Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00288/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 September 2017	**On 28 September 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

BS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Patel of Legal Comfort Solicitors
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of a material error of law in the decision of Judge of the First-tier Tribunal R Cooper (the judge), promulgated on 6 March 2017, allowing the Appellant's appeal against the Respondent's decision, made on 5 May 2015 (and supplemented by a decision dated 4 May 2016) to refuse his protection and human rights claims and to maintain the deportation order issued against him.

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Background

2. The Appellant was born on [ ] 1985. He lived his life in Kirkuk, Iraq. He entered the UK clandestinely on or around 7 January 2003 (approximately 18 years old) and made an asylum claim which was refused on 11 March 2004. An appeal against this refusal was dismissed on 16 June 2004. He absconded between 21 April 2005 and 2009 but came to the attention of the authorities on 28 June 2009 when he was arrested for affray. He was convicted of an attempt to commit Grievous Bodily Harm on 15 March 2010 and received a sentence of 12 months imprisonment. He was issued with a notice of liability to automatic deportation on the 31 March 2010 and a deportation order was signed and served on him on 29 April 2010.

3. On 15 June 2011 the Iraqi embassy issued to the Appellant a travel document and removal directions to Iraq were made for 21 June 2011. These were cancelled following an application for judicial review. The judicial review application was finally refused on 7 March 2014. The Appellant made further representations for leave to remain based on his relationship with a British citizen and because of the changed situation in Iraq. The refusal of these further representations (which amounted to a fresh protection and human rights claim) were the subject of the appeal before the First-tier Tribunal.

The 'error of law' hearing

4. The grounds of appeal relied on by the Respondent at the 'error of law' hearing held on 24 July 2017 reflected the narrow basis upon which the First-tier Tribunal allowed the appeal. The judge found, *inter alia*, that the Appellant lived in Kirkuk before travelling to the UK in 2002, that his father was killed in 1990 and his mother died in 1993, that he had no other immediate family members or friends still living in Iraq who could support him, that he had no Civil Status Identity Document (CSID) card, that he spoke English fluently with a broad London accent, but he was not well educated although he attended school in Iraq and used to speak and read the Kurdish language. The judge additionally found that the Appellant undertook barbering skills work whilst in prison, that he was in a relationship with LS and that they only began living together in June 2015, that LS has twice become pregnant and on both occasions terminated the pregnancy as she did not want to have a baby if the Appellant was going to be deported, that the Appellant was convicted on 26 June 2015 of criminal damage and fined following an argument with LS concerning her decision to have an abortion, and that he did not have a genuine relationship involving parental responsibility with LS's 2 children.

5. The judge concluded that the Appellant would be unable to obtain a CSID, that this, in combination with other factors, would expose him to a real risk of destitution if returned to Baghdad, and that he would be unable to relocate, upon return to Baghdad, to the Iraqi Kurdish Region (IKR). Having heard

evidence from both the Appellant and LS the judge found that their relationship was not strong and that there was no recent medical evidence to support a claim advanced that there would be a negative impact on her mental health if he was deported. The judge found there was little evidence demonstrating that the Appellant was fully integrated in the UK, and indeed very little evidence regarding his private life at all, although the judge accepted that the Appellant spoke with a broad London accent and had tattoos and piercings and would "stand out in Iraq." The judge nevertheless also allowed the appeal under article 8 on the basis that, if removed to Baghdad, and in the absence of any likelihood that he would be able to obtain a CSID card, he would be at risk of being rendered destitute without the means to support and accommodate himself in Baghdad. The fact that the risk of destitution was high enough to meet the article 3 threshold was sufficiently compelling such that it outweighed the public interest in the Appellant's deportation.

