Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12269/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 2nd May 2019

Decision & Reasons Promulgated
On 5th June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR H S G
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr M Abdullah, Hazelhurst Solicitors
For the respondent: Mr C Bates, Senior Presenting Officer

DECISION AND REASONS

The background

1. The appellant is a Kurdish national of Iraq, born in 1980. He made a claim for protection on 7 November 2017 on the basis he would be at risk if returned because of imputed political opinion. The claim was refused on 12 October 2018.

2. His appeal was heard by First-tier Tribunal Judge Devlin at Manchester on 20 November 2018.In a decision promulgated on 24 January 2019 it was dismissed. The judge did not find the appellant to be credible. There were multiple aspects to the claim and a summary of the judge's decision on these is set out at paragraph 337. The judge rejected his claim that he had provided security for the Americans. The judge also rejected his claim that he was shot at by Al Qaeda in 2008 or that he received threats from the Mujahidine Al-Dawla.His claim of having worked for a security firm in 2014 was rejected. His claim to have been detained and injured by Hasd Al-Shabi in 2015 or that they had raided his house and killed his sister and brother was rejected. The judge finally rejected his claim to have been raped. In summary, his entire claim was rejected in all aspects.

3. At paragraph 314 the judge turned to the feasibility of his return. The appellant had claimed that his passport had been misplaced in Iraq. The judge saw no reason why he could not contact his wife for assistance. He had produced his CSID and INC, albeit the respondent believed the former was a forgery. The judge did not accept this and concluded there was no reason why he could not be returned to Iraq either on his own passport or a laissez passer.

4. It was accepted he was from Tuz Khermatu which is in Salah Al- Din Province. This is one of the contested areas identified in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944. At paragraph 346 Judge Devlin judge referred to the situation on the ground having moved on since AA but felt it prudent to follow the country guidance that any civilian there faced a 15 C risk. On the basis the appellant could not return there the judge turned to consider internal relocation, principally to Erbil in the IKR where he had lived before.

5. The judge referred to medical evidence that whilst he was in no imminent risk he may require surgery in the future on his heart valve. There was no argument that travel was unsafe or that the necessary care was not available in Erbil. However, at paragraph 350 the judge accepted that his cardiac condition was such that he may not be able to access employment. However he has siblings and aunts and an uncle who could support him. In the past he had owned a trailer and employed people. The judge was not satisfied he would face destitution and concluded it would not be unduly harsh to expect him to relocate.

The Upper Tribunal

6. Permission was granted on the basis it was arguable the judge failed to give adequate consideration to the appellant's circumstances when considering relocation. The grounds contained the judge failed

to make a comprehensive assessment of the situation the appellant would face.

7. Both parties were in agreement that the appellant in terms of documentation is returnable. He had produced a CSI D which he indicated was genuine. The respondent questioned this in relation to section 8 issues. However the judge found it was a valid document. The proposal would be for the appellant to return to Erbil via Baghdad. Both representatives indicated the actual mechanics of entry to Erbil are not in dispute.

8. The question is whether the judge properly considered the reasonableness of this relocation. The appellant has a wife and 3 young children living in the contested area. They are aged 6, 4 and almost 2. Mr Abdullah submitted the judge did not deal with how they would manage or even if they could gain entry.

9. The appellant had given evidence about family members in Iraq. He said he had an uncle and brothers. He said that the judge had found the appellant would not be able to access employment because of his health. I was referred to AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC)and the submission was that the appellant would be unable to support himself. He said there were no details about the circumstances of his family members in Iraq and whether they can support him.

10. At paragraph 350 the judge had referred to the appellant owning a trailer from which he received a regular income. Mr Abdullah explained that the appellant had bought a lorry and engaged a driver and rented the vehicle out and in this way obtained an income. However, he said the appellant's case was that he had sold everything in order to finance his journey to the United Kingdom and suggested the appellant circumstances were now considerably different.

11. Mr Bates in response pointed out that at paragraph 348 the judge had recorded that the appellant had lived in Erbil before with his wife and their children and so this was someone who had familiar with the area. In the past he had sufficient connections to support himself and his family. He pointed out that the burden of proof is upon the appellant to show it was unduly harsh for him to relocate. Consequently, it was for the appellant to explain what had happened to his trailer and why he could not re-establish himself. He was aware this was an issue from the refusal letter.

12. I was referred to paragraph 54 which summarises the submissions in the First-tier Tribunal by Mr Abdullah on his behalf. The submission was directed towards his underlying claim and was to the effect he had no need to tell lies and but for the threats he

had a comfortable life in Iraq. It states that he had owned a lorry and had US$60,000 and his wife and children where there. Mr Bates pointed out that it was for the appellant to demonstrate at the First-tier Tribunal that that is not the position and that his family members were not in a position to support him.

