



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

Appeal Number: PA/09936/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Decision & Reasons Promulgated
Centre
On 6 June 2019** **On 26 June 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**T O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Profumo instructed by Migrant Legal Project (Cardiff)

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

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 25 October 1992. He arrived in the United Kingdom on 29 January 2018 and claimed asylum.
3. On 26 July 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a determination sent on 7 February 2019, the First-tier Tribunal (Judge Lever) dismissed the appellant's appeal on all grounds.
5. First, the judge made an adverse credibility finding and rejected the appellant's account that he was at risk on return to Iraq as a result of an incident in 4 November 2017 when he worked in a hotel in Kirkuk when he had unwittingly assisted three men who were members of ISIS by providing transport to bring them to the hotel. They were subsequently arrested by the police and he feared ISIS who believed he had informed on them and he also feared the government because he would be associated with ISIS.
6. Secondly, the judge accepted that the appellant was a Kurd from Kirkuk. He also accepted that the appellant, on return to Kirkuk, would be exposed to a risk of indiscriminate violence contrary to Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC).
7. Thirdly, however, the judge found that the appellant could safely and reasonably internally relocate either to Baghdad or to the IKR.

The Appeal to the Upper Tribunal

8. The appellant appealed to the Upper Tribunal on a number of grounds.
9. First, in ground 3, the appellant contended that the judge had erred in law in reaching his adverse credibility finding in respect of the appellant's asylum claim.
10. Secondly, in grounds 1 and 2, the appellant contended that the judge had failed to apply the relevant country guidance cases in reaching his adverse findings in respect of internal relocation, namely:
 - (1) BA (Returns to Baghdad) Iraq CG [2017] UKUT 0018 (IAC) - in relation to return to Baghdad; and
 - (2) AA (Art 15(c)) Iraq CG [2015] UKUT 544 (and [2017] EWCA Civ 994) and AAH (Iraqi Kurds - Internal Relocation) Iraq CG [2018] UKUT 00212 (IAC) - in relation to relocation to the IKR and whether the appellant would have a CSID on return.

11. Finally, in ground 4, the appellant contended that the judge had failed properly to consider the medical evidence concerning his mental health in assessing his circumstances in Baghdad or the IKR.
12. On 13 March 2019, the First-tier Tribunal (Judge O'Garro) granted the appellant permission to appeal.
13. The respondent did not file a rule 24 response.

Discussion

14. At the hearing, I heard detailed submissions from Ms Profumo who represented the appellant. Having heard her submissions, Mr Howells who represented the Secretary of State accepted that the judge had erred in law in reaching his adverse findings in respect of internal relocation to Baghdad and the IKR. He accepted that in para 26 - 28, the judge had failed to have proper regard to the CG decisions in BA, AA and AAH in assessing the appellant's circumstances if he relocated to either Baghdad or the IKR.
15. Mr Howells accepted that, as a consequence, the judge's decision in relation to Art 15(c) should be set aside and remade. He accepted that none of the judge's findings in relation to the appellant's circumstances on return to Iraq, including the judge's finding that he would have, or be able to obtain shortly after return to Iraq, a CSID should stand. Mr Howells accepted that, in remaking the decision, new findings should be made, in accordance with the CG decisions, in relation to what, if any, documentation the appellant would have on return.
16. In the light of that, I do not need to deal further with grounds 1, 2 and 4. It is accepted that the judge materially erred in law in dismissing the appellant's humanitarian protection claim on the basis that, although an Art15 (c) risk existed in Kirkuk, he could safely and reasonably internally relocate either to Baghdad or the IKR.
17. To that extent, therefore, the decision must be remade.
18. There remains, however, ground 3 which challenges the judge's adverse credibility finding in relation to the appellant's asylum claim.
19. The judge's reasoning in relation to this is set out at paras 15 - 21 and 24 as follows:
 - "15. I have carefully considered all the evidence in this case. The Respondent accepted the Appellant was from Iraq, there appears no dispute that he is Kurdish. The Respondent did not accept the Appellant was from Kirkuk because although he had some knowledge of that city there was a few inconsistencies, notably regarding the location of the hotel where the Appellant claimed to work. The Respondent noted that hotel appeared to be based in another city although did not specifically assert the Appellant was from that area. Having looked at all of the evidence available

including the prospect there is a hotel of the name given by the Appellant in Kirkuk I find applying the lower standard of proof that for these purposes the Appellant is from Kirkuk.

16. The Appellant's fear is based upon a fear of both ISIS and the government arising essentially out of one incident. He claimed that the hotel manager had asked him to provide transport to bring three men to the hotel. It transpired those three men were members of ISIS. ISIS wanted the Appellant because they believed he had told the authorities about them, and the authorities wanted him because they believed he had helped members of ISIS.
17. On the Appellant's account he had worked in a hotel in Kirkuk for one and a half to two years. His jobs including manning the front desk and checking in guests, acting as a porter and on a regular basis collecting guests from the airport or other locations and delivering them to the hotel. He had also claimed in interview to have been a cleaner. The Appellant claims that he speaks a little Arabic. I find that the Appellant would have a reasonably good grasp of conversational Arabic in order to fulfil the various jobs he is required to do on his account and had done for that period of time.
18. His claim, based upon this single incident on 4th November 2017 is not in my view credible. The manager of the hotel had instructed the Appellant to collect the three men and bring them to the hotel. They were unknown to the Appellant as no doubt he was unknown to them. The Appellant had no knowledge they were alleged members of ISIS and he had no connections with that group. If, as he claims, they were arrested by the authorities at the hotel as suspected or known members of ISIS that suggests some advanced intelligence known to the authorities. Logically the person the authorities may have had most interest in was the manager of the hotel.
19. The Appellant claims, and it is a coincidence that following the end of his work that day he went to his uncle's/aunt's home rather than his own house. He further claims, again coincidentally that a great friend Assad telephoned him from the hotel where they both worked to advise the Appellant that the police wanted the Appellant because they had arrested the men, discovered they were members of ISIS and were carrying money in their luggage. It would appear to follow that all of these discoveries were made after the Appellant had left the hotel. I do not accept as credible that even if such event occurred it would be in circumstances where the friend Assad would be privy to that level of information. I do not accept that the discovery and search of those individuals would have been done in the presence of Assad as claimed (question 27). Further, if the police were so keen to interview the Appellant they do not appear to have questioned Assad as to the Appellant's whereabouts or indeed spoken to the hotel manager. It could hardly be said the Appellant was in hiding by being at his aunt's/uncle's home. Indeed, at question 37 he refers to the police going firstly to that house before going to his family home. Although he claims to have obtained the information from his

uncle who was apparently present when the police came to the house the Appellant does not suggest with any clarity that the police actually wanted to arrest him. He referred on a number of occasions to the CCTV showing him bringing the men to the hotel. Even assuming the existence of CCTV in working order it would do no more than show the Appellant doing a task as part of his employment for which he was directed by the manager.

20. The Appellant claims to have left Iraq the day after the event (i.e. 5th November) with sufficient monies and planning in place that allowed him to be taken by a smuggler, and potentially his uncle, from Iraq through to Turkey and then ultimately to the UK. That in my view is not consistent with a sudden departure. I find the event on the 4th November to be an invention of the Appellant. Even if there was an element of truth it still does not begin to explain how either the police would necessarily associate him with ISIS and it certainly does not explain how ISIS would even have any knowledge of the Appellant.
21. It should also be noted that in November 2017 ISIS were no longer the threat they may have been a few years earlier. As an occupying force with control they have largely disappeared and reverted more to a classic terrorist group. Indeed, the Appellant's own evidence of ISIS in [2016] when he claimed they took over the hotel, disclosed that the authorities were able to take back control of the hotel and free all hostages.

....

24. I further make an adverse credibility finding from the fact that the Appellant clearly passed through safe countries before arriving in the UK, was fingerprinted in at least one of those countries and spent one month in France but failed to claim asylum. I make an adverse credibility finding in respect of that matter under Section 8. The failure of the individual to claim asylum in a safe country such as France for a protracted period is in my view cogent evidence that individual is an economic migrant."

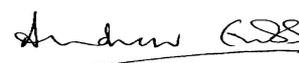
20. The grounds, upon which Ms Profumo relied, raised a single point in relation to the judge's reasoning. It related to the final sentence in para 18 where the judge said: "logically the person the authorities may have had most interest in was the manager of the hotel."
21. Ms Profumo submitted that there was no basis for this final sentence. It was an assumption based upon no evidence or authority. It amounted to speculation about a material fact.
22. Mr Howells submitted that the judge gave a number of reasons, particularly in para 19 of his determination, why he did not accept the appellant's account. None of these reasons were challenged in the grounds. He submitted that it was properly open to the judge to state, as a matter of common sense, that the authorities were likely to be most interested in the manager of the hotel. The judge had not materially erred in reaching his adverse credibility finding.

23. I accept Mr Howell's submissions. The judge gave a number of reasons, now unchallenged, why he did not accept the appellant's account. It was, in my judgment, open to the judge to state as a matter of common sense that when the authorities came to the hotel it was most likely that, as the incident involved the hotel, that the authorities would be most interested in the individual in charge, namely the manager of the hotel. But, in truth, this comment even if not properly open to the judge, did not materially affect his adverse credibility finding and his rejection of the appellant's evidence that the incident on 4 November 2017 occurred. The judge's reasoning, in particular at paras 19, 20, 21 and 24 were, in my judgment, more than an ample basis to legally sustain his adverse credibility finding.
24. Consequently, I reject ground 3. The judge did not materially err in law in reaching his adverse findings in relation to the appellant's asylum claim and in dismissing the appeal on that ground.

Decision

25. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
26. Having heard the representatives' submissions, the proper disposal of this appeal is to remit it to the First-tier Tribunal in order to remake the decision in respect of the appellant's humanitarian protection claim under Art 15(c) of the Qualification Directive.
27. In remaking the decision, the judge's finding that the appellant is a Kurd from Kirkuk shall stand. Likewise, his finding, based upon the respondent's position before him, that there is an Art 15(c) risk in Kirkuk shall also stand subject to any future CG decision relevant to that issue. None of the judge's finding in paras 25 - 29 relating to the internal relocation issue are preserved.
28. The judge's decision to dismiss the appellant's appeal on asylum grounds stands.
29. The appeal is, accordingly, remitted to the First-tier Tribunal to be heard by a judge other than Judge Lever.

Signed



A Grubb
Judge of the Upper Tribunal

24 June 2019