



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: PA/09991/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

Decision & Reasons Promulgated

On the 31st May 2018

On the 4th July 2018

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR S.A.

(Anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Mynott (Counsel)

For the Respondent: Mrs Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge T.R. Smith promulgated on the 27th November 2017, which he dismissed the Appellant's asylum

appeal.

2. The Appellant is a citizen of Iraq who was born on the 2nd November 1985. It is the Appellant's case that his father was a Judge who retired in 2009 and who died of natural causes on 9th April 2015. The Appellant says a group of terrorists threatened his late father by letter on the 16th April 2015 and shot at his late father's house on the 20th April 2015. It is also the Appellant's case that he is of Kurdish ethnicity.
3. Judge Smith found the Appellant's story was not credible and that the Appellant initially alleged the family had been threatened by letter by unknown individuals, but then changed that to say that it was two Peshmerga families whom the Appellant's late father had sentenced as a Judge. Judge Smith found that the Appellant could not satisfactorily explain why it would have taken some 6 years after his father retired before some disgruntled families would send a threatening letter there being no previous problem since his father's retirement. The Judge found that the Appellant had been inconsistent as to whether the threats came from unknown individuals, two Peshmerga families or from a group of terrorists calling themselves Islamic State at [80].
4. The Judge further found that the Appellant lived in Qasib Xana part of Kirkuk. The Judge at [107] made reference to the Country Guidance case of AA (Article 15 (C)) Iraq CG [2015] UKUT 544, went on to find at [108] that Isis had been driven out of Kirkuk and that the representative for the Appellant Mr Fakira had accepted that. The Judge further relied in that regard on the Country Policy Information Note: Iraq: return/internal relocation September 2017 at paragraph 2.2.4. The Judge found that although Mr Fakira had referred him to documents which noted tension between the Iraqi government and Kurdish fighters in Kirkuk the situation had now resolved and the Kurdish forces had withdrawn from Kirkuk and there was no ongoing violence. He therefore came to the conclusion that the Appellant was not at a real risk of indiscriminate violence in his home area, as there was no longer any internal armed conflict there. He found that even if he was wrong then the Appellant and his brother could relocate and live with the Appellant's uncle in Chamchamal, located about 40-minute drive from Kirkuk. The Judge found that the

Appellant's account was that his family had left all of their documents with the Appellant's uncle and that therefore the Appellant's uncle had the Appellant's CSID card. The Judge did not accept the Appellant's account that he had his own CSID card with him when he left Iraqi and it was damaged in the sea. The First-tier Tribunal Judge went on to make an alternative finding that in any event the Appellant could internally relocate in safety and without undue hardship to Erbil in the IKR.

5. The Appellant seeks to appeal that decision for the reasons set out within the Grounds of Appeal. That document is a matter of record and is therefore not repeated in its entirety here, but in summary, it is argued that Judge Smith failed to demonstrate strong grounds and cogent evidence for departing from the Country Guidance case of AA (Article 15 (C)) Iraq CG [2015] UKUT 544 that Kirkuk is a contested area where the risk of indiscriminate violence is such as to mean he was entitled as a civilian to a grant of humanitarian protection under Article 15 (C) of the Qualification Directive. It is argued the Judge failed to attach weight to the documents submitted in the Appellant's bundle demonstrated ongoing conflict within Kirkuk and had failed to take account of the Appellant's evidence regarding the UNHCR position on return to Iraq.
6. Within the second ground of appeal it is argued that the Judge erred in finding that it was safe for the Appellant to relocate to the Iraqi Kurdish Region (the IKR). It is argued that it would be unduly harsh to relocate there and that his entry into the IKR was not guaranteed and that access to the IKR would put him in a real risk of arbitrary indefinite detention and that the Judge had failed to consider the viability of the Appellant's relocation to the IKR. It was said that the Judge failed to have proper regard to the Danish Immigration report entitled "the Kurdish region of Iraq (KRI), access, possibility of protection, security and humanitarian situation", as a whole and that it is said that within that report it was said that Kurds who were registered as living in Kirkuk could not reregister or buy property in any part of the IKR and that relocation in the IKR would be unduly harsh and Judge Smith erred in concluding otherwise.
7. Permission to appeal has been granted by First-tier Tribunal Judge Mahmood on the 3rd

January 2008 who found that all grounds were arguable, but stated that the Appellant should not be overoptimistic in view of the numerous adverse findings made by the Judge. He found that the Judge had fully dealt with the subject of documents produced by the Appellant at [100] and had concluded the Appellant and his brother could go to live in Chamchamal about 40-minute drive from Kirkuk.

