



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02622/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2018

Decision & Reasons Promulgated
On 3 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DARA [K]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Ms M Gherman, Counsel, instructed by Virgo Solicitors

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Metzger allowing the appeal of the respondent against the Secretary of State's decision to refuse him asylum in the United Kingdom.
2. The respondent will from now on be referred to as the applicant for ease of reference.

3. The Secretary of State accepted the applicant's claim that he was born in Yarmuk village, Riyaz, Kirkuk in Iraq. The applicant stated his date of birth to be 3 April 1992.
4. The judge summarised the applicant's evidence as follows: that he was Kurdish and was brought up in Kirkuk. He was arrested by ISIS in September 2014 and arrested again in November 2014. His father was killed by ISIS on 11 March 2015 and the applicant ran away and joined the Peshmerga and fought against ISIS. He began helping the Peshmerga in July 2015 at the same time his father was beaten up by the Peshmerga fighters in 2015. The applicant stated that his brother was ultimately killed by the Peshmerga either in July or November 2015.
5. The applicant stated that he left Iraq in late January 2016 and arrived in the UK via Turkey and Greece on 22 February 2016 and claimed asylum on arrival.
6. The applicant claimed that he was never a member of the Peshmerga and was afraid of them. He was aware that somebody called Colonel Mohammed was in charge of the Peshmerga at the time that he was assisting them. He was asked to carry out specific tasks for the Peshmerga but he was not aware what they were planning. His brother was beaten up and later died of his injuries from the Peshmerga.
7. In cross-examination he said he had decided to assist the Peshmerga after his father was killed by ISIS. The Peshmerga were not from his area and the fighting was not in his village but it was nearby. His brother knew he was helping the Peshmerga and the Peshmerga asked his brother about him and his brother was attacked but did not tell the Peshmerga about him.
8. The judge made the following findings:

"12. Mr Eaton on behalf of the Respondent submitted that essentially the only real challenge as is apparent from the refusal letter and his submissions was whether the Appellant's brother had been killed by the Peshmerga. If the Appellant were able to establish that, then there were no other areas in which the Appellant appeared to be inconsistent.

13. I note that the Appellant did make mention of the killing of his brother by the Peshmerga. He made clear in his interviews that he feared not just ISIS at the time but also the Peshmerga and I find the Appellant was wholly consistent in relation to what happened both to his father and to his brother and I therefore had no difficulty in finding the Appellant had established to the relevant standard that he was credible in relation to the background of his claim and that he was at risk of attack from the Peshmerga were he to be returned to the IKP given what had happened to his brother in 2015.

14. As that was the sole issue before me, namely the Appellant's credibility and it was accepted by the Respondent that those attracting the adverse interest of the Peshmerga would be at risk of ill-treatment in the area where they are in power, it

follows that I find the Appellant has established to the relevant standard that he would have a well-founded fear of persecution for a Convention reason.

15. *In relation to the Article 3 human rights claim, given my findings in relation to the Appellant's credibility and the objective evidence by which there is no sufficiency of protection and internal relocation is not an option for those attracting the adverse interest of the Peshmerga, it follows that I find the Appellant has also established to the relevant standard that there would be a breach of Article 3 of the ECHR were he to be returned to the IKP."*

9. Two grounds of appeal were advanced on behalf of the Secretary of State. The first ground submitted that the judge has allowed the appeal on the basis that the applicant was consistent about his claim to be at risk from the Peshmerga. However, the judge failed to give consideration to the numerous issues raised in the refusal letter, not just with regards to the applicant's account regarding his brother but also the direct challenge to the applicant's claim about his father which led to his subsequent involvement with the Peshmerga. The judge did not engage at all with these matters set out by the respondent in the RFRL nor did the judge give any reasons for finding why the applicant's account was favoured over the respondent's, which was supported in part with the objective evidence and references to inconsistencies in the applicant's evidence.
10. This ground was supported by Mr Tufan, who argued that the losing party is entitled to know the reasons why they have lost. The judge was under a duty to give reasons for his findings. He said the judge's decision was extremely brief.
11. Ms Gherman in response submitted that the judge's decision was short in the light of the concessions made by Counsel for the Secretary of State, Mr Eaton. This was recorded by the judge at paragraph 12 of his decision. Mr Eaton essentially said there was only one real challenge outstanding, which was whether the applicant's brother was killed by the Peshmerga. If the applicant was able to establish this, then there were no other areas in which the applicant appeared to be inconsistent.
12. I find that the concession made by Mr Eaton meant that the inconsistencies relied on by the respondent in the Reasons for Refusal Letter no longer existed except for that one challenge. Consequently, I find that the first ground of appeal raised by the Secretary of State is without merit as the Secretary of State's representative pursued only one material inconsistency, which the judge resolved at paragraph 13 in the applicant's favour.
13. The Secretary of State's second ground of appeal was that even if the judge was minded that the applicant was at risk from the Peshmerga, the judge failed to go on to consider internal relocation and sufficiency of protection, which were clearly relied upon by the respondent. The judge therefore made a material error in finding that the applicant had a risk on return. While the judge was entitled to find a risk if the applicant were to return to the IKR of Iraq, he was still under a duty to consider relocation to an area outside of the IKR. Given that the judge's findings were limited

to the IKR, it was submitted that there was no adequate reason as to why the applicant would be prevented from relocating to the IKR.

