



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04361/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 2 February 2018

Decision & Reasons Promulgated
On 6 March 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

SALAM [H]

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr R Worthington

(Solicitor)

For the Respondent:

Mr M Diwnycz

(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal ("the tribunal") which was sent to the parties on 19 December 2016. The tribunal dismissed his appeal against the Secretary of State's decision of 29 January 2016 refusing to grant him international protection. However, on 6 December 2017, I set aside the tribunal's decision whilst preserving certain of its findings and conclusions. I decided that I would remake the decision in the Upper Tribunal. In remaking the decision I have decided to allow the claimant's appeal against the decision of 29 January 2016. What follows below is an explanation as to why I have done so.

2. By way of background, the claimant is a national of Iraq. He was born on [] 1975. He is a Feyli Kurd. According to the expert report of one Dr. R Fatah of 10 November 2017, Feyli Kurds are Shia Muslims, not Sunni Muslims as many Iraqi Kurds are, and they speak their own dialect of Kurdish which is known as Laki. There is, it is said in that report, a history of Feyli Kurds having been persecuted by previous Iraqi regimes in the past. The claimant is from Khanaqin in the Diyala Governorate.

3. The claimant's immigration history is extensive and convoluted. I am not going to set it out in full because it is a matter of record and is largely irrelevant to the specific issues I am now called upon to decide. But it is worth noting that he first came to the United Kingdom ("UK") on a date in 2002 and that he made his first (unsuccessful) claim for asylum on 12 November 2002. There have been a number of different decisions made by decision makers and tribunals in respect of him.

4. The claimant had asserted, before the tribunal, that being from Diyala he would be at risk upon return at the hands of the organisation sometimes called "ISIS", who were then in control of that part of Iraq and that conditions there were such that he fell within the terms of Article 15c of the Qualification Directive. He also asserted that he would not be able to take advantage of an internal flight alternative. Specifically, he argued that it would be unsafe for him in Baghdad or the part of Iraq governed by Kurdish Iraqis and which I shall call the "IKR", or that it would otherwise be unduly harsh to expect him to relocate to either place.

5. The tribunal did not actually make a finding as to whether it thought he would be at real risk of persecution for a 1951 Convention Reason at the hands of ISIS in Diyala. It did, though, in accordance with Country Guidance decisions, conclude that he would face an Article 15c risk there such that, absent the facility of internal flight, he would be entitled to humanitarian protection. But the tribunal concluded that if he went to the IKR he would be free of any risk of persecution or serious harm. I set aside the tribunal's decision because although it had found that the claimant would not be at real risk of persecution or serious harm if he was to go to the IKR it had not actually made a clear finding as to whether it would or would not be unduly harsh to expect him to so relocate. The distinction is important because if a claimant establishes to the necessary standard that he/she is at risk of persecution or serious harm in the home area of the home country, then the question in the context of asylum and humanitarian protection is not simply whether there would be such a risk elsewhere but whether there would be available to such claimant an internal flight alternative in circumstances where it would not be unduly harsh to require him or her to take advantage of it. The unduly harsh test, it seems to me, is in general terms a less demanding one than the test for persecution or serious harm. I preserved the tribunal's findings with respect to all matters other than relocation to either Baghdad or the IKR and I directed a further hearing before the Upper Tribunal which took place before me on 2 February 2018. The only issue to be decided at that hearing, therefore, related to internal flight to Baghdad or the IKR. Representation at that hearing was as stated above and I am grateful to each representative.

6. At the hearing I had before me the documentation which had been before the tribunal. I also had additional documentation which included a supplementary bundle filed on behalf of the claimant on 26 January 2018, a skeleton argument prepared by Mr Worthington and dated 2 February 2018 and the expert report of Dr. R Fatah referred to above. I confirm that I have considered the various documents before me, even if not specifically mentioned in the previous sentence, before deciding how the decision ought to be remade. Further, I have reminded myself of the very well established legal tests concerning entitlement to asylum and humanitarian protection and concerning the matter of internal flight.

7. The claimant's evidence in chief was extremely brief. He simply adopted his most recent witness statement which is dated 18 January 2018 and then confirmed to Mr Worthington that he is able to speak Arabic. In his statement the claimant had confirmed the location of his home area in Iraq, that he is a Shia Muslim, that he had first come to the UK in 2002 and that when he lived in Iraq he did some work on his family's farm. He said that he did not think any of his family had ever been recognised as Iraqi citizens. Pausing there, there is information in the report of Dr R Fatah to the effect that at least some Feyli Kurds had not been recognised as Iraqi citizens in the past. In cross-examination the claimant reiterated that he is a Feyli Kurd from Khanaqin. He said he does not have any friends either in his home area of Iraq or in the IKR.