8. In his oral submissions Dr Mynott recognised that the Appellant would have to succeed in respect of both Grounds of Appeal, in order for the decision of First-tier Tribunal Judge Smith to be overturned, and that he had to show that the Judge had got it wrong both in respect of the ability to return to Kirkuk and also to the IKR. He argued that there was nothing to show that the Country Policy Information Note: Iraq: Return-internal relocation dated September 2017 was actually in evidence before the First-tier Tribunal Judge, and I could not locate such note on the file. Mrs Aboni was not able to say that such note had been either submitted prior to the hearing by either side. Dr Mynott further argued that Chamchamal was within the governance of Kirkuk. He argued that the very strong grounds and cogent evidence would be needed before the Judge could go behind the Country Guidance case of AA, and the Judge had not indicated what the strong grounds and what cogent evidence was that led him to depart from the country guidance case. He argued that AA (Article 15 (C)) Iraq CG 2015 UKUT 544 had been confirmed by the Court of Appeal in July 2017, just 4 months before the First-tier Tribunal hearing and although the guidance was revised, it was still concluded by the Court of Appeal in giving guidance that Kirkuk was a contested area and that that guidance had been issued with the agreement of both parties as country guidance.
9. Dr Mynott argued that the Secretary of State's own policy in the Country Policy Information Note was not evidence and the Judge had not referred to any evidence within that note, such as to justify departing from the country guidance case. He argues that there was continuing fighting and instability in Kirkuk and that there was evidence regarding such between pages 137-168 of the Appellant's bundle before the First-tier Tribunal. He submitted that the evidence before the Judge did not entitle the Judge to make findings that the situation now resolved and that the Kurdish forces had withdrawn from Kirkuk

and there was no ongoing violence. He argued that before the Judge was a guardian article from October 2017 indicating that there were still clashes between the Iraqi government and Kurdish forces.

10. In respect of the second ground of appeal it is argued by Dr Mynott that the Judge had failed to properly consider the evidence regarding the undue harshness of internal relocation to the IKR. He argued that access to the region was not guaranteed and that access was restricted at checkpoints and the access restrictions at checkpoints were not always clearly defined and information could be variable and subject to change due to the security situation, as stated within the UNHCR position on returns to Iraq at page 172 of the bundle for the Upper Tribunal. He argued that the Court of Appeal in AA had said that undue harshness was fact sensitive in each individual case at paragraph 20 of the guidance. Dr Mynott argued that the Appellant would be a young Kurdish man travelling with a 15-year-old sibling from a contested area in Kirkuk, who was going back to Baghdad via Europe and that security checks of some kind could be experienced by him and his minor brother and that there may be arbiters getting access to the IKR. Dr Mynott further argued that detention could happen and relied upon note 64 within the UNHCR position on returns at page 170 where it was stated that "*the men and boys fleeing from ISIS held territory into the KRG are being detained for indefinite periods even after they pass initial security check for possible ties to ISIS by the KRG security forces they denied access to lawyers and detained , sometimes for weeks, even if they are not individually suspected of a crime, where KRG authorities conduct further screenings on them*" and that when within the Danish Refugee Council report on "the Kurdistan regional of Iraq (KRI) Access, Possibility of Protection, Security and Humanitarian Situation" dated April 2016, at paragraph 2.7.1 he argued that there had been examples of arrests of people who did not have access to have ID and who were put in detention and interrogated for months without charges and without having access to a lawyer. He further argued that the Danish Refugee Council report at paragraph 2.5 stated that the "*UNHCR explained the Kurds who are registered as living in Kirkuk cannot reregister or buy property in any part of KRI. If a man from Kirkuk marries a woman from another part of the Kurdish controlled area or KRI, her father is moved to Kirkuk. A couple like this would not be able to move in and out of Kirkuk, and they would not be able to move to or buy property in KRI*". He argued that the Appellant could not reregister within the KRI, he would not be

able to settle and it would be unduly harsh to reside there.

