Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11013/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st June 2019	**On 12th July 2019**

Before

DISTRICT JUDGE MCGINTY
SITTING AS A DEPUTY UPPER TRIBUNAL JUDGE

Between

MR A.A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Lowis of Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Wyman promulgated on 24th April 2019 following a hearing at Hatton Cross on 27th March 2019 at which he dismissed the Appellant's asylum and human rights claims.

2. the First-tier Tribunal Judge made a direction regarding anonymity under Rule 13 of the Tribunal Procedure (First-tier Tribunal) Immigration and Asylum Chamber Rules 2014 and given the nature of the issues in this case is similarly make an anonymity order. Unless or until a Tribunal or

court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall identify him either directly or indirectly or any member of his family. This direction applies both to the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant in this case is a citizen of Iraq who comes from Kirkuk and is of Kurdish ethnicity. His case was that his father was a member of the Ba'ath Party and is said to have been a sergeant and commander. His case is that he cannot return to Iraq because of his father's association with Ba'ath Party and that he will be targeted due to his father's involvement and as a result, his own imputed political opinion. The First-tier Tribunal Judge accepting that it was possible that the Appellant's father may have been a low level member of the Ba'ath Party, but did not accept the Appellant's father was a commander of the Ba'ath Party as claimed.

4. The judge then went on to discuss the country guidance as given in the Upper Tribunal version of **AA [2015] UKUT 00544** as subsequently confirmed by the Court of Appeal, in respect of the Article 15(c) of the Qualification Directive considerations as to whether there was a state of internal armed conflict in various areas of Iraq such as any civilian returned there, solely on account of his or her presence faces a real risk of being subjected indiscriminate violence amounting to serious harm within the scope of the Qualification Directive. At paragraph 87 of the judgment, Kirkuk was said to be one of those contested areas mentioned in the country guidance.

5. However at [88] the judge went on to state:

> "*Since the reasons for refusal letter Daesh had not lost all of the territory they held within Iraq and therefore the security situation in Kirkuk no longer meets the threshold of Article 15(c)".*

It was therefore found that there is no risk of indiscriminate violence in northern Iraq, the Appellant was no longer at risk from ISIS and the Appellant did not qualify for humanitarian protection.

6. The judge went on to find the Appellant was not at risk from his father's limited role with the Ba'ath Party and then went on to find that the Appellant could obtain his CSID from his mother in Turkey and then went on to consider whether or not the Appellant could support himself back in Kurdistan, as soon as he obtained his CSID. That was dealt with between paragraphs 103 and 106 of the judgment. The judge said the Appellant did have a sister who lived in Irbil and that the case of **AAH** states that cultural norms would require the family to accommodate an individual. The judge found that the Appellant could live a relatively life which would not be unduly harsh.

7. The judge found that the Appellant had not provided any letters from his sister explaining that she could not accommodate him, whether because

there is no room in the house or that her family could not afford to do so and he said there was no explanation as to the lack of evidence provided.

8. The judge went on to find that assuming he did have a CSID, the Appellant would be able to obtain work and no doubt use his skills including language skills he obtained from his time in the UK and that he found that the Appellant would have the ability to return to Kurdistan and live with his family, namely his sister and therefore did not qualify for asylum, humanitarian protection or Human Rights protection.

9. The Appellant now seeks to appeal that decision for the reasons set out within the Grounds of Appeal drafted by Counsel on 5th May 2019. I am most grateful to both legal representatives for their very helpful submissions in respect of this case. I am also grateful to Ms Lowis and also her skeleton argument. It is helpful if Counsel has gone to the trouble of drafting a skeleton argument so the judge knows in advance what is being argued and also that I do bear in my mind that this does take time and effort and I am appreciative of how much effort goes into it.

10. I note that permission to appeal in this case had been granted by First-tier Tribunal Judge Buchanan on 28th May 2019. In this case Mr Bramble on behalf of the Home Office concedes that in respect of the first Ground of Appeal that the judge erred in his approach to the country guidance regarding Article 15(c) risk in the Appellant's home area of Kirkuk, but he does not concede that this is material. Mr Bramble, however, argues that the fact that even if the judge wrongly concluded that the country guidance could be departed from the way that he did, the fact that the Appellant has a sister within the IKR with whom he can live and that he will be able to obtain employment based upon the judge's findings means that any error based upon the judge's approach to the Article 15(c) risk in Kirkuk is not material.

11. The second Ground of Appeal argues that the judge took an incorrect approach in the assessment of support available for the Appellant within the IKR.

12. In respect of the first ground. As I stated the judge noted that Kirkuk was one of the contested areas as far as the country guidance was concerned at paragraph 87 of the judgment. But then at [88] he went on to say that both the security situation had changed significantly since April 2015 by the date of the decision letter and that thereafter Daesh had now lost all of the territory that they held within Iraq and therefore the security situation in Kirkuk no longer met the threshold of Article 15(c).

13. As Ms Lowis notes in the skeleton argument the Court of Appeal in the case of **SG (Iraq) v SSHD [2012] EWCA Civ 940** in the judgment of Lord Justice Stanley Burton paragraphs 46 and 47 stated

> "*The system of country guidance determinations enables appropriate resources in terms of the representations of the parties to the country guidance appeal, expert and factual evidence and the personnel and time of the Tribunal to be*

> *applied to the determination of conditions in and therefore the risks of return for persons such as the Appellants in the country guidance appeal to the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.*
>
> *It is for these reasons as well as the desirability of consistency the decision makers and Tribunal judges were required to take country guidance determinations into account and follow them unless very strong grounds supported by cogent evidence are adduced justifying their not doing so*".

14. Although in that regard the First-tier Tribunal Judge has stated that the security situation has now changed since the country guidance case, what he actually fails to set out is actually any evidence to support those conclusions. I do not consider that is something that the judge can simply state that by means of his own judicial knowledge and has to consider evidence actually before him in that regard and as to whether it is sufficient to indicate that the country guidance should be departed from. It is also argued by the Appellant that the judge failed to take into account objective evidence referred to in the Appellant's own skeleton argument including the 2017 Iraq Human Rights Report, the US Department of State and 2017/2018 Annual Report Iraq from Amnesty International which was said to support an assertion that remained a risk of breach of Article 15(c) due to indiscriminate violence in Kirkuk

15. Within paragraph 7 of the Grounds of Appeal it is said that the only evidence departing from country guidance was the Respondent's own CPIN dated March 2017 but that was the Respondent's own assessment that the situation in Kirkuk no longer met the threshold. It seemed the judge has not even referred to that as a reason for departing from the country guidance. Clearly the basis upon which the judge has departed from country guidance has not been adequately explained. The question as to whether or not that error is material, as Mr Bramble quite rightly points out, is dependent on ground 2 as to whether or not, irrespective of the security situation in Kirkuk, the Appellant could safely and without undue hardship internally relocate to Irbil particularly with his sister.

16. In that regard both parties referred me to paragraphs 36 to 41 of the judgment of the First-tier Tribunal Judge where he summarised parts of the head note in the case of **AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212** which gave guidance as to whether or not relocation to the IKR of an Iraqi Kurd who was not from the IKR will be unduly harsh.

17. At paragraph 40 Judge Wyman stated that

> "*If the Appellant has family members living in the IKR, cultural norms would require that family to accommodate him. In such circumstances, the Appellant would in general have sufficient assistance from the family to lead a 'relatively normal life' which will not be unduly harsh*".

18. However, the judge has not actually read into his judgment the entirety of paragraph 8 of the headnote, because that headnote went on to state "*it is nevertheless important for decision makers to determine the extent of any systems provided by P's family on a case by case basis*".

19. In this case as I said when the judge then went on to consider the question of the sister and the Appellant's ability to relocate to Irbil, he started at paragraph 103 of the judgment and found that the Appellant's sister lives in Irbil and that based on the case of **AAH** cultural norms will require the family to accommodate an individual and that that would mean that a person would lead a relatively normal life which will not be unduly harsh. The Judge found the Appellant had not provided any letter from his sister explaining that she could not accommodate him, whether because there is no room in the house or the family cannot afford to do so and said there was no explanation as to the lack of such evidence being provided.

20. What is argued by the Appellant is that at paragraph 63 of the judgment when setting out the evidence the First-tier Tribunal Judge had stated

> "*Mr A confirmed his sister remains living in Irbil. She is married. She has not had any problems living in Irbil. Mr A explained that when women get married their tie from their birth family is disconnected. This is why she has had no problems relating to their father. … It is different for a son, as males inherit problems from their father*".

21. What Ms Lowis argues is that if one looks at this case on a case by case basis as required by paragraph 8 of the head note on **AAH** to determine whether or not family assistance is likely to be provided, the Appellant in this case had given evidence that when women get married their tie from their birth family is disconnected so that she argues the Appellant would not be in a position simply to go and live with his birth family and his sister back in Irbil.

22. Mr Bramble argues that the reference to the tie to the birth family being disconnected does not mean they were no longer in contact but simply that responsibility for the sister then passed from the birth family to the husband and his family upon marriage.

23. Ms Lowis in her skeleton argument says that the reason why the Appellant was unable to produce a statement from his sister was that they were no longer in contact following her marriage. The First-tier Tribunal Judge has not actually considered what the Appellant's evidence in that regard regarding the tie to the birth family being disconnected, as to whether that meant that he was no longer in contact with her.

24. Mr Bramble put a different interpretation upon that evidence but either way the judge has not considered that evidence as to whether or not the Appellant could be accommodated by his sister and the Appellant's evidence that the tie to his sister was disconnected upon her marriage. The judge has not taken account of the Appellant's evidence in that regard

and has therefore might have failed to take account of relevant evidence when determining that issue.

25. Criticism is also made by Ms Lowis of the judge's findings regarding the Appellant's ability to obtain employment in the KRG, and in that regard, she also refers me to paragraph 10 of the head note of **AAH** where it is said that

> "*Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
>
> *(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;*
>
> *(ii) the employment rate for Iraqi IDPs living in the IKR is 70%;*
>
> *(iii) P cannot work without a CSID;*
>
> *(iv) patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to perspective employers and to vouch for him;*
>
> *(v) skills, education and experience. Unskilled workers are at the greatest disadvantage with a decline in the construction industry reducing the number of labouring jobs available;*
>
> *(vi) if P is from an area with marked association with ISIL, that may deter respective employers."*

26. Although Ms Lowis does not say that this is a checklist and that the judge has to consider every single factor, what she does argue is that the case has to be assessed on a case-by-case basis, taking those matters into account where relevant. which indicates gender would not be relevant and or could get a CSID. What she does say is that the judge has not taken account of the unemployment rate at 70% in the IKR or the fact that the Appellant was coming from Kirkuk an area with a marked association with ISIL. Those factors seemingly have not been considered by the judge. There are therefore also errors in the way that internal relocation was dealt with. That does mean that overall the errors are material.

27. In those circumstances I find that the decision does contain material errors such that the decision of the First-tier Tribunal Judge should be set aside in its entirety and the matter remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Wyman.

Notice of Decision

The decision of First-tier Tribunal Judge Wyman does contain material errors of law and is set aside. The matter is remitted back to the First-tier Tribunal for

rehearing de novo for any First-tier Tribunal Judge other than First-tier Tribunal Judge Wyman.

The Tribunal does make an anonymity order in this case. Unless or until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 7th July 2019
DJ McGinty
District Judge McGinty
Sitting as a Deputy Upper Tribunal Judge