



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06826/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 11 November 2021

Decision & Reasons Promulgated
On 23 November 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

HM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Easty instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Iraq born on 8 April 1994. He is a Kurd and was born in Kalar City in the IKR. However, at a young age, he moved to live in Diyala Governorate in Central Iraq. As a result of an attack by Daesh in August 2014, the appellant fled his home village. Between 23 August 2014 and 14 February 2019, he lived in a Refugee Camp in Khanaqin, known as Qorattoo Camp.
3. Whilst living in that camp, between March 2018 and when he left in February 2019 he formed a relationship with a girl. Her family did not approve of the relationship and the girl's father and brother threatened to kill the appellant. Consequently, on 14 February 2019, the appellant left the camp - where he lived with his uncle and brother - and travelled to Sulaymaniyah in the IKR, being taken there by his uncle, where he stayed for three days with a friend of his uncle. He then left Iraq, with the aid of an agent, leaving by air from Baghdad travelling to Turkey and then on to the UK.
4. The appellant claims to have arrived in the United Kingdom on 27 March 2019 and, the following day, he claimed asylum.
5. On 2 July 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal

6. The appellant appealed to the First-tier Tribunal. In a determination sent on 4 February 2020, Judge L Murray dismissed the appellant's appeal on all grounds.
7. First, the judge accepted the appellant's account and that he had a well-founded fear of persecution in his home area (which the judge treated as the IDP camp in which he lived in Khanaqin) based upon a real risk of persecution at the hands of the family (in particular the father and brother) of the girl with whom he had had a relationship. Secondly, the judge accepted that the Iraqi authorities could not provide a sufficiency of protection. Thirdly, however, the judge found that the appellant could internally relocate, as was claimed by the Secretary of State, to Sulaymaniyah in the IKR. The judge found that the appellant would not be at risk of persecution in Sulaymaniyah as the girl's family would have no interest in pursuing the appellant there. Further, the judge found that the appellant could reasonably and without undue harshness live in Sulaymaniyah where, on the judge's finding, it was accepted that the appellant had family members (namely his brother and uncle) in the IKR and that he had the option of being accommodated by his uncle's friend in Sulaymaniyah. The judge also found that the appellant could obtain his CSID from his uncle, who on the appellant's evidence, had been sent his passport and CSID by the agent. Alternatively, as the appellant was originally from the IKR (Kalar City), having been returned to Sulaymaniyah, he could with the aid of his family obtain in person or by proxy a replacement CSID.

8. The appellant sought permission to appeal that decision challenging, in essence, the judge's finding that the appellant could internally relocate to Sulaymaniyah. Permission was initially refused by the First-tier Tribunal (DJ Woodcraft) on 16 March 2020 and by the Upper Tribunal (UTJ Blum) on 23 June 2020.
9. The appellant sought to judicially review the UT's refusal of permission on a Cart basis. Permission to bring the judicial review proceedings was initially refused by the High Court. However, on renewal to the Court of Appeal, Phillips LJ granted permission in an order sealed on 23 June 2021. As a result of that order, on 15 July 2021 Master Gidden quashed the UT's refusal of permission to appeal.
10. On 5 August 2021, the Vice President of the Upper Tribunal (Judge Ockelton) granted the appellant permission to appeal limited to the issues identified by Phillips LJ in his decision of 23 June 2021 as arguable.
11. Following directions issued by UTJ Pitt on 27 August 2021, the respondent filed a skeleton argument on 10 September 2021 contending that Judge Murray's decision and findings in relation to internal relocation did not disclose any legal error. No skeleton argument was filed, in accordance with UTJ Pitt's directions, by the appellant.

