



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

Appeal Number: PA/06406/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2nd October 2018**

**Decision & Reasons  
Promulgated  
On 17<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MAA (IRAQ)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Mukherjee, Counsel instructed by Davjunnell Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal dismissing his appeal against the decision to refuse his protection and human rights claims which he had brought on the basis that he was an ethnic Kurd from the city of Kirkuk who had fled persecution by ISIL, and who could not return to Kirkuk because it remained a contested area and an internal location to the IKR was not a reasonable option having regard to the case law of **AA (Iraq) -v- SSHD [2017] EWCA Civ 944** ("AA"). The Judge rejected his account of past persecution, but accepted that he

could not return to Kirkuk as it remained a contested area. However, the Judge found that he could internally relocate to the IKR.

### **The Reasons for the Grant of Permission to Appeal**

2. On 8 August 2018 First-tier Tribunal Judge Pedro granted permission to appeal as it was arguable that the Judge had made unreasonable and contradictory findings on credibility and had failed properly to apply Country Guidance case law, and that these amounted to material errors capable of affecting the outcome.

### **Relevant Background**

3. The appellant's accepted date of birth is 4 July 1999. He claims to have arrived in the UK clandestinely on 1 February 2016, and he is recorded as having claimed asylum on 12 April 2016. The Home Office records show that he was fingerprinted in Greece on 19 November 2015.
4. He said that he had been born and brought up in Kirkuk City. His father used to be an ambulance driver, but in January 2013 he had been injured in an explosion. This had left him unable to work. The appellant had attended school from the age of 6 to 13 years. After that, he had taken up employment to help his family financially, working as a car mechanic.
5. In July 2015, two men came into the workshop and asked about his boss's whereabouts. They left three boxes for him. After they left, he looked inside the boxes and saw that there were bombs inside. When he got home, he told his family that he had seen bombs in the boxes that were left in the workshop. He then went to the authorities and reported this. A week later, his boss and the group associated with his boss were arrested. It was later broadcast on television that his boss and the two men who had visited the workshop were part of a group that had been arrested due to them having links with ISIL. Following their arrest, he said that he had received a letter which stated that "they" would deal with him as the result of his actions. He claimed that his father had also received a threatening phone call.
6. Approximately two months after receiving the threatening letter, in or around September 2015, he was passed by two men on motorcycles. They shot at him, and he had to be taken to hospital. As a result of this, he moved to his uncle's chicken farm which was outside Kirkuk City in an area called Perde. He was in hiding at the chicken farm until November 2015, helping his uncle on the chicken farm. On 10 November 2015 his uncle arranged for him to leave Iraq.
7. On 5 May 2018 the respondent gave his reasons for refusing the appellant's protection claim. His account of his alleged problems with ISIL was rejected as it was internally inconsistent. In addition, while he claimed that he had received a threatening letter on Facebook in April 2016, he had not provided a screenshot of the letter on Facebook to

substantiate this aspect of his claim. Since his arrival in the UK, he had been in contact with his family until November 2016. His family, on his account, had not experienced any further problems living in Kirkuk after he had left.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

8. The appellant's appeal came before Judge Row sitting at Birmingham in the First-tier Tribunal on 18 June 2018. Both parties were legally represented.
9. In his subsequent decision promulgated on 26 June 2018, the Judge set out the appellant's case at paragraphs [11]-[19]; and the respondent's case at paragraphs [20]-[22].
10. The Judge made findings on the evidence at paragraphs [25]-[48]. At paragraphs [27]-[32], the Judge gave his reasons for rejecting various respects in which the respondent had asserted in the refusal letter that the appellant's account was either inconsistent or not plausible. At paragraphs [33]-[40], the Judge gave particulars of the finding which he had made at paragraph [27], which was that there were however some aspects of the appellant's account which were not plausible; and that there were certain aspects of his case where not all material factors at his disposal had been submitted or a satisfactory explanation given for the lack of relevant material.
11. The Judge reached the following conclusion at paragraph [42]: *"Even at the low standard of proof required, it is for the appellant to prove his case. I find that the appellant is an Iraqi of Kurdish ethnicity. I find that he came from the Kirkuk area. I find this because the respondent accepted this at the hearing. I do not find that the appellant discovered bombs sent to his employer. I do not find that the appellant reported this to the police in Iraq. I do not find that his employer was arrested. I do not find that the appellant subsequently received threats from terrorists. I do not find that he left Iraq to escape those threats. I do not find that he has lost contact with his family in Iraq. I find that his family arranged the appellant's travel to the United Kingdom not for his safety, but as an economic migrant. I do not find that the appellant has lost all his identification documents or that he could not obtain them. I find that he either still retains them or would be capable of recovering them from his family or acquiring replacements with their assistance."*
12. On the topic of internal relocation, the Judge said at paragraph [46] there remained the question of whether the appellant was in possession of a CSID or could obtain one. He did not accept that the agent had taken his documents from him. It was for the appellant to establish this, and he had found him to be an unreliable witness. His family had arranged for him to be sent to the UK. Presumably, there were some considerable expenses involved. He did not accept that the appellant was not in touch with his family. It was for him to establish that, and he had not done so. There

was no reason why the appellant should not be able to obtain his CSID from his family members or use their assistance to obtain one.

13. At paragraph [47], the Judge held that the appellant was a powerfully-built young man who was articulate and confident. He looked more mature than his 19 years. He had previously worked. There was no reason why he should not be able to obtain employment in the IKR. He was not at risk of destitution there. The IKR was virtually violence-free.

