Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06277/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal on 21 June 2017	**Decision & Reasons promulgated on 22 June 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MTS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Samra of Harbans Singh & Co Solicitors
For the Respondent: Mrs Petterson Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Fenoughty ('the Judge') promulgate on 5 January 2017 in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a citizen of Iraq born on [ ] 1993 who appealed against the refusal to grant him asylum. The appellant claimed he faces a real risk from IS and did not want to live in an area controlled by them. He also claims to fear a number of Kurdish groups as his father had been a member of the Ba'ath party which had targeted Kurds. The appellant also asserted a fear of the PUK and KDP as he had been part of a party that voiced opposition against the President and took part in demonstrations and media interviews criticising him. Other aspects of the appellant's claim were rejected by the Secretary of State too.
3. The Judge sets out the evidence provided, appropriate legal provisions, and the submissions relied upon by the advocates before making findings of fact at [58 – 90] of the decision. The findings may be summarised in the following terms:

    i. A number of inconsistencies in the evidence undermined the credibility of the appellant's evidence [58].
    ii. The tribunal was willing to attach some credence to the appellant's account of his family life as it was consistent with his brother's account [59].
    iii. The tribunal did not accept that the appellant and his family would be at risk as a consequence of his father's membership of the Ba'ath party (if true) seventeen years after his death in light of the fact his mother had been able to live in the village and Sulaimaniyah and owned and sold property and worked in business and enrolled on a course without being subjected to any harm or threats over that period [59].
    iv. The tribunal did not accept the appellant had left his identity and nationality documents behind when he left home in Dooz [60].
    v. The tribunal found it inconsistent that the appellant would have left Dooz without his CSID card and yet been able to travel to Sulaymaniyah, obtain a passport, buy, operate and sell a business and enrol on a hairdressing course without documents [61]. The Tribunal found the appellant had taken his identity documents with him or obtained replacement identity documents on arrival in Sulaymaniyah in 2014 [61].
    vi. The appellants claim to be at risk was inconsistent with country guidance which indicated that Kurds who are not from the IKR could relocate to the area. The same material found having former Ba'ath party connections did not enhance the risk of indiscriminate violence [62].
    vii. The appellants evidence regarding threats following his establishing a political party with friends in February 2011 and being arrested was inconsistent [63].
    viii. The appellant purported to be a member of the Gorran party. Two letters provided were not dated, one had no heading one had a questionable heading, neither envelope sending the letters was provided to the tribunal. The appellant claims to have taken part in a TV programme for approximately one and a half minutes and criticised what the P UK were doing for Sulaymaniyah [64].

ix. The tribunal accepted it was improbable the police would allow detainees to take photographs of themselves in handcuffs and a police car and found it inconsistent the appellant would have been arrested and released if he was in breach of bail conditions. The tribunal accepted the respondent's submission that the TV channel on which the appellant had appeared was one which the regime tolerated despite opposition views, accepted the transcript did not contain any specific criticism which had been shown to put the appellant at risk, and accepted the Gorran Party is an official opposition party. It is not accepted the appellant's activities went beyond legitimate opposition activities to an extent it placed at risk of harm or that he received a specific threat to his life [65].

x. The appellant's representatives did not address the tribunal on the appellants sur place activities. There was no evidence the appellant was involved in political activities in the UK which might place him at risk from the authorities on return to Iraq [66].

xi. Extracts from social media in telephone conversations did not identify the originator of the threatening remarks or indicate he was in any way connected with or influential over the authorities in Iraq. The appellant's representative did not address the tribunal in relation to these documents [67].

xii. The tribunal found the appellant gave a vague and unsatisfactory account of the contact between himself and his mother which is contradicted by his brother's account regarding when they were last in contact. [68].

xiii. The tribunal did not accept the reason it was claimed nobody from the church came to support the appellant, which was said to be because the conversion was recent, was reasonable to expect a member of the church would have been invited to give evidence of the appellant's interest in Christianity, irrespective of its extent and duration. [69].

xiv. The appellant's evidence was found to be contradictory and inconsistent such that the Judge could not place significant weight on his evidence. The tribunal was not prepared to accept the unsupported claim the appellant had converted to Christianity and that evidence to this effect had been given in order to bolster his case [70].