13. He submitted that Mr Abdullah was now seeking to reargue aspects of the appeal and raising issues which had not been put before the judge. The judge did not find that the appellant and his family would face destitution.AAH referred to the cost of renting Erbil as averaging around $350 per month. The appellant had not shown that his family members in Iraq were unable to send him remittances.

14. By way of reply, Mr Abdullah referred me to question 244 of the appellant's interview where he said he could not relocate because his brother had a bad reputation because of association with Daesh. He refers to having spent 'that big amount of money'. He submitted this supported the appellant's account all his funds were liquidated to pay for his journey to the United Kingdom. He then referred me to the appellant's health condition and the details set out in AAH on the prospects for those without support.

Consideration

15. It is clear from the decision of First-tier Tribunal Judge Devlin that the appellant's appeal has been given the most anxious scrutiny. The issue in the Upper Tribunal is much narrower and relates to whether the judge erred in concluding the appellant could relocate to the IKR.

16. In considering the points made on his behalf it has to be borne in mind that the burden of proof is upon the appellant. Furthermore, on numerous occasions the appellant has lied. At paragraph 275 the judge referred to the appellant's mendacity. He had been fingerprinted in Finland in December 2008 and was granted asylum there the following year. Despite his claimed fear following events in Iraq he returned on numerous occasions. He did not volunteer information about the grant of protection in Finland. When revealed, his complaint was against the cold climate and the fact his attempts at bringing his wife and children there had been unsuccessful.

17. The submission made on his behalf in the first-tier Tribunal recorded at paragraph 54 related to his claims about various events in Iraq. Essentially the submission was that he had a good life there; was earning substantial amounts of money employed by the Americans; had been able to buy a lorry and engage a driver. He had been granted refugee status in Finland. Therefore he had no reason to lie. The judge however found he did lie. Now there has

been a volte face when the appellant faces the prospect of return, with him being portrayed as impecunious and unemployable.

18. The comments made by the judge about return at paragraph 340 onwards are not to be read in a vacuum. The judge was aware of the country guidance cases on return to the IKR.The judge was aware of the appellant's immigration history and had been provided with appeal bundles. The appellant heard evidence from the appellant. The judge commented on individual aspects of the reasons for refusal.

19. At paragraph 24 the judge recorded that the appellant trained as a mechanic. He was able to find employment as such in Finland. At paragraph 34 it was recorded the appellant did not work between 2011 and 2004. The account was that he employed a driver to drive a trailer or lorry and he was able to live on this income.

20. The account was that after being granted refugee status in Finland he returned to Iraq where he married. One and a half months later he returned to Finland and tried to bring his wife over. When this was refused he returned to Iraq and his wife became pregnant with their 1st child. The appellant's account was that they had lived in Erbil. At paragraph 36 judge records two further children being born and that the appellant travelled to Finland 3 times, staying for a month or two before returning to Iraq. Again, he sought to bring his wife and children to Finland and was unsuccessful. Paragraph 38 records that the appellant had not told the Finnish authorities about his return to Iraq.

21. At paragraph 40 the appellant had claimed he could not remain in Erbil without a reference because his brother was suspected of joining Isis. Consequently, he claimed he then moved back to his home area. However, the judge had rejected this claim about his brother and a reference (para 343).

22. At paragraph 82 the judge recorded the appellant's claimed to be proficient in Arabic, Turkish and English. These claims were made in the context of his claim that he was of use to the Americans and should be treated with some scepticism. Nevertheless, that was the case he was making and this in turn reflects on his ability to relocate and establish himself. At paragraph 86 the judge recorded the appellant stating he was employed in a garage in Iraq for 16 years. The judge rejected his claim that he was illiterate but at paragraph 88 recorded that even if this were so, he was a very intelligent individual.

23. At paragraph 349 the judge referred to the GPs letter relaying a cardiologists report. In the following paragraph the judge said because of his medical condition he may not be able to access

employment. It is noteworthy the judge did not say he could not obtain employment but use the phrase `may not be able'. The inference from the appellant's medical condition is that he may not be fit for heavy physical work. However, this does not exclude all forms of employment. In the past, on the appellant's account, he was able to subcontract his trailer. He could use similar skills on return. The judge emphasised the family support that would be available and concluded he would not face destitution.

24. AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) has been referred to. There was no issue in the appeal about the practicality of return. The appellant is Kurdish. The IKR is violence free. The appellant has had the advantage of living in Erbil before. The transition may be eased by a returns package. The appellant has been absent from his wife and children for some time. On relocation to Erbil he could seek to establish himself and then invite them to join.

25. In summary, I do not find any material error of law established in the judge's decision on the points raised.

Decision

No material error has been established in the decision of First-tier Tribunal Judge Devlin. Consequently, that decision dismissing the appellant's appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Date: 3 June 2019