



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07999/2019

**THE IMMIGRATION ACTS**

Heard remotely via video (Skype for Business)  
On 4 January 2021

Decision & Reasons Promulgated  
On 14 January 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

IB  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L Brakaj, Counsel, instructed by Iris Law Firm  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS (P)**

1. This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. This is a remade decision following the identification of material legal errors in the decision of Judge of the First-tier Tribunal Cope, promulgated on 11 December 2019, dismissed the appellant's appeal against the respondent's decision dated 7 August 2019 to refuse his protection and human rights claim and his claim for humanitarian protection. The 'error of law' decision was made without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

## **Background**

3. The appellant is a Kurdish national of Iraq who hails from Erbil in the Kurdish Region of Iraq (KRI). He is 51 years old and is married with four children.
4. I summarise the appellant's claim. He was a long-time member of the Patriotically Union of Kurdistan (PUK), a Kurdish political party, and had been employed by the Kurdish Regional Government (KRG) since 1993 within the autonomous Iraqi Kurdish Region (IKR). His duties included welcoming and looking after visitors at the Kurdistan Presidency of the Council of Ministers building and testing food and drink for the Prime Minister and Deputy Prime Minister. He was also secretly paid by the Zanyari, the PUK intelligence service, to gather information, particularly about the Kurdish Democratic Party (KDP - a rival Kurdish political party). In his statement dated 17 September 2019 (paragraph 7) the appellant stated that he had "a good relationship" with Dr Barham Salih, who had been the PUK Prime Minister of the KRG until 2012. In 2017 Dr Salih left the PUK to set up his own political movement. The appellant was asked by the Zanyari to spy on Dr Salih. He refused. He was subsequently threatened by the Zanyari and lost his job. Fearing for his safety from the Zanyari, the PUK, and the KDP (because it became aware that the appellant had spied on it), he eventually fled Iraq on 29 October 2018. Dr Salih became president of Iraq on 2 October 2018.

## **The decision of the First-tier Tribunal**

5. Although the respondent did not consider the appellant provided a credible account of events that caused him to leave Iraq, Judge Cope found the appellant's account credible. The judge accepted, on the lower standard of proof, the appellant's account as summarised above. In particular, Judge Cope accepted that the appellant had been asked to spy against Dr Salih but refused out of loyalty to Dr Salih and was consequently threatened by the Zanyari. Judge Cope found that the appellant held a genuine and well-founded fear of persecution from the PUK, KDP and the Zanyari if he were returned to the IKR. No issue has been raised with the sustainability of Judge Cope's primary factual findings in respect of the appellant's risk of persecution in the IKR. In accordance with paragraph 21 of the 'error of law' decision these factual findings have been ring-fenced.

6. Judge Cope then considered whether the internal flight alternative was reasonably available to the appellant in respect of Baghdad. The judge referred to **AA (Article 15(c) Iraq CG** [2015] UKUT 00544 (IAC) ("**AA-UT**"), as amended by the Court of Appeal decision in **AA (Iraq) v SSHD** [2017] EWCA Civ 944 ("**AA-CA**"), and **AAH (Iraqi Kurds - internal relocation) Iraq CG** [2018] UKUT 00212 (IAC) ("**AAH**"). The judge noted that the appellant had given his Iraqi Nationality Identity Card (INIC) to an immigration officer in the UK. The judge found that the appellant could use the INIC card to obtain a replacement passport or *laissez-passer* in order to travel to Baghdad, and that he would be able to support himself through employment or otherwise obtain social assistance through the use of his INIC card.
7. In considering whether it would be reasonable to expect the appellant to internally relocate to Baghdad Judge Cope accepted that the appellant did not have family in Baghdad and that he was from a minority community. Judge Cope also noted that the appellant spoke perfect Arabic and that he had an INIC card. Judge Cope found that "the most significant factor" when assessing the availability of internal relocation was that the appellant "had a very direct and personal link with Dr Salih who is now the president of Iraq" and that the appellant would have access to a high level of protection as he was "part of the inner circle of the current president of Iraq." Judge Cope found, based on the appellant's closeness to Dr Salih, that Dr Salih would be able to provide the appellant with protection and would assist him in terms of obtaining accommodation and financial support.

