



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04783/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 24th August 2017**

**Decision & Reasons Promulgated
On 6th September 2017**

Before

Upper Tribunal Judge Chalkley

Between

**ARKAN IBRAHIM KAREEM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Solicitor with Broudie Jackson Canter

For the Respondent: Mr G Harrison, a Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is an Iraqi national of Kurdish ethnicity who claims to have been born on 27th October 1995.
2. On 2nd May 2016, the respondent refused to grant asylum and humanitarian protection to the appellant and as a result, the appellant appealed to the First-tier Tribunal. The appeal was heard by First-tier Tribunal Judge Malik sitting in Manchester on 20th December last.

3. The appellant's claim to asylum was based on his fear of persecution from his uncle. The appellant's father died when he was young and he lived with his mother and older sister in Rahimawa. He finished school at the age of 15 and worked as a labourer in and around Kirkuk. Since he was not able to earn very much, his paternal uncle assisted the family financially. He lived in the same building with his wife and three children. He worked in the construction business and, claimed the appellant was very strict and would hit him if he disobeyed his uncle.
4. The appellant claimed that in August 2004, his uncle asked him to join Daesh. The appellant refused and the appellant claims that his uncle hit him with a butt of a gun on his head. To teach him a lesson, his uncle also reported the appellant to the police. They put the appellant in handcuffs, took him to the hospital where he received stitches and then transferred him to the police station where he was held for five or six days. They never told him why he was released, but he knew that his uncle just wanted to show how powerful he was.
5. The appellant went home and about a month later he was asked to go out with his uncle at night. He was not told where he was going and was taken to a cemetery where his uncle met two people in a car. They gave his uncle a bag and he talked for a short time. His uncle told him that they needed to deliver the bag to someone. He said that his uncle did not tell him what was inside the bag and when the appellant refused his uncle became furious. His uncle took a gun and shot the appellant in his right leg causing him to pass out. When he awoke he found himself in his uncle's friend's house where he was treated by a doctor who removed a bullet. The appellant was then driven home by his uncle.
6. When the appellant's mother asked what was wrong the appellant explained it was an accident and felt that he could not tell her the truth in front of his uncle. It was two or three days later when he did tell her the truth, because she was suspicious. Eventually his mother sold her jewellery and arrangements were made for the appellant to leave Iraq.
7. The judge gives clear, logical and cogent reasons why she found that the appellant had fabricated the core of his claim. She found it to be a false asylum claim and went on to find that the appellant was not at risk from his uncle and, or in the alternative from the authorities for any of the reasons he claimed. His account was totally false.
8. As a result, the judge went on to consider what risk, if any, the appellant would face on return. The respondent accepted that the appellant was from Kirkuk, a contested region of Iraq. The appellant does not originate from IKR, but the judge assessed the risk on return on the basis that he would be returned to Baghdad and then would relocate to IKR. She considered the country guidance case of *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 (IAC) and noted that the appellant had left Iraq on his own passport which he claims to have given to an agent in Turkey and had now

lost. He exited from the border within the IKR region and had previously been to IKR. The judge found that there was no reasonable evidence to suggest that he could not request his family to act on his behalf for him to obtain a new CSID or nationality documentation to enable him to seek a laissez passer to return to Iraq. The appellant was found to be of Kurdish ethnicity who speaks Sorani.

9. Upper Tribunal Judge Clive Lane granted permission to appeal to the Upper Tribunal, suggesting that it was properly arguable that the First-tier Tribunal may have erred in its finding that the appellant's relatives in Kirkuk would be able to assist the appellant in obtaining a CSID; it was arguable that the appellant would need to go to Kirkuk as part of the process and may expose himself to risk by doing so. It was also found to be properly arguable the appellant may not be able to relocate safely to the IKR from Baghdad.
10. The appellant's representative relied on his grounds. Mr Harrison submitted that the judge had found that the appellant's claim lacked all credibility. He claimed that his family were in Kirkuk but, submitted Mr Harrison, nothing else the appellant had said was found to be true. Mr Harrison submitted that his family members could be elsewhere in Iraq. He agreed with me that this was speculation on his part.
11. After reflecting, Mr Harrison told me that he accepted that there must be an error of law in the judge's determination and, as a result he said that if AA were applied then the first question to ask was whether or not it was feasible on return to Baghdad to avoid any potential undue harshness in that city by travelling to the IKR?
12. I asked the representatives if they were both agreed that I should remake the decision myself. They both indicated that they saw no reason why I should not. Mr Greer submitted that notwithstanding the fabricated claim made by the appellant, the country guidance was such that the appellant could not be returned and his appeal would have to be allowed. Mr Harrison indicated that there was no reason why I should not remake the decision. He told me that he was not conceding the appeal, but indicated that he would be surprised if I were to do anything other than to allow the appeal.
13. I reserved my decision.
14. In *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC) the Tribunal gave extensive guidance. The appellant is a former resident of the Iraqi Kurdish region. AA makes it abundantly clear that he will not be returnable to Baghdad if he is not in possession of either a current or expired Iraqi passport, or a laissez passer. Holding a civil status identity document (CSI) is one way in which it is possible for an Iraqi national to obtain a passport or laissez passer, but the appellant cannot obtain one while he is in the United Kingdom. He claims that he has lost contact with his

relatives. He has been found not to be credible and to have fabricated the core of his asylum claim and, as Mr Harrison points out, there is no reason to believe the appellant when he says that his relatives are in Kirkuk and he has lost contact with them. They might very well be elsewhere in Iraq and they may very well be in a position to assist him obtain a CSID. However, as I pointed out to Mr Harrison is speculation.

15. As anticipated by Mr Harrison and as distasteful as it is to allow an appeal by someone who has made a completely fabricated his asylum claim and demonstrated that his word cannot be relied upon, I have concluded that **his asylum appeal must be allowed**, because he cannot be returned to Baghdad.
11. I have concluded that the determination of the First-tier Tribunal Judge did involve the making of an error on a point of law. I remake the decision myself. For the reasons I have given, I have concluded that the appellant's asylum appeal must be allowed.

Summary

The appellant's asylum appeal is allowed.

Richard Chalkley
Upper Tribunal Judge Chalkley