



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02886/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 8 October 2019

Decision & Reasons Promulgated
On 5 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR R A K P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Mutyambizi-Dewa, Immigration Advice Service
For the Respondent: Mr D. Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born on 5 May 1996. He arrived in the United Kingdom and claimed asylum on 12 July 2015. His asylum application was refused on 8 January 2019. He appealed against that decision and his appeal came before

First-tier Tribunal Judge Obhi for hearing on 31 May 2019. In a decision and reasons dated 17 June 2019, the judge dismissed the appeal.

2. Permission to appeal was sought in time on the basis that the Judge erred materially in law in that, despite being satisfied that the Appellant was a Kurd from the contested area of Zemar in Mosul province in Iraq, the judge expressed surprise that the Appellant could not speak Arabic when the Appellant has consistently maintained he is a Kurdish Bahdini speaker. It was submitted that this was material in respect of the Appellant's ability to relocate to Baghdad in light of the country guidance decision in AA (Iraq) [2017] EWCA Civ 944 and in the Judge's assessment of the reasonableness of internal relocation.
3. Permission to appeal was granted by First-tier Tribunal Judge Saffer in a decision dated 18 July 2019 on the basis that an ability to speak Arabic is a material factor as set out in AA (Iraq) (op cit) because it means he will be less likely to find work [37] and could make it unsafe for him to return [42].

Hearing

4. At the hearing before the Upper Tribunal Mr Mutyambizi-Dewa, on behalf of the Appellant, submitted that the judge had made her decision based on a belief that the Appellant should have been able to speak Arabic, that she makes this point a number of times, yet this finding is clearly against the country guidance, see [34] and [38]. The judge further failed to make any finding as to whether or not the Appellant was from a minority community despite the fact that he is Kurdish; no account was taken of his age and the Judge imposed a duty on the Appellant to remember what happened when he was 4 years old when his father was arrested and for his parents to have informed him of every aspect of their lives. The judge did accept the Appellant is from a contested area – Zemar (or Zummar, spellings vary) but went on to find that he has an uncle in Turkey and it would be likely that he would receive family support. The Judge finds he would be able to find a job and relatives in the IKR but the Appellant does not have any skills which would enable him to do this. Mr Mutyambizi-Dewa submitted the judge's findings were totally flawed.
5. In his submissions, Mr Mills stated that he did not truly understand the constant complaints about the ability of the Appellant to speak Arabic, in light of the fact that the judge clearly found the Appellant as a Kurd could relocate to the IKR, therefore the fact that he does not speak Arabic does not matter and is not material because he could relocate to the IKR: see [42]. The judge also found that ISIS were no longer in his region.
6. I pointed out that the judge's findings in this respect, that the Appellant's area was no longer contested, were not in accordance with the country guidance. Mr Mills clarified his position, which was that the Appellant would be returned to Baghdad and could then internally relocate from Baghdad to Erbil and the IKR. Mr Mills accepted that there had been no Presenting Officer present at the First-tier Tribunal hearing so perhaps this aspect was not grappled with. He submitted that the Appellant was not credible, even if he was a child when events took place the

Appellant had been inconsistent and the judge was entitled to disbelieve what he had said. Mr Mills submitted that even if one does not have an identity card the effect of the judge's findings is that he has the means or the family to assist in obtaining one: see [40].

7. Mr Mutyambizi-Dewa in reply submitted that the description of the Appellant as a fit young man at [40] does not reflect his claim he has only an uncle in Turkey and no relatives in Iraq.
8. I reserved my decision, which I now give with my reasons.

