



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

Appeal Number: PA/06591/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 24 January 2019**

**Decision & Reasons Promulgated
On 5 February 2019**

Before

Deputy Upper Tribunal Judge Pickup

Between

OR

[Anonymity direction made]

and

Appellant

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms S Khan, instructed by Broudie Jackson & Canter
Solicitors

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lloyd promulgated 226.18, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 9.5.18, to refuse his claim for international protection.
2. First-tier Tribunal Judge Pedro granted permission to appeal on 7.8.18.

3. From the grounds it is clear that the only issue challenged is the Tribunal's assessment of the article 15(c) risk of indiscriminate violence and, allied to that, return to Baghdad before travelling on to either Kirkuk or the IKR. In essence, the grounds challenged the judge's conclusion that the appellant can return to live in Kirkuk, a contested area, and the alternative conclusion that he will be able to relocate to the IKR. It was asserted that the judge failed to provide sufficient reasoning to depart from the country guidance case law on the basis of a change in country conditions superseding that prevailing at the date of the country guidance case law. In the alternative, reliance was made on the recent decision in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC), promulgated after the decision of the First-tier Tribunal, and the considerations that need to be made before deciding that relocation to the IKR is feasible.
4. The matter first came before me on 17.10.18. In my error of law decision, promulgated 22.10.18, I found such error in the decision of the First-tier Tribunal as to require the decision to be set aside and remade.
5. In essence, I found the judge's article 15(c) assessment that the appellant could return to Kirkuk at [68] was inadequately reasoned and failed to identify the clear and cogent country background evidence justifying departing from the country guidance that Kirkuk is in a contested area. Whilst IS control of Kirkuk may no longer be an issue, that conflict may have been replaced by another, between Iraqi government forces allied to militia and Peshmerga Kurdish forces. Representing the respondent, Mr Bates indicated that he was unable to defend that part of the decision of the Tribunal. In the circumstances, I found that part of the decision to be in error of law.
6. I also found insufficient reasoning for the alternative conclusion at [68-69] that the appellant will be able to relocate to the IKR. There needed to be clarification as to how the appellant would be returnable to Iraq and on what basis he will be able to obtain a CSID to enable him to do so.
7. Whilst AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC) had not been promulgated at the date of Judge Lloyd's decision and could not have been taken into account, it is now clear that there needed to be reasoning as to how the appellant would be able to manage on arriving in Baghdad and making his way to the and survive in the IKR.
8. For those reasons, I found the decision of the First-tier Tribunal on the issue of return inadequately reasoned and thus in error of law. However, only that part of the decision needed to be revisited. Given that there has been no challenge to the First-tier Tribunal's rejection of the factual basis of the appellant's protection claim, and there was no application to amend the grounds of appeal, there is no basis to disturb that part of the decision of the First-tier Tribunal and I uphold that part of the decision.

9. Following submissions, I was satisfied that this could be done in a continuation hearing in the Upper Tribunal at which the appellant will have the benefit of an interpreter so that he could understand the proceedings.
10. I also specifically preserved the following findings of the First-tier Tribunal:
 - (a) The appellant is not at risk of on return of an honour killing;
 - (b) He was not in a relationship with Ms M ;
 - (c) He did not elope with or marry Ms M (or any other person) and was single;
 - (d) He did not experience any opposition from Ms M's family;
 - (e) Mr M is not a powerful or influential figure in the appellant's home area;
 - (f) Ms M was not killed by her family;
 - (g) Ms M's father has no adverse interest in the appellant;
 - (h) He will be at no risk from Ms M's family on return;
 - (i) There is no blood feud or honour dispute involving the appellant;
 - (j) The appellant is not a credible witness in his own cause.
11. Other relevant findings of the First-tier Tribunal were not challenged and must stand as made, including:
 - (a) The appellant has not been disowned by his own family;
 - (b) He has no problems with any member of his family;
 - (c) He remains in contact with his family;
 - (d) The family home in Kirkuk has not been destroyed;
 - (e) He legally exited Iraq using his own passport and identity;
 - (f) He has a brother in Iraq whom he will be able to contact on return and who would be willing to assist him;
 - (g) He remains in contact with friends and neighbours in Kirkuk who will be willing to assist him on return to Iraq;
 - (h) He has contacts within the IKR, including the tribe chief with whom he lived in 2015 and his brother's friend with whom he also lived. These contacts will be able to assist him in the IKR;
 - (i) The appellant speaks some Arabic;
 - (j) He has previously been in possession of a CSID card;
 - (k) He is a young and healthy male with no dependents;
 - (l) He has not attempted to obtain documentation from the Iraqi Consulate in Manchester;
 - (m) With the assistance of his brother and other contacts he will be able to obtain ID documents before returning to Iraq.

