Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04177/2016

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunal Liverpool	**Determination Promulgated**
On 18 July 2018	**On 22 August 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

FH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Karnik instructed by Amelius Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1 This is the resumed hearing of the appellant's appeal following an error of law hearing on 26 March 2018.

2 The appellant is a national Iraq, from Kirkuk. An account that he had come to the adverse attention of ISIS was rejected by Judge of the First tier Tribunal Mayler in her decision of 5 July 2017. The Judge held however the appellant would be at risk

of indiscriminate harm contrary to Article 15(c) of the Qualification Directive in Kirkuk (as indeed had been accepted by the respondent in the refusal letter of 9 April 2016), and held that the appellant could not reasonably internally relocate to Baghdad. The respondent appealed against that decision, on grounds, *inter alia*, that the judge had failed to consider the potential for the appellant to internally relocate to the Iraqi Kurdish Region, IKR.

3 At a hearing before me on 26 March 2018 (decision dated 11 April 2018), I held that the Judge had erred the manner alleged, and I then adjourned the hearing to permit the appellant to give oral evidence as to the reasons why he could not internally relocate to the IKR, and for findings of fact to be made on the appellant's assertion, given in his original asylum claim, that he could not live in the IKR due to a land dispute between his family and the 'Jaff' clan, residing in the IKR. The matter therefore came before me to again today, there being inadequate time on 26 March 2018 for the appeal to continue.

4 It is also to be noted that since the matter last came before the Tribunal, the Upper Tribunal has issued further Country Guidance in relation to internal relocation to the IKR in the form of the decision of in AAH (Iraqi Kurds - Internal Relocation) (CG) [2018] UKUT 212 (IAC) (26 June 2018).

5 The appellant gave evidence before me through a Kurdish Sorani interpreter, Mr. Zada. I ensured that they were able to understand one another. The appellant adopted his witness statements of 27 January 2016, (respondent's bundle, pages C4 to C7), and 7 November 2016 (appellant's bundle at B1-B5).

6 In his statement of 27 January 2016 the appellant asserted that he could not reside in Iraqi Kurdistan because his maternal uncle had a tribal problem with the Jaff tribe which would affect him. The appellant's maternal uncle had killed a member of this tribe over a land dispute. Further, the appellant could not go to a Shia area because he was Sunni.

7 I also set out the appellant's evidence in his SEF interview of 8 February 2016 on this issue. At the question 36, the appellant said he feared the Jaff clan because there was a feud between them and his maternal uncle and as he was related to his uncle he feared them. At questions 86 - 98 the appellant confirmed that the land dispute arose about 3 to 4 years ago (i.e. therefore sometime in 2012 to 2013) and his uncle killed a member of the Jaff clan at that time, 3 to 4 years ago. The uncle left the region and had since then been living in Kirkuk. The appellant did not know where the land was but it was in Kurdistan. The appellant said initially the uncle did not have any problems but then the dispute started. The uncle had legally bought a piece of land from someone but it turned out that the people who were supposed to inherit the land stood against the selling of it and claimed it. The appellant did not know who his uncle had killed but the uncle had advised the appellant not to go to Kurdistan, to avoid any retaliation. The appellant did not know where in Kurdistan the uncle had resided. The Jaff clan could be found anywhere in Kurdistan. They

could find the appellant because the clan had some sort of authority and power in Kurdistan. The appellant did not know if the members of the Jaff clan knew where his uncle was. The appellant did not know what had happened to the piece of land but probably the Jaff clan had taken it back or were occupying it. The Jeff clan were everywhere in Kurdistan. They would be able to know where the appellant was eventually. If they asked around they would find out that he was related to his maternal uncle.

8 In evidence in chief the appellant confirmed that he had never lived in Kurdistan and did not have any family there.

9 In cross examination by Mr. McVeety the appellant stated that the dispute had been in Sulemaniya. The uncle had not lived long term in Sulemaniya, he had gone there to purchase land and come back. The problem had arisen because it was said the land belonged to the whole family, to a number of siblings. The uncle had legally bought the land. The appellant and his family had not been attacked as a result of this land dispute, although there had been threats, although not directed at the appellant personally. The appellant had not been in touch with his maternal uncle until about two months before the previous hearing before the First tier Tribunal (which would therefore have been about May 2017). The uncle had bought the land because the buying and selling of land was good business because of high land prices.

