



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02241/2016

THE IMMIGRATION ACTS

Heard at Stoke
On July 14, 2017

Decision & Reasons Promulgated
On July 17, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR ASAD RASHAD ALI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Azmi, Counsel, instructed by Halliday Reeves
Solicitors

Respondent

Mr Bates (Senior Home Office Presenting Officer)

Interpreter

Mr Kafur

DECISION AND REASONS

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. The appellant, an Iraqi national, entered the United Kingdom on November 2, 2015 concealed in a lorry and claimed asylum the same day. The respondent refused his application on February 24, 2016 under paragraphs 336 and 339F HC 395.
3. The appellant appealed against that decision on March 4, 2016 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appellant's appeal came before former Judge of the First-tier Tribunal Robertson (hereinafter called the "Judge") on September 16, 2016 and in a decision promulgated on November 3, 2016 he dismissed the appellant's appeal on all grounds.
5. The appellant appealed that decision on November 14, 2016 and Judge of the First-tier Tribunal Gillespie granted permission to appeal on December 1, 2016 as the Judge had arguably erred in finding the appellant could return to Jalawla in circumstances when the respondent's own guidance stated the area was still contested.
6. The matter came before me on May 18, 2017 and at that hearing Mr Bates conceded there was an error in law and submitted the Judge should have considered the issue of internal relocation. I was invited by Mr Azimi to remit the matter but having considered the representations of both representatives I kept the matter in the Upper Tribunal and adjourned the case for further oral and written evidence.
7. I made it clear that the Judge's findings of fact about the appellant's claim were retained and the sole issue for the resumed hearing would be whether it would be a breach of article 15c to return the appellant to Iraq.

Appellant's Evidence

8. At the resumed hearing, the appellant re-adopted his previous statement and gave oral evidence. He maintained, contrary to the findings of the Judge, that his parents were born in Sharazoor and then went to live in Jalawla and that whilst they had Civil Status Identity Documents (CSID) he had never been issued with one and had simply relied on the documents that his parents had been issued with at birth. He stated he had no contact with his father in Iraq and there was no one whom he could turn to obtain the document. He maintained his earlier fear of his father's family (rejected by the Judge) and argued he would be unable to live anywhere in the IKR or Baghdad.

Submissions

9. Mr Bates submitted that based on the Judge's earlier preserved findings this Tribunal should look carefully at his evidence today. Whilst he maintained his parents were born in Sharazoor and then went to live in Jalawla, this had specifically been rejected by the Tribunal as had his fear of his family. The Tribunal were therefore dealing with a male who was to be returned to Iraq. The issue for the Tribunal today was whether he could safely now be returned to Jalawla in light of the improved situation there or alternatively he could relocate to either the IKR or live in Baghdad. Mr Bates submitted that his claim not have access to a CSID should be treated with caution because of the previous findings. He submitted that he could now return to Jalawla because evidence showed it was no longer a contested area and he could safely return to live there. Alternatively, he was a Kurd and the evidence showed he was fit and well and he would be able to fly to Erbil by one of a number of routes. He would be given entry for at least ten days and as he claimed to have family all over the IKR he would have access to them in light of the rejection of his account. He submitted that the appellant would be able to obtain the necessary documents and he asked me to refuse the appellant's appeal.
10. Mr Azimi submitted that whilst the Judge had made findings in paragraphs [15] to [19] of his decision he had not totally rejected the appellant's account. The appellant's claim today was he had no family to turn to in Iraq as he had either lost contact with them or he feared them. He invited me to accept he had no one to turn to in Iraq and this would hinder the process for him to obtain the necessary paperwork. He also argued that the recent Court of Appeal decision of AA (Iraq) [2017] EWCA Civ 944 did not say Jalawla was no longer a disputed area and in those circumstances he could not return there. The appellant stated he did not have a CSID and he had no access to one because he had no family who could help him. He submitted that he fell within the risk categories identified in paragraphs [9] to [11] in the Annex of AA. Similarly, he had no family in Baghdad and would be unable to settle there. He invited me to find internal relocation was not reasonable or feasible and to grant him humanitarian protection.
11. Mr Bates invited me to find there had been no error in law an error in law and to remit the matter to the First-tier Tribunal because ultimately the Judge was the person tasked with assessing the evidence and making credibility findings. It was clear from the Judge's decision that the Judge was aware of the report but for the reasons given in the decision he concluded the appellant lacked credibility and the findings

made were all open to him. Even if those reasons about return to his home area were not adequately reasoned he could return to Kabul. It was not suggested in the grounds of appeal that Kabul was not available to him and all findings made were open to him.

FINDINGS

12. Findings of fact were made by the previous Judge about the appellant's claim and those findings are preserved. The Judge found:
 - a. The appellant gave inconsistent evidence about what he feared. On arrival in the United Kingdom he claimed he feared ISIS but in his evidence the appellant only claimed to fear his family and the JAFF tribe.
 - b. The appellant submitted a copy Iraqi Citizenship certificate which named his parents and gave their place of birth as Jalawla. The appellant claimed initially this was an incorrect translation but then claimed it had been done deliberately so they would not be identified.
 - c. The appellant received no direct threats either from ISIS or his extended family though he claimed his father had received a threatening letter albeit many years after his father had eloped with his mother. It was unclear why if their location had been discovered the threat was not carried out and no direct had been taken against his parents in 26 years.
 - d. The Iraqi Citizenship Certificate showed the appellant's parents were born in Jalawla and they were married and living in Jalwawla.
13. The situation in Iraq is changing all the time as most recently demonstrated by the recent events in Mosul. The Court of Appeal recently considered the situation in Iraq albeit it is clear from the language used this was on a limited and discrete basis concerning the Iraqi Civil Status Identity Document. The point considered by the Court of Appeal is of relevance to this appeal because the appellant claimed he did not have access to a CSID and I will return to that issue later in my decision. What is clear though from the Court of Appeal decision is that the court was not tasked with considering other aspects of the country guidance decision. To that extent Mr Azimi's submission that the Court considered the law and made no amendments (other than to the CSID issue) has no merit.

