



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09994/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 2 May 2018**

**Decision & Reasons
Promulgated
On 9 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHAMERAN AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs H Aboni, Senior Home Office Presenting Officer
For the Respondent: Ms J Sachdev of Bury Law Centre

DECISION AND REASONS

1. I 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 I do not consider it necessary to make an anonymity direction.

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 Ransley, promulgated on 20 November

2017 which dismissed the Appellant's appeal on asylum and ECHR grounds, but allowed the appeal on Humanitarian Protection grounds.

Background

3. The Appellant was born on 8 April 1994 and is a national of Iraq. On 17 September 2017 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 Ransley ("the Judge") dismissed the appeal against the Respondent's decision on asylum and ECHR grounds, but allowed the appeal on Humanitarian Protection grounds. Both parties lodged grounds of appeal. On 6 December 2017 First-tier Tribunal Judge Saffer refused to grant permission to appeal to the appellant but granted permission to appeal to the respondent stating

1. Both parties seek permission to appeal against a decision of First-tier Tribunal Judge Ransley promulgated on 20 November 2017 whereby the appeal against the decision to refuse to grant asylum was dismissed but in relation to ancillary protection was granted.

2. I am satisfied that the applications are in time as they were filed on 4 December 2017 and 24 November 2017 respectively.

3. There is no merit in the appellant's application. The Judge was entitled to find he had not established he was at risk due to his father's alleged past Ba'ath party work or due to his religion for the reasons she gave. The grounds amount to nothing more than a disagreement with that.

4. It is arguable that the Judge may have materially erred regarding the option of internal relocation in light of [112] of AA and the latest the background evidence produced by the respondent.

5. The appellant submitted renewed Grounds of appeal to the Upper Tribunal and on 2 March 2018 Upper Tribunal Judge Kebede refused permission to appeal stating

1. The appellant, a national of Iraq, appeals against the respondent's decision to refuse his asylum and human rights claim. First-tier Tribunal Judge Ransley dismissed the appeal on asylum and human rights grounds, but allowed it on humanitarian protection grounds. The First-tier Tribunal has granted permission to the Secretary of State to appeal the Judge's decision on humanitarian protection, but has refused permission to the appellant to appeal the decision on asylum and human rights grounds. The appellant now seeks to renew his application for permission in the Upper Tribunal. However permission is again refused for the same reasons as given in the First-tier Tribunal.

2. The Judge, having given full consideration to the appellant's claim and the evidence before her, provided full and cogent reasons for rejecting the appellant's account of his father's employment by the Ba'ath party and his account of the killing of his father. The Judge had full regard to the background information relied upon by the appellant in addressing the delay in the revenge killing of his father and also considered the death certificate produced by the appellant. The Judge noted inconsistencies in the appellant's evidence about the death threat and was unarguably entitled to take such inconsistencies into account and to accord the weight that she did to the evidence as a whole. The Judge also had regard to the appellant's claim to be at risk as a Sunni Muslim and provided cogent reasons for concluding that he would not be at risk on that basis. The Judge's adverse findings and conclusions were unarguably cogently reasoned and were fully and properly open to her on the evidence before her. The grounds do not disclose any arguable errors of law in the Judge's decision.

The Hearing

5.(a) For the respondent, Mrs Aboni moved the grounds of appeal. She told me the First-tier Tribunal Judge found that the appellant was not a credible witness, and rejected the appeal on asylum grounds but found that the appellant was entitled to humanitarian protection. She told me that the Judge's error lay in consideration of internal relocation, and whether it was reasonable for the appellant to relocate from Baghdad to the IKR. She told me that although the Judge touches on internal relocation, her findings are not adequate.

(b) Mrs Aboni told me that as the appellant is not from IKR he will be returned to Baghdad. She reminded me that the Judge found that the appellant has access to his ID card and so would not be without a CSID. As a result, she told me that the appellant's return is feasible and he would have access to services and support. Mrs Aboni told me that the judge only considered travel between Baghdad & IKR by road, when she should have considered the availability of a flight from Baghdad to Erbil.

(c) Mrs Aboni told me that the Judge's consideration of internal relocation is inadequate, and creates a material error of law. She urged me to set the decision aside.

