



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/04917/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 21<sup>st</sup> February 2018**

**Decision & Reasons Promulgated  
On 16<sup>th</sup> March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**[S M]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Holt, Counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iraq born on 22<sup>nd</sup> August 1999. The Appellant claims to have left Iraq illegally crossing into Syria by foot and arriving in the UK illegally on 21<sup>st</sup> October 2015. He claimed asylum on 3<sup>rd</sup> November 2015. The Appellant's application for asylum is based on race and a non-Convention reason namely that he is from a contested area and that he received threats from his mother's relatives. The Appellant's application for asylum was refused by Notice of Refusal dated 1<sup>st</sup> May 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Gurung-Thapa sitting at Stoke on 25<sup>th</sup> April 2017. In a decision

and reasons promulgated on 18<sup>th</sup> May 2017 the Appellant's appeal was dismissed on all grounds.

3. On 1<sup>st</sup> June 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended that the First-tier Tribunal Judge finding that the Appellant would be able to relocate to the KRI "with relative ease" effectively "skipped a step" by failing to consider what risk was faced by the Appellant in Baghdad itself. Secondly whilst the Judge had correctly identified at paragraph 58 of her decision the test to be considered when examining the risk involved in travel from Baghdad to the IKR the judge had failed to make an assessment of practicality of travel from Baghdad to the IKR (such as to Erbil by air) and the judge had failed to apply correct country guidance.
4. On 13<sup>th</sup> September 2017 Designated Judge Shaerf granted permission to appeal. Judge Shaerf noted that the Grounds for Appeal considered the risk to the Appellant would be likely to face on return to Baghdad and in travelling to the Iraqi Kurdish Region (IKR) and that the judge had arguably erred in failing to take into account the fact that the Appellant would be returning as a minor and his claim that he has limited Arabic. At the time of the hearing Mosul, which is where the Appellant's home village was close to, was under heavy siege and no account was taken of the proximity of Erbil to where the judge considered the Appellant could relocate and how he would be able to negotiate passage from Baghdad to Erbil. Additionally, subsequent to the promulgation of the decision of the Court of Appeal in *AA (Iraq) v SSHD [2017] EWCA Civ 944* revised country guidance had been given by the Upper Tribunal.
5. On 21<sup>st</sup> September 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. Therein the Secretary of State contended that the judge had considered return to Baghdad as set out at paragraphs 55 to 61 of her decision and that the Judge had found that the Appellant was not credible in not knowing the whereabouts of his parents and siblings.
6. It was on that basis that the appeal initially came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The issue was whether or not it was practical to return the Appellant, who was a Kurd, to Iraq bearing in mind that such return would be through Baghdad and whether an Appellant could reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR. It was accepted at that hearing that each case is fact-sensitive and was likely to involve an assessment of:
  - (a) the practicality of travel from Baghdad to the IKR (such as to Erbil by air);
  - (b) the likelihood of the Appellant securing employment in the IKR;
  - (c) the availability of assistance from family and friends in the IKR.
1. On hearing submissions from the legal representatives I concluded that the judge had erred in law in that she had missed out consideration of the

relevant vital stages before reaching her findings and that it was necessary for a judge to adopt a step by step approach.

2. On that basis I set aside the decision of the First-tier Tribunal and gave directions but retained the matter before myself to be reheard on the first available date 42 days hence.
3. It is that rehearing that comes back before me. The Appellant appears by his instructed Counsel, Mr Holt. Mr Holt is extremely familiar with this matter. He has appeared on all previous hearings involving this Appellant and is the author of Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

### **The Issue**

4. In my directions I recorded that the outstanding issues related to:
  - (i) the risk faced by the Appellant in Baghdad;
  - (ii) as to whether the Appellant was able to travel from Baghdad to the IKR.

