



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003352

First-tier Tribunal No: PA/50929/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th of November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SAM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by Hallmark Legal Solicitors.

For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 17 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Atkinson ('the Judge') promulgated on 22 May 2023, in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant sought permission to appeal asserting the Judge had made a misdirection in law by giving weight to immaterial considerations: relocation to Baghdad. Relevant parts of the grounds drafted by Mr Greer, dated 3 June 2023, read:

5. At [45] and at [53], the FTT finds that the Appellant would be at risk of harm in his Home Area. At [51], the FTT finds that the Jaff Tribe, of which the Appellant's persecutors are a part, can exercise direct governmental or quasi-governmental control preventing internal relocation within the IKR. At [55], the FTT finds that the Appellant cannot relocate within the IKR (in which Erbil is located).
 6. In the present case, the only place of relocation that the Respondent proposed that the Appellant relocate within Iraq is Erbil in the IKR (RFRL, Paragraph 84 - 85, FTT Bundle. Page 366).
 7. Applying the principle in MB and SC (Jamaica), the Appellant's appeal should have succeeded; he could not relocate to the one place that the Respondent said that he could relocate. This being the only remaining issue to be determined, the Appellant's appeal should have succeeded.
 8. It was therefore wrong in law for the Tribunal to find, as it did at [58] - [59], that the Appellant could relocate to Baghdad, this matter not being in dispute between the parties.
3. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
2. The grounds assert that the Judge erred in finding the Appellant could internally relocate to Baghdad when the Respondent had proposed only internal relocation to Erbil, where the Judge found the Appellant would be at risk.
 3. The decision does not say whether the Respondent raised the possibility of internal relocation to anywhere other than Erbil. If what the Appellant alleges in the grounds did indeed happen it is an arguable material error of law. It will be for the parties to explain to the Upper Tribunal what was in fact argued before the FTT in relation to internal relocation.
4. In a Rule 24 response dated 28 July 2023 the Secretary of States representative writes:
2. The Respondent does not accept that First-tier Tribunal Judge Atkinson has materially erred in law in the decision and reasons promulgated on 17 th May 2023, and therefore the Respondent resists the Appellants challenge to this appeal.
- Ground 5, 6 and 7
3. It is asserted the Judge erred by stating the Appellant cannot relocate within the IKR at para [55] of the determination despite the Respondent stating he could. The Respondent finds no error here as it is clear para [55] of the determination is a 'slip of the pen'. The Tribunal's attention is drawn to para [54] where it is clear the Judge finds the Appellant can relocate anywhere in IKR except his home area and provides reasons. It therefore follows the Judges' intension at para [55] was to state a finding internal relocation within IKR other than the Appellants home area is open to him.
- Ground 8
4. The Respondent accepts the Judge erred in finding it not unreasonable or unduly harsh for the Appellant to return to Baghdad as this was not raised by either party, either in the SSHD's refusal dated 12.2.21 or the ASA dated 6.9.21. The Respondent however finds this finding immaterial as the Judge had already found on internal relocation at paragraphs [52] to [55] of the determination.
 5. The Respondent asks that the First-Tier decision is upheld.
5. As a result of the Secretary of State's assertion of a typographical error made by the Judge the matter was referred to him for clarification. In an email sent on 15 November 2023, the Judge wrote:

I am responding to your request below about clarification of the wording in paragraph 55 of my determination

Regrettably, the word not is a typographical error.

I will take steps to correct the determination under the slip rule and re-promulgate.

6. By notice dated 16 November 2023 the Judge confirmed the correction to [55] by removing the word “not” so that sentence now reads “*I therefore find that the appellant does have a viable internal relocation option within the IKR*”.
7. By email dated 16 November 2023 sent at 10:26 the parties were advised of the content of the Judge’s email of 15 November 2023.

Discussion and analysis

8. The Judge found a real risk to the appellant in his home area which is not challenged by the respondent.
9. The Judge went on to consider internal relocation which gave rise to two issues, firstly whether the appellant could relocate within the IKR as an Iraqi Kurds, or, if not, to anywhere else within Iraq.
10. Guidance on the approach to be taken when considering internal relocation was provided in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) in which the Tribunal held that there is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings. It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there.
11. It was accepted by the Secretary of State that there was no suggestion the appellant could reasonably relocate to Baghdad in the refusal letter and that the Judge’s approach to considering this issue is infected by legal error as conceded in the Rule 24 response and before me.
12. The question therefore is whether the Judge found the appellant could internally relocate within the IKR or not. It was accepted that was the only issue at large before the Upper Tribunal.
13. Ms Patel referred to [52 - 55] and [61] of the Judges decision in which it is written:
 52. I turn next to my assessment of the viability of internal relocation within the IKR in the context of my summary of the background circumstances as described above.
 53. I find that if the appellant were to return to his home area, it is reasonably likely that his presence would become known to the family of Kozhir Farigh Adbullathe and thereby face a real risk of serious harm at their hands and also at the hands of the perpetrators of the killing of Kozhir Farigh Adbullathe. If the appellant were to move elsewhere within the IKR it is reasonably likely that his presence there would ultimately come to the attention of the family of Kozhir Farigh Adbullathe because of the pervasive distribution of the Jaff tribe. As a result, the appellant would face a real risk of serious harm.
 54. I do not find it reasonably likely that the appellant’s presence elsewhere in the IKR would come to the attention of the perpetrators of the killing of Kozhir Farigh Adbullathe because, on the appellant’s own account, he knows very little about them. I find the evidence before me does not show that they have a standing,

connections or influence outside the appellant's home area such that they would be aware of his presence and take steps to harm him.

55. I therefore find that the appellant does not have a viable internal relocation option within the IKR.

....

61. I find that the appellant has discharged the burden of proof of having a well-founded fear of being at risk of serious harm from members of the Jaff tribe but that he has a viable internal relocation option, albeit not within the IKR.

14. It was submitted on the appellant's behalf that the Rule 24 response did not take full account of the Judge's actual findings in the above paragraphs. It was submitted the Judge finds that if the appellant were to return to his home area his presence would become known to two separate factions and that if he moved elsewhere in the IKR it was likely his presence would ultimately come to the attention of one of those factions.
15. At [54] the Judge finds that relocation within the IKR to other than his home area would not bring him to the attention of one the other faction.
16. Whilst the Judge attributes risk to the extent of the reach of the Jaff tribe, albeit country information indicates this tribe's influence is mainly between Sulamaniyah and the Iranian border, there is no challenge to the Judge's findings that the appellant's presence may become known to those he alleges he is in fear of in all of the IKR, by way of a cross-appeal.
17. The amendment at [55] by the removal of the word "not" was argued before me as being out of line with the remaining findings made by the Judge, even if this that was what the Judge intended to say.
18. Miss Patel emphasised the point by reference to [61] where the Judge specifically finds the appellant has a viable internal relocation option albeit not within the IKR. That is based upon the Judge's findings in relation to Baghdad which the Secretary of State accepts was not a finding open to the Judge on the facts.
19. On behalf of the Secretary of State Miss Young accepted that Miss Patel's interpretation of the determination, even with the later amendment, must stand, that the error in relation to internal relocation to Baghdad is accepted, and that accordingly the appeal must be allowed.
20. I find the Judge has made a material error of law for the reasons set out in the grounds seeking permission to appeal, grant of permission to appeal, submissions made before me, and the Secretary of State's position set out above.
21. I set the decision aside and substitute a decision to allow the appeal.

Notice of Decision

22. The First-tier Tribunal has materially erred in law. I set that decision aside.

23. I substitute a decision to allow the appeal on asylum grounds.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 November 2023