6. For the appellant, Mrs Sachdev relied on the appellant's rule 24 response and the skeleton argument prepared for the appellant, together with a bundle of documents lodged in advance of today's hearing. She reminded me that the respondent's decision accepts that the appellant cannot return to Baghdad. The Judge's reliance on paragraph 46 of the reasons for refusal letter goes without challenge. She told me that the Judge considered all of the background information together with country guidance. At [42] the Judge found that the appellant would be able to obtain a CSID, but Ms Sachdev told me that the border to IKR is now close to IDPs. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The focus in this case is entirely on the question of internal relocation. The grounds of appeal relied on paragraphs 112 & 113 of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). The Court of Appeal amended the country guidance in AA (Iraq) CG [2017] EWCA Civ 944. 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).*

8. At [42] of the decision the Judge finds that the appellant has access to his national identity card and so we will be able to obtain a CSID. At [43] the Judge correctly takes the starting point to consider internal relocation from the respondent's position in the reasons for refusal letter. The respondent's position at [46] of the reasons for refusal letter is that relocation to Baghdad is not reasonable for this appellant. It is common ground that the appellant is a Kurd, he speaks only Kurdish (paragraph 45 the reasons for refusal letter)

9. The focus in the reasons for refusal letter, and in the Judge's decision, is clearly drawn on the ability of the appellant to make his way from Baghdad to the IKR. The following guidance is found in AA

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.*

10. The appellant is a Kurd but he does not originate from IKR. Between [43] and [46] of the decision the Judge considers the viability of internal relocation. The Judge takes guidance from AA and then finds at [46] that it is not reasonable to expect the appellant to relocate to Baghdad.

11. The Judge's reasoning is brief, but it is sufficient. The respondent accepts that the appellant cannot be returned to the IKR. It's the respondent's position that the appellant will be returned to Baghdad and from there make his way to IKR. Mrs Aboni told me that the respondent intends to return the appellant to Baghdad. The argument presented to me is that the Judge has not considered the option of internal air travel - a flight from Baghdad to Erbil. The Judge's finds at [44] that travel is not possible because of the risk of attack from militia.

12. It would have been helpful if the Judge expressly considered the viability of air travel, but at [46] the Judge draws the findings in the decision together by saying that the appellant is entitled to humanitarian protection because

- (a) his home province is in a contested area

(b) the respondent accepts that it is not reasonable to expect the appellant to relocate to Baghdad, and

(c) the appellant does not originate from the IKR

13. The fundamental flaw in the argument presented by the respondent is that the respondent accepts that it is not reasonable to return the appellant to Baghdad at paragraph 46 of the reasons for refusal letter. The respondent does not challenge [43] of the decision, where the Judge refers to the respondent's acceptance that it is unreasonable for the appellant to relocate to Baghdad.

14. If it is not possible to return the appellant to Baghdad, then it is not possible for the appellant to start his journey from Baghdad to IKR.

15. On the facts as the Judge found them to be, the appellant is distinguishable by his ethnicity as a Kurd, his language (Kurdish Sorani) and his religion, and so will be viewed as a member of a minority community. The appellant might have a CSID; but he does not have family members or friends in Baghdad able to accommodate him; there is no suggestion that the appellant can find a sponsor to access a hotel room or rent accommodation; He has no network of support in Iraq. Although Kurdish, he has not lived in IKR. He does not come from IKR, so the respondent will send him to Baghdad.

16. Five of the seven factors set out in paragraph 15 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 count against the appellant. One factor is neutral, and only one factor (available CSID) is in the appellant's favour. On the facts as the Judge found them to be, and placing reliance on the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, the appellant's profile indicates that it cannot be reasonable to return the appellant to Iraq. Internal relocation is unduly harsh.

17. If returned to Iraq the appellant would be treated as a Kurd from a contested area. As a displaced Kurd, the appellant would be treated as a man from a minority ethnic group. The appellant has no support in Baghdad (Where the respondent will leave him, even though the respondent has always said that it is unreasonable to return the appellant to Baghdad). He will be expected to make the final part of the journey alone, from a dangerous starting point without access to accommodation or food. It is most likely that he will not have access to accommodation and employment within Iraq. He therefore faces the prospect of destitution if returned to Iraq. Internal relocation is unduly harsh.

18. In this case the Judge clearly took correct guidance from AA v SSHD [2017] EWCA Civ 944. Having taken correct guidance in law and made findings of fact the Judge reached his conclusion. It is not a conclusion that

the respondent likes but it is a conclusion which was reasonably open to the Judge on the facts as she found them to be.

19. 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.

20. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as she found them to be. The respondent might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

21. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

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

DECISION

The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 20 November 2017, stands.

Signed Paul Doyle

Date 8 May 2018

Deputy Upper Tribunal Judge Doyle