



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02144/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 8 June 2018

Decision & Reasons Promulgation  
On 5 July 2018

Before

**UPPER TRIBUNAL JUDGE HEMINGWAY**

Between

**FAA**  
(ANONYMITY DIRECTED)

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Ms R Pickering (Counsel)

For the Respondent: Mrs R Pettersen, (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 15 November 2016 and which it sent to the parties on 21 November 2016. In making its decision the tribunal dismissed the claimant's appeal from a decision of the Secretary of State of 15 February 2016, refusing to grant him international protection.
2. Shorn of all but the essentials, the account which underpinned the claimant's assertion of entitlement to international protection is as follows: He is a national of Iraq of Kurdish ethnicity. He was born on 20 March 1988. He is from and has lived all of his life in a city called Tuz Khurmatu (see paragraph 1 of his witness statement of 29 October 2016). Pausing there though, it has been said elsewhere in the documentation before me that he is from Tikrit in Iraq. I do not think the two are one and the same but I have concluded

that, in any event, nothing turns on that for my purposes. At some point around the latter end of 2013 or sometime in 2014, members of the organisation sometimes called ISIS came to reside in the area where he lived. His cousin joined ISIS and he was pressurised to join them too. He declined but, as a result, he was attacked and beaten as was his wife. For those reasons he fled Iraq and, with the assistance of an agent, made his way to the United Kingdom (UK).

3. It is recorded that the claimant made his application for international protection on 10 October 2015. But the Secretary of State refused the application on 15 February 2016 for reasons which are set out in a lengthy written decision which I shall call “the reasons for refusal letter”. The Secretary of State disbelieved his account of involvement with ISIS. She also decided that, even if he was at risk in his home area of Iraq, he could internally relocate either to Baghdad or to the part of Iraq which is administered by the Kurdish authorities and which I shall call the Iraqi Kurdistan Region (IKR). The claimant appealed to the tribunal.
4. The tribunal held an oral hearing of the appeal on 7 November 2016. The claimant gave oral evidence at that hearing with the assistance of a Kurdish Sorani speaking interpreter. He was represented by Ms R Pickering of counsel who also represented him before me. The Secretary of State was represented, at that stage, by Mr S Mullarkey, a Home Office Presenting Officer. The tribunal seemed to accept that the claimant is in fact from Tuz Khurmatu albeit that, at one point, it referred to a different place called Kalar, as being his home area (see paragraph 23 of its written reasons). But anyway, a key contention made on his behalf was that his home area was mired in violence and insecurity to the extent that the requirements of Article 15c of Council Directive 2004/83/EC (the Qualification Directive) were met, so that he could not go back there. Indeed, the tribunal proceeded on that basis. Nevertheless, it considered the credibility of his account concerning ISIS members and it rejected it. It then asked itself whether he could relocate to the IKR and/or to Baghdad. It decided that, in fact, he could internally relocate to either of those places.
5. This is what the tribunal said about the credibility of the claimant’s account:

“25. I find that the appellant’s account is inconsistent in a number of respects. For example, in substantive interview at questions 28 to 38, the appellant said both that he had been approached by his cousin on two occasions and that he had been approached on three occasions by his cousin. Further, in his witness statement, the appellant claimed that his cousin had approached him on three occasions and that, on the second and third occasions, he and his wife were beaten; however, at interview the appellant also said that on the occasion of the third visit, the appellant had fled and made no mention of being beaten.

26. By way of further example, the appellant was asked in oral evidence about the what happened [sic] on the visits by his cousin. In oral evidence, the appellant said, amongst other things, that at the last visit his cousin had attacked his wife and fired shots. However at substantive interview the appellant made no mention of the cousin firing shots.

27. The appellant has not put forward a satisfactory explanation for these inconsistencies which go to core aspects of his account; and as such tend to undermine the credibility of the appellant's account.

28. The appellant relies on a number of documents in support of his application. I treat these documents with a degree of caution for a number of reasons.

29. First, they have been adduced at relatively short notice and the respondent has not had an opportunity to examine the originals prior to the hearing.

30. Second, the appellant's account of how the documentation was obtained, by whom they were obtained and for what purpose, is vague.

