



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

Appeal Number: PA/03333/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 21 November 2017

**Decision and Reasons
promulgated
On 15 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**DAH
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sachdev of the Bury Law Centre

For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

DECISION AND REASONS

1. Following a hearing at Manchester on 11 July 2017 the Upper Tribunal found the First-tier Tribunal had made an error of law material to the decision to dismiss the appeal. The operative part of the Error of Law finding reads as follows:

21. I find no arguable legal error in the findings of the Judge save the question of whether the analysis undertaken in relation to

the internal relocation argument to Baghdad has been properly undertaken. The Judge would have been unaware of the recent findings of the Court of Appeal concluding that the country guidance case of AA was incorrectly decided in relation to one important aspect of the case but, even without this, it is arguable the analysis is inadequate.

22. I therefore set aside the decision of the First-tier Tribunal. The adverse credibility findings made by the Judge shall stand as they have not been shown to be infected by arguable legal error material to the decision. It has not been shown despite the errors made by the Judge that such findings are unsafe. The findings in relation to the appellant's home area being in a contested region shall be preserved. It shall be also preserved that, in the absence of evidence to the contrary, the appellant is unable to relocate directly to the IKR. If the respondent secures the approval of the Kurdish authorities between now and the next hearing to direct entry no doubt all parties will be informed accordingly.
23. The issue the Upper Tribunal shall consider on the next occasion is that relating to the internal relocation of the appellant to Baghdad or any other area of Iraq it is suggested he is able to return to and, if appropriate, the appellant's ability to travel to the IKR and secure entry from Baghdad and the feasibility of his being able to relocate to that region.

Background

2. The appellant is a citizen of Iran born in April 1990. The First-tier Tribunal set out its findings from [12] - [52] of its decision summarised in the Error of Finding.
3. It is not disputed that the appellant is an Iraqi national of Kurdish ethnicity who comes from Hawija in Kirkuk Province. The First-tier noted a number of discrepancies in the appellant's evidence leading to a conclusion the appellant is not a credible witness in relation to his alleged claim to entitlement to international protection, but an economic migrant.
4. The Judge found the appellant speaks Kurdish Sorani and does not face a risk of serious harm in the IKR. It was also found the appellant has access to the documentation required to obtain a passport or travel document.
5. The country guidance relating to return to Iraq is that currently in force following the decision of the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944. The Court found that the existing country guidance should be revised by consent so as to read: (i) Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer; (ii) No

Iraqi national will be returnable to Baghdad if not in possession of one of these documents; (iii) In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents; (iv) Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport. However (v), regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

6. No issues arise in relation to documentation. It is not disputed that the appellant will not be able to automatically enter the IKR initially but will have to return to Baghdad. The appellant is in possession of his CSID which is required in order for him to access financial assistance from the authorities; employment; education; housing; and medical treatment.
7. In AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) (unchanged by the Court of Appeal) it was held that (i) 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 comments in this case on humanitarian protection and areas of the country where there is an internal armed conflict) the Baghdad Belts; (ii) In assessing whether it would be unreasonable/unduly harsh for an Iraqi national (P) to relocate to Baghdad, the following factors are, however, likely to be relevant: (a) whether P has a CSID or will be able to obtain one (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 the support generally given to IDPs. (iii) there is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

Evidence and submissions

8. The appellant seeks to rely upon a country report written by Dr Rebwar Fatah Associates dated 10 November 2017.
9. Dr Fatah's instructions are set out at [42] of the report. One question specifically asked was whether the appellant can pre-book a flight to the IKR while in the UK so he can fly there via Baghdad. Dr Fatah notes that Baghdad, Sulaymaniyah and Erbil International Airports are generally considered secure. Two airline companies operate from Baghdad to Erbil; Iraq Airways and Fly Baghdad. Flights operate four to eight times per day and there are flights every day of the week. Two airline companies operate flights from Baghdad to Sulaymaniyah: Iraq Airways and Fly Baghdad. Iraq Airways runs three to five flights daily, while Fly Baghdad runs one flight every three to four days.
10. Dr Fatah noted that as of 7 November 2017 it did not appear to be possible to book flights from Baghdad to either Erbil or Sulaymaniyah on the Iraq Airways website as a consequence of the decision of the Federal Government to ban international flights to the IKR and instead allow only domestic flights following the Kurdish independence referendum in late September 2017. It is reported that a search showed that the flights are either not available on a certain day or are sold out. It is not made out this is a situation that still prevails, with flights being permitted as before as at the date of the promulgation of this decision.
11. Dr Fatah states that flights from Baghdad to Erbil are available through Fly Baghdad for between 60 to 78 US dollars on most days and from Baghdad to Sulaymaniyah through Fly Baghdad for 60 US dollars flying two to three days a week. It is reported that the total number of passengers travelling to Kurdish airports had fallen to less than 300 from more than 2000 as a result of the flight ban by the Federal Government.
12. At [73] Dr Fatah concludes:

