



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07655/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

**Decision & Reasons
Promulgated**

On 13 March 2019

On 15 March 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AS
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Hussain, Counsel

For the respondent: Mr Diwyncz, 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 order. 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 original appellant in this decision identified as AS.

Introduction

1. In a decision sent on 5 July 2018 Deputy Upper Tribunal Judge Pickup found that the First-tier Tribunal ('FTT') erred in law, and that the decision should be set aside and remade by the Upper Tribunal ('UT') at an adjourned hearing.

Summary of asylum claim

2. The appellant is a citizen of Iraq, of Kurdish origin. He was born in Kirkuk and lived there for many years, but his family had homes in both Kirkuk and in Sulaymaniyah, in the Kurdistan Region of Iraq ('IKR'). The appellant is educated to degree level and began working in the media in 2008.
3. The appellant lived mostly in Kirkuk but moved to Sulaymaniyah after he was attacked for reasons relating to his activities as a journalist. He was involved in a documentary about the oppression of women, which was perceived as un-Islamic. This was released in April 2016. Shortly after this, he was beaten up and threatened. His home was then attacked by gunshots and he received a threatening phone call. He therefore left Kirkuk for Sulaymaniyah on 21 April 2016.
4. Shortly after moving to Sulaymaniyah, the appellant was again targeted. His car was fired at on 17 May 2016 and he fled Iraq on 19 May 2016. The appellant believes that he was targeted by an extremist Islamic group and the Iraqi and IKR authorities were unable or unwilling to provide him with sufficient protection, given his activities as a journalist.
5. The appellant arrived in the United Kingdom on 14 June 2016 and claimed asylum on arrival.

Issues

6. At the beginning of the hearing there were preliminary discussions clarifying the evidence available and the disputed issues to be determined. Both representatives agreed the following matters:

- (i) As noted by Judge Pickup at [7] of his decision, the FTT accepted the entirety of the appellant's account of what happened to him in Iraq, which then led to his departure. The FTT found the appellant to be a "*broadly credible witness*" whose real problems began because of his involvement in a video in which he voiced provocative and un-Islamic views. The FTT accepted that consistent with the country background evidence, the appellant was targeted for this reason. Although the FTT did not expressly address the continuation of the adverse interest in the appellant from Kirkuk to Sulaymaniyah, Mr Diwyncz accepted that the FTT accepted the appellant's account of what happened in Iraq in its entirety and these are properly to be regarded as preserved findings of fact.
- (ii) The FTT did not address the country background evidence supporting the appellant's claim that his fear that he would continue to be targeted for serious harm in the IKR is well-founded.
- (iii) The appellant has a CSID that is being kept by the respondent. Dr Fateh has considered a scanned copy of the CSID and outlined in a report dated 27 November 2018 numerous concerns about the authenticity of the CSID, such that he concluded that the document lacks the main characteristics of a reliable CSID. Notwithstanding this, the appellant maintains in a witness statement dated 11 March 2019, that he obtained the CSID using the proper channels and it is a genuine document. In any event, the appellant is in contact with his family members in the KAA. His father has a CSID, national identity card and a nationality certificate. It was therefore accepted that in line with the accepted evidence provided by Dr Fateh in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC), the appellant would be able to obtain a CSID from the Iraqi Consulate in the UK - see in particular [26] to [28] of AAH. The appellant could therefore be returned to Baghdad, from where he could travel to the IKR. Mr Diwyncz confirmed that the respondent only sought to argue that the appellant would not face a real risk of persecution in the IKR or alternatively could internally relocate there, and as such it is not necessary to examine his circumstances in Baghdad. Mr Diwyncz also accepted that in accordance with the FTT's findings, the appellant is at risk in Kirkuk and it is undisputed that the appellant cannot safely return there, and as such the sole focus is now upon the IKR.

- (iv) The FTT did not make any clear findings on the well-foundedness of the appellant's fear of persecution in the IKR. This does not depend upon the appellant's credibility, as this has been accepted. Rather, the issue in dispute to be determined by me is whether the appellant's subjective fear that he will be targeted for serious harm again in the IKR is well-founded. Both representatives agreed this would turn on an assessment of the country background evidence, and that I must assess prospective risk by using the lower standard of proof applicable to claims of international protection.
- (v) If the appellant's fear in the IKR is well founded, that is the end of the matter. If accepted, he would have a well-founded fear of persecution for reasons relating to an imputed political opinion in both Kirkuk and the IKR.