10 I asked the appellant some questions. The last information the appellant had about his uncle's whereabouts was from about a year and three or four months ago, that he was then in Kirkuk. A friend Arkan had informed the appellant of this. When asked if the appellant was of any particular clan the appellant said he did not know too much about this. He was just Kurdish. When asked how would any member of the Jaff clan know that the appellant was related to his maternal uncle, the appellant says - because they have authorities and power in the PUK. His uncle had remained in Kurdistan for about 3 to 4 months after the time he bought the land.

11 There were with no further questions for the appellant.

12 I heard submissions from the parties.

13 Mr. McVeety pointed out that this was a rare case in that the appellant was already known to possess all of the relevant documentation which would be required for daily life in Iraq. There was a CSID card on file in the Home Office file, and a nationality certificate. These were set out at B5-B6 of the respondent's bundle, and I saw copies of the originals plus translations in the Tribunal appeal file.

14 In relation to the appellant's claimed risk of harm in the IKR from the Jaff clan, Mr. McVeety argued that this was not a credible account. The Country Policy and Information Note on Iraq: Blood Feuds, dated August 2017, sets out the different clans within the Kurdistan area. Information on the Jaff was to be found at 5.3

onwards. The Jaff is a large tribe, and Sulemaniya is considered to be their provincial centre. Mr McVeety argued that it was implausible that a person such as the appellant's maternal uncle would choose to purchase land from the Jaff clan knowing their relatively powerful position, and would have anticipated problems. Further, the appellant's account of the land dispute was vague. The appellant could not explain how the large Jaff clan, with its various subdivisions, would know collectively anything about this particular land dispute which related to a particular Jaff family. Furthermore, even if this land dispute was known amongst a wider group of Jaff clan members, the appellant had not established how they would come to know that the appellant was related in any way to his maternal uncle.

15 In any event, it was the appellant's case that his maternal uncle had left the IKR and was residing in Kirkuk, and there was no evidence that any blood feud over a land dispute was being pursued with any vigour. The appellant had not said that he himself had been the subject of any threat. Further, if the Jaff power base exists around the Sulemaniya area, the appellant could live in Erbil. It was odd that the appellant himself suggested that he was not aware of his own tribal origin, suggesting that the appellant was not telling the truth that this element of his appeal.

16 As regards the application of AAH, Mr. McVeety argued that the appellant would be returned to Baghdad, and, in possession of a CSID card, will be able safely to fly or travel overland to the IKR. Nothing prevented this, in accordance with paragraph three of the replaced section E of the headnote of AA (Iraq) v SSHD [2017] EWCA Civ 944, such journey being affordable and practical and can be made without a real risk of the person suffering serious harm.

17 Mr. McVeety referred to paragraph 6 of the amended headnote which provided that a person in the appellant's position would normally be granted entry to the territory of IKR. Subject to security screening and registering his presence with the local mukhtar the appellant will be permitted to enter and reside in the IKR with no further legal impediments or requirements, and there was no sponsorship requirements for Kurds. The potential risk factors during any security screening were unlikely to arise in the appellant's case. He did not come from a family with any association with ISIL. Although he came from an area associated with ISIL, the appellant was of Kurdish origin, and although he is a single male of fighting age, he would have evidence of his recent arrival from the UK to dispel any suggestion of having arrived directly from ISIL territory.

18 Considering whether the appellant might have family assistance to support him in the IKR, Mr. McVeety suggested that given the appellant's poor credibility, it was not necessarily that to be taken to be the case that he did not have family members living in the IKR. It was accepted that the appellant would not be able to gain access to a refugee camp for IDP's in the IKR, being extremely overcrowded already (headnote, para 9(i)). It was suggested that under the Voluntary Returns Scheme, the appellant would have access to a returns package of up to £1500 which the

appellant could use to pay for rent, as per headnote para 9(ii), even at the cost of $300-$400 per month. The appellant would not need to resort to a 'critical shelter arrangement' living in an unfinished or abandoned structure. Considering headnote para 10, whilst accepting the high unemployment rate in the IKR, Mr. McVeety argued that the appellant could find work, as he had some skills and experience. Although unskilled workers were at the greatest disadvantage due to the decline in the construction industry, the appellant had worked previously in Iraq as a barber, and he was reasonably likely to be able to obtain the same employment.