xv. Evidence regarding contact by the appellant with his mother was inconsistent. The appellant remained in contact with his mother who could continue to support him financially as she had done when they lived in Iraq and will be able to vouch for him if he needed to establish his identity for the purpose of re-documentation [71].

xvi. The appellants evidence is unreliable and inconsistent. Documents relied upon by the appellant had not been shown to be authentic by reference to material or expert evidence that is independent of the appellant. The letters and photographs were not documents on which reliance could properly be placed [72].

xvii. The tribunal did not accept that every inconsistency identified undermined the appellant's credibility. The tribunal was prepared to accept that the appellant's support for the Gorran party was consistent

with his views and opinions but did not consider that amounted to evidence of active political engagement of a kind which would lead to the appellant being subjected to adverse attention from the authorities [73].

xviii. The appellant's credibility is damaged as a result of his failure to seek asylum in France or Germany, especially as he had direct contact with the German authorities where he had been fingerprinted [74].

xix. The tribunal did not accept the appellant's account of the circumstances in which he claimed to have left Iraq. The tribunal did not accept the appellant will be at risk on return to Iraq as a consequence of his relationship to his father who died in 1999, if it was accepted he was a member of the Ba'ath party [75].

xx. The tribunal accepted the appellant could not return to Dooz personally but found his mother had access to proxies who sold land on her behalf after she had left and considered it reasonable to assume that the appellant would similarly be able to access a proxy to assist in obtaining the required documentation [77].

xxi. The tribunal did not accept the appellant's claim that his mother had disowned him as a consequence of finding out about his new religion and found they remained in contact and that she should be able to support him financially and by providing copies of information and documentation to enable the appellant to obtain replacement documents, if required [78].

xxii. The appellant did not tell the tribunal whether he had made any attempt to obtain replacement identity documents [79].

xxiii. The appellant as a former resident could travel directly to the IKR or as a Kurd gain temporary admission without needing a sponsor [82].

xxiv. Had the appellant not been a resident of the IKR he would be returned to Baghdad from where it had not been shown he would be precluded from taking a flight to the IKR.

xxv. The tribunal was not satisfied the appellant's interest in Christianity was genuine. There was nothing in case law to indicate a Christian relocating to the IKR would be at risk of harm [86].

4. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The operative part of the grant reads:

> 2. The grounds argue that the Judge made factual errors about the evidence which led to negative findings which were therefore unsafe. The Judge failed to make a finding regarding the actions of the PUK or KDP against critics.
>
> 3. It is arguable that the Judge erred in finding that the appellant had not been critical of the PUK and KDP in view of the transcript from 1/10/15 (video 1) found in the respondent's bundle. This ground is arguable. It is also arguable that the appellant's answers regarding his passport were not clear and could have been read as the grounds assert. This ground is arguable. It is also arguable that the Judge erred in finding the appellant claimed to have been released on bail in 2012 or 2015. This ground is also arguable.

5. The respondent opposes the appeal.

Error of law

6. Mr Samra asserted the Judge had made a number of factual errors in the decision. These include the Judge mistaking the meaning of the answer to question 59 of the appellant's asylum interview. In this part of the interview the appellant was being asked about his passport. At question 58 he was asked why he had a passport to which he replied "For travel or holiday". At question 59 he was asked when he obtained the passport to which he responded "2014, don't remember date, it was when I moved from DK". Mr Samra submitted that the appellant was stating that the passport was made in 2014 when he was leaving Dooz not that he had it made after he moved. Mr Samra accepts the reply may be interpreted both ways but claims the Judge should have sought clarification before making an adverse finding.
7. The Judge at [59 – 61] did not accept that the appellant had left his identity and nationality documents behind him when he left his home in Dooz. This accords with the appellant's claim that he had his passport with him at that time. The Judge noted the above questions and interpreted the response as a statement the appellant got the passport in 2015 when he moved from Dooz because he wanted to go to Turkey for a visit. The issue arose as in a later written witness statement the appellant had claimed to have left Dooz hurriedly but to have taken his passport with him. The Judge found it inconsistent that the appellant would have left Dooz without his CSID card yet been able to travel to Sulaimaniyah to obtain a passport. The Judge summarises the findings at [61] as "the tribunal found that either the appellant had taken his identity document with him, or he had been able to obtain replacement identity documents on arrival in Sulaimaniyah in 2014, by which he was able to live and work in the region for over a year". This finding encompasses the appellant's claim to have taken the identity documents with him when he left Dooz. The grounds fail to make out any arguable material error based upon the Judge not bringing this matter to the appellant's attention and nor do they establish arguable legal error material to the decision. The Judge accepted that the appellant had the documents, as he claims, and that he used the documents to enable him to live and work in the IKR.
8. Mr Samra also submitted the Judge made an error of fact [63] as the appellant did not state that in 2012 he was released on bail conditions as this only applied to the 2011 arrest. Mr Samra stated the evidence given at the hearing was that the appellant was bailed and released on conditions in 2011 and arrested and released in 2012 and 2015 which is consistent with the evidence in his witness statement. Bail conditions and court appearance related to one arrest only. It is argued there are no consistencies as found by the Judge recorded in the interview, witness statement or in court papers and that the Judge misunderstood or misread the evidence.

