



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03100/2015**

THE IMMIGRATION ACTS

**Heard at Glasgow
On 15 February 2018**

**Decision & Reasons Promulgated
On 8 March 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**MARIWAN AMEEN MOHAMMED
(ANONYMITY NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Caskie, advocate, instructed by Latta & Co, solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bradshaw promulgated on 27 September 2016, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 21/06/1985 and is a national of Iraq. The appellant entered the UK on 22/07/2015 and claimed asylum. On 12/11/2015 the Secretary of State refused the Appellant's Protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bradsahaw ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 25/10/2016 Judge Nightingale gave permission to appeal stating

"1. Permission is sought to appeal, in time, against the decision of the First-tier Judge Bradshaw, dated 27 September 2016, dismissing the appellant's appeal against the refusal of asylum.

2. The grounds argue that the Judge failed to consider whether the appellant would be able to travel to the IKR without a CSID. The Judge failed to give consideration to how the appellant would be able to secure employment in the IKR. The Judge had also failed to take into account that the appellant had had no contact with his family since leaving Kirkuk. The Judge had failed to properly apply the country guidance on AA.

3. In an otherwise full and sustainability reasoned decision, it is arguable that the Judge did not consider the method by which the appellant, accepted to be undocumented, could travel on to Erbil from Baghdad. Arguably, the Judge did not therefore correctly apply AA. It is also arguable that the Judge gave no reasons for finding that the appellant would be able to obtain employment in the 10 day period and so be permitted to remain in the IKR. It is also arguable, albeit only just, that the Judge failed to consider that the appellant had had no contact with his family in Iraq. Permission is granted on all grounds pleaded."

The Hearing

6. Parties' representatives told us that they were in agreement about this case. Ms O'Brien told us that the crux of the challenge is a failure to make factual findings and a failure to follow the guidance given in AA (Iraq) CG [2017] EWCA Civ 944.

7. Both Mr Caskie & Ms O'Brien asked us to remit this case to the First-tier to be determined of new. Ms O'Brien told us that credibility is still an issue, & that specific findings require to be made about the availability of documentation to this appellant.

Analysis

8. At [10] of the decision the Judge clearly identifies that the appellant comes from Kirkuk, and that the applicant is not from the IKR. Between [16] and [26] the Judge summarises the appellant's case and identifies the appellant as an Iraqi Kurd.

9. Between [27] and [36] the Judge summarises the respondent's submissions, and then between [37] and [42] summarises the appellant's submissions. The Judge's findings of fact start at [43]. At [84] the Judge finds that the appellant is a young, healthy man and (after taking guidance from AA) between [85] and [88] the Judge finds that the appellant could safely relocate to IKR.

10. Since the Judge's decision was promulgated, 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)

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. What is missing from the Judge's decision is a consideration of what will befall the appellant if he is returned to Baghdad. What is required is a consideration of whether or not the appellant has a network of support available to him and whether or not he has or is able to acquire a CSID. The facts and circumstances of the appellant's case must be set against the seven factors set out at [15] of annex A to the case of AA (Iraq) CG [2017] EWCA Civ 944. Analysis of how the appellant would make his way from Baghdad to IKR is also necessary.

13. As that analysis is missing from the Judge's decision, we find that the decision is tainted by a material error of law. We must set the decision aside.

14. We consider whether or not we can substitute our own decision but find that we cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

16. In this case we have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

17. We remit this case to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Bradshaw.

Decision

18. The decision of the First-tier Tribunal is tainted by material errors of law.

19. We set aside the Judge's decision promulgated on 27 September 2016. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle

Date 7 March 2018

Deputy Upper Tribunal Judge Doyle