



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04359/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 April 2019

Decision & Reasons Promulgated
On 3 May 2019

Before

Deputy Upper Tribunal Judge Pickup

Between

PM
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Burnett, instructed by JD Spicer Zeb Solicitors

For the respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

- Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.*
- This is the appellant's appeal against the decision of First-tier Tribunal Judge Frankish promulgated 12.7.18, dismissing his appeal against the decision of the Secretary of State, dated 21.4.17, to refuse his protection claim.

3. First-tier Tribunal Judge Andrew refused permission to appeal on 13.8.18. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Rintoul granted permission to appeal on 7.2.19.
4. The error of law consideration came before Upper Tribunal Judge Perkins on 8.3.19. His decision promulgated 11.3.19 accepted the concession of the respondent that the decision of the First-tier Tribunal was defective for absence of findings on the appellant's ability to obtain a CSID, necessary to his safe return. Further, the First-tier Tribunal failed to determine if the appellant's home is safe.
5. Judge Perkins found errors of law, set the decision aside, and reserved the remaking of the decision in the appeal to the Upper Tribunal. He also held that the findings of the First-tier Tribunal, including the adverse credibility findings, stand "unless necessarily displaced by findings on the availability of the CSID and the safety of the home area."
6. The resumed appeal hearing was allocated to me pursuant to a transfer order made by the Principal Resident Judge on 8.4.19.
7. The preserved findings including the following:
 - (a) That the appellant is not a credible witness in his own cause [15];
 - (b) The core factual account was found to be untrue [22]. The contradictions to the appellant's core account were found to be so deep, central and pervasive that they are not true. The claimed murder of the appellant's brother and the threats of murder to the appellant and his father, and the alleged circumstances thereof, were entirely rejected, although it may be that the brother is deceased and there may have been some "fractious disputes" over grazing land;
 - (c) Khalid's family were not all-powerful as claimed and the assertion that they were endowed with power through KDPI connections was rejected;
 - (d) The family sold assets to finance the transportation of the appellant to Northern Europe as an economic migrant [24]. However, he abandoned the endeavour following a failed claim in Switzerland and returned home, only to be sent back again by his family. Nothing new has transpired at home since that claim;
 - (e) The appellant was fingerprinted in Bulgaria but failed to claim asylum there, which undermined his credibility pursuant to s8;
 - (f) "The appellant accepted that his representatives in Switzerland had his identity document but he left before waiting for them to retrieve it and pass it to him [25];"
 - (g) With his family connections in Iraq and the proceeds of the sale of assets held for him by his brother-in-law, there is no risk that the appellant will be destitute

on return to Iraq. He will also have £1,500 available to him from the assisted voluntary return scheme;

- (h) The claim that the appellant's lost his parents in a forest, the suggestion that they may be deceased, or alternatively that their whereabouts unknown to him was rejected as not credible [23];
- (i) In any event, the appellant has other family in Iraq, including his sister and brother-in-law, as well as a paternal uncle living locally to his family.

