



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

Appeal Number: PA/04135/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 27th March 2018**

**Decision and Reasons
Promulgated
On 10th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**INS
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Levine, ILC Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant is a citizen of Iraq who was born on the 1st January 1998. She appeals against the decision of First-tier Tribunal Judge Spencer, promulgated on the 12th June 2017, to dismiss her appeal against refusal of her Protection Claim.
- 2.** The basis of the appellant's claim can conveniently be summarised as follows.

- 3.** The appellant is a Kurdish Sunni Muslim who hails from Kirkuk in Iraq. On the 15th September 2016, she began a sexual relationship with a man who was providing her with private tuition in mathematics and physics. She fell pregnant as a result. The appellant and her tutor immediately left Iraq. However, they subsequently became separated on route to the United Kingdom. The appellant now fears that upon return to Kirkuk her family members will kill her for bringing shame and dishonour upon the family as a result of giving birth to a child outside wedlock. She additionally fears that she will suffer serious harm due the areas surrounding Kirkuk continuing to be contested by Daesh. Finally, she fears that she will become destitute because she is a lone female without documentation.
- 4.** Judge Spencer rejected the appellant's account of the circumstances in which she came to leave Iraq, not least because there was conclusive (and uncontested) fingerprint evidence to show that she was in Greece at the time when she claimed to have been in a sexual relationship with her tutor in Iraq. The judge was unimpressed by the appellant's change at the hearing of her timeline and her explanation for why it was different from that which she had given in her Asylum Interview. The judge also held that the fact that the appellant had entered the UK using a false Spanish passport was damaging to her overall credibility. His conclusion in relation to the reasons for her flight from Iraq are stated at paragraph 32 of his decision:

"I therefore conclude that the Appellant has failed to substantiate her claim as to how she became pregnant or that she has a well-founded fear of her family."
- 5.** Paragraph 4 of the Grounds of Appeal argue that (a) the judge failed to apply "any commonsense to the matter" (above), (b) the question of how the appellant came to be pregnant was "totally irrelevant", and (c) the judge's sole purpose in making this finding was "to undermine and to lower the self-esteem of the Appellant". Mr Levine sought to advance this somewhat Delphic argument by suggesting that, upon a natural and ordinary construction of the words employed, the judge had made a finding that the appellant had failed to substantiate her claim that she become pregnant through sexual intercourse. Such a finding would indeed be lacking in "any common sense". It is however, if I may say so, a most improbable interpretation of the judge's meaning. When read within the context of the preceding paragraphs it is clear that what the judge in fact found was the appellant had failed to substantiate the claimed circumstances in which she had entered into a sexual relationship with the father of her child. On this reading of paragraph 32, the judge's finding was very far from "irrelevant" to the issues in the appeal. On the contrary, it went to the very core of the appellant's claim that she was now at risk of harm from her family members in Iraq.
- 6.** The only other ground of appeal that was pursued by Mr Levine was that contained within paragraph 5 of the written grounds:

“Paragraph 34 of the Determination of Judge Spencer is internally inconsistent and weak at best. If the judge is able to make a finding to the effect that “I find that she would face a real risk of suffering harm if she attempted to travel through the areas controlled by Daesch via land then it is logically indefensible for the Judge not to follow the Upper Tribunal case of AA in which it was said that there was a real risk of indiscriminate violence in Kirkuk (the Home town of the Appellant). The judge has not understood the true nature and legal effect of the Upper Tribunal case of AA and how it is directly relevant and applicable to this case.”

7. Before considering this ground further, it is first necessary to set in context what the judge had to say about the reasonableness of the appellant’s return to Kirkuk and relocation elsewhere within Iraq.

“33. It was agreed between the parties that it was held in the country guidance case of *AA 15(c) Iraq CG 2015 UKUT 00544 (IAC)* that Kirkuk is a contested area. The parties also agreed that the Court of Appeal held in *SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940* stated that:

“decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced to justifying their not doing so.”