19 For his part, Mr. Karnik sought to draw a distinction between the guidance now given in AAH, which refers to the requirement for 'a valid CSID' card, as opposed to the possession 'a CSID' card, referred to in AA Iraq, without any qualification that it be deemed to be valid.

20 Although Mr Karnik accepted that the CSID card issued by the Kirkuk authorities to the appellant in 2014 did not have any expiry date on it, he referred to the fact that Iraqi documentation has changed its format from time to time and that there is a reasonable degree of likelihood that a CSID card issued in 2014 may no longer be valid, on the basis that it may have been replaced by a different form of document.

21 Further and in any event, given that the respondent was proposing to return the appellant to Baghdad, and had specifically identified the route of travel to a place of internal relocation to the IKR, then the principles of HH Somalia applied in the present appeal, resulting in the burden of establishing that such route was safe lay on the respondent. Thus, the burden lay on the respondent to demonstrate that the CSID card in the appellant's name remained valid.

22 If the appellant arrived in Iraq without a valid CSID card, then the fact that he came from Kirkuk was relevant. It was highly unlikely that Kirkuk, given the conflict which had prevailed there during the period in which ISIS had a significant presence in the region, would still have a functioning Civil Status office from which the appellant could obtain a replacement CSID card. The headnote of AAH provided that it would not be safe for a person to attempt to travel overland from Baghdad to the IKR without being in possession of a valid CSID card.

23 Further, Mr. Karnik argued that the appellant had no family members in the IKR, and, as noted by paragraph 8 of the headnote in AAH, cultural norms would require that any family in IKR would be expected to accommodate him. This was an example of the importance of family support. Further, any voluntary returns package would soon run out, and the appellant would be unable to afford the high rental prices mentioned in the IKR.

24 Mr. Karnik referred to headnote para 10(iv), that patronage and nepotism continued 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 to vouch for him. Mr. Karnik argued that the appellant had no such patronage or support group available to him. Even if the appellant had experience as a barber, Mr Karnik argued that a small business such as that is likely to be run by a family group (and I note, for instance, that the appellant was a barber together with his own father in Kirkuk). Mr Karnik argued that this will be a close-knit group, reluctant to admit members into employment within such workplaces, who were unrelated to the owners, and unknown to them. The appellant as a newcomer would be treated with suspicion and would not be given material assistance by those around him.

25 Mr. Karnik referred me to a number of paragraphs in the main body of the decision in AAH which he argued supported the propositions set out in the headnote.

26 Mr. Karnik also addressed me on the Jaff clan issue. He argued that the appellant's young age at the time, and his physical distance from the problems should be taken into account when considering the level of detail he was able to give in relation to his maternal uncle's problems. There was nothing implausible about the level of detail he was able to provide.

27 Mr. Karnik argued that the Jaff clan, being influential and powerful, was likely to have heard on a wide basis the news of the killing of one of their member in the Sulemaniya area. It would have been of note, and notorious, that the killing took place by a person from outside the Sulemaniya area who had attempted to purchase land. This novel feature of the matter would be known by a wide group of the Jaff clan. Mr. Karnik argued that the suspicion of newcomers to the IKR would result in questions being asked about the appellant's origins, and there was a reasonable degree of likelihood that his family origins, even if the uncle was related to the appellant through the maternal line rather than the paternal line, would become known. This would result in the appellant being be at risk of serious harm in the IKR. In the alternative, Mr. Karnik referred to the risk of destitution as a set out above.

Discussion

28 I determine the appeal on the basis that the appellant cannot return to Kirkuk, or remain for a prolonged period in Baghdad. He will be returned to Baghdad. I reject Mr. Karnik's proposition, made for the first time in closing submissions, that the appellant does not have a valid CSID card. No evidence has been shown to me to suggest that the formats of the CSID cards issued since 2014 have changed in any way so as to make the appellant's CSID card now invalid. Mr. Karnik's assertion is just that; a bare assertion, and his argument that the document, which he accepts was valid at the time that it was issued, is no longer valid, is nothing more than pure speculation on his part. I am of the view that the appellant's CSID card, which

is valid, will enable the appellant to either fly or travel overland from Baghdad to the IKR.

29 Mr Karnik also made reference for the first time in closing submissions to HH Somalia. I assume this to be a reference to HH (Somalia), AM (Somalia), J (Somalia), MA (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426. However the point was wholly undeveloped by Mr Karnik. No copy of the authority was placed before me, and no particular passage was referred to. I make no further reference to the case. There is no evidence whatever to support the appellant's current assertion that his CSID card may no longer be valid.