The UT Hearing

12. The appeal was listed before me on 11 November 2021 when the appellant was represented by Ms Easty and the respondent by Mr Bates.
13. I heard oral submissions from both representatives limited to issues concerning the sustainability of the judge's finding that the appellant could internally relocate to Sulaymaniyah in the IKR.
14. It was accepted before me that the judge's findings in paras 14–53 stood. The appellant has established a well-founded fear of persecution in his home area (namely the IDP camp in Khanaqin). However, there is no real risk of persecution in Sulaymaniyah.
15. The sole issue challenged was whether the judge had sustainably found that the appellant could reasonably be expected to relocate to Sulaymaniyah in the IKR applying the country guidance in SMO and others (Art 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ("SMO and others"). That case was remitted by the Court of Appeal to the Upper Tribunal on a limited issue concerning [391] and whether an individual could be expected to know the relevant volume and page reference in the civil register in order to obtain a replacement CSID from a Civil Status Office. Further, although the UT had in addition considered other issues concerning obtaining ID documentation in particular as arose from the Home Office's *CPIN* of June 2019, it was not suggested before me that those issues were relevant to the error of law decision in this appeal.

The Judge's Decision

16. The judge's findings and decision in relation to internal relocation are set out at paras 48 and 52-57.
17. At para 52, citing the case of SC (Jamaica) v SSHD [2017] EWCA Civ 2112 at [33], the judge recognised that there were three questions:
- (1) what is the location to which it is proposed the person should internally relocate?;
 - (2) is there a real risk of serious harm or persecution in that place?; and
 - (3) if not, is it reasonable and not unduly harsh to expect the person to relocate to that place?
18. In answer to questions (1) and (2), the judge concluded that the respondent's intention was to return the appellant to Sulaymaniyah in the IKR and that was the place of relocation. Further, she also found that the appellant would not be at real risk of serious harm or persecution in Sulaymaniyah.
19. The judge then turned to question (3) and considered the issue of the reasonableness of relocating to Sulaymaniyah. At para 54, the judge dealt with the feasibility of the appellant's return and a broader issue of his circumstances in Sulaymaniyah. She said this:
- "54. In relation to feasibility of return, the appellant's expert at paragraph 115 cites a source from 2018 regarding on entry requirements but this has been superseded by SMO in which the Upper Tribunal relied on more recent evidence. The Upper Tribunal were assisted by the UNHCR document on 25 April 2019, which confirmed that on-entry sponsorship requirements for Erbil and Sulaymaniyah were lifted in early 2019. The UNHCR stated the position to be that in Erbil and Sulaymaniyah Governorates, persons originating from outside the KRI must approach the local Asayish in the neighbourhood in which they seek to reside in order to obtain a residency card. They do not require a sponsor. As the appellant originated from within the KRI he would not have to approach the local Asayish nor would he need a sponsor. *I consider that the appellant does have a viable support network in accordance with that decision. He has family in the IKR and whilst he could not return to live with them in the IDP camp, his uncle clearly has connections in Sulaymaniyah as he had a friend who[m] he contacted immediately and accommodated the appellant.* The appellant has worked before, having been a factory guard (question 72 of the interview). Whilst there is high unemployment, past employment experience is likely to assist his ability to secure accommodation and employment in the IKR." (my emphasis)
20. Then at paras 56-57, the judge reached her conclusion that it would be reasonable to expect the appellant to live in Sulaymaniyah:
- "56. The appellant has been consistent in respect of the family members he has in the IKR. He has a brother and a maternal uncle who lived in the IDP camp with him.

According to his oral evidence the appellant gave the agent his passport and mobile phone and the agent said he would return it to the appellant's uncle. The appellant said in oral evidence that neither his uncle nor his brother had a Facebook page. That he had rung his uncle's number but that it was switched off and that he does not have a friend on Facebook who knows his uncle. The appellant does not suggest that his uncle would have left the IDP camp. The appellant also said in interview that there was no reason why he could not replace his passport and Iraqi ID. I find that the appellant could have, and has not, taken steps to contact his uncle. He knows his location and is still in contact with individuals in Iraq who could in turn contact him. The appellant's uncle could then, as he agrees in his interview, send the documents which were returned to him by the agent in the UK or alternatively give them to him in Sulaymaniyah. Further, the appellant was born in the IKR in Kalar City in the IKR and could by relying on his maternal uncle as a proxy [to] obtain a replacement CSID from there or alternatively attend in person. His uncle was able to drive him to Sulaymaniyah when the appellant fled and I conclude therefore he could meet him and go with him to Kalar City.