### **The 'error of law' decision**

8. In the 'error of law' decision I found that Judge Cope acted in a procedurally improper manner by failing to raise with the appellant his specific concerns in respect of the availability of internal relocation with particular reference to his belief that the appellant would be able to make personal contact with the president of Iraq and thereby obtain protection and assistance. On the particular facts of the case fairness required the appellant to be given an opportunity to engage with those concerns.
9. Whilst I accepted that Judge Cope may still have been entitled to reach the same conclusion even without consideration of any support that could be provided by Dr Salih, it was by no means certain that he would have done so. Although the appellant had access to his INIC card and could speak fluent Arabic, he had no family in Baghdad and was a member of a minority community. Nor was there any reference in the Judge's decision to issues concerning sponsorship in Baghdad or any assessment made in respect of the possibility that the appellant's previous involvement with an intelligence agency may still expose him to a real risk of serious harm even in Baghdad. A remote hearing was therefore listed to determine the issue of the availability of the internal flight alternative and directions issued to that effect.

## The hearing to remake the decision

10. The appellant did not provide any further documentary evidence. He relied on his statement dated 17 September 2019 and the bundle of documents served at the First-tier Tribunal hearing running to 342 pages. The respondent relied on the Country Policy and Information Note - 'Iraq: internal relocation, civil documentation and returns' (June 2020), version 11.0 ("the CPIN report"). Both parties cited and relied on **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)** ("SMO"). The appellant gave his oral evidence remotely via an interpreter. Although there were some initial difficulties with the interpreter's Internet access the majority of the interpretation was done using a telephone line. There were no issues raised by either party with the quality or the accuracy of the interpretation.
11. Having already adopted his September 2019 statement for the First-tier Tribunal hearing on 24 September 2019, the appellant was asked several questions in examination-in-chief. I summarise his oral evidence.
12. The appellant last spoke to Dr Salih in 2016 by telephone via Dr Salih's office secretary. The appellant had never held Dr Salih's personal telephone number. The appellant did not believe the 'office number' with which he previously contacted Dr Salih could now be used to contact him since Dr Salih was no longer in the IKR and in light of Dr Salih's current position as President of Iraq. So far as the appellant was concerned there was no way he could now contact Dr Salih. The appellant's family were still in Iran (the appellant and his family went to the Kurdish area of Iran in January 2018 and, other than a short return to Iraq in 2019, the appellant's family have remained in Iran ever since) and he had no contact with anyone who was capable of sponsoring him to live in Baghdad.
13. The appellant then underwent cross-examination, which I summarise. The appellant did not try to contact Dr Salih. The appellant did not know whether Dr Salih's previous office manager and secretary still held those positions. The appellant did not have an email address for Dr Salih, only a general office email address for when Dr Salih worked in the IKR. The appellant did not believe Dr Salih would be able to give him protection because he (Dr Salih) was a "powerless individual". The appellant described how militias were "running the show."
14. The appellant has a sister in Denmark and a cousin in Italy, but they were refugees and were having trouble supporting themselves. They would be unable to remit any funds to the appellant should he return to Baghdad. The appellant claimed he had a serious eye problem that prevented him from working. He also had children who could not speak Arabic and they would be in danger if they had to relocate to Baghdad as it was a dangerous place for children. In re-examination the appellant said he did not have an email address.

15. In his submissions Mr Whitwell adopted the Reasons for Refusal Letter and drew to my attention paragraph 204(d)(14)&(15) of **AA-UT** which contained useful guidance on the issue of internal relocation. The appellant would be able to work as he had an INIC and could speak Arabic and he would be able to benefit from a returns package providing him some financial assistance and potentially from his immediate family in Iran or his extended family in Europe. A 'support network' could include support from other Kurds. Mr Whitwell also invited me to consider the CPIU report at 2.5.13 (where the respondent accepts the position on internal relocation as set out in **SMO**) and 8.1.3 (indicating that there are no sponsorship requirements for entry into Baghdad, although persons from formerly ISIS-held or conflict-affected areas require two sponsors from the neighbourhood in which they intend to reside). **AA-UT**, at paragraphs 198 to 203, listed organisations that could assist the appellant. The appellant had not tried to contact Dr Salih and it was likely that the appellant would be able to obtain protection from the Iraqi state.
16. In her submissions Ms Brakaj drew my attention to paragraphs 415 and 416 of **SMO** and submitted that, in order for it to be reasonable for the appellant to relocate to Baghdad he had to have access to 'external support' and that no such 'external support was available to the appellant. Such support could not be offered by other Kurds and there remained a danger that, if the appellant approached other Kurds for support, his identity and location would become known to those he fears will persecute him in the IKR. The appellant reasonable believed he would be unable to get any protection or support from Dr Salih, and there was no reason for Dr Salih to offer the appellant and protection or support. Dr Salih's position had changed since the appellant knew him and the appellant now had no way to contact him. The appellant was never a close personal friend of Dr Salih and, given that Iraq was in turmoil, there was no indication that Dr Salih would be willing to assist the appellant, who was simply a former employee. The appellant ran a real risk of his location becoming known to the PUK or their security apparatus if he applied for a job as the only references that could be provided came from those organisations. The appellant had no experience of working in shops or manual labour.
17. I reserved my decision.

