



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13685/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22 May 2019

Decision & Reasons Promulgated
On 3 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

QARAMAN [Q]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms S Cunha, Home Office Presenting Officer

For the Respondent: Ms G Brown of Counsel instructed by Sutovic & Hartigan

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Aziz promulgated on 21 February 2019 in which the appeal of Mr Qaraman [Q] against the decision of the Secretary of State for the Home Department dated 22 November 2018 was allowed on protection grounds.
2. Although before me the Secretary of State for the Home Department is the appellant and Mr [Q] is the respondent, for the sake of consistency with the proceedings before

the First-tier Tribunal I shall refer to the Secretary of State as the Respondent and Mr [Q] as the Appellant.

3. The Appellant is a citizen of Iraq whose date of birth is given as 1 January 1983. He arrived in the United Kingdom on 14 October 2008 and claimed asylum. His application was refused and a subsequent appeal dismissed by Immigration Judge Ford in a decision given on 16 November 2009 (ref. AA/11780/2009). Thereafter the Appellant made a series of further representations to the Secretary of State in respect of his protection claim. The most recent set of further submissions were made in December 2014. The rejection of those submissions led to judicial review proceedings which were settled on the basis that the Respondent would give further consideration to the Appellant's position. Supplementary submissions were presented to the Respondent by way of letter dated 20 September 2018.
4. The Respondent refused the representations by way of a 'reasons for refusal' letter ('RFRL') dated 22 November 2018, although it was acknowledged that the Appellant's representations amounted to a 'fresh claim' for asylum and accordingly the refusal attracted a right of appeal.
5. The Appellant appealed to the IAC.
6. The appeal was allowed on humanitarian protection grounds for the reasons set out in the decision of Judge Aziz, with particular reference to Article 15(c) of Council Directive 2004/83/EC - 'the Qualification Directive'.
7. The Respondent sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Pedro on 29 March 2019.
8. A substantial part of the grounds in support of the application for permission to appeal focused upon the First-tier Tribunal Judge's decision not to depart from 'country guidance' cases notwithstanding a submission made by the Respondent's Presenting Officer that departure was justified pursuant to particular passages in a Country Policy Information Note and observations made in judicial review proceedings in a case called **Amin [2017] EWHC 2417**.
9. However, before me Ms Cunha does not seek to pursue that line of challenge. Materials have been placed before me to indicate that the decision in **Amin** was itself subject to appeal, and the appeal settled before the Court of Appeal by way of consent.
10. Ms Cunha also helpfully and appropriately indicated that there were other aspects of the grounds of appeal upon which she did not seek to rely. In particular, it had been pleaded that the Judge had failed to identify a 'Refugee Convention reason' for risk, but in circumstances where the case essentially turned on the issue of humanitarian protection - and in particular generalised risk - it was not a requirement to identify a specific 'Convention reason'.

11. The First-tier Tribunal Judge in a decision which, in my judgement, has an attractive and coherent flow, made primary findings of fact in respect of the Appellant's circumstances, first by reference to the findings of Judge Ford from the previous appeal (see decision of Judge Aziz at paragraph 69), and thereafter by reference to the particular evidence that was before Judge Aziz. Those further findings are summarised at paragraph 74 in the following terms:

"Having heard from both the appellant and his brother, I make the following additional findings in respect of the evidence heard at this appeal hearing:

- (i) The appellant's mother and sister continue to live in the family home of his paternal uncle in Kirkuk. They live at the property with his paternal uncle's wife and two children.*
- (ii) The appellant has no other family members in Iraq with whom he (or his brother) are in contact with.*
- (iii) The appellant's mother and sister are supported by the appellant's brother from the United Kingdom. The appellant's maternal uncle's wife and her children are supported by members of her family.*
- (iv) The appellant's mother and sister largely remain indoors due to the security situation in their area.*
- (v) The appellant's brother visited Iraq last year. He travelled to Sulaymaniya with his British national wife. He arranged for his mother and sister to come and see them. They travelled by taxi and were taken by a taxi driver known to the family. The reasons why the appellant's brother did not travel directly to Kirkuk was because he was still in fear of members of the Jaff tribe. However, I also accept that one of the other reasons why he did not go back to Kirkuk was because of the security situation there and in particular, the ethnic conflict between Sunnis and Shi'ites."*

12. I pause to note that the references at 74(i) to a *paternal* uncle appear to be in error. The Appellant's mother and sister had moved in with the Appellant's *maternal* uncle, that is to say the brother of the Appellant's mother, in 2003. The evidence before the First-tier Tribunal indicated that the uncle had died in 2010 but that the Appellant's mother and sister continued to live in the household of the uncle's family - i.e. the Appellant's maternal uncle's wife and her children as referenced at 74(iii).
13. Having made those findings, the Judge went on to consider the submission made by the Respondent's Presenting Officer to depart from the country guidance (paragraphs 76-83). As I have already indicated, that is no longer a live issue before me, and accordingly it is not presently disputed that the Judge appropriately followed the established country guidance cases referred to in the body of his Decision.
14. Pursuant to the 'country guidance', the Judge made the first critical finding in respect of the appeal at paragraph 84. At paragraph 83, with reference to **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**, the Judge noted the 'starting point' for assessing

the issue of humanitarian protection, and then concluded at paragraph 84 that the areas in which the Appellant was born and his family lived were contested areas identified in AA as being areas where there was a risk of Article 15(c) harm.

15. The Judge then noted the Respondent's alternative submission - that if there was an Article 15(c) risk in the Appellant's home area, internal relocation to the IKR was viable (paragraph 85). In this regard the Judge gave consideration to the question of possession of a CSID document. The Judge accepted that the Appellant did not have a CSID, and found that he would face a difficulty in obtaining one because both his place of birth and the place of his family's residence since 2003 were in contested areas where there was an Article 15(c) risk (paragraph 86). The Judge considered the discussions in the various country guidance cases in respect of the availability of a central archive in Baghdad, but it was noted in this regard that the precise operation of the national status court in Baghdad was unclear (paragraph 88). This led the Judge to the following conclusion:

"The appellant will therefore find himself in a position where he is an undocumented IDP of Kurdish background in Baghdad and is unable to obtain a CSID in his home area because it is in a contested region." (paragraph 89)

16. The Judge noted the competing submissions that arose from such circumstances with regard to the extent to which the Appellant might be able to obtain assistance from family in Iraq. The discussion in the Decision goes on to consider potential assistance, both in the context of obtaining a CSID and more generally in the context of the reasonableness or otherwise of Baghdad as a place of internal relocation. I note that the Respondent's representative is recorded as having made the submission that once the Appellant obtained a CSID card he would be able to relocate to the IKR (see paragraph 90).
17. The Judge - again with careful and seemingly full reference and recital of pertinent passages from 'country guidance' - noted that the acquisition of a CSID in the particular circumstances of the Appellant, where he could not readily go to his home area, was essentially premised on the availability of a male family member willing to attend the civil registry with the Appellant. Necessarily in circumstances where the Judge had found that the only family members still in Iraq were the Appellant's mother and sister it was concluded that there would not be any such male family member available (paragraph 93). Consequentially the Judge concluded *"Internal relocation to the IKR is not a viable option"* (paragraph 93).
18. In the sequential analysis of the Decision this then meant that the only remaining question was that of internal relocation to Baghdad. The Judge addressed this at paragraph 94:

"The appellant will be an undocumented Kurd in Baghdad. A city with which he has no family, no connections and no support system. I find that there is a real risk of destitution, amounting to serious harm. The country guidance case-law is clear that a CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical

treatment. If an appellant shows that there are no family or other members likely to be able to provide means of support (as is the case here), he is likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to the appellant by the Secretary of State or her agents to assist the appellant's return have been exhausted, it is reasonably likely that the appellant will still have no CSID."

(I pause to note that the form of paragraph 94 closely follows and replicates the considerations set out at paragraph 9 of the country guidance annexed to the case of **AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944.**)

19. Accordingly the Judge concluded that internal relocation was not a viable option in the particular circumstances of the case, and the Appellant's protection appeal succeeded.
20. Paragraph 2 of the Respondent's grounds of appeal plead that the Judge wrongly conflated his assessment of risk of destitution with that of serious harm - "*there is a real risk of destitution, amounting to serious harm*" (paragraph 94). It was suggested in the course of submissions that this was to confuse the Article 15(c) 'serious harm' with the notion of destitution.
22. In abstract principle there is merit in such a submission: the concept of 'serious harm' under Article 15(c), which requires a risk from indiscriminate violence, is not to be equated with destitution. However, it seems to me that that is not the meaning at paragraph 94 - which in any event is a direct adaptation of the words in the country guidance appended to the Court of Appeal decision in **AA**. The Judge was considering internal relocation to Baghdad, the Article 15(c) risk of 'serious harm' arising elsewhere. In the context of internal relocation it was not necessary for the Appellant to establish that he would be at risk of 'serious harm' within the meaning of Article 15(c) in the place of internal relocation. It seems to me that the country guidance adopted by the Judge means no more than that destitution can cause serious harm in the normal meaning of such a phrase - and not with reference to any 'specialised' defined meaning under Article 15. To that extent I am not persuaded that any potential conflation of destitution and Article 15(c) risk is either made out on the particular facts of this case, or in any event would be material to an overall consideration of the issues and decision in the appeal.
23. Paragraphs 12 and 13 of the grounds of appeal - I have leapt to those paragraphs bearing in mind the various concessions that have been made by the Respondent in respect of the grounds of appeal - seek to argue that the Judge was in error in consideration of the country guidance cases with regard to obtaining a CSID.
24. However, it seems to me that nothing is readily identifiable as indicative of a departure from the principles of the country guidance. Indeed, in fairness to Ms Cunha, the point was not amplified in any particular detail before me. Rather, the focus of the Respondent's submissions was the extent to which the First-tier Tribunal

Judge had adequately factored in to the evaluation of Baghdad as a place of internal relocation the potential support that might be available from family members.

25. The family members who were potential providers of support consisted of no more than the Appellant's mother and sister resident in Kirkuk and the Appellant's brother - who had been granted refugee status in the United Kingdom and was now living in the United Kingdom married to a British citizen.
26. It seems to me clear enough from the wording of paragraph 94 (quoted above), and in particular the words in parenthesis - "*as is the case here*" - that the First-tier Tribunal Judge concluded that any meaningful support was not available to the Appellant from his family members. Accordingly the real issue becomes the adequacy of that finding, both in substance and reasoning.
27. So far as the Appellant's mother and sister are concerned, I recall what was said at paragraph 74(iv) by way of a primary finding of fact: although there was evidence considered and discussed before the First-tier Tribunal of a single trip having been made to the relatively proximate town of Sulaymaniya at the time of the Appellant's brother's visit to Iraq, it was found that they "*largely remain indoors due to the security situation in their area*". The Respondent's Presenting Officer made a submission that a similar journey might be undertaken to Baghdad by the Appellant's female relatives (paragraph 90). The submission was made in particular in the context of assisting the Appellant to obtain a CSID card - although necessarily on the basis of the Judge's findings the presence of female relatives was not considered to be likely to assist in this regard irrespective of whether the journey could reasonably and safely be made. Given the primary finding of fact at paragraph 74(iv), it seems to me readily understandable why the Judge concluded at paragraph 94 that in practical terms the Appellant would not be able to avail himself of the support of his mother and sister in Baghdad. They themselves were essentially dependent upon others for the provision of accommodation in that they were living in the household of the Appellant's deceased uncle, and were also reliant to some extent on financial support from the Appellant's brother. In those circumstances it seems to me that the judge has indicated adequately the conclusion that he reached in this regard, and the reasons for such a conclusion.
28. It is to be acknowledged that paragraph 94 contains no express reference to any potential 'means of support' that might be provided by the Appellant's brother. However, my attention has been directed to elements of the materials that were before the First-tier Tribunal, in particular the witness statements of the Appellant and his brother. In his own witness statement, dated 24 January 2019, the Appellant referred to having been supported in the United Kingdom primarily through the system of Asylum Support, although there had been occasions where he had been supported by his brother. In this regard I note that the ordinary practice would have been that upon the Appellant becoming 'appeal rights exhausted' in or about late 2009, any support that he had been receiving through Asylum Support would have ceased; thereafter he would only likely have been able to access further support on

the basis of being destitute and by reason of having outstanding further submissions and/or in due course a further appeal. In his witness statement the Appellant relates that he lived with his brother for a time:

"[He let] me stay with him in the living room and eat the food he cooked. He gave me a little bit of money if I needed it, for instance to travel. In fact he was not able to support me at various times which is why I had to get NASS again. He does not have enough money to support me to live in Iraq. He has enough for his life and to send my mother some". (paragraph 25)

29. The Appellant's brother's witness statement, also dated 24 January 2019, touched on this matter at paragraph 15:

"If Qaraman was sent back I would not be able to support him out there. I do not earn a lot of money. I am married and have to support my wife as she is not working. I would try and do what I could but I do not have a lot of money".

30. Further to this, the Judge recorded in the Decision the Appellant's brother's oral testimony with regard to the support that he extended to his mother and sister in these terms:

"The amount of money which he sends to his mother and sister depends on their needs. Last year he sent money on two-three separate occasions. On each occasion he sent around £200-£300." (paragraph 46)

31. It is to be acknowledged that that passage does not in terms make any reference to the brother's ability to send money, it being said that he sends such monies according to the needs of the recipients rather than his ability so to do. Also, as I already indicated there are no express findings in this regard, and nor are the brother's possible means expressly referenced at paragraph 94, or otherwise in the context of the matters considered at paragraph 94.
32. However, again I remind myself that the Judge states a clear conclusion that "*the case here*" is that the Appellant has shown "*there are no family or other members likely to be able to provide means of support*". It seems to me unlikely that in what is otherwise a thorough, detailed, and well-structured Decision, the Judge overlooked the substance of the matters that were put before him during the course of the evidence.
33. In any event, and more pertinently, the real issue in respect of the viability of Baghdad as a location of return was a combination of the facts that the Appellant was an ethnic Kurd and that he would not be able to obtain a CSID. The importance of the CSID in establishing oneself in Baghdad, or indeed anywhere else in Iraq, was reiterated not only in the country guidance but in the Decision's paragraph 94 – including particular reference to its significance in accessing financial assistance, employment, housing and medical treatment. On that basis I am not persuaded that the lack of any more detailed analysis or findings in respect of the brother's means is such as to render the analysis at paragraph 94, or indeed the analysis more generally in the appeal, materially deficient. I am satisfied that the Judge reached a sustainable conclusion in respect of internal relocation to Baghdad without material error of law.

Notice of Decision

34. The decision of the First-tier Tribunal contained no material error of law and stands.
35. The Appellant's appeal remains allowed.
36. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **31 May 2019**

Deputy Upper Tribunal Judge I A Lewis