31. And thirdly, because they appear to be inconsistent with certain aspects of the appellant's account. Thus on the one hand, the appellant's case in part appears to have been advanced on the basis that he could not be removed to IKR because of lack of connection and family support in that region; yet on the other hand the appellant also relies on a document (page 12) which is said to have been issued by the Kurdistan Region Council of Ministers.

32. In considering the credibility of the appellant's account I have looked at all the evidence in the round, including the background materials. On the totality of the evidence, I do not find the appellant to have given a credible account. I find that his evidence is not reliable for the reasons given above and I do not accept any aspect of his claim that has been put in issue by the respondent. I make further findings as necessary below."

6. The tribunal then moved on to the question of internal relocation and said this:

"34. Given that I find that I cannot rely on the appellant's account, I have considered the matter of return to Iraq and internal relocation on the basis that the appellant would be considered to originate and, or, have connections in IKR; and in the alternative whether or not he would be able to relocate to Baghdad.

35. I consider first the situation and the appellant's circumstances on the basis of return to IKR. I find that the available evidence does not show to the requisite standard that the appellant originates from IKR; however there is a sufficient evidential base to show that the appellant has some connection there and that his wife and family are established in the Sulaymaniyah governate. In that context, the appellant has relied on documentation that originates from the IKR and claims to have arranged for his wife to return to her father's household in Kalar, which on the face of it appears to be in the IKR.

36. In those circumstances, the appellant would be able to obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. Given the support he would have available from his family, there are real prospects of him being able to establish himself there and being able to find employment. The evidence does not show that the IKR authorities would proactively remove Kurds such as the appellant in these circumstances.

37. I consider it next, in the alternative, return to Baghdad. I note that as a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City.

38. In the present case, the appellant has put forward a claim in part based on evidence showing that he has a CS identity document and that he can communicate and speak, if not write, in Arabic. I find that in these circumstances he therefore has sufficient prospects of being able to find employment, even if it be the case that he would have no family members in the immediate area on whom he could call for support.

39. In considering the appellant's circumstances, I also take into account the fact that he is Sunni Kurd. I note that the background materials suggest that he would be viewed as a member of a minority community, and as a Sunni he would be in a predominately [sic] Shia environment. The respondent's own guidance note indicates that Arab Sunnis may be of adverse interest to Shia militias; however that guidance does not extend to the position of Kurds who are Sunni. I do not accept, that by analogy, Sunni Kurds would be perceived as supporters of ISIS in the same way as Sunni Arabs may be so perceived by Shia militias.

40. In considering the available evidence, I find that on balance, given the appellant's particular circumstances, it would not be unduly harsh or unreasonable for him to relocate to Baghdad.

41. In so doing I also reject the various submissions as set out in the skeleton argument of Miss Pickering on issues in relation to the practicability of travel to and within Iraq. That is because there are practical arrangements that can be made to access IKR and the appellant would be able to call on the support of his family members in order to do so, as the appellant himself suggests in having made arrangements for his wife to move to Kalar."

7. That is why the tribunal dismissed the claimant's appeal. But that was not the end of the matter because permission to appeal to the Upper Tribunal was sought. Three grounds of appeal were advanced. I now summarise them. In ground 1 it was asserted that the tribunal had erred with respect to its consideration of relocation to the IKR because it had assumed that the claimant would be sent directly to the IKR from the UK. That caused it not to deal with issues it was required to deal with concerning how the claimant would be able to travel from Baghdad to the IKR (its being said that Baghdad would in fact be the point of return). In ground 2 it was asserted that in considering internal relocation to Baghdad the tribunal had failed to address the considerations which had been said to be relevant to relocation to Baghdad as set out in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC). In ground 3 it was asserted that the tribunal had erred through failing to consider some background country material concerning the security situation in Baghdad and through failing to consider some other background country material regarding difficulties it was said persons would experience in seeking entry to the IKR.

