



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

Appeal Number: PA/07227/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 23 January 2020**

**Decision & Reasons
Promulgated
On 14 February 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L King instructed by Qualified Legal Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure of publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Iraq who was born on 16 May 1998. He was born in the Iraqi Kurdish Region (“IKR”) and lived there until 2004 when his family moved to Kirkuk. In Kirkuk, he joined the Kurdish Democratic Party (the “KDP”) in January 2017 and, in June 2017, he joined an organisation called the ‘Immortal Pathway Group’. That organisation, associated with the KDP, was specifically created in connection with the Kurdish referendum on independence.
3. In August 2017, he began a relationship with a girl (“D”) who was the niece of a senior member of the PUK and closely associated with a senior commander of the PUK Peshmerga forces (“J”). I have omitted the detail of these individuals in order to protect the anonymity of the appellant.
4. Following the Kurdish referendum in September 2017, the appellant left Kirkuk in October 2017 and returned to the place of his birth in the IKR because he feared political persecution in Kirkuk.
5. In December 2017, he returned to Kirkuk. Whilst he was there, in February 2018 and again in April 2018, he proposed marriage to D but that was rejected by J.
6. In May 2018, he again returned to his place of birth in the IKR as he believed that J had told the Iraqi authorities about his political activities and feared political persecution.
7. Shortly after, his girlfriend contacted him and told him that she was to marry J’s son and she threatened suicide.
8. In the light of this, the appellant returned to Kirkuk in June 2018 in order to see her. When J saw them together, he reacted angrily, firing a gun and causing the appellant to run away. The appellant fled to Erbil in the IKR where he remained, living with a friend of his old boss, until August 2018. Whilst there, his boss telephoned him and told him he was not safe as J was looking for him. As a result, the appellant left the IKR, travelling to Turkey by bus, and from there on to the UK.
9. The appellant arrived in the United Kingdom clandestinely on 27 February 2019. On 18 May 2019, he claimed asylum. He claimed that he was at risk on return to Iraq (both in Kirkuk and the IKR) because of his political opinion and because he was wanted by J.
10. On 19 June 2019, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and under the European Convention on Human Rights.

The Appeal to the First-tier Tribunal

11. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge M Loughridge. At that hearing, the appellant was represented but the Secretary of State was not.

12. Judge Loughridge accepted much of the appellant's account. He accepted that the appellant had been a "low-level KDP supporter/activist". He also accepted the appellant's account of his relationship with D and that he would be at risk from J if he returned to Kirkuk. The evidence before the judge, which he accepted, was that D was no longer alive although he did not positively decide, as was the appellant's case, that she had committed suicide. At para 25-26 of his determination, Judge Loughridge set out his finding that the appellant was at risk on return to Kirkuk, namely his home area, as follows:
 - “25. I have little hesitation in saying that the Appellant cannot safely return to Kirkuk. Critical in reaching this conclusion is my finding that his girlfriend is no longer alive. That fact significantly elevates the risk from [J] because [J] will in all probability blame the Appellant for his niece's death. Whether or not this is correctly analysed as a risk of an 'honour killing' - and whether the Appellant therefore falls within the 'particular social group' of potential victims of honour-based crimes - is difficult to determine. Ms King has referred me to objective evidence at page 132 of the Appellant's bundle which contains information about honour-based violence most if not all of which appears to take place 'within' a family rather than being perpetrated against an 'outsider'. However, on balance it seems to me that this *is* probably a situation of potential honour-based violence given the close connection between the risk to the Appellant and his wish to marry [J's] niece. In any event, the same risk similarly arises under Article 3. The fundamental point is that if the Appellant's presence in Kirkuk came to the attention of [J] there would be a real risk to him of being harmed/killed by way of revenge for his girlfriend's death.
 26. For completeness, I will comment further on the issue of the Appellant's girlfriend's death. I mentioned above that I do not make a positive finding that she committed suicide and that is because the objective evidence on honour-based violence specifically refers to one reason for such violence being refusal of an arranged marriage - which is precisely the circumstance in which the Appellant's girlfriend found herself. She was clearly unwilling to marry her cousin and there is a distinct possibility that in fact she was a victim of honour-based violence perpetrated by her uncle, indeed the objective evidence is that honour killings are often concealed as suicides. The precise circumstances of her death are immaterial to my overall conclusions and it is therefore open to me to leave this issue unresolved, which is what I do. The point, however, is that the Appellant is likely to be blamed by [J] for the death however it occurred”.
13. Having made that finding, at para 27, the judge identified the remaining legal issue as being whether the appellant could safely relocate elsewhere in Iraq and whether it was reasonable for him to do so. The obvious place of potential relocation was to the IKR and, in particular, to Erbil.
14. At paras 28-31, the judge considered whether the appellant would be safe in the IKR, in particular in Erbil. Having regard to the appellant's circumstances and the relevant *CPIN*, the judge concluded that the appellant could safely live in Erbil. His reasons were as follows:
 - “28. The obvious place to consider for relocation is the IKR. This is an autonomous region recognised by the Iraqi government and run by the Kurdish Regional Government. It is where the Appellant was born and spent the first few years of his life and is where he fled to from Kirkuk on