### **Assessment of internal relocation**

18. Rule 339O(i) of the immigration rules provides:
  - (i) The Secretary of State will not make:
    - (a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

19. There are two limbs to the assessment of internal relocation; the first is whether an applicant would have a well-founded fear of persecution or a real risk of suffering serious harm in the place of proposed relocation, the second is whether it would be reasonable for the person to relocate to that place – see **AS (Safety of Kabul) Afghanistan CG** [2020] UKUT 00130 (IAC), at [23]). As stated in **SSHD v SC** [2018] WLR 4004, [2017] EWCA Civ 2112 at [39]:

“The tribunal only reaches the [reasonableness] stage of the test if it is satisfied that the person would not be exposed to a real risk of serious harm.”

20. The ultimate question in respect of the 2<sup>nd</sup> limb is whether in such a case taking account of all relevant circumstances pertaining to the appellant and his country of origin, it is reasonable to expect the appellant to relocate or whether it would be unduly harsh to expect him to do so (**AH (Sudan) & Ors v SSHD** [2007] EWCA Civ 297; **Januzi and others v SSHD** [2006] 2 AC 426).
21. The test is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge) and it requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (**AH (Sudan)**, para. 13). One way of approaching the assessment is to ask whether in the safe haven the applicant can lead a relatively normal life without facing undue hardship in the context of the country concerned. This is a valuable way of approaching the reasonableness evaluation. It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. This does not however mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly harsh (this is the point emphasised by Lady Hale in **AH (Sudan)**).
22. In the specific context of Iraq, the most recent Country Guidance (**SMO**) provides the following guidance in respect of the viability of internal relocation

to Baghdad. I note that headnote 30 indicates that the decision replaces all existing country guidance on Iraq.

23. The respondent has only identified Baghdad as a place of possible relocation and no issue was raised with this approach by Mr Whitwell. Headnote (19) of **SMO** reads:

*19. Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq).*

24. Headnote (19) reflects the Tribunal's assessment at paragraphs 410 to 416. At paragraph 411 the Tribunal stated:

*"The safety in Baghdad City and the Baghdad Belts has improved immeasurably since the previous country guidance decisions were issued and we anticipate that it will often be submitted by the respondent that an individual who is at risk in another part of Iraq can relocate to the capital or its environs. Whether such relocation is safe is a fact-specific assessment; we do not consider there to be any general risk contravening the QD or the ECHR in this area. The presence of any of the enhanced risk factors at [313]-[315] above will necessarily be relevant when considering the specific risk to an individual in the capital, however. As we have stated above, the identification of those risk factors by the UNHCR and EASO serves to confirm the ongoing application of the country guidance in BA (Iraq)."*

25. Relevant 'enhanced risk factors at paragraphs 313 to 315 (in respect of humanitarian protection, but equally applicable in respect of internal relocation) include members of an ethnic group who are in a minority in the area, and women and children without genuine family support.
26. Ms Bracaj did not suggest there that the appellant, who does not hail from a previously ISIL held area or a conflict-ridden area, and who holds an INIC card, would not feasibly be able to meet any sponsorship requirements for settlement in Baghdad. She did submit however that the appellant, who is not a Sunni or Shia Arab, and who would ultimately wish to be reunited with his wife and four children, would need 'external support' in order for Baghdad to be a reasonable internal relocation option. This submission finds support in paragraph 416 of **SMO**. This states, in material part:

“In respect of those who are not Arab Shi'ite and Arab Sunni single able-bodied men or married couples of working age without children and without identified specific vulnerabilities, the respondent did not positively assert that relocation to Baghdad would be reasonable in the absence of external support there. In the absence of any such submission, we endorse the appellants' submission, drawing as it does on the expertise of the UNHCR. It will remain necessary in any case to consider an individual's ability to relocate to Baghdad holistically, even where they fall into this category or where they have viable support in the capital.”