"Flights are generally a safe means of transport within Iraq but following the referendum, international flights have been banned to Kurdish airports. Flights to Kurdish airports depart from Baghdad fairly regularly, but it would appear that they are less available than previously. It is possible to book flights from Baghdad to Erbil and Sulamanyia but not possible to book the same on Iraq Airways."
13. The appellant will be returned from the United Kingdom to Iraq on an international flight by the UK government and will only be seeking a domestic flight from Baghdad to the IKR.
14. In relation to relocation to Baghdad, Dr Fatah states the appellant will face a huge disadvantage in finding employment and accommodation and communicating and integrating with other people in Baghdad as he

only speaks a little Arabic. The appellant claims to have experience as a village shopkeeper but lacks education and is illiterate which it is stated would make it more difficult to find employment. Dr Fatah also speaks of obstacles in relocating to Baghdad due to sponsorship requirements for IDP's as the Baghdad Government does not allow entry for any IDP's unless they have a sponsor within the Baghdad Governorate. It is said the sponsorship policy has been strictly enforced and that if an IDP's home area is previously or currently held by ISIS, or areas affected by conflict, they face three additional requirements which are (a) security clearance from five security agencies: National Security, Federal Police Intelligence, Local Police Intelligence, Baghdad Operations, and ISF Intelligence. It is said they require a sponsor in the neighbourhood of Baghdad in which they wish to settle who is required to provide documentation and may be asked to gain a support letter from the local *mukhtar* confirming their residency in the neighbourhood. The individual relocating requires a support letter from the *mukhtar* confirming their status as an IDP wishing to relocate.

15. Dr Fatah notes these requirements must be held by people upon their arrival in the neighbourhood to which they wish to relocate although even those with appropriate documentation may be refused residency at the discretion of the authorities in Baghdad. It is also reported IDP's who are able to relocate to Baghdad may also face restrictions on their freedom of movement although it is also noted elsewhere that IDP's did not face restrictions on freedom of movement if they possess valid documents.
16. As a Kurd in Baghdad; Dr Fatah states that as a person removed from his kinship network the appellant would have great difficulty in finding employment, accommodation and generally in integrating. Dr Fatah states that the Kurdish community in Baghdad is not organised in any way so as to be able to offer the appellant any sort of assistance with employment, accommodation or integration but is rather comprised of individuals who have their own interests.
17. In relation to relocation to the IKR; Dr Fatah notes the appellant is from the Kirkuk Governorate, a disputed territory, which may lead him to face some issues in relocating to the IKR. Dr Fatah states as an ethnic Kurd the appellant may be able to relocate if he is able to obtain documentation, for while the Kurdish authorities would allow Kurds from disputed territories to enter the IKR they cannot obtain any identity cards relating to this area. They can rent properties and stay in the region and if they stay they need to provide their details to the local *Asayish*. If they do not they can face security issues. If they are able to find employment a Kurd may be able to stay in the Kurdish controlled IKR.
18. Dr Fatah states that the appellant requires documentation, most importantly his CSID which is also required to leave the airport and pass through land security checkpoints. Dr Fatah states the appellant would

have to return to his original civil registry in Kirkuk to obtain documentation and to also register civil occurrences and that it is not possible for the Public Distribution System rations to be moved from outside the KRG to within it; meaning the appellant would not be able to rely on the food ration registered in Kirkuk.

19. Dr Fatah notes that arrival at Erbil airport does not generally require sponsorship for individuals from Kirkuk although the appellant may still face scrutiny at the airport due to ISIS having formerly been in control of his home area. Dr Fatah also notes an account of individuals from Kirkuk wishing to enter the IKR by land being refused at checkpoints. It is stated an individual from Hawija in Kirkuk is likely face some suspicion due to ISIS control of the area and the appellant may be subject to close scrutiny to determine whether he can enter and remain in the IKR.
20. Dr Fatah confirms the appellant speaks the main language in the IKR and would not face linguistic obstacles to integration in the Sulamaniyah and Erbil governorates. Dr Fatah repeats his earlier comment regarding experience as a village shopkeeper and lack of education making it difficult to find employment. Dr Fatah refers in the report to lone individuals, both men and women, but especially women, who relocate to a new place in the absence of family support possibly facing suspicion and hostility, not by virtue of any written rules but societal codes. If a person has family members or friends in the area of relocation integration will be facilitated as the family members or friends can introduce the relocated to other people in the community.
21. On behalf of the appellant, it was submitted that the initial hurdle in relation to relocation to Baghdad is the need for a sponsor and security clearance and accommodation which the appellant does not have.
22. It was submitted that even if the appellant is able to pre-book flights to the IKR he would need a debit or credit card to do so but he does not have a bank account. It was also questioned whether flights could be arranged within the proper timescale.
23. The appellant could not go to areas reserved for foreign nationals in the IKR as he is not a foreign national. Road traffic is dangerous and problematic which would put him at risk. It was submitted the appellant may face additional scrutiny and problems as his home area was held by ISIS and there is ongoing conflict. It was submitted is not clear what is happening following the referendum and resultant political instability. The appellant would need to return to Kirkuk to transfer to the IKR which is problematic.
24. It was submitted there is no guarantee the appellant will be able to get into Baghdad or the IKR and maybe sent back to Kirkuk.
25. The appellant will find it difficult to find accommodation or jobs in Baghdad due to language issues.