14. The Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) considered the position as it was in May 2015 and issued a judgement in October 2015. In AF (2004) UKIAT 00284 the Tribunal said that failure by Adjudicators to follow country guidance cases was an error of law but where there is evidence to enable me to depart from a Country Guidance then I am entitled to do so as long as I give reasons for doing so.
15. Mr Bates invited me to depart to depart from AA and find that Jalawla was no longer a contested area. Paragraph [1] of the headnote in the annex of AA states-

“There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.”
16. Jalawla is part of the governate of Diyala and therefore formed part of a contested area. This of course was the reason the original error of law arose because the Judge stated it was not part of a contested area.
17. Mr Bate submitted in evidence a bundle of country evidence that supports his argument that Jalawla was no longer part of a contested area although he acknowledged it was part of the “disputed territories” being claimed by both central government in Baghdad and the IKR.
18. The evidence adduced included the following:
 - a. An article dated March 28, 2016 which referred to almost 600 families returning to their homes in the area over a two day period. Three of the six neighbourhoods had been reconstructed and it was expected that many more displaced families would return to the other three neighbourhoods the following week. At that date around 4000 families had returned to the area and they had done so because the houses, streets and roads had been declared safe by bomb disposal engineers. ISIS had been removed from the area.
 - b. Evidence of the rebuilding of the city.
 - c. Home Office Country Policy and Information Note June 2017.

- i. Para 2.2.4 makes clear that internal relocation is in general possible to all areas except those areas identified. One such area is “the parts of the Baghdad Belts (the residential, agricultural and industrial areas that encircle the city of Baghdad) that border Diyala and Salahal-Din. This area is still assessed as meeting article 15(c).
- ii. Para 2.2.6 states people who originate from the IKR will in general be able to return there and to relocate to another area subject to the provisos listed in para 2.2.8.

d. Evidence of flights to Erbil from Baghdad.

19. Mr Azimi did not present any evidence to support his submission that Jalawla remained part of a contested area although he did argue that it remained part of a disputed area.
20. There was no evidence adduced of any continuing fighting in the appellant’s home area and the respondent’s position is now changed in that whereas she accepted the area was in a contested area last year this was now not something they placed any reliance on. Representatives regularly refer to Iraq like Libya as being a country in flux. I find that as at today’s date Jalawla is no longer in a contested and the fact there may be a dispute between Baghdad and the IKR does not mean it is no longer a safe place to return to.
21. Looking at the findings already made in this matter I am satisfied that subject to any document issues that have been raised there is nothing to prevent the appellant returning to his home area. There is evidence that he would be able to fly to Baghdad and then onto Erbil.
22. The problem I have with the appellant’s evidence today is that he was merely repeating evidence that he had given to the First-tier Tribunal. Those findings were never challenged and they are my starting point.
23. I am satisfied his parents were born and lived in Jalawla. I reject his claim that his extended family in the IKR would take action against him and I do not find there is any outstanding grudge against him or his family.
24. If the appellant feels unable to return to Jalawla then there is the option to return to Erbil (from Baghdad on one of the many daily flights) and either stay there or in another part of the IKR subject of course to my being satisfied that he would be able to secure documents or be allowed to remain without them.

25. The Court of Appeal reviewed the importance of documentation and a CISD in AA and gave the updated guidance in the Annex to its decision-

"B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.

6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

8. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

C. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an

area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

26. Based on the findings made the issue is whether the appellant's ability to obtain an CSID. Having found his parents were born in Jalawla and lived there and that the area no longer forms part of a contested area and having rejected his claim fear of persecution it seems to me that when the appellant was returned he would be granted entry to the IKR as a Kurd and I am satisfied that he would be able to obtain the CSID without any real difficulty. I reject his claim that he himself did not have one. He gave evidence that his parents did have one and as his account of events has been rejected I do not find it credible that as an adult living in Iraq for around 24 years he would not have obtained a CSID.
27. Having considered all of the evidence I find were the appellant to be returned to Iraq he could either return to his home area to live or alternatively he could return to the IKR region via an internal flight from Baghdad and obtain his CSID and re-establish his life, like many others, in Iraq.

DECISION

28. The original Judge's decision contained an error in respect of humanitarian protection only. I set aside that decision and have remade it.
29. I dismiss the appellant's appeal on humanitarian protection grounds and uphold the decisions to dismiss his other claims.

Signed:

Dated: **6 September 17**



Deputy Upper Tribunal Judge Alis

FEE AWARD TO THE RESPONDENT

No fee award is made as I have dismissed the appeal.

Signed:

Dated: **6 September 17**

A handwritten signature in black ink, appearing to read "SPAL" with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis