



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

Appeal Number: PA/04458/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th September, 2017 and
Signed and sent to
Promulgation 25th
September 2017.**

**Decision & Reasons Promulgated
On 26th September 2017**

Before

Upper Tribunal Judge Chalkley

Between

**NABARD ARAM MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was born on 25th December 1968.
2. The appellant left Iraq by bus in August 2015, and from there travelled to Turkey where he remained for a week. From Turkey, the appellant walked by foot to Bulgaria with the help of an agent. The appellant was detained in Bulgaria for some fifteen days, but following his release he then went to

Serbia. From Serbia, he travelled to Hungary where he remained for a couple of days, after which time he then went to Croatia. The appellant then travelled to Austria passing through Germany and on to France where he remained for two and a half months. Whilst he was in France an agent put him in a lorry to come to the United Kingdom. He arrived in the United Kingdom on 4th December 2015, and claimed asylum on being arrested by Kent Police.

3. The Secretary of State considered and refused the appellant's claim for asylum on 16th April 2016. At the same time, a decision was made to remove the appellant as an illegal entrant by way of directions under paragraphs 8 - 10 of Schedule 2 to the Immigration Act 1971.
4. The appellant appealed and his appeal was heard by First-tier Tribunal Judge Bircher at Manchester on 6th February 2017.
5. The basis to the appellant's claim for asylum involved his father who owned a shop. His father attended the mosque every day to pray and on 25th May, 2014, his father was killed by ISIS. A suicide bomber exploded a device killing the appellant's father and other victims in the neighbourhood.
6. The appellant's father was blamed for the explosion, because he was known to be a religious man. Following his father's death, ISIS sent letters to the appellant on two occasions inviting him to join the organisation, but he refused.
7. The appellant claimed to be fearful of ISIS because he refused to join their organisation and he also fears people in Jalawla, his home area, because his father was thought to have caused the explosion and relatives of the dead would wish to extract revenge for the loss of their loved ones on the appellant.
8. The judge heard oral evidence from the appellant, but for reasons she sets out in her determination, she did not find the appellant to be credible. The judge did not believe that members of the community would have believed the appellant's father to be a terrorist/suicide bomber given that he owned a shop in the neighbourhood, was known to be a religious and peaceful man and was known to many. Given that he was so well-known and respected in the community, the judge found that it was simply not credible that the neighbourhood should conclude that the appellant's father was the bomber. The judge also believed that the account of the explosion which allegedly killed his father lacked detail.
9. The judge also found that it was not credible that ISIS would attempt to recruit the appellant by means of delivering two letters to his home. If ISIS had been intent on recruiting the appellant, then the judge believed, they would have used greater force and would have had face to face meetings with him.

10. The judge did not accept the appellant had lost all contact with family members in Iraq and in particular with the uncle who had assisted him to travel to the United Kingdom. The appellant had confirmed at his interview that he did hold in Iraq the necessary civil status ID and nationality certificate, but claimed that he lost them on his travels to the United Kingdom. In answer to a question put to him during his asylum interview, he acknowledged that he could go to the Iraqi Embassy and ask for a replacement of these documents, if the Iraqi Embassy are able to do that.
11. The judge found that the appellant could return to his home area, because Jalawla has now been liberated from ISIS. As an alternative, he could also return to the IKR via Baghdad. The judge said, at paragraph 48 that he need not necessarily return to IKR via Baghdad given that there are commercial and international flights from the United Kingdom via Turkey to places such as Erbil and Sulaymania. As a Kurd, he would be able to go to the IKR for a limited period of ten days during which time he could try and find employment. At paragraph 50 of the determination, the judge said that there was no reason why the appellant could not approach the United Kingdom based IKR authorities to legitimise his entry on arrival, or make appropriate enquiries to secure ID. The judge said that by his own admission at his substantive interview the appellant recognised that he could approach the Iraqi Embassy in the United Kingdom to secure replacement documents.
12. The judge noted that the appellant maintains he suffers from depression, back, joint and leg ache, but there was little by way of medical evidence to demonstrate that these were serious conditions impacting heavily on his day-to-day living. The judge found that there was no reason why the appellant could not return to Iraq. He would be able to return to his home area or internally relocate within Iraq away from his home area and ISIS without relocation being unduly harsh.
13. Dissatisfied with the judge's decision, the appellant sought and was granted leave to appeal to the Upper Tribunal. In granting leave First-tier Tribunal Judge Nightingale said this:-
 - “4. However, it is arguable that the judge erred in finding that the appellant would not be returned via Baghdad in the light of AA. It is also arguable that the judge failed to consider whether the appellant would be admitted to the IKR and failed to assess the reasonableness of relocation to Baghdad. Ground 2 is arguable. It is also arguable that the judge failed to consider the appellant's Article 8 claim regarding paragraph 276ADE.”
14. Mr Howard, who appeared on behalf of the appellant, accepted that the second ground really stood or fell with the first ground and he did not address me on it. He told me that return would be to Baghdad, but the appellant does not have the necessary identity documents. Those that he did have he lost en route to the United Kingdom. The issue was whether or not it would be unduly harsh to expect him to return to Baghdad. Mr

Howard accepted that the appellant was not found to be credible and that the judge found that he had lied about the death of his uncle being killed. He asked me to bear in mind that the appellant is a Sunni Muslim who has little education and suffers from depression, back, joint and leg ache. In deciding whether or not it would unduly harsh for him to pass through Baghdad, the fact that he is a Sunni Muslim has limited education and has medical conditions all need to be factored in with the issue that he has no identity documents.