8. At the hearing before me, in his oral evidence the appellant adopted his previous and new witness statement of 22.3.19, in which he maintains he remains unaware of the whereabouts of his parents and that he is not in contact with his sister in Iraq or his paternal uncle, or any other family member in Iraq. He points to belated attempts to make contact with his family through the Red Cross and I have been provided with a single letter from the Red Cross, dated 3.1.19, confirming a very recent tracing enquiry. The letter states that updates would be provided every three months, but no further communication from the Red Cross has been produced, the absence of which is not explained. He was then cross-examined by Mr Jarvis.
9. A full note of the oral evidence and the submissions of the two representatives is with the tribunal's case file and need not be recited here. However, I point out that the appellant was specifically challenged as to the whereabouts of his identity documents. He denied the account recorded at [25] of the decision of the First-tier Tribunal that his representatives in Switzerland had his identity document but he left before waiting for them to retrieve it and pass it to him. Before me, he claimed that he had one ID card which was taken from him by the police at the point of arrest in Switzerland. He thought it had been taken to the court but was not given back to him. He said he asked his representatives for it and they told him they could not get it back for him. He was unable to wait any longer as he had been given a date by which he had to leave the country. This account is inconsistent with that recorded in the decision of the First-tier Tribunal and no evidence other than the word of the appellant has been adduced to demonstrate that the judge had inaccurately recorded the evidence. If that had been the case some substantive evidence should have been provided of the alleged inaccuracy. Mr Burnett suggested that what the appellant was recorded as saying was consistent with his present account. I do not accept that at all; it is plain that the account now given was not put before the First-tier Tribunal. In the circumstances, to the extent that his present account differs from that as recorded in the decision of the First-tier Tribunal I cannot accept it as truthful. I must proceed on the basis that the appellant did have an Iraqi ID document which was held, or at the very least accessible to his legal representatives in Switzerland. He left the country without waiting for it to be retrieved and returned to him. It follows that the document must still be available and yet no effort has been made to seek it.
10. In the light of the preserved findings and the inconsistency between those and his new and existing statements, as well as the clear rejection of the appellant's credibility and his core factual account, I also find that I cannot accept the appellant's

renewed claim in oral evidence to have no contact with his family in Iraq. It follows that I must proceed on the basis that not only will he be able to make contact with family members in Iraq but benefit from their support and financial assistance, entirely consistent with the findings of the First-tier Tribunal.

11. Applying the amended country guidance from AA (Iraq) v SSHD [2017] EWCA Civ 944 and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), it is necessary to consider whether the appellant will be able to obtain a CSID before or shortly after returning to Iraq, to assess the risk on return in his home area, and determine whether he will be able to return to the home area, or alternatively relocate to Baghdad or the IKR.

Return to the Home Area or Relocation Elsewhere?

12. It was not made very clear in the First-tier Tribunal decision, but it is common ground that the appellant originates from Alawa Mahmoud [24], which it is agreed lies outside the IKR, in the vicinity of Kirkuk. The question arises whether he can return to his home area. The amended Country Guidance of AA is to the effect that Kirkuk remains a 'contested area' with a risk of article 15(c) indiscriminate violence. Mr Jarvis urged on me that there has been such a change of circumstances since the demise of ISIS that the home area can be regarded as safe and that I should depart from the Country Guidance. He referred me to the most recent CPIN of November 2018 and in particular paragraphs 2.3.20 to 2.3.36, as well as the charts at section 8. I accept that there is evidence demonstrating a reduction in incidents of violence. However, I am not satisfied that pursuant to SG (Iraq) v SSHD [2012] EWCA Civ 940, that the evidence relied on amounts to very strong grounds supported by cogent evidence to justify departing from the Country Guidance. In the circumstances, I find that it is not reasonable to expect the appellant to return to his home area.
13. Neither am I satisfied on the application of the Country Guidance that the appellant as a Sunni Kurd with no known family support there can safely relocate to Baghdad. Mr Jarvis made the point that it was for the appellant to demonstrate that it would be unreasonable and/or unduly harsh to expect him to relocate to Baghdad. However, the appellant would have no network of support there and would on two grounds be a member of a minority ethnic or religious grouping with no evidence that he speaks Arabic or has any means to establish himself there.
14. In the circumstances, I have turn to consider relocation to the IKR, applying the amended Country Guidance. As the appellant does not emanate from the IKR he cannot be returned there directly but will have to make his own way there from Baghdad. However, the appellant would be no more than a transit passenger at Baghdad Airport. Whilst AAH stated that flights to the IKR, to Erbil and Sulaymaniyah had been suspended, that is no longer the case and there are direct flights from Baghdad on a daily basis. I understand that the Home Office will not enforce return beyond Baghdad but that a through ticket for Erbil or Sulaymaniyah will be provided on request. There are international flights to IKR airports from a number of countries, including Austria and Jordan but as the appellant cannot be

returned directly to the IKR, these are not available to him. However, to be able to board a flight to the IKR from Baghdad Airport, the Country Guidance indicates that the appellant will need a CSID.

