Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: PA/03962/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision promulgated**
on 19 May 2017	**on 14 June 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GORAN SALAM SARRADDIN
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane instructed by Braitch RB Solicitors.
For the Respondent: Mr Mills Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Hussain ('the Judge') promulgated on 27 October 2016 in which the Judge dismissed the appellant's appeal against the refusal of his claim for international protection and/or for a grant of leave to remain on human rights grounds.

Background

2. The appellant was born on 1 April 1997 and is a citizen of Iran.
3. The Judge noted the appellant's immigration history and basis of claim, that the appellant was a former police officer in Iraq and whilst there faced threats from ISIS because he, like his brother, was involved in arresting members of ISIS. The appellant asserted that threats from ISIS became real when an explosion took place outside the family home.
4. The Judge sets out the findings of fact from [7] to [25] of the decision which may be summarised in the following terms:

   a. The appellant is not credible [7].
   b. The appellant was not consistent about his date of birth or large parts of his evidence. The appellant was aware of his date of birth but has given two different dates. The date of birth given in the screening interview was changed to match the date of birth on the police ID documents subsequently produced [8].
   c. Whichever date of birth is adopted to the appellant was 16 years old when he claims he joined the police although the appellant go also gave an inconsistent account of when he joined the police; claiming in his substantive interview it was March 2013, in oral evidence July 2013, whereas his police ID card is dated from September 2013 [8].
   d. The appellants age, so far as it relates to employment as a police officer, is an important factor as the Iraqi constitution and law prohibits child labour and employment and work detrimental to health, safety, or morals for anyone under 18 [9].
   e. The appellant claimed to have undertaken dangerous work at the age of 16 having been trained in the use of weapons and going on raids to arrest ISIS members and being involved in firefights. The Judge was not satisfied the State of Iraq would employ a juvenile in such circumstances. In light of that, the Judge was not satisfied that the appellant was a member of the Iraqi police force [9].
   f. The Judge did not find it credible that a 16-year-old will be employed as a bodyguard for somebody much older and more powerful than he was [10].
   g. The appellant's brother for whom he was a bodyguard is also in the United Kingdom, they live together, but the brother did not attend to give oral evidence. His absence was unexplained and detracted from the weight given to the appellant's account [11].
   h. The appellant remained in Iraq despite the claimed explosion outside the family home, from January 2014 to May 2015. There were no incidents during this time and no threats to him or his family. There was no trigger incident in May 2015 forcing him to leave. In oral evidence the appellant claimed he left Iraq because the family were living in one room but, when challenged, changed his evidence to say he left because he did not want to endanger his family. Such inconsistency damaged his credibility [12].

i. The explanation for leaving to protect the family was found implausible because the family suffered no harm for at least the 14 months that he was with them, despite an alleged letter from ISIS threatening violence against the family [12].
j. The appellant's credibility is damaged by his failure to claim asylum in France despite being there for 2 ½ months [13].
k. The appellant is from Kirkuk [17].
l. The appellant's parents and family still live in Iraq in their village in the area where, despite the claimed threat from ISIS, they lived with the appellant without incident [18].
m. The appellant is in regular contact with his father and other members of the family. His father posted the ID documents to him. The family still live in the same house and have come to no harm or experienced any difficulty. The village is 70 to 80 km from Kirkuk [18].
n. Since his substantive interview the appellant has obtained his Iraqi nationality documents making return to Iraq feasible [19].
o. There is no reason why the appellant cannot return to the Iraq Kurdistan Region (IKR) [20 – 21].
p. The appellant would not be destitute in the IKR. The appellant claims to have worked in the past and could find work as a labourer but, if not, his family including his father live nearby and would be able to support him or he could return to live with the family in the village where they have lived without incident for some time [22].
q. If returned to Baghdad, there are flights every second day from Baghdad. The appellant would not become destitute as his family could provide support as they did when they helped him leave Iraq. The appellant speaks basic Arabic. Any difficulties would be short lived. Even if the stay in Baghdad was for a significant period the appellant's father could forward his CSID document to him which would enable the appellant to obtain some financial assistance from the authorities, education, housing and medical treatment. Taking all into account, the appellant will face little or no risk of destitution amounting to serious harm in Baghdad [23].
r. Internal relocation would not be unduly harsh [24].
s. The appellant did not pursue any other claim including Article 8 ECHR [25].

