



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04552/2017

THE IMMIGRATION ACTS

Heard at Newport
On 19 October 2017

Decision & Reasons Promulgated
On 16 November 2017

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

RA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Caseley, instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order prohibiting the disclosure or 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.

Introduction

2. The appellant is a citizen of Iraq who was born on 12 August 1985. He arrived in the United Kingdom on 1 June 2010 and claimed asylum on that day. His claim was subsequently refused on 15 November 2013 and his appeal dismissed on 10 January 2014.
3. On 24 September 2014, further submissions were made on the appellant's behalf. These were refused on 31 July 2015, but following the lodging of a judicial review claim, that decision was withdrawn and a new decision made rejecting the appellant's further submissions as a fresh claim on 13 April 2016. Following the lodging of a further judicial review claim, that decision was also withdrawn and the submissions reconsidered. On 19 April 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.
4. The appellant appealed against that decision to the First-tier Tribunal. Judge C J Woolley dismissed the appellant's appeal on all grounds. The judge accepted that the appellant would be at risk of persecution in his home area of Makhmur on the basis that he had worked for the coalition forces in Iraq. However, the judge found that the appellant could safely and reasonably internally relocate to the IKR. In reaching that conclusion, the judge applied and followed the Upper Tribunal's Country Guidance decision in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) ("AA").
5. The appellant sought permission to appeal to the Upper Tribunal relying, in part, upon the subsequent decision of the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944 ("AA(Iraq)") which, on appeal from the Upper Tribunal, amended, in part, the country guidance set out in AA.
6. Initially, permission to appeal was refused by the First-tier Tribunal but, on 6 September 2017, the Upper Tribunal (UTJ Pitt) granted the appellant permission to appeal on the basis that the judge had erred in law in finding that the appellant could relocate to the IKR following the Court of Appeal's decision in AA (Iraq).
7. On 14 September 2017, the Secretary of State filed a rule 24 notice in which she contended that the judge had been correct to follow the Upper Tribunal's CG decision in AA.
8. Thus, the appeal case came before us.

The Judge's Decision

9. The judge made a number of findings favourable to the appellant. First, he accepted that the appellant was at risk in his home area because of his employment by the coalition forces. Secondly, the judge found that in the appellant's home area there was an Art 15(c) risk. Thirdly, the judge found that the appellant could not reasonably be expected, as a Kurd, to relocate to Baghdad city. However, the judge found that the appellant could safely and reasonably relocate to the IKR. His reasons are set out at paras 59-65 as follows:

“Relocation to the IKR

59. **AA (Iraq)** went on to consider the reasonableness of relocation to the IKR. It is worth noting that **BA (Baghdad)** did not consider this point as it was narrowly focussed on returns to Baghdad city. At paras 19 and 20 of the head note **AA (Iraq)** considered the factors that should be considered in respect of a Kurd who did not originate from the IKR. Factors identified as relevant include an assessment of the practicality of travel from Baghdad to the IKR, the likelihood of the person being able to secure employment, and the availability of assistance from family and friends in the IKR.
60. The possibility of relocation was considered by Judge Osborne in his decision of 8th January 2014. As before, I take these findings as a starting point. Judge Osborne conducted an assessment of relocation at paras 26 – 28 of his decision. Even though he relied on country guidance which has now been superseded he identified factors that are still relevant – such as his Kurdish ethnicity; the fact that the lack of a sponsor is of little significance; and his previous affiliation with the KRG through his language. Judge Osborne found that relocation to the IKR was reasonable and would not be unduly harsh.
61. The evidence in the present appeal, and my findings on this evidence, also throw up other relevant factors. I have noted that the KRG claims Makhmur as part of the Erbil Governorate and in fact provides financial assistance to that area. Although the appellant is not from the IKR proper he is from the next best place as he comes from a region which the KRG wants as its own and which it currently supports financially. I find that the authorities in the IKR will be likely to look more favourably therefore on the appellant as originating from this region. He is a Kurd from an area which, in the eyes of the KRG, belongs to Erbil and I find that therefore his acceptance into the IKR will be facilitated.
62. In contrast to Judge Osborne I have accepted that the appellant worked as a mechanic for the coalition forces. This was over quite a considerable period and from the warmth of the testimonials to him (and the fact that two Brigadiers and a Major were prepared to write in support of a junior civilian) I find that his work must have been highly valued. I find that a good mechanic will always be welcome in a society such as the IKR that depends heavily on road transport for the functioning of its economy. He is likely, I find, to be able easily to gain employment in this field of work where he has already shown his skills.
63. It is true that he does not have any family in the IKR who might be able to support him. He was however in contact with many Kurds while working for the coalition forces and I do not accept that some of them are not presently in the IKR and could not be contactable (via Facebook for instance, through which he regained contact with Major A). In his asylum interview he claims as a reason why he cannot go to the IKR the problems he had with the H J family but I have found that the land dispute is now far in the past and that this family have no interest in any ongoing feud with the appellant. In fact I find that with the passage of time they are likely to have completely forgotten about him.
64. I have considered carefully the passages in the appellant’s bundle to which I was referred by Miss Caseley and have noted above (and indeed have considered the whole of the appellant’s bundle). I find however that despite all this evidence that it would be reasonable to expect the appellant to relocate to the IKR. He will not be going there penniless but will have the money from the resettlement grant available to him. With this he will be able to afford the airfare from Baghdad city to Erbil and will not have to cross by any dangerous land routes. I note the county

information showing the frequent flights between Baghdad International Airport and Erbil. The country information suggests that people arriving by air are welcomed (as having more resources than those arriving by road). The appellant with his skills as a mechanic will more particularly be welcomed as someone who will be able to contribute valuably to the economy. I note the requirements to register every ten days but also remark that the country guidance does not reveal any undue effort to remove those who have overstayed. The appellant as a Kurd from Makhmur, and working in a valuable occupation, will I find be under no pressure from any immigration requirements in the IKR.

65. I find that he can be reasonably expected to relocate to the IKR and that this relocation will not be unduly harsh for this particular appellant in his circumstances. I find that he will not be at risk of persecution or of serious harm in the IKR. I find therefore under Paragraph 339O that he does not have a well founded fear of persecution, or of serious harm, in that part of Iraq."

Discussion

10. Ms Caseley's first, and main point, was that the judge fell into error by applying the Upper Tribunal's Country Guidance ("CG") decision in AA when that decision, in some material respects, had been found to be in error and had been amended by the Court of Appeal in AA(Iraq). In particular, Ms Caseley placed reliance upon the Court of Appeal's change in the guidance in relation to the relevance of a Civil Status Identity Document ("CSID") in determining whether the returnee would have the ability to work and live in the area of their proposed relocation. Ms Caseley submitted, correctly, that the Court of Appeal had amended the guidance so that, in assessing an individual's case, it was necessary to decide whether he would have a CSID or would be able to obtain one within a reasonable period after arrival in Iraq. Ms Caseley placed reliance upon the amended paras 9-11 of the guidance which are as follows:

- "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.”

11. As we understood Ms Caseley’s point on the amended guidance, the judge had failed to consider whether the appellant would be able to obtain a CSID and its relevance to his relocation in the IKR.
12. For present purposes, we are content to assume that the amended guidance, if it had been in existence, would have been material to his consideration of the issue of internal relocation to the IKR.
13. We do not, however, accept that the judge erred in law by applying the Upper Tribunal’s CG decision in AA. At the date of the hearing, that decision was “authoritative” within the *Senior President’s Practice Directions: Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* (10 February 2010 as amended), para 12.2 of which states:

“A reported determination of the Tribunal, the AIT or the IAT bearing the letters ‘CG’ shall be treated as an authoritative finding on the Country Guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later ‘CG’ determination, or is inconsistent with other authority that is binding on the Tribunal, such a Country Guidance case is authoritative in any subsequent appeal, so far as that appeal:

- (a) relates to the Country Guidance issue in question; and
- (b) depends upon the same or similar evidence.”

14. Then at para 12.4 the Practice Direction continues:

“Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable Country Guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for an appeal on a point of law.”

15. In other words, the failure to follow a relevant CG decision is likely to be an error of law. That has been recognised by the Court of Appeal in a number of decisions (e.g. R (Iran) v SSHD [2005] EWCA Civ 982 and SG (Iraq) v SSHD [2012] EWCA Civ 940). The view has been expressed by the Court of Appeal that a CG decision of the Upper Tribunal is no less authoritative even if permission to appeal has been granted to the Court of Appeal (see, SG (Iraq)). However, a Tribunal will not err in law by a failure to follow a Country Guidance decision that post-dates the decision under challenge (see, AK v SSHD [2006] EWCA Civ 1117 and SA (Sri Lanka) v SSHD [2014] EWCA Civ 683).

16. In SA (Sri Lanka), the Court of Appeal declined to find that the Upper Tribunal had erred in law by applying the relevant CG decision at the time of its decision, despite a change in the country guidance subsequently. At [13], Patten LJ (with whom Laws and Moses LJ agreed) said this:

“It is therefore difficult to see how the decision of the Upper Tribunal in this case which was based on a consideration of the then most recent Country Guidance contained in TK, coupled with the case-specific evidence produced by SA himself, can be said to contain an error of law by reason of it not having considered the then unpublished material now set out in the decision of GJ. A fact-finding Tribunal may, of course, commit an error of law if it bases a particular finding on no evidence or makes an assessment of the issue it has to decide which is contrary to the only possible conclusion which could be reasonably reached on the basis of the admissible evidence ... that the decision of the Upper Tribunal in this case was clearly open to it on the factual material that it had to consider and it is difficult to see how the Upper Tribunal can be said to have fallen into error by failing to consider material that was not before it and which may in part relate to a state of affairs that post-dates its decision. This is not a case where there has been a material but subsequent change in the law with the result that the decision of the lower Tribunal can now be seen to have proceeded on the basis of a misdirection. I would therefore dismiss the appeal on the basis that there has been no error of law.”