The CSID

15. From the Country Guidance in both AA and AAH, I accept that whether or not return is presently feasible, it is necessary to consider whether the appellant will have access to a CSID before or shortly after return to Iraq, within a reasonable time frame. Amongst the relevant factors in that consideration held in AAH is whether the appellant has any other form of documentation available to him, or other information about the location of his entry in the civil register. I have considered the factors set out in AAH including the location of the civil registry office and whether there are family members who could attend the office to obtain the necessary information. Country background information also suggests that there are a number of other ways to obtain a CSID, including whilst still in the UK provided the appellant has the information of the book volume and page number of his family entry in the register.
16. On the evidence and the preserved findings I find that the appellant either has access to his CSID or will be able to access sufficient information to obtain a renewal of the CSID before leaving the UK. First, as stated above, there is no evidence that either the appellant or his present legal representatives have made any contact with those legal representatives to seek the Iraqi ID document he left in Switzerland. It follows that this is one source of identification that will enable the appellant to retrieve that ID document and use it to obtain a CSID to enable his return to Iraq. The First-tier Tribunal noted this was one means to overcome the documentation problem.
17. Second, I have rejected the appellant's claim to have lost contact with his family in Iraq. It follows that he has family members, including male relatives, who can act on his behalf either as a family member or as a proxy to obtain the relevant information necessary to obtain a CSID. The finding has been preserved that the family also hold financial resources, certainly more than enough to twice finance his journey as an economic migrant to Europe. With such resources, the appellant can also employ a lawyer or other representative acting with a power of attorney to obtain the relevant details or indeed the renewed document. I also note that there is no evidence that the appellant has made any attempt to renew his CSID via the embassy or consulate in the UK. It follows that I am satisfied that the appellant will have access to a CSID before returning to Iraq and thus will be able to board a flight to the IKR. The Country Guidance is that as a Kurd he will not be denied entry and will not be required to leave.
18. Whilst the appellant cannot himself be expected to go to Kirkuk, his home area is a relatively short distance from the IKR. I am satisfied that he is in contact with family members and has not lost contact as claimed. He will be able to make contact and renew his family ties from within the IKR. It would not be unreasonable to expect those family members to also contact the appellant in the IKR and visit him there. With the assisted voluntary return funds and the financial resources of his family he

will be able to provide accommodation for himself and give himself time to establish himself in the IKR. He will not face any risk of indiscriminate violence there and being able to demonstrate that he has come from the UK, he will not be suspected of ISIS sympathy or of having come directly from ISIS territory. There is no known ISIS link in his family background and there is no evidence that he will be regarded with suspicion.

19. On the evidence taken as a whole, I am satisfied that the appellant will not need to access a critical shelter arrangement and given that he is able-bodied he will be able to seek work in the same way as others. I have found he will also have or be able to obtain a CSID relatively quickly so that he will be able to access both accommodation and legitimate employment, as well as government support services. Whilst there may be challenges, his position with family support and financial resources will be rather better than many others. He is physically fit and would want to work. In all the circumstances, I find that he will be able to establish himself and lead a relatively normal life in the IKR without facing a risk of destitution or living in inhuman conditions such as to breach article 3 ECHR. It would, therefore, not be unduly harsh to expect the appellant to return to Iraq via Baghdad and relocate to the IKR.
20. It follows from the above and for the reasons set out that the appeal cannot succeed on asylum, humanitarian protection grounds, or the narrow ambit of articles 2 and 3 ECHR grounds.

Decision

21. It was previously found that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside. The decision was set aside. I re-make the decision in the appeal by dismissing it on all grounds.

Signed

DMU Pickup

Deputy Upper Tribunal Judge Pickup

Dated