



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00125/2014

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 18 April 2016**

**Decision & Reasons
Promulgated
On 13 May 2016**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**D S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person, no legal representative
For the Respondent: Mr N Bramble, HOPO

DECISION AND REASONS

1. This is a re-hearing of the appellant's appeal against the decision of the respondent made on or about 9 January 2013 to make a deportation order in terms of Section 5(1) of the Immigration Act 1971, following the conviction and sentencing of the appellant by a Judge at Portsmouth

Crown Court on 15 March 2013 for a total period of eighteen months' imprisonment for a dwelling house burglary.

2. The appellant is an Iraqi Kurd from Mosul. He last entered the UK on 4 February 2008 with leave to enter as the spouse of a British national. He was granted indefinite leave to remain on 3 March 2010. Notice of liability to deportation was served on him in consequence of his criminal convictions, on 11 April 2013. A deportation order was signed, and served on the appellant on 9 January 2014.
3. An appeal in this matter was heard by First-tier Tribunal Judge Holder on 26 November 2014. The appeal was dismissed. Permission for an onward appeal was granted. On 5 March 2015, Mr McCloskey J allowed the onward appeal and directed the remittal of the matter to the First-tier Tribunal for a re-hearing and fresh determination. Consequently the matter came before First-tier Tribunal Judge Gillespie. The judge allowed the appellant's appeal on asylum grounds only.
4. In my decision promulgated on 25 November 2015 I held that the judge's decision contained errors of law for the following reasons:

- “4. At paragraph 29, First-tier Tribunal Judge Gillespie found that the appellant has made out a claim for protection on the grounds that deportation will breach the obligations of the United Kingdom under international Convention, whether on the grounds of asylum; or of breach of Articles 2, 3 or 8 of the European Convention on Human Rights, or of breach of protection afforded by Article 15C of the Qualification Directive. He found in the circumstances of his decision that it was not necessary for him to address the further case made out for protection of family and private life of the appellant and of his wife and minor children or others who would be affected by his removal.*
- 5. In reaching these conclusions, the judge relied on the reasons he had given at paragraphs 25 to 28.*
- 6. The judge found at paragraph 25 that it is accepted that the appellant is a Kurd from Mosul. He found that the region is not under the control of the Iraqi Government but is occupied and controlled by ISIL. In the circumstances the appellant would be at risk of persecution in Mosul by ISIL in pursuit of their campaign of terrorist operation, and as a perceived opponent of ISIL or as a Kurd, which ethnic group is in well-recognised opposition to ISIL. The judge went on to find that the appellant is at any event at risk, absent any Convention reason, of death or inhuman and degrading treatment in his home area.*
- 7. I agreed with Mr Walker that the judge did not set out what background evidence he relied on to conclude that the appellant*

would be in fear of ISIL considering that the appellant left Iraq in 2000.

8. At paragraph 26 the judge found that the appellant would be returned to Baghdad. He found that it would not be safe for the appellant to traverse Iraq, including through ISIL controlled areas, to reach any Kurdish governorate. He would therefore be obliged to remain in Baghdad and on background evidence the Baghdad governorate is the most violent in Iraq. Again the judge did not identify the background evidence he relied on to reach this conclusion. In any event he did not consider whether there were any family members in Iraq who could assist the appellant.
9. At paragraph 27 the judge gave reasons for departing from the findings in **HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)**. In particular the judge found that the particular factors which would place the appellant at enhanced risk are his ethnicity, the likelihood of the appellant being an enhanced target for ISIL because of the worsened country situation, and the appellant's precarious mental health as a result of three distinct attempts at suicide, preparation for an act of suicide and a course of conduct of self-harm while in circumstances of stress and mental perturbation.
10. At paragraph 28 the judge found that because of the appellant's mental state, combined with the exceedingly perilous and straitened circumstances in Iraq, it would be unduly harsh for the appellant to relocate in Iraq and such relocation would be an infringement of Article 3. Alternatively it would be a breach of Article 8, at least in respect of the moral and physical integrity aspects of private life, as being highly likely to lead to the appellant's suicide.
11. I agreed with Mr Walker that the judge has not given adequate reasons for departing from **HM** or the Home Office country information which states that "the security situation in Baghdad has changed since **HM2**" such as to make the judge's conclusions unreliable.
12. I agreed with the argument in the grounds that the judge's finding that the appellant's ethnicity would make him vulnerable to risk, means that any person with the same ethnicity would be at risk. As to the appellant's precarious mental state, there was no medical report before the judge as to the availability of medical treatment or drugs available to the appellant upon his return or even whether he is receiving any medical treatment in the UK, such that withdrawal of the medical treatment would lead to a suicidal risk before he is deported or after he is deported.

