



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

Appeal Number: PA/01321/2019

**THE IMMIGRATION ACTS**

**Heard at North Shields (Kings Court)  
On 16 August 2019**

**Decision & Reasons Promulgated**

On 30 August 2019

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**MF  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Brakaj, Iris Law Firm

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

1. The appellant is a citizen of Iraq, where he was born in 1990. He is of Kurdish ethnicity, and appeals the decision of First-tier Tribunal Judge Hands, who for reasons given in her decision dated 22 March 2019, dismissed the appellant's appeal against refusal of his asylum claim on 31 January 2019 for reasons given on the same date. The appellant's case is that he left Iraq in August 2015 and reached the United Kingdom on 9 November 2015 (and claimed asylum the same day) after a period of time in Bulgaria where he was detained. By way of additional background, the appellant was convicted on 4 May 2018 for the possession of a false Belgium passport for which he was sentenced to six months' imprisonment.
2. The details of the appellant's claim (and the position of the Secretary of State) are captured by paragraph [10] of the judge's decision as follows:

"10. The Appellant is seeking asylum for a Convention reason based on his fear of returning to Iraq because of his religion, being of the Kaka'i faith. The Respondent accept he had a genuine subjective fear in his home area. The Appellant claims he was unable to relocate prior to leaving Iraq and would therefore be unable to relocate in the IKR should he return as his faith would be questioned and become known, hence leading to a real risk of serious harm. He comes from the Kirkuk area. He cannot return there because it is a contested area and he cannot return to Baghdad. He does not speak Arabic, he does not hold a CSID, he has no family or support network in Baghdad or the IKR and obtaining a CSID would place him at risk because of the basis of Article 15(c) of the Qualification Directive."
3. The judge observed that the Secretary of State had accepted that the appellant was a national of Iraq (from Kirkuk), that he is of the Kaka'i faith and of Kurdish ethnicity. The judge also noted matters accepted by the Secretary of State which she explained as follows, in paragraph [12]:

"12. While it was accepted by the Respondent that the Appellant is of the Kaka'i religion and his account of the problems he faced in his home area because of the invasion of ISIS, it was not accepted that the problems he faced in Kirkuk or Erbil amounted to persecution as they were found to be discriminatory only. His religion was not known until he chose to reveal it and he was not physically harmed as a result. The Appellant's account before me remains the same and I find, therefore, there is insufficient evidence to establish the Appellant suffered persecution because of his religion prior to his departure from Iraq. The Appellant's problems arose from the general situation when ISIS invaded his village and the surrounding area resulting in his displacement."
4. Thereafter the judge concluded that the most recent background information confirmed that ISIS had been driven from Iraq to the extent that either the IKR government or the Iraqi government controlled all areas of the country. Accordingly the judge found that there was not a

reasonable likelihood the appellant would suffer persecution from ISIS or any other terrorist group.

5. After noting the submissions made and directing herself in relation to the country guidance in *AAH and AA* (the citations for which are *AA (Article 15(c))(Iraq CG [2015] UKUT 544 (IAC)* as amended by the Court of Appeal in *AA (Iraq) v SSHD [2017] EWCA Civ 944* and *AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)*), the judge noted in paragraph [18] the appellant's circumstances and that he had been able to find work in Erbil without a CSID. She found the appellant did not have a deep knowledge of his religion nor did he have a deep belief in it. He had indicated in his asylum interview that he was considering conversion to Christianity and did not actively participated within his religion since arrival in the United Kingdom. Not bearing the signs of a religion as described in the country information, the judge reasoned that the only way a person would find out about that religion would be if the appellant chose to reveal it. Specifically in relation to the CSID, the judge observed at [22]:

“22. The Appellant claims he has no knowledge of the whereabouts of his family and he has made no attempt to find out about them either through the Red Cross or other agencies. There is no evidence that he has approached the Iraqi Embassy to seek assistance in obtaining a CISD [sic] from the information he does have available in connection with his place of birth, date of birth and his family name. He advised that apart from his mother and sister with whom he lived, the Appellant had wider family members, including uncles in a neighbouring village. He makes no reference to any effect the ISIS invasion had on them so it is just as likely they are in their original homes as they are not. While I acknowledge the Appellant has a very low burden of proof placed upon him, in my judgement, it is not sufficient for him to sit back and boldly state he has no knowledge of his family or that he cannot obtain the necessary documentation. He has a duty to establish that these facts are more than likely to be true and he has not discharged that duty.”

