



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08648/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 7th September 2018

Decision & Reasons Promulgated
On 31st October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

SM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T Hussain, Counsel instructed by Broudie Jackson & Canter

For the Respondent: Mr. Tan, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity order was not made by the FtT. However, as the case involves protection issues, it is appropriate to make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269). Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify SM (“the appellant”).

This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is an Iraqi national. He claims to have arrived in the United Kingdom in May 2007. He made a claim for asylum on 9th May 2007 and that claim was refused for the reasons set out in a decision dated 7th November 2007. The appellant appealed, and his appeal was dismissed for the reasons set out in a decision promulgated by Immigration Judge Edwards, dated 4th January 2008. The appellant subsequently made further submissions to the respondent, the most recent of which were made on 6th December 2016. On 22nd August 2017, the respondent again refused the claim for international protection and the appellant appealed to the First-tier Tribunal (“FtT”). His appeal was heard on 9th January 2018 and dismissed for the reasons set out in the decision of FtT Judge Williams promulgated on 24 January 2018. It is that decision that is the subject of the appeal before me.
3. Permission to appeal was granted on all grounds by Upper Tribunal Judge Saffer on 7th February 2018. At the outset of the hearing before me, Mr Tan confirmed that there had previously been a hearing of the appeal listed before Upper Tribunal Judge Bruce on 21st May 2018. That hearing had been adjourned pending the promulgation of new country guidance, and the matter was to have been re-listed before Upper Tribunal Judge Bruce. The decision of the Upper Tribunal in **AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212** was promulgated on 26th June 2018.
4. A transfer order was made by Principal Resident Judge O’Connor on 20th July 2018. It was agreed by the parties that there has been no error of law decision previously, and the matter comes before me to determine whether the decision of the FtT Judge should be set aside for legal error. I record from the outset that in considering the appeal, I have had regard to the Country Guidance set out in case of **AA (Article 15(c)) Iraq CG [2015] UKUT 544** as amended by the Court of Appeal and which has now been refined by the more recent case of **AAH (Iraq) [2018] UKUT 212**

("AAH"), that was obviously not available at the time of the decision of the FfT Judge.

The decision of FfT Judge Williams

5. At paragraph [13] of the decision, the FfT Judge refers to the previous decision of Immigration Judge Edwards and the findings made. At paragraphs [14] to [17], the FfT Judge summarises the appellant's claim that as a Kurdish national of Iraq from Kirkuk, he would remain at risk upon return because if returned to Baghdad, he will be targeted as a Kurdish Sunni Muslim, and if returned to Kirkuk, he will be killed on account of the time and that he is spent in the UK and his Kurdish ethnicity. The judge records, at paragraph [17], the appellant's claim that he "... Does not have [a] birth certificate, a civil status identity card or passport ..." and that the appellant "... has two brothers and one sister in Kirkuk, with whom he has intermittent contact.".
6. The FfT Judge found that the appellant is a national of Iraq from Kirkuk, a contested region. The FfT Judge found that it is not reasonably likely that the appellant would be at any future risk upon return. The appellant is of no specific on-going adverse interest to the authorities, but left Iraq due to the general security situation prevailing at the time. The FfT Judge also found that it is reasonably likely that the appellant remains in contact with his family. At paragraphs [38] to [43], the Judge addressed return to the appellant's home area of Kirkuk, and the possibility of internal relocation, applying the country guidance in **AA (Article 15(c)) Iraq CG [2015] UKUT 544**, as amended ("AA"). The FfT Judge concluded that the appellant's concerns regarding return to his home area of Kirkuk are well founded. However, it would be reasonable for the appellant to internally relocate to the Iraqi Kurdish Region ("IKR"). The FfT Judge accepted that it would not be reasonable for the appellant, a Sunni Muslim, to remain in Baghdad, but it would be reasonable for the appellant to travel via Baghdad International Airport *in transit* and internally relocate to Erbil International Airport. The Judge noted, at [42], that Erbil International Airport is open and receives direct flights from Baghdad

International airport. Alternatively, the appellant could fly directly from the UK to Erbil via European countries such as Germany or Austria. As to whether internal relocation to the IKR would be unduly harsh, the FfT Judge states, at [43];

“...it is reasonable for him to return to IKR and he would be able to extend his stay to over 10 days (AA at 19). He is reasonably likely to find employment (AA 20(c)) taking into account: his young age; his ability to speak Kurdish Sorani; a character which has shown fortitude and resourcefulness as demonstrated by a willingness to relocate to the UK and support himself for 9 years; reasonable health - I note the appellant has a history of some mental health issues (AB page 10) but would be able to access treatment in IKR; as discussed above [29-30] I am satisfied that he still has family in Iraq (including 3 siblings in Kirkuk) who could provide assistance; there being no requirement for sponsorship: Home Office CPI Note page 44 of 57, September 2017 and Report of the Danish Refugee Council of April 2016, 'The Kurdistan Region of Iraq KRL Access, Possibility of Protection, Security and Humanitarian Protection. In particular: 2.1.6 Exemption from Sponsorship requirements "IOM stated that Kurds, including appellant's from Kirkuk are exempted from the sponsorship requirement".