8. Having considered the oral and the documentary evidence I find as follows:

“(a) The claimant is from Khanaqin in Iraq and is a Feyli Kurd.

(b). He is able to speak Kurdish Sorani (he spoke it at the hearing); he is able to speak Laki (which one would expect of a Feyli Kurd); and he is able to speak Arabic (he told me he could).

(c) I find on the basis of what the claimant has indicated and on the basis of what is confirmed by Dr R Fatah that Feyli Kurds in Iraq are Shia Muslims and not Sunni Muslims. For the avoidance of doubt I find that the claimant himself is a Shia Muslim.

(d) I find that the claimant has not previously been issued with documentation by the Iraqi authorities which would confirm that he is accepted as a national of Iraq. This finding requires some explanation. Dr R Fatah has said, in his report, that some Feyli Kurds have not been recognised as Iraqi nationals. Further, some have previously been stripped of their Iraqi nationality. The claimant himself said in his statement of 18 January 2018 that he has never had a CSID (an important identity document possessed by most Iraqi nationals and about which I shall say more below) or an Iraqi passport. He also said that his father had told him that the family ‘had never had any documents from the Iraqi Government’. He repeated his claim that he had never had any formal identity documentation in Iraq when cross-examined and was not further challenged about that. What he says is plausible given the content of Dr Fatah's report. To the ‘real risk standard’ which applies with respect to asylum and humanitarian protection cases, I accept what he says.

(e) I find the claimant previously worked on his family's farm as a shepherd. He says so in his statement and was not challenged about it. It seems to me to be a plausible contention. I accept what he says.

(f) I find that the claimant no longer has any contact with family and friends in Iraq. That finding too requires some explanation. The claimant has been in the UK since 2002. He has, therefore, been absent from Iraq for an extensive period. Although he did not make mention of contact with his family in his statement of 18 January 2018 he did address that matter in his earlier statement of 12 October 2016. He said then that he had not been in contact with anyone in Iraq since he left in 2002 and that he no longer knew ‘if the members of my family are even still alive’. He added ‘I have no family or friends in any other part of Iraq’. He was not specifically asked about family in cross-examination before me but he did say, which is consistent with his statement, that he did not have any friends in Iraq. Given the well documented upheavals and difficulties experienced in Iraq in relatively recent times I regard it as plausible that the claimant has lost contact with his family and any friends he would have had in Iraq. Given that he was not seriously challenged about this assertion before me and given the plausibility of what he says I find, to the lower standard, that he is no longer in touch with his family nor any friends in Iraq.”

9. I now go on to consider, in light of the above findings, whether there will be available to the claimant an internal flight alternative either in Baghdad or in the IKR. I must do that because, of course, I have preserved the tribunal’s findings concerning the Article 15c risk in Diyala.

10. In AA (Article 15(c)) [2015] UKUT 544 (IAC), as adjusted by the judgment of the Court of Appeal, a non-exhaustive list of matters relevant to internal flight to Baghdad (the place to which this claimant will be returned if he is returned) was set out. I shall now go through them. The first matter is whether or not the claimant has a CSID document or will be able to obtain one. Such a document, as explained by the Court of Appeal in AA, is of considerable importance because it provides access to financial assistance from the authorities, employment, education, housing and medical treatment. I have, however, found that this claimant has not even been recognised, in the past, as a national of Iraq. On that basis I conclude that he does not currently have a CSID document. I would not entirely preclude the possibility that he might be able to obtain one at some time in the future. However, in looking at what is said in Dr Fatah’s report, it may be that he would first of all have to attempt to apply for Iraqi citizenship and that there would be no guarantee that he would be granted it although there is that possibility. But I would conclude that in the short to medium term it is most unlikely that he would be able to get one. That means he will at least for a considerable period face real difficulty in accessing the sorts of support services referred to above.

11. The next consideration is whether or not the claimant is able to speak Arabic. It is relevant because it was decided in AA that those who cannot are less likely to be able to find employment. Here the claimant is in a relatively favourable position because he does speak Arabic. But it is also appropriate to consider, more widely, his prospects of finding work. In that context I have found that his only work experience in Iraq was on a farm. It does not seem unreasonable to say that, at least within Baghdad itself, he is unlikely to have available to him similar employment. It does not seem to me that the absence of a CSID will necessarily preclude him from finding employment but it will probably represent a barrier.

