



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/09087/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-Trent  
On 17<sup>th</sup> November 2017**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MAR**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Howard (Solicitor)

For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge C Burns, promulgated on 28<sup>th</sup> March 2017 following a hearing at Birmingham on 14<sup>th</sup> March 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Iraq, and was born on 28<sup>th</sup> March 1990. He appealed against a decision of the Respondent dated 15<sup>th</sup> August 2016, refusing his application for asylum and humanitarian protection.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he had sold groceries to two men, who had subsequently been arrested for terrorism, and that his own failure to explain to the Anti Terrorism Forces (ATF) about his lack of involvement in terrorism, now expose him to a risk of ill-treatment. He alleged that there would be a case for imputed political opinion being ascribed to him on account of what he had alleged.
4. The Secretary of State contests this, stating that the Appellant's claim is not plausible and in any event does not engage a Convention reason.

## **The Judge's Findings**

5. The judge began his determination by pointing out earlier on the lack of credibility in the Appellant's testimony. He stated that, "his propensity to be untruthful is further demonstrated by his conflicting account of what funds he took with him on his journey to the UK" (paragraph 14). This is what the Respondent Secretary of State had regarded as material and the judge referred to it at the outset of the determination.
6. The judge also pointed out that the Appellant did not in his screening interview state that he has been suspected of involvement in terrorism (see paragraph 13).
7. For reasons that the judge set out (at paragraphs 41 to 50) the judge found the Appellant's claim to be lacking in credibility and dismissed it. T
8. The judge did not accept that the Appellant had been tired or bewildered having just arrived into the UK because he did have the benefit of an interpreter and he was not asked difficult questions (see paragraph 42).

## **The Appeal Before this Tribunal**

9. The essence of the appeal before this Tribunal lies in the judge's determination that the Appellant could return to Iraq, because he was potentially returnable to Baghdad, from where he could go to his home territory.
10. The judge dealt with this under a section headed "Return to Iraq?" (see paragraphs 51 to 59). The essence of the judge's determination lay at paragraph 56 where it was held that the Appellant was "a man who has had access to resources previously - either \$1,000 or \$2,000 to fund his journey" (paragraph 56).

11. The judge was of the view that the funds would be available to him also in Iraq upon return.
12. Permission to appeal had been granted by the Tribunal on 8<sup>th</sup> September 2017.
13. In submissions before me, Mr Howard, appearing on behalf of the Appellant, relied upon the recent judgment of the Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944**, where it had been held that it was important to undertake an assessment about a returnee's position following arrival in Baghdad, and the judge had failed to do this in paragraph 56, confining his attention purely to the Appellant's return to the capital city in Iraq.
14. Mr Howard submitted that the Appellant was Kurdish, did not speak Arabic, and his family were all based in Kirkuk, and not in Baghdad, such that it had not been shown by the judge that the Appellant would escape destitution if returned to Baghdad. In short, a sufficient assessment had not been carried out by the judge at paragraph 56.
15. For his part, Mr Bates submitted that a closer look at paragraph 56 did show the judge having carried out a full assessment. After having concluded that the Appellant was a man who had access to resources previously, because he had been owner or part-owner of a shop, the judge went on to say that, "I do not accept his account that he had lost touch with his family ... he does not say that his father is no longer contactable".
16. The judge also held that this was a person who "would be a young man returning to Baghdad prior to travelling onto IKR", such that this plainly showed the judge focusing his attention on the Appellant's onward travel journey to the IKR. The judge had simply not overlooked the Appellant's subsequent onward journey to IKR.
17. It was on this basis, submitted Mr Bates, that the judge had then gone on in the same paragraph to state that,

"He has family in Iraq and is likely to have access to funds from the business. He has no physical disabilities. He has worked before. He is resourceful and resilient as evidenced by his journey to the UK. He will not be at risk of destitution ..." (paragraph 56).
18. Second, Mr Bates submitted that the plain fact was that the Appellant's credibility was roundly rejected by the judge.
19. Third, Mr Bates submitted that the judge had thereafter gone on to look at the Appellant's Article 8 rights in the context of paragraph 276ADE and rejected that there will be any significant obstacles to the Appellant's reintegration into Iraqi society upon his return. The determination, submitted, Mr Bates, was without any material error of law.
20. In reply, Mr Howard stated that if one looks at the latest Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944**, it is plain from the appendix at the end

of the judgment that there is a section headed “Iraqi Kurdish Region” which requires an assessment of the position in respect of the IKR. Mr Howard properly drew my attention to paragraph 20 here which states that,

“Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR will be fact-sensitive; and is likely to involve an assessment of

- (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air);
- (b) the likelihood of case securing employment in the IKR; and
- (c) the availability of resistance from family and friends in the IKR”.

21. Mr Howard then submitted that paragraph 21 goes on to say that, “as a general matter, another Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR”.

### **No Error of Law**

22. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law such that I ought to set it aside (see Section 12(1) of TCEA 2007). My reasons are as follows.
23. First, the judge does expressly take into account “the risk of destitution” to the Appellant in Baghdad upon arrival because he expressly refers to this at paragraph 56.
24. Second, Mr Howard submitted before me that, although the judge had stated that the Appellant “is likely to have access to funds from the business”, without explaining where this business was, the plain fact is that the Appellant had already stated in his evidence that he had funds of \$1,000 to \$2,000 to fund his journey, from previous resources that he had access to, and was an owner or part-owner of a shop (see paragraph 56).
25. Third, the judge did not accept that the Appellant had lost contact with his family, was unable to call his father, or that his father was no longer contactable.
26. Finally, the judge did not accept the Appellant’s position in terms of the likelihood of not being able to secure employment or the non-availability of assistance from his family.
27. In short, what is stated at paragraph 20 of the latest Court of Appeal judgment (see the appendix) in **AA (Iraq) [2017] EWCA Civ 944**, is fully complied with in the judge’s determination at paragraph 56. Any error has to be a “material” error and it is not the case that in this respect the judge has erred in law in this determination.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

An anonymity direction is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

1<sup>st</sup> December 2017