



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02065/2019

THE IMMIGRATION ACTS

Heard at North Shields
On 29 July 2019

Decision & Reasons Promulgated
On 9 August 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

D A (IRAQ)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Muneeb Akram, Counsel instructed by Halliday Reeves
Law Firm

For the respondent: Mr Andrew McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties.

Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him refugee status, humanitarian protection or leave to remain on human rights grounds. The appellant is an Iraqi Kurd from Kirkuk.
2. The respondent accepts that there is a risk to this appellant in his home area of Kirkuk, and also that he cannot be expected to exercise an internal flight option to Baghdad. The appeal turns on whether the Iraqi Kurdish Region (IKR) is an appropriate internal flight option for him.

Background

3. The appellant is a citizen of Iraq, a Sunni Muslim Kurd, from a contested area, Kirkuk. In 2003, the appellant's father was killed by the Asayish or people who worked for the IKR government, because he had worked for the Ba'ath party as a border guard.
4. While in Iraq, the appellant lived with his widowed mother and his siblings. He is in possession of a CSID. He learned Arabic at school and speaks it to a reasonable level.
5. In 2008 or 2009, the appellant began to work with Mines Advisory Group Iraq (MAG), a branch of an international charitable organisation which 'saves and improves lives by reducing the devastating effects armed violence and remnants of conflict have on people around the world'. In 1997, MAG was joint winner of the Nobel Peace Prize.
6. The appellant produced a reference confirming that he worked for MAG Iraq from June 2009 until July 2015, working first as a Mines Detection Dog Team Leader and later just as a dog handler. The appellant had successfully passed the international course for MDD Team Leader at the NPA Global Training Centre in Sarajevo, Bosnia. He worked and cooperated with people from different national, religious and racial groups, without any bias or prejudice.
7. The country director for MAG Iraq in October 2015, Nina Seecharan, confirmed the length of the appellant's employment and its Technical Field Manager for Mine Detection Dogs (MDD), Adnan Avdic, gave him a splendid reference, noting that he had successfully achieved qualifications in Manual Demining Clearance as a deminer, a team leader, a dog handler and a dog team leader, that he was '[ready] to

learn and gain new knowledge and skills and quality [and] impart the acquired knowledge to others’.

8. Mr Avdic said that the appellant had unexpectedly decided to resign and emigrate to the United Kingdom but that he would gladly reemploy him should he return to Iraq, as the appellant was ‘fully capable to accept all working challenge’.
9. The appellant’s explanation for his sudden decision, which was accepted in the First-tier Tribunal, was that in July 2014, he lost his mobile phone, which was found by an Islamist, who realised from materials and photographs on that mobile that the appellant was working for a British company. The Islamist telephoned the appellant, warning him to leave his job and calling him an infidel and a spy.
10. The appellant reported this to a friend who was a policeman, but the police were unable to trace the caller and the policeman said that they would be unable to protect him. The appellant gave up his job for two weeks, but was depressed and returned to work, this time merely as a dog handler not a team leader. The appellant was careful: he changed his telephone number, wore his civilian clothes until he got to work, and varied his route to and from work.
11. On 26 June 2015, the appellant received a direct threat from Abu Omar Askari, who said he was from Islamic State/Daesh. He asked the appellant to provide him with explosives, and to give him the names of Kurdish, British and foreign personnel working for MAG Iraq. He threatened to kill the appellant if he refused.
12. The appellant contacted his friend in the police, who again said that no protection was available. ISIS Daesh had people working in the government and everyone was in danger. The appellant telephoned a work colleague, who advised him to go and stay at the MAG Iraq base and to advise his family members to stay away from their home.
13. On 27 June 2015, just a day later, there was another threat. A Kurdish person working with a jihadi group told the appellant he must obey Mr Alaskari or be killed. Three days later, a grenade and a letter from Mr Alaskari was thrown into the courtyard of the appellant’s home. The grenade killed the family dog. The letter contained threats from both ISIS/Daesh and the Kurdish jihadi group:

“Your cooperation protects your life from death, and we warn you, for the last time, to help the heroic Mujahideen and make forewarned be forearmed.”

The appellant’s mother telephoned him to say what had happened. The appellant obtained the letter from his mother and relied on it in his appeal.

14. The appellant contacted his work colleague, who took him to Suleimaniyah, and he left Iraq, travelling via Turkey, Hungary and France to the United Kingdom. The appellant was fingerprinted in Hungary but did not claim asylum there because the Hungarian authorities ill-treated him.

15. The appellant had lost contact with family and friends in Iraq and said that he could not relocate to Baghdad, because he was a Sunni Kurd, or in the IKR, where he had no sponsor and the Kurdish jihadi group had threatened him.

First-tier Tribunal decision

16. First-tier Judge Myers, sitting in Bradford, dismissed the appeal. He accepted the appellant's core account as credible, save that he did not believe the appellant's evidence that he would be unable to obtain current contact details for his friend in the Kirkuk police or his former work colleague, or his mother and siblings in Kirkuk.
17. The judge accepted that the Kirkuk work colleague's mobile phone number had stopped working in 2016, a year after the appellant left Iraq. He considered that these two people would help the appellant again, as they did in the past.
18. The judge did not explain why, apart from his own perception that this should be possible, an otherwise credible witness should be treated as lacking in credibility on that issue.
19. The judge accepted that the appellant could not return to Kirkuk where it was 'far too early to assess the situation' and that there remained an Article 15C risk in Kirkuk. Additionally, the judge considered that it would be unreasonably harsh to expect him to live in Baghdad, where he had no friends or family, and would be a member of a minority community.
20. The judge directed himself by reference to *AAH* (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC) and the decision of the Court of Appeal in *AA (Iraq) v The Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944. He found at [38] that as a Kurd with a CSID the appellant would not need a sponsor to get into the IKR.
21. The judge did not accept that the appellant remained at risk in the IKR by reason of his father's links to the Ba'ath party or from the Kurdish jihadi group which threatened him in 2015. The IKR was virtually violence free.
22. The appeal was dismissed on the basis that in resettling in the IKR the appellant would benefit from assistance from his mother and siblings in Kirkuk, and his former work colleague and policeman friend in Kirkuk.
23. The appellant appealed to the Upper Tribunal.