5. The Judge concludes by finding the appellant does not qualify for asylum or Article 15 (c) protection but even if he did, he can internally relocate to the IKR or Baghdad without facing undue hardship.
6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The operative parts of the grant of permission being in the following terms:

> 3. The grounds disclose arguable errors of law in at least three respects.
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> 4. Firstly, it is arguable that in relying on the failure of the Appellant's brother to give evidence in stating that this undermined the Appellant's credibility, the Judge materially erred as it was a different brother who the Appellant claimed to have worked as a

bodyguard for, and it is not clear what evidence the brother in the United Kingdom could have given that would have enhanced the Appellant's claim.

5. Secondly, it is arguable that the Judge has materially erred in extrapolating constitutional norms in a collapsed state to apply to the Appellant when there is a civil war, to justify the finding that it did not work as a police officer.

6. Thirdly, it is arguable that the Judge has materially erred in dismissing the Appellant's account before considering the ID produced, and has not considered the documentation in the round as part of the claim itself before reaching conclusions on credibility.

Error of law

7. It was submitted on the appellant's behalf that the inconsistency in relation to the appellant's date of birth had not been adequately dealt with by the Judge. It was asserted there was no cross-examination on this issue and that it was a matter that should have been put before the appellant for comment.

8. At [8] the Judge notes that in his screening interview the appellant gave a date of birth of 1 April 1997 which he changed to 21 February 1997 to match the police document. There is a discrepancy in these two dates, although the Judge did not find the discrepancy of significance to the core element of the claim that the appellant was at risk as a former police officer who had faced threats from ISIS, for on both dates of birth the appellant would have been claiming to have been 16 years of age when he joined the police.

9. The Judge was entitled to note the discrepancy and to consider that together with all the other evidence the appellant was seeking to rely upon. In relation to the assertion matters should have been put to the appellant, such claim does not make out any arguable legal error. Proceedings within this jurisdiction are by their nature adversarial. The appellant was represented by Mr Lane, competent and experienced counsel, who would have been in a position either in evidence in chief or re-examination to have raised issues that needed clarifying. If, for whatever reason, no further evidence was adduced in relation to this issue the Judge was perfectly entitled to consider the available material. It has not been shown the finding of an inconsistence is arguably perverse or irrational or outside the range of permitted findings, in light of the discrepancy, or that the appellant did not receive a fair hearing with ample opportunity to advance his case and deal with issues that arose, before the First-tier Tribunal. No arguable legal error is made out on this ground.

10. In relation to the finding by the Judge that the Iraq State would not employ the appellant as a police officer, it was submitted the Judge erred as evidence was put forward that the country is in a state of internal conflict in which the usual rule of law is often breached and that evidence was cited from the objective evidence that children were being used in the conflict, although Mr Lane accepted that this mostly related to militia groups. Legal error is submitted in the Judge failing to consider the evidence and submissions and arriving at a conclusion that was too simplistic and contrary to what is known about how States act generally during conflict.