12. The next consideration is whether or not he has family members or friends in Baghdad able to assist him. I have found that he is not, in fact, in contact with any family members or any former friends. Even if he does have family or friends in Iraq with whom he is not in contact but who he might be able to locate at some point in the future, it seems most unlikely that they would be located in Baghdad given that he himself is not from there.

13. The next consideration relates to the position of lone females and is not relevant to this claimant.

14. The next question is whether or not the claimant would be able to find a sponsor to enable him to access a hotel room or to rent accommodation. It follows from what I have already said that he would not be able to do that.

15. The next consideration is whether or not the claimant is from a minority community. He is. Not only is he a Kurd but he is a Feyli Kurd.

16. The final matter specified in AA is whether or not there might be any support available for him bearing in mind that there is some evidence that returned failed asylum seekers are provided with support generally given to internally displaced persons. I have not been directed to or presented with any evidence on behalf of the Secretary of State which would indicate that such support might be available to him.

17. In addition to the above factors I have considered the general situation in Baghdad at present. In BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) it was said that the level of general violence in Baghdad is significant. I do not accept what reads to me as a suggestion by Dr Fatah that the claimant, if returned to Baghdad, would actually be at risk of persecution or serious harm there, because that view is largely unexplained and because it seems to be in conflict with what was decided in BA which is current Country Guidance. But I would accept that the general concerns regarding lawlessness and insecurity are pertinent to the question of internal flight.

18. Putting all of the above matters together I have concluded that whilst the claimant would be able to go to Baghdad, indeed he will be returned there, it would be unduly harsh to expect him to take advantage of an internal flight alternative there. That is, essentially, because of his lack of contacts in Baghdad, because of what I have found to be his inability to obtain appropriate documentation within the short to medium term and because of an absence of family or other support.

19. I now turn to internal flight to the IKR. Mr Worthington's initial contention, as to that, is that the claimant will simply be unable to actually travel from Baghdad to the IKR without documentation. Mr Worthington relies, for the most part, upon what is said in Dr Fatah's report about such difficulties. Although the standard of proof is an undemanding one it does not seem to me that the claimant has demonstrated that he will not be able to actually travel to the IKR. The comments of Dr Fatah relied upon by Mr Worthington in his skeleton argument seem to me to relate more to difficulties in obtaining documentation and difficulties in seeking to actually be admitted to the IKR which is slightly different to the question of whether he would physically be able to make his way there. So, I proceed on the basis that he could get there.

20. In AA it was said that a Kurd who does not originate from the IKR would be able to obtain entry to the IKR for a period of 10 days as a visitor and then renew that entry permission for a further 10 days. It was also said that if such a person was able to find work then he would be permitted to stay for longer though there would be a need to register with the authorities and provide details concerning the employment. It was also noted that there was no evidence that the authorities in the IKR would proactively seek to remove Kurds from the IKR once their period of entry as a visitor had expired. Here though, of course, I am dealing with the position of a Feyli Kurd. Dr. R Fatah, in his report, notes that there have been reports of Feyli Kurds, even documented ones, facing difficulties in gaining access to the IKR. But there is little detail as to that

contained in the report and I would conclude, following AA, that as a Kurd the claimant will be able to obtain the usual temporary entry into the IKR as a visitor. The question then is whether requiring him to live there would be unduly harsh.

21. If he were to attempt to live in the IKR the claimant would be doing so, on my findings, without any assistance from family members there or from friends there. He would be undocumented which might cause him ongoing difficulties in accessing any support from the authorities in control in the IKR. Dr Fatah makes reference to an independence referendum which had been held in the IKR in September 2017 and which led to the retaking by the Iraqi authorities, from the Kurds, of disputed territories and which has had an adverse knock on effect regarding the economy in the IKR. I would conclude that the IKR will have sustained some economic damage in that regard which will impact upon employment prospects generally and I would also conclude that as a Feyli Kurd and a Shia Muslim the claimant might experience particular and significant difficulty in obtaining employment. I would conclude, therefore, in his particular circumstances, that it would be unduly harsh to expect him to take advantage of an internal flight alternative in the IKR.

22. It is in light of the above that I have decided, in remaking this decision, to allow the claimant's appeal. I do not do so on asylum grounds because the risk identified by the tribunal and preserved by me related to Article 15c of the Qualification Directive. But that does mean, given my findings as to the undue harshness of the internal relocation, that the claimant succeeds on humanitarian protection grounds.

Decision

The decision of the tribunal has already been set aside.

In remaking the decision I allow the claimant's appeal on humanitarian protection grounds.

I make no anonymity direction.

Signed: Date: 5 March 2018

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

I make no fee award since no fee is payable.

Signed: Dated: 5 March 2018

Upper Tribunal Judge Hemingway