Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01934/2016

THE IMMIGRATION ACTS

Heard at Glasgow **on 10 August, 16 October and 7 November 2017**	**Decision & Reasons Promulgated** **On 9 November 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SWRKEW MUHAMMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION

1. In her decision dated 5 February 2016 the respondent accepted that the appellant is a Kurd from Kirkuk who fled from ISIS, but not that his father was a Ba'athist, and held that the appellant could relocate to the IKR.

2. First-tier Tribunal Judge McGrade dismissed the appellant's appeal by decision promulgated on 20 December 2016. He rejected the account that the appellant's father was a Ba'athist, considered it open to the appellant to relocate to Kurdistan, and rejected the asylum appeal (¶29). He rejected also submissions based on humanitarian protection, on article 3 and on private life (¶30 -32).

3. The first ground of appeal to the UT was inadequate assessment of the feasibility of relocation, in respect of lack of documentation.

4. The second ground was error in failing to assess the significance of the absence of evidence that the Kurdish authorities had pre-cleared the appellant for entry, which also made it material that there was no consideration of the feasibility of relocating in Baghdad.

5. The case came before Designated Judge Murray in the UT on 9 May 2017. Her decision promulgated on 12 June 2017 records that the respondent conceded the first ground, but not the second, and that parties accepted "that further fact-finding will have to be undertaken by both parties relating to internal relocation". The Judge concluded:

> The findings of fact in the FtT decision shall stand. With regard to internal relocation both parties will require to produce further facts to support their arguments and a second stage hearing will be arranged before the UT based on internal relocation and the first issue raised in the grounds.

6. Pursuant to that decision and to a transfer order enabling the case to be heard by a differently constituted tribunal, the case came on for further hearing before me on 10 August 2017.

7. Representatives, who had also appeared before Judge Murray, concurred in stating that they perceived some difficulty, for which they both accepted responsibility, in that there was a lack of clarity in the FtT's findings of fact (particularly between ¶30 and 32), the consequences of which had not been thought through in arriving at the agreed outcome above. They asked for adjournment, and for further procedure to be adjusted as follows.

8. The following issues of fact were not settled, and were agreed to be open for decision, and for further evidence to be tendered:

> whether the appellant has a CSID;
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> if not, whether he can obtain a CSID soon after return to Iraq;
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> whether his father has died, and if so when;
>
> whether he is married, and if so, the whereabouts of his wife and child;
>
> the whereabouts of his mother and sister;
>
> whether any family in Iraq can assist him to obtain a CSID before his return;
>
> if he has family in Iraq, their circumstances and whereabouts.

9. It was agreed that the findings of fact of the FtT stand to the extent that the appellant's father was not a member of the Ba'ath party, and that issue has no bearing on his ability to relocate.

10. Directions were issued in the terms above, and the case was listed for further hearing on 16 October 2017. At that hearing, the appellant adopted his statements of 24 November 2016, 8 August 2017 and 12 October 2017 as his evidence-in-chief, and was cross-examined. Parties subsequently provided written submissions on the final resolution of the case. On 7 November 2017, they had nothing to add.

11. The first question is whether the appellant is a generally reliable and credible witness on those factual matters which remain outstanding

12. A point of departure is that he has already been found not to be a satisfactory witness regarding his father's involvement in the *Ba'ath* party. I accept, however, that an adverse finding in one respect does not mean that the appellant may not be truthful about anything else.

13. It is argued for the appellant that omissions at screening interview are explained by misunderstanding of the questions asked; the tribunal should be slow to draw adverse inferences from omissions at a screening interview, given its nature; a misunderstanding made its way into his statement of 24 November 2016; dates were wrongly recorded at his substantive interview, and not noticed when that was read back to him; lapse of time and lack of education should be taken into account; and he explained why he left his child behind when fleeing Isis.

14. Taking account of the above, and having heard and reflected on the evidence as a whole, the applicant has not persuaded me that he is a reliable witness, even to the lower standard.