11. The Judge had available to him and appeal bundle including a 2015 US State Department country report on human rights practices in Iraq, dated 13 April 2016.
12. Mr Lane made specific reference to the section of that report headed "Child Soldiers" in support of his argument but it is noted at page 160 – 161 of the appellant's bundle, in the said report, that it is written :

> The were no reports that ISF conscripted or recruited children to serve in the security services. According to the report of the UN Secretary-General on children and armed conflict in Iraq, released in November, while there were no instruction for children to join fighting, children continued to be associated with PMF and militias in all conflict areas. UN observers reported children wearing military uniforms and carrying weapons, as well as parading alongside adult members of armed groups. The report stated that on June 7, the Ministry of Youth and Sport sent a letter to its directorates in all governorates encouraging the use of youth clubs for military training of youth.
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> On July 28, the Associated Press reported its staff witnessed dozens of camps around the country with hundreds of students training to join the PMF and fight Da'esh. A spokesman for the Prime Ministers Office responded that there were isolated incidents of underage fighters joining combat on their own but that's the government did not condone children going to war. Observers noted there were no official encouragement for children to join militias, which occurred infrequently and generally due to family or peer encouragement.

13. The issue before the Judge did not relate to whether the appellant had joined a militia group. The specific claim by the appellant was that he joined the police force and engaged in the type of conduct the Judge found was contrary to the Iraqi constitution. In relation to the material relied upon by Mr Lane there is no evidence to support the contention raised in the grounds that the alleged state of disorder is the norm in Iraq to the extent the constitution is ignored. It is accepted that some areas of Iraq have been found to be in a state of internal armed conflict, but this does not apply to all parts of the country. Whilst the state of governance may not be the same as that in other countries around the world it is not made out that the country is in such a state of chaos or disorder that the restriction in relation to the employment of children in dangerous roles is relaxed, or undermined, such as to impact upon the finding by the Judge on this point. There is, indeed, in relation to the appellant's own evidence no report that the Iraqi Security Forces (ISF) conscripted or recruited child soldiers.
14. It has not been made out that the finding by the Judge in relation to this issue was not reasonably open to the Judge on the evidence. No arguable legal error is made out on this point.
15. Mr Lane also submitted the Judge had erred in relying on implausibilities in relation to the account. This is a case in which the findings are not based solely on plausibility and, indeed, the weight to be given to the evidence was a matter for the Judge bearing in mind issues such as the appellant's claim to have joined the police force aged 15 and have engaged in dangerous activities was not supported by the country information. This is not a claim to have joined a militia group or ISIS, where the use of child soldiers is recognised, but the Iraq Security Forces where there was insufficient evidence to show that the Judge's conclusion regarding the use of underage individuals was not a sustainable

finding. Adequate reasons have been given to the findings made and the weight to be given to the evidence was a matter for the Judge.

16. The assertion the appellant referred to the wrong brother at [11] is accepted by Mr Mills as the appellant has a brother lawfully in the United Kingdom as well as brothers in Iraq. The issue is not, however, whether the Judge erred in law when assessing the identity of the brother, but whether the error made is material. The assertion made by the appellant is that as a result of that error the overall assessment of the appellant's credibility cannot stand. This has not been made out. It is not disputed that the brother in the United Kingdom did not give oral evidence on behalf of the appellant, although it is accepted that the brother in the United Kingdom may not have personal knowledge of what occurred in Iraq. The finding by the Judge that the failure of the brother to attend and give oral evidence detracted weight from the appellant's account may not be a sustainable finding, although it has not been shown the amount of negative weight that may have been given to this matter was a determinative factor. This, for example, has no impact upon the Judge's findings in relation to the core account to have joined the police and the age issue, sufficient to make out they are not safe and sustainable findings. No material error has been arguably made out.
17. Paragraph 7 of the grounds was not pursued by Mr Lane who did not seek to rely upon the same.
18. Paragraph 8 of the grounds relates to the section 8 adverse credibility findings, which are challenged on the basis the appellant is a man of young age with an older brother in the United Kingdom who could help him which was the excuse for not claiming asylum earlier. The fact the appellant was deliberately seeking to enter the United Kingdom where he had a brother does not arguably excuse him from the option of claiming asylum, which is an application for international protection, at the earliest opportunity. What the appellant's actions suggest is that he had no intention of claiming asylum until he arrived at the jurisdiction of his choice when he would make such a claim. It has not been made out why the appellant could not have claimed asylum the earliest opportunity for, if he succeeded, he may have been able to join his brother in any event. The explanation provided does not admit a finding of legal error material to the Judge's decision on this basis.
19. In relation to the ID document, it was asserted the Judge found the appellant lacked credibility and therefore found the documents to be of no assistance whereas if the Judge was finding the documents are forged, the onus would be on the respondent to prove this fact. It is asserted the Judge should have considered whether documents were true or not and, if true, the extent to which they backup the appellant's account. It is stated the Judge erred in not considering the documents to be true as a result of the date of birth issue which it is asserted was not put to the appellant, a matter that has been disposed of above. Mr Lane also asserted an artificial separation by the Judge who should have considered the documents as part of the claim.
20. The document is considered by the Judge at [14] where the following findings are made:

> 14. These are some of the reasons why did not find the appellant to be credible. My main finding that he was not in the police force means that he did not receive the claimed threat from ISIS nor that there was an explosion outside their house both which occurred because the appellant claimed he was a police officer. It also goes without saying that I place no weight on the police ID documents produced by the appellant. I therefore dismiss his asylum claim.

21. Had this been all the Judge said there may have been merit in the submission by Mr Lane of artificial separation, in the Judge deciding the account was not credible but then using this finding to place no weight upon the ID document rather than considering the document as part of the overall claim. This was, however, not all the Judge did for at [8] it is found:

> 8. The appellant was not consistent about his date of birth as indeed he wasn't about large parts of his evidence. The appellant is clearly aware of his date of birth and the fact that he has given two different dates, damages his credibility. At his screening interview, he gave his date of birth as 1 April 1997. This was subsequently changed to 21 February 1997 to match the date of birth on the police ID documents that he subsequently produced. The significance, if any, of the date of birth, can only relate to whether it is claimed that he was either the child or a juvenile when he joined the Iraqi police force. However, on closer examination, the discrepancy, other than damaging the appellant's credibility, is of no significance because, no matter which date of birth is adopted, the appellant was 16 years old when he says that he joined the police. As with his date of birth, he gave an inconsistent account of when he joined the police. In his substantive interview, he said that he joined in March 2013, in his oral evidence, he said that he joined in July 2013 where as his police ID card is dated from September 2013 suggesting that that is when he joined. Whichever date of birth is used, he was, on all of those dates, 16 years of age.

22. The Judge clearly factored the police ID document into the assessment of the evidence at a much earlier stage in the decision than [14]. Having considered the evidence as a whole the Judge was fully entitled to decide that no weight could be placed upon the police document. The Judge does not find the ID is forged and no evidential burden arises upon the Secretary of State to prove a forgery. The statement in paragraph 9 of the grounds that the Judge "seems to be saying" that they must be forgeries misrepresents the actual finding that no weight may be placed upon the evidence. The police ID document may be a genuine document in that it has been deliberately prepared in the form that was provided to the Judge even though what it purports to represent is not consistent with the evidence taken as a whole. The Judge was entitled to place the weight he considered it was appropriate to place on the document without needing to consider the forgery issue. This is amply demonstrated within this jurisdiction when dealing with ETS cases in which there may be what on the face of it appears to be a valid English language certificate, upon which no weight may be placed in terms of accepting what the certificate purports to show in relation to an appellant's English language ability, as the test which gave rise to the marks recorded in the certificate was taken by a third party. The certificate is not necessarily forged even though the actions of an appellant are deceitful.

23. Mr Lane challenges the Judges conclusions in relation to the area of Iraq in which the appellant could return by reference to *AA (Article 15(c)) Iraq CG [2015] UKUT 544*. The appellant asserts the Judge erred by saying he cannot return to his home area of Kirkuk but then at [22] that he can return to that area. There is also a challenge to the findings in the alternative that the appellant could go to the IKR which it is said the Judge was required to assess by reference to whether it would be unduly harsh for the appellant to settle there. The appellant challenges the findings of the Judge that the appellant could seek employment in the IKR and the findings in relation to the conditions the appellant would face on return to Baghdad. The appellant asserts that internal relocation is not reasonable and that there will be a real risk of Article 3 ECHR real treatment such that the finding is infected by arguable legal error.