30 The appellant will be admitted to the IKR, as per the relevant guidance in AAH. I find that there is no reasonable degree of likelihood that the appellant will come to serious harm upon any security screening on arrival in the IKR around the time of his registration with the mukhtar. Although the appellant comes from an area previously held by ISIS, he will be able to demonstrate that he has recently come from United Kingdom, and will have had nothing to do with the recent conflicts in between Kurds and Iraqi national forces against ISIS insurgents. Further, I see little reason why the Kurdish authorities in IKR would suspect a Kurd of being involved in ISIS atrocities, given that ISIS treated the Kurds with hostility.

31 I find that the appellant will be able to secure accommodation for a short period of time using funds that he will be provided with as part of a returns package.

32 I do not find that the appellant will be at risk of serious harm in IKR from the Jaff clan. Even allowing for the appellant's relative youth and that he received information about the land dispute from his maternal uncle second hand, and did not receive threats directly from the Jaff clan, I find that his account of this issue is very vague. He is unable to provide the name of any particular family from the Jaff clan that is involved in the dispute, where in particular the land is, what type of influence or power this particular family has in the IKR, and whether they have any particular influence in the local authorities or wider authorities in the IKR.

33 Further, and in any event, I find that it is simply not made out that the wider Jaff clan will know anything about a land dispute in which a particular Jaff family have become embroiled. Further still, the appellant has failed to establish, even if a fairly wide group within the Jaff clan are aware of the land dispute between the particular Jaff family and the appellant's maternal uncle, how there would be a reasonable degree of likelihood that any person in the IKR would come to know that he was related to his maternal uncle. It has not been asserted, for instance, that he shares a name or part of a name with his maternal uncle. Even if newcomers into an area in the IKR may face some scrutiny, I find that the appellant would be able to give his father's name and family background without there being any risk of needing to identify his mother's brother. The proposition that the appellant is at risk of harm in the IKR as a result of any dispute that the maternal uncle had with the Jaff plan is fanciful, and does not establish a reasonable degree of likelihood of serious harm.

34 I find the determination of this appeal therefore depends on the probability of the appellant securing employment to avoid himself becoming destitute in the IKR. In this regard I find it of assistance to consider the outcome in the appeal in AAH itself. I quote the Upper Tribunal's consideration of the likely fate of that appellant at paragraph 146 - 149:

> "146. In respect of accommodation, the Appellant would not be able to gain access to a refugee camp. The camps are closed to newcomers. Nor would he be able to rent a room in one of the traditional neighbourhoods, since on Dr Fatah's evidence this would be regarded as socially unacceptable. He has no family members to take him in. It would be open to the Appellant to rent an apartment in a new neighbourhood at the cost for $300-$400 per month, or to pay for a hotel room. Whilst these are options that would certainly be available to him in the immediate period after his arrival - assuming he has applied for the VRS grant - we think it very unlikely that the Appellant would be able to earn enough money to keep paying that level of rent. In those circumstances the most likely outcome is that within a couple of months of his arrival in the IKR the Appellant will find himself living in a 'critical housing arrangement'. Whether his quality of life in this accommodation can be said to be 'unduly harsh' depends on whether or not he is able to secure sufficient income to obtain basic necessities such as food, clean water and clothing.
>
> 147. Although the Appellant is literate in both Sorani and Arabic he has limited education and no qualifications. Those are factors that weigh against him in the job market. His experience as a labourer is of negligible value given the very high unemployment rate in the IKR, and the decline in the construction industry. We recognise that the Appellant has no connections to call upon to help him get a job. In this regard we also note that the Appellant has in the past demonstrated an ability to overcome that particular obstacle: he had no connections to Mosul when he and his wife moved there, and yet he managed to find employment and provide for his family for some 11 years before he left that city. The last job he had in Mosul was as a generator operator. We consider that to be a real advantage. It is a semi-skilled role that is unlikely to be affected by the economic downturn: most businesses and many homes will be dependent upon such generators. Finally, what the Appellant has that many IDPs do not, is a valid CSID. The Appellant is physically able, literate, experienced and crucially, he is documented. Taking those factors into account we are satisfied that he will be one of the minority of IDPs in the IKR who are able to secure some form of employment.
>
> 148. We do not underestimate the difficulties that the Appellant will face. Taking all of the relevant factors into account we are however satisfied that he will be able to lead what is in general for Iraq today a relatively 'normal' life. His accommodation will be far from ideal, but we find that he will be able to feed and clothe himself. He will be able, as he has done here, to establish a private life in the form of friendships with others, be it locals or other IDPs in his area. It is not reasonably likely

> that he will become destitute or that his human dignity will be otherwise compromised to an unacceptable extent.
>
> 149. We do not therefore accept that it would be unreasonable to expect the Appellant to relocate to the IKR and his appeal must be dismissed."