6. After reiterating that ISIS had all but disappeared, the judge continued at [24] to [26] :

“24. The Appellant, as a person of Kurdish ethnicity who originates from Kirkuk, will be able to return to the IKR where there are several large cities, including Sulaymaniyah, Erbil and Duhok, where he could live. His agricultural skills and labouring ability and his education in the United Kingdom will assist him in finding employment to support himself and thereafter accommodation.

25. I must consider if the level of armed conflict is such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c). The Appellant will not be at risk at the point of return as he will be returned directly to Erbil in the IKR where he has an avenue open to him to obtain his CSID. Once in Erbil, as he is of Kurdish ethnicity, he will be able gain permission to

reside there initially until he can either contact his family who are just as likely to be in the village where he left them as not and obtain a CSID. Thereafter, he will be able to obtain accommodation and employment, be that with his family or on his own.

26. From the evidence and submissions before me, I do not find that there is a real risk of serious harm to this Appellant in terms of the humanitarian protection provisions or that Article 15(c) is engaged.”
7. Finally, the judge considered that no claim was made out under the Human Rights Convention with specific reference to Articles 2 and 3.
8. Permission to appeal was initially refused by First-tier Tribunal Judge Grant but granted by Upper Tribunal Judge Kamara on a renewed application in which it is contended, as to the appellant’s religion, that it was arguably not open to the tribunal to conclude without any further reason that the only way a returnee’s religion would be known would be if they chose to reveal it having regard to country guidance regarding the screening of new entrants or information known about individuals at local level.
9. The second ground relates to the correctness of the judge’s finding in relation to the ability of the appellant to obtain employment. It is argued that country guidance was ignored when this aspect was assessed.
10. In granting permission to appeal Upper Tribunal Judge Kamara observed:
  - “2. It is arguable that in finding that the appellant’s religion (it is accepted that he is from the Kaka’i minority) would not become known unless he chose to reveal it that the Tribunal failed to take into consideration that need for the appellant to register his presence with the local Mukhtar as well as the screening which would take place on a local level by security and the Mukhtar in his home area. The remaining grounds also have merit.”
11. Mr Diwnycz acknowledged the absence of a rule 24 response by the Secretary of State and further indicated at the outset of the hearing that he would not be resisting the appellant’s appeal in the Upper Tribunal. Ms Brakaj emphasised that the basis of the appellant’s challenge related to the incorrect application by the judge of the Supreme Court decision in *Hj (Iran) v SSHD and HT (Cameroon) v SSHD* [2010] UKSC 31 on the basis that the appellant could not be expected to hide his faith when exercising internal relocation. The evidence indicated that his faith had led to discrimination in relation to his employment in the IKR. Mr Diwnycz accepted that the appellant had in fact initially sought to conceal his religion and that its disclosure had led to the employment difficulties. He accepted that the consideration by the judge of internal relocation had been inadequate.
12. In my judgment I consider that Mr Diwnycz was correct to concede error by the judge; the principles established in *Hj (Iran)* are of equal

applicability in a consideration of the reasonableness of internal relocation consideration where risk is found elsewhere. I consider the error material and set the decision aside. None of the judge's findings stands and, in the light of the extent of fact-finding required, remit the case to the First-tier Tribunal for its further consideration before a differently constituted Tribunal.

- 13.** The Upper Tribunal is shortly to publish a decision giving country guidance on the Article 15(c) risk previously established in relation to the appellant's home area. It would seem therefore appropriate for the appeal to be listed before the First-tier Tribunal once the country guidance decision is available.

Signed

Date 22 August 2019

UTJ Dawson  
Upper Tribunal Judge Dawson