



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07663/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 19 October 2018

Decision & Reasons Promulgated
On 25 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

H. A.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rogers, Immigration Advice Centre

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, entered the United Kingdom illegally in 2009 and claimed asylum. That claim was refused, and his appeal against that decision was dismissed by determination of Judge Balloch [B3-]. His appeal rights against that refusal were exhausted on 7 January 2010.

2. The Appellant lodged a further protection claim on 3 April 2017, which was refused on 27 July 2017. An appeal against the decision to refuse this protection claim was heard and dismissed by First Tier Tribunal Judge Spencer in a decision promulgated on 2 October 2017.
3. The Appellant sought permission to appeal from the FtT on three grounds;
 - (i) that whilst the Judge had correctly accepted that Mosul was a “contested area”, he had erred in concluding that Kirkuk was not,
 - (ii) that the Judge had relied incorrectly upon evidence suggesting that the Appellant could gain entry to the KRG as a Sunni Kurd without the need for a sponsor, and,
 - (iii) that the Judge had failed to adequately consider the ability of a returnee to Iraq to support themselves, wrongly concluding that the Appellant would face no risk of destitution.
4. Permission to appeal was refused by First tier Tribunal Judge Lever on 17 January 2018. The Appellant renewed his application to the Upper Tribunal, where it was granted by Upper Tribunal Judge Plimmer on 4 May 2018 on the basis it was arguable the Judge had failed to properly apply the current country guidance, as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944.
5. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The hearing

6. When the appeal was called on for hearing Ms Rogers, who did not appear below, noted that the Judge’s decision had been promulgated before the Court of Appeal decision in AA had been published, and shortly before direct flights from the UK to Erbil in the KRG had ceased.
7. It was common ground before me that direct flights from the UK to Erbil have resumed, and are now available to those Kurds prepared to return voluntarily to Iraq. The point of return for all involuntary returns remains Baghdad.
8. Ms Rogers accepted that the grant of permission by the Upper Tribunal had been made before the most recent country guidance of AAH (Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 212, and that no attempt had been made on behalf of the Appellant to amend the grounds of appeal to take account of that guidance.

9. As to grounds one and two, it is common ground that in the light of the guidance to be found in AAH, the Judge erred in accepting the Respondent's argument that the evidence placed before him showed a material and enduring improvement in the situation within Kirkuk. It is common ground before me that the Kirkuk area remained a "contested area" for the purposes of the humanitarian protection appeal at the date of the hearing below, and that on the current country guidance, it remains so today. However it is also common ground before me that this error would not be material, if, the decision upon the Appellant's ability to relocate to the KRG was sustainable. The Judge had found that the Appellant was able to avoid the Article 15(c) risk that he faced as a civilian in his home area of Mosul, by relocation to the KRG.
10. Ms Rogers therefore focused upon ground three, and argued that the Judge's assessment of the Appellant's ability to relocate to the KRG was necessarily flawed since it was conducted without reference to the guidance to be found in AAH. It was accepted however that if I were to accede to this argument I would not need to hear any further evidence, or reconstitute the hearing of the appeal to take further submissions, in order to remake the decision.
11. For his part Mr Diwnycz argued that there was no material error of law that could be identified, since I would be bound to reach the same decision upon the Appellant's ability to relocate, were I to apply the guidance to be found in AAH to the evidence that was placed before the FtT, and the findings of fact made by the Judge. Thus the decision to dismiss the appeal was the correct one.
12. The Respondent's argument was that on the unchallenged findings of fact, the Appellant's position had to be assessed on the basis that he was a fit twenty nine year old male Sunni Kurd, who was capable of being fully documented prior to return, who could obtain legitimate employment, and who would be able to access significant financial support from his uncle, and from the support package available to those who agreed to return voluntarily. The Appellant would be able to enter and settle in the KRG, even though he was not a returning resident, and thus he would not be forced into destitution, or, life in a "critical shelter arrangement".