8. Permission was originally sought (as the rules require) from the First-tier Tribunal but the application was made late and time was not extended. But it is clear that, had time been extended, permission would have been refused anyway. But the application was renewed with the Upper Tribunal and permission was granted. The grant is silent about lateness, but can be assumed that the Upper Tribunal Judge who granted permission had concluded that

time ought to be extended. Otherwise, of course, he would not have granted permission at all. The salient part of the grant reads as follows:

“1. Paragraph s 25 and 26 [of the tribunal’s written reasons of 15 November 2016] are not, arguably, compelling reasons to reject the appellant’s claim and the Judge’s dismissal of the documentary evidence is cursory.

2. This leaves a lacuna as to what the First-tier Tribunal Judge was required to do with the viable places of relocation and the means of travel to them once the appellant had reached Baghdad.

3. The Judge’s treatment of these issues is short and appears to lack the necessary detail. Nor does it appear to relate to the current Country Guidance which addresses these issues”.

9. Permission having been granted there was a hearing before the Upper Tribunal (before me) so consideration could be given as to whether or not the tribunal had erred in law, and if so, what should flow from that. Representation at that hearing was as indicated above and I would wish to thank each representative for the assistance they provided.

10. Ms Pickering relied, in large measure, upon the written grounds. A key issue as to ground 1 was the point of return. The claimant would be returned to Baghdad and not to the IKR. The tribunal had, therefore, erred in failing to consider how he might travel from Baghdad to the IKR if he was to relocate there. As to Baghdad, the factors which the Upper Tribunal had said to be relevant to relocation there in the case of AA, cited above, had simply not been considered. Further, the tribunal had not justified its seeking to distinguish between the position of Sunni Arabs and Sunni Kurds (the claimant is a Sunni Kurd). Mrs Pettersen, argued that the tribunal’s decision had properly addressed all relevant matters and that there had been evidence before the tribunal to demonstrate that there were flights from Baghdad to cities in the IKR (she did not disagree with Ms Pickering’s contention that return would be to Baghdad rather than the IKR in the case of this claimant). As to Baghdad, the tribunal had in fact correctly applied the test set out in AA.

11. As noted, it was not in dispute before me that the claimant, not being from the IKR would be returned to Baghdad. I have, therefore, asked myself whether the tribunal erred in law in deciding, as it did, that the claimant would be able to internally relocate (in the sense of living away from his home area in Iraq) to Baghdad. Of course, it was not just a question of whether he would be safe there in the sense of his not being at risk of persecution or serious harm. There was the question of whether, in all the circumstances, requiring him to internally relocate would be reasonable. Guidance was given as to that in the Country Guidance decision of the Upper Tribunal in AA. Indeed, the Upper Tribunal in AA, provided a non-exhaustive list of factors it said were likely to be relevant. Those factors were whether or not the claimant had any CSID (an important identity document) or would be able to obtain one; whether the claimant would be able to speak Arabic (its being said that those unable to do so would be less likely to find employment); whether the claimant has family members or friends in Baghdad available to accommodate him/ her; whether the claimant is a lone female (its being the case that women face greater difficulties than men in finding work); whether the claimant would be able to find a sponsor to access a hotel room or rent accommodation; whether the claimant is from a minority community; and whether there would be support available for the claimant bearing in mind the existence of some evidence to the effect that returned failed asylum seekers would be provided with the support

generally given to internally displaced persons. It should also be pointed out that when AA reached the Court of Appeal the particular importance of the CSID was stressed.