13. *The Home Office Country Information Report clearly states that the security situation in Baghdad has changed significantly since **HM2**. It was not apparent from the determination that the judge considered the Home Office Country Information in his decision to depart from **HM2**, or indeed that his findings were based on information contained in the respondent's COI Report."*
5. This was the third occasion that the appellant had appeared before me and on all occasions without a legal representative. He has been held in immigration detention since he completed his criminal sentence. At a CMR hearing on 22 February 2016 when the case was adjourned to be relisted, Mr Walker, HOPO, handed the court and the appellant a copy of enquiries the Home Office had made on 15 April 2015 as to his healthcare and the response by Dr Michaela Routhu, a Registrar in Forensic Psychiatry at Winchester HMP dated 13 January 2016. The appellant is currently held at Winchester HMP.
 6. At today's hearing the appellant was given a full copy of the Upper Tribunal's decision in **AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC) (30 October 2015)**.
 7. The appellant gave evidence through an Iraqi interpreter using the Arabic language. The appellant confirmed that he is a Kurd from Mosul. He said he had no contact with any family member in Iraq and therefore did not know who was there at the present time. Both parents should be alive and living in the family home Mosul. He last had contact with his mother a year ago. He has five brothers and two sisters who all live in Mosul. One of his siblings is older than him. The rest are younger. As far as he knows his siblings are in employment.
 8. The appellant said he did not know what job he would be able to do in Iraq on his return. In the UK he used to work in different restaurants. As far as I gathered the last restaurant was a kebab shop. He lived with his wife and children. He has been in the UK for fourteen years or more.
 9. He said his health was almost good. He has not attempted suicide recently and has no suicidal thoughts. He is presently not on any medication.
 10. In cross-examination the appellant confirmed that he returned to Iraq in 2006 and remained there until 2008. When he returned to the UK in 2008 it was on a valid Iraqi passport. That passport is still valid. He lived with relatives in Kurdistan. He had two uncles who lived in Dahok with whom he lived for two years. A third uncle lived an hour away from Dahok. He confirmed that Dahok is in the Iraqi Kurdish region. As far as he was aware his uncles still lived in Dahok.
 11. The appellant said that he has an Iraqi civil status document. He does not have it with him in the UK. It is in the family home in Mosul.

12. The appellant said that he last had contact with his wife about six months ago and last spoke to his children about six months ago. He last saw them a year ago.
13. The appellant said that if he returned to Baghdad it would not be easy for him to make contact with his family in Iraq because he does not have their correct number. He managed to speak to his mother a year ago through the internet by Skype. It would not be easy to connect to the website when he is in Baghdad. He confirmed that when he lived with his uncles in Dahok for two years, he did not have any problems with the Iraqi authorities.

