IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13939/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 14 February 2020	**On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

SZH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Smith, instructed by Bankfield Heath, solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Iraq who was born in 1994. He appealed to the Upper Tribunal against a decision of the First-tier Tribunal dismissing his appeal against the refusal by the Secretary of State to grant him international protection. The Upper Tribunal (Upper Tribunal Judge Hemingway) set aside the decision of the First-tier Tribunal and gave directions for the decision to be remade in the Upper Tribunal. Following the making of a transfer order, I heard the resumed hearing at Bradford on 14 February 2020.

2. Judge Hemingway set aside the decision for the following reasons [9]:

> "9. As to Ground 3 it appears that, in fact, when she made her decision to refuse international protection, the Secretary of State had nevertheless accepted that Mosul was in an area which remained a contested area. However, the Secretary of State's position at that stage seems to have been that Mosul was no longer to be regarded as the claimant's home area because he had relocated to Erbil which is within the part of Iraq under Kurdish control (IKR) prior to leaving Iraq (see paragraph 43 of the Secretary of State's decision letter of 7 December 2016). But, on the face of it, in preparing for the appeal to the tribunal, it looks like no-one had really appreciated that the Secretary of State's position was that the claimant's home area had changed. In her skeleton argument prepared for the purposes of the tribunal hearing, Ms Warren had argued at paragraph 4 of that document that the claimant was from a contested area and, at paragraph 5, she had said "as it is accepted that the appellant is from a contested area, then the sole issue is one of internal relocation…". Although the skeleton argument did not deal with the contention that the home area had changed (and neither did the tribunal) I am satisfied that what was said in the skeleton argument and elsewhere, irrespective of what might have been said at the hearing, was sufficient to place the tribunal on notice that there was an issue to be decided as to whether or not the claimant's home area had changed and, if not, whether Mosul was located in an area which remained contested. The tribunal did not do that so it erred in law. That error was a material one because had the tribunal concluded that the claimant's home area was still Mosul and had it concluded that Mosul was still in what remained a contested area and had it decided that there was no available internal flight alternative it would, in all probability, have allowed the appeal. That then is sufficient for me to conclude that the tribunal's decision has to be set aside."

3. He indicated [15] that the issues remaining to be determined were as follows:

> "15. Whilst I do not intend to be prescriptive or exhaustive, it seems to me that the issues I (or a colleague) may have to decide and which therefore evidence and argument might be useful, may be as follows:
>
> (a) Whether it can be said that the claimant's home area is Mosul or whether it is Erbil (further oral evidence may assist us to that).
>
> (b) Assuming the home area is Mosul, whether that is in a part of Iraq which remains a "contested area". Expert evidence or background country material as well as relevant case law might assist.
>
> (c) Assuming that the home area is Mosul and that the claimant cannot return there either because it is in a contested area or for some other good reason, whether the claimant might be able to relocate to a different part of Iraq including, as possible candidates, Baghdad or the IKR."

4. At [14] Judge Hemingway preserved the following findings of fact from the decision of the First-tier Tribunal:

> "14. In the above circumstances I have concluded that the proper course is for the Upper Tribunal to remake the decision whilst preserving the tribunal's adverse credibility conclusion and its consequent findings. That means the section of the tribunal's written reasons which I have reproduced above will be preserved. So, in a nutshell, my starting point (or the starting point of a different Upper Tribunal Judge if remaking is not to be undertaken by me) will be the findings that there was no relationship as claimed; there was therefore no risk in consequence of any such relationship; **the claimant is still in contact with his uncle; and the uncle has his CSID card and nationality certificate (paragraph 75 of the written reasons).**" **[my emphasis]**

5. At the resumed hearing, the appellant adopted his written statements as his evidence in chief. He was not cross examined. Having heard the oral submissions of both representatives and having considered Ms Smith's skeleton argument, I reserved my decision.

6. The burden of proof is on the appellant and the standard of proof is whether there are substantial grounds for believing there to be a real risk that the appellant faces persecution, ill-treatment or serious harm if he returns to his home area of Iraq. If he is unable to return to his home area, it is necessary to determine whether would be unduly harsh for him to exercise internal flight within Iraq, either to Baghdad or to the Independent Kurdish Region (IKR).