35 I note in the present appellant's witness statement of 27 January 2016 that the appellant attended primary and then secondary school, up to the age of 18, and until the age of 23 the appellant studied at a technology school in Kirkuk (paragraph 5). During the time he was studying he also worked in a barbershop with his father. At question 25 of the SEF interview, the appellant also states that he studied at technology (vocational) school until year three but did not complete it. Although that background would appear to represent a level of education which is probably higher than that many men living in IKR, the only evidence of the appellant's actual employment was with his father in the family barbershop.

36 The only language which the appellant appears to speak is Kurdish (screen, question 1.10 a 1.11). In AAH itself, appellant AAH's limited education and lack of qualifications were deemed to be factors that weighed against him in the job market. It was found that appellant AAH's experience as a labourer was of negligible value given the very high unemployment rate in the IKR upon the decline in the construction industry. That appellant, like the present appellant, had no connections to call upon in order to help get the job.

37 However, in AAH, the Upper Tribunal noted that that appellant had in the past demonstrated an ability to overcome the obstacle of having no connections to call upon when he and his wife had moved to Mozel, and he had managed to find employment and to provide for his family for some 11 years before having to leave that city. His last job in Mozul had been as a generator operator. The Upper Tribunal considered that to be a real advantage, being a semiskilled role that was unlikely to be affected by the economic downturn. Appellant AAH, as does the present appellant, had a valid CSID card. In AAH, the Tribunal took the factors of AAH being physically able, literate, experienced and crucially documented, into account in being satisfied that he would be one of the minority of IDP's in the IKR who would be able to secure some form of employment.

38 I am ultimately persuaded by Mr. Karnik's submission that obtaining employment in the IKR will be extremely difficult for the appellant, and the appellant's lack of family connections, patronage and nepotism are all important factors to consider in assessing the probability of his securing employment. Unlike the appellant AAH, the present appellant has no experience of venturing out by himself as the head of a household to find work. The appellant was only 22 years old at the time that he left, and his only employment experience was working together with his father. Although there will always be a requirement for barbers in any community, I do not consider that skills in that area are likely to be seen the being of real advantage, such as appellant AAH's skills as a generator operator. I also accept Mr. Karnik's submission that barbers businesses are likely to be run by family groups with which the appellant would have no connection.

39 I am persuaded, taking all these factors into account, that the appellant faces a real risk of being unable to find sufficient employment on entering IKR to enable him to financially survive and to provide himself with adequate accommodation. I find that internal relocation from Kirkuk to IKR is not only unduly harsh and unreasonable, but it is in fact likely to result in a real risk of destitution crossing the threshold into inhuman and degrading treatment or punishment contrary to Article 3 ECHR.

40 The appellant's original appeal before Judge Meyler was allowed not on refugee grounds, but rather on the grounds that the refusal of his protection claim was unlawful under section 6 of the Human Rights Act 1998, as a result of a risk of breaches of Articles 2 and 3 ECHR, also with reference to Article 15(c) of the Qualification Directive.

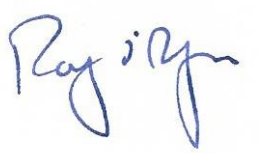
41 I am of the view that the proposed internal relocation of the appellant to IKR raises a real risk to him under Article 3 ECHR.

Decision

42 On 26 March 2018, I ruled that the decision involved the making of a material error of law, and set aside the decision.

43 I remake the decision by allowing the appeal under Article 3 ECHR.

Signed: Date: 13.8.18



Deputy Upper Tribunal Judge O'Ryan

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

This appeal concerns a protection claim. Unless and until a Tribunal or court directs otherwise, the appellant is 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.

Signed: Date: 13.8.18

Deputy Upper Tribunal Judge O'Ryan