



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04354/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2019**

**Decision & Reasons Promulgated
On 29 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ZANKO [R]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Specialist Appeals Team

For the Respondent: Ms J Fisher, Counsel, instructed by Duncan Lewis,
Solicitors

DECISION AND REASONS

The Respondent

1. The Respondent, Zanko [R] (the Applicant), is a national of Iraq born on [~] 1992. He is a Sunni Kurd from a village near Kirkuk and is single with no dependants.
2. He stated he left Iraq in 2015. He arrived in the United Kingdom on 13 January 2015 clandestinely by lorry when, after being arrested, he claimed international surrogate protection because on return he feared persecution by Da'esh.

The SSHD's Original Decision

3. On 15 March 2018 the Respondent (the SSHD) refused the Appellant's application on all grounds but did accept that he is a Sunni Kurd from the area of Kirkuk. The SSHD did not accept the Applicant's account of difficulties he and his family had experienced with Da'esh in his village and considered his early claim to be a minor which he had subsequently withdrawn, damaged his credibility.
4. The SSHD considered if the Appellant could not return to the Iraqi Kurdish Region (IKR) he could safely be returned through Baghdad and relied on the country guidance in *AA (Iraq) v SSHD [2017] EWCA Civ.944* that there was no real risk to an ordinary civilian travelling from Baghdad to the IKR by air to Erbil or Sulaymaniyah. The SSHD acknowledged the Appellant would need a Civil Status Identity Card (CSID) which he did not have and which he would be able to obtain through the consular section of the Iraqi Embassy.
5. The SSHD considered that in the light of recent improvements in the situation in the Applicant's home area there was no real risk of indiscriminate violence such as to engage Article 15(c) of the Qualification Directive 2004/83/EC 29 April 2004.
6. For the same reasons the Applicant's claims under Articles 2 and 3 of the European Convention were rejected. The Appellant's claim based on his private and family life protected by Article 8 of the European Convention relying only on his presence in the United Kingdom since 13 January 2015 did not meet the requirements of the Immigration Rules or warrant consideration exceptionally outside the Rules.
7. On 29 March 2018 the Appellant lodged notice of appeal under s.82 Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds recite his history and refer to background evidence that Da'esh continued to commit gross human rights violations and that he would be at risk on return to Iraq. There was no appeal against the Respondent's decision under Article 8 of the European Convention.

Proceedings in the First-tier Tribunal

8. By a decision promulgated on 6 September 2018 Judge of the First-tier Tribunal P J M Hollingworth allowed the appeal on international surrogate protection grounds.
9. The SSHD sought permission to appeal which on 18 October 2018 Judge of the First-tier Tribunal Beach granted because it is arguable the Judge had failed to give sufficient reasons for finding the Applicant was at risk across the whole of Iraq including the IKR or that he could not internally re-locate.

Proceedings in the Upper Tribunal

10. By a decision promulgated on 17 January 2019 I found that the First-tier Tribunal decision of 6 September 2018 contained a material error of law in relation to the assessment of the risk to the Applicant on return and the availability of internal relocation such that it should be set aside and re--

made. For the reasons given at paragraphs 18 and 19 of my earlier decision, I retained the re-hearing to myself in the Upper Tribunal.

11. The Applicant attended. Ms Fisher stated that she did not intend to call the Applicant to give oral testimony. A court interpreter was available. I explained to the Applicant the purpose of the hearing and how it would proceed on the basis of only submissions. The interpreter was available throughout the hearing to summarise for the Applicant what was said. The SSHD's Country Policy and Information Note on Iraq: Internal relocation, civil documentation returns of February 2019 (CPIN 2019) was submitted.