57. On all the evidence before me therefore I find that he could obtain a CSID within a reasonable time, that he would have a support network and prospects of employment and that he could live a relatively normal life without undue hardship."

Phillips LJ's Grant of Permission

21. In granting permission in the Cart challenge, which forms the basis of the grant of permission to appeal by the Vice President, Phillips LJ said this:

"I grant permission to apply for judicial review on ground 1 (the legality), limited to the issue of whether the FTT Judge properly considered and applied [SMO and others] in relation to the issue of internal relocation to the KRI. I also grant permission in ground 2 (fairness) and ground 3 (irrationality), as those grounds are closely linked with the aspect of ground 1 on which I grant permission. My reasons are as follows:

There is no arguable basis to challenge the FTT's determination that the appellant would not be at significant risk in the event of internal relocation. Further, the FTT was not incorrect to apply the test for the reasonableness of internal relocation as set out at [33] of SC (Jamaica) [2017] EWCA Civ 2112. Although the factual matrix of that case was different, this three-part test is applicable to the present case, as demonstrated by the Upper Tribunal's adoption of it in SMO [at 398].

However, there is a sufficiently arguable case that, although citing the material passages of SMO, the FTT Judge did not properly consider and apply the detailed guidance in that case as to the facts as relevant in the specific context of internal relocations to the IKR. At [423] of SMO, the UT noted that the UNHCR Guidance is that internal relocation within the IKR is genuinely not available as a result of the humanitarian situation. The only exceptions are where it '*can be established*' that the individual '*would have access*' to (i) *adequate shelter*, (ii) *essential services* and (iii) *livelihood opportunities* or '*proven and sustainable support to access an adequate standard of living*' [emphasis added]. At [424] of SMO, it is further stated that '[i]t will be unreasonable for a Kurdish individual to relocate from the Formerly Contested Areas to the IKR in the absence of a viable support network or the means to find accommodation and employment in accordance with the guidance in AAH (Iraq), the ongoing application of which is confirmed.' Given that the FTT Judge is finding that the applicant has given consistent evidence, his only two living relatives in the KRI were living in an IDP camp (which the appellant now suggests is actually in GOI

territory), it is arguable that there was insufficient basis to find (as did the FTT Judge) that the appellant had sufficient family and connections to render internal relocation reasonable, feasible and not unduly harsh. It is also sufficiently arguable that that finding was procedurally unfair and/or irrational.”

The Submissions

22. On behalf of the appellant, Ms Easty relied upon that grant of permission and that the judge had not sufficiently considered the factors set out in SMO and others for relocation to the IKR in Section E “Iraqi Kurdish Region” of the judicial headnote paras 20-28.
23. First, Ms Easty submitted that there was a factual error. The judge had proceeded on the premise that the appellant had family (namely an uncle and brother) living in the IKR in the IDP camp in Khanaqin. However, Khanaqin was not in the IKR but rather was in the Central Iraqi region in Diyala Governorate. Ms Easty submitted that the only support that the appellant could have in Sulaymaniyah was, at best, his uncle’s friend.
24. Secondly, in addition, the judge had inadequately considered whether the uncle’s friend (not being family) could and would provide longer term accommodation beyond the three days in which he had accommodated the appellant during the time the appellant was fleeing Iraq. Thirdly, she submitted that the judge had failed to give adequate reasons why the appellant would be adequately accommodated of his own in the IKR or, given that his past work was unskilled, he would be able to obtain employment without the family links which the case law recognised were important in obtaining employment in the IKR.
25. On behalf of the respondent, Mr Bates accepted that the judge (and the Secretary of State in her decision) had wrongly treated the appellant as coming from the IKR when he lived in the IDP camp. He pointed out that in SMO and others at [103], although the area of Khanaqin as part of Diyala had come under Peshmerga control during the struggle with Daesh, that had ended in 2017 and it was not in the IKR. Although, Mr Bates pointed out that originally the appellant was from the IKR, having been born in Kalar City where, he submitted, the appellant’s relevant Civil Status Office (“CSA”) was if it was necessary to obtain a replacement CSID. Nevertheless, he submitted that the judge had not decided the case on the basis that the appellant would have support from his family in the IKR but rather that his family (in particular his uncle) could arrange support from his uncle’s friend as in the past. He submitted that the judge was entitled to conclude that his uncle’s friend could assist in providing accommodation and also contacts for employment. Mr Bates submitted that the judge was entitled, for the reasons he had given, to find that the appellant could reasonably be expected to live in Sulaymaniyah in those circumstances.