The appeal before me

7. Although the appellant relies upon two grounds of appeal, both grounds are closely linked. It is accepted by the appellant that the outcome of the appeal rested upon the Judge's decision as to the reasonableness of internal relocation.
8. It is said that the FfT Judge erred by speculating how the appellant would actually get to the IKR. The appellant relies upon the decision in **HH (Somalia) -v- SSHD [2010] EWCA Civ 426**, to support the proposition that the Judge was required to consider the appellant's safety at the point of return, and on any journey that he would have to make to reach safety. The Tribunal was required to determine any challenge to the safety of the route, or method of return. It is said that the Judge erred by speculating how the appellant would actually get to the IKR and that in so far as return to the IKR via Baghdad is concerned, absent guarantees that the appellant can even enter Baghdad, let alone leave for safe onward travel to the IKR, there is a real risk that the appellant will be refused entry or stranded in Baghdad, exposing him to treatment contrary to Article 3, and rendering internal relocation unreasonable or unduly harsh. The appellant contends that he has not been pre-cleared by the IKR authorities and as a consequence, he will not be able to enter the

IKR. Even if it were possible for the appellant to reach the IKR, the FfT Judge speculates that the appellant would find employment and speculated that the appellant could rely upon his family in Kirkuk for support.

9. Mr Hussain submits that it is common ground that the appellant is from Kirkuk, in the contested region. He submits that in his assessment of the risk upon return, the Judge treated the appellant as if he were returning to the IKR as his home area, rather than addressing whether internal relocation to the IKR would be even possible, and if it were possible, whether it would be unduly harsh. He refers to paragraphs [169], [170], [205] and [207] of AA. He submits that the Judge failed to adequately address how the appellant would get to the IKR because he has not been pre-cleared by the IKR authorities and as a consequence he will not be allowed to enter the IKR. He submits that even if the appellant were able to safely get to Erbil International Airport, the background material establishes that the appellant could only remain in the IKR temporarily, and so internal relocation is not a proper alternative that is open to the appellant in any event.

Discussion

10. The appellant claims to be an Iraqi of Kurdish ethnicity from Kirkuk. This was accepted by the FfT Judge. The appellant's claims to have suffered threats in Iraq were not accepted by either the respondent or the FfT Judge. It is not necessary to consider the asylum claim further because the dismissal of this aspect of the FfT Judge's decision is not being challenged.
11. The FfT Judge set out relevant extracts from the extant country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, promulgated on 11 July 2017, ("AA") at paragraph [8] of the decision.
12. I reject the submission made by Mr Hussain that the Judge treated the appellant as if he were returning to the IKR as his home area, rather than addressing internal

relocation to the IKR. The Judge accepted that the appellant is a national of Iraq from Kirkuk. At paragraph [22] of the decision, the FfT Judge records that “... *It is reasonably likely that the appellant’s home area of Kirkuk is a contested region having regard to AA ...*”. At paragraph [33], the Judge again records, in his findings that the appellant is an Iraqi national, from Kirkuk, a contested region and at paragraph [38] concluded that the “.. *The Appellants concerns regarding the security situation in his home area of Kirkuk are well-founded.*”.

13. The issue under Article 15(c) of the Qualification Directive was whether there is a real risk of the appellant suffering serious harm if he returns to Kirkuk. Serious harm in this context consists of a serious and individual threat to the appellant's life by reason of indiscriminate violence due to armed conflict. I am quite satisfied that the Judge proceeds upon the premise that the appellant is to be considered as originating from Kirkuk, an area outside the IKR, and determined the appeal by reference to the country guidance set out in AA. At paragraph [38] of the decision, the FfT Judge found that the appellant’s concerns regarding the security situation in his home area of Kirkuk are well founded. In my judgement, it is plain that the Judge proceeds upon the premise that the appellant’s home area is Kirkuk, a contested region, and that the issue before him was, internal relocation.
14. The FfT Judge found that it would not be reasonable for the appellant, a Sunni Muslim to remain in Baghdad because the appellant does not have an Iraqi ID card or a civil status ID Card (“CSID”). The FfT Judge found that it would be reasonable for the appellant to travel via Baghdad International Airport *in transit* and internally relocate to the IKR. The reasons provided by the Judge are set out in one short paragraph, at [43] of the decision. The Judge reached his decision by reference to the country guidance set out in AA.
15. The FfT Judge concluded that the appellant could, as a Sunni Kurd, upon return by air from the UK to Baghdad, travel onward to the KRG and live there in safety. In AAH, the Upper Tribunal replaced section E of the Country Guidance annexed to the Court of Appeal’s decision in AA, and although the current country guidance

is that even a Kurd who does not originate from the IKR may enter the IKR lawfully for up to 10 days, and then extend his stay to settle there, having found employment, there is a need to consider wider issues such as travel between Baghdad and the IKR, the documents that will be available to an individual, whether the individual will be at particular risk of ill treatment during the security screening process, and the options available for accommodation and employment.

16. The decision of the Upper Tribunal in AAH post-dates the decision under appeal before me, but from a careful reading of the Judge's findings and conclusions, in my judgement the Judge did not adequately address the issues relevant to the appellant's journey from Baghdad to the IKR and whether it would be unduly harsh to expect him to relocate to the IKR. That is not to say anything about the merits of the appeal. Because of the paucity of the reasons, I simply cannot be satisfied that a Judge properly considering the relevant matters now referred to in AAH, would reach the same decision.
17. It follows that the decision of the FtT must be set aside. As to the disposal of the appeal, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the reasonableness of internal relocation, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.
18. The following findings of fact are preserved:
 - a. The appellant is a national of Iraq from Kirkuk, in the contested region.
 - b. The appellant is of no adverse interest due to his father's involvement with the Ba'ath party and or his employment as a police officer. The findings set out at paragraph [24] of the decision of Immigration Judge J D L Edwards in

the decision dated 4th January 2008 shall stand for the reasons set out at paragraphs [27] and [28] of the decision of the FfT Judge.

- c. The appellant has family that remain Iraq and he remains in contact with his family.

Notice of Decision

19. The appeal is allowed and the appeal is remitted the FfT for a fresh hearing of the appeal.

20. I have made an anonymity direction.

Signed

Date

19th October 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

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

Signed

Date

19th October 2018

Deputy Upper Tribunal Judge Mandalia