Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10789/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 18th August 2020	**On 22nd September 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

HAH
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Islam, Fountain Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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 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.

Introduction

1. The appellant is a national of Iraq. He appealed the respondent's decision dated 24th October 2019 to refuse his claim for international protection. The appeal to the First-tier Tribunal ("FtT") was dismissed by FtT Judge Obhi for reasons set out in a decision promulgated on 7th February 2020.

2. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Sheridan on 2nd July 2020. The matter comes before me to determine whether the decision of FtT Judge Obhi is vitiated by a material error of law.

3. The hearing before me on 18th August 2020 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is

proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Background

4. The background to the appellant's claim for international protection is summarised at paragraph [2] of the decision of Judge Obhi. The respondent accepts the appellant is an Iraqi national. The appellant claims that he was born in Mala Abdulla, in Kirkuk. He claimed, and the respondent accepted, that his father was killed when he fought as a volunteer with the Peshmerga in their fight against ISIS in July 2015. The appellant claims that he left Iraqi in August 2015 and that his mother and his paternal uncle sent him to the UK because ISIS had entered Kirkuk, and they feared for his safety.

5. The appellant claims that he has not had any contact with his family since December 2015 when he was in Finland. He claims his mother told him that she, her brother and two of the appellant's paternal uncles were also planning to leave Kirkuk and travel to Europe.

6. The evidence of the appellant is set out at paragraphs [15] to [22] of the decision of Judge Obhi. The appellant also relied upon the evidence of [Mr T], and his evidence is set out at paragraphs [23] and [24] of the decision.

7. Judge Obhi noted the circumstances which caused the appellant to leave his home are not disputed by the respondent. She noted that there is little evidence that ISIS have any particular interest in the appellant based on his father's involvement with the Peshmerga and she found the appellant cannot prove that case, even on the lower standard. She went on to consider whether the appellant will be at

risk of indiscriminate violence and noted that country guidance previously provided that there were areas of Iraq in which the situation was so volatile that an individual may face a real risk on return of indiscriminate violence. She considered the more recent country guidance set out in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) ("SMO & Others") in which the Tribunal held that the situation in the Formerly Contested Areas, including the governorate of Kirkuk is complex and whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment. She noted the Upper Tribunal had said:

> *"The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*
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> - *Opposition to or criticism of the GOI, the KRG or local security actors;*
> - *Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
> - *LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
> - *Humanitarian or medical staff and those associated with Western organisations or security forces;*
> - *Women and children without genuine family support; and*
> - *Individuals with disabilities."*

8. Judge Obhi noted that although the appellant originates from Kirkuk, he does not have any of the personal characteristics listed, and she concluded that he cannot succeed in his claim that he will be at risk of indiscriminate violence, or that he comes within Article 15(C) of the Qualification Directive.

9. She went on to consider the appellant's claim that he has no identity documents. She noted the appellant will be returned to Baghdad, and referred to headnote [9] of the country guidance in SMO & Others, that an international protection claim cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that the person's return is not currently feasible on account of a lack of any of those documents.

10. Judge Obhi noted, at paragraph [37], that although the appellant is a Kurd, he does not originate from the Kurdish area. She concludes that internal relocation to the IKR is possible for the appellant. At paragraphs [38] to [40] of her decision, Judge Obhi states:

> "38. The appellant is a fit and healthy young man. He has travelled throughout Europe and therefore is perhaps not as vulnerable as he portrays himself to be. I note that he has been prescribed antibiotics and antidepressants, but the evidence, including that from Lets Talk suggests that his depression is well managed with his medication. Furthermore, he does have support, including that of [Mr T] who is himself a former national of Iraq and who upon acquiring British nationality has returned to Iraq for a holiday and clearly does not consider it a dangerous place for him to return to for a holiday. I found [Mr T]'s evidence in relation to his trip to Iraq to be guarded, he denied that he has family still in Iraq, I do not accept that. It is more likely than not that he returned to visit family even though he claims that he stayed at a hotel. To return to a country from which he fled through fear of persecution for a holiday without the attraction of a family member is not, in my view, credible.
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> 39. Although the appellant claims that he has no contact with any family member in Iraq those claims have to be taken with some caution, as he clearly does not want to return and from what he has said, his family did not want him to return and he is therefore bound to say that he has no-one to return to. It is likely that he has contact with family members in Iraq and he could obtain replacement ID documents. Similarly, he could attend at a CSA and provide details of the page reference in the Family Book, information that he is likely to have or be able to obtain.
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> 40. In terms of his private life, the appellant has provided very little evidence of any integration into the wider community in the UK. He has been in the UK for a limited time and has not established either a private or a family life which would be significantly interfered with if he were required to return to his country of origin. I do not find the appellant to be a refugee or to

> be at risk of indiscriminate violence under article 15c; therefore, there are no insurmountable obstacles to his return.

11. The appellant advances two grounds of appeal. First, the judge has failed to provide adequate reasons as to why the appellant's human rights claim was not made out. Second, the judge reached an irrational decision and/or failed to provide adequate reasons for her decision.

12. Mr Islam submits the appellant left Iraq as a child and last had contact with his family in December 2015. He submits the Judge has not adequately considered what has happened to the appellant's family, including the possibility that they may have been killed, and whether the appellant will be able to obtain the CSID documents to enable travel from Baghdad to the IKR. Mr Islam submits the Judge failed to properly consider the country guidance set out in SMO & Others and that a more detailed assessment of the evidence was required. He submits the key issue is whether the appellant can obtain a CSID, and there is a risk that the appellant's family do not remain in Iraq. Furthermore, even upon return to the IKR, there is a risk that the appellant would be destitute and thus internal relocation would be unduly harsh. Mr Islam submits that if the appellant cannot obtain a CSID document, internal relocation to the IKR would not be possible and it follows that there would be very significant obstacles to the appellant's integration in Iraq. Mr Islam accepts the outcome of the Article 8 claim stands and falls with the claim for international protection.

13. In reply, Mrs Aboni relied upon the respondent's Rule 24 reply dated 30th July 2020 and submits the Judge gave adequate reasons and made findings that were open to her on the evidence. She submits the findings and conclusions reached by the Judge are in line with the most recent country guidance set out in SMO & Others. She refers to the country guidance in which the Tribunal noted that the

number of individuals who do not know and could not ascertain their volume and page reference in the civil register would be quite small because it is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. At paragraph [392], the Upper Tribunal also said:

> "There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. As is clear from AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back."

14. Mrs Aboni submits the appellant has not given credible evidence regarding the loss of contact with his family and it was open to the judge to conclude that his claim that he has no contact with any family member in Iraqi, must be taken with caution. She submits it was open to the Judge to conclude the appellant has been in the UK for a limited time and has not established either a private or a family life which would be significantly interfered with if he were required to return to Iraq. She submits it was open to the judge to conclude that there are no very significant obstacles to the appellant's reintegration in Iraq.

15. Although many of the criticisms made by the appellant have little merit, in my judgement, Judge Obhi failed to adequately address the risk upon return. I reject the claim made by the appellant that Judge Obhi failed to have regard to the fact the appellant is a Sunni Muslim

Kurd, who lived outside the IKR. Contrary to what is said by the appellant, at paragraph [2] of her decision the Judge noted the appellant was born in Kirkuk and at paragraph [32], she noted that in relation to formerly contested area such as Kirkuk, there needs to be a fact sensitive "sliding scale" assessment based upon a number of factors set out in the country guidance. Judge Obhi noted, at [33], that the appellant does not have any of the personal characteristics that would put him at risk and again noted that the appellant originates from Kirkuk, which is a formerly contested area. Judge Obhi does not however make an express finding that the appellant would not be at risk upon return to Kirkuk and thus could return to his home area.

16. At paragraph [37], Judge Obhi noted the appellant is a Kurd but does not originate from the Kurdish area. She states that relocation to the Kurdish area is possible for the appellant, but does not address whether it would be unduly harsh for the appellant to relocate to the IKR, how the appellant would travel from Baghdad to the IKR, and the circumstances in which he would be living in the IKR. The support that Judge Obhi refers to as being available to the appellant, including that of [Mr T] is not identified. Although Judge Obhi states that the appellant's claim that he has no contact with any family members in Iraq must be taken with some caution, she does not reject that evidence. She does say, at [39], that it is likely the appellant has contact with family members in Iraq, but she does not give reasons for reaching that finding.

17. I quite accept that at paragraph [391] of the country guidance in SMO & Others the Upper Tribunal noted that the number of individuals who do not know and could not ascertain their volume and page reference would be quite small. The details were said to appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. The Upper

Tribunal had noted the volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. That however must be considered in light of what was said by the Upper Tribunal at paragraph [392]. That is, there will be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell, and those who have issues with literacy or numeracy may all be able to make such a claim plausibly, even though it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. These are not matters that are in my judgement adequately addressed at paragraph [39] of the decision.

18. It follows that in my judgement the decision of Judge Obhi is vitiated by a material error of law and must be set aside. As to disposal, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

19. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

20. The appeal is allowed and the decision of FtT Judge Obhi promulgated on 7th February 2020 is set aside.

21. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

22. I make an anonymity direction.

Signed **V. Mandalia** Date: 11th September 2020
Upper Tribunal Judge Mandalia