Discussion

26. The relevant country guidance in respect of internal relocation to the IKR for an individual of Kurdish ethnicity is set out in SMO and others in Section E “Iraqi Kurdish Region” as follows:

“E. IRAQI KURDISH REGION

20. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

Kurds

21. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
22. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
23. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P’s identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P’s identity documents but may also be achieved by calling upon “connections” higher up in the chain of command.
24. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.
25. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.
26. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a ‘relatively normal life’, which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P’s family on a case by case basis.
27. For Kurds without the assistance of family in the IKR the accommodation options are limited:

- (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;
- (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;
- (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;
- ((iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

28. 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 unemployment rate for Iraqi IDPs living in the IKR is 70%;
- (iii) P cannot work without a CSID or INID;
- (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 prospective employers and to vouch for him;
- (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;
- (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers."

27. There was no dispute before me that the appellant would not require a sponsor to live in the IKR as he is Kurdish and, of course, originally came from the IKR. He might, however, require registration with a local Mukhtar, in order to reside there (see para 24 of the CG guidance). In para 26, the guidance emphasises the importance of family in providing accommodation and also other assistance, which would include contacts in order to obtain employment. At para 27, the guidance points out the considerable difficulties faced by an individual who does not have

“family” in the IKR to provide accommodation or other material support. Paragraph 28 of the guidance emphasises the issues relevant to securing the employment including the need for a CSID or INID, the importance of patronage and, in essence the difficulties faced by unskilled workers and the high unemployment rate.

28. In this case, the judge found that the appellant could contact his uncle in Iraq and that the appellant could *either* obtain his existing ID documents from his uncle, which had been returned to his uncle via the agent, *or* he could obtain a replace CSID in Kalar City shortly after arriving in the IKR. That conclusion is not challenged.
29. I accept Ms Easty’s submission that the judge, and the Secretary of State, wrongly concluded that the appellant had family members in the IKR. That was on the basis that his uncle and brother continued to live in the IDP camp in Khanaqin which, it was assumed, was within the IKR. Mr Bates accepts (on the basis of [103] in SMO and others) that is not the case even though the area was, at a time prior to 2017, under the control of the Peshmerga. As I understand the position, it was never part of the IKR and most certainly is not today. It is also not presently under the control of the IKR authorities.
30. However, I accept Mr Bates’ submission that the judge did not, in fact, rely upon support directly from the appellant’s family (his brother and maternal uncle) in the IKR. Although in para 54, she noted that they were within the IKR (which is a course wrong) and could provide him with support, and she again said that he had family members in the IKR in para 56, the support which the appellant needed, the judge found, would be provided by his uncle’s friend who lives in Sulaymaniyah.
31. Is that sufficient? Ms Easty submits it is not as support really need to come from “family”. I accept that the country guidance in SMO and others is largely concerned with support from “family members”. However, although that may be the most common way in which support would be provided, the country guidance does not restrict needed “support” exclusively to family members. This was recognised by the UT in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 212 (IAC) at [96]-[97] as follows:

“96. We read 'others' at (b) as 'friends who may be able to assist'. Whether this is applicable must be determined on a case by case basis but it must be borne in mind that the primary unit of social interaction, and support, in Iraq is the family. As Dr Fatah has repeatedly stressed, Iraq is a collectivist society where the norm would be for people to look to their relatives for sustenance. In the event of external stressors - such as war, disorder or a collapsing economy - that inward dependency is increased. The chances of friends being able to support non-relatives must be assessed in that context.

