



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12837/2016

THE IMMIGRATION ACTS

Heard at Field House
On 21 September 2017

Decision & Reasons Promulgated
On 13 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR BAM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer of Counsel

For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The appellant is a national of Iraq and was born on 1 January 1997. He entered the United Kingdom clandestinely on or around 29/31 May 2016. He was detected, served with notice of his liability to removal, and claimed asylum on the basis that he fears persecution from ISIS as a Kurd and because his father had been a member of

the Baath party. Also he claimed to be at risk from family and the Kurdish community because of his father's activities and because his father had killed 2 cousins in a land dispute. The appellant's claim for asylum was refused by the respondent on 4 November 2016. The appellant appealed against that decision to the First-tier Tribunal.

The appeal to the First-tier Tribunal

3. In a decision promulgated on 13th February 2017 First-tier Tribunal Judge P-J S White dismissed the appellant's appeal. The First-tier Tribunal found that whilst satisfied that the appellant's return is not feasible his claim to international protection could not succeed.
4. The appellant applied for permission to appeal against the First-tier Tribunal's decision to the Upper Tribunal. On 9 June 2017 First-tier Tribunal Judge Macdonald refused the appellant permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 1 August 2017 Upper Tribunal Judge McWilliam granted the appellant permission to appeal.

The hearing before the Upper Tribunal

5. The grounds of appeal argue that the judge has confused the question of whether in light of the risk of serious harm that exists in Kirkuk relocation to the IKR would be unreasonable or unduly harsh with whether there is a risk of serious harm solely on the basis of lack of documentation. The confusion has arisen from the issue of feasibility of return. Reference is made to the case of **AA (Iraq) v SSHD [2017] UKUT 00119**. It is asserted that the appellant is not relying solely on the lack of documentation to demonstrate a risk of serious harm. The risk of serious of harm in Kirkuk is accepted and is not born out of the documentation issue but by the level of indiscriminate violence. The appellant would not be able to obtain the civil ID document and therefore this renders his relocation to the IKR unreasonable or unduly harsh because without such a document the appellant would not be able to enter the region. There is the difference between the documentation issues in relation to feasibility of return, which hypothetically would place a person in a place of safety and able to live a reasonable life, and the documentation issues relevant to the assessment of the reasonableness of internal relocation. Reference is made to the case of **AA (Iraq)** headnote at D - internal relocation within Iraq (other than the IKR). It is submitted that having accepted that relocation to Baghdad is unreasonable and that without documentation the appellant would not be able to enter IKR, in light of the risk that exists in his home area of Kirkuk the judge ought to have concluded that relocation to IKR is also unreasonable and the appellant's humanitarian protection claim made out.
6. The second ground of appeal was that the judge erred in his conclusion on paragraph 276ADE of the Immigration Rules. However, at the start of the hearing Mr Palmer indicated that they were no longer relying on paragraph 276ADE.
7. Mr Palmer referred to the decision of **AA (Iraq) v SSHD [2017] EWCA Civ 944**. He submitted that the Court of Appeal has now found that the Upper Tribunal decision

in the country guidance case of AA (Iraq) is in error and had substituted paragraphs amending that decision. He submitted the judge had made sufficient findings to allow the appeal outright. He referred to four paragraphs of the First-tier Tribunal decision - paragraphs 13, 16, 21 and 22. These amount to a finding that the appellant has 15(c) risks in Kirkuk. He referred to paragraph 22 where the judge asked the correct question about internal relocation. The judge was correct that the task was to make appropriate findings on returning without a passport in paragraph 23 and in paragraph 24 made a finding that there was no ID document in the UK. He submitted the crucial findings at paragraphs 25 and 26 make it absolutely clear that the judge was saying that the appellant could not internally relocate in Baghdad. At paragraph 27 the judge fell into error which was understandable as the judge did not have the Court of Appeal decision in AA (Iraq). The judge made findings that the appellant was not able to get a CSID. The guidance in AA (Iraq) [2017] sets out that the appellant would have to get this document to be able to travel to the IKR. In relation to paragraph 8 of the original grounds the findings of the judge at paragraph 27 regarding relocation to Baghdad were correct but the analysis is now wrong because of the court of appeal's decision in AA (Iraq). He referred to the court of appeal's decision at paragraphs 36 and 39. He submitted the quintessential importance of the CSID was not taken into account by the judge. The judge found that the appellant cannot get that document and he cannot obtain it in a reasonable time.

