



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00889/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 11 May 2017

Decision & Reasons Promulgated
On 12 May 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H S

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire Solicitors (Scotland) Ltd
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Farrelly, promulgated on 7 February 2017. His grounds may be summarised as follows.

Error when assessing internal relocation.

(1) The FtT erred at ¶30 as there was no or insufficient evidence that the Kurdish authorities had pre-cleared the appellant: AA [2015] UKUT 00544 headnote 17 and ¶150. If the appellant does not have pre-clearance he would have to exercise internal flight to Baghdad: AK [2007] Imm AR 81. The FtT made no assessment of factors relevant to reasonability of such relocation. The appellant has no ties in Baghdad, is Sunni, and faces the risk of kidnapping.

(2) The FtT also erred when finding that the appellant could fly from Baghdad to Erbil. He would not be able to as he would be returned on a *laissez passer* valid for only one journey, which would be taken from him on return, and would have no documentation to fly from Baghdad to Erbil: AA at ¶25. The FtT reached findings not supported by the evidence, or failed to exercise anxious scrutiny.

Submissions for appellant.

2. The grant of permission was on ground (2) only. The appellant did not seek to advance ground (1).
3. The appellant's position was that he had no documents. The ground of appeal should be read under deletion of reference to a *laissez passer*. The case should have been decided on the basis that the appellant would have no document enabling him to travel from Baghdad to Erbil.
4. In that respect, the appellant relied on the observation of the judge granting permission, "The reasonable prospect of the appellant travelling from Baghdad to another part of Iraq (including Erbil) would have afforded the appellant a safe outcome but, arguably, had to be considered in terms of whether there was a realistic prospect of this being achieved in practice; route, method of transport, cost etc.".
5. The judge did not at paragraph 28 or elsewhere in the decision make a finding on whether the appellant has any documents. At paragraph 30, there was a failure to reach a conclusion on his position assuming he has no documents. The country guidance imposed a requirement to look at the practicalities of travel.
6. The judge appeared at paragraph 11 and elsewhere to approach the case as if the appellant's account of events was accepted. That might explain the lack of a specific finding. If that had been the judge's view, he should have allowed the appeal on the basis that the appellant would have no documents, had no family connections to enable him to replace them, and would be unable to access the IKR.
7. Alternatively, if the judge failed to reach a finding on whether the appellant could relocate in Baghdad, a fresh decision should be reached by reassessing that option. There being no basis for finding that he had the ability to obtain a document or the assistance of his family, that point should be resolved in his favour, and the appeal should be allowed.
8. As a further alternative, if it were thought that the error could be resolved only by further findings after fresh hearing of the evidence, the case should be remitted to the FtT.

Submissions for respondent.

9. Paragraphs 28 - 30 were plainly to the effect that the appellant could be returned to Iraq by way of Baghdad and could relocate in the IKR. At the end of paragraph 30, the judge said, "He could reasonably relocate, [most] likely to the IKR" [typographical correction agreed by the parties]. That was a finding that he would have the means of travelling on. That derived from the narration at paragraph 27: country guidance indicated that although not removable directly to the IKR, not being from that area, the appellant could travel there from Baghdad, supported by AA at paragraphs 24 and 171, to both of which the judge referred.

10. It was for the appellant to make his case, and he had not established that there would be any difficulty in taking a flight from Baghdad to Erbil. There are been nothing drawn to the judge's attention to suggest any difficulty in that respect. Essentially he now sought to argue a point which had not been put to the FtT. In any event, it was not shown to have any substance.

Response for appellant.

11. The obligation was not on the appellant to establish his case but, unusually, in this respect on the SSHD, based on AA at paragraph 170.
12. The appellant said in his witness statement at paragraph 14 that he did not have identity documents when he came to the UK. It was accepted that his evidence was ambivalent as to whether he had documents in Iraq, and that it might be implied that he did. The issue of practicality of return had been before the judge, as had been the availability of assistance of friends and family. The judge noted these matters but reached no decision. It was not apparent from the decision that the judge had appreciated that ability to board a flight from Baghdad to Erbil might be a relevant issue. This was not the raising of a new point after the hearing.
13. Even if this was a new point, the matter was important enough to deserve being admitted in the discretion of the court, or as an obvious issue.

Discussion and conclusions.

14. The appellant relies heavily on parts of two paragraphs in AA:

25. Dr Fatah ... did not think that the *laissez passer* used ... to return from the UK ... could be used for an onward trip to the IKR. The *laissez passer* is a document valid for one trip and likely to be taken by the authorities on arrival in Baghdad.

170. ... If the position is that the Secretary of State can feasibly remove an Iraqi national, then she will be expected to tell the tribunal whether and if so what documentation has led the Iraqi authorities to issue the national with passport or *laissez passer* (or signal their intention to do so). The tribunal will need to know, in particular, where the person concerned has a CSID. It is only where return is feasible but the individual concerned does not have a CSID that the consequences of not having one come into play.

15. The appellant seeks to place more weight on those passages than they properly bear.
16. Paragraph 25 comes from narration of evidence, not from conclusions.
17. The nature of a *laissez passer* is that it is issued by the Iraqi authorities in the UK for the return of a national. The appellant does not refer to any evidence that it is a document relevant to travel within Iraq, nor to any evidence about documentation required by providers of travel within Iraq. The passage of evidence does not bear the construction that if a *laissez passer* is taken from an appellant, that bars onward travel.

18. Paragraph 170 comes within the discussion of internal relocation. It is framed in terms of what a tribunal may expect from the SSHD, but I find that it does not support this appeal, for three reasons:

(1) The terms of the paragraph do not reach quite so far as the appellant contends. If there is any obligation on the SSHD then even at highest she does not have to prove in each case what documents are required for an appellant to book and board an internal flight in Iraq, and that he possesses or can obtain them. It is enough that the general availability of travel is established, and that is not in dispute.

(2) The form of words used in the paragraph does not find its way into the guidance which is set out at paragraph 204 and headnote 20, thus:


Whether a Kurd, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) practicality of travel from Baghdad to the IKR (such as to Erbil by air); (b) the likelihood of securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.

(3) In so far as paragraph 170 suggests that the burden on the SSHD, the passage is of no binding effect, is not incorporated into the guidance, and I respectfully disagree. The proposition is contrary to principle. The respondent makes travel arrangements after not before conclusion of an appeal. It would be unworkable to have to put such arrangements in place prior to appeal hearings. Many cases include a claim to fear the national authorities, and so to approach them might well be unlawful. Issues about return in the event of an unsuccessful appeal are for resolution later (if necessary, by way of judicial review) not while the appeal process remains live.

19. The judge was not shown that he had to delve any further than he did into the question of documentation needed to book and board a flight to Erbil, or directed to any evidence on that point which might have made the appellant's case.

20. For these reasons, I find that the grounds and submissions for the appellant do not show that the making of the FtT's decision of the FtT involved the making of an error on a point of law. That decision shall stand.

21. An anonymity direction was made in the FtT. The matter was not addressed in the UT, so anonymity has been preserved herein.



11 May 2017
Upper Tribunal Judge Macleman