Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11975/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 18th February 2019

Decision & Reasons Promulgated
On 29th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

R M K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the appellant: Mr Bates, Senior Presenting Officer
For the respondent: Mr Cole of Parker Rhodes Hickmotts,Solicitors.

DECISION AND REASONS

Introduction

1. In these proceedings the Secretary of State is the appellant. However, for convenience I will continue to refer to the parties hereinafter as in the First-tier Tribunal.

2. The appellant is a Kurdish national of Iraq from Kirkuk. She was born in July 1972. She came to the United Kingdom in December 2007. Thereafter, there have been a number of unsuccessful applications for protection. Tribunals in December 2009 and March 2017 found her not to be credible. Then, on 27 September 2018 she made a further claim which was refused by the respondent. This was the subject of an appeal to First-tier Tribunal Judge Atkinson at Bradford on 12 November 2018. Mr Cole appeared for the appellant then as he does now. In a decision promulgated on 29 November 2018 her appeal was allowed on 15 C grounds and on the basis of article 3.

3. The judge was prepared to treat the appellant as a vulnerable witness on the basis she and mental health issues. She claimed not to have any documentation and that contact with her family was limited and her attempt to obtain documentation through the Consulate was unsuccessful.

4. The judge noted the previous decisions in which the appellant had not been found credible and that she was not considered to be a witness of truth. Mr Cole accepted these adverse findings and did not seek to advance the claim on her account of events . Instead, he argued that Kirkuk remained a contested area. The refusal letter had suggested that because the changes in the country the guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) should no longer be followed.

5. At paragraph 40 the judge concluded that her account of her family circumstances in Iraq were not as claimed. The judge went on to find in the following paragraph that it was reasonably likely she could obtain documentation with the assistance of family members in Iraq. Consequently the judge concluded that she was returnable in terms of documentation.

6. The judge followed the guidance of AA and concluded that she could not return to Kirkuk because there remained a 15 C risk. The previous had judge accepted the respondent's contention in relation to Kirkuk.

7. The judge then considered the possibility of relocation to the IKR and concluded as a lone woman with no family support and limited employment experience this was not viable.

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8. Permission to appeal was sought for a number of related reasons. Permission was granted on the basis it was arguable the judge failed to give adequate reasons why she could not return to Kirkuk, particularly as the earlier Tribunal had concluded she could. The grounds also questioned the conclusion she could not relocate to the IKR.

9. Mr Bates referred to the Devaseelan principal and argued the judge did not explain why he was departing from the earlier decision in relation to the general security situation in Kirkuk. Regarding relocation to the IKR, he referred to the

judge's finding that she had family in Iraq and submitted that even if they were not in the IKR they could still support her there.

10. Mr Cole relied upon the rule 24 response dated 13 February 2019. This challenges specific aspects of the grounds relating to documentation as being inaccurate. In relation to the situation in Kirkuk it was contended that the judge correctly followed the relevant country guidance case law and that the Devaseelan principal did not apply in this situation. Insofar as Devaseelan applied, the judge followed this by adopting the negative credibility findings. Regarding relocation to the IKR the appellant has no family support there and the judge had followed AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) given that the appellant would be a lone woman in a most disadvantaged position in terms of seeking accommodation and employment. He also referred to her mental health.

Conclusion

11. I am in agreement with Mr Cole that the question of return to Kirkuk was not a Devaseelan situation. An earlier tribunal had decided not to follow the extant country guidance on this issue. It was argued in the refusal letter that the country situation had changed. Notwithstanding the earlier decision First-tier Tribunal Judge Atkinson needed strong grounds supported by cogent evidence to depart from the country guidance case. The judge clearly appreciate this and invited submissions on this. At paragraphs 44 to 46 gave reasons for continuing to follow the country guidance case.

12. Devaseelan gives guidance in relation to findings of fact personal to the appellant in an earlier appeal. Devaseelan distinguishes factual findings going beyond the individual, such as country conditions and advocates a more open approach. The earlier judge had departed from the country guidance. However , First-tier Tribunal Judge Atkinson was not required to follow that finding in the same way had it been something specific to the appellant. In this situation it was for the judge to decide if there were sufficient evidence not to follow the guidance. The judge did correctly apply the Devaseelan principal in relation to previous finding specific to the appellant, namely, the negative credibility findings and documentation and family support. Consequently, I see no error here.

13. The next challenge related to how the judge dealt with the possibility of relocation to the IKR.The decision is not to be read in a vacuum. The judge had previous determinations and a bundle on behalf of the appellant. This included information about her mental health. At paragraph 49 the judge dealt with the viability of relocation and accepts the difficulty she would have in obtaining accommodation and concluded from the background information that was not reasonably likely she would be able to gain access to the refugee camps. Consequently, the judge concluded she would be reduced to living in unfinished or abandoned structures. The judge then refers to her personal circumstances at paragraph 51 and acknowledges her mental health issues. I find this entirely in accordance with AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) .The headnote

is that if a person has family members living in the IKR cultural norms would require that family to accommodate them and so they would, in general, have sufficient assistance. The decision maker is required to assess the extent of any assistance. In the present case there was no finding that she had family in the IKR but rather that she had family in her home area of Kirkuk. Mr Bates submitted that they could send her remittances. However, this is quite different from having a presence on the ground. The country guidance decision concluded that for those without the assistance of family in the IKR the accommodation options are limited. The decision specifically states that lone women are very unlikely to be able to secure legitimate employment. Consequently, I find no material error of law established in relation to how the judge dealt with relocation.

14. The arguments advanced in the grounds of appeal in relation to documentation are be misconceived. The judge had found the appellant could obtain documentation.

15. Generally this to be a succinct decision where the law has been correctly applied and findings made which are sustainable.

Decision

The Secretary of State's appeal is dismissed. No material error of law has been established. Consequently, the decision of First-tier Tribunal Judge Atkinson allowing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge. Date: 28 March 2019