Mr Bates considerably assists me by indicating that the Secretary of State does not wish to pursue the issue as to whether the Appellant would face risks in Baghdad, it being accepted that being a Kurd, save in the most exceptional of circumstances which are not present here, it would not be appropriate for the Appellant to remain in Baghdad. Consequently, the only outstanding issue before me is whether or not it is practical for the Appellant to travel from Baghdad to the IKR.

### **Evidence**

5. In my directions I granted leave to either party to file and serve a bundle of such objective evidence upon which they wished to rely. There was no further evidence produced by the Secretary of State but the Appellant produces a short objective bundle of news articles, and literature regarding the obtaining of visas to Iraq. Not all of these articles are ones that would not have been before the First-tier Tribunal Judge but I have given due consideration to this objective evidence. In addition, although I gave no direction that this should be obtained, the Appellant's solicitors have obtained an expert's report from Sheri Laizer. This report is dated 14<sup>th</sup> February 2018. I have given it read through consideration, Ms Laizer not being here before the court for the purpose of cross-examination.
6. I had previously given directions that the matter would proceed by way of submissions only. [SM] was excused attendance before me but has chosen to appear. That of course is his prerogative.

### **The Expert's Report**

7. Within his submissions Mr Bates makes reference to Ms Laizer's report and to criticism that higher courts have previously made against reports

provided by this expert. It is, however, pertinent to have read the report and to note its conclusions. These are set out at page 11 of the report. Some of them however stray from the discrete issue that is before me. The conclusions that are relevant to the issue are as follows:

- (1) [SM] cannot safely return to Mosul to have a new CSID card issued. He needs valid ID to travel anywhere within Iraq including Baghdad.
- (2) [SM] has no CSID and no Sponsor to allow him to enter Baghdad or Erbil, whether to stay or work there.
- (3) [SM] cannot travel safely by road. He cannot board an aircraft without adequate identity documentation. Once arrived in the KRG he could not find accommodation or work to remain there. He would almost certainly become an IDP, destitute, alone and homeless.

### **Submissions/Discussions**

8. Mr Holt submits that there are effectively two ways in which an Appellant can return to the IKR, either by being pre-cleared and flying direct to Erbil or via Baghdad and then making your own way to the IKR. He acknowledges that it is accepted that returns to Baghdad are feasible and given the need for a Kurd to get out of Baghdad promptly it is reasonable that he would then relocate. He further points out that it is generally accepted that travel by road through the area known as the Baghdad Belts to the northern region of the IKR is extremely dangerous and not practical. Consequently, the issue is whether or not the Appellant when he arrives in Baghdad can get on a plane to Erbil or any other part of the IKR.
9. Mr Bates points out that the Appellant is from Mosul which is actually outside the IKR and that whilst the Secretary of State accepts that the Appellant cannot live in Baghdad as a Kurd, there are flights from Baghdad to Sulaimaniya and to Erbil. He consequently points out that the issue is effectively why the Appellant cannot get on an internal flight to the IKR. He submits that based on previous preserved findings of Immigration Judge Gurung-Thapa credibility was rejected at paragraph 46, honour based risks were rejected and at paragraph 52 the family feud was rejected. He then reminds me that at paragraph 61 the core of the Appellant's claim was rejected by the First-tier Tribunal Judge and based on such adverse credibility findings that the Appellant has contact with his family regarding documentation. The implication from this is that the Appellant would be able to obtain relevant documentation via family members if he is returned to Baghdad Airport.
10. Mr Bates is critical of Dr Laizer's report, reiterating her past reports having received criticism from the upper courts. He particularly asked me to consider page 10 of her report entitled "Travel by air to Erbil (or Sulaimaniya)" and her reference therein as to the procedure at the airport. He cannot understand (and I have some sympathy with this approach) as to why Ms Laizer makes reference to her own personal experience. He points out this is not her appeal. He further criticises where she states:

“A travel document or laissez passer will not likely suffice as ID to board domestic flights and may raise suspicion about [SM]’s motives and reasons for return to Iraq from the UK”.