6. Although the judge did not find the Appellant to be an impressive witness, noting inconsistencies in his account relating to the death of his family members and between his evidence and that of LS (his partner), I was nevertheless satisfied, for the reasons given in paragraphs 17 to 21 of my 'error of law' decision, that the judge was rationally entitled to accept the Appellant's assertion relating to the CSID card. In light of the absence of clear evidence as to how the National Status Court in Baghdad operated, or evidence as to the length of time that an application for a CSID may take, I was satisfied that the judge was entitled to conclude that there existed a real risk that the Appellant, who does not come from Baghdad and who has no family in the city capable of providing him support, would face a real risk of destitution by the time any funds provided to him by the Respondent or her agents to assist his return were exhausted and that it would be unreasonably or unduly harsh to expect him to relocate to Baghdad.

7. I did however find that the judge's assessment of the availability of internal relocation to the IKR was insufficiently reasoned and that there was a failure to properly consider the guidance issued by the Upper Tribunal in the country guidance case of *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC). The guidance in *AA* in respect of internal relocation was not altered by the appeal to the Court of Appeal (see *AA (Iraq)* [2017] EWCA Civ 944). The headnote in *AA*, as amended by the Court of Appeal, reads,

> *"19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*
>
> *20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as*

to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR."

8. The First-tier Tribunal gave no consideration to the practicality of travel from Baghdad to the IKR, or to the likelihood of the Appellant obtaining entry to the IKR for 10 days as a visitor, and there was no consideration of the likelihood that he may find employment which would entitle him to remain in the IKR on registration with the authorities. Having identified a material error of law I adjourned the matter to enable evidence to be provided by both parties relating to the viability and reasonableness of the Appellant relocating to the IKR.

The resumed hearing

9. At the resumed hearing, the only new evidence adduced on behalf of the Appellant was a Further Witness Statement signed and dated on 18 September 2017. Although this further witness statement was ostensibly in the Appellant's own words some of its paragraphs were written from the perspective of a third person. In the statement, the Appellant recalled a previous journey to an airport in the UK when the Respondent sought to remove him to Iraq. He did not recall having any identity or travel documents at that time. He never held any identity or travel documents for Iraq, including the IKR. He had no family or friends who could assist him in obtaining documentation or a job. The Appellant claimed that his girlfriend was 20 weeks pregnant and that he could not relocate to a war-torn country. He claimed to be totally integrated into English society and spoke fluent English. There were said to be no adequate reception facilities for him in Iraq or the IKR. He claimed he could not speak "the local language of Iraq or the IKR thereby it would be impossible for him to integrate in that extremist society." The statement reiterated that the Appellant spoke with a British accent and had exposed body tattoos which were very likely to identify him as an outsider who did not practice Islam and that this would expose him to a real risk of harm in a society where religious extremists will.

10. The Respondent only provided copies of the Upper Tribunal and Court of appeal decisions in *AA*. There was no additional background evidence relating to the issue of internal relocation to the IKR.

11. The Appellant adopted his statement and was asked some supplementary questions by Mr Patel, and some clarificatory questions by myself. In response to these questions the Appellant confirmed that he knew no-one in the IKR and had never been there, that he had made no inquiries concerning the IKR, and that he did not know anything about the region. He claimed he could speak a little Kurdish; he could understand when spoken to but that he could not fully answer back. The Appellant did not have a religion. he undertook a 6 months chef course while in prison and had worked as a chef in a restaurant for only 3 weeks. He studied barbering for 8 months in college and had attained levels 1 to 4 in a qualification he could not recall. He said he knew how to cut hair. When I

asked him why he could not get employment in the IKR as a chef or a barber he said he did not know anyone there.

12. In cross-examination the Appellant confirmed that he could speak Kurdish when he first entered the UK. he was asked about a disclaimer he signed on 25 March 2010 under the Facilitated Returns Scheme (FRS). The Appellant explained that this occurred 7 years ago after he finished his custodial sentence but was detained under immigration powers. He had "literally had enough" when he signed the disclaimer. At the time the Appellant said he had an aunt in Iraq although he did not know where she was. When I asked the Appellant about the practicability of travelling to the IKR from Baghdad he said Kurdish was his language and he could not speak Arabic. He also said he was no longer a Muslim. He said he could not find a job in the IKR and he did not know anyone.

13. In re-examination the Appellant said he could cook Italian food such as pasta, meatballs and calamari. He could cut normal hairstyles such as short back and sides and he could use clippers and scissors. He was very nervous about the situation in Iraq which he said was very bad.

