



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02250/2016

**THE IMMIGRATION ACTS**

Heard at Birmingham Employment Tribunals  
On 11<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 05<sup>th</sup> October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HALOW ABDUL-RAHMAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr N Azmi (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Birk, promulgated on 1<sup>st</sup> November 2017, following a hearing at Birmingham on 9<sup>th</sup> October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the

Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Iraq, and was born on 15<sup>th</sup> August 1996. He appealed against the decision of the Respondent dated 21<sup>st</sup> December 2017, refusing his application for asylum and for humanitarian protection under paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is a Sunni Muslim Kurd who comes from a town in the Diyala governorate. His father was a member of the Ba'ath Party and involved in killing Kurdish people. On 16<sup>th</sup> May 2013 he was shot dead. The Appellant left his town of Jalawala in June 2014 when ISIS invaded his home area. On 10<sup>th</sup> June 2015 he was contacted by ISIS on his mobile phone and told that he had to join ISIS in order to take revenge for his father who had been killed by Shia militias. The Appellant refused. He was forced to leave the area. He left Iraq on 16<sup>th</sup> June 2015. He fears that if he returns he will be persecuted and killed by ISIS.

### **The Judge's Findings**

4. The judge did not find the Appellant's claim to be credible (paragraph 25). She found that the Appellant's claim had been fabricated (paragraph 26). The judge held that the Appellant did not require protection or the implementation of the Refugee Convention (paragraph 30). As far as his return to Iraq was concerned, the judge held that the "return of the Appellant would be to Baghdad which would be a relocation for the Appellant" and that "the guidance is that a return to Baghdad in terms of armed conflict does not give rise to a level of indiscriminate violence to civilians which engages Article 15(c)" and that "Sunni identity alone is not sufficient to give rise to a real risk of serious harm" (paragraph 31). Indeed, the Appellant previously had an ID card "which he states has been left in Iraq" and the judge was not satisfied that the Appellant had "no family members in Iraq to whom he could turn to for support" (paragraph 32).
5. The appeal was dismissed.

### **Grounds of Application**

6. The grounds of application state that the judge whilst finding at paragraphs 32 to 33, that the Appellant had family support in Iraq, failed to conclude that the Appellant had such support in Baghdad, which is where the Appellant was being returned to. In **AA [2017] EWCA Civ 944**, the Court of Appeal emphasised the importance of the applicant being "from a minority community". This had been overlooked by the judge.

7. On 29<sup>th</sup> November 2017, permission to appeal was granted by the Tribunal on the basis that, the reference by the judge (at paragraph 33) that the Appellant spoke "... a little bit of Arabic..." was indicative of the acceptance that the judge recognised that the Appellant did not have a fluent command of Arabic. Given that the judge also held (at paragraph 33) that the Appellant "...may not have a sponsor in Baghdad in order to rent accommodation..." it was arguable that she failed to take into account the proper picture in finding that it would be unduly harsh for the Appellant to be returned to Baghdad.
8. On 21<sup>st</sup> December 2017, a Rule 24 response was entered by the Respondent to the effect that what the Court of Appeal stated in AA [2017] EWCA Civ 944, was not to be read as a list of requirements before relocation was considered reasonable. The judge did give adequate reasons at paragraphs 31 to 34 to support her conclusion as to why the Appellant could safely return to Baghdad.

### Submissions

9. At the hearing before me on 11<sup>th</sup> September 2018, Mr Azmi, appearing on behalf of the Appellant, submitted that the sole issue before this Tribunal was that of internal relocation. The matter had previously been considered by Judge Ferguson, when the Appellant's appeal had been allowed, but then overturned by DUTJ McCarthy on 1<sup>st</sup> June 2017 in the Upper Tribunal, necessitating a remittal back to the Tribunal of Judge Birk. Judge Birk, however, had now fallen into error, according to Mr Azmi, because of her finding at paragraph 31, that the Appellant can be returned to Baghdad. The error lay in the fact that the judge was considering this issue, not as an issue of return, but as an issue of internal relocation. However, it was necessary to first know whether the Appellant could be returned to Baghdad, before it could be considered whether internal relocation could be found in the IKR. The judge, on the other hand, made a decision which was flawed, because of a lack of consideration regarding whether the Appellant had any family support in Baghdad, so as to enable him to return to Baghdad in the first place, before internal relocation could then take place. The Appellant had no family support in Baghdad. It was not enough for the judge to say (as she did at paragraph 32) that the Appellant had family in Iraq, despite the fact that she does not then confirm where in Iraq the Appellant has a family. This was a matter of some considerable importance given that it is not possible to consider return to Baghdad for someone who is not a fluent speaker in the Arabic language, had never lived in Baghdad, and had no material support there.
10. For her part, Ms Aboni submitted that she would rely upon the Rule 24 response. It was clear from paragraph 15 of the annex in AA [2017] EWCA Civ 944, that the list of issues to consider were not to be operated as prerequisites before relocation could be considered as being reasonable. The judge had considered the issue of return to Baghdad quite adequately. The judge had also said that the Appellant could take advantage of a reintegration package upon return. It had been found that the Appellant had a CSID card. He could get a duplicate on the basis of that card. There was no error of law.

11. In reply, Mr Azmi submitted that the judge had only been able to find that the Appellant spoke "a little bit of Arabic", and on this basis alone, the Appellant could not reasonably return back to Baghdad, if he had no family there.

**No Error of Law**

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion notwithstanding Mr Azmi's clever and well-honed arguments before me. It is true that the judge does not make a finding as to whether the Appellant has any relatives in Baghdad. In fact, it is arguable that the judge finds the opposite. This is clear from her statement that, "although he may not have a sponsor in Baghdad..." (paragraph 33). However, that aside, the judge does conclude that the Appellant "has previously had an ID card which he states has been left in Iraq" (paragraph 32). Of course, it was the Appellant's case that he now had no family support, and only last spoke to his mother in 2014 and to his sister and brother-in-law in 2016. However, the judge did not accept that no support would be forthcoming from family relatives, even if the Appellant were to be returned to Baghdad. The judge was not satisfied that the Appellant's sister and her husband had left their place of abode. She concluded that "therefore, in terms of obtaining a CSID he would have family members who would be prepared to vouch for him when he approaches the CSA officers. I find that he would be able to obtain one reasonably soon after his arrival in Iraq" (paragraph 32). Such a finding is in compliance with the latest country guidance cases in Iraq, such that whatever error may have arisen in the judge's conclusions in these respects, they cannot be said to be material errors of law.

**Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

28<sup>th</sup> September 2018