Findings and Reasons

9. I have concluded that there are material errors of law in the decision and reasons of First tier Tribunal Judge Obhi, in that there are a paucity of findings on matters material to an assessment of the reasonableness of internal relocation.
10. The Judge at [34] accepted that the Appellant is from the Zummar area of Ninewah governorate and that this is a contested region *cf.* AA (Iraq) [2017] EWCA Civ 944. She went on at [35] to [42] to consider the issue of return to Iraq and internal relocation, concluding at [42] that the Appellant could relocate to the IKR because of his Kurdish nationality and that he has the means of obtaining a CSID and no particular characteristics which will make it unsafe for him to return to Iraq.
11. In AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) the Upper Tribunal held *inter alia* as follows at [171], in a passage which was not part of the remit of the appeal to the Court of Appeal:

“Relocation to the IKR

171. We have found at paragraphs 112 and 113 above that there is no Article 15(c) risk to an ordinary civilian in the IKR. What, though, of internal relocation? So far as a Kurd is concerned, the evidence of Dr Fatah was not seriously challenged by the respondent and we, in any event, accept it (see esp. paragraph 24 above). The position of Iraqi Kurds not from the IKR is that they can gain temporary entry to the IKR; that formal permission to remain can be obtained if employment is secured; and that the authorities in the IKR do not pro-actively remove Kurds whose permits have come to an end. Whether this state of affairs is such as to make it reasonable for an Iraqi Kurd to relocate to the IKR is a question that may fall to be addressed by judicial fact-finders, if it is established that, on the particular facts, permanent relocation to Baghdad would be unduly harsh. In such circumstances, the person concerned might be reasonably expected to relocate to the IKR. In this scenario, whether such further relocation would be reasonable will itself be fact sensitive, being likely to involve (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of securing employment; and (c) the availability of assistance from friends and family in the IKR.”

12. The Judge did not find that the Appellant could reasonably be expected to relocate to Baghdad but rather to the IKR, given his Kurdish ethnicity. At [41] she found that

there are direct flights from Baghdad to Erbil on a daily basis. However, I find that there is an absence of analysis of matters material to factors (b) and (c) above and the reasonableness of internal relocation, in particular:

13. In respect of whether there are family members in Iraq, the Judge found at [31] that the Appellant's claims as to his father's involvement with the Ba'ath party were vague and confused and she did not find this aspect of the appeal to be credible. As to his parents and siblings whereabouts, at [32] the Judge implicitly accepted the Appellant's evidence that his parents had been killed but his siblings were still alive but that this was an assumption arising from Daesh's practice of taking young people and killing old ones [18] however, she makes no clear finding on this, nor offers any finding as to their whereabouts and importantly, whether they are older or younger than the Appellant and would be able to assist him in obtaining a CSID.
- 13.1. In respect of the Appellant's maternal uncle, his evidence was that he was in Owenat in Iraq but travelled to Turkey with the Appellant and remained there but he does not know where he is now [18], [20]. At [39] the Judge accepts this in finding: "*at the very least he has an uncle who resides in Turkey*", however, she then goes on to find that he "*probably also has relatives in Iraq and possibly in the IKR.*" The difficulty with this finding is that it is lacking any apparent evidential basis, no evidence or consideration having been given to any relatives other than the Appellant's parents and siblings, last seen in Zummar, Ninewah and his paternal uncle, who she found to be in Turkey. Thus I find that this finding is unsafe and essentially speculative.
- 13.2. There is, in addition, no finding as to whether or not the Appellant has a CSID or any Iraqi identity documentation. I further find that the Judge's finding at [42] that the Appellant "*has the means of obtaining a CSID*" if he relocated to the IKR is also lacking in any evidential basis and fails to consider the factors set out in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC).
14. Whilst at [38] the Judge found that it was "surprising" that the Appellant does not speak Arabic if he lived in Iraq and his father was involved in the Ba'ath party she made no finding as to whether or not she accepted that the Appellant does not speak Arabic, but in any event I accept the submission of Mr Mills that this is immaterial, given that the issue is one of internal relocation to the IKR.

Notice of Decision

15. The appeal is allowed to the extent that it is remitted back to the First tier Tribunal for re-hearing, solely on the issue of internal relocation. The Judge's findings at [31] are preserved as they have not been challenged, however, further fact finding will be required in light of the issues set out at [13] above.

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 their 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 *Rebecca Chapman*

Date 1 November 2019

Deputy Upper Tribunal Judge Chapman