12. In light of the limited scope of the continuation hearing and the preserved findings of the First-tier Tribunal, it was not clear to me that any further oral or documentary evidence would be necessary. However, I indicated that I would consider any application to adduce further evidence at the resumed hearing and issued directions in that regard as to the service of any proposed additional evidence.
13. Outside the time limit I directed for the service of proposed further evidence, the appellant's representatives submitted a further bundle, received by the tribunal on 14.1.19, together with an application to admit the evidence under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I note that the application does not comply with the requirements of Rule 15(2A) in that it does not explain why the evidence had not been submitted to the First-tier Tribunal.
14. The proposed evidence comprised a short additional witness statement of the appellant, together with Internet articles addressing ISIS invasion of Kirkuk and generally its safety. The bundle also included a copy of AAH.
15. Following preliminary discussion with the two representatives, Mr Diwnycz did not pursue return to Kirkuk and did not object to me proceeding on the basis that to expect the appellant to return to Kirkuk would be unduly harsh. Neither did he pursue any suggestion that the appellant could relocate to Baghdad, as opposed to merely transiting Baghdad Airport on his way to the IKR. It follows that the sole issue was the feasibility of return to Iraq and relocation to the IKR. I also indicated that I intended to follow the country guidance that as he does not come from the IKR, the appellant will not be able to be returned there directly through pre-clearance processes but will have to be returned to Baghdad and make his way to the IKR from there. Mr Diwnycz and Ms Khan agreed with my proposal to proceed on that limited basis.
16. It follows that the bulk of the additional evidence sought to be adduced was not relevant to the outstanding issue in the appeal. I also raised concern about admitting the appellant's additional statement, dated 7.1.19, when in large part it purported to contradict the preserved findings. However, Ms Khan indicated that she would do no more than have the appellant adopt the statement and tender him for cross-examination. In the circumstances, I admitted the witness statement only, on the clear understanding that I could not accept any part of the appellant's statement that contradicted the preserved findings. The only question asked of the appellant in cross-examination was as to whether he acknowledged that the IKR was part of Iraq and not an independent country.

Feasibility of Return to Iraq

17. Applying the country guidance set out in AAH and AA (Iraq) v SSHD [2017] EWCA Civ 944, considering the current Home Office Country Guidance on return to Iraq, dated October and November 2018 and in the public

domain, and adopting the preserved findings, I am satisfied that the appellant will be able to obtain sufficient documentation to enable his return to Iraq and onward journey to the IKR, which is virtually violence free and where there will be no article 15(c) risk.