### **The Hearing in the Upper Tribunal**

14. At the hearing before me to determine whether an error of law was made out, Mr Mukherjee, who did not appear below, developed the case advanced in the grounds of appeal. He also raised a new point, which was that the Judge had not applied the Country Guidance of **AAH (Iraq)**. However, after enquiry, it emerged that **AAH** had not been published on the Upper Tribunal website until 28 June 2018 - two days after Judge Row's decision was promulgated.
15. In reply, Mr Whitwell submitted that the Judge had directed himself appropriately, and that he had made findings that were reasonably open to him on the evidence.

### **Discussion**

16. Ground 1 relates to the appellant's account of past persecution, and Ground 2 relates to the issue of the viability of the appellant relocating to the IKR.
17. Ground 1 is that the Judge made unreasonable and contradictory findings on credibility and/or plausibility. Mr Mukherjee has identified the following findings as being perverse or contradictory: (a) the finding at paragraph [38] that it would be relatively easy to obtain evidence that he had been taken to hospital in September 2015 after allegedly being knocked unconscious in a gun attack; (b) the finding at paragraph [33] that it was implausible that the appellant had waited for his employer to return after discovering the bombs; (c) the finding at paragraph [34] that if someone at ISIL was intent on killing him, they would not have phoned up first to warn his uncle of this fact.
18. Given that Kirkuk was a contested area in 2015, and given that the Judge did not accept the respondent's case that Kirkuk City itself was no longer a contested area, there is some force in the argument that it was unreasonable to expect the appellant's solicitors to obtain documentary confirmation from the named hospital that they had treated the appellant in September 2015. On the other hand, when presenting his asylum claim, the appellant represented that he was in touch with his family, and that they had not had any problems in Kirkuk since he left. The Judge also rejected the appellant's evidence that he was no longer in contact with his family. Therefore the family were an alternative potential source for

documentary evidence of the appellant's attendance at the hospital pursuant to an attack on him in September 2015.

19. In paragraph [33], the Judge set out a number of respects in which he considered the appellant's case with regard to bombs (plural) was not plausible. I consider that it was open to the Judge to find the appellant's evidence about what happened implausible, and hence not credible, for the reasons which he gave. From the appellant's account, the incident in question did not take place at a time when ISIL had control over the city. On the face of it, it was at a stage when ISIL terrorists were attempting to infiltrate the city, and were operating under conditions of secrecy. Against this background, it was open to the Judge to find that it would be "*an odd thing*" for terrorists to leave boxes containing bombs with someone who was not a part of their group (i.e. the appellant), in circumstances where the boxes were easily opened; and, absent a warning, the employee was likely to make the innocent assumption that the boxes were connected with his employer's business as the operator of a car repair workshop, and therefore there was no good reason not to open them.
20. It was open to the Judge to find incredible the proposition that, upon discovering a number of bombs in the boxes, the appellant did not alert the police, or telephone his father for advice, or leave the building, or seek to alert bystanders of the danger.
21. Mr Mukherjee submits that the Judge was being inconsistent in taking this line, as at paragraph [36] he reminded himself that the appellant was only 16 years old and that he would have gone where he was told to. However, as submitted by Mr Whitwell, there is no real inconsistency.
22. The appellant was not employed by the men who left the boxes, and he was not a co-conspirator. The appellant's evidence was that he had informed his family later, and after consulting his father and uncle, he had reported the matter to the police. It was open to the Judge to find not credible the proposition that he did not inform his family of the situation immediately, rather than waiting for his employer to return, and then pretending to his employer that he did not know that there were bombs in the boxes.
23. At paragraph [36], the Judge was addressing the credibility of the appellant fleeing to the UK, rather than fleeing to the IKR. It was open to the Judge to hold that relocation to the IKR (which was very close by) would have been a more credible response by the adults looking after him than an overland and overseas journey to the UK, which would have involved much greater expense and more physical danger.
24. It was also open to the Judge to find that it was not plausible, and hence not credible, that if ISIL had found the appellant at his uncle's farm in Perde, and wanted to kill him, they would have contacted his uncle to inform him that this was what they proposed to do - thereby giving the appellant the opportunity to escape.

25. The Judge began his analysis by identifying various respects in which he did not agree that the appellant's account was inconsistent or implausible. This demonstrates that the Judge approached his task of assessing credibility fairly and conscientiously. He gave anxious scrutiny to the appellant's claim, and he gave adequate reasons for accepting some aspects of it, but rejecting other aspects of it. Since the upshot of his analysis was that overall the appellant was not a reliable witness, it was open to the Judge to find that the appellant was an economic migrant who had been sent by his family to the West to improve his life chances, rather than to escape persecution or a situation of internal armed conflict.
26. Ground 2 is that the Judge failed to apply the Country Guidance given in **AA**. Mr Mukherjee pleads that in determining whether the appellant could relocate to the IKR, the Judge failed to consider whether the appellant could obtain assistance from family and friends in the IKR, because he made no finding that the appellant's family were in the IKR. He points out that there is no evidence that the appellant's family have relocated to the IKR. Therefore, he submits that the Judge has not given adequate reasons for finding that the appellant would be able to obtain the CSID that he requires to be able to live in the IKR.
27. However, as was explored in oral argument, the Judge specifically rejected the appellant's evidence that he had lost all his identification documents (paragraph 42) and he rejected his evidence that he was not in possession of his CSID because the agent had taken it from him (paragraph 46). Under the Country Guidance authority that was applicable at the date of promulgation, it was not necessary that his family should be residing in the IKR. All that was required was that the appellant had a CSID or that he could obtain one.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 4 October 2018

Judge Monson  
Deputy Upper Tribunal Judge