14. In his submissions Mr Armstrong invited me to hold against the Appellant the absence of any enquiries made by him about the IKR. I was invited to find that the Appellant's claimed lack of proficiency in Kurdish was not credible. He had arrived in this country as an 18-year-old speaking Kurdish and it was very unlikely that he would have lost the ability to speak the language to the extent advanced by him. I was invited to find that the Appellant had sufficient skills such as hairdressing to enable him to obtain employment in the IKR. There was nothing preventing him from flying to the IKR from Baghdad. He could additionally apply under the FRS scheme to return to Iraq.

15. Mr Patel reminded me that the Appellant had no friends or relatives in the IKR and that he was fluent in English. It was claimed, without any evidential support, that the Appellant would be in difficulties in the IKR because he no longer regarded himself as Muslim or having any religion. Although Mr Patel submitted that the Appellant's western appearance, including tattoos and piercings would expose him to a real risk of serious ill-treatment in the IKR, he was unable to draw my attention to any background evidence in support of this assertion. Towards the end of his submissions, after I had repeatedly asked him to draw my attention to any background evidence supporting his various contentions, Mr Patel suggested that if such evidence was relevant he should be permitted an opportunity to obtain an expert report. I refreshed his memory of my directions following the error of law hearing and indicated that all evidence relevant to the issue clearly identified at the last hearing should have been provided in preparation for the resumed hearing. Mr Patel did not identify any expert and did not make a formal application to adjourn the hearing.

16. I indicated to the parties at the conclusion of the hearing that, given the absence of any further background evidence produced by either party, that I would consider the most recently issued Country Policy and Information Note produced by the Home Office relating to internal relocation to the IKR. Neither representative objected to this proposal. I have therefore considered the publicly available 'Country Policy and Information Note - Iraq: Return/Internal relocation (June 2017)'. I reserved my decision.

Discussion

17. In determining whether it is reasonable or unduly harsh to expect the Applicant to make his way to the IKR if deported to Baghdad I draw guidance from paragraph 171 of the Upper Tribunal's decision in *AA*, produced below.

> "We have found at paragraphs 112 and 113 above that there is no Article 15(c) risk to an ordinary civilian in the IKR. What, though, of internal relocation? So far as a Kurd is concerned, the evidence of Dr Fatah was not seriously challenged by the Respondent and we, in any event, accept it (see esp. paragraph 24 above). The position of Iraqi Kurds not from the IKR is that they can gain temporary entry to the IKR; that formal permission to remain can be obtained if employment is secured; and that the authorities in the IKR do not pro-actively remove Kurds whose permits have come to an end. Whether this state of affairs is such as to make it reasonable for an Iraqi Kurd to relocate to the IKR is a question that may fall to be addressed by judicial fact-finders, if it is established that, on the particular facts, permanent relocation to Baghdad would be unduly harsh. In such circumstances, the person concerned might be reasonably expected to relocate to the IKR. In this scenario, whether such further relocation would be reasonable will itself be fact sensitive, being likely to involve (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of securing employment; and (c) the availability of assistance from friends and family in the IKR."

18. Neither party produced any evidence relevant to the practicability of travel from Baghdad to the IKR. There was no evidence presented to me as to how the Appellant would arrange travel from Baghdad to the IKR, or how he would afford the journey whether by plane or road. It was suggested in *AA* that a returnee may be able to travel by air to Irbil but I have not been provided with any evidence relating to this possibility. I do not know how far in advance he would be able to purchase a plane ticket, how much it costs to undertake travel, or what documentation, if any, needs to be shown before one can purchase a ticket or board a flight. I remind myself that headnote 17 of *AA* states that the authorities in the IKR do not require an Iraqi national to have an expired or current passport, or laissez passer in order to gain entry. It is unclear what documentation, if any, would be required to enter the IKR.