18. The relevant circumstances are that he was previously in possession of both a passport and a CSID, having legally exited Iraq in his own identity and passport. Whilst he cannot be expected to return to Kirkuk himself, his family home in Kirkuk has not been destroyed and he remains in contact and on good terms with his family there, who will be willing to assist him on return. He also remains in contact with friends and neighbours in Kirkuk who would also be willing to assist him. He also has contacts within the IKR who would be willing to assist him.
19. Given he is in contact with family, he will be able to obtain the relevant information relating to his CSID to enable him to obtain a CSID and indeed a passport to make his return feasible. It is also open to him to use a proxy family member with power of attorney to obtain a renewal of his CSID in Kirkuk. Significantly, even now, he has not made any attempt to obtain documentation from the Iraqi Consulate in the UK, when the country guidance is that with basic information as to the book and volume number that I am satisfied will be able to be provided by his family or friends in Iraq, a replacement CSID can be obtained in the UK. Given that he has previously had a passport, he should also be able to use this information to enable the Iraqi authorities to confirm his identity. I note the appellant's general lack of credibility, preserved from the decision of the First-tier Tribunal, and find his recent statement inconsistent with the preserved findings, so that do not accept any part of his claim to have no one to assist him in Iraq. I specifically preserved the finding that with the assistance of his brother and other contacts, the appellant will be able to obtain ID documentation before returning to Iraq. The onus was on the appellant, to the lower standard of proof, to demonstrate that he does not have and cannot obtain documentation. For the reasons set out above, I find he fails to discharge this.

Entry into and Conditions in the IKR

20. For the reasons set out below, after applying AAH, I find that the appellant will be able obtain entry into the IKR from Baghdad, without the necessity of making overland travel, and will be able to establish himself there without risk of destitution.
21. The background evidence is that flights from Baghdad to the IKR resumed in March 2018, post-dating AAH. Following the country guidance, with a CSID, he will have no difficulty making the internal transfer at Baghdad Airport to a flight to Erbil or Sulaymaniyah within the IKR. The authorities in the IKR will permit temporary entry and he is at no risk of being refused or removed from the IKR. I also note that he previously had no difficulty entering the IKR before leaving Iraq. He will need but I am satisfied he will have his CSID to enable him to access state support, as well as obtain

accommodation and employment. He will be able to demonstrate that he comes via the UK and thus there is no risk of him being considered as associated with ISIS or other groups opposed to Kurdish authority.

22. Even if he did not have a CSID on entry to the IKR, I am satisfied that with the assistance of family and/or others in both Kirkuk and the IKR the appellant will be able to obtain one within a short and reasonable time of arrival.
23. I reject the appellant's claim that he will have no one to assist him in the IKR. In addition to having family members not far away in Kirkuk, I have preserved the findings that he has contacts within the IKR who will be willing to assist him, including the tribunal chief with whom he lived in 2015 and his brother's friend with whom he also lived. These contacts will be able to assist him find accommodation and make contact with his family members in Kirkuk.
24. I take fully into account the difficult economic conditions within the IKR, including high unemployment, as set out in AAH. However, the appellant is young, fit and healthy and has demonstrated his resilience in making the difficult journey to the UK. He will be able to employ those skills and resources to help establish himself in the IKR and seek employment. In addition, I am satisfied that he will be able to call on the assistance of friends and contacts within the IKR and will also be able to make contact with his family in Kirkuk who may also be able to provide assistance and further contacts to help him. In addition, I take into account the assisted voluntary return payment that he can apply for to smooth his transition and finance at least temporary accommodation for several months whilst he establishes himself more securely. He will not need to access critical shelter or a displaced persons camp. Even if he cannot find employment within a reasonable period, he has family and friend connections to assist him to survive adequately. In all the circumstances, I am satisfied that he will ultimately and within a reasonable period be able to establish himself in the IKR, so that there is no real risk of destitution on return to Iraq and relocation to the IKR.
25. It follows that applying the lower standard of proof, the appellant's claim must fail on all grounds. His return to Iraq is feasible. There is no article 15(c) risk for the appellant in the IKR and I am satisfied that he will reasonably be able to relocate there in safely without any real risk of undue hardship.

Decision

26. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision, preserving those findings set out above;

I remake the decision by dismissing the appeal on all grounds.

Signed DMW Pickup

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. However, given the circumstances, I make an anonymity order.

Direction Regarding Anonymity

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed DMW Pickup

Deputy Upper Tribunal Judge Pickup

Dated