



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

Appeal Number: PA/06747/2018

THE IMMIGRATION ACTS

Heard at Field House UT

On 1st November 2018

**Decision & Reasons
Promulgated**

On 16th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR F.F.M.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation or appearance

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant F.F.M. was born on 24th May 1994 and is a male citizen of Iraq. By a decision dated 19th May 2018 the Secretary of State refused the Appellant's application for international protection. The Appellant appealed to the First-tier Tribunal (Judge Blundell) which in a decision promulgated on 9th August 2018 dismissed the appeal. The Appellant now appeals with permission to the Upper Tribunal.
2. The core of his claim hinged on an assertion that he is of Kurdish ethnicity and came from Kirkuk. He claimed that he feared persecution from ISIS and Daesh on account of volunteering for an organisation opposed to ISIS and because he had worked as a security guard at the United University in Sulaymaniyah.
3. The central part of the Appellant's case revolved around a dispute as to where he originated from. The Appellant claimed that he came from Kirkuk which is outside the three federally recognised Independent Kurdish Region (IKR) governorates of Dohuk, Erbil and Sulaymaniyah. It was the Respondent's case that the Appellant's home village of Darveshan is situated in Sulaymaniyah. The Respondent was equally satisfied that following answers given by the Appellant in his various interviews he was untruthful in a claim that he had lost contact with his family. The Respondent was satisfied that the Appellant's wife, children, parents and a brother remained in Sulaymaniyah.
4. After taking evidence and hearing submissions, the judge had reserved his decision. He then became aware that the country guidance case of **AAH (Iraq) [2018] UKUT 212 (IAC)** had been handed down (it was published on the same day as the FtT hearing). Quite properly the judge decided that this decision seemed to be relevant to the appeal before him and he therefore issued directions for further written submissions from both parties [16]. For the purposes of this hearing, the written submissions from the Appellant briefly continued to assert that he was from Kirkuk, had no identity documents with him, and therefore could not safely relocate to Kirkuk due to the ongoing conflict.
5. The judge did not believe the Appellant's account of past events in Iraq. Having seen and heard from the Appellant and after referring to the various interviews which the Appellant underwent, Judge Blundell made several findings of fact:
 - The Appellant is of Kurdish ethnicity
 - The Appellant's family home is in Darveshan village in the Sulaymaniyah area

- His family, including his parents, wife and children remain in that area
 - The Appellant has not lost contact with his family as claimed. The judge drew on evidence from the Appellant's response in his interview (Q.29) and disbelieved the Appellant's claim that his home village had been demolished. There was evidence that the Appellant keeps in contact with his family by Viber
 - The Appellant has a CSID card, which is at his home in Sulaymaniyah
 - The Appellant's passport was retained by the German authorities when the Appellant claimed asylum in Germany, en route to the UK.
6. In a careful and thorough analysis of the evidence before him the judge concluded that the Appellant was demonstrably not from Kirkuk as he had claimed and was not at risk from ISIS. Central to the judge's reasoning were his findings that the Appellant was from Darveshan in Sulaymaniyah [25] and that his claim to have lost contact with his family was discredited [28].
7. The judge then turned his mind to the ability of the Appellant to return safely to the IKR. Following receipt of the further submissions from the parties, the judge analysed the Appellant's position and, referring to the guidance set out in **AAH**, concluded the following at [32-34]:

"In light of the findings I have reached about the appellant's home area; the location of his family; and the contact that he has with his family, I consider the application of the country guidance to be essentially straightforward. His CSID remains at the family home in Darveshan. Were he to be returned to Baghdad (which is the only place to which he could conceivably be returned at present), he would need that CSID in order to leave the airport. [.....] If the appellant were removed from the UK, he would alert his family to his impending arrival and a member of the family could travel to Baghdad to provide him with his CSID. [.....]" [32]

"In the event that the appellant's family has misplaced the appellant's CSID (or it is damaged or expired), however, I consider it more likely than not that they would be able to obtain a new CSID for him before his arrival in Iraq." [33]

"I conclude, therefore, that the appellant would be in possession of a CSID shortly after arriving in Baghdad because his family members would bring his existing CSID to him or would obtain a replacement before his arrival. The appellant would use that document to travel to the IKR without difficulty. On arrival, he would be subjected to security screening but there is no reason to believe that he would be of concern to the Kurdish authorities. [.....] He would return to his family in Sulaymaniyah and he would not be required to resort to a critical shelter arrangement of the kind described in the country

guidance. [.....] There is no rational basis upon which I could conclude that the appellant would be destitute or at risk on return to Sulaymaniyah.” [34]

He then dismissed the appeal.

8. The Appellant appealed that decision and permission was granted in the following terms:

“The grounds requesting permission to appeal to the Upper Tribunal argue that the judge erred in the conclusions reached in respect of the CSID card and its replacement. Those ground an arguable material error of law and leave is granted on all grounds.”

9. It is correct to say that issue was taken with the FtT’s findings on the basis that they were ‘speculative’ and unjustifiable. Thus the matter comes before me for an error of law hearing at the Upper Tribunal.

Error of law hearing

10. Before me, Ms Isherwood appeared for the Respondent. There was no attendance either by the Appellant or anyone on his behalf. No reason was put forward to explain this non-attendance. I was satisfied that both the Appellant and his named representatives had been properly served with notice of the hearing. I caused enquiries to be made with the Tribunal administration staff to ensure that no further correspondence had been received from either of them. That drew a negative response. In the circumstances I saw no reason not to proceed with the hearing and I heard submissions from Ms Isherwood.
11. Suffice to say that Ms Isherwood relied in the main on the submissions dated 30th July 2018, forwarded by the Respondent in response to the directions issued by the FtTJ. She submitted that the decision of the FtTJ was a careful and well-constructed one. The judge had addressed the CG cases of both **AA** and **AAH**. He had made clear findings on credibility concerning the Appellant’s claim that he came from Kirkuk and that he had lost contact with his family. She drew my attention to the fact that the Appellant by his own account had said that he worked in Sulaymaniyah and that he had exited the country using his own passport from Sulaymaniyah airport. It was open to the judge to find that the Appellant came from that part of the IKR rather than Kirkuk. It stood to reason that his family remained there and that he had not lost contact with them.
12. She further drew my attention to the judge’s findings at [28] where the judge commented that the Appellant was a man who changed and contrived his account in order to bring himself within the terms of the prevalent case law.

13. She outlined that the Appellant himself had said that his CSID card was at home and that the judge