Decision

13. The Appellant's case at the 2009 appeal hearing was not that Kirkuk was his home area - his claim was that he only moved to live with an uncle in Kirkuk in 2005 once he was orphaned. He claimed to have been born and raised in Mosul. That position

was not altered in the course of the appeal below. On that basis, it is in Mosul that his “family book” records will be held.

14. Although the Appellant’s original case was that he faced a risk of harm anywhere within Iraq because of his father’s past role as an intelligence officer, the Appellant’s evidence about this was rejected as untrue by Judge Balloch. On any fair reading of her decision, she considered the Appellant’s evidence concerning his father to have been untrue [decision #53-5]. She only went on to consider the appeal in the alternative, and found that even if his father had been killed as claimed, then the Appellant had not experienced any personal threat since the death of his father, and nor had any threat been made against the family. Judge Balloch concluded that neither he, nor his uncle genuinely believed that any such threat of harm existed. There was no new evidence placed before Judge Spencer in relation to these issues, and he was not invited to revisit these adverse findings. They must therefore form the starting point for any consideration of the Appellant’s circumstances.
15. I note that the Appellant did not pursue an asylum appeal before Judge Spencer; his appeal was pursued solely on Article 3 and humanitarian protection grounds on the basis he could not be expected to return to either Mosul, or Kirkuk, in safety because of the levels of indiscriminate violence faced by civilians in those areas [Decision #4]. His appeal was argued on the basis that relocation to avoid those risks was not an option that was available to him, since he would not be admitted to the KRG as one who had never lived there previously. It was argued that he had no documents, and could not be expected to obtain any. It was also argued that he had no prospect of financial support or practical assistance from his uncle because he had lost contact with him. Thus it was argued that whether he gained entry to the KRG, or remained in Baghdad, he faced destitution and a breach of his Article 3 rights in the event that he was returned. Thus it was argued that it was not reasonable to expect him to avoid the risk he faced as a civilian in either Mosul or Kirkuk by relocation to either Baghdad, or to the KRG.
16. Whilst the Judge did not have the benefit of the guidance to be found in AAH he did make a number of findings of primary fact which are relevant to any assessment of the Appellant’s ability to relocate to either Baghdad, or the KRG in the light of that guidance. None of those findings of primary fact have been challenged in the grounds.
17. Thus the Judge found that the Appellant had not told the truth, and that he was in contact with his uncle in Kirkuk. He found that the Appellant had been issued with a CSID card in Iraq, and that he had left it with his uncle. The Judge rejected the

Appellant's claim that he was unable to recover the CSID from his uncle.

18. Since, on the Appellant's own evidence his uncle was relatively wealthy in the context of Iraq, because he had been able to pay for the Appellant's travel to the UK, the Judge found that his uncle would be in a position to support the Appellant financially should he return to Iraq. That level of financial support was found to extend to an ability to pay for direct flights to the KRG from the UK, to avoid the need for travel via Baghdad [Decision #31, 33].
19. In those circumstances, I am satisfied that the level of assistance that the Judge concluded was available to the Appellant would necessarily extend to the ability of the Appellant's uncle to provide any identity document that he was holding on the Appellant's behalf in safe keeping. The ability to provide documents he held, would not be limited to the CSID, but would extend in addition to any birth certificate and national identity card that he held.
20. The Judge did not deal with the question of whether the Appellant had ever previously been issued with a passport by the Iraqi authorities. However I am satisfied that in this case that omission is immaterial. If a passport had previously been issued, then if the uncle held it in safe keeping he could provide it to the Appellant. If one had been issued, but was now lost, then the Appellant could obtain a replacement passport from the UK, because he could provide his biographical details and finger prints to the Embassy, and his uncle could in addition, vouch for him as a male relative. If no passport had ever been issued, then the issue of a passport to the Appellant in the UK could still occur, because the uncle could vouch for him, and could provide the identity documents he held. Moreover, on the basis of the findings that the Judge did make the Appellant's uncle would have the ability to pay for any proxy that might be necessary to access any further records held in Mosul, if he felt unable to travel there himself.
21. Thus the Judge was correct to conclude that the return of the Appellant to Iraq was feasible. Moreover, in the light of the current country guidance of AA and AAH the Appellant would be able to travel upon a valid Iraqi passport, whether issues to him as a replacement, or as a new issue. If he chose to return voluntarily, then at the date of the hearing below flights from the UK to Erbil were available allowing him to avoid travelling via Baghdad. It is common ground that such flights are now available once again. If he returned voluntarily, he also had available to him the financial support package provided to those who do so.