Mr Bates comments that there is no background evidence or supportive evidence produced by Ms Laizer for this contention and in any event, in order to have entered Iraq to be accepted back into the country, the Appellant's nationality would have had to be accepted by the authorities. He consequently poses the question of why the Appellant would not in such circumstances be able to travel.

11. Mr Holt responds by stating that it is common sense rather than any comments made in an expert’s report that in order to get on any aeroplane ID must be available and that travelling anywhere in the world is difficult in the present climate. He submits it would be impossible to find objective evidence that would challenge the question “Can you get on a domestic plane in Baghdad without ID?” He further submits it is not open to the Secretary of State to put forward an argument that you can travel onward from Baghdad through a laissez passer as no such evidence has been put before me and the documentary evidence produced does not go so far as to say that. There is no evidence that the Appellant has other documentation, i.e. a laissez passer or documents for internal travel.
12. Whilst accepting that Ms Laizer’s report says a lot that is not pertinent to this appeal it is not in his view damaging to the appeal, it is merely irrelevant, but she does emphasise a point which he contends is important, namely that this Appellant has no family connection in the IKR despite the submissions of the Secretary of State.
13. He submits it is not a typical fact-finding exercise and it is necessary to decide if there is a risk of his getting out of the airport at Baghdad. He asks me in all the circumstances to allow the appeal.

## **Findings**

14. This is one of an ever increasing seemingly number of cases that comes before the Tribunal relating to return of Iraqis to the IKR via Baghdad. Each case has to be looked at on its own facts and firstly, whilst Mr Holt and Ms Laizer refer to a lack of family members, it has to be remembered that there were adverse credibility findings made by the First-tier Tribunal Judge. Those findings were preserved which is why this matter remains in the Upper Tribunal. Having said that, I do acknowledge that as a general principle merely to say that a family member from the IKR exists and that that family member will merely go and obtain the appropriate documentation and bring it to Baghdad to enable the Appellant to travel is, in the absence of evidence that that is likely to occur, hardly sustainable. It is accepted that it is not practical to return a Kurd to Baghdad but it is acceptable to return a Kurd through Baghdad, i.e. that there will have to be an onward transfer to the Kurdish Region and most

Kurds would not wish to leave the relative safety of the airport, i.e. go into Baghdad, before boarding an onward flight.

15. Mr Bates advises me that the provision of a ticket to Iraq will only be provided to Baghdad by the Secretary of State, i.e. they will not provide an onward ticket to Erbil or Sulaimaniya. Consequently, it is necessary for an Appellant to obtain his own ticket. The question then becomes a very narrow one, namely "Will such ticket be available?" Unless there is certainty that it is, bearing in mind the conclusion that it is not appropriate to return a Kurd to Baghdad due to the risk that they would be exposed to, then it cannot be appropriate to return such a person unless there is certainty that they will be in a position to move on.
16. It seems absolutely certain that all airlines will require security checks and whilst I note what Mr Bates states, namely that for the Iraqis to admit the Appellant or any other person back into the country in the first place they would have to be satisfied he is Iraqi, he would still have to be in a position to produce documentation, albeit a passport or a laissez passer, which would enable the authorities to check the document against the database containing security details of dangerous and wanted persons, and for the CSID number on ID cards to be checked against a register and security database. In the absence of such document the Appellant cannot travel.
17. In such circumstances I have not been satisfied that there is evidence that this is an Appellant who would have the appropriate travel documents. In such circumstances I conclude that there is a real risk that the Appellant would find himself stuck in Baghdad. Consequently, it is in this instant case that I find it is not practical for this Appellant to travel onwards to the IKR and in such circumstances the Appellant's appeal is allowed.

### **Notice of Decision**

Based solely on the fact that it is not practical for the Appellant to make onward travel from Baghdad Airport to the IKR, the Appellant's appeal is allowed.

No anonymity direction is made.

Signed

Date 14 March 2018

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 14 March 2018

Deputy Upper Tribunal Judge D N Harris