Submissions for the SSHD

12. Mr Kotas noted the passage of time since the appeal had been heard by the First-tier Tribunal (17 August 2018) since which time the circumstances of ISIS/ Da'esh/the Islamic Caliphate had dramatically changed but the basis of the Applicant's claim was the situation in the summer of 2015 when he had left Iraq. The issue before the Upper Tribunal now was whether the Applicant could be returned to Kirkuk or the Kurdish Region of Iraq (KRI).
13. At the time of the judgment in *AA (Iraq) v SSHD [2017] EWCA Civ.944* Kirkuk had been a contested area but this was no longer the case. He relied on paragraph 1.2 of the SSHD's Country Policy and Information Note Iraq: Security and humanitarian situation of November 2018 (CPIN 2018).
14. Mr Kotas also relied on paragraph 2.3.20ff of the CPIN 2018 and in particular paragraph 2.3.30 that since 2015 Da'esh's territorial control has collapsed and their operational capability has significantly degraded. He submitted there was no evidence Da'esh was re-grouping in Iraq. He emphasised that Country Guidance should be followed unless there are very strong grounds supported by cogent evidence for not so doing: see paragraph 47 of *SG (Iraq) v SSHD [2012] EWCA Civ. 940*. He relied on paragraph 63 of the judgment in *R (Amin) v SSHD [2017] EWHC 2417 (Admin)* in which Sir Ross Cranston stated:

"... as far as the position in Kirkuk is concerned, and the requirement for the claimant to return there to obtain a CSID, the Secretary of State was entitled to take the realities on the ground there into account. Kirkuk is no longer a contested area. In my view, country guidance cases must give way to the realities, a point recognised by the Court of Appeal in *SG*... at para.47. There are apparently still dangers there, but nothing like the position as when *AA* was decided."
15. He turned to the decision in *AAH (Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 00212 (IAC)* in which the Upper Tribunal had found there were no international flights to the KRI but circumstances had changed as evidenced in CPIN 2019 paragraph 2.7 that the ban on international flights to the KRI had been lifted and that former residents of the KRI will be returned to the KRI. Voluntary returns can be made to either Erbil or Sulamaniyah. I have taken it that the acronyms IKR and KRI referred to the same or very much the same area. He stressed that an individual's refusal

to return to the country (area) of origin did not constitute grounds for a subsidiary protection claim.

16. He continued that if the Applicant were to be returned to Baghdad, he would not be at risk in the light of the two letters from the Iraqi Embassy in London referred to in paragraphs 2.7.5 and 2.7.6 to be found at Annex is A and B of CPIN 2019. These two letters give rise to the concerns of the Upper Tribunal expressed at paragraph 111 of *AAH*, about the need for a valid Iraqi passport or a Civil Status Identity card (CSID) being required to leave Baghdad Airport by road and to negotiate the various checkpoints on the route to the IKR. He submitted that significant weight should be attached to these letters and there was no evidence to show that the arrangements referred to in them were not in place and working. On return to Baghdad the Applicant will be able to proceed onwards to Kirkuk or the KRI.
17. The Applicant had been tight-lipped about his family in Iraq and he noted there was no evidence about any family contact since 2015. Alternatively, internal relocation would not be unduly harsh.

Submissions for the Applicant

18. Ms Fisher relied on her skeleton argument. She accepted the situation in Kirkuk might now be different from the date of the First-tier Tribunal's decision but, nevertheless, the situation there remained uncertain. It was a contested area in July 2018, a month before the appeal had been heard in First-tier Tribunal. The *SG* grounds for departing from Country Guidance had not yet been met. It was clear that Da'esh was still causing problems. It should be noted that *R (Amin)* was heard in September 2017 almost 6 months before *AAH*. There was no cogent evidence to support the claim that there had been a change since the decision in *AAH* and so justify a departure from *AAH*.
19. She referred to paragraph 7.1.5 of CIPN 2019 dealing with the documents required by displaced persons to enter the KRI. According to a journalist relied on in the joint report of April 2016 by the Danish Refugee Council and Danish Immigration Service that those who originate from the KRI will not face problems on return there but those who do not originate from there must travel to the home area from which they originally came after arrival at an airport in the KRI. She referred to paragraph 7.3 of CIPN 2019 noting that the Danish report observed that Internally Displaced Persons were no longer allowed to enter the KRI and many were kept waiting at border checkpoints and there were documentary requirements for admission to the KRI. The important point to note was the Applicant had no connections to the KRI and even if he gained entry, he would not be able to sustain himself.
20. Additionally, she referred to paragraph 13 of *AAH* that the Kurdish Governate and the Iraqi government remained in territorial dispute over certain areas and particularly Kirkuk and its oil revenues and that "all observers agree that the future is uncertain and the security situation remains precarious". Kirkuk remained an issue and she had identified the

various paragraphs in *AAH* and CPIN 2019 at paragraphs 11-12 of her skeleton argument. The Applicant was not from the KRI but from the province of Kirkuk. Internal relocation would be unduly harsh.