19. In *AA* (at [80]) the Respondent submitted that returnees receive assistance under the Voluntary Assisted Return and Reintegration Programme ('VARRP'), and that a 'Start Card' containing the first £500 [of a possible maximum of £1,500], is

provided at the airport as the returnee leaves. It is unclear whether the VARRP programme is the same as the Facilitated Return Scheme (FRS). I take judicial notice of the fact that funds provided through the FRS are not available to individuals who have appealed beyond the First-tier Tribunal, although funds can exceptionally be provided. On the basis of the evidence given in *AA*, and assuming the Appellant is able to receive those funds, it appears that he would only receive those funds at the airport when he leaves. If so, he would not be able to purchase a ticket in advance using funds provided by the Respondent. I note from the appeal papers that the Appellant's partner was in receipt of Job-Seekers Allowance and Child Tax Credits, suggesting that she may struggle to provide the Appellant with funds to support himself either in Baghdad or the IKR.

20. The Applicant would therefore be returned to Baghdad in circumstances where he is unlikely to have pre-purchased a plane ticket to take him directly to Irbil. There is no evidence as to whether he would be able to purchase a ticket immediately on return to Baghdad, or the likelihood of him getting a seat at very short notice. I remind myself of the First-tier Tribunal's judge's conclusions that it would be unreasonable or unduly harsh for the Appellant to remain in Baghdad. Although Mr Patel was unable to support his assertion that the Appellant would face a risk of ill-treatment as a result of his clearly visible tattoos and piercings, I take account of the decision in *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 00018 (IAC) which accepted (at [83]) that there is evidence to indicate that those returning from Western countries might be at heightened risk of kidnapping, and that whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. The Tribunal concluded that it was reasonable to infer that the longer a person has been abroad the greater the perception might be that they have benefited from opportunities in the West and may be worth targeting. The Appellant has been away from Iraq since at least 2003, and his physical appearance is very likely to lead to a perception that he is a westernized individual. I note however that the evidence in *BA* did not suggest that there would be a real risk to an individual on this ground alone.

21. In light of the above assessment there is considerable uncertainty as to whether the Appellant would be likely to obtain a flight to the IKR within a reasonable period of time, and that the longer he remains in Baghdad, the greater the risk he could face of destitution or kidnapping, especially given that he does not speak Arabic and the difficulties he would encounter in obtaining a CSID card.

22. I have nevertheless considered whether it would be reasonable, on the particular facts of this case, for him to remain in the IKR on the basis that he is able to make his way there. There has never been any challenge to the Appellant's assertion that he does not have any friends or family in the IKR, and that he does not know anyone there. He is therefore unlikely to have any support network. It was not suggested by Mr Armstrong that the Appellant's partner

would be able to afford to send the Appellant money if he relocated to the KRI. I do not accept that his proficiency in the Kurdish language is as poor as he claims. He entered the UK as an 18-year-old and would have spoken Kurdish at that time. It is highly unlikely that he would have forgotten the language to such an extent that he has difficulty in answering questions. I note that many significant aspects of his evidence were rejected by the First-tier Tribunal. I am nevertheless prepared to accept the Appellant's claim that his proficiency in the language has diminished to some extent since his arrival in 2003, and that he speaks with a marked English accent.

23. The Appellant is young and healthy. He does not however have any significant academic qualifications or work experience. He has only ever worked in a restaurant for 3 weeks, and undertook a short course in cooking while in prison. Although he has studied barbering and professes to have some qualifications in this regard he has never been employed as a barber. I acknowledge that cooking and barbering are transferable skills that may enable an individual to obtain employment, but the Appellant has virtually no work experience in either field. As such, there must remain a significant risk that he would be unable to find employment in the IKR within the 10 days granted to him as a visitor, especially if his proficiency in Kurdish is diminished to some extent. Even if the Kurdish authorities do not pro-actively remove Kurds without a work permit there must exist a real risk that the Appellant, without any network of support and unfamiliar with the region, would soon find himself destitute. I am consequently satisfied that it would be unreasonable or unduly harsh to expect the Appellant to relocate to the IKR.

Notice of Decision

The Appellant's protection appeal is allowed

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Upper Tribunal Judge Blum

27 September 2017
Date