Findings

14. I considered this appeal in the context of the country guidance decision in **AA** and in the context of the oral evidence given by the appellant today. I find that on the whole, the appellant gave credible answers to the questions he was asked, although he tried to play down his ability to contact them were he to be removed to Baghdad. He also admitted that he used various aliases to make asylum applications in the past.
15. It is not disputed that the appellant is a Kurd from Mosul. Mr Bramble relying on paragraphs 101 to 106 of **AA** submitted that Mosul falls into the governorate of Ninewah and it is a contested area. The Upper Tribunal at paragraph 102 found that the security situation in the governorate including Ninewah remains volatile. The Upper Tribunal at paragraph 106 held that given the volatility of the situation in the contested areas, the number of displaced persons therefrom, the tactics of warfare used by ISIL and the circumstances in the areas controlled by ISIL, they have no hesitation in endorsing the respondent's concession and concluded that a civilian with no distinguishing characteristics will, simply by virtue of his/her presence in the contested area be at risk of suffering harm of the type identified in Article 15(c) of the Qualification Directive. In light of this evidence Mr Bramble accepted that the appellant cannot return to his home area of Mosul.
16. Mr Bramble relied on paragraphs 112 and 113 of **AA** where the Tribunal specifically looked at the Iraqi Kurdish region and Dahok. The Upper Tribunal noted Dr Fateh's opinion that the IKR "*is virtually violence free, and only exceptional one offs disrupt this*". The Upper Tribunal considered the Home Office April 2015 CIG which also made reference to the November 2014 attacks but identifies that there have been ten deaths as a consequence. The report concluded that the IKR is stable and has very low levels of violence. The Upper Tribunal concluded at paragraph 113 that the evidence before it did not establish that there was an Article 15(c) risk to an ordinary civilian in the IKR, and neither does a person's ethnicity, religion or sex, whether taken individually or cumulatively, and has the level of risk so as to engage Article 15(c).

17. The appellant's evidence was that he lived in Dahok trouble free for two years. In the light of this evidence and the conclusions drawn by the Upper Tribunal at paragraphs 112 and 113, I find that the appellant is not likely to suffer any risk of harm, or serious harm were he to relocate to Dahok.
18. In considering relocation to Baghdad city, which is where the appellant would be returned to in any event, I rely on the Upper Tribunal's finding at paragraph 152 of **AA**. In light of Dr Fateh's evidence, the Upper Tribunal concluded that a CSID is required to access income/financial assistance, employment, education, housing, pension and medical committee documents. There will be those who do not have a CSID but who nevertheless have access to adequate support mechanism in Baghdad, those persons with family or friends in Baghdad who are willing and able to provide such assistance to them. In this appellant's case he has a CSID in his home in Mosul. I see no reason why he cannot obtain this document or apply for a replacement to assist him to settle in Baghdad.
19. At paragraph 135 of **AA**, the Upper Tribunal said that they had not heard or seen anything that would lead them to conclude that persons without connections or Kurds, in Baghdad are an "*enhanced risk category*".
20. On this evidence I find that the appellant can relocate to Baghdad. He has a valid passport and returned to the UK on that passport in 2008. He has family in Iraq and has a CSID. He has been in contact with his mother. I was not persuaded by his claim that he would not be able to contact her again if he was removed to Baghdad.
21. I do not find in the light of **AA** that the appellant falls into any risk category under Article 3 or Article 15(c) of the Qualification Directive. He confirmed that he did not have any medical issues at the moment. Indeed, Dr Routhu confirmed in her response to the respondent's healthcare enquiries on 13 January 2016 that the appellant was not on any medication. She noted that although the appellant had some reported history of depression and suicidal thoughts/attempts, her understanding that his risks to self have been related to stress-related worries about deportation. She said that the appellant did not mention any symptoms of PTSD or panic attacks. There was no evidence of major mental illness when she assessed him. As already noted the appellant himself said he was "almost" in good health and did not have any suicidal thoughts and had not attempted suicide in the recent past.
22. On all the evidence before me I find that the appellant would not be at risk on return to Iraq.
23. I find that there are no Article 8 issues in this case and indeed Article 8 was not raised by the appellant. In any event, the appellant's evidence is that he has not seen his wife and children for a year and last had contact with them about six months ago. In the absence of evidence from his wife as to the current family circumstances, I find that there is no family life

between the appellant and his wife and children. It would not be unduly harsh if he was separated from his wife and children by virtue of his removal to Iraq.

Notice of Decision

The appellant's appeal is dismissed.

Signed

Date: 6 May 2016

Upper Tribunal Judge Eshun