17. The point being made is clear: a change in country guidance subsequent to a Tribunal’s decision cannot establish an error of law if it has properly applied the extant Country Guidance at the date of its decision. The CG decision is, a “factual precedent” (see S and another v SSHD [2002] EWCA Civ 539 at [28]) which – to the extent we have indicated – remains authoritative in other cases raising the same factual issue about the particular country until it is changed. That is clearly authoritatively determined by the Court of Appeal in the cases we have cited. The position is no different if the country guidance changes (or it ceases to exist) because the Court of Appeal subsequently overturns or, as here on appeal, ‘amends’ the guidance. The subsequent change in the country guidance is properly a matter for further submissions and the contention that, based upon the “new” country guidance, the individual is making a fresh claim.
18. The country guidance in effect at the time of Judge Woolley’s decision was that set out in the Upper Tribunal’s decision in AA. He applied it and he was right to do so. The subsequent change in that guidance does not show that he erred in law. Indeed, Judge Woolley would have erred in law if he had not followed AA as it was not suggested to him that other evidence provided good reasons to depart from it.
19. For those reasons, therefore, we reject Ms Caseley’s main submission.
20. The remainder of Ms Caseley’s submissions focused on specific aspects of Judge Woolley’s reasoning in paras 59-65 (which we set out above).
21. First, Ms Caseley submitted that the judge had been wrong in paras 61 and 64 to find that the appellant would be accepted into the IKR even though he came from an area, outside the IKR, but which the Kurdish authorities considered belonged to them. Further, he had been wrong to find in para 64 that, as a Kurd, he would be welcomed as someone who could contribute to the economy.

22. Ms Caseley placed reliance upon the respondent's *Country Information Guidance, Iraq: Return/Internal Relocation* (August 2016). She relied on para 2.2.10 where it is stated:

"In general, it may be possible for Kurds who do not originate from the KRI to relocate to the region. Information suggested that ethnic Kurds are free to enter the KRI, although other sources say this may depend on certain circumstances".

23. Further, she relied on para 8.1.1 which states that:

"A letter from the British Embassy in Baghdad, dated 4 December 2014, noted that for those arriving by air at Erbil or Sulamanyah airports were directed to report to the nearest Asayish office to regularise their stay. The letter noted: 'it is worth reiterating the point that admission does remain at the discretion of Kurdish immigration and border officials and that temporary restrictions can be imposed and withdrawn without notice'".

24. Finally, she relied on para 8.1.5 which provides:

"Some of these sources, however, said that if an Iraqi citizen does not originate from KRI, the person must travel onwards to the area he or she is originally from when arriving through an airport in KRI."

25. Ms Caseley accepted that these matters were not raised in her skeleton argument but she had raised them in her oral submissions.

26. It is clear to us that the judge had well in mind the country guidance dealing with internal relocation to the IKR and Ms Caseley's submissions in that regard is set out at para 21 of his decision. The relevant guidance is found at paras 19-20 of the headnote in AA which was left intact by the Court of Appeal and is in the following terms:

"19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.

20. Whether K, 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) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR."

27. The *CIG* document does not, in our judgment, materially add to the relevant factors which the judge considered in the light of AA. We see no basis upon which it can be said that the judge failed adequately to consider whether the appellant would be able to enter, and remain within, the IKR in order to internally relocate.

28. Secondly, Ms Caseley submitted that the judge had erred by failing to give reasons why the appellant would be able to secure employment in the IKR notwithstanding the economic situation in the IKR. The point is, however, unsustainable. Again, the


judge clearly, consistently with the country guidance, considered in determining the internal relocation issue the importance of whether the appellant would be able to obtain employment. The judge noted the appellant's previous experience as a "good mechanic" and was entitled to find that those skills would assist him in obtaining employment as someone who would be able to "contribute valuably to the economy". That finding was not contradicted by any specific evidence and was properly open to the judge rationally to conclude.

29. Finally, Ms Caseley submitted that the judge had failed to explain why the appellant would be able to obtain assistance from family and friends in the IKR. As the judge explained in para 63 of his decision, whilst the appellant had no family in the IKR, he had a number of contacts amongst Kurds who had been working for the coalition forces. The judge also noted that the claimed family feud with another family was "far in the past" and was not "ongoing". The issue of support from family and friends was only "one" of the factors that the judge had to take into account in assessing, in accordance with AA, whether the appellant could reasonably relocate to the IKR. The judge's findings in para 66 were properly open to him on the evidence and were not irrational. However, in any event, the judge, in effect, found that the appellant would be likely to find employment and therefore be in a position to support himself without assistance.
30. For these reasons, we reject Ms Caseley's submissions (in ground 2, 3 and 4) that the judge's factual finding that the appellant could reasonably be expected to relocate to the IKR was legally flawed.

Decision

31. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal on all grounds did not involve the making of an error of law. That decision stands.
32. The appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

15 November 2017