



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

Appeal Number: PA/04644/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 17th May 2019**

Decision & Reasons Promulgated

On 3rd June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS S S H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Howard (Solicitor)

For the Respondent: Mr C. Williams (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

This is an appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 11th September 2018, following a hearing at Birmingham on 24th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

The Appellant is a citizen of Iraq, was born on [~] 1993, and is a female. Her husband is dependent on her claim. The essence of the claim is that in April 2016 she was approached by a man called [D], who asked her to marry him. [D] later contacted the Appellant's husband and threatened him. Later on, two men tried to kidnap the Appellant's son. [D] even shot at her husband's car, which was parked outside their house. It is a feature of this appeal that the Appellant's husband had previously sought entry to the UK, claiming to be an Iranian. It is accepted that the Appellant is a Kurd from Kirkuk in Iraq.

The Judge's Findings

The judge did not accept that the Appellant was targeted as claimed or that she and her family were forced to flee Iraq as a result of the interest expressed in her by [D]. The judge was clear that

“it may be there is an individual known to her as [D], or by a different spelling, but the inconsistencies in the account given are such that I do not accept that the Appellant and her family were threatened by him or that there was any campaign of intimidation against them” (paragraph 27).

The appeal was dismissed.

Grounds of Application

The grounds of application state that the judge had accepted that the Appellant and her husband had a family in Kirkuk, with whom they had contact. The judge concluded that they would have access to CSID documents or passports. The Appellant and her husband could return to Kirkuk. If they could not do so, then in the alternative they could relocate to IKR via Baghdad (see paragraphs 20 to 29). The grounds argue that in so concluding, the judge failed to have regard to the country guidance case of **AAH [2018] UKUT 00212**. Under this decision the judge had to consider whether it would be possible for the Appellant and her family to relocate to IKR without family support. The same would apply if they were required to return to Kirkuk without family support. It was in these circumstances that the issue of whether relocation would be “unduly harsh” became relevant. The judge had not properly considered the matter.

On 8th October 2018 permission to appeal was granted.

Submissions

At the hearing before me on 17th May 2019, Mr Howard, appearing on behalf of the Appellant, made the following submissions. First, if the judge had accepted that the Appellant and her husband were from Kirkuk, and that for that reason they were returnable, this overlooked the fact that under the country guidance case of **AA (Iraq) [2015] UKUT 00544**, the region of “Kirkuk” was a contested area.

Second, the judge had found that the Appellant and her husband spoke one of the Kurdish languages, and this being so, they would be able to move from Baghdad to IKR (paragraph 29) but the judge failed to consider all the factors relevant when considering whether return to Baghdad city is feasible. After all, the Appellants, as Kurds, belong to a minority ethnic group. It was important for the judge to consider whether there were any family or friends to accommodate the Appellant and her husband in Baghdad, before such a conclusion could be made. In fact, the judge does not refer to the case of **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**, which makes it clear that in general the authorities in Baghdad are unable, and in the case of Sunni complainants, are unwilling to provide sufficient protection. The judge, on the other hand, simply focused on the fact that the Appellant had contact with family members, without considering other factors, such as the fact that sectarian violence had increased since the withdrawal of US-led coalition forces in 2012. The Appellant and her husband would have to rely on support given to other IDPs in Baghdad.

Third, the judge provided inadequate reasoning in concluding (at paragraph 59) that internal relocation to the IKR would be possible after a journey from Baghdad, given that such an assessment is fact-sensitive and involved consideration of the practicality of travel from Baghdad to the IKR (such as Erbil by air). In this regard, the judge did not give consideration to the recent case of **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212**, paragraph 39 of which makes it clear that certain conditions would have to be fulfilled before such a possibility could materialise.

Finally, none of the family members of the Appellant and her husband originate from the IKR, which is an area that had been associated with ISIL, and her husband was male, and of fighting age, and if it was the case that he would be placed at risk, then a relocation to that area would not be feasible.

For his part, Mr Williams submitted that the judge had made clear that there was no personal and specific risk to the Appellant (see paragraph 27) because she was not targeted as claimed, and nor was it the case that her family were forced to flee Iraq as a result of interest expressed in her by a man called [D]. The family were not threatened by him. There was no campaign of intimidation against them. Second, Kirkuk was no longer a contested area. Mr Williams placed reliance upon the High Court case of **Amin [2017] EWHC 2417**, where Justice Cranston had made clear that

“Kirkuk is no a longer contested area. In my view, country guidance cases must give way to the realities, a point recognised by the Court of Appeal in **SG (Iraq) [2012] EWCA Civ 940**, at paragraph 47. There are apparently still dangers there, but nothing like the position as when **AA** was decided” (at paragraph 63).

In the circumstances, submitted Mr Williams, the judge’s decision was entirely sustainable.

In reply, Mr Howard submitted that the case of **Amin** was a judicial review decision and not directly relevant to the present proceedings. In any event,

the judge had not made a finding on whether Kirkuk was safe or not. He had simply concluded that return to Kirkuk would be viable. In fact, he had then gone on to also express himself in the alternative, by stating that “if return to Kirkuk is not viable there is the alternative of residing in the IKR” (paragraph 29), but had still failed to demonstrate that such an alternative was reasonably exercisable by the Appellant and her husband.

No Error of Law

I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. Whilst it is true that the judge does not refer to the range of cases that Mr Howard has meticulously drawn my attention to, the factual basis of the decision by the judge is sustainable on the basis of the reasons given and the findings made.

First, it is the case that the judge does not find the claim that the Appellant fled as a result of an interest expressed by [D] to be credible.

Second, the judge observes that the Appellant’s husband had previously impersonated himself as of Iranian nationality.

Third, the judge rightly points out that the Appellant and her family are from Kirkuk and are of Kurdish ethnicity, and that

“with there being evidence of there being contact with the families of the Appellant and her husband and having rejected the core of the Appellant’s account I find that the Appellant has not shown that either the relevant CSIDs and other documents such as passports are not available”

to them. This was “given the presence of family in Iraq it has not been shown that the Appellant and her husband would be unable to obtain renewed CSIDs or passports as required” (paragraph 28). That conclusion is consistent with the latest country guidance case of **AAH [2018] UKUT 00212**.

Fourth, in relation to the alternative expressed by the judge, the alternative expressed by the judge, here, again, adequate reasons are given when the judge points out that “if return to Kirkuk is not viable there is the alternative of residing in the IKR”. The reason why the judge finds this alternative to have been made out is because “the Appellant and her husband speak one of the Kurdish languages and I find that they have access to the relevant identity documentation that would enable them to move on from Baghdad to the IKR and to access the services required” (paragraph 29). This demonstrates the judge has been perfectly alive to the relevant issues of access to services, and access to relevant documentation.

Finally, I might as well also add that one other finding that the judge made was in relation to the Appellant’s husband, who had made a 2008 asylum claim on

the basis that he was of Iranian nationality. After that, he had returned to Iraq. The judge explained how, “whatever the basis of his claim then it appears that he was not in danger then as he returned to Iraq following his father’s death and makes no suggestion that he had any problems until those raised in this appeal” (paragraph 24). For all these reasons, the decision made by the judge was, when looked at in its entirety, entirely one that was open to him. There is no error of law.

Decision

An anonymity order is made.

The appeal is dismissed.

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 her or any member of her 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

Deputy Upper Tribunal Judge Juss

29th May 2019

**TO THE RESPONDENT
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Juss

29th May 2019