



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05264/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 30th January 2018**

**Decision & Reasons Promulgated
On 26th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**D A S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Wilkins of Counsel

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge McGinty of the First-tier Tribunal (the judge) promulgated on 3rd May 2017.

2. The Appellant is an Iraqi citizen of Kurdish ethnicity born in September 1992. He arrived in the UK illegally on 16th December 2015 and claimed asylum.
3. His asylum claim was based upon fear of persecution because his father was a member of the Ba'ath Party in Iraq, and he also feared ISIS who had taken control of his home area of Jalawla in Diyala, Iraq.
4. The asylum and human rights application was refused on 7th May 2016 and the appeal was heard on 18th April 2017.
5. The judge heard evidence from the Appellant and did not accept his account of his father having had any role with the Ba'ath Party. The judge accepted the Appellant's account that he had resided in the Iraqi Kurdish region (IKR) with his uncle, but did not accept that he had been the subject of threats while living there. The judge accepted that the Appellant's home area had in the past been taken over by ISIS, and found his account in that regard to be credible and consistent.
6. The judge concluded that the Appellant couldnot return to his home area of Jalawla but that he could reasonably relocate and live in safety within the IKR. The judge found that the Appellant would be returned to Baghdad, and could safely travel from Baghdad to the IKR where his uncle could act as a Sponsor for him. The judge found that the Appellant had lived safely in the IKR for a period of eighteen months prior to travelling to the UK. The appeal was dismissed on all grounds.
7. The Appellant had been legally represented at the appeal but applied for permission to appeal without legal representation. Permission to appeal was granted by designated Judge Shaerf and I set out below, in part, the grant of permission;

"The first three grounds of appeal are no more than an expression of disagreement with the conclusions reached by the judge for which he gave sustainable reasons.

The fourth and last ground of appeal refers to the judge's treatment of the background information about the risk on return. It is arguable that the judge's treatment of the issue of the Appellant's relocation to the Kurdish Autonomous Government is brief and inadequately argued. In addition it is arguable the judge has not dealt with the likely circumstances of the Appellant in Baghdad immediately on return. Further, after promulgation of the judge's decision the Court of Appeal considered and revised the country guidance given by the Upper Tribunal on returns to Baghdad in its judgment in AA (Iraq) v SSHD [2017] EWCA Civ 944 delivered on 22 June 2017. For the reasons given in this paragraph permission to appeal is granted."
8. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the judge had directed himself appropriately, noting that the Appellant had previously lived in the IKR for eighteen months, and that he had a relative with whom he could live.

9. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the judge had erred in law such that the decision should be set aside.

Submissions

10. Miss Wilkins relied upon her skeleton argument. It was specifically argued before the First-tier Tribunal that the Appellant would be at risk if he had to travel from Baghdad to the IKR, and reliance was placed upon Foreign and Commonwealth Office evidence of road travel in Iraq being highly dangerous. The judge had stated at paragraph 36 that he did not accept that that evidence was in itself sufficient to show that the Appellant could not safely make one trip from Baghdad to the IKR. It was submitted that this conclusion was unsustainable in that much of the area the Appellant would have to travel through to reach the IKR, is an area of Article 15(c) risk.
11. It was submitted that the judge further erred in law by failing to consider at all what the situation would be for the Appellant on arrival in Baghdad, where he has no connections, and as a Kurdish Sunni Muslim would be very unlikely to be given assistance by the local community.
12. Mr Bates relied upon the rule 24 response pointing out that the judge had not considered that the Appellant would settle in Baghdad, but simply that he would transit through Baghdad on route to the IKR. It was submitted that the judge had not erred in finding that the Appellant could live safely in the IKR and it would not be unduly harsh for him to live in that region given his previous residence. Counsel who had represented the Appellant before the First-tier Tribunal made submissions in relation to road travel within Iraq, but travel to the IKR from Baghdad would be by air. It was for the Appellant to prove that travel by air from Baghdad to the IKR would not be reasonable and the Appellant had not made any submissions or presented evidence to the judge to indicate that travel by air was unreasonable. Mr Bates pointed out that the Appellant would be eligible for Assisted Voluntary Return.
13. Miss Wilkins responded by submitting that the feasibility of air travel from Baghdad to the IKR had not been considered by the judge.
14. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

15. The judge did not consider the Appellant's circumstances in Baghdad as the judge did not consider that the Appellant would be remaining or settling in Baghdad, but would be returned to Baghdad, and then travelling onward to the IKR. I do not find that the judge materially erred in not considering the circumstances in Baghdad. The judge recorded at paragraph 17 of his decision that the Appellant had a CSID. The relevant

guidance is contained within the Annex to AA [2017] EWCA Civ 944 at section E paragraph 20 which is reproduced below;

“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 securing employment in the IKR; and
- (c) the availability of assistance from family and friends in the IKR.”

16. The judge found that the Appellant would be able to travel from Baghdad to the IKR. There is no indication that it was suggested to the judge that it would be unreasonable for the Appellant to travel by air. Submissions were made that it will be dangerous to travel by road. I accept that if an individual of Kurdish ethnicity is to travel from Baghdad to the IKR, then travel would take place by air.
17. The judge noted that the Appellant had previously lived in the IKR for approximately eighteen months. The judge found that he had done so without any difficulty. The judge found, as accepted by the Appellant, that he had lived with his uncle who is a resident of the IKR.
18. The country guidance at section E paragraph 18 confirms the IKR is virtually violence free and there is no Article 15(c) risk to an ordinary civilian in the IKR.
19. The judge properly considered the country guidance. It was noted that because the Appellant did not originate from the IKR, he could obtain entry for ten days as a visitor, and then renew his permission for a further ten days. He would be able to remain longer if he found employment, and there was no evidence that the IKR authorities proactively removed Kurds from the IKR whose permits had come to an end.
20. The judge placed significant weight on the fact that the Appellant had previously lived with his uncle in the IKR for a substantial period of time. In my view the judge did not err in concluding that the Appellant would be returned to Baghdad and from there could transit safely to the IKR, and did not err in finding that he had a reasonable internal relocation option in the IKR.

Notice of Decision

The decision does not disclose a material error of law. The decision stands and the appeal is dismissed.

Anonymity

I make an anonymity direction because the Appellant has made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date: 5th February 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 5th February 2018

Deputy Upper Tribunal Judge M A Hall