7. In his most recent witness statement (which the appellant adopted) he denies that he is in touch with his uncle or, indeed, any other member of his family. He denies that his home area is the IKR (Erbil, in particular). He asserts that he is still in fear of his life in the IKR on account of his relationship with a woman notwithstanding the rejection of account by the First-tier Tribunal. The appellant asserts that he will be unable to find accommodation or work in the IKR. He states that he cannot live in Baghdad. He claims that he went to the Iraqi consulate in Manchester but was told that nothing could be done to assist him or to provide him with replacement identity documents.

8. I have considered the appellant's evidence in light of the fact that the previous judge has found him to be a wholly unreliable witness. In so far as the appellant's most recent statement simply contradicts findings made by the First-tier Tribunal, I reject it. I have been directed by Judge Hemingway to proceed on the basis of the findings as stated above and Ms Smith, who appeared for the appellant at the resumed hearing, did not suggest to me that I should do otherwise. I am, however, prepared to accept what the appellant says regarding his visit to the Iraqi Consulate; his experience there is very similar to that of other displaced Iraqis who have approached their nation's consular facilities in the United Kingdom and it has the ring of truth.

9. Ms Smith submitted that the appellant remained at risk in his home area of Iraq and that that area should be identified as Bashiqa, Mosul which is in Ninewah Governate and not Erbil, *de facto* capital of the IKR. She submitted that Ninewah remains disputed between the government of Iraq and the forces of the IKR. ISIL remains a threat to the civilian population in the region. The balance of power has shifted from the Sunni to the Shia population and the appellant, as a Kurdish Sunni, would be exposed to risk.

10. I acknowledge that the appellant's home area should properly be identified as Ninewah. I accept the submission that the appellant was only a temporary, asylum seeking resident of the IKR. However, whilst I acknowledge that there is some political turbulence within Ninewah, I am not satisfied that it has been demonstrated that the appellant, a Kurdish Sunni Muslim man with absolutely no political security profile, faces a risk on return at a level which would cross the necessary threshold. I was directed to no evidence which clearly indicates that the shift in the balance of power in the governorate has been *per se* sufficient to expose an individual such as the appellant to a real risk of harm. I make that finding well aware of the requirement (most recently encouraged by the Upper Tribunal in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019]* UKUT 400 (IAC)) to analyse each case on a fact-specific basis. The most recent country guidance indicates that the security situation in Ninewah is no longer so serious as to attract Article 15 (c) protection. I find that, provided the appellant is able to travel safely from Baghdad to his home area (which I find he should be able to do provided the has the necessary identity documents) then he will be able to reside safely there for the foreseeable future.

11. However, the question remains whether the appellant can obtain the necessary identity documentation (his existing or a new CSID or a newer form INID) in order to make the journey from Baghdad to his home area. I have rejected the appellant's continuing assertion that he is not in touch with his uncle who appears to remain living in the IKR. Having regard to all the evidence and to the previous findings of the Tribunal, I consider it reasonably likely that, through his continuing contact with his uncle, the appellant has already re-established contact with his immediate and wider family or that he would be able to do so now without difficulty. Crucially, the finding has been preserved that the appellant's uncle is in possession of the appellant's genuine CSID and nationality document (see the emphasised passage at [4] above). I find that it is likely that the appellant's uncle will send these documents to the appellant in the event that the appellant tells him that he is to be removed to Iraq. It follows that the appellant will have in his possession all the necessary identity documents by the time he arrives in Baghdad. Being in possession of those documents, the appellant will be able safely to travel from Baghdad to his home area, Ninewah. He will not need to reside in Baghdad for any length of time at all but, if he is delayed there, his possession of the CSID should ensure that he can access necessary services and thereby avoid harm and destitution. Even if I am wrong regarding the safety of the

appellant's home area, I find that, in possession of the identity documents which is uncle will send to him, the appellant will be able to travel directly by air from Baghdad to Erbil. I am aware that finding employment may be problematic in the IKR but the appellant has the advantage of his family contacts there and, whilst he searches for employment, the security of permanent accommodation with his uncle or other family members. Accordingly, I find that internal flight to the IKR would not have unduly harsh consequences for this appellant. I stress that I make that finding in the alternative; it is my primary finding that the appellant may safely reside in his home area.

12. It follows from what I have said that the appellant's appeal against the decision of the Secretary of State to refuse him international protection should be dismissed.

Notice of Decision

The appellant's appeal against the Secretary of State's decision dated 7 December 2016 is dismissed.

Signed Date 16 March 2020
Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.