Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07079/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision and Reasons Promulgated**
On 17 December 2018	**On 15 January 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

R A O
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms I Sabic of Counsel, instructed by Sutovic and Hartigan Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Sullivan promulgated on 10 October 2018 dismissing his appeal against the respondent's decision of 3 April 2018 to refuse his claim

for protection following the making of a deportation order on 13 August 2015 (reconsidered and maintained on 22 December 2017).

2. The appellant is a national of Iraq, born on [~] 1982. He arrived illegally in November 2009 and a subsequent asylum application on the basis that he feared terrorists in Iran because of his past service there as a member of the Iraqi National Guard was refused on 18 December 2009. The appeal against the decision was dismissed in March 2010.

3. On 21 December 2011 the appellant was convicted of rape and received a ten year prison sentence. He put forward a further protection claim and that was considered but refused on 3 April 2018. His appeal was heard at Harmondsworth on 8 October 2018. He argued that he would be at risk on return as he was a Sunni Kurd and a former policeman. No article 8 claim was pursued. Judge Sullivan did not accept the claim and dismissed the appeal. Permission to appeal was sought and granted by First-tier Tribunal Judge Gibb on 1 November 2018.

4. I have not had sight of a Rule 24 response from the Secretary of State.

5. The matter then came before me on 17 December 2018.

The Hearing

6. For the appellant, Ms Sabic submitted that the judge had found that the appellant came from the KRI. The issue then arose as to where he would be returned to. She relied on her skeleton argument in which she focuses on two grounds. The first is that there was a lack of findings on the contact with and availability of family members in Iraq who would be able to assist the appellant. She argued that despite the finding that the appellant was completely lacking in credibility, the judge was required to make findings on family support. It is maintained that the findings that were made are inadequate.

7. Secondly, Ms Sabic argued that if it were the case that the judge had adequately found that the appellant had family he would be able to contact in Iraq, she had failed to follow country guidance. It was accepted that by the date of the hearing before the First-tier Tribunal the position as to international flights to the IKR had altered from the position at the time AAH [2018] UKUT 212 had been promulgated. In the absence of a voluntary return to the IKR, the appellant would be removed to Baghdad. As the appellant maintained that he was from Mosul, he would not agree to a return to the IKR. It had not been shown that the appellant would be able to obtain a CSID or any other

form of identification if returned to Iraq. If this ground was upheld, then the issue of relocation to Baghdad needed to be considered.

8. In response, Mr Clarke submitted that the grounds had not been made out and the determination showed that the appellant had failed to discharge the low burden upon him. Both Judge Sullivan and the judge dismissing the earlier appeal had made adverse credibility findings. Judge Sullivan had noted that a relative of the appellant had recently visited the UK; the appellant could have obtained assistance from him. A friend had also visited (at 32). The judge found that the appellant had withheld information about his family (at 31a) and she rejected his claim that his father was dead (at 31b). Other matters were also found to be unbelievable. The previous judge had also found that the appellant was from the IKR. Judge Sullivan had no reason to depart from that finding. She found that he did have family in Iraq and did not accept that he would be unable to obtain a CSID card. Her finding that he had family who would be able to assist him is clearly made and sustainable. The appellant's former position as a policeman would also make it simple, one would imagine, to obtain identification.

9. With respect to whether the appellant chose to return to the IKR or preferred to be forcibly removed to Baghdad, the wrong test had been argued. The test was whether the appellant would be at risk in his home area. If the appellant was prepared to obstruct his removal to a safe area, that could not be held to be relevant to the assessment otherwise it would encourage all appellants to follow that tactic. I was referred to CPIN on CSID cards and asked to find that the judge's findings had been open to her.

10. Ms Sabic replied. She submitted that it was crucial for the Tribunal to consider where the appellant would be returned to. He would only be returnable to a safe area if he chose a voluntary return. Further, it was not open to the judge to depart from country guidance as regards flights and return. Such a departure could only be undertaken by the Upper Tribunal.

11. At the conclusion of the hearing I reserved my determination which I now give with reasons.

Findings and Conclusions

12. I have had careful regard to the submissions and all the evidence before me. On the first point I am satisfied that the judge made adequate and sustainable findings. She rejected the appellant's account of having lost touch with his family and/or of his family having left Iraq. She was entitled to conclude that, having found the

appellant's claim to be a fabrication, he could not be believed with respect to his claim about his family. It was therefore open to her to find that the appellant would be able to turn to them for assistance in obtaining identity documents if he did not already have them.

13. With regard to the issue of return, the judge found that the appellant was from the IKR as did the previous Tribunal judge. She found that it would be safe for her to return there. The evidence before her were that there were international flights to that area and so she was entitled to find that he could be returned there. I have had regard to the submission about voluntary returns but as Mr Mills submitted, the test is whether he would be safe in his home area. I also find merit in his submission that if appellants were permitted to refuse return to safe areas in favour of possibly unsafe areas, then that would make a mockery of the asylum system.

14. In conclusion, therefore, the judge considered the appellant's claim for protection but found that it had not been made out.

Decision

15. The First-tier Tribunal Judge did not make any errors of law and the decision to dismiss the appeal stands.

Anonymity

16. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

Date: 4 January 2019