



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06197/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Manchester
On 7th June 2017**

**Decision & Reasons
Promulgated
On 28th June 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**HMO
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Wilkins, Greater Manchester Immigration Aid Unit
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, born in 1994. He has permission¹ to appeal against the decision of the First-tier Tribunal (Judge James) to dismiss his appeal on human rights and protection grounds. The determination was promulgated on the 8th December 2016.

Anonymity Order

¹ Permission granted by First-tier Tribunal Judge Bennett on the 17th January 2017

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 nor any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

The Facts

3. In her letter dated the 2nd June 2016 the Respondent accepted that the Appellant is a national of Iraq, that he is of Kurdish ethnicity and that he is from a village near Mosul. Having heard the oral evidence of the Appellant the First-tier Tribunal made positive findings of fact about the following matters:
 - The Appellant fled Mosul with a friend in order to avoid a forced conscription drive by Daesh
 - They made their way on foot through the countryside, and assisted by a family friend named Majid, took a taxi to Erbil
 - As they attempted to enter the IKR the men were stopped at a checkpoint. The Appellant and his friend were arrested upon suspicion of being Daesh infiltrators
 - They were released after four days
 - The Appellant subsequently found that Majid had paid a large bribe to secure his release, and had agreed to the condition that the Appellant would leave the country
 - Majid subsequently arranged their passage to Turkey
4. Having made these findings the First-tier Tribunal accepted that the Appellant was at risk in his home area of Mosul. It did not however find there to be any subsisting risk to him in the IKR. Referring to the extant country guidance of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) the Tribunal found as follows:

“I have considered whether he has a genuine fear of return to the IKR. The Appellant submits that he would be killed or mistreated by the authorities in the IKR if he was returning there but his submission is based purely upon his detention while escaping from Daesh. I have explained why I find that his detention would be an entirely reasonable response to being apprehended by IKR authorities. However I am not satisfied that his previous detention would give rise to an expectation of further detention should he be returned to the IKR. I have noted that the Appellant has submitted that there is objective evidence of numerous people fleeing Mosul and entering the IKR. Accordingly the IKR authorities will have encountered many people with similar narratives to that of the Appellant. I have considered this matter further in light of the guidance in **AA**.

I have noted section E of the head note to **AA**. The Appellant is a Kurd. He speaks the language and has been a farm worker in the Kurdish region of Iraq. I accept the submission that he has transferrable skills that would enable him to obtain employment in the IKR. He has held an ID card or taskara which remains with his father. I accept that the Appellant has had not recent contact with his family. I have noted the Country Information and Guidance dated December 2014 which has been set out in some detail in Annex A and conclude that having held a taskara he would be able to obtain a new or re-issued one on return to Iraq or through the embassy in London.

For the above reasons I conclude that the appellant would not be a person of interest to the IKR authorities on return.... it would not be unduly harsh or unreasonable to expect him to relocate in the IKR”

The appeal was thereby dismissed.

The Appeal

5. Ms Wilkins submits that the First-tier Tribunal erred in its approach to whether it would be safe or reasonable for the Appellant to return to the IKR. She makes four points:
 - i) The Judge made no findings as to whether it would be possible for the Appellant to get from Baghdad (where he would be returned) to Erbil. The evidence had been that the Appellant would have no funds to get from A to B.
 - ii) In its assessment of internal flight the Tribunal failed to have regard to one of the three factors identified as

relevant in AA, namely the availability of assistance from family and friends in the IKR. The evidence had been that the Appellant knew no-one in the region.

- iii) In finding that he would be able to obtain a new taskara the Tribunal failed to take into account its own finding that his home area was under Daesh control. In AA the Tribunal had held that an individual's ability to obtain a new identity document would be "severely hampered" if they were from a contested area.
- iv) The Tribunal does not appear to have factored in the accepted evidence that the Appellant had been released upon condition that he leave the country and does not return to the IKR.

The Response

6. For the Secretary of State for the Home Department Mr Harrison agreed that in reaching its findings on internal flight to the IKR the Tribunal had not expressly referred to the evidence that the Appellant had been released upon condition that he should not return. He submitted however that it was implicit from the facts as found that the Judge had had regard to that matter. If I found there to be an error of law as alleged by the Appellant the Respondent invited me to re-make the decision having regard to the country guidance and to the up to date country background material.

Discussion and Findings

7. I am not satisfied that there is any merit in ground (i). The Appellant would upon removal be eligible for an IOM resettlement grant that would enable him to pay for passage, by way of internal flight, from Baghdad to Erbil. There was no evidence before me that he would face any administrative difficulties getting on such a flight. Although he is not in possession of a CSID he would have an emergency travel document. In the absence of any evidence to the contrary I find that such a document would serve as identity papers sufficient to board an internal flight. Although the First-tier Tribunal did not make express findings on this issue I do not find that to be a material omission.
8. I find that grounds (ii)-(iv) are made out. Having found the Appellant to be a credible witness, and his account to be true, the Tribunal does appear to have omitted to factor into its risk assessment the fact that he had been detained by Kurdish security personnel and only released upon condition that he does not return to the IKR. That was plainly a pertinent factor, and one difficult to square with the finding at paragraph 40: I conclude that the Appellant would not be a person of interest to the IKR authorities on return". I am further satisfied that

the Tribunal has omitted to consider whether the Appellant has family or other potential sponsors in the IKR. The presence of such connections was identified in AA as being an important consideration in the assessment of internal flight, and as such the omission must be a material one.