three occasions. It has its own army – the Peshmerga – which in reality is under the control of the two main factions in Kurdish politics in Iraq, the KDP and the PUK. The population of the IKR is just over 8 million and the principal city, Erbil, has a population of almost 900,000.

29. I consider that the only risk to the Appellant is from a specific individual relating to a personal matter. In particular, although the Appellant was briefly involved in KDP politics before he left Iraq there is no cogent evidence that this carries a real risk of serious harm or leads to a well-founded fear of persecution *in the IKR*. There are undoubtedly certain tensions between the KDP and the PUK but I have not seen anything which suggests that low-level KDP supporters/activists – and the Appellant is clearly no more than that in terms of his political profile – are targeted by political opponents. The Respondent’s CPIN: “Iraq: Political opinion in the Kurdistan Region of Iraq (KRI)” makes it absolutely clear that there is little if any risk to an ‘ordinary’ KDP member eg paragraph 2.2.2: “The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having taken part in protests against, the KDP and/or PUK”.
 30. Is this individual – [J] – likely to have the means/motivation to track down the Appellant in the IKR? Whilst it is impossible to completely rule this out the risk is at such a low level that it falls well below the threshold required in a protection claim. The Appellant could relocate to Erbil which is a large city and a location in which he has previously lived for approximately six weeks. There is no obvious reason why his presence in Erbil would even come to [J’s] attention and it is relevant to say that there is no evidence that his position as a karate champion elevates his profile to any significant extent, for example such that he is readily recognisable by members of the public. Furthermore, although [J] is well connected within the PUK it is the KDP rather than the PUK which controls Erbil – paragraph 2.4.1 of the Respondent’s CPIN: “Iraq: Political opinion in the Kurdistan Region of Iraq (KRI)”. The CPIN also states – at paragraphs 2.3.1 and 2.3.2 – that “Both the KDP and PUK have powerful militias (the Peshmerga). A supporter or member of either the KDP or PUK will be able, in general, to avail themselves of the protection of either the KDP or the PUK, depending on their location”. Put another way, the Appellant’s KDP credentials would serve him well in Erbil in protecting him from any risk which could possibly come from [J]. The Appellant’s suggestion in his oral evidence that [J’s] boss, [], has unlimited power in the IKR and can arrest/kill anyone, and is above the law, is not borne out in the objective evidence, at least not with regard to areas of the IKR under KDP control.
 31. Taking all the above into account I conclude therefore that the Appellant could safely relocate to her Erbil i.e. without any real risk to him from [J]. The situation for him in that location would be vastly different to returning to Kirkuk, particularly to the area of Kirkuk where his family and [J] live”.
15. At paras 32–38, applying the relevant country guidance decisions in AA (Iraq) v SSHD [2017] EWCA Civ 944 and AAH (Iraqi Kurds – Internal Relocation) Iraq CG [2018] UKUT 00212 (IAC), the judge found that it would be reasonable and not unduly harsh for the appellant to live in Erbil where, although he did not have any family members, he had lived with the friend of his old boss for about 45 days and he would be able to obtain a replacement CSID and find work in Erbil.