Evidence

7. Having agreed the ambit of the appeal, Mr Hussain called the appellant to give evidence. He confirmed his most recent witness statement.
8. Mr Diwyncz cross-examined the appellant very briefly and on one matter only: his visit to the Iraqi Embassy on 7 March 2019. I intervened because the parties had already agreed that whatever happened on that visit, the appellant would be able to obtain a CSID before being returned to Iraq, given his knowledge of the necessary information required to obtain one. Mr Diwyncz did not ask any further questions.
9. The appellant also relied upon two bundles containing country background evidence, together with two reports from Dr Fateh. Dr Fateh's report dealing with the appellant's CSID is of little relevance given the parties' agreement that he could obtain another one if necessary.
10. Dr Fateh's second report analysed the appellant's risk upon return to Iraq and the IKR. As I said at the hearing, the Tribunal has repeatedly found Dr Fateh to be an experienced and helpful country expert on Iraq – see more recently [91] of AAH. However, in this case Dr Fateh's report on the appellant's activities and risk on return contains omissions and generalisations, such that I am only attach limited weight to it. Dr Fateh summarised the appellant's account in a superficial manner. He failed to acknowledge that the harm perpetrated upon the appellant continued to Sulaymaniyah. He addressed the

risk to journalists in a very general manner and did not directly address the risk to journalists involved in the type of activities the appellant was involved in, in the IKR. Similarly, Dr Fateh failed to address sufficiency of protection in the IKR in these circumstances. Finally, Dr Fateh seems to have ignored the accepted fact that the appellant has many family members he can turn to for support in the IKR.

Submissions

11. I heard brief submissions from each representative. Mr Diwyncz submitted that the appellant's activities were of a low profile and of some vintage, such that he would not be viewed with any on-going adverse interest upon his return to the IKR.
12. Mr Hussain relied upon his skeleton argument and invited me to find that the appellant's fear of being persecuted on return to the IKR is well-founded, and that is sufficient for his appeal to be allowed.
13. After hearing submissions from both representatives, I reserved my decision, which I now provide with reasons.

Re-making the decision

14. On the preserved findings of fact, the appellant has clearly suffered past persecution in both Kirkuk and Sulaymaniyah. The appellant has already been subject to serious harm in the past, and I must assess whether there are good reasons to consider that such harm will not be repeated (see para 339K of the Immigration Rules).
15. I acknowledge that the appellant's media and journalistic activities cannot be said to be high profile or well-known throughout Iraq and the IKR. However they have been considered of sufficient concern that almost immediately after the video was released, the appellant was targeted in different ways and in two different regions. Within days of the video being released, the appellant was subjected to a beating, threats and a shot on his home. Within a month of moving to Sulaymaniyah his car was shot at.
16. There is extensive country background evidence submitted on behalf of the appellant in support of the submission that as at that time in 2016 and continuing, journalists, whose work is perceived to breach religious / political / cultural mores, are targeted for serious harm by government officials and non-state actors, and that the KRI will be

unable or unwilling to provide sufficient protection to journalists who have been targeted, given the dim view taken and treatment toward many journalists, by the government in the KRI. This includes the following:

- (a) In a Human Rights Watch ('HRW') report dated 9 February 2013 "*Iraqi Kurdistan: Free Speech Under Attack*" there are several examples of the KAA government arbitrarily detaining journalists for criticising public officials.
 - (b) The 2017 HRW report on Iraq refers to a 2016 International Federation of Journalists report that deems Iraq to be the deadliest country in the world for journalists.
 - (c) The 2017 Amnesty International report describes journalists throughout Iraq working in a dangerous environment at risk of abduction, intimidation, harassment and death threats for covering topics deemed sensitive.
 - (d) The 2017 US State Department report describes in detailed terms numerous beatings, detentions and death threats against media workers throughout the IKR. This report also describes extremists and armed groups limiting freedom of expression.
17. Mr Diwyncz did not take me to any evidence to undermine the general proposition or the evidence set out above, to support his submission that the passage of time would obviate the risk of serious harm in the IKR for this appellant. Mr Diwyncz referred me to the Home Office's Country Policy and Information Note on Iraq dated February 2019, but did not take me to a single paragraph to undermine the very dismal picture for journalists, as painted by the other country background evidence. I am satisfied that when the lower standard of proof is applied there are no good reasons to consider that the serious harm that befell the appellant in Sulaymaniyah in 2016 will not be repeated either there, or elsewhere in the IKR.
18. Mr Diwyncz faintly submitted that the appellant would be able to obtain the protection of the authorities in the IKR outside Sulaymaniyah but was unable to take me to any country background evidence to support this submission. I am satisfied that the appellant has displaced the burden on him of establishing that he has a well-founded fear of persecution for reasons relating to an imputed political opinion throughout the IKR. The country background evidence describes the sustained targeting by way of inter alia, beatings, arbitrary arrests, abductions, threats, of

those working in the media by both non-state and state actors, throughout Iraq and the IKR.

Decision

19. I remake the decision by allowing the appellant's appeal and find that his removal would breach the Refugee Convention and Article 3 of the ECHR.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
14 March 2019