



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

Appeal Number: PA/11084/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 7th March 2019**

**Decision & Reasons
Promulgated
On 21st March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**SARBASI [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Madubuilke (Solicitor)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A A Parker, promulgated on 2nd November 2018, following a hearing at Manchester on 16th October 2018. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on [~] 1987. He appealed against the decision of the Respondent Secretary of State, dated 3rd September 2018, refusing his claim for asylum, and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that has no brothers or sisters. He is an only child. He had a maternal uncle who lived in Mosul. His mother died in 2013. That was the last time he had contact with his maternal uncle. He cannot return to Mosul because he has a genuine fear of persecution there. He cannot return to Iraq because he does not have a CSID card. His father and uncle were both involved in the Ba'ath Party. There is a previous decision by the judge to this affect. That remains relevant under the **Devaseelan** principles.

The Judge's Findings

4. The judge observed, at the outset of the determination, that Mr Madubuilke, who appeared also on that occasion before the First-tier Tribunal, had at the outset stated that "There is nothing new to add to his previous claim and bases the Appellant's fear on return on the facts found by the previous Immigration Judge as the Respondent accepts he cannot return to Mosul" (paragraph 23).
5. The judge also observed that the Respondent had accepted that the Appellant was a truthful witness with respect to his subjective fear of return to Mosul. However, the objective evidence does show that there is another area in Iraq to which the Appellant could reasonably relocate (see paragraphs 18 to 19).
6. The judge held that the Appellant could not reasonably relocate to another part of Iraq. He had regard to the leading decisions in this jurisdiction in this matter. Reference was made to **BA (returns to Baghdad) Iraq CG [2017] UKUT 18** and to **AA (Article 15(c)) Iraq CG [2015] UKUT 544**. Moreover, reference was also made to **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212** (see paragraphs 38 to 43). In particular, the judge observed that he would have to agree with the Presenting Officer on the day of the hearing "That the fact his father and uncle were Ba'athist Party members does not create a risk for him as the rule was not significant. These were essentially the findings that the previous Immigration Judge made" (paragraph 38).
7. Even so, however, what transpired from the latest case of **AA [2018]** was that the Appellant is from an area associated with ISIS and this would create problems for him in the IKR. He would need a civil registration card. The evidence of Dr Fatah suggested that between 2014 and 2017, ISIS had closed up all the relevant registration offices in areas under its

control, destroying many of them, and that “Dr Fatah maintained that he has never known anyone to obtain new documents from the central registry in Baghdad” (paragraph 54) as a result of this.

8. The appeal was allowed.

Grounds of Application

9. The grounds of application state that the judge had materially misdirected himself in law because he had come to the conclusion that the Appellant qualified for refugee asylum status without giving any reasons for such a conclusion. Throughout the entirety of the determination, the judge made no findings in regard to how the Appellant is at risk due to the reason of imputed political opinion. In fact, the judge had accepted what the Presenting Officer had stated (at paragraph 38) and that he would have to agree that “The fact that his father and uncle were Ba’athist Party members did not create a risk for him”
10. On 23rd November 2018, permission to appeal was granted by the Tribunal on the basis that it was arguable that the judge erred in making a finding regarding the Appellant’s risk in his home area of Mosul on Convention grounds. The judge accepted that following the case of **AA**, the Appellant would be at risk of indiscriminate violence. However, in the judge’s consideration of the reasonableness of internal relocation, the judge finds a risk to the Appellant on Convention grounds, namely, on imputed political opinion grounds, but this only relates to the situation in Baghdad (see paragraph 47).

Submissions

11. At the hearing before me on 7th March 2018, Mr Tan, appearing on behalf of the Respondent Secretary of State, relied upon the grounds of application. He submitted that, although it had been accepted that the Appellant had a well-founded fear of persecution in Mosul, the Respondent Secretary of State did not accept that the Appellant cannot return. This is because Mosul was no longer a contested area (paragraph 22). Moreover, Mr Madubuilke had stated before the judge in no uncertain terms that “There is nothing new to add to his previous claim and bases the Appellant’s fear of return on the facts found by the previous Immigration Judge” (paragraph 23).
12. For his part, Mr Madubuilke submitted that the application of **Devaseelan**, given that there had been a previous determination by a judge, was actively considered by the judge (at paragraph 23). The judge had observed that, “This is a case where the Appellant is telling the truth regarding core elements of his claim.” The judge observed that, “he is an Iraqi citizen, speaks Kurdish, is a Sunni Muslim, and from Mosul” (paragraph 23). But even so, what is now being said, did not form part of the grounds of application. These were predicated on the basis that the

judge had failed to give proper reasons. That cannot be right. The judge gave ample reasons for coming to the conclusion that he did.

13. This is clear from the judge's careful reference to **AAH [2018]**, where the judge observes that the Tribunal there (at paragraph 125) had stated that an individual returning with no family would need to find accommodation and a single returnee according to Dr Fatah "Would not be able to rent in the traditional neighbourhoods and living on the street becomes a real possibility" (paragraph 45). In that case (at paragraph 28) the Respondent Secretary of State accepted "That individuals facing destitution (by which we understand means living on the street and having no food security) cannot be returned to Iraq as it would violate the United Kingdom's obligations under Article 3 ..." (paragraph 45).
14. The judge had then applied that general position, as set out in the country guidance case of **AAH [2018]**, to the particular facts of this case, which was that the Appellant was a person without any family members, and that "He does not know anyone in Baghdad. Sunni Muslims are targeted as it is believed they support ISIS" (paragraph 46). The judge had gone on to say that, "The Appellant is from Mosul, he is Kurdish and a Sunni Muslim, without a CSID card. All these factors would mean he is at risk of being targeted in Baghdad" (paragraph 57).
15. In reply, Mr Tan submitted that it was important to consider whether internal relocation would be available to the Appellant, even if he could not return back to Mosul in his home area. The headnote of **AAH [2018]** appears to have been applied by the judge at paragraphs 43 to 44, but it was still necessary for the judge to ask what risk factors applied to the Appellant, who had now been in the UK since 2010.

No Error of Law

16. 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. My reasons are as follows. This was a case where the essential facts were not in dispute. There had been a previous decision, to which the judge had a proper regard under the principles in **Devaseelan**. By the time that the appeal arose before the judge the issues were clear cut, and Mr Madubuilke, with exemplary economy, had made it clear that "There is nothing new to be added to his previous claim" (paragraph 23).
17. Second, the fact that the Appellant was an only child, had no parents, and no family members to turn to (see paragraph 11) was not in contention.
18. Third, the judge dutifully applied the leading cases in this jurisdiction (see paragraphs 38 to 43). Reliance was placed upon the case of **AAH [2018]**, with close attention paid to the expert report by Dr Fatah, that the civil registration system in Iraq is in disarray, and that he has never known anyone obtain the documents from the central registry in Baghdad.

19. But even leaving all of this aside, the judge provided ample reasons in the conclusion that the Appellant, “Returning with no family would need to find accommodation and a single returnee according to Dr Fatah would not be able to rent in the traditional neighbourhoods and living on the street becomes a real possibility”, such that this “Would violate the United Kingdom’s obligations under Article 3” (paragraph 45).
20. Finally, it is noted that he is from Mosul, is of Kurdish ethnicity, is a Sunni Muslim, and risks being targeted in Baghdad (paragraph 47). These conclusions were based on evidence that was before the Tribunal. The conclusions were accordingly open to the judge to make.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

No anonymity direction is made.

This appeal is refused.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th March 2019