8. Mr Tufan submitted that the judge, at paragraph 24, found the Appellant did have an ID though not in his country. This will make it possible for him to obtain a CSID. The Court of Appeal in AA (Iraq) held that if you have family members then you would not be at risk (paragraph 10 of Part C of the amended CG.) The appellant should be able to get a document even if there is no passport. If the appellant has family members it follows from a proper reading of AA Iraq (as amended) that the appellant would be able to obtain a document. The question to ask is does he have family members. His mother is alive on his own evidence. At paragraph 8 the judge makes a finding that the mother can support him and he can obtain family details. He referred to paragraph 7 of AA (Iraq), if P's return is not feasible it cannot equate to him being at risk. The appellant will be returned to Baghdad and can secure entry to IKR. If he goes to IKR there is no known case that the IKR expel Kurds. If there are any errors of law they are not material. The country guidance case as now promulgated must amount to the appellant not being at risk.
9. Mr Palmer in reply said that the judge found that the appellant would not be able to return to Baghdad because it is unduly harsh to for him to relocate to Baghdad. With regard to the respondent's assertion that there are no known cases of people being expelled there is no evidence that if the appellant were returned to Baghdad he could then go to IKR. The appellant in his evidence has stated that he was not in contact with his mother. The judge looked at whether the appellant could be vouched for in Baghdad. He submitted that it cannot be said that it is possible for the appellant to obtain a CSID - the judge found that that is not the case. He submitted that the appellant would need to have ID documents to travel through to IKR and there are no documents to obtain entrance.

Discussion

10. The issue on appeal is narrow. Did the judge err in the approach to and conclusions reached on the reasonableness of relocation to the Iraqi Kurdish Region ('IKR'). The appellant's asylum claim was dismissed and there is no appeal against that element of the decision. The judge found (and which had been accepted by the respondent) that the appellant could not return to his home area of Kirkuk as it would be a breach of article 15(c) of the Qualification Directive. The remaining issue was whether or not the appellant could relocate. The judge found that it was not reasonable for him to relocate to Baghdad (which was also accepted by the respondent). The only issue was whether he could relocate to the IKR. The judge found:

27. I have noted earlier in the grounds given in AA about the feasibility of relocation to IKR for Kurds who do not originate from there. An issue may sometimes arise about the ability to travel safely from Baghdad to Erbil, but there is no suggestion, still less evidence, that this appellant could not travel safely to the IKR if returned to Baghdad. Ms Daykin's submissions focussed on two points. One was her submission that there was no reason to suppose that this appellant could find a job within the timescales suggested by the guidance, so that he would not be able to stay. As to that I note that the guidance expressly refers to the lack of evidence of proactive removal of those who are unable to find work within the timescales and thus extend their permits. In any event it seems to me that the suggestion that he would be unable to find work is simply speculative. The other submission made was that without some form of appropriate documentation, which Ms Daykin submitted the appellant did not have, he would be unable even to enter the IKR. She directed me to some passages in the 2016 CIG report which indicate the need for some form of identification in order to gain entry. I accept that that may well be correct, but two points arise. The first is that this aspect of the appellant's claim turns on his inability to relocate because of an absence of documentation, which is a significant factor in the light of the decision in AA. The second is that in my judgment an artificial submission. I am dealing, *ex hypothesi*, with the case of a Kurd who does not originate from the IKR, and who will therefore have to be returned first to Baghdad. It is beyond doubt that without some form of identification it is not feasible to return anyone to Baghdad. To be in a position to try to relocate from Baghdad to the IKR such a person must have obtained sufficient identification documentation already. If a stage is reached at which this appellant can be returned to Baghdad it seems to me therefore to follow, in the state of the current guidance, that he could also transfer from Baghdad to the IKR and relocate there.

28. That question, however, only arises once the Tribunal is satisfied that the appellant's return to Iraq is feasible. That is expressly set out at paragraph 8 in section C of the headnote in AA. It is further said at paragraph 7 in section B, that an international protection claim cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification documentation if the tribunal finds that the appellant's return is not currently feasible, given what is known about the state of his documentation. As Ms Daykin correctly pointed out, the Tribunal went on to hold that there might be cases, where the risk did not arise, or not solely, from a lack of documentation, where the claim should be determined even though return was not currently feasible, and the appellant in AA has now been given permission to appeal to the Court of Appeal on that specific aspect of the Tribunal's decision, essentially seeking a ruling that the protection claim should be determined on its merits even where return is not feasible. That appeal has not yet been heard, and in the nature of

things it is unknown what the decision will be, and I am satisfied that at present I am bound by the law as stated by the Upper Tribunal in AA.

29 The respondent has not, notwithstanding the guidance given, set out a clear position on whether or not the appellant's return is said to be feasible, and she has certainly not set out her case on how she proposes to remove the appellant or what sort of documentation is expected to lead to the issue of either a passport or a laissez passer. The appellant's evidence is that he does not have identification documents, and while I have indicated some reasons to view his evidence with reserve that is not sufficient, in the absence of any positive case, to enable me to conclude that he has such documentation as will make his return feasible. Accordingly I am not satisfied that his return is feasible. I am satisfied that his claim to be unable to relocate to the IKR, that being effectively the only basis on which the respondent says that he can go back to Iraq, is mainly if not wholly dependent on his claim to lack the necessary documentation. In the light of the current state of the law I am satisfied that while his return is not feasible his claim to international protection, on the basis on which it is advanced, cannot succeed. That conclusion applies to the asylum claim, but also to the humanitarian protection and Article 3 claims."