22. It is common ground before me, in the light of the guidance to be found in AAH that the Judge was quite correct to accept the Respondent's argument that the evidence showed that the Appellant as a Sunni Kurd would be allowed to physically enter the KRG without any need to demonstrate that he had a sponsor resident within the KRG.
23. Even if the Appellant travelled to the KRG via Baghdad, he would be able to take an internal flight in safety to the KRG. He would be able to travel upon either his CSID, or a passport.
24. The guidance in AAH is that the Appellant would be physically unable to gain access to a refugee camp in the KRG because they are all oversubscribed, and that relocation would be unduly harsh if there was a real risk that he would therefore be required to resort to the lower end of the spectrum of "critical shelter arrangements" [AAH #127]. Thus the question for the Tribunal becomes one of whether the Appellant would be able to support himself and find accommodation within the private rental sector from a combination of his own earnings, the VRS support package, the support available from the Iraqi authorities, and any financial support available from his uncle [AAH #128].
25. The reasons offered for the Appellant's inability to secure employment are; (i) his lack of employment experience and skills, (ii) the unemployment rate for IDPs in the KRG, and, (iii) the lack of family contacts to provide patronage and introductions.
26. As to (i). The Appellant's denial of employment experience and skills cannot be accepted at face value. The Appellant has been found to have failed to have offered a credible account of how he has spent his time in Iraq, and his claim to have never gone out of the house has been rejected as untrue. The plain inference to be drawn from that finding, and the fact that he is a fit and healthy young man with an earning capacity, is that he does in fact have employment experience from his time within Iraq that he has chosen not to disclose.
27. As to (ii). The guidance to be found in AAH is that unemployment amongst IDPs within the KRG is 70%, in contrast to a rate of 20% for other residents of the KRG. However that unemployment rate of 70% includes women who face serious gender discrimination in their attempts to find employment, and, all those IDPS who are undocumented and thus unable to take employment legitimately. The Appellant would not face that gender bias, and he would be able to take legitimate employment because he would hold a CSID.
28. As to (iii), there is no finding that the Appellant has even distant family within the KRG to help him obtain employment through nepotism, and there is no finding that the Appellant's uncle has

contacts or friends that would do so. That would undoubtedly mean that finding employment would be more difficult, and take longer to secure, but it does not mean that it would be impossible.

29. There is a finding that the Appellant would have available to him significant financial support from his uncle (on a scale noted above), and there is the guidance that as a voluntary returnee he would be able to access a support package worth £1500 through the VRS. He cannot be heard to say that he would refuse to return voluntarily, and thus be unable to access this.
30. I note the Appellant's argument that he would be unable to access support from the Iraqi authorities, because he would be unable to draw food rations using his CSID within the KRG. Since his CSID had been issued to him in Kirkuk, it is argued he would be required to travel to Kirkuk to draw those rations, which he could not reasonably be expected to do, given that this would require him to place himself at risk of harm through travel into a "contested area" [AAH #130]. Given his age, and stated place of birth, the Appellant's CSID ought to have been issued to him in Mosul, not Kirkuk. Be that as it may, the same argument obviously applies to both areas. Both are within the contested areas, and accordingly I accept that he cannot reasonably be expected to enter them in order to draw food rations. AAH did not suggest there was any ability to get a proxy to collect food rations.
31. Looking at the evidence in the round I am satisfied that this Appellant would be able to secure employment in the KRG within a reasonable period of arrival. I am not satisfied that relocation to the KRG would place him in circumstances of destitution. Thus the expectation that he relocate to the KRG is not unduly harsh within the AAH guidance.
32. Accordingly, and notwithstanding the terms in which permission to appeal was granted to the Respondent the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 2 October 2017 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 19 October 2018