



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA135612016

THE IMMIGRATION ACTS

Heard at Glasgow
on 3 and 24 May 2017

Determination issued
on 30 May 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

B H

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer

For the Respondent: Miss L McCrorie, of Loughran & Co, Solicitors

DETERMINATION AND REASONS

1. Parties are as described above, but the rest of this determination refers to them as they were in the FtT.
2. The appellant identifies himself as a Kurdish citizen of Iraq, born in 1994. He speaks Kurdish Sorani.
3. The appellant claimed as follows. He is from [a] village in (or near) the city of Tuz Khormato [an ethnically mixed area] in Salah Al-din Province. Arab men in his

village tried to recruit him to ISIS. He reported this to the *peshmerga*, who arrested one of the men. A month later, shots were fired at his family home. He would be at risk if he returned home. He could not move to the IKR, due to a tribal dispute which led his father to leave there before the appellant was born.

4. The respondent's decision of 23 November 2016, refusing that claim, runs thus:

¶13-22. The appellant gave a poor and evasive account of his origins, such that his credibility was damaged and nationality and identity could not be "verified". It was not accepted that he is from the area he claimed, but it was accepted that he is Iraqi and Kurdish.

¶23-30. The claimed approach from Isis was vague and incredible.

¶31-37. The allegation of a tribal dispute or blood feud, and inability to relocate to IKR, was also rejected.

¶38-39. Failure to claim in France was adverse to credibility under section 8 of the 2004 Act.

¶43-46. Under reference to *AA Iraq CG [2015] UKUT 00544*, even if his home area was in a contested area, as a Kurd, regardless of origin, the appellant could relocate to Erbil or elsewhere in the IKR.

¶47-52. Alternatively, the appellant could relocate to Baghdad, or via Baghdad.

¶53-57. The claim failed, for similar reasons, in terms of humanitarian protection and of articles 2 and 3 of the ECHR.

¶58. There was no reason to grant leave in terms of family and private life, exceptional circumstances, or in the exercise of discretion.

5. FtT Judge Hands allowed the appellant's appeal by decision dated 5 January 2017.

6. The judge records submissions from the SSHD that Salah Al-din was not, on up-to-date information, a contested area (¶24(e)); and from Miss McCrorie that there was an unsafe level of violence there (¶26(b)).

7. For reasons given at ¶34 - 47, the judge found that the appellant had not established his claims about an approach from ISIS, a blood feud, or his travel to the UK, and that on return he would be of no adverse interest to the Iraqi or Kurdish authorities or ISIS. At ¶43 she said that the appellant had "not established that he does originate from Salah Al-din."

8. Under the heading "humanitarian protection" at ¶48-52 the judge said that both parties accepted the situation had changed since *AA*. She cited at length from a UNHCR report of November 2016, and continued as follows:

"51. The appellant ... would ... not have the skills or support or sponsorship to enable him to establish a life should he choose to remain in Baghdad. Travelling from Baghdad to his home area will be fraught with difficulty given it would involve travelling through some of the areas still contested. His home area has not been established but is identified by the UN as being insecure, having been

retaken from Isis ... Although he has not established that he is entitled to protection under the Refugee Convention he does not fit into the category of person who can be returned to Iraq because of the current insecurity ... in the northern and central region and inability to obtain ... employment and accommodation in Baghdad. Further, the increasing insecurity in Baghdad as found by the UNHCR would indicate that any Kurdish person arriving there would not find themselves in a safe environment because of the deterioration in law and order and level of indiscriminate violence he would face.