21. The Respondent had relied on the letters from the Iraqi Embassy in London at annexes A and B to CPIN 2019 but there was no evidence to show that returnees are provided with the requisite documentation. She highlighted the Embassy's use of the word "may" and not "will" where the letters refer to returnees being issued with documentation. Such documentation was the same as the Upper Tribunal had considered at paragraphs 24-37 of *AAH*. There was no copy of the letters from the Secretary of State which initiated these two letters from the Embassy. She referred to paragraphs 5.4ff, 5.6.4ff, 6.1.9, 6.2 and 6.3 of CPIN 2019 which detail the contents and circumstances in which various Iraqi state documents such as a CSID or an Identity Card or passport are issued and required to be produced. Paragraph 2.7.9 recorded that a laissez-passer was not to be confused with a CSID. It may not be impossible for the Applicant to re-document himself but it would be an extremely fraught and protracted process. Even if the Applicant reached Iraq he would be destitute without a CSID or family support: see CPIN 2019 paragraph 2.6.2ff and this was conceded by the Secretary of State as recorded at paragraphs 93ff of *AAH*.
22. Mr Kotas for the SSHD had nothing further to add.

The Standard and Burden of Proof

23. The standard and burden of proof in relation to claims under the Refugee Convention, for humanitarian protection under the Qualification Directive 2004 and under the European Convention are for all material purposes one and the same; that is the Appellant must show that there are substantial grounds for believing that if returned to his country of origin he would be persecuted for a Refugee Convention reason or if removed from the United Kingdom will be subjected to treatment which for the purposes of humanitarian protection as defined by paragraph 339C of the Immigration Rules will amount to serious harm or will be subjected to treatment which will violate his rights under the European Convention. This is known as the lower standard of proof. The effective date for assessment of the evidence in support of each claim is the date of the hearing.

Consideration and Conclusions

24. I was referred to a considerable number of passages in CPIN 2019 which is recorded as updated on 22 January 2019. It does not appear to have been before the Upper Tribunal in *AAH* which relied very heavily on the expert evidence of Dr Fatah. In addition to the specific passages in CPIN 2019 to which I was referred, I have looked at paragraph 8 of CPIN 2018 dealing with the security situation. Paragraph 8.1.2 refers to a statement by the US intelligence community to Congress in February 2018 that although ISIS's exclusive control over distinct territories in Iraq had ended it has started and probably will maintain a robust insurgency. Paragraph 8.1.4 refers to a post of July 2018 by the International Crisis Group that ISIS-related insecurity continued in the Kirkuk, Diyala and Saladin provinces.

Paragraph 8.1.6 refers to the Combating Terrorism Center highlighting in September 2018 that the Hamril Mountains which straddle Kirkuk, Saladin and Diyala had been a safe haven for Da'esh and there was a risk that the focus on clearing these areas may 'ebb' because of the delay in the formation of the new Iraqi government, finally completed in early October 2018. I also noted at paragraph 2.3.30 that the conflict had changed in nature from open conflict to periodic asymmetric attacks in a number of governates including Kirkuk.