16. Consequently, Judge Loughridge dismissed the appellant's appeal on asylum and humanitarian protection grounds on the basis that he could safely and reasonably internally relocate to Erbil in the IKR.

The Appeal to the Upper Tribunal

17. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds. In particular, that the judge had wrongly assessed the risk to the appellant as a "low-level supporter/activist"; had wrongly found that the appellant could safely relocate to Erbil by concluding that he would not be at risk from J; and was wrong to find that he could reasonably live in Erbil even if he were not at risk.
18. On 12 November 2019, the First-tier Tribunal (DJ Macdonald) granted the appellant permission to appeal.
19. On 21 November 2019, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision, in particular that he would not be at risk on account of his political activity.
20. Before me, Ms King, who represented the appellant, relied upon the grounds and her skeleton argument which she developed in her oral submissions. Principally, she submitted that the judge had wrongly assessed the risk to the appellant based upon his political activity in applying the relevant *CPIN* (Iraq: Political opinion in the Kurdistan Region of Iraq (KRI)) (August 2017) given the level of his political activity. It was not accurate to describe him as a 'low-level' activist and supporter given his activities in Kirkuk. Secondly, Ms King submitted that the judge had wrongly assessed the risk to the appellant in Erbil from J. He had failed to take into account the appellant's profile as a national karate champion which, if he continued his sport on return, would raise his profile such that he was at risk of coming to the attention of J. Further, Ms King submitted that the judge had failed to give adequate reasons in para 30 of his determination for concluding that J did not have the motivation to track him down. The judge had failed to take into account that J had continued to pursue him and, following a phone call from his former boss, that was why he had left Erbil and Iraq to come to the UK. Finally, although with somewhat less vigour, Ms King submitted that the judge had been wrong to find that it was reasonable for the appellant to live in Erbil as it was speculation whether the friend of his boss would provide him with support and sponsorship.
21. On behalf of the respondent, Mr Howells acknowledged that he was at some disadvantage as there was no record in his file of the evidence as the respondent had not been represented before the judge. Nevertheless, in assessing the risk to the appellant in Erbil as a result of his political opinion, Mr Howells submitted that the judge's finding was consistent with the *CPIN* as the appellant would be living in a KDP controlled area and there was no basis for finding that he would be at risk from the KDP

because of his past (or indeed future) activities supporting the KDP. As regards the risk to the appellant from J, Mr Howells submitted that J was part of the PUK and that the judge had been entitled to find at para 30 that the appellant could seek the protection of the KDP in Erbil against J. Mr Howells submitted that the judge was entitled to find, if the appellant was not at risk, that it would be reasonable to live in Erbil.

Discussion

22. As I have already indicated, Judge Loughridge found that the appellant was at risk of persecution and/or treatment contrary to Art 3 of the ECHR in his home area of Kirkuk. That risk arose from J because of his attitude to the appellant as a result of the appellant's relationship with J's niece. It does, however, seem apparent that as a result of the appellant's political activities in Kirkuk, he was also at risk from the Iraqi authorities. That was part of his account as to why he left Kirkuk in May 2018. The judge's finding in relation to the risk to the appellant in Kirkuk at paras 25-26 (which I set out above) relates only to the risk from J if the appellant were in Kirkuk. It does not appear, however, from the appellant's grounds of appeal or the submissions made before me that it is contended that the judge erred by failing to find that the appellant was also at risk from the Iraqi authorities. In truth, he may well also be at risk on that basis in Kirkuk. In any event, the judge's failure to make any finding in that regard is not material to his decision or, indeed, to any re-making of the decision since the crucial issue, as was accepted before me, is whether the appellant can safely and reasonably relocate to the IKR, in particular Erbil. The relevant matters to that issue are whether the appellant would be at risk because of his political activities or from J in Erbil and, if he would not, whether it would be reasonable and not unduly harsh for him to live there.
23. As regards the risk to the appellant in Erbil as a result of his political activities, it is extremely difficult to see how his political activities in support of the KDP could put him at risk in Erbil which is a KDP controlled area. Judge Loughridge referred to the relevant *CPIN* in relation to political opinion in the IKR. Unfortunately, the Tribunal's file did not contain a copy of that *CPIN*. The judge made reference to a number of paragraphs in that document, in particular para 2.2.2 at para 29 of his determination. That paragraph must be seen in the context of the immediately preceding para 2.2.1 and the following para 2.2.3. Paragraphs 2.2.1-2.2.3 provide as follows:
- "2.2 Assessment of risk
- 2.2.1 The democratically-elected Kurdistan Regional Government (KRG) is broad-based, with representatives from all the major parties, although it is dominated by the Kurdistan Democratic Party (KDP) (see Kurdistan Regional Government (KRG)). However, ongoing tensions exist between the main parties: the KDP; its main rival, the Patriotic Union of Kurdistan (PUK); and the Gorran ('Change') party, which has emerged in recent years to challenge the dominance of the KDP and PUK.