9. In [63] the Judge noted the appellant's claim to have been arrested in 2011 which is not disputed. The Judge then finds the appellant claimed he had been arrested in 2012 and released on bail conditions and that he was again arrested in 2015, yet claimed in reply to a question at interview only to have been detained once in 2011 and that on the other two occasions he was arrested and released the same day.
10. The appellant in reply to question 124 of the interview claimed that he gave interviews regarding political issues when he was released in February 2012, and did not give an interview in 2015. In reply to question 126 when the appellant was asked how long he was detained on each occasion replied "just one time in July 2011 for four days, the other times I was arrested and released same day".
11. The appellant has been arguably consistent in relation to his claim to have been arrested in 2011 and to have been released on bail conditions and that on other occasions in 2012 and 2015 not to have been made the subject of bail conditions, but to have been released shortly thereafter, although Mr Samra claimed in his submissions that the appellant was also beaten on these occasions. I find it made out that the Judge appears to have made an error of fact although it has not been made out that it is material to the overall decision.
12. Mr Samra submitted that at [65] the Judge found the video conference did not show the appellant was critical of the Kurdish Government which is stated not to be materially correct. A copy of the transcript of the interview has been provided in the appellant's bundle and attached to the respondent's bundle. Mr Samra's submission is that the appellant accused the PUK of doing nothing for the region but stealing the money and the KDP of being against the Kurds by supporting Saddam in 1996 and also criticises a regional leader by saying he is the cause of the crisis and will not solve the same. It has submitted such statements are critical of the main parties in the region which have not been properly considered by the Judge.
13. At [65] the Judge makes a number of findings including that part of the appellant's claim was improbable and inconsistent. Whilst accepting the appellant had undertaken the interview it was found that it was one on a channel the regime tolerated, notwithstanding the broadcast of opposition views. The finding by the Judge is that the transcript did not contain any specific criticism which had been shown to put the appellant at risk. It is not a finding by the Judge that the interview was not critical of the Kurdish Government. A reading of the transcript shows criticisms raised by the appellant but it was not made out, as the Judge identified, that even though they appear on the face of them to be critical they are of a sufficiently antagonistic nature to create a real risk of persecution in the eyes of any potential persecutor. The specific finding is that the appellant had not demonstrated that, despite his comments in the television interview, he faced a real risk of ill-treatment on return. The party the appellant supports is the main opposition party in the IKR and it is likely that many things of a similar nature are said. The appellant's stance in relation to the degree of risk was not made out by reference to relevant country information. No material error of law has been arguably established.

14. Mr Samra further submits that at [73] the Judge found the appellant was a supporter of the Gorran party and active on TV but found such activities would not be enough to subject him to the adverse attention of the authorities but did not state why as the content of the evidence is critical and the Judge should highlight where he thinks the line is for parties like the PUK and KDP to react to criticism they received. Such ground has no arguable merit. The burden of proving a person is entitled to a grant of international protection lies upon the person so alleging. If the appellant was claiming that what he did crossed the threshold of tolerance, such that he faced a real risk from either of the parties named, it was necessary for the appellant to produce sufficient evidence to corroborate this claim.
15. The Judge did not dispute that the appellant had made the comments on television or that he was a member of the opposition party but the country information provided in the appellant's appeal bundle and/or at the hearing does not arguably support a finding that the Judge materially erred in law in not allowing the appeal. In this ground, Mr Samra is attempting to reverse the burden of proof which does not fall upon the Judge.
16. The grounds submit that the errors led to negative credibility findings and are not adequately reasoned. Even though it is accepted the Judge made some errors, what is not accepted is that these errors have been shown to be material on the basis of the reasons pleaded in the grounds seeking permission to appeal to the Upper Tribunal.