15. Some of the features of the evidence which have led to this conclusion are these:

    a. At screening interview, the appellant said he fled having lost his mother and sister and having nowhere to go. He made no mention of a wife and child, although some of the questions were designed to elicit such information. His later claim includes a history of having a wife, who was killed by Isis, and a child, whom he left with a friend.

    b. In his statement of 24 November 2016, the appellant said his "parents" were missing. Elsewhere, he said that his father died around 2002 - 2004. In cross-examination, he said that it was not his two parents who went missing, but his mother and sister, and denied ever having told anyone that both his parents might still be alive.

    c. Questioned on his age, when he left school and went to work on his uncle's farm, and how events related to his father's date of death, the appellant denied his plain evidence that he left school at that time; claimed not to know, and to have made only a rough guess; and suggested the explanation might be that he had repeated years at school, which "some pupils did". He then said that he could not recall if he repeated a year, because he had not been taking school seriously. Although the questions were clear, the answers became increasingly argumentative and defensive. Details fade over time, but the appellant would be likely to remember such an important episode in his life as whether he left school and went to work at the time his father died or at some other period. The aspect of repeating years at school gave an impression of making matters up as he went along, rather than an honest attempt to recall the truth.

    d. The appellant told the presenting officer that he had always given 3 October 2012 as the date of his marriage, and was not aware of giving any other date. It then became clear, however, that he was recorded as giving other dates: at substantive interview, 30 October 2012; in a preliminary statement, January 2013; and at the hearing in the FtT, 7 May 2013. The appellant's explanation was that "30th" might be an error for "3rd", which is a possibility, and that he never gave the other two dates, but he clearly had. This is an unexplained series of discrepancies.

    e. The appellant claimed to have left his 2-month old son with a "friend" from his village, who did not appear to be much more than an acquaintance, and to be in the same danger from Isis, with no clear idea of this person's plans for himself or for the child. He said he called this person from Turkey, and found out that he and the child were then apparently safe in Kirkuk, but to stay with them would have been

impossible, because "there was just a little friendship between us"- which did not answer the question. He had not mentioned this alleged call, two years ago, prior to cross-examination. Persons fleeing extreme danger may have no choice to abandon helpless infants, as submitted for the appellant, but that is a very extreme step. His evidence was very weak on this issue, containing no credible detail.

f. Witnesses may or may not betray emotion on painful subjects; but his marriage, the death of his wife at the hands of Isis, the abandonment of his infant son, and the absence of current knowledge about his son and other relatives were all matters which did not apparently move the appellant in the slightest.

g. The lack of persuasive detail and the appellant's indifference suggest that wife, son and lack of family contact are all fictitious rather than real.

h. While caution has to be exercised in reaching conclusions based on demeanour, the appellant made a generally poor impression as a witness. He seldom gave a straight answer to a plain question, either on emotive or on unemotive matters. His only signs of agitation came when being put to explain weaknesses in his account, not from the nature of horrific alleged events. He resorted when in difficulty at several points to blaming interpreters (and even the FtT judge) for recorded inconsistencies in his evidence, complaints not previously aired and not all going to matters where minor slips might be expected, but to plain differences.

16. The appellant's final submissions seek a favourable outcome, under reference to the guidance in *AA* Iraq CG [2015] UKUT 00544 (which has been modified and set out as an annex to *AA* (Iraq) [2017] EWCA Civ 944), based on lack of a CSID or ability to obtain one, and absence of family contact or assistance.

17. On the foregoing view of his credibility, no findings fall to be made in favour of the appellant on any outstanding matter.

18. The appellant fails to make a case that he has no CSID, would be in any difficulty in obtaining or replacing such a document, or lacks assistance from family and friends. There is no basis on which to find that he would be in any difficulty in relocating to the IKR.

19. There is no reason to think he might have to settle for the less attractive option of Baghdad, but if he did, there is no reason to find that beyond him.

20. The determination of the First-tier Tribunal has been **set aside**, as narrated above. The following decision is substituted: the appellant's appeal, as brought to the FtT, is **dismissed** on all available grounds.

21. No anonymity direction has been requested or made.

Hugh Macleman

8 November 2017
Upper Tribunal Judge Macleman