14. Mr Tufan, whilst relying on this ground, submitted that there had been huge developments in Kirkuk, in the Iraqi area which is not in the IKR. He said that in October 2017 Iraqi forces overtook Kirkuk, which is now in the hands of the government. He said the judge did not consider this evidence.
15. Mr Tufan submitted that the country guidance case of **AA (Iraq)** has been modified by the Court of Appeal. The Court of Appeal held that a detailed analysis of the applicant's case is required by a judge undertaking consideration of whether indiscriminate violence in Iraq, under Article 15(c) of the Qualification Directive, applies. Mr. Tufan submitted that the judge did not do this. Mr Tufan also submitted that the removal direction in this case is given as Baghdad. The Secretary of State stated in the Reasons for Refusal Letter that the appellant can then travel to Kirkuk by car. The area of transit would not involve travel through ISIS or Peshmerga controlled areas and therefore not subject to any security issues for the applicant. Mr Tufan submitted that the judge failed to consider any of this.
16. Ms Gherman submitted that the judge's failure to consider internal relocation did not amount to a material error of law. This was because of what the judge said at paragraph 1 of the Decision and Reasons. The judge stated that the parties agreed that the sole issue was the applicant's credibility in relation to his fear now of the Peshmerga. The applicant no longer feared ISIS (Daish) and the Secretary of State accepted that were the applicant to be credible in relation to his fear, there would be insufficiency of protection and there would be no internal relocation, given that the applicant would be returning to the IKP. Counsel submitted that the IKP is the same as IKR.
17. Ms Gherman submitted that **AA (Iraq)** went to the Court of Appeal for the Court of Appeal to clarify whether a CSID card could be obtained by an applicant where the Secretary of State asserts that his removal to Iraq is feasible. Ms Gherman submitted that the CSID was not an issue in this case.
18. With regard to internal relocation Ms Gherman submitted that in the light of the agreement between the parties that the applicant would be returned to the IKR and to Erbil Airport, the objective evidence supported the judge's view that the applicant would be at risk of persecution on return to the IKR. She relied on the Court of Appeal's decision in **AA (Iraq)**, where at page 14 of 15 at E: Iraqi Kurdish Region, the Court of Appeal noted at paragraph 17 that the respondent, that is the Secretary of State, would only return the applicant to the IKR if the applicant originates from the IKR and the applicant's identity has been 'pre-cleared' with the IKR authorities. Ms Gherman said the appellant has never said he was from a Kurdish city. He said he was born in Riyaz, Kirkuk. Kirkuk is a disputed territory currently in the control of IKR governorates. Ms Gherman referred to the Home Office Country Policy and Information Note on Iraq: Return/Internal Relocation September 2017. Paragraph

2.2.7 states that people who originate from the KRI are returned to Erbil International Airport. Paragraph 2.2.19 states that unless they are returned to the KRI, a person will be returned to Baghdad in the first instance. Paragraph 3.1.3 states that a person who does not originate from the Kurdish Region of Iraq (KRI) will be returned to Baghdad in the first instance. 3.1.4 states: "In general, a Kurd or a person who originates from the KRI can relocate to the KRI. Non-Kurds generally not."

19. Ms Gherman referred to paragraph 4.2.1, which states:

"Currently the KRG will consider for return all persons of Iraqi Kurdish ethnicity who are from an area currently under the administration of the KRG, that is the three governorates of Dohuk, Erbil and Suleimaniah and some parts of Kirkuk governorate (but not persons from Kirkuk city). Only persons who are pre-cleared by senior KRG immigration officials will be liable for removal under these procedures.

20. Ms Gherman submitted that the judge did not make material errors of law. He was adhering to the submissions made by Mr Eaton, who submitted that the return of the appellant would be to the KRI. This means that he would be returned to Erbil Airport and on return would face the risk of persecution as an ethnic Kurd. According to Wikipedia the Kirkuk governorate is currently under the control of Iraqi Kurdistan and not under the Iraqi government. Consequently, on return to Erbil the applicant would be at risk of persecution.
21. In reply Mr Tufan said there was nothing to say that the appellant's village was in Iraqi Kurdistan. He relied on a BBC World Service report which stated that the Iraqi government forces have taken control of Kirkuk. That was the headline but the subtext states that dozens of residents flee Kirkuk after armed Iraqi troops took control of the city.
22. I find that the respondent accepted that the applicant was from Yarmouk village in Riyadh in Kirkuk.
23. I accept that the judge's decision was short. This was because of what was agreed between the parties and recorded by the judge at paragraph 1 of his "Decision and Reasons". The judge accepted the credibility of the applicant's claim and consequently, the Secretary of State's acceptance that there would be insufficiency of protection and there would be no international relocation given that the applicant would be returning to the IKP.
24. I find in the circumstances that in the light of the submissions made by Ms Gherman, and the objective evidence drawn to my attention by Ms Gherman, the judge did not make an error of law in his decision.
25. The judge's decision allowing the applicant's appeal shall stand.

Notice of Decision

The appeal by the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date: 29 June 2018

Deputy Upper Tribunal Judge Eshun