17. At the hearing, Mr Samra sought to introduce a further element by reference to the country guidance case of *AA (Article 15 (c)) Iraq CG [2015] UKUT 544 (IAC).* Mr Samra submitted it was accepted that the appellant came from a contested area. Mr Samra refer to the headnote at paragraph 17 which reads: "*17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.* " It was argued that the term "originates from" refers to the fact that a person has to be from the IKR before he can be returned directly to that region. A person not entitled to return directly will have to return via Baghdad. In such a case the Judge was required to examine in detail the findings made by the Upper Tribunal in *AA* in relation to the reasonableness of internal relocation to Baghdad. As stated, this is not a matter that was raised in the original grounds of appeal.
18. In *AA*, the tribunal found:

Internal relocation

Legal Framework

147. Article 8 of the Qualification Directive, which applies to both Refugee Convention and subsidiary (humanitarian) protection claims, is headed "*Internal protection*" and provides:

> "1. As part of the assessment of international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of

suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin."

148. The correct approach to the issue of relocation is that set out by Lord Bingham in Januzi v Secretary of State for the Home Department [2006] UKHL 5 [2006] 2 AC 426 i.e. whether a person can reasonably be expected to relocate or whether it would be unduly harsh to expect them to do so. In AH (Sudan) & others (FC) [2007] UKHL 49 at [22], Baroness Hale described the reasonableness test as being "*stringent*". The burden of proof, as with all aspects of the subsidiary protection determination process that we are concerned with, falls on the appellant.

149. If an ordinary civilian can establish a real risk of serious harm exceeding the Article 15(c) threshold in their home area, then in order to found eligibility for a grant of humanitarian (subsidiary) protection, it also has to be demonstrated that such a person cannot relocate to another region either because there is a real risk of serious harm in, or *en route* to, such a region or because circumstances exist there that would otherwise make it unreasonable or unduly harsh for such a person to relocate. The presence of Article 3 etc. serious harm is not a prerequisite for finding that relocation would be unduly harsh or unreasonable.

Places of Return

150. The Respondent states that she will only return Iraqi nationals to either Baghdad or to the IKR. The Respondent also identified that she will only return a person to the IKR if that person is from the IKR and such person has been pre-cleared for return by the IKR authorities.

19. The reference to return to the IKR is a reference to the Secretary of State's position/policy. The tribunal in *AA* do not specifically seek to limit the meaning of the phrase "if that person is from the IKR" which therefore has to be given its ordinary meaning. The Judge noted in [32] that the guidance in *AA* stated that "return of former residents to the Iraqi Kurdish Region (IKR) will be to the IKR". This clearly indicates that what is required is a connection with the IKR before direct return is considered with no indication that this did not apply to former residents who did not originate from that area. It is accepted that those who will be returned directly are likely to be Iraqi Kurds as this is a predominantly Kurdish area. The appellant is an Iraq Kurd and a former resident of Sulaimaniyah within the IKR. The Judge was arguably entitled to conclude that he fell within the definition of a former resident which is a term not only satisfied by having a birth connection or duration of any specific minimum period of residence within the IKR. The appellant lived in that area, worked, traded and functioned as a member of that community.

20. It is also noted in *AA* that any returns directly to the IKR have to be pre-cleared by the Kurdish authorities. On the facts known to the Judge there was little evidence to indicate a likelihood that such pre-clearance would be refused.

21. The Judge does consider return to Baghdad at [83] but by way of speculation if the appellant had not been a former resident of the IKR. In that respect the Judge found return would be feasible to Baghdad from where the appellant could fly to the IKR. No arguable legal error is made out in the Judges approach to the question of return to Baghdad as this is not a primary finding. As stated it is the Judge, at its highest, considering matters in the alternative.
22. There is no other challenge pleaded to the findings of the Judge which set out other adverse credibility issues. Having considered the submissions, with the appropriate degree of anxious scrutiny, as this is a protection claim, this tribunal finds that the appellant has failed to establish any arguable legal error material to the decision to dismiss the appeal.

Decision

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

Anonymity.

24. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 21 June 2017