



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03760/2017

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Manchester
On 17th July 2018

Decision & Reasons Promulgated
On 26th July 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

S A
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif, instructed by Fountain solicitors

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

DECISION AND REASONS

1. The appellant claimed to be an Iraqi citizen. He arrived in the UK on 14th October 2016 and claimed asylum the same day. His claim was refused for reasons set out in a decision dated 3rd April 2017. His appeal was dismissed by First-tier Tribunal Judge Gurung-Thapa who found the appellant not to be an Iraqi national but nevertheless went on to consider his asylum claim as if he were. She dismissed that claim together with his human rights claim for reasons set out in a decision promulgated on 11th August 2017.
2. The appellant sought and was granted permission to appeal on four grounds:

- (a) That having found the appellant not to be a citizen of Iraq, the judge then went on to make findings as if he were; such contradiction being a material error of law;
 - (b) The judge failed to apply *AA (Iraq)* [2017] EWCA Civ 944; linked with
 - (c) Failed to apply country guidance in failing to assess adequately whether it would be unreasonable/unduly harsh for the appellant to relocate to Baghdad or the IKR; and
 - (d) Failed to make findings on paragraph 276ADE Immigration Rules.
3. Before me Mr Sharif acknowledged that the Secretary of State had been obliged to indicate where it was intended to return the appellant to, even though it was not accepted that he was a national of that country as he claimed. Mr Sharif also accepted that the judge had made a finding on the appellant's nationality – he was not a national of Iraq – but had then proceeded based on his claimed nationality on the premise “if she was wrong in that finding”. As pointed out by Mr Bates, the appellant had not submitted that as a non-Iraqi national he feared persecution if returned to Iraq but had maintained throughout that he was Iraqi. There is no error of law by the First-tier Tribunal in finding that the appellant was not an Iraqi national but then going on to consider his claim for asylum as if he were.
4. Grounds 2 & 3 are linked. Mr Sharif submitted that at the date of the hearing, Kirkuk was still to be regarded as a contested area and that an Article 15C risk remained. He submitted that at the time, Kirkuk was still under the control of Daesh and that to depart from the Country Guidance applicable at that time was a material error of law. To then conclude that the appellant could relocate to Baghdad without considering whether that was unduly harsh or unreasonable was a material error of law; that the judge had failed to consider the factors set out in the CG in reaching that decision and he set out the headnote he relied upon:

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called “contested areas”, comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.

B. DOCUMENTATION AND FEASIBILITY OF RETURN (excluding IKR)

5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad.

.....

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 CSID or will 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 the support generally given to IDPs.

5. The judge, for cogent and unchallenged reasons, disbelieved the appellant's account of why he was at risk of being persecuted for a Convention reason. The First-tier Tribunal judge found that his family (mother, step-father, sister) had not been killed by ISIS. She found he had a CSID, that he has family including an uncle, mother, step-father and sister in Iraq with whom he is in contact and that although he would be returned to Baghdad he had the option of travelling to the IKR if he wished where he would be able to relocate. The First-tier Tribunal judge concluded that there was sufficient evidence to depart from the finding in AA that Kirkuk remained under the control of Daesh/ISIS. If that finding is incorrect and an error of law, the issue arises as to whether the judge's consideration of potential relocation holds good.
6. The judge in reaching her findings referred to the CG case and to the headnote which confirmed that a Kurd who does not originate from the IKR can travel there as a visitor, obtain a permit and then renew permission. If he finds employment he can remain for longer. She also noted that there was no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end. She also, in considerable, detail considered whether the appellant's return to Kirkuk was 'feasible'. Even if she was wrong in stating that there was sufficient evidence to depart from the CG with regards to Kirkuk, her analysis of the situation the appellant would find himself in in either Baghdad or the IKR cannot be considered to have been undertaken without consideration of whether it is unreasonable or unduly harsh. She did not use those specific words other than in quoting the relevant extracts from AA whilst taking her decision, but the tenor of her decision, makes clear that she was considering internal relocation from the perspective of whether it was reasonable for a single young, fit man with relatives in Iraq and a CSID with no political profile and with the ability to find employment to travel to Baghdad/IKR. Although based on the evidence that was before the judge at the date of the hearing she may have been premature in reaching a finding that Kirkuk was no longer a contested area, she nevertheless considered the possibility of relocation. There is no error of law in the decision by the First-tier Tribunal judge in finding that the appellant could relocate to Baghdad/IKR.
7. In so far as paragraph 276ADE of the immigration rules is concerned, Mr Sharif acknowledged that other than the matters he relied upon in his asylum claim, the appellant had no other basis for asserting that there were significant obstacles

that prevented him from reintegrating into Iraq. In the absence of something other than a claim for international protection being put forward, there is no material error of law by the First-tier Tribunal judge failing to decide on that aspect of the claim given the international protection claim failed.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands.

Anonymity

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 an order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008); the appellant is a failed asylum seeker who is being returned to the country from which he claimed asylum.



Date 20th July 2018

Upper Tribunal Judge Coker