34. The Respondent seeks to rely upon a Country Policy and Information Note dated March 2017 (paragraph 70 RFRL). This states that, *“the security situation has changed since April 2015, the point up to which AA considered evidence... Daesh now only control parts of Mosul... and the surrounding areas in Kirkuk governorate.”* I have to consider how the Appellant would travel from Baghdad to her hometown of Kirkuk. I find that she will most likely have to travel through an area controlled by Daesh in order to do this as they still control the surrounding areas in the Kirkuk governorate. There is no airport in Kirkuk and she would therefore have to complete this journey by land. I find that she would face a real risk of suffering serious harm if she attempted to travel through the areas controlled by Daesh via land. I therefore find that this evidence does not amount to very strong grounds to not follow the Country Guidance of AA on this issue.

35. I therefore turn to the issue of internal relocation. I agree with the submission that the Appellant’s return is feasible as she will be able to obtain her Iraqi nationality certificate and passport from her family. I also agree that even if return were not feasible this in itself would not be a reason to grant protection.

36. The Respondent submits that the Appellant could travel from Baghdad to the IKR to live with her aunt. The Country Guidance in AA states:

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 15(c) risk to an ordinary civilian in the IKR.*

19. *A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*

20. *Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness 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 Irbil by air); (b)the likelihood of K's 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."*

37. I follow the guidance in AA and find that she would be returned to Baghdad. I find that she would be able to travel from Baghdad to the IKR. It has not been substantiated that she would have to travel through any area controlled by Daesh in order to complete this journey. She is an ordinary citizen and will have her documents. She is not at risk at any roadblocks, as I do not accept that her family will have reported her missing, as I do not find her credible on this issue as to why she left Iraq. I do find that she is heavily pregnant. I have considered this however I find that this will not restrict her from travelling via land or air. There is no evidence that substantiates that she will not be able to conduct this journey as a result of being pregnant. I find that she would be to take an internal flight to the IKR and this would also mean that she would avoid any area controlled by Daesh. I find that she has shown great resourcefulness and fortitude in travelling to the UK. I find that she could use this again and could travel to the IKR and live with her aunt.

38. She is in contact with her aunt and has visited her once a year (Q.24) and I find that she will be able to reside with her. These findings mean that she will be able to find accommodation very quickly. The Country Guidance states, "*There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*" I therefore find that the Appellant would be allowed entry initially for 10 days and would be allowed to remain there. Once her child has reached an age where other people can care for him/her I find that the Appellant will be able to use her resourcefulness and find employment. I find that she is an intelligent young lady who will be able to find some sort of employment. I agree with the Respondent's submission in the RFR and find that it would be reasonable for the Appellant to relocate to the IKR.

39. The Appellant submits in her witness statement that she requires medical care and assistance in the UK and that she will require a reasonable level of nursing/medical care after she has given birth. The Appellant herself in interview stated that she now has no complications

in her pregnancy and she was told that these issues had resolved the day before the interview (Q.4). I find that she has not substantiated that the appropriate level of care for a pregnant lady is not available in the IKR. I also find that she has not substantiated that her pregnancy will restrict her from relocating and travelling to the IKR.

8. Contrary to the impression that is given in the written grounds of appeal, it is apparent from the above that the judge was well aware of the need to follow the guidance in AA absent cogent evidence justifying departure. It is moreover clear that he had declined the respondent's invitation to depart from that guidance on the strength of the further information that had been placed before him. Doing his best with the grounds as pleaded, Mr Levine suggested that there was an inherent contradiction between the judge's finding at paragraph 34 that it would not be safe for the appellant to travel from Baghdad to Kirkuk and his finding at paragraph 37 that she could safely travel from Baghdad to the Independent Kurdish Region (IKR). However, it is patently clear from the judge's reasoning that the difficulty for the appellant in travelling to Kirkuk was that due to the absence of an airport in that city so that she would be forced to travel overland through ISIS-controlled territory, whereas she would be able to avoid this by taking an internal flight to Erbil airport in the IKR [paragraph 37]. That was a finding that was reasonably open to the judge given his other findings (which are not challenged) that the appellant would be able to secure the necessary travel documentation [paragraph 35], the absence of evidence to suggest that the Kurdish authorities proactively remove those who stay beyond their initial period of leave to remain, the appellant's continued contact with her aunt who lives in that region [paragraph 38], and the lack of evidence suggesting that appropriate medical care would be unavailable in the IKR [paragraph 39].

Notice of Decision

9. The appeal is dismissed.

Signed

Date: 7th April 2018

Judge of the First-tier Tribunal

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

