



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03170/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal (IAC)
On 30th November 2017

Determination Promulgated
On 18th December 2017

Before

UPPER TRIBUNAL JUDGE COKER

Between

SA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bradshaw, instructed by Central England Law Centre
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as SA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. On 20th June 2017, I found an error of law in the decision by the First-tier Tribunal dismissing the appellant's international protection appeal, in the following terms:
 1. Having heard submissions from both parties, it being conceded by the respondent that there was a material error of law by the First-tier Tribunal judge in reaching his decision on the issue of feasibility of return to Iraq, I set aside the decision to be re-made.
 2. Although Ms Aboni submitted that there was no error of law as such by the First-tier Tribunal judge in his decision on internal relocation, she confirmed that the issue of internal relocation was itself dependant on the feasibility of return.
 3. In these circumstances, I confirm that the decision of the First-tier Tribunal is set aside on the two issues of feasibility of return and internal relocation. For the avoidance of doubt, no findings of fact by the judge as to internal relocation are preserved.
2. On 29th August 2017, I made the following directions:
 1. SSHD to state within four weeks of today
 - (a) Whether she considers Kirkuk to be a contested area or not.
 - (b) Is it reasonable for this appellant, a Kurd from Kirkuk, to internally relocate to the IKR.
 2. The appellant to file and serve any evidence he intends to rely upon 7 days before the resumed hearing
3. Both parties complied with the directions and I received:
 - (a) Submission from the respondent dated 22nd September 2017;
 - (b) Country Policy and Information Notes on Iraq: Security and Humanitarian Situation (March 2017);
 - (c) Iraq: return/Internal Relocation (September 2017);
 - (d) The Kurdistan Region of Iraq (KRI). Access, Possibility of Protection, Security and Humanitarian Situation. Danish Refugee Council Report April 2016;
 - (e) Expert Report prepared by Alison Pargeter dated 28th November 2017;
 - (f) Humanitarian Response Plan dated February 2017 for 2017 produced on behalf of the Humanitarian Country team and partners, United Nations Office for the Coordination of Humanitarian Affairs;

(g) Skeleton argument on behalf of the appellant dated 30th November 2017.

4. I heard submissions from both representatives, it being agreed that neither party required oral evidence to be given.
5. The two issues before me are, firstly, is the evidence now available such as to require me to depart from the Country Guidance in *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 (IAC) as amended by *AA (Iraq)* [2017] EWCA Civ 944 that there is at present a state of internal armed conflict in Kirkuk such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his presence, 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 (“Article 15(c) risk”); secondly if return to Kirkuk remains an Article 15(c) risk, is internal relocation to the IKR a safe and reasonable option such as to defeat the appellant’s protection claim.

Article 15(c) risk

6. Ms Aboni, relying on the Danish report and the March 2017 and September 2017 reports, submits that there is sufficient evidence to demand a departure from the Country Guidance. In particular, she submits the March 2017 report asserts that the changed security situation in Kirkuk including the significant territorial losses by Daesh, that the number of security incidents has declined and Kirkuk has amongst the lowest levels of violence of all areas; that families were returning to Kirkuk; the area was under the control by the Kurdish Peshmerga and the number of violent incidents was significantly lower than during the period considered by the Country Guidance. She referred to a judicial review (CO/2508/2017) where the respondent’s successful position was that Kirkuk was no longer an Article 15(c) risk. I was not provided with a copy of that decision and do not know the date of the decision or what evidence was before the respondent when she reached her decision the subject of challenge and I have therefore not taken that into account in reaching my decision.
7. Ms Aboni only received Ms Pargeter’s report on the morning of the hearing. I offered her time to consider the report prior to her making her submissions but, having looked through it briefly she said she did not require any time. On conclusion of her submissions I asked her if she had anything particular she wished to say with regard to Ms Pargeter’s report but she did not. She relied upon the respondent’s opinion that Kirkuk was no longer a contested area and the appellant could return there.
8. As submitted by Mr Bradshaw, the reports relied upon by the respondent all pre-date the Kurdish referendum which was held on 25th September 2017. Thereafter Iraqi forces moved into the ‘disputed’ areas and took over the key facilities including the oil fields and military bases; the Kurdish Peshmerga withdrew. The report by Ms Pargeter (who is an acknowledged expert and whose report Ms Aboni did not challenge at all) states, *inter alia*, that the Iraqi troops are unable to maintain security in Kirkuk, that there is significantly less security in the Governate than there was under Kurdish rule, that there was a

report that armed groups operating in Kirkuk were carrying out kidnapping and revenge attacks.