27. The appellant is a 51 year old man who speaks both Kurdish and Arabic and who has, or is able to obtain, an INIC (it was not suggested by Ms Bracaj that the appellant would face any documentation problems). He claimed at the hearing that he was unable to work because of problems with his eyes but this was not supported by any medical evidence, a point accepted by Ms Bracaj. The appellant's bundle does contain a letter, dated 27 June 2019, from a Consultant with the Newcastle Eye Centre, indicating that the appellant had vitreoretinal and cataract surgery on his left eye and that the right intraocular pressure was elevated, but it does not suggest that the appellant's eye condition prevented him from working or would do so in the future. I note that the appellant also suffers from diabetes for which he receives medication. The limited medical evidence before me does not support the appellant's claim that he is incapable of working.
28. The appellant is however Kurdish, as is his family who are currently residing illegally in Iran, and it was not disputed that Kurds constitute a minority in Baghdad. Both **AAH** and **SMO** refer to the 'collectivist' nature of Iraqi society, and **SMO** gives guidance that someone who is not an Arab Sunni or Shia is likely to require external support to live in Baghdad, i.e. a support network of members of their family, extended family, or tribe. The appellant has consistently maintained that he has no family in Baghdad and this particular assertion was not disputed by Mr Whitwell. Mr Whitwell suggested that the appellant could access external support from his family in Iran, but the evidence before me indicates the appellant's wife and children are residing there illegally and there was no suggestion that the appellant's wife was working or otherwise capable of providing financial support to the appellant. The appellant stated that his sibling and cousin in Europe were refugees and struggling themselves and were incapable of supporting him. This assertion is plausible and not inconsistent with the totality of the evidence before me. I accept the appellant's claim, applying the lower standard of proof, that he could garner no financial or other practical support from his extended family in Europe.
29. Mr Whitwell contends that the appellant could approach other Kurds in Baghdad who could provide external support. There is however very limited evidence in the background materials on the size and status of the Kurdish population of Baghdad, and there is little if any evidence suggesting that simply being a Kurd is in any way akin to being a member of the same 'tribe' when considered in the context of a support network capable of providing



external support. This submission is not supported by the relevant CG decisions. The option of approaching other Kurds, either for financial or accommodation support or for the purposes of employment, also raises a concern based on the acceptance that this appellant holds a well-founded fear of persecution from the PUK, its security apparatus, and the KDP. Given the collectivist nature of Iraqi society, there must remain a risk, at least on the lower standard of proof, that members of the Kurdish population of Baghdad may inform the PUK or the KDP of any approach made by the appellant, which may lead to the appellant's location becoming known to his persecutors. This is likely to reasonably inhibit the appellant from making any approach to the Kurdish community.

30. Drawing these threads together, whilst I acknowledge that the appellant speaks Arabic and that he has an INIC card, he would be returned to Baghdad, a city in which he has never lived and in which he has no friends or family or other network of support, and in which he would be a member of a minority group. Even taking account of the funds available from the Voluntary Return Scheme, which may enable the appellant to survive for a few weeks, in the absence of any meaningful network of support, and bearing in mind the natural desire to be joined by his wife and four children, I am not persuaded that his ability to speak Arabic and his documentation would, of themselves, render his relocation to Baghdad reasonable in light of the most recent CG decision.
31. The issue remains whether the appellant could rely on Dr Salih for both security and other assistance. I find it surprising that the appellant has not made any attempt to contact Dr Salih, either by writing to him or by seeking to contact him by telephone or through email. I note however that the appellant does not have Dr Salih's personal phone number or email address (a claim that was not expressly challenged by Mr Whitwell and which is inherently plausible) and that Dr Salih's position is now significantly different from that when the appellant knew him. I accept Ms Bracaj's submissions, supported as they are by the appellant's answers in his interviews and in his statements and oral evidence, that he is not a close personal friend of Dr Salih or part of Dr Salih's 'inner circle' as described by Judge Cope. I find credible the appellant's claim that he does not believe Dr Salih would be willing to provide assistance to a former employee who he has not seen in several years. I additionally find credible the appellant's claim that he does not have any direct contact details for Dr Salih and his belief that, given Dr Salih's current position, he is unlikely to personally assist the appellant. Applying the lower standard of proof, I am satisfied that the appellant is unlikely to be able to make any meaningful contact with Dr Salih such that Dr Salih would be in a position to offer support or assistance to him. I consequently find, applying the test set out in **Januzzi** and affirmed in **AH (Sudan)**, that it would be unreasonable or unduly harsh to expect the appellant to relocate to Baghdad.

**Notice of Decision**

**The protection appeal is allowed**

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

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

*D. Blum*

6 January 2021

Signed

Date

Upper Tribunal Judge Blum