11. In her submissions Mrs Aboni relied upon the Secretary of State's Rule 24 Reply dated the 20th March 2018, in which it was argued that the First-tier Tribunal Judge had directed himself appropriately and that the Judge had considered if the Appellant could return to Iraq and considered the issue of the Appellant obtaining the relevant documents and had also properly considered whether the Appellant could relocate to another part of the country, as set at paragraphs 118 onwards. She further argued that although it was not clear that the policy note was before the Judge, the fact was that ISIS had been driven out of Kirkuk and was no longer considered by the Secretary of State to be a contested area. She argued the Appellant's evidence simply referred to skirmishes. However, she did concede that the First-tier Tribunal Judge had not properly set out the evidence that he relied upon in making findings that the violence had stopped and that Kurdish forces had been forced to withdraw from Kirkuk.
12. However, she argued that the Judge had found that the Appellant would be able easily to obtain his documents from his uncle and that the Appellant's ability to relocate to the to the IKR was in line with the Country Guidance case of AA and the Appellant would be returned to Erbil by air via Baghdad, so he would not have difficulty with checkpoints and that he would be able to gain entry for 10 days and then renew that entry for further period and if they found employment, they could remain on. She argued the Judge had considered the individual circumstances of the Appellant in terms of undue harshness and found that there were no language difficulties, he had a work history, was single, in good health and could establish a life in Erbil. She argued that the findings were open to the judge and in line with the country guidance and there was no material error of law.

My Findings on Error of Law and Materiality

13. In respect of his findings regarding Kirkuk and his departure from the country guidance case of AA (Article 15 (C)) Iraq, in finding that there was no ongoing violence such that the Appellant was not at a real risk of indiscriminate violence in Kirkuk and there was no

longer internal armed conflict there, the Judge appears to have relied upon the Country Policy Information Note: Iraq: Return/internal relocation from September 2017 and in particular upon paragraph 2.2.4 of that note.

14. However, neither party were in a position to tell me how it was the Judge came to have that Country Policy Information before him as neither side claimed to have put the same in evidence, either before or at the hearing. Clearly, if the Judge wishes to rely upon terms of any Country Policy Information note that was not put in evidence, that should be put to the parties at the hearing, so that they can comment on any particular paragraph the Judge wishes to rely upon, in the interests of fairness.

15. However, at [109], relying upon that Country Policy Information note, the Judge had found that there was no ongoing violence in Kirkuk and Kurdish forces had withdrawn from the Kirkuk so that the Appellant was not at a real risk of indiscriminate violence there and that there is no longer internal armed conflict, such as to justify him departing from the country guidance case of AA. However, the Judge has not made any reference to the Court of Appeal decision in AA, which was promulgated just four months before his decision. Further, in relying upon the Country Policy Information note at paragraph 2.2.4, the Judge has simply quoted the Secretary of State's position that internal relocation is in general, possible to all areas of Iraq except the Nambar governance, the Ninewah governance, the parts of Kirkuk governance in and around Hawija and parts of the Baghdad belt that border Nambar, Diyala and Salahal al Din. The Judge has not considered any of the evidence relied upon by the Secretary of State in that Country Policy Information note or elsewhere, and that would justify reliance upon the Secretary of State's position in that regard. The Judge has not quoted any evidence in support of the Secretary of State's stance that there is no ongoing violence and there is no longer internal armed conflict in Kirkuk. He has not considered the evidence relied upon by the Secretary of State further on in the guidance note, in order to assess whether or not it is sufficient to depart from the country guidance. In that regard, the Judge's findings have not been adequately and sufficiently explained in order that the losing party knows why they have lost. The judge has therefore erred in that regard.

16. Further, although the Judge says the Appellant could go and live with his uncle in Chamchamal that is a city located within the Kirkuk governance, and the Judge has not properly explained either why it would be that the Appellant could safely go back to Chamchamal given that that is in the Kirkuk governance, in light of the country guidance given by the Court of Appeal in July 2017 in AA. I therefore do find that the Judge has erred in respect of his findings in regards to the Appellant's ability to return back to Chamchamal, in his finding in that regard having not been adequately and sufficiently explained.

17. However, turning to the question about the ability of the Appellant to relocate to the IKR without undue harshness, the Court of Appeal in the case of AA (Iraq) v Secretary of State for the Home Department [2107] EWCA Civ 944 in giving the amended guidance in respect of the Iraqi Kurdish region and did find that:

"17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been "pre-cleared" with the IKR authorities. The authority in the IKR do not require P to have an expired or current passport or a laissez passer.

18. The IKR is virtually violence free. There is no Article 15 (C) risk to an ordinary civilian in the IKR.

19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities proactively remove Kurds from the IKR whose permits have come to an end.

20. Where a K, returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR will be fact sensitive; and is likely to involve an assessment of (A) the practicality of travel from Baghdad to the IKR (such as to Erbil by air) (B) the likelihood of K securing employment in the IKR; and (C) the availability of assistance from family and friends in the IKR".

18. The First-tier Tribunal Judge did specifically take account of the fact that the Appellant was Kurdish and spoke Kurdish Sorani and that therefore he would encounter no language difficulties in Erbil and that he had a history of working with a storage company briefly and on his own evidence that the police officers are fighting against ISIS. The Judge also found that the Appellant was single and in good health and did not fall into a vulnerable group such as elderly, children or female and that he showed a level of fortitude in being from Iraq and establishing a life in the United Kingdom and that he could show the same level of fortitude in establishing life in Erbil. The Judge has therefore taken account of individual factors of this Appellant and further took account of the fact that he would be seeking to relocate with his younger brother, in determining that he could relocate to the IKR. He has carried out a fact sensitive consideration and made findings which were open to him on the evidence in that regard.

19. Although Dr Mynott sought to rely upon the contents of the UNHCR position on returns to Iraq in November 2016, in respect of access restrictions being applied at check points not always being clearly defined or that the information could be subject to sudden changes depending on security situations, that report predated the Court of Appeal guidance in AA, the Court of Appeal had made it clear that a Kurd who did not originate from the IKR could obtain enter for 10 days as a visitor and then renew that entry for a further 10 days, based upon the evidence which was accepted by both sides in renewing the guidance previously given in the Upper Tribunal at that stage. In circumstances the Appellant would be flown to Erbil via Baghdad, the Court of Appeal made it clear that he could gain entry for 10 days as a visitor and then renew the entry permission for a further 10 days. The Judge seeking to rely upon the guidance given in the country guidance case which was reiterated by the Court of Appeal, rather than previous guidance given by the UNHCR, is therefore not an error of law on the part of the Judge and the Judge was entitled to make the finding he made in that regard. The appellant will be flown to Erbil, rather than encountering checkpoints on the road.

20. Further, although Dr Mynott sought to rely upon the Danish report to say that people without identity could be detained for indefinite periods and interrogated without charge

and without access to a lawyer, the findings of First-tier Tribunal Judge Smith were that he did not accept that the Appellant had lost his CSID, and found that the Appellant had left his documentation with his uncle and would therefore be able to obtain his documentation upon return. The risk Dr Mynott therefore sought to argue in terms of being arrested and interrogated for months without charges for not have an ID are therefore unfounded as the Judge found the Appellant would be able to access his ID upon return.

21. Although Dr Mynott further sought to argue that based upon the Danish report, Kurds who are registered as living in Kirkuk could not reregister or buy property in any part of the KRI, the Court of Appeal in issuing the guidance in 2017 post-dating the UNHCR report had made it clear that a Kurd who did not originate from the IKR could obtain entry for 10 days as a visitor and renew that entry and if they then found employment and that they could remain for longer although would need to register with the authorities and provide details of the employer. Having referred to that specific guidance, Judge Smith also specifically considered the Danish report and the fact that it is stated that "*three sources said that IDP's have access to renting houses in KRI. The IOM (International Organisation for Migration) said that rental accommodation is available to IDP's, if they have sufficient funds and the sponsor. Two sources said that many IDP's chose to live with several families together in a rented house*". He also at [126], found that Human Rights Watch found that it was uncertain that Kurds could settle in the KRI, but Human Rights Watch did not state that ethnic Kurds could not settle and that the Danish report said that Qandil had said that ethnic Kurds had no problem settling in the KRI. The Judge had therefore properly considered the Danish report, but to the extent that the Danish report predates and is inconsistent with the Court of Appeal authority that indicates that people who do obtain employment can register with the authorities, the Judge did not err in following the country guidance.

22. The Judge had properly considered the question as to whether it was unduly harsh for the Appellant to relocate to the KRI and found that it was not taking account of the appellant's own individual circumstances which he fully and properly considered. The Judge's dealings with the Appellant's entry to the KRI, and whether it would be unduly

harsh for him to internally relocate they had been quite properly dealt with by the Judge and he has made findings open to him on the evidence. There is no error of law in regards to internal relocation to the KRI.

23. In such circumstances although the Judge has erred regarding the situation in Kirkuk in not fully explaining his reasons fully and adequately explaining his reasoning in respect thereof, the Judge has not erred in respect of internal relocation to the KRI, and in such circumstances the decision of First-Tier Tribunal Judge Smith does not reveal any material errors of law and as his findings in respect of the IKR were open to him and do not contain any material errors of law. In such circumstances the Appellant's appeal is dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge Smith does not contain any material errors of law and is maintained.

The Appellant is granted anonymity unless and until the Tribunal or otherwise directs. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

RFMcGinty

Deputy Upper Tribunal Judge McGinty

Dated 8th June 2018