26. Mr Bates submitted it is important to note the appellant has his CSID. The appellant could obtain the nationality certificate as he will obtain a temporary travel document from the United Kingdom if his nationality is established.
27. Mr Bates submitted it is reasonable for the appellant to return to Baghdad. It was accepted that it has not been argued that what was being proposed was that the appellant could settle in Baghdad as he has no family and limited language skills that will create the problems identified by Dr Fatah and in the case law. It was submitted it is realistic for the appellant to travel from Baghdad to the IKR.
28. Mr Bates submitted it is feasible that the appellant can book a flight on one of the available operators to ensure his means of transport. It was submitted the lack of a credit card is not an issue for if the appellant is removed he will receive a return package from the UK government which provides cash for travel from the place of return to his home area. It was submitted this would include the cost of the flight ticket. The appellant had not demonstrated that he could not book a flight that tied in with his date of return to Baghdad.
29. In relation to return to the IKR, Mr Bates submitted some of the conclusions of the expert are not supported by the evidence. The country guidance case says the appellant will be able to enter the IKR without a sponsor and it was not made out that recent changes would make the matter any different. The appellant is from Kirkuk an area that is now in the control of the Iraqi government and Shia militia and it is not made out the appellant will be prevented from returning to his home area, if required.
30. The information in UNHCR documented on 20 October 2017 refers to small areas of armed conflict. It is submitted there is no evidence that a Kurd will be forced from the IKR and UNHCR refers to some having returned to Kirkuk indicating the situation is not as severe as it was thought it would have been in Kirkuk for Kurds who lived there.
31. Mr Bates submitted it is also relevant appellant left Iraq at the first opportunity and has therefore not lived in his home area whilst it has been under the control of ISIS. An examination will not reveal security concerns based on association with this group as he will be able to establish to the authorities or anybody who checks that he has been in the United Kingdom.
32. Mr Bates challenged one of the sources relied upon by Dr Fatah at [112 – 116] of the report on the basis nothing is known of the sources used by Dr Fatah meaning that one could not be satisfied that source is reliable. Mr Bates questioned why Dr Fatah would rely upon one unnamed individual source as evidence as to risk to Kurds. It was submitted that if this evidence was credible or reliable it would be known to the UNHCR but inadequate evidence was provided from any

other source to corroborate the claim. It was submitted that the report of Dr Fatah does not demonstrate that the appellant will be unable to gain entry to Baghdad and relocate from there to the IKR.

33. In relation to the appellants claim to have no family; Mr Bates referred to the fact that the core account of his protection claim had been rejected as not being credible which raises the question of whether his claim not to have any family members to return to was credible. In any event, the appellant was not entitled to international protection. It was submitted the appellant will be entitled and able to obtain documents issued by the Iraq authorities and there was no evidence that he will face any risk from the Iraqi regime in Kirkuk.
34. In reply Ms Sachdev accepted Dr Fatah did not say travel is impossible but did indicate that difficulties arose. It was submitted it is questionable what the appellant would do in the interim from landing in Baghdad to boarding his flight to the IKR. It was submitted the support the respondent said will be available will not be sufficient as the appellant will not be able to find a place to stay. It is argued the appellant has limited work experience to provide support.
35. Ms Sachdev submitted there was evidence of the Peshmerga holding people at the land checkpoints who tried to secure entry from a number of places and that following the initial onslaught by ISIS the IKR is full and not taking internally displaced persons. IDPs face problems in Kurdistan.
36. It was submitted the respondent's country information dated September 2017 confirmed that a person would be sent back to Kirkuk unless they had a sponsor and if he has no sponsor the appellant will be treated as an Iraqi citizen not a Kurd indicating the difference between ethnic Kurds and persons from Kirkuk.
37. It was submitted the respondent's conclusion the appellant can return is not the case and that the appellant has no network in the Kurdish region to assist him and faces a huge amount of difficulty in Iraq. Return would not be as easy as suggested by the respondent on which basis the appeal should be allowed.