9. To depart from country guidance requires evidence to be presented that reliably enables a conclusion to be reached that conditions have either deteriorated or improved to such an extent that a different conclusion as to risk can be drawn. Small changes or change that is not of reasonable durability will be insufficient to justify a departure from the country guidance. What is required is evidence of a durable and sustainable change to country conditions.
10. In this case, the situation in the Kirkuk Governate did appear, prior to the referendum, to have stabilised if not significantly improved to the extent that families and individuals were returning to their previously abandoned homes and the level of violence had significantly reduced. The situation since the referendum has now reversed that. Ms Aboni did not seek to challenge the conclusions of Ms Pargeter about the decline in security in Kirkuk, such opinion being adequately referenced by Ms Pargeter; Ms Aboni simply relied upon the earlier reports she had submitted.
11. The evidence before me, of very recent provenance, is more up to date and reliable as to the current situation in the Kirkuk Governate than that which was before the respondent when the March 2017 and September 2017 reports were produced. I am satisfied that there has been no change of sufficient significance to justify departure from the Country Guidance that Kirkuk remains an Article 15(c) risk.
12. It is established, therefore, that the appellant is, if returned to Kirkuk, at real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive
13. The issue of internal relocation therefore arises.

Internal relocation

14. During the hearing, I canvassed with the parties the possibility of the appellant being able to return to Kirkuk for a short period of time to obtain his CSID, the country evidence indicating that the administrative records of the Kirkuk Governate had not been transferred to Baghdad. As submitted by Mr Bradshaw, the fact of Article 15(c) risk renders such a possibility unreasonable. Although Ms Pargeter in her report confirms that the civil status directorate in Kirkuk is functioning normally, it cannot be the case that, if there is an Article 15(c) risk, it is either feasible or reasonable for the appellant to travel there to obtain his CSID.
15. Ms Pargeter states categorically that

“As an ethnic Kurd, [SA] would be able to relocate to the KRI, which is largely stable and free from violence, without any problems and without requiring a sponsor.”

This is contrary to the position described in the Country Guidance which states, *inter alia*, that a sponsor is required. I accept Ms Pargeter's statement, it being of recent provenance and relating specifically to the appellant – a Kurd from Kirkuk.

16. Ms Pargeter describes in considerable detail the acute and crippling financial crisis in the KRI, and says that the continued inflow of refugees and IDPs has placed considerable stresses on the economy, that public services are deteriorating considerably, the delivery of health, education and social protection programmes had been severely constrained (from a World Bank report 2015), and that a report in October 2016 warned that the

“Ministry of Health had announced that capacity to provide health services had exhausted to the level where it could only meet 455 of the health needs of the population inclusive of IDPs and refugees”.

There are IDP camps; in September 2016, the Kurdish regions foreign minister said that without increased resources the region could no longer sustain its current level of support to those already displaced. In paragraph 4.18 of her report Ms Pargeter says:

It is clear that as a young male who has no family in the IKR, [SA] would be very likely to face real difficulties supporting himself were he to relocate to the region. He is very unlikely to find work or proper accommodation, and although the KRI has a social protection network, this remains undeveloped. Under the existing system, benefit payments are made to vulnerable individuals including the disabled, widows, and divorcees. Indeed the system is skewed very much towards females rather than males. Benefits are also afforded to unemployed graduates who have not been able to find work in either the public or private sectors, while some of the most vulnerable families receive a monthly family allowance. As a single male, [SA] would not receive benefit payments from the Kurdish authorities.

She goes on to say:

5.1 [SA] is from the Balak tribe.....

5.2 There is little information in the public domain about this tribe, given that it is not a particularly important or influential tribe. As a member of this tribe, [SA] would be likely to receive hospitality from the tribe were he to go to the area where its members reside. However this is not the same thing as receiving proper long term financial support or assistance. While the tribe may be able to help him with getting a job, given the current economic crisis in the region, this is still likely to be extremely challenging. To the best of my knowledge, therefore, the help he could get from the tribe would not be sufficient to sustain him long term.

6.1 ...

6.2 However as far as I am aware, the embassy could provide [SA] with a *laissez passer*, providing the can confirm his nationality and personal details.Once the Iraqi authorities have retrieved his details, [SA] should be able to obtain a *laissez passer* that would enable him to travel to Erbil or Baghdad, although given there are currently no international flights going in and out of Erbil, he would need

to go back via Baghdad. Once in Iraq, [SA] could apply for a replacement CSID from Kirkuk. The civil status directorate in Kirkuk is functioning normally.

17. AA (*Iraq*) states in the headnote that a CSID is generally required to access financial assistance from the authorities, employment, education, housing and medical treatment. Ms Pargeter does not address whether a CSID is necessary in the IKR, her report dealing with the economic infrastructure. She does not state that a CSID is required to be able to access what little support there is or to access employment. She does not state that a CSID is required in order to obtain admission to an IDP camp or assistance through a camp. She states that a replacement CSID can be obtained from Kirkuk but does not state whether it is necessary to go to Kirkuk in order to obtain this document. AA (*Iraq*) suggests that the evidence then before the Tribunal did not demonstrate that the Central Archive in Baghdad was in practice able to provide a CSID for those in need; but in any event, this does not seem to apply to those from Kirkuk. AA (*Iraq*) refers to a National Status Court to which an individual can apply for formal recognition of identity but states that the operation of the court is unclear. This is not addressed by the Court of Appeal. In [39] of the Court of Appeal judgment the Court states

“... [A CSID] is for practical purposes necessary for those without private resources to access food and basic services. In addition, it is feasible that an individual could acquire a passport or a *laissez-passer*, without possessing or being able to obtain a CSID. In such a case, an enquiry would be needed to establish whether the individual would have other means of support in Iraq, in the absence of which they might be at risk of breach of Article 3 rights.”

18. The evidence before me and relied upon by SA, is Ms Pargeter’s report. When writing that report she was aware that Kirkuk was an area subject to Article 15(c) risk, that SA was a Kurd from Kirkuk without a CSID and with no family links to the IKR. She was aware there was no direct travel to Erbil and that SA would have to travel from Baghdad to the IKR. She does not state that a CSID is required for internal travel in Iraq. In the light of her knowledge of the specific characteristics of SA and her statement that SA would have no difficulty relocating to the IKR, on the evidence the parties have put before me I conclude that SA does not require a CSID to access employment, rent accommodation, access health care etc in the IKR.
19. The issue therefore to be determined is whether it is unduly harsh for SA to relocate.
20. The consideration of relocation was considered in **Januzi [2006] 2AC 426** and, at [21] Lord Bingham of Carlisle summarised the correct position as

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so . . . There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department*, [2002] 1WLR 1891 para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls. . . . All must depend on a fair assessment of the relevant facts."

21. At [5] of *AH (Sudan)* [2007] UKHL 49 Lord Carlisle confirmed this and said

“...Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is.”

As Lady Hale said [22]

“Further, although the test of reasonableness is a stringent one - whether it would be “unduly harsh” to expect the claimant to return - it is not to be equated with a real risk that the claimant would be subjected to inhuman or degrading treatment or punishment so serious as to meet the high threshold set by article 3 of the European Convention on Human Rights. As Lord Bingham points out, this is not what was meant by the references to article 3 in *Januzi*, including what was said by my noble and learned friend, Lord Hope of Craighead, when he referred to “the most basic of human rights that are universally recognised” at para 54. Obviously, if there were a real risk of such ill-treatment, return would be precluded by article 3 itself as well as being unreasonable in Refugee Convention terms. But internal relocation is a different question.”

22. It was not suggested by Mr Bradshaw or Ms Aboni that the economic circumstances in the IKR amounted, for SA, to an Article 3 risk. If SA had been able to remain in Kirkuk, he would have been expected to seek employment, find accommodation and generally generate a livelihood for himself. In assessing internal relocation, taking full account of SA’s personal characteristics, can he reasonably be expected to go to the IKR where those Article 15(c) risks don’t exist? This assessment has to take into account, not as a primary comparator but as one element in the assessment, what his situation would have been had he remained in Kirkuk, absent the Article 15(c) risk. He would still have had to get a job, start a business or do what he could to generate a livelihood. It may be that unemployment is higher in the IKR and that there are serious housing and medical treatment shortages but the evidence was not that he would be disqualified from competing equally with other citizens in obtaining such employment or services just as he would if he were able to return to his home area of Kirkuk, or that he would be prevented from obtaining such employment or services for reasons that singled him out because he was a Kurd from Kirkuk. There was no cogent evidence before me to reach a finding that SA would be in some way disqualified from obtaining assistance. Essentially the evidence is that ‘things are grim’ in the IKR. The fact that conditions will be extremely challenging does not mean that it would be

unduly harsh to expect the appellant to face them in re-establishing himself in a safe place of relocation within his country of nationality.

23. On this basis, I conclude that for SA, on the basis of the evidence relied upon by him in this case, that internal relocation to the IKR is not unreasonable or unduly harsh.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it



Date 12th December 2017

Upper Tribunal Judge Coker