25. At paragraph 111 of *AAH* the Upper Tribunal noted "whilst we note the evidence of Country Research Manager (...) that the Iraqi authorities have assured the Home Office they will "assist with any onward travel documentation" we have been shown no evidence that this is actually happened, or what such documentation might be. (The expert's) uncontested evidence was that a failure to produce a CSID-or in the environs of the airport a passport-would likely result in detention until such time as the authorities could be satisfied as to the individual's identity"
26. I note the same report refers to other sources that ethnic Kurds, including Kurds from Kirkuk can freely enter the KRI, that ethnic Kurds with long residency in Kirkuk can gain access to the KRI possibly even for settlement and somewhat inconsistently that ethnic Kurds with long-term residency in Kirkuk must follow the same procedure for entry to the KRI as for all other Iraqi citizens.
27. The Upper Tribunal in *AAH* had before it the Embassy Letters to be found in the annexes to CPIN 2019 and the concession made at paragraphs 93ff re-appears at paragraph 2.6.20 of CPIN 2019. The plethora of sources on which it relies cannot be said to present anything like a uniform or consistent view of the requirements for entry to the KRI or the ease or difficulty with which the requisite documentation and in particular a CSID might be obtained.
28. The Applicant has not been forthcoming about his family remaining in Iraq or the KRI. From the 2018 decision of the First-tier Tribunal it appears the Appellant has not been pressed for information about his family. The information he gives about his family appears principally at interview replies 100-107 and particularly in relation to the ability to contact them at interview replies 109-111 and the age assessment report at page B13 of the SSHD's bundle.
29. There has been no challenge to the Applicant's claim to hail from Kirkuk Province which is not within the KRI and is an area where there is dispute between the KRI authorities and the Iraqi government particularly because of the oil resources in the province. There was no challenge to the Applicant's claim that he had contacted the Red Cross with a view to tracing his family without success: see interview reply 105. The Applicant is unlikely to be able to obtain information about his family from Iraq to enable him in the normal course to obtain a CSID: see paragraphs 173-187 of *AA (Iraq)* and 100-107 of *AAH*.

30. The Applicant is unlikely to be able to satisfy the documentary requirements for a *laissez-passer* identified at paragraphs 2.7.13 and 2.7.15 of CPIN 2019. He will therefore have to rely on the arrangements outlined in the Embassy's two letters annexed to CPIN 2019. These were the subject of some concern at paragraph 111 of *AAH* and there was no relevant evidence before me to address the concerns voiced in *AAH*. The evidence points to the Applicant not being able to obtain the relevant documentation to move beyond Baghdad airport.
31. The background evidence about the requirements for entry to the KRI by an ethnic Kurd from Kirkuk province is unclear, as already outlined. The general security situation in Kirkuk province is outlined at paragraph 8 of CPIN 2019 and can be described at best as uncertain. At paragraphs 8.1.2ff CPIN 2019 shows that ISIS is pursuing "hit and run" tactics and continues to challenge the authority of the Iraqi government and is waging an effective campaign to re-establish durable support zones while raising funds and rebuilding command-and-control over its remnant forces, so much so that it could gain sufficient strength to mount a renewed insurgency that once again threatens to overmatch local security forces in both Iraqi and Syria: see paragraphs 8.1.5 and 8.1.7.
32. For the reasons already given, I am satisfied to the lower standard that it is unlikely the Applicant can be returned to Iraq or the KRI. However, the impracticability of return is not grounds for the grant of refugee status.
33. Looking at the evidence in the round, I am satisfied to the lower standard that return to his home area in Kirkuk province or internal relocation anywhere in the KRI or indeed elsewhere in Iraq would be unduly harsh, particularly in the light of the SSHD's approach outlined at paragraph 2.6.20ff of the CPIN 2019 and the risk of destitution.
34. The Applicant has been found to have left Iraq for a Refugee Convention reason. The SSHD has not pursued a challenge to the 2015 circumstances which the Applicant asserted were the reason for his flight and the First-tier Tribunal decision allowed his appeal on Refugee Convention grounds. The consequence is the SSHD's appeal is dismissed and Applicant's appeal is allowed on asylum grounds and for the same reasons under Article 3 of the European Convention.

Anonymity

35. There was no request for an anonymity direction and having considered the appeal I find none is required.

NOTICE OF DECISION

The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds (Article 3)

Anonymity direction not made.

Signed/Official Crest

Date 26. iii. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE SSHD: FEE AWARD

The appeal has been allowed but no fee award may be made because no fee has been paid.

Signed/Official Crest

Date 26. iii. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal