Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01374/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 22nd February 2019	**On 18th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

SAIWAN [M]
(No anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought against a decision by Judge of the First-tier Tribunal Mackenzie dismissing an appeal on protection and human rights grounds.

2. The appellant is a national of Iraq of Kurdish ethnicity. He originates from a village in the vicinity of Sulaymaniyah in the IKR

(Iraqi Kurdish Region). He came to the UK in 2004 and claimed asylum on the basis that he was at risk from a blood feud with the Sheikh Ismaely tribe. In 2004 he had an appeal hearing against the refusal of protection (AS/06959/2004) at which his fear of the blood feud was found to be credible. However, the Adjudicator who heard the appeal found there would be a sufficiency of protection for the appellant from the authorities in the Kurdish Autonomous Zone, as it was termed then, and internal relocation was also a valid option. The appeal was therefore dismissed.

3. In 2010 the respondent began a review of the appellant's position. This concluded in 2017 with a refusal decision in response to further submissions from the appellant. Following a judicial review there was a further reconsideration by the respondent, ending in a refusal decision subject to a right of appeal, which the appellant is now exercising.

4. The Judge of the First-tier Tribunal began with reference to the principles set out in the case of Devaseelan [2003] Imm AR 1 in relation to findings made in an earlier appeal. The judge then went on to make a finding that the blood feud was no longer "live". The reason why the judge made this finding was because she was not satisfied by the evidence the appellant gave before her about contact he might have had with his family in Iraq. The judge did not believe that the appellant had not been in touch with his family for the fourteen years he had been in the UK. According to the judge, the appellant did not provide any evidence, from his parents or any other source, confirming that the blood feud was still active. The judge drew an adverse inference from the appellant's failure to provide supporting evidence or to offer a credible explanation for why it had not been sought. The judge was not satisfied that the appellant had a genuine fear for any reason of returning to Iraq.

5. Permission to appeal was granted by the Upper Tribunal on the grounds that the judge arguably erred by not properly applying the Devaseelan guidelines and by not properly assessing the viability of internal relocation.

Submissions

6. At the hearing before me Mr Winter relied upon the application for permission to appeal. He submitted that the evidence before the First-tier Tribunal was the same as in the previous appeal apart from the addition of an expert report by Dr Fatah. Further submissions had been made. There was no adequate basis for the Judge of the First-tier Tribunal to depart from the findings which had been made in the previous appeal. Mr Winter acknowledged

that the issues relating to internal relocation would arise only if the judge was found to have erred on the Devaseelan point.

7. For the respondent Mr Matthews pointed out that removals had resumed to Erbil in the IKR. This was now where it was proposed the appellant be returned to, instead of Baghdad. Relocation would be possible within the IKR or in Baghdad. Mr Matthews contended that the Judge of the First-tier Tribunal did not depart from the findings in the previous appeal. The judge was entitled to ask if the risk from the blood feud continued today. The judge had regard to Dr Fatah's report, which was referred to at paragraph 29 of the decision. If the judge had erred the proper course would be remittal.

Discussion

8. Mr Matthews made the not unreasonable point that in the current appeal the Judge of the First-tier Tribunal was entitled to ask if the blood feud was still continuing. Mr Winter made the point that the only new evidence before the appellant in relation to this, apart of course from the appellant's own evidence, was the expert report by Dr Fatah. It is unfortunate then that in attempting to answer the question of whether the blood feud was continuing the Judge of the First-tier Tribunal should have completely disregarded the evidence of Dr Fatah on this point. In his conclusions, at paragraph 68 of his report (Appellant's bundle, p 20) Dr Fatah wrote: "Blood feuds can last for a very long time, the passing of 14 years is not a reason in itself for a blood feud to die out."

9. Of course, the Judge of the First-tier Tribunal was entitled to find that the appellant was not telling the truth about whether he had had any contact with his family. What she could not do, however, was to use this as a reason to depart from the findings made in the previous appeal without regard to the other new evidence before her, which was Dr Fatah's opinion as an expert witness that the passing of 14 years was not a reason in itself for a blood feud to die out. In departing from the previous finding without considering Dr Fatah's evidence the Judge of the First-tier Tribunal erred in law.

10. The consequence of this is that the finding by the Judge of the First-tier Tribunal as to whether the blood feud is continuing is unsound and her decision should be set aside. I informed the parties at the hearing of my decision on this point. Having regard to the previous appeal and the evidence of Dr Fatah, the finding in the previous appeal as to the existence of a blood feud still stands.

11. The approach taken by the Judge of the First-tier Tribunal to the issue of internal relocation was predicated on the erroneous finding

that the appellant was no longer at risk. For reasons recognised in the grant of permission to appeal, the findings made by the Judge of the First-tier Tribunal on this issue are not adequate. I invited the parties to address me on the question of internal relocation with a view to re-making the decision.

12. In relation to internal relocation Mr Winter relied upon the skeleton argument for the appellant lodged before the First-tier Tribunal. It would be unreasonable to return the appellant to Erbil. The appellant could be identified at a road block in IKR or when registering with a Mukhtar. Reliance was also placed upon Dr Fatah's report.

13. Mr Matthews submitted that the appellant could live elsewhere in IKR, away from his home area. If he needed a CSID he could ask his family to obtain this for him and relocate elsewhere in Iraq.

14. I informed the parties that I would reserve my decision on the issue of internal relocation and would have the appeal listed for a further hearing if I considered that further documentary evidence and submissions were required.

15. I have, however, been able to re-make the decision having had regard to the report by Dr Fatah, the Home Office Note of September 2017 on "Return/Internal relocation", to which I was referred by Mr Winter, the Court of Appeal decision in AA(Iraq) [2017] EWCA Civ 944 and the country guideline cases of BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018]UKUT 00212.

16. The country guideline case of AAH refers to Kurds returning or relocating to IKR. At the time this decision was issued there were no international flights to IKR. Mr Matthews informed me that flights to Erbil have now been resumed. According to previous Home Office guidance on flights to Erbil, in the Note of September 2017 on "Return/Internal relocation", a person being returned to Erbil from the UK required "pre-clearance" from the authorities in IKR. The Home Office Note addresses this at 4.2 (Appellant's bundle, p 125) as also very briefly does Dr Fatah (Appellant's bundle, p 52). Pre-clearance seems to require some evidence of identity acceptable to the authorities in IKR. Of course, the feasibility of return is a separate issue from the need for international protection. However, the availability of identity documentation may be relevant to the viability of internal relocation, in accordance with AA (Iraq).

17. The case of AAH points out that if a returning Iraqi Kurd has family members in the IKR the family would normally accommodate the returnee. Support from family members would mean that if this was not a returnee's home area relocation would not be unduly

harsh. In the case of this appellant, however, he is at risk from the blood feud in his home area where his family members reside.

18. In his first appeal in 2004 it was established that the appellant would have a sufficiency of protection from the Kurdish authorities. Country conditions have changed significantly since then and there is new evidence before me on these, including Dr Fatah's report and the recent country guideline cases. Dr Fatah concluded there would not be a sufficiency of protection in the IKR and his conclusions have not been challenged by other evidence. At paragraph 54 Dr Fatah points out that members of the security forces have a tribal loyalty as well as a loyalty towards their employers. In smaller towns and villages the authorities were often unable to prevent killings in tribal disputes. At paragraph 57 Dr Fatah points out that the appellant would need substantial evidence to prove to the security forces that he required protection and any protection would be limited in duration and degree. The population of IKR was about 5.5 million. A person searching for someone can ask around in local communities. The system of patronage means that use may be made of friends or family in positions of power or access to databases to look for information. Dr Fatah also points out that whereas in the past an entire tribe would pursue a feud this was no longer the case. Members of tribes were also more spread out than previously, although this might spread their influence beyond their traditional homeland.

19. Dr Fatah is sceptical about the viability of internal relocation. In AAH there is reference to the difficulties in obtaining accommodation and employment in IKR for those not able to avail themselves of family support. Dr Fatah states that to relocate the appellant would require a CSID. Dr Fatah states at section 7.1 of his report (Appellant's bundle, p 46) that it is possible to renew or replace a CSID at the Iraqi Embassy in London if certain documents are provided, such as an Iraqi passport and an Iraqi National Certificate, neither of which the appellant has, as well as a copy of the previous CSID. It should be borne in mind that the appellant has now been away from Iraq for nearly fifteen years and any documentation he might have had is likely to be significantly out-of-date.

20. Mr Matthews suggested that the appellant could ask his family to obtain a CSID for him. To do this, however, Dr Fatah indicates that the appellant would have to obtain an Iraqi passport from the Embassy and to obtain this he would need a CSID issued no more than 10 years previously and an Iraqi National Certificate (section 7.3). It does not seem to be feasible to obtain either a passport or a CSID outside Iraq unless a person already has one of these documents in their possession.

21. According to Dr Fatah, at section 7.2 of his report, to obtain a CSID within Iraq the appellant would have to attend the official registration office in his home area. In the IKR the appellant would also need the recommendation of his Mukhtar. Thus to obtain a CSID in Iraq the appellant would not only have to go to his home area he would also have to notify the local Mukhtar of his whereabouts. This would seem to defeat the concept of internal relocation.

22. Dr Fatah addresses the possibility of relocation outside the IKR but points out at section 7.5 that without proper documentation the appellant would be unable to access basic rights and services. Dr Fatah concludes that the lack of a CSID would be an obstacle to internal relocation.

23. In summary, the position of this appellant is that he cannot return to his home area in IKR because of the risk from the blood feud. The authorities would be unable to provide him with a sufficiency of protection. Internal relocation within IKR is unlikely to be a reasonable alternative for the appellant because of the ease with which an individual can be traced within this area. The lack of a CSID also detracts from the viability of internal relocation. The only feasible way the appellant can obtain a CSID is by applying in person in his home area, with the support of his Mukhtar, thereby revealing his presence there. Relocation in Iraq generally would not be viable without a CSID.

24. In these circumstances consideration needs to be given to the type of protection to which the appellant is entitled. His fear is of a blood feud and does not arise for a reason recognised by the Refugee Convention. The appellant nevertheless faces a real risk of serious harm and qualifies for humanitarian protection.

Conclusions

25. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

26. The decision is set aside.

27. The appeal is re-made by allowing the appeal.

Anonymity

The First-tier Tribunal made a direction for anonymity. I have not been asked to renew this direction and as the appeal succeeds I see no reason of substance for doing so.

Fee Award (N.B. This is not part of the decision)

No fee has been paid or is payable so no fee award is made.

M E Deans 13th March 2019
Deputy Upper Tribunal Judge