11. The judge did not have the benefit of the court of appeal's decision on the country guidance provided by the Upper Tribunal in **AA (Article 15(c))Iraq CG [2015] UKUT 00544 (IAC)**. The court of appeal held that the Upper Tribunal in **AA (Iraq)** had erred in equating a CSID to a return document. It is not merely to be considered as a document which can be used to achieve entry but may be an essential document for life in Iraq. The court held that regardless of the feasibility of return it is necessary to decide whether an appellant has a CSID or will be able to obtain one. The court of appeal corrected the country guidance by appending to the judgment a complete revised country guidance with amended paragraphs in bold. The court of appeal decision was released in July 2017 some 4 months after the First-tier Tribunal decision was promulgated in this appeal. In **OM(AA Wrong in Law) Zimbabwe CG 2006 UKAIT 00077** it was held that where a CG case is found to be legally flawed, the reasons for so finding will have existed both before and after its notification. The error is effectively replicated in the decision which followed it and so there would be an error of law in that decision too.
12. The judge (understandably) did not adopt the approach as now set out in the amended CG case of **AA (Iraq)**. He followed the Upper Tribunal CG case as then promulgated as he was bound to do. However, as the Upper Tribunal CG on the issue of the CSID was legally flawed the judge in this case erred in law by essentially stopping at the feasibility of return issue, although he does consider that logically the appellant if returned would have to have some form of identity document that would enable him to travel to and enter the IKR.
13. The grounds of appeal argue that the appellant would not be able to obtain the CSID document and therefore this renders his relocation to the IKR unreasonable or unduly harsh because without such a document the appellant would not be able to enter the region and that there is a difference between the documentation issues in relation to feasibility and return and the documentation issues relevant to the assessment of the reasonableness of internal relocation. It is asserted that the judge

made a finding that the appellant does not have a CSID and could not obtain one in a reasonable period of time.

14. The judge records the appellant's evidence regarding his CSID and made the following relevant findings:
 1. 'he did have an identity document with his name, his photograph, his stated place of birth and the details of his parents, but that he had left it with his mother when he left the country and did not know where it was now'.
 2. 'he said everyone had to have a civil identity document and an Iraqi nationality and identity document in order to obtain a passport and that the only document he had was the civil identity document'.
 3. He then agreed that after the invasion of Garal he and his mother had moved to Tovelha for 1½ years, and it was in Tovelha that he claimed to have left his identity card.'
 4. 'he had left the document behind when he fled Iraq...[because] this was a document which was only useful inside the country'
 5. I have no doubt, in the light of the evidence, that he did have some form of Iraqi identity document when he left the country, but that is not the same as evidence that he still had it with him in the United Kingdom. There could be a variety of reasons, ranging from accidental loss to deliberate disposal, why he would not still have it.
15. I do not accept that the judge made a finding that the appellant did not have a CSID or could not obtain one in a reasonable time. It seems clear that the appellant was describing a CSID in his evidence. His evidence was that he left it behind in Iraq. The issue that the judge considered was whether he had identity documents in the UK. The judge concluded essentially that he did not have it with him in the UK. The judge also indicated that there could be reasons why he would not still have it but that does not equate to a finding that in fact he does not have the document albeit that it is not with him in the UK. There were no findings on the time it might take for the appellant to obtain a CSID. The judge has not made a specific finding as to whether the appellant still has family in Iraq. There is no criticism of the judge because on the basis of the flawed CG there was no need to do so. There is therefore no basis upon which the appeal can be simply allowed outright. Further fact finding is required.
16. There was a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
17. I considered whether or not I could re-make the decision myself. I considered that further fact finding is required and it would not be appropriate in this case for me to re-make the decision. This is a case where there is no challenge to the essential findings of fact made by the First-tier Tribunal other than findings on the issue on

reasonableness of relocation to the IKR arising out of the incorrect approach. The findings of fact made throughout the decision up to and including paragraph 26 can be preserved. It is appropriate in this case for the matter to be remitted to be heard by First-tier Tribunal Judge P-J S White to re-consider and decide, in light of the amended CG in **AA (Iraq)**, whether it is reasonable for the appellant to internally relocate to the IKR.

18. I remit the case to the First-tier Tribunal for the case to be heard at the First-tier Tribunal at Hatton Cross before Judge P-J S White pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

Notice of Decision

The appeal against the decision of the First-tier Tribunal is allowed. The matter is remitted to the First-tier Tribunal on the limited issue as to whether or not it is reasonable for the appellant to relocate to IKR in light of the amended CG in **AA (Iraq)**.

Signed P M Ramshaw

Date 12 October 2017

Deputy Upper Tribunal Judge Ramshaw