



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02319/2018

THE IMMIGRATION ACTS

Heard at Field House
Oral decision given following hearing
On 4 September 2018

Decision & Reasons Promulgated
On 19 September 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

[Z A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp of Counsel, instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of Iraq who was born on 7 July 2000. He claims to have arrived in the UK clandestinely on 17 June 2017 and he claimed asylum on 4 August 2017. That application was refused on 1 February 2018 and he appealed against that decision.

2. The appellant's appeal was heard before First-tier Tribunal Judge Chudleigh sitting at Hatton Cross on 19 March 2018. In his decision Judge Chudleigh notes that the appeal was pursued on asylum grounds and under Articles 2 and 3 of the ECHR only and that the appellant expressly did not advance an appeal under Article 8.
3. In a Decision and Reasons promulgated on 27 March 2018 Judge Chudleigh dismissed the appellant's appeal.
4. In the course of his decision the judge made various findings, some of which could be said to be findings of fact specific to this appellant while others were findings based on a combination of whatever evidence he accepted, coupled with what he understood to be the country information, including country guidance, which was available at the time. For example, there was an important finding at paragraph 35 of the decision which was that the appellant was a "member of a particular social group" being "part of a group of Kurdish Sunni Muslim males who originate from a predominantly Arab Shia area in Iraq". The judge accepted the appellant's evidence that his home was attacked in Kirkuk in about 2015 and he and his family fled to Irbil in the IKR. He also accepted that his eldest brother had disappeared from Kirkuk in "mysterious circumstances" but he did not accept that there was any evidence that he had been taken by ISIS. The judge did not believe that the appellant was known to ISIS or is of any particular interest to the government authorities or to anyone else and he also did not believe he had left Iraq because of any particular fear. He found that he had travelled to the UK in search of a better life and not because of any particular fear of harm in Iraq. With regard to the claim that the appellant had lost contact with his family, the judge stated in terms that he did not believe the appellant when he said that he had changed his phone and therefore did not have the telephone numbers of his family in Iraq, considering it inconceivable that he would not have saved the numbers, and he found in terms that "I consider that the appellant lied to me about this to try and enhance his prospects on appeal".
5. There were also various other findings, some of which were more favourable to the appellant. The judge accepted, for example, that having come from Kirkuk which is in an area to which on current country guidance it was not safe to return because there was a real risk of indiscriminate violence, the appellant could not safely return to his home area. The judge also found that it would not be reasonable in all the circumstances to require the appellant to internally re-locate to Baghdad. However, the judge did find that internal relocation was available to him within the IKR, because he could live, so found the judge, in Erbil where his uncle lived and apparently had a shop. He found at paragraph 51 that "in Erbil the appellant has immediate and extended family present who will support him" and that "accordingly there was no risk of serious harm to the appellant arising from the lack of a CSID".
6. With regard to the CSID, which the appellant did not have, the judge cited from the Court of Appeal judgement in the county guidance case of *AA Iraq* in which the court had outlined the need for CSID in Iraq and had also accepted that it may be difficult for an applicant to return to Kirkuk to get a CSID because of violence (which is of course consistent with general country guidance) but the judge considered that in this

case there would be no risk of serious harm to the appellant arising from the lack of a CSID because, as the judge had found, he could live with his uncle and work for him.