Permission to appeal

24. Permission to appeal was granted on only one of the two grounds advanced: at ground 1, Ms Cleghorn (who settled the grounds) argued that:

"... It is submitted that the First-tier Judge clearly finds the appellant a credible witness [28] and has given an incredibly detailed account. He has submitted his CSID to the respondent and gave evidence 'to his credit' that he speaks Arabic

to a reasonable level [36]. It makes no sense why she would later then 'not accept that the appellant has not contact with family and friends in Iraq' [39]. Given that Kirkuk is currently contested, i.e. that there is indiscriminate violence to the extent that it engages 15(c), it is not clear why his evidence would not be accepted that he has tried and failed. Likewise, it is not clear how he could simply 'trace' his mother given the significant numbers displaced in and around Kirkuk and, even if he could, how they could assist from Kirkuk given the checkpoints between Kirkuk and the IKR."

25. When granting permission, First-tier Judge Scott Baker found that the First-tier Tribunal's finding that there was no risk to the appellant from his late father's involvement with the Ba'ath party because no country evidence to that effect had been adduced before the judge, was 'made without any findings relating to the appellant's father and was made in a complete vacuum', rendering the decision arguably irrational and arguably also tainting the internal relocation findings.
26. Ground 2, which relies on country evidence which was not before the First-tier Tribunal, was excluded from the grant of permission.

Rule 24 Reply

27. The respondent's Rule 24 Reply argued that the decision of the First-tier Tribunal was thorough and that, given that the appellant had some contact with his friends in Kirkuk since his arrival in the United Kingdom in 2015, it was not unreasonable to assume that he could grace them now and obtain help from his family in Kirkuk, if they could be traced. The respondent continued to argue that there was no credible evidence before the First-tier Tribunal of a real risk of serious harm in the IKR from which the authorities could not protect him.
28. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

29. I heard oral submissions from both parties. There was no new evidence before the Upper Tribunal for the error of law hearing.
30. For the appellant, Mr Akram argued that it was very unlikely that the appellant would be able to trace his family and friends in Kirkuk and that the physical removal of ISIS/Daesh did not remove the Ba'athist influence. The appellant's family and friends were all in a contested area which was still considered to be at 15(c) levels of risk. He pointed out that the respondent had a separate CPIN on the risk to those formerly associated with the Ba'ath party and further, that the appellant was known to have worked for a non-governmental organisation, MAG Iraq. He would remain at risk on return.
31. For the respondent, Mr McVeety said that ISIS/Daesh had no presence in Iraq or Syria now. The appellant had previously worked for the government and that would assist him in resettling in the IKR on return. He would be returning from the

United Kingdom not directly from the contested area, which should allay any suspicions of him by Kurds living in the IKR.

Analysis

32. The risk to this appellant is put in two ways: first, that his late father was a Ba'ath party border guard and was killed in 2003 for that reason; and second, that he himself worked for MAG Iraq as a mine detector and dog handler, and that an Islamist threatened his life on several occasions, telling him to stop working for MAG Iraq and then asking him to give weapons and the names of those with whom he worked.
33. That risk is not related to his late father, but to the appellant's own work for a British company, leading the jihadist who threatened him to regard him as an infidel and a spy: in short, a collaborator.
34. The First-tier Judge did not adequately engage with that element of the account, and the findings of fact that the appellant was lying about being unable to reach his former friends and family in Kirkuk, given the existence of an Article 15(c) situation there, are inadequately reasoned, particularly in the light of the generally detailed and credible account he gave.
35. I remind myself that by paragraph 339K of the Immigration Rules HC 395 (as amended):

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."
36. It was accepted by the First-tier Judge that this appellant was subjected to direct threats of serious harm in 2015 when he left Iraq and that it is not safe to return him to Kirkuk, his home area, nor to Baghdad because he is a Sunni Muslim. The evidence before the judge that there were 'good reasons to consider that such persecution or serious harm will not be repeated' was slight.
37. The appellant has no contacts in the IKR and the evidence of his still having any contacts or family in the contested Kirkuk area consisted solely of supposition on the part of the First-tier Judge. It is difficult to see how they could help him from Kirkuk, even if he could find them.
38. Accordingly, I am satisfied that there is a material error of law in the First-tier Tribunal decision, in that the First-tier Judge's reasoning is inadequate. I set aside the decision of the First-tier Tribunal.
39. The evidence before the First-tier Tribunal was insufficient to amount to 'good reasons to consider' that the appellant will not now be at risk from Islamists or jihadis who consider him to be a collaborator because he worked with MAG Iraq. I

therefore consider that the appellant has discharged the burden upon him, to the lower standard, of showing that he remains at risk in the IKR, the only internal relocation option which has been advanced as possible by the respondent.

40. I remake the decision in this appeal by allowing the protection appeal.

DECISION

41. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

I remake the decision by allowing the appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 29 July 2019