24. The Judge was aware of the country guidance caselaw and notes the claim for humanitarian of subsidiary protection from [15] and the fact that in *AA* the Secretary of State accepted that Kirkuk is a contested area, notwithstanding that from mid/end 2014 the Kurdish forces had defeated ISIS and forced them from Kirkuk which was at that point under Kurdish control, and has remained so ever since. The Judge finds the appellant can return to his home area where there was no evidence of incidents or a credible threat. The Judge noted that the village was some 70 to 80 km from Kirkuk. This is a relevant finding for Kirkuk is about 87 km from Erbil and 96 km from Sulaimaniya, the major cities in the IKR and areas in relation to which it has been accepted there has never been a real risk of harm sufficient to warrant a grant of international protection. The reality of the matter is that even if the city of Kirkuk was at the time of ISIS occupation within a contested area, the evidence before the Judge was that there was no real risk in the appellant's home area. The Judge was required to assess risk at the date of the hearing of the appeal which was 20 October 2016. It was also submitted by Mr Mills that there have been further advances against ISIS in Mosul and other areas outside the appellant's home area, which is arguably correct. A reading of the material provided to the Judge also shows there is no evidence that the appellant's home area was ever under the control of ISIS. As such, the Judge was not required to find there was a real risk pursuant to Article 15 (c) in the appellant's home area as the evidence did not support such a conclusion. The finding the appellant was able to return to his home area has not been shown to be a finding infected by arguable legal error.

25. The assertion by the appellant that his CISD makes return feasible is not in accordance with *AA* which states that what makes return feasible is either the possession of an Iraqi passport or a laissez passé. The applicant has his identity document so he should be able to obtain a passport from the Iraq Embassy in the United Kingdom to facilitate his return. The appellant has failed to establish this is not so. The Judge also found the appellant maintained contact with his parents and there is therefore no evidence that other documents could not be obtained, if required.

26. It is accepted that the country material refers to the influx of refugees into the Kurdish area but as the finding the appellant can return to his home area has not been shown to be infected by arguable legal error, the issue of internal flight

does not arise. The appellant is of Kurdish ethnicity and with appropriate documentation could return directly to the IKR if pre-clearance is obtained, in accordance with established practice, from the Kurdish authorities.

27. The appellant has a viable option of returning to Baghdad with the available documents from which he can fly internally to Erbil and be reunited with his family if he cannot fly directly to the IKR. In relation to return to Baghdad, the Judge deals with what is described as a limited period of time until he can re-join his family. The appellant asserts in his grounds that the Judge failed to consider the reasonableness of relocating but this is an issue raised in the Reasons for Refusal letter placing the burden upon the appellant to establish that the proposed option is not reasonable.

28. The appellant claimed he had worked as a police officer in Iraq but now, as Mr Mills identified, seems to be claiming that he cannot be expected to find work. As a healthy individual with no known impediment to obtaining employment, with necessary language skills, and family support, it has not been made out that the appellant will be unable to support himself (directly or with the assistance of others). The Judge does not find the appellant's conditions are sufficient to engage article 3 when finding in [23] that the appellant would not become destitute or suffer any significant hardship and any that he suffered would be short lived. It is not disputed that it may be difficult for the appellant to return to Baghdad and that matters may be hard or difficult for him if thie option was necessary. That is not however the correct test. It is not made out that even if the appellant does find things difficult whilst he re-establishes himself that threshold of any problems experienced will cross the high threshold of Article 3.

29. Considering the decision in the round, it has not been made out the Judge has made arguable legal error material to the decision to dismiss the appeal for the reasons set out in the grounds of challenge, oral submissions, and the material made available to the Tribunals.

Decision

30. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

31. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated the 13 June 2017