



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04825/2018

THE IMMIGRATION ACTS

Heard at Bradford
On the 27th November 2018

Decision & Reasons Promulgated
On the 3rd December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S A K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr R O’Ryan, Counsel instructed by Kirklees Law Centre
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Judge Thorne, promulgated on the 31st May 2018, to allow the appeal against refusal of the appellant’s Protection Claim.
2. I extend the anonymity direction that was made in the First-tier Tribunal.

Background

3. The appellant claimed to hail from Dubz in the Kirkuk governorate of Iraq where he lived with his parents. In 2015, a man called ‘Sirwan’ offered him money to undertake work that would “send him to Paradise”. Whilst the appellant did not

realise the implications of this offer at the time, his mother informed a neighbour ('Karim') who was a police officer. This in turn led to Sirwan's arrest and a consequent attack by Sirwan's friends on the family home. The appellant therefore left the family home and, following a night in the police station, fled Iraq. His case is and was that he fears being targeted by Sirwan's friends on return to Iraq who he suspects are terrorists.

4. The respondent accepted that the appellant hailed from Dubz and was an Iraqi national. He did not however accept that the appellant had given a credible account of his reasons for leaving Iraq. The principle reason for this was that the appellant had initially claimed that the events triggering his departure from Iraq had occurred in 2017 rather than 2015, only admitting to lying as to his whereabouts in 2017 when he was confronted with conclusive proof that he had been fingerprinted in Sweden in November 2015. Moreover, given recent background country information showing a significant improvement in the security situation, it would now be safe for the appellant to return to his home area. Alternatively, as a male of Kurdish ethnicity, he could reasonably be expected to relocate to Erbil in the KDP.
5. The judge accepted the appellant's explanation for lying, namely, that he was a naïve and impressionable youth at that time and had simply said what the agent had told him to say [46]. The judge therefore accepted that there was reasonable degree of likelihood that the core of the appellant's account was true [44]. The judge further concluded that there was insufficiently clear and cogent evidence for him to find that the appellant's home area was no longer contested [52]. He therefore found that the appellant continued to face a real risk of suffering serious harm due indiscriminate violence on return to that area [53]. He also found that the appellant was without family, social or cultural ties to Baghdad and thus faced a real risk of destitution on return to that city, "as a lone child with no experience of living in Baghdad" [54, 55].

Discussion

6. There are three grounds of appeal, which I shall take in turn.
7. The first ground is that the judge erred in his assessment of the background country information concerning the safety of return to the appellant's home area and/or failed to provide adequate reasons for his conclusion in that regard. The information upon which the respondent relied is summarised at paragraphs 78 to 84 of the letter explaining the respondent's reasons for refusing the appellant's Protection Claim. It is taken from the relevant Country Policy and Information Note (CPIN) and states that (a) Daesh have lost territory in Iraq, (b) Iraqi government and associated forces have regained control of some areas, (d) the level of violence has declined, and (e) internally displaced persons (IDPs) are now returning to their home areas. Return to the Kirkuk governorate is therefore said to be now generally possible with the exception of those parts in and around Hawija.
8. The judge dealt extremely briefly with the evidence concerning the security situation in Iraq at paragraph 52 –

I have considered all the most up to date information submitted by the parties and conclude that there is inadequate cogent and clear evidence before me so as to allow me to depart from the general country guidance in the case of AA v SSHD [2017] EWCA Civ 944.

9. Mr O’Ryan was hard pressed to claim that the above adequately explained why the judge felt that the evidence in the CPIN did not justify departing from the decision in AA v SSHD. He nevertheless submitted that any failing in that regard was immaterial given that (a) the onus of establishing that the Tribunal should depart from the findings in AA (in which it was found that the *entirety* of the Kirkuk governate was a ‘contested area’) rested upon the Secretary of State, and (b) the evidence in the CPIN was contradictory and did not in any event support the claims made by the respondent as to the risk on return. In support of the latter submission, he pointed out that (a) the parties had agreed in the more recent decision of BB (Returns to Iraq) CG [2017] UKUT 00018 (IAC) that the security situation outside Baghdad continued to be extremely fluid, (b) there was a contradiction between the assertion in the CPIN that there were no areas in Iraq under ISIS control and its acceptance that there *were* some areas of continued risk of serious harm due to ISIS control, and (c) the number of security incident had increased by December 2016 when compared with April 2015 and, likewise, there had been an increase in the number of civilian fatalities between April 2015 and January 2017. I agree. I would also point out that given that the respondent accepted there were some areas of the Kirkuk governorate (in and around Hawija) that continued to be contested, it was incumbent on the Secretary of State to adduce evidence that the appellant’s home in Dubz was not within such areas if he was to make good his argument. There was in fact no such evidence before the Tribunal. I therefore conclude that this ground of appeal has not been made out.
10. The second ground of appeal is that the appellant’s youth was an insufficient reason for the Tribunal to accept his explanation that he had been simply following his agent’s instructions in falsely claiming that he had left Iraq in 2017 rather than 2015 (see paragraphs 4 and 5, above). It may well be that many if not most judges would have found it to be something of a stretch to accept this as being a satisfactory explanation for the substantial discrepancy in the appellant’s timeline. It was nevertheless reasonably open to the judge to accept it on the evidence that was before him. The claim to the contrary is not in my judgement even arguable.
11. The third ground is that in finding that the appellant would be unable to secure the means to fly from Baghdad (to which the respondent would return him) to Erbil, the judge failed to have regard to the availability of financial assistance from the Secretary of State. However, as Mr O’Ryan rightly pointed out, it had never been suggested to the judge that such funding would be available for this purpose. It is therefore difficult to see how the judge can be criticised for not having regard had to it. Moreover, even if it were the case (which it is not) that the judge could be criticised for failing to appreciate that funding would be available to get the appellant to the KDP, the judge gave additional sustainable reasons (at paragraph 57) for why relocation would not be a reasonable option –

Moreover, bearing in mind that he is a lone child with no experience of living in the IKR, has no family or friends to support him in the IKR, and is unlikely to be able to obtain employment there, I conclude that A cannot reasonably be expected to avoid any potential undue harshness in Baghdad city by travelling to the IKR.

12. I therefore conclude that none of the Secretary of State's grounds of appeal against the decision of the First-tier Tribunal are made out.

Notice of Decision

1. This appeal is dismissed

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: 28th November 2018

Deputy Upper Tribunal Judge Kelly