97. The nature of Iraqi society is also important in assessing who 'family members' might be. It was Dr Fatah's evidence that any relatives in the IKR would be compelled by social convention to take in any newly arrived IDP. It was our understanding of that evidence that this would include 'family members' who in this country might be regarded as rather distant, for instance great-uncles, cousins etc.”

32. While this was said primarily in the context of assistance or support to obtain replacement ID documents, it is not so limited. It reflects the expert's view that, while the commitment of family to support family members may represent the primary source of support, "others" may, in a particular instance, provide it also.
33. In SMO and others the UT recognised that its guidance, on the issue of internal relocation to the IKR, "essentially replicates the guidance given in AAH (Iraq) albeit in a more compressed form" (see [424]).
34. Consequently, although the family is the "primary unit of social interaction" and which is the principal source of "support" due to the prevailing "cultural norms", support by "others" may also be available. Its availability is to be determined on a "case by case basis". In this appeal, the judge had evidence that the friend of the appellant's uncle had provided the appellant with accommodation, albeit only for three days, whilst he was seeking to flee Iraq. Clearly, the appellant's uncle was able to enlist his friend's assistance to this extent. There was also evidence of the uncle's ability to travel from the IDP camp (where he continued to live) to Sulaymaniyah as he drove the appellant there. There was no reason to doubt that the appellant's uncle would be able to contact his friend in the future. Although the support provided by the friend was more limited than the appellant would need in order to be able to 'settle in' to living in Sulaymaniyah, it was, in my judgment, reasonably open to the judge to conclude on the evidence before her that the appellant's uncle would be able to enlist his friend's help in the future in order to provide the appellant with longer term accommodation and patronage.
35. Ms Easty relied upon the fact that the appellant was unskilled as he had worked only as a security guard whilst living in the IDP camp. Of course, the guidance in SMO and others emphasises the limitations on the availability of work in the IKR, in particular for unskilled workers who were said to be at the "greatest disadvantage". Whether or not the appellant's work as a security guard is properly characterised as "unskilled", it is clearly work that he was able to carry out whilst living at the IDP camp. In the IKR, as the judge found, the appellant would have the advantage of the patronage of his uncle's friend. It was not, in my judgment, irrational for the judge to find that he would have "prospects of employment".
36. Also, as Mr Bates submitted, the appellant's uncle had the resources to arrange for the appellant to leave Iraq through an agent. Whilst the appellant's uncle does not, as such, reside in the IKR, as the appellant's flight from Iraq illustrates, he appears to have the ability to move freely from the IDP camp in Khanaqin (which is close to the IKR border) and the IKR itself. To that extent, the judge was, undoubtedly, entitled to take into account that the uncle could provide him with some support. That support might well be, though the judge did not spell it out, financial. The CG guidance in SMO and others also indicates that the appellant would be entitled to apply for a grant under the Voluntary Return Scheme which he could be expected to access as his return to Sulaymaniyah would not expose him to any real risk of persecution.

37. Despite Phillips LJ's concerns about the appellant's ability to access support in the IKR in granting permission in the Cart proceedings, I am satisfied that the judge gave adequate reasons for reaching a rational and reasonable conclusion, having set out and applied the guidance in SMO and others, that the appellant would be able to access accommodation and support, including obtaining employment so that it would be reasonable to expect him to relocate to Sulaymaniyah.
38. For these reasons, the judge did not materially err in law in finding that the appellant could reasonably be expected to internally relocate to Sulaymaniyah in the IKR.

Decision

39. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.
40. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
17 November 2021