15. While the judge seemed to believe that the appellant acknowledged that he could go to the Iraqi Embassy and ask for replacement documents, Mr Howard emphasised that the appellant's answer to the question was that yes he could, "if they do that".
16. Mr Bates suggested that it was quite clear the appellant could obtain identity documents whilst in the United Kingdom. He could either go to the IKY authorities or to the Iraqi Embassy in the United Kingdom, or he could ask his relatives in Iraq to assist him. His uncle was clearly not dead and he may well have other relatives. As far as Baghdad is concerned, Mr Bates suggested that he would only need to transit it. Given that he is a Kurd he would be able to go to the IKR for a limited period during which time he could try and find employment. From IKR he would be able to return to Jalawa if he wished to. Mr Bates suggested there was no error of law in the determination. The appellant would be returned to Baghdad. But there is no reason why he would not be able to remain there for a brief time even if he were not able to transit the same day to Erbil. His ethnicity, religion and health issues do not make it unreasonable to expect him to go to Baghdad and it was certainly not unduly harsh to expect him to transit Baghdad en route for Erbil and, if he chose to go to his home area.
17. Mr Howard pointed out that at the appellant's substantive interview he had acknowledged that he could go to the Iraqi Embassy and ask for replacement documents, but that he was not aware of whether or not they would be available at the Iraqi Embassy. I asked Mr Howard if there was any evidence that such documents would not be available from the embassy and he told me there was not.
18. I reserved my decision.
19. In *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC) the Tribunal considered, amongst other things, the question of internal relocation within Iraq, other than to the Iraqi Kurdish Region. At Sections D and E of the headnote they said this:-

"D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IRAQI KURDISH REGION)"

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad city or (subject to paragraph 2 above) the Baghdad Belts.
15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad the following factors are, however, likely to be relevant:
 - (a) whether P has a CSI or would be able to obtain one (see Part C above);
 - (b) whether P can speak Arabic (those who cannot are less likely to find employment);
 - (c) whether P has family members or friends in Baghdad able to accommodate him;
 - (d) whether P is a lone female (women face greater difficulties than men in finding employment);
 - (e) whether P can find a sponsor to access a hotel room or rent accommodation;
 - (f) whether P is from a minority community;
 - (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with support generally given to IDPs.
16. There is not a real risk of an ordinary citizen travelling from Baghdad Airport to the southern governorates, suffering serious harm en route to such governorates so as to engage Article 15(c).

E. IRAQI KURDISH REGION

17. The respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport or laissez passer.
 18. The IKR is virtually violence free. There is no Article 15C risk to an ordinary civilian in the IKR.
 19. A Kurd (K) who does not originate from the IKR can obtain entry for ten days as a visitor and then renew this entry permit for a further ten days. If K finds employment, K can remain longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities proactively remove Kurds from the IKR whose permits have come to an end.
 20. Whether K, if returned to Baghdad, can reasonably expect him to avoid any potential undue hardship 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 Erbil by air); (b) the likelihood of K securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.
 21. As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR."
20. The appellant is a Kurd from an area outside the IKR. As to whether or not he is able to obtain identity documents, it may or may not be the case that

he could obtain them himself from the Kurdish authorities in the United Kingdom, or from the Iraqi Embassy in the United Kingdom. But in any event there would appear to be no reason at all why the appellant's relatives could not obtain sufficient evidence of identity. He will of course be returned to Baghdad, but I agree with Mr Bates, he is only likely to be in Baghdad for a matter of days and it may very well be possible that he could transit on arrival and go straight to Erbil. If he were to voluntarily return to Iraq he would be entitled to a grant which would assist him to travel to Erbil and onto his home area, if he wishes to return to it. In Erbil he could remain for ten days as a visitor and then renew entry for a further ten days whilst seeking employment. I accept that he may only be able to obtain the most menial of jobs, but given that he was prepared to lie about his uncle's death I am not prepared to accept that he has no skills whatsoever that he could not use to good effect on behalf of an employer. I have concluded that it would not be unreasonable or unduly harsh to expect the appellant to transit Baghdad. If he chooses to he can enlist the help of his relatives to obtain a CSID. I appreciate that he may not have friends or family members in Baghdad to accommodate him and he may not be able to speak Arabic, but he is unlikely to need to remain in Baghdad for more than a matter of hours. I similarly do not believe it to be unreasonable or unduly harsh to expect the appellant to relocate to the IKR should he not wish to travel on to his home area. I do not believe that the health problems he claims to have are likely to seriously prevent him from working if he wished to. As AA makes clear, however, there is no evidence that the IKR authorities proactively removed Kurds from the IKR whose permanence have come to an end but there seems no reason at all now why the appellant should not return to his home area in any event.

21. I am grateful to Mr Howard for confirming that the fourth challenge to the determination (leave was only granted on two of the four challenges) stands or fall with the other challenge on which leave was granted.
22. I have concluded that the making of the decision by the judge did not involve the making of a material error of law and I uphold her determination. The appellant's appeal is dismissed on asylum grounds, on humanitarian grounds and on human rights grounds.

Notice of Decision

The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

No fee payable.

Richard Chalkley
Upper Tribunal Judge Chalkley