



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00770/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 4 June 2018

Decision & Reasons Promulgated
On 7 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H M

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms R Petterson, Senior Home Office Presenting Officer
For the Respondent: Mr C Holmes, Instructed by Parker Rhodes Hickmotts Solicitors

DECISION AND REASONS

1. To preserve the anonymity direction made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Jones, promulgated on 26 July 2017, which allowed the Appellant's appeal against the respondent's decision to refuse his protection claim.

Background

3. The Appellant was born on 5 January 1998 and is a national of Iraq. On 25 July 2016 the Appellant made a protection claim, saying that he had converted to Christianity and is at risk from his family. On 10 January 2017 the Secretary of State refused the Appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Jones ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged, and on 29 June 2017 Judge Chohan gave permission to appeal stating

1. Permission to appeal is sought, in time, against the decision of Judge T Jones, promulgated on 26 July 2017, allowing the appellant's appeal against a decision of the respondent to refuse to grant asylum.
2. In short, the grounds argue that as the Judge had not accepted the appellant's core claim in respect of his conversion to Christianity, the Judge erred by allowing the appeal.
3. It is correct to say that the Judge finds the appellant's conversion to Christianity as not genuine. It seems that was the appellant's core claim. However, the Judge then went on to allow the appeal on the basis of the current situation in Iraq. However, it seems it is open to argument that the Judge has given inadequate reasons for finding that the appellant would be at risk on return to Iraq.
4. Accordingly there is an arguable error of law.

The Hearing

5. (a) For the respondent, Mr Petterson moved the grounds of appeal. She told me that the Judge did not accept the appellant's account of conversion to Christianity, but allowed the appellant's appeal finding that internal relocation will be unduly harsh. She took me to [45] to [47] of the decision and told me that, there, the Judge's consideration of internal relocation is inadequate. Ms Petterson told me that the Judge reaches the conclusion that the appellant cannot return to Iraq because of the economic situation in IKR

(b) Ms Petterson told me that the Judge's findings are fundamentally flawed because the Judge does not indicate what risk the appellant would face if returned to Iraq. She told me that the Judge gives no reason for finding that return to IKR will be unduly harsh and provides no specification of risk to the appellant. She urged me to set the decision aside.

6. (a) For the appellant, Mr Holmes told me that the decision does not contain any errors of law. He told me that the starting point is that the appellant comes from Kirkuk and is Kurdish. The appellant does not come from IKR. According to AA (Iraq) CG [2017] EWCA Civ 944 there is an article 15(c) risk (and by analogy article 3 risk) in Kirkuk

because it is a contested area. He told me that the Judge reached the correct conclusion, entirely in line with the country guidance given in AA (Iraq) CG [2017] EWCA Civ 944..

(b) Mr Holmes told me that even though the appellant's asylum claim was rejected, the appellant cannot return to his home area where there is an article 15(c) risk. He told me that the Judge correctly considers internal relocation by taking into account of the appellant's ethnicity, the difficulties that he would face in Baghdad, and the appellant's inability to travel from Baghdad to IKR without encountering risk. He told me that the Judge's findings are entirely supported by country guidance. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. At [41] the Judge rejects the appellant's claim to have converted to Christianity, and in doing so dismisses the appellant's asylum appeal. Mindful of the country situation, and the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, the Judge then turns his attention to internal relocation, which he deals with between [42] and [47].

8. The Judge's relevant findings of fact are that the appellant is a Kurd, from Kikuk. He speaks Kurdish Sorani, not Arabic. He is single and has no dependents. At [44] the Judge takes guidance from AA (Iraq) CG [2017] EWCA Civ 944. At [45] the Judge finds, from background materials, that IKR is struggling to cope with the number of internally displaced persons trying to enter the region, and at [46] the Judge relies on the UNHCR report December 2016.

9. At [46] the Judge finds that the appellant will not have a sponsor (or anyone else) to assist him. On the facts as the Judge found them to be, the appellant would return to Baghdad as a Kurd who does not speak Arabic, and has neither a sponsor nor support.

10. The Court of Appeal has provided the following guidance in AA (Iraq) CG [2017] EWCA Civ 944.

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *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.*

11. In making that finding the Court of Appeal adheres to what was said in AA (Iraq) CG [2015] UKUT 0054 (IAC). The following guidance is also found in AA (Iraq) 2017

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. *As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*
15. *In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
 - (a) *whether P has a CSID or will be able to obtain one (see Part C above);*
 - (b) *whether P can speak Arabic (those who cannot are less likely to find employment);*
 - (c) *whether P has family members or friends in Baghdad able to accommodate him;*
 - (d) *whether P is a lone female (women face greater difficulties than men in finding employment);*
 - (e) *whether P can find a sponsor to access a hotel room or rent accommodation;*
 - (f) *whether P is from a minority community;*
 - (g) *whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*
16. *There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

E. IRAQI KURDISH REGION

17. *The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.*
18. *The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.*
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.*
21. *As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.*

12. In the reasons for refusal letter the respondent says he intends to return the appellant to Erbil. This appeal concerns the Judge's findings in relation to return to either Erbil or Baghdad. The focus is therefore on [42] to [47] of the decision. There, the Judge finds (in summary form) that six of the seven factors to be considered at [15] of annex A to AA (Iraq) 2017 mitigates against the appellant (the seventh factor is neutral)

13. The Judge's decision is entirely supported by the country guidance case. The Judge could have provided more detailed reasons, but the conclusion that he reaches is correct in law. Even if the sparse reasoning provided for the Judge's consideration of internal relocation is an error of law, it cannot be a material error because the conclusion he reaches is correct in law.

14. The findings that the Judge makes are well within the range of findings reasonably available to the Judge. The findings are drawn from the evidence placed before the Judge. The Judge correctly takes guidance from AA v SSHD [2017] EWCA Civ 944.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. There is nothing wrong with the Judge's fact-finding exercise. The correct test in law has been applied. The decision does not contain a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

17. No errors of law have been established. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 26 July 2017, stands.

Signed *Paul Doyle*

Date 6 June 2018

Deputy Upper Tribunal Judge Doyle