12. Miss Pickering's contention is that the tribunal erred through not having regard to those matters said to be relevant. But in my judgment, it is clear that, in fact, the tribunal did have those considerations squarely in mind when it considered internal relocation to Baghdad. It started its assessment as to that at paragraph 37 of its written reasons by noting the general position to the effect that it would not be unreasonable or unduly harsh for a person from a contested area (that is an area where the 15(c) test is met) to relocate to Baghdad. The tribunal noted that the claimant had advanced a claim which it said was "based on evidence showing that he has a CS identity document". I have taken that as being a reference to a CSID card and no one has suggested anything different. The Tribunal noted there was evidence suggesting the claimant could speak Arabic. Those matters caused it to conclude that he would be able to find employment in Baghdad and that that would be so even if he could not call upon family members for support. As to ethnicity, the tribunal accepted and took into account that the claimant is a Sunni Kurd. It referred to a Home Office Guidance Note stating that Sunni Arabs might be of adverse interest to Shia militias. Accordingly, although such is contested on behalf of the claimant, it was entitled on the material before it to draw a distinction between the position of Sunni Arabs and the position of Sunni Kurds. What it said about all of this appears from paragraph 37 up to 39 of its written reasons. In my judgment what it said covers the factors expressed to be of potential relevance to internal flight to Baghdad in AA. As to the ones it did not mention, the claimant is obviously not a lone female and the tribunal can be taken to have appreciated that. He did not, on the evidence, appear to have a sponsor who might be able to assist him in accessing accommodation. But the tribunal probably had that factor in mind when it commented that he had no family members upon whom he could call for support in the area of Baghdad. In any event, it said that it thought he had "sufficient prospects of being able to find employment" which of course would have assisted him in obtaining and paying for accommodation. It did not find, one way or the other, whether he might be given the support available to internally displaced persons but since it did not positively mention that such support would be available it can be taken to have assumed (in favour of the claimant) that such would not be available.

13. The consideration of internal flight to Baghdad was perhaps a little on the brief side. But succinctness, of itself, is not to be penalised. The tribunal's reasons on the point had to be sufficiently clear for the claimant to appreciate why matters had been resolved against him and they were. The reasons had to be adequate and they were. As to the related suggestion that the tribunal overlooked background country material concerning insecurity in Baghdad, it simply followed the extant Country Guidance before it. It was not argued before it, or before me, that any background country material demonstrated that there had been a marked change in conditions in Iraq such that the Country Guidance decision (AA) which the tribunal applied ought no longer to be followed.

14. For the above reasons then I have concluded that the tribunal did not err in deciding that the claimant was able to internally relocate to Baghdad. That of itself, it seems to me, is the end of the matter but I shall go on to consider some other factors for the sake of completeness.

15. Ms Pickering, as noted, argued that the tribunal had erred with respect to its consideration of internal relocation to the IKR. Of course, whether it did or did not no longer matters given my conclusion that it did not err with respect to Baghdad. But I do accept, as seemingly did everybody else, that the claimant would not have been returned from the UK

to the IKR even if he had expressed a preference for it. So, he would have had to travel from Baghdad to the IKR and would then have had to secure access to the IKR. I agree that the tribunal did not contemplate an initial return to Baghdad when considering relocation to the IKR. I agree it did not, therefore, consider the practicalities of travel. So, to that extent, it did err in law albeit that that error (given my conclusions as to internal flight to Baghdad) is not a material one.

16. The Upper Tribunal Judge who granted permission to appeal thought it arguable that the adverse credibility conclusion provided by the tribunal was inadequate. For myself I do not think it was. It could perhaps have been a little fuller but that is not, of itself, a reason for finding that it erred in law. It was not a matter pursued before me by Ms Pickering and I think she was right not to do so. It seems to me that, in fact, the issue is not relevant. It mattered not to the outcome whether the claimant had told the truth or whether he had misled regarding ISIS. That is because, for other reasons, it had been decided that the claimant was at risk in his home area anyway. It had not been argued that the persons who had sought to recruit him would be able to track him down and harm him in either Baghdad or the IKR. Further, the tribunal's adverse view as to his credibility did not impact upon its assessment as to the viability or otherwise of internal flight. So, I would conclude as to that particular issue, a point which was raised when permission was granted but was not raised in the original grounds of the appeal, that there was no error of law but that even if there had been, it was not a material one.

17. This appeal to the Upper Tribunal then is dismissed.

## **Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision shall, therefore, stand.

## **Anonymity**

The First-tier tribunal granted the claimant anonymity. Nothing was said about that before me. I have decided it is appropriate to maintain the status quo. So, I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings in whatever form shall identify the claimant or any member of his family. Failure to comply may lead to contempt of court proceedings.

**Signed**

**M R Hemingway**

**Judge of the Upper Tribunal**

**Dated**

**4 July 2018**

**To the Respondent**

**Fee Award**

No fee is payable so there can be no fee award.

**Signed**

**M R Hemingway**

**Judge of the Upper Tribunal**

**Dated**

**4 July 2018**