52. Therefore, I find the appellant is eligible for humanitarian protection.”

9. The SSHD’s grounds of appeal to the UT are on these lines. The judge having given full reasons why the appellant is not a refugee erred by relying upon a UNHCR report to depart from the country guidance in AA without adequate reasons; UNHCR do not apply the relevant legal criteria for assessment of risk, and their reports are not to be read as if they did.
10. Mr Matthews accepted that the grounds are not drawn as accurately as they might have been, but he submitted that they were a basis for identifying error, as follows. The decision letter clearly if not specifically contemplates that the appellant may well be from the IKR. The judge appears to agree. In any event, it was for the appellant to prove any case based on a specific area of origin, and he failed to do so. The judge plainly contradicted herself between ¶43 and ¶51, where she repeated her finding that the appellant had not established his home area, yet went on to decide the case as if he had. The judge made no attempt to show that information before the judge from UNHCR was different in nature from reports considered in AA and other cases. The information was not different. UNHCR has been advising against enforced returns to Iraq for many years, before and since AA. The respondent’s case in the refusal decision was firstly about return to the IKR, not to Baghdad. The judge was not entitled to ignore that. She assumed that removal would be to Baghdad, for no reason. The decision should be set aside and remade. That could take place in the UT or by remit to the FtT, to the same or to another judge, but based on the findings of fact, which were not challenged by the appellant, made on the individual claim.
11. A rule 24 response to the grant of permission argues for the appellant that the FtT’s decision is justified in terms of the findings in AA about relocation in Baghdad. Miss McCrorie submitted along those lines, and further as follows. Both parties had filed up-to-date evidence which the judge was entitled to consider about the situation in Salah Al-din province. She was right to take as her starting point that there was such insecurity that the appellant could not return there. There was recent evidence before the judge not only from UNHCR but also from Amnesty International. Although the judge looked at the evidence, her findings were justified in any event by the guidelines stated in AA. If the case required a further decision, the appellant’s case was that there had been ample evidence that he was from the area he claimed. The relevant findings should be reassessed in any further decision. It was accepted that the rule 24 response said nothing about the adverse credibility findings, but that was because it was framed in response to the grounds and to the grant of permission.

12. Having reserved the case for consideration, I issued my decision on error of law, and gave directions, along the lines of the following paragraphs, ¶13 – 22.
13. The SSHD's grounds are rather clumsily put, in a way which has its origins in a misleading and unnecessary feature of the decision.
14. The grounds look for a debate about whether the UNHCR guidelines justify departure from country guidance, when the judge's consideration on close inspection bears to be decided within the guidance, if it was right to treat the case as turning on relocation in Baghdad.
15. The terms of the report from UNHCR do seem to be no different in substance from material which was before the UT when deciding AA. The appellant set out no comparison of materials to that effect, and nor did the judge. But that is not the real issue which emerged from the grounds and submissions.
16. The grounds yield an inevitable finding that the decision of the FtT errs in law, by failing to give any adequate reason why the appellant is entitled to a grant of humanitarian protection.
17. The clear finding at ¶43 of the FtT decision, quoted above, is repeated at ¶51 but departed from in the same sentence for no reason stated. The appellant did not suggest any reason which might be read in.
18. There is no explanation why the case is found to turn on relocation to Baghdad, rather than on removal to the IKR (or of why removal to the IKR might be taken to involve relocation, rather than return).
19. The determination of the First-tier Tribunal is **set aside**.
20. Rule 24 requires a statement of any grounds upon which a party was unsuccessful in the FtT but upon which he intends to rely in the UT. Although a rule 24 response was filed for the appellant, it included no such statement. No reason had been advanced for revisiting the credibility findings adverse to the appellant (and no error was apparent in those findings).
21. In terms of the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal, paragraph 7, the decision was apt to be re-made in the UT, by way of further submissions.
22. **Both parties** were **directed** to file and to copy to each other, not less than 7 days prior to the next hearing, a note, outlining their respective cases on the further decision which should be reached by the UT, referenced to the judge's findings, country guidance, and any relevant evidence which has been filed.
23. Both parties filed written submissions prior to the further hearing on 24 May 2017.

The appellant's case on remaking the decision.