9. In respect of the CSID the First-tier Tribunal placed reliance upon information found in Annex A of the Respondent's Country Information and Guidance Note dated December 2014, to the effect that a new identity document could be obtained from the Iraqi embassy in London. This CIG was not available to me, nor to the First-tier Tribunal; I take it that it based its finding on the selected extracts set out in the Respondent's refusal letter (at page 10 of 14). The error identified by Ms Wilkins is that the Tribunal does not appear to have read the entire paragraph. Had it done so it would have seen the following: "usually existing documents or copies would need to be submitted to receive consular assistance. In the case of replacing lost documents, those of a relative could be submitted to identify the person applying. Sources consistently indicated that if an individual was unable to prove their identity and demonstrate that they were an Iraqi national, reacquiring documents via an embassy would not be possible". The accepted evidence in this case was that the Appellant was from a contested area, that he had no original or copy documents with him and that he had lost contact with his family. I accept that the Tribunal materially erred in law in its findings on the CSID, since it is difficult in light of the accepted facts and the guidance in AA, to see how he would go about obtaining a new identity document.
10. The decision of the First-tier Tribunal is therefore set aside to the limited extent identified above. The Respondent has made no challenge to the remaining findings of fact made.
11. The parties invited me to remake the decision in the appeal on the facts as found by the First-tier Tribunal.
12. The Appellant is from a contested area of Iraq and as such would face a real risk of serious harm in his home area. There is no challenge to that finding. His accepted evidence was that he fled his home village in Mosul district after Daesh took over and started committing gross human rights violations. The Appellant personally witnessed such atrocities, including the beheading of three young police officers. He fled because Daesh told the Mukhtar in his village that adult males were to report for training.
13. He has attempted to avail himself of the internal flight alternative once before. Upon his arrival at the Kurdish border he was, by his own admission, dirty and dishevelled. He and his friend were both wearing black and having come from a Daesh controlled area, had long hair and beards. The Kurdish security personnel understandably viewed them with some suspicion. They were handcuffed and taken by car to a building called the 'Asaysh' or security headquarters. The

Appellant does not claim to have been physically assaulted during his four day detention, but he was held in violation of basic human rights inasmuch as he was given no food or water. He was interrogated by officers who told him that being Kurdish did not count for much since they had reports that some Kurds had joined Daesh. They wanted to know why he had come to Hawler (Erbil). The Appellant only managed to get out when his family friend Majid paid for his release. He had negotiated with someone he knew who was "quite high up" in the Asaysh. The officer who authorised his release did so upon specific undertaking that the Appellant would not come back to the IKR. Majid did not immediately manage to secure the release of the friend that the Appellant had been with but told him that he would do his best.

14. The question is whether the Appellant would have better luck next time. He would not this time be entering the IKR direct from a contested governate. He would not, one assumes, be dirty, dishevelled, bearded and dressed in black. The chances of him being apprehended as a Daesh fighter, flying straight from Baghdad or even the UK, would be substantially lessened. I have no doubt at all that he would however be questioned. He would be holding no Iraqi identity document and would be readily identifiable - by accent if nothing else - as being from Mosul. I am satisfied that it is reasonably likely that he would be screened by the Asaysh security forces, and that it is reasonably likely that they would discover that the Appellant was previously in detention, and the conditions attached to his release.
15. In her submissions Ms Wilkins relied on country background information postdating the decision in AA. A Human Rights Watch report dated 29th January 2017 details how they are aware of at least 183 boys being held by Kurdish security personnel on suspicion of being with Daesh. Detainees as young as 11 reported being tortured in detention, including being beaten with pipes, burned with cigarettes and shocked with electricity. Others reported being threatened with rape. HRW researchers were able to see physical marks on the detainees which supported the accounts being given. The US State Department report dated 3rd March 2017 documents numerous violations of human rights in the IKR, including extrajudicial execution, abusive interrogation in detention and prolonged detention without trial in Asayish prisons - sometimes for more than 6 months. The November 2016 UNHCR Position Paper on Returns to Iraq confirms there to be credible reports of ill-treatment of IDPs from Daesh controlled areas. The displacement of such large numbers of people have caused tensions to rise in the region, with some politicians and security officials repeatedly asserting that ISIS fighters were among the IDPs and/or that there was a correlation between the influx of IDPs and the increase in security incidents, thereby contributing to the strengthening of pre-existing negative perceptions of IDPs. UNHCR confirm that some IDPs have been released from detention only to be forcibly evicted from the region back into

contested areas.

16. Having considered all of that information I cannot be satisfied that there is a safe, viable internal flight alternative in this case. The Appellant is not an Arab – the characteristic most likely to place an IDP at risk in the IKR, but he is someone whom the Asaysh have already regarded with suspicion, and he is a Sunni from Mosul. He is someone who has specifically been instructed not to return to the area. I am satisfied that at the very least the Appellant would face a real risk of not being admitted to the IKR. In light of the country background material I must be satisfied that there is a real risk that his on-arrival screening would include ill treatment.
17. The Respondent did not submit that there were any other viable alternatives for relocation outside of the IKR. For the avoidance of doubt I find that there is not a reasonable alternative: the Appellant is Kurdish, has no relatives or contacts in the Baghdad and has no CSID. Applying the reasoning in AA he is one of those for whom relocation to the city would be unduly harsh.

Decisions

18. The determination of the First-tier Tribunal contains an error of law and it is set aside to the limited extent identified above.
19. I remake the decision in the appeal as follows:

“The appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection because he is a refugee.

The appeal is allowed on human rights grounds”.
20. There is an order for anonymity.

Upper Tribunal Judge Bruce
26th

June 2017