



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04205/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 4 June 2018

Decision & Reasons Promulgated
On 7 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

JIHAD QADIR MOHAMMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed of A1 Immigration Services
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Manchester promulgated on 7 August 2017, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 15 March 1993 and is a national of Iraq. On 22 April 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Manchester ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 26 October 2017 Judge Foudy gave permission to appeal stating

1. The appellant seeks permission to appeal against a decision of the First-tier Tribunal Judge Manchester who, in a decision promulgated on 7 August 2017, refused the appellant's asylum appeal.
2. The grounds argue that the Judge erred in finding that the appellant's home area in Iraq was not a contested area and failing to adequately address risk on return.
3. In the decision the Judge found that the appellant came from Tuz. The Court of Appeal recently found that that was a contested area: AA(Iraq)[2017] EWCA Civ 944. It is arguable that the appellant would therefore be at risk in that area.
4. The grounds disclose an arguable error of law.

The Hearing

5. (a) Mr Ahmed moved the grounds of appeal for the appellant. He told me that the Judge failed to follow the country guidance given in AA (Iraq) 2017. He told me that the Judge found that the appellant's home area is a contested area, so that the Judge should have drawn the conclusion that the appellant is entitled to Humanitarian Protection. Mr Ahmed told me that the Judge's consideration of internal relocation is flawed, and that the Judge's findings at [41] and [42] of the decision are made against the weight of evidence.

(b) Mr Ahmed told me that at [44] the Judge correctly finds that the appellant does not come from IKR, but that the Judge then failed to follow country guidance by reaching the conclusion that the appellant could return to IKR. He told me that the Judge should have found that the appellant will be returned to Baghdad. He should then consider the risks to the appellant in Baghdad and the appellant's ability to travel between Baghdad and IKR. He told me that, because the Judge did not follow that structure of analysis, the Judge's findings in relation to internal relocation are flawed.

(c) Mr Ahmed referred me to AA (Iraq) 2017 and told me that, on the facts as the Judge found them to be, the only conclusion that the Judge should have reached (if he had followed the guidance given in that case) is that internal relocation is unduly harsh and therefore the appellant is entitled to humanitarian protection and succeeds on article 3 ECHR grounds. Mr Ahmed urged me to set the decision aside.

6. For the respondent, Ms Petterson told me that the decision does not contain errors of law. She told me that at [38] the Judge makes a clear finding, in line with AA (Iraq) 2017 EWCA Civ 944, that the appellant's home area is a contested area. She told me that the Judge then correctly went on to consider internal relocation, and found that it is neither unduly harsh nor unreasonable for the appellant to go to IKR. She told me that the Judge's findings on internal relocation are sustainable and that the Judge's

decision was reached after the Judge correctly took guidance in law. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. At [38] of the decision, the Judge correctly took guidance from AA (Iraq) 2017 EWCA Civ 944. There, the Judge found that the appellant comes from a contested area and that the appellant cannot return there because of the risk of serious harm within the meaning of article 15(c) of the qualification directive. The Judge then correctly turns his mind to internal relocation.

8. The Judge's findings on internal relocation start at [39]. The Judge finds that the appellant is a Kurd who does not come from IKR, but visited there in the course of his employment as a delivery driver. The Judge's conclusion is that because the appellant is Kurdish and has visited IKR a number of times, the appellant can return to IKR. At [43] of the decision the Judge relies on paragraph 19 of the annex to AA (Iraq) 2017 EWCA Civ 944.

9. AA (Iraq) 2017 EWCA Civ 944 says that the appellant will be returned to Baghdad. On the facts as the Judge found them to be the appellant is a single Kurdish male with no connection to Baghdad. His first language is Kurdish Sorani, although he understands Arabic.

10. The following guidance is also found in AA (Iraq)

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. *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 paragraph 2 above) the Baghdad Belts.*
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.*

16. *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).*

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.*

11. What is missing from the Judge's decision is a consideration of what will befall the appellant if he is returned to Baghdad. What is required is a consideration of whether or not the appellant has a network of support available to him, both Baghdad and IKR, and whether or not he has or is able to acquire a CSID. The facts and circumstances of the appellant's case must be set against the seven factors set out at [15] of annex A to the case of AA (Iraq) CG [2017] EWCA Civ 944. Analysis of how the appellant would make his way from Baghdad to IKR is also necessary.

12. As that analysis is missing from the Judge's decision, I find that the decision is tainted by a material error of law and set the decision aside.

13. Although I set the decision aside I have sufficient material before me to enable me to substitute my own decision. The Judge's decision is relation to the asylum appeal is not challenged.

14. On the facts as the Judge found them to be, the appellant is distinguishable by his ethnicity as a Kurd, his language (Kurdish Sorani) and his religion, and so will be viewed as a member of a minority community. The appellant might have a CSID; but he does not have family members or friends in either Baghdad or IKR who are able to accommodate him; there is no suggestion that the appellant can find a sponsor to access a hotel room or rent accommodation; He has no network of support in Iraq. Although Kurdish, he has not lived in IKR. He does not come from IKR, so the respondent will send him to Baghdad.

15. Five of the seven factors set out in paragraph 15 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 count against the appellant. One factor is neutral, and only one factor (the potential to recover his CSID) is in the appellant's favour. On the facts as the Judge found them to be, and placing reliance on the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, the appellant's profile indicates that it cannot be reasonable to return the appellant to Iraq, because it would make the appellant a homeless, unemployed, internally displaced person. Internal relocation is unduly harsh.

16. If returned to Iraq the appellant would be treated as a Kurd from a contested area. As a displaced Kurd, the appellant would be treated as a man from a minority ethnic group. The appellant has no support in Baghdad (Where the respondent will leave him). He will be expected to make the final part of the journey alone, from a dangerous starting point without access to accommodation or food. It is most likely that he will not have access to accommodation and employment within Iraq. He therefore faces the prospect of destitution if returned to Iraq. Internal relocation is unduly harsh.

17. Even if the appellant could be admitted to IKR for 10 days, and that 10-day period may be extended for a further 10 days, he would only have 20 days to try to establish himself with a job and accommodation. He would be competing with other young men in a region which is starting to struggle with an influx of refugees. As a young man from a minority group without a means of support in Baghdad, there will be significant obstacles to the appellant negotiating his way from Baghdad to IKR. The appellant does not have skills which make him desirable to an employer. Following the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, I find that internal relocation is unduly harsh.

18. The appellant is therefore entitled to humanitarian protection and succeeds on article 3 ECHR grounds.

Decision

19. The First-tier Tribunal decision promulgated on 7 August 2017 is tainted by material errors of law. The decision is set aside.

20. I substitute my own decision.

21. The appeal is dismissed on asylum grounds

22. The appeal is allowed on humanitarian protection grounds.

23. The appeal is allowed on article 3 ECHR grounds.

Signed *Paul Doyle*
Deputy Upper Tribunal Judge Doyle

Date 6 June 2018