24. The note and submissions, which were fully supported by detailed references to the evidence and case law, may be outlined thus:
- i. The appellant has demonstrated that he is from [a village], part of Tuz Khurmatu in Salah al-Din province.
 - ii. His account is corroborated as to the ethnically diverse nature of the area, the presence of a mosque and of a hospital, and the journey time to Kirkuk, and speaking Kurdish Sorani.
 - iii. Tuz Khurmatu and Salah al-Din province remain a contested area.
 - iv. He cannot be removed to Salah al-Din province.
 - v. He is not a former resident of the IKR, so any proposed removal would be to Baghdad.
 - vi. He has no current or expired passport or *laissez passer* and so cannot be removed to Baghdad.
 - vii. He has no CSID and cannot obtain one. He cannot approach the Embassy without jeopardising his claim. He cannot contact his family as he does not have a number and does not know where they are.
 - viii. Lack of family support implies risk of destitution and qualifies for protection.
 - ix. He cannot obtain a CSID because his home area is contested and because he would be unable to prove his identity.
 - x. He cannot relocate to Baghdad due to having no CSID and being unable to obtain one; being unable to speak Arabic; having no family friends or other sponsor; and being of the Kurdish and Sunni minorities.
 - xi. He cannot relocate in the IKR as he is not from there, and due to familial and financial constraints, the risk of travel, and absence of assistance.
 - xii. *BA* [2017] UKUT demonstrates risk in Baghdad as a Sunni, a Kurd, a non-Arabic speaker, etc.
 - xiii. The appellant cannot go to his home area, to the IKR, to Baghdad or anywhere else.
 - xiv. *R (on the application of H) v SSHD* [2017] UKUT 00119 requires consideration of the circumstances, as above.
 - xv. The appellant establishes a need for protection on Refugee Convention grounds; or under article 2 and 3 ECHR; or humanitarian protection; not excluded by either sufficiency of protection or internal relocation.

The respondent's case on remaking.

25. The respondent submitted thus:
- i. The appellant failed to establish that he is from [a village], Tuz Khurmatu, or anywhere in Salah al-Din province.
 - ii. No case has been made for revisiting the adverse credibility findings.
 - iii. In any event, there is no apparent error in those findings. On that basis, the appellant has not been found truthful about his fear of ISIS; his family's involvement in a tribal dispute or blood feud in the IKR; his means of travel to the UK; or his origins.

- iv. The appellant said he had lost his passport and had no other Iraqi identity documents. There was no express finding in the FtT's decision, but no reason to treat these matters in his favour.
- v. The FtT found that the appellant does have access to identity documents at ¶44, which clearly implied a finding that he does have contact with his family in Iraq.
- vi. Having failed to show that he is from [a village], it would defy logic to find that the appellant is from any contested area.
- vii. The basis on which to decide the case is that the appellant is not from a contested area.
- viii. The appellant may be from the IKR, or alternatively it would not be unreasonable to expect him to relocate there.
- ix. If the appellant did have to travel to the IKR via Baghdad, there was no reason why he might not do so.
- x. There was no basis on which to find that the appellant would be without employment, family support, identity documents, or funds (made available by the respondent; cf. AA at ¶79).
- xi. Flights are available from Baghdad to Erbil.
- xii. There were no grounds to depart from AA, which on the findings of fact of the FtT required the outcome to be reversed.

Conclusions.

26. Miss McCrorie has pressed the case for the appellant as strongly as the evidence would bear, both in the FtT and in the UT. However, the case on remaking the decision is entirely dependent on reversing the adverse credibility findings of the FtT.
27. No reason has been shown to revisit those findings.
28. In any event, the FtT's reasons for those findings are plainly sound.
29. On the evidence before the FtT, I would have had no difficulty in reaching similar findings for similar reasons.
30. Once the error into which the FtT fell at ¶51 is eliminated, there is nothing by which it might be found that the appellant has established entitlement to protection.
31. The respondent's analysis of that issue is accurate.
32. The appellant fails to establish that he is from a contested area, so his case does not turn on internal relocation.
33. The guidance in AA 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.”

34. Even if the case did turn on relocation to the IKR, there is no reason to hold that the appellant would not be able to do so.
35. The FtT erred at ¶51 by treating the further alternative of relocation in Baghdad as decisive of the case, when on the findings that was not an outcome which the appellant faced.
36. It is at least doubtful whether the FtT’s finding that the appellant could not resettle in Baghdad can be justified, given its earlier conclusions on the primary facts; but as the alternative does not arise, there is no need to analyse that further.
37. An anonymity direction was made in the FtT, although there does not appear to be any particular reason for one. The matter was not addressed in the UT, so anonymity has been preserved.
38. The following decision is substituted: the appeal, as originally brought to the FtT, is **dismissed**.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

25 May 2017
Upper Tribunal Judge Macleman