- 2.2.2 The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having taken part in protests against, the KDP and/or PUK. Each case must be considered on its merits.
- 2.2.3 There are reports that political opponents of the KRG and/or the KDP and/or PUK have been arrested, detained, assaulted and even killed by the Kurdistan authorities. However, there is no evidence that such mistreatment is systematic. In general, a person will not be at risk of serious harm or persecution on the basis of political activity within the Kurdistan Region of Iraq (KRI). Decision makers must, however, consider each case on its merits. Decision makers must consider that those more likely to be at risk of such mistreatment include:
- journalists/media workers and human rights defenders, particularly
 - independent journalists who do not have the protection of either the KDP or PUK;
 - those who write about certain subjects, including corruption, the lack of human rights in the region, women's rights and anything that could be construed as endangering the security of the region or public morality;
 - those critical (or perceived as critical) of prominent figures in the KDP or associated organs such as the Peshmerga (see Arrests and detention and Restrictions on media freedoms)".

24. Ms King submitted that the judge had wrongly applied para 2.2.2 as the appellant was not merely an "opponent" or, indeed as the judge found, a "low-level activist" given his involvement in Kirkuk which had included supporting the KDP and the independence movement where a banner had shown the appellant and had been torn down and burnt by the Iraqi authorities.
25. Mr Howells submitted that the relevant guidance was concerned with the risk to an individual arising from his political activities when he was in an area in the IKR controlled by the other group: namely, political activity for the KDP carried out in a PUK area or political activity for the PUK carried out in a KDP area. Here, the area of proposed relocation was to a KDP area and it was political activity by the appellant on behalf of the KDP which it was now said put him at risk.
26. Whilst it is somewhat unclear in its terms, it does seem likely that Mr Howells' submission is correct. It would be consistent with para 2.3.2 dealing with "protection" where it is stated:
- "A supporter or member of either the KDP or PUK will be able, in general, to avail themselves of the protection of either the KDP or the PUK, depending on their location".
27. In my judgment, Judge Loughridge did not err in law in finding that the appellant would not be at risk because of his political activities, on behalf

of the KDP, if he relocated to Erbil which is a KDP controlled area. In my judgment, the background material does not support the appellant's case that he would be at risk whether or not he is perceived as a "low-level supporter or activist" of the KDP based upon his past political activities in Kirkuk and, although the evidence on this is less clear, his future political activities (if any) in Erbil. He would not be at risk from the KDP itself and, simply on the basis of political activity, the judge's conclusion that he could safely live in Erbil is supported by and, entirely consistent with, para 2.3.2 that he would be able to obtain protection from the KDP if it was suggested his political activities would be of interest to the PUK.

28. However, in relation to the risk, if any, to the appellant in Erbil from J, I accept the substance of Ms King's submissions that the judge failed properly to consider all the evidence as to whether the appellant would come to the attention of J whilst living in Erbil and whether J had the motivation to track him down.
29. First, whilst the judge makes reference to the fact that the appellant is a "karate champion" he goes on to state in para 30 that there was nothing in the evidence which "elevates his profile to any significant extent, for example such that he is readily recognisable by members of the public". Ms King, relying upon the grounds of appeal, pointed out to me that the judge had failed to set out the entirety of the appellant's evidence. The appellant's evidence was that he was "number one" in Kurdistan; he was the national champion in 2007, he had competed in Turkey and Iran and the competitions were reported on television and in the newspapers and there were photographs of him competing available on social media. The judge made no reference to that evidence which, Mr Howells could not dispute was the appellant's evidence in the absence of a Presenting Officer's record. Further, Ms King submitted that the judge had failed to take into account that the appellant would likely continue his sporting activity on return to Erbil and that would heighten his profile and potentially lead to J discovering his whereabouts. I accept that submission.
30. Further, as Ms King submitted, the judge appears to have concluded that J had no motivation to seek out the appellant. However, the appellant's evidence was that he left Erbil to come to the UK because his former boss had told him that J was still seeking him and he was not safe. The judge accepted, in large measure, the appellant's evidence. In para 20, he made no reference to this evidence and, if accepted, it would appear to be inconsistent with the judge's finding in answer to his own question of whether J was "likely to have the means/motivation to track down the appellant in the IKR", that whilst it was "impossible to completely rule this out the risk is at such a low level that it falls well below the threshold required in a protection claim".
31. Likewise, in relation to the risk of J having the means to find the appellant, the judge failed, in my view, to have sufficient regard to the senior role played by J within the PUK and that of his boss in the PUK Peshmerga. Of

course, in para 30, relying on paras 2.3.1 and 2.3.2 of the *CPIN*, the judge noted that protection might be available from the KDP to the appellant. That was, however, said in the context of a risk to an individual as a supporter or member of the KDP, in all probability, in the context of their political activity for the KDP. The risk to the appellant from J, given his senior position (and that of his boss) in the PUK required the judge not simply to state the *CPIN* policy but to engage with the background evidence. There was evidence before the judge, referred to in para 36 of the grounds, derived from the EASO, Country of Origin Information Report Iraq Targeting of Individuals (March 2019) at para 1.10.2 that:

“A small group of persons in top of the political parties, KDP and PUK, can do anything they want without fearing sanctions etc. In general, the KDP and PUK are in control. If a person has a conflict with a powerful figure from these two parties or the Asayish, that person would be in trouble”.

32. I do not say that the judge was bound to find that the appellant was at risk from J but rather that his finding that he was not at risk from J failed to consider, and take into account, all the appellant’s evidence, together with the background evidence.
33. It follows, therefore, that the judge erred in law in reaching his finding in para 31 that the appellant could safely relocate to Erbil because there would be no real risk to him from J if he lived there.
34. That, in itself, is sufficient to set aside the judge’s decision and finding in relation to internal relocation. Ms King also challenged the judge’s findings and reasons at paras 32–39, that it would be reasonable and not unduly harsh for the appellant to live in Erbil. As the judge’s decision in respect of internal relocation must be re-made, and that the appellant is likely to give further oral evidence, it would not be right, in my judgment, to preserve the judge’s findings and reasoning in paras 32–39. Indeed, it was common ground between the representatives, that if I found that the judge had erred in law and his decision was set aside, the only findings of the judge which should be preserved were in paras 18–22 and 25–26 of his determination.
35. Consequently, I am satisfied that the judge erred in law in dismissing the appeal in finding that the appellant could internally relocate to Erbil.

Decision

36. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant’s appeal on asylum and humanitarian protection grounds involved the making of an error of law. That decision is set aside.
37. The parties agree that, in these circumstances, it was appropriate for the appeal to be remitted to the First-tier Tribunal in order that the decision could be re-made in respect of the issue of internal relocation to the IKR, in particular to Erbil. Given that this is likely to involve further evidence, including oral evidence from the appellant, I am satisfied having regard to para 7.2 of the Senior President’s Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal.

38. On remittal, the judge's findings in paras 18-22 and 25-26 are preserved. In essence, the appellant has established that he would be at risk of persecution and/or Art 3 ill-treatment in his home area of Kirkuk and the sole legal issue is that of internal relocation. The appeal is remitted to the First-tier Tribunal on that basis to be heard by a judge other than Judge Loughridge.

Signed

A handwritten signature in black ink, appearing to read 'Andrew Grubb', with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal
13 February 2020