7. The appellant has been granted permission to appeal to this Tribunal by First-tier Tribunal Judge Chohan in a decision dated 18 April 2018 and it is effectively argued on two grounds. The first is that the judge did not give adequate reasons for failing to follow country guidance with regard to the real difficulties that would arise because of the lack of a CSID, in particular in circumstances where it would be very difficult, if not impossible, for this appellant to acquire one from his home area because, by reason of the risk of the risk of indiscriminate violence he cannot return to Kirkuk. The second is that the finding that the appellant would be able to survive without a CSID in Erbil, because his uncle could get him a job, is speculative to say the least and inadequately reasoned.
8. Before this Tribunal, on behalf of the appellant, Mr Fripp raised a further argument which is that the judge did not appear to appreciate the difficulties that would be involved in returning to Kirkuk at all because it was clear from the country guidance given in *AA (Iraq)* (and in particular at paragraph 5 of the annex to the decision, which was apparently agreed between the parties during that hearing) that “return of former residents of the ... IKR will be to the IKR and all other Iraqis will be to Baghdad”. As the appellant was a former resident of Kirkuk, it would seem to follow (or at least be strongly arguable), that the appellant would therefore have to be returned to Baghdad from where he would somehow have to make his own way to the IKR. The judge having found that it would not be reasonable to expect the appellant to relocate to Baghdad, does not appear to have considered at all what difficulties the appellant might face in undertaking this journey.
9. Mr Fripp referred the Tribunal to the subsequent country guidance given in *AAH* which, although heard at the end of February 2018, was not handed down until June and in which it is stated in terms at the fifth paragraph of the headnote that a returnee to Iraq “would face considerable difficulty in making the journey between Baghdad and the IKR without a CSID or valid passport”. Although the judge did not make any error of law in not having regard to country guidance which had not been promulgated as at the date of his Decision, the relevance of this decision was that it showed that this error was a material one.
10. On behalf of the respondent, Mr Clarke very fairly accepted that he was in difficulty in defending this decision because of the absence of reasoning as to how the appellant would get to the IKR from Baghdad and also because the finding that the appellant could rely on support from his uncle and family lacked reasoning.
11. In the judgment of this Tribunal Mr Clarke was right to accept that effectively he could not realistically defend this aspect of the decision. Clearly the judge did not consider what difficulties there would be as to how the appellant would get to the IKR and also he did not give any adequate reasons as to how it was that he could find that his uncle would be able to give him a job; absent reasons this finding is entirely speculative. Also, in light of country guidance the finding that he could survive without a CSID in the IKR is also inadequately reasoned.

12. It follows that this decision will have to be remade and I have to consider whether or not the appeal should be reheard de novo or whether any findings realistically can be retained.
13. In the grounds the appellant asks for the hearing to be remitted for rehearing before the First-tier Tribunal de novo, with which approach Mr Clarke on behalf of the respondent concurred. However, as he is perfectly entitled to, Mr Fripp would prefer that at least some of the credibility findings be retained, accepting that this must include at least some of the adverse credibility findings which had been made. Having considered this very carefully, this Tribunal considers that it would be very difficult to pick and choose between which credibility finding and other findings should be retained and which should not, especially given that the appellant's appeal must be considered as at the time of the resumed hearing, by which time no-one can really predict at the moment what the exact situation will be on the ground in Iraq. It may very well be the case for example that flights are permitted into the IKR direct, in which case the simple issue will be as to what risk the appellant would face as a result of his not having a CSID or other identity document. This is a matter which will have to be considered afresh in light of all the evidence. It is also a very difficult and dangerous task to seek to retain some findings and not others because credibility findings are made holistically in the round and it is often artificial to expect a judge who hears evidence to consider him or herself bound by previous findings which had been made even though, in light of subsequent evidence, he or she may wish to depart from these findings.
14. In these circumstances, because there will of necessity have to be further fact-finding, it is considered that it is in the interests of justice to remit this hearing back to the First-tier Tribunal sitting at Hatton Cross for a de novo hearing before any judge other than Judge Chudleigh and I shall so order.

Notice of Decision

15. **I set aside the decision of First-tier Tribunal Judge Chudleigh as containing a material error of law and direct that this appeal shall be remitted for a de novo hearing (with no findings of fact retained) to the First-tier Tribunal sitting at Hatton Cross to be heard by any judge other than Judge Chudleigh.**

No anonymity direction is made.

Signed:



Upper Tribunal Judge Craig

Date: 17 September 2018