Discussion

38. It is not disputed that the appellant will find it difficult to settle in Baghdad as a result of his lack of a sponsor, language issues, and employment opportunities. The term 'settle' refers to a more permanent status than that of a person visiting or passing through.
39. The appellant will be able to return with relevant documentation including a passport or temporary travel document and is in possession of his CSID. It is not disputed the appellant will also have the benefit of a relocation package to assist with the costs of travel to his home area.

40. It is not made out that the appellant will not be able to obtain a domestic flight within Iraq to the IKR. The point made on the appellant's behalf regarding the timing of the flight is a matter that can form part of the arrangements for his return. It is not made out that once a flight is booked, on which the appellant is to be returned to Baghdad, arrangements cannot be made for either a connecting flight to the IKR or one shortly after arrival. If delay is minimal the appellant will be in the same position as any other passenger in transit in an international airport. If there was a delay of a few days it is not made out the appellant will not have the resources or ability to arrange and fund temporary accommodation. The evidence does not show that Kurds cannot enter Baghdad or visit and speaks of difficulties in settlement. The statistics relating to the number who previously flew between Baghdad and the Kurdish region, some 2000 a day reduced to 300, indicates that many Kurds fly between the named cities. It is not made out that the appellant will not be able to enter and remain in Baghdad on a temporary basis.
41. The issue of a lack of a credit card is a reference to how flights will be booked online ordinarily by individuals in the United Kingdom. There was no evidence from the appellant to show that flights could not be booked, with the respondent's assistance as part of the relocation package if feasible, or by the appellant using the cash resources available to him on return.
42. It is not made out the appellant has any adverse profile that would give rise to suspicion based upon his having lived in an area previously under the occupation of ISIS. The appellant has been in the United Kingdom and his presence here can be vouched for if required.
43. It is not made out the appellant will not be able to enter the IKR. In relation to family support the appellant, in his asylum interview, gave details of his mother, father, two brothers, a sister, and other family in Iraq. The appellant claimed not to be in contact with his family members at the date of that interview which was 6 February 2016. The appellant has adduced no credible evidence to support his claim that one of his brothers, [Z], was killed.
44. The appellant claims to have left Iraq on 1 October 2015.
45. The First-tier Tribunal Judge noted inconsistencies in the appellant's account including his claim that ISIS had attacked his area and that his father had been killed in or around March 2013 as the country information indicated that ISIS did not attack his home area until June 2014 some fifteen months after the appellant claimed that his father was killed by ISIS. The Judge did not accept the appellant's explanation for this contradiction was plausible and found the appellant was fabricating the story so to enhance his asylum claim.

46. The appellant also claimed before the First-tier Tribunal that he learned his father was killed in March 2013 and that he was in prison at the time whereas he had regularly changed his story from March 2013 to March 2014 and claimed he was not put in prison until May 2013. The Judge did not accept the appellant's explanation for the clear discrepancy in the chronology was plausible. The First-tier Tribunal Judge at [28] of the decision of that Tribunal found the appellant's evidence in relation to how he learned of his father's death could not be accepted as it was riddled with inconsistencies to such a degree that it was to be entirely dismissed. At [39] the First-tier Tribunal Judge found the appellant's evidence may not be relied upon and that he had not provided any credible basis to support his claim. These are preserved findings. There is, therefore, arguable merit in Mr Bates submission that little weight should be placed upon the appellants claim to have no family support in Iraq.
47. I find it not made out that the appellant will be returned to the IKR as a person without family support from either his parents, siblings, or other family members. The appellant has not made out that he has not been able to trace family members as the evidence appears to suggest he has made very little effort to do so. It is not made out that family support will not be available to assist the appellant in reintegrating into Iraq or to assist with the provision of accommodation and/or employment. The family previously owned a shop at which the appellant worked and there is no credible evidence this or other resources have been lost to the family.
48. The appellant is no more than a failed asylum seeker identified by the First-tier Tribunal as a person who is an economic migrant. No real risk has been made out on return. The appellant has not established he has any adverse profile that will make him of interest to any of the authorities. It is not made out the appellant cannot be returned to Baghdad or that he will be unable to fly from Baghdad to the IKR and secure entry. It is not made out the appellant will not have family support or assistance to enable him to re-establish himself either in the IKR or his home area if he is returned there by the Kurdish authorities.
49. The burden of establishing an entitlement to international protection falls upon the person so alleging. I do not find the appellant has discharged the burden of proof upon him to the required standard to establish such an entitlement. It is accepted that with the upheaval that has occurred in Iraq the appellant may find matters difficult but this does not entitle a person to a grant of international protection.

Decision

- 50. The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

51. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Hanson

Dated the 14 March 2018