



Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11909/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
Promulgated
On 22nd August 2018

Decision & Reason

On 5th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR. S I O
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

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

For the respondent: Mr Howard, Counsel, instructed by Fountain Solicitor

DETERMINATION AND REASONS

Introduction

1. It is the Secretary of State who is appealing in these proceedings. For convenience, I will continue to refer to the parties hereinafter as in the First-tier Tribunal.
2. The appellant is from a village in Kirkuk, Iraq and of Kurdish ethnicity. He is a Sunni Muslim. He was born in January 1998. He

claimed Isis came to his farm in 2014 and took him away. When his mother protested they killed her. He was detained for a year, during which time he was raped and beaten. Isis then took him to hospital in Mosul so they could obtain his blood for use in transfusions for to their own members. In the hospital by chance he met his aunt who was a doctor and she helped him escape. Arrangements were made with an agent and he travelled to the United Kingdom leaving his home country in or around September 2015 and arriving here in mid December 2015. He said that he made his claim for protection the following day. He had a CSID document but claimed it was lost when the family home was destroyed in 2014 and he has since been unsuccessful in obtaining a replacement, referring to the lack of documentation as to his identity. He claimed he has been unable to contact his father or brother or sister nor his aunt who helped him escape.

3. His claim was refused on 1 November 2017. His identity was accepted. However, his claim of escaping from Isis was not accepted. Some aspects of his claim were consistent with country information. For instance, the time it would have taken to go from his village to Mosel and the reports that Isis had been forcing prisoners to give blood.
4. The respondent discovered he had been in Belgium and given a different name which undermined his credibility. He travelled through France and failed to claim there. In any event the respondent took the view that conditions in the country had improved and if needs be he could internally relocate to Baghdad or the Iraqi Kurdish region.

The First tier Tribunal

5. His appeal was heard at Manchester on 22 December 2017 before Designated Immigration Judge McClure. In a decision promulgated on 7 March 2018 it was dismissed on asylum grounds and allowed on humanitarian protection and articles 2 and 3. The judge accepted he had been detained by ISIS but did not accept his account of escaping from a hospital. The judge concluded with the changing country situation Isis would no longer be able to track him and that he did not face a risk for a Convention reason. The judge rejected his claim that the villagers would believe he had joined Isis.
6. The judge referred to ongoing hostilities between Kurdish forces and the Iraqi army as well as the conflicts with Isis. Civilians therefore would face a 15 C risk.
7. Permission to appeal was granted on the basis the judge did not take into account country information indicating an improved security situation or the appellant's ability to obtain a CS ID.

Reference was made to the negative credibility findings. I have received a rule 24 response from the appellant's representative. It contends that the challenge amounts to a disagreement with the judge's findings of fact. It states Designated Immigration Judge McClure correctly followed the current country guidance information.

8. I have been provided with the decision of AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 which was heard on the 27th and 28 of February 2018 with the decision promulgated on 26 June 2018. Consequently, it postdates the hearing before Designated Immigration Judge McClure. It gives supplementary guidance to section C of the guidance annexed to the Court of Appeal's decision in AA (Iraq)-v- SSHD [2017] Imm AR 1440. The section is dealing with a CS ID and the head note of the latest guidance details relevant factors in considering whether a replacement CSID is likely to be obtainable. These include whether the appellant has any other form of documentation or details about the entry in the civil register. The location of the registry office would be relevant, including whether it was in an area held by formerly held by ISIL and whether it is still operational. Another factor is whether there are male family members who could go to the office to seek the documentation. This new country guidance also replaces part E which deals with the IKR.

At hearing.

