



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

Appeal Number: PA/07938/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 8 May 2018**

**Decision & Reasons Promulgated
On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**R. K.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, who entered the UK illegally, and then claimed asylum on 22 July 2016. That protection claim was refused on 4 August 2017. His appeal against that refusal came before the First-tier Tribunal at North Shields on 19 September 2017, when it was heard by First-tier Tribunal Judge Cope. The appeal was dismissed on all grounds in a decision promulgated on 24 October 2017.
2. The Appellant's application for permission to appeal was granted by First tier Tribunal Judge Scott Baker on 1 February 2018. Two grounds were advanced; (i) that the Judge had deprived the Appellant of a fair hearing

by finding that he was not from Kirkuk, when this was not a claim that was in dispute, and, (ii) that the Judge's approach to the humanitarian protection claim was fundamentally flawed, and failed to consider the issue of internal relocation. Thus the matter comes before me.

3. No application had been made to introduce evidence under Rule 15(2A) of the Upper Tribunal Procedure Rules. The Appellant had not attended when his appeal was called on for hearing, but Ms Brakaj invited me to proceed in any event since she could not state that the Appellant wished to attend, and her firm had made no request for an interpreter to be booked for the hearing.
4. The Appellant has always claimed to be from the area of Dubz, Kirkuk. That claim, as Ms Brakaj accepted, was properly identified by the Judge as having never been the subject of any formal concession by the Respondent [85]. Ms Brakaj also accepted that the only concession made was that the Appellant is a national of Iraq. Moreover that his former places of residence, or origins within Iraq, were therefore issues of fact upon which the Judge had to make findings, if he could.
5. In this case the Judge concluded, having considered the evidence fully, that the Appellant had not told the truth about where he originated from within Iraq, any more than he had done when giving an account of his previous experiences within Iraq. No relevant material evidence upon that issue is identified as having been left out of account by the Judge, and no irrelevant material is identified as having wrongly been brought into account, in reaching that conclusion. In short it was open to the Judge to reject the claim to have originated from Kirkuk, and he gave entirely adequate reasons for doing so. (No challenge is offered to the adequacy of the reasons given.) Although the Judge felt unable in the light of the evidence to make a conclusive finding on the issue he found that it was more likely than not that the Appellant originated from the KRG. It is not unusual for the Tribunal to make a conclusive finding in such circumstances, and no error of law follows from the failure to do so.
6. Having rejected the Appellant's claim to originate from Kirkuk, and, his claim to have no family in Iraq, the Judge quite properly considered the asylum, Article 3, and humanitarian protection claims in that light. His conclusion was that the Appellant had attracted no adverse attention from the Iraqi authorities, or indeed any group of non-state agents. He concluded that the Appellant could in any event, as a Sunni Kurd, upon return by air from the UK to Baghdad (as the point of return to Iraq), travel onward to the KRG and live there in safety. In doing so he referred himself to the country guidance decision of AA (Iraq) [2017] EWCA Civ 944, and the reports placed before him in evidence [95]. The attack made in the grounds upon this finding was predicated upon the assertion that the Appellant was from Kirkuk and that he had no right to enter, or settle within, the KRG. That assertion falls away for the reasons set out above.

7. The current country guidance is that even a Kurd who does not originate from the KRG may enter the KRG lawfully for up to 10 days, and then extend his stay to settle there, having found employment. If he originated from the KRG, there would appear to be no such restriction upon the length of stay. This was not a case in which the Respondent was asserting she would make a direct return from the UK to Erbil. Nor was it a case in which the Appellant made out any credible reason why he could not be expected to take an internal flight from Baghdad to the KRG, where he could live in safety, if he felt unable or unwilling to live in Baghdad.
8. Although this was not part of the grounds, Ms Brakaj attacked the Judge's conclusions on the ability to live within Iraq, or travel within Iraq, on the basis the Judge had failed to deal with the question of what documents the Appellant would be able to obtain either in advance of his return, or upon his return to Baghdad. She asserted that he would be undocumented upon return, and unable to obtain the issue of any documents. When I pointed out that the Appellant had admitted at interview that he had previously been issued with a genuine Iraqi passport, she initially argued that it must have been an illegitimate passport, although she then had to concede that this had not been the Appellant's case [Q67]. Whilst the Appellant had claimed to have lost this passport there was no finding from the Judge in his favour that (uniquely) this element of his evidence was true. Perhaps more importantly however, Ms Brakaj accepted that the Appellant had never suggested that he had sought, and been refused, a replacement passport by the Iraqi Embassy. I am satisfied that there appears to be no good reason on the Judge's findings why the Iraqi authorities would refuse to issue him with a replacement, if of course he were to give accurate biographical information, and genuinely co-operate with them in applying for a replacement.
9. In the circumstances I can dispose briefly of Ms Brakaj's complaint (not contained within the grounds) that it was not open to the Judge to find that the Appellant would be able to take a flight from Baghdad to the KRG. If he had co-operated with the Iraqi authorities the Appellant would have travelled from the UK to Baghdad using a replacement passport. As the holder of an Iraqi passport the current country guidance does not suggest the Appellant would be unable to obtain a CSID (should he genuinely need one to have one issued to him) either in the UK before travelling, or, in Baghdad upon arrival there. Nor does that country guidance suggest that a replacement passport and/or a CSID would be insufficient to allow him to board an internal flight from Baghdad to the KRG.
10. Ms Brakaj then sought to argue that the Judge had erred in failing to consider whether relocation to any part of the KRG was reasonable given his individual circumstances. She was however unable to identify any relevant individual circumstance that the Appellant had relied upon, or, that the Judge had accepted existed, which could have arguably rendered it unreasonable to expect the Appellant to make a life for himself there. Although she did point to the Appellant's claim that he had no family in

Iraq, she abandoned that when I reminded her that the Judge had specifically rejected this assertion too [86].

11. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.
12. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 24 October 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

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 his 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 8 May 2018

Deputy Upper Tribunal Judge J M Holmes