9. Mr Tan continued to rely upon the grounds for which permission had been granted. He submitted that there had been an incomplete consideration by Designated Immigration Judge McClure of the issues arising. He said that it was not until paragraph 45 of the judge's decision that the findings are set out and it is contended that there was no clear finding as to the appellant's ability to get documentation either here or shortly on return. He also submitted the judge did not set out findings as to how the appellant would fare either in Baghdad or the IKR. The judge had accepted that the appellant's account was consistent with the background information but had rejected his claim about escape. On the basis that his credibility was thereby damaged this was relevant to his claims about documentation.
10. Mr Howard in response submitted the decision confirms the judge was aware of the country guidance cases and the country information. Paragraph 16 of the decision records the ongoing fighting in the country and identifies the issue as to whether or not there has been a significant and sustained change in the situation so that the appellant is no longer entitled to humanitarian protection. Therefore, the judge appreciated the points made by the respondent when considering the appeal. The argument advanced

by the respondent about a change in the country situation and the level of violence is set out at paragraph 44.

11. Having rejected the appellant's claim about his escape and concluding locals would not believe he had joined Isis the judge at paragraph 54 concluded he was not at risk for any Convention reason. At paragraph 55 on the judge went on to consider the general circumstances in his home area, a contested area. The judge concluded in paragraph 56 that whilst Isis was no longer in the area this did not find this meant there was no longer a significant and substantial reduction in the fighting. The judge referred to ongoing fights between Kurdish forces and the Iraqi army and fighting against Isis. The judge concluded therefore that civilians in the region would continue to be at significant risk of indiscriminate violence as set out in the country guidance cases. Therefore, he submitted the judge had in mind the country guidance decision and the new background information and had reached an informed and considered conclusion on this.
12. On the issue of relocation Mr Howard referred me to the judge's finding at paragraph 47 that the appellant had been seized by Isis and detained. He acknowledged that the details about his ability to obtain the CSID and to relocate was limited but referred to paragraph 34 where the appellant set out how his documentation had been destroyed. Paragraph 53 of the decision records the appellant saying he had not been in touch with anyone from his home village. The judge rejected his claim that villagers believed he had joined Isis.

Conclusions

13. The judge has set out in detail the appellant's claim and the arguments by the respondent about changes in the country situation. The judge had regard to the country guidance then available. Clearly therefore the judge appreciated the competing arguments and the country conditions. The judge did not have the benefit of AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 as it had not been promulgated at that stage. However, I see nothing about the updated decision which would inevitably have led to a different conclusion.
14. At paragraph 18 onwards the judge sets out the claim and made clear findings about what was accepted and what was rejected. The judge did not reject in entirety the appellant's credibility. The account given was consistent with the country information. What the judge rejected was his claimed escape.
15. It was a matter for the judge to decide whether the situation in the country had changed to such an extent that the guidance given

in the case law could be departed from. The judge declined to do this. The judge accepted that the Refugee Convention was no longer applicable because of the decline of Isis. The judge found the appellant would not face persecution because he was Sunni.

16. The judge concluded the situation in the appellant's home area was such that he was entitled to humanitarian protection. Such a finding was not dependent upon the appellant's credibility. The judge referred to ongoing fighting between Kurdish and Iraqi fighters as well as ongoing skirmishes with Isis.
17. It can be inferred that the judge accepted the appellant did not have and could not obtain documentation. There was nothing to suggest the office in his home area was functioning to reissue new documents or that the appellant had the necessary details. There was nothing to suggest there was a male member of his family who would be in a position to assist with documentation. The decision should not be considered in a vacuum. The judge had the benefit of the respective bundles including the appellant's substantive interview in which a question 17 to 20 he indicated no contact with his aunt or other family members.
18. If the did not have the CSID or the means to obtain one fairly quickly then he could not realistically be returned, even on an interim basis, to Baghdad.
19. The decision indicates the care taken with the appeal. The focus was upon determining the truth of the underlying claim, with the judge accepting parts and rejecting other parts. The judge concluded the Refugee Convention was not engaged and explained why. The judge had regard to the country guidance cases and concluded a 15 C risk prevailed in his home area. If he were unable to obtain the CSI the then a detailed consideration of relocation was not necessary. Consequently, I do not find any material error of law established.

Decision.

No material error has been established in the decision of Designated Immigration Judge McClure. Consequently, that decision which dismissed the appeal on asylum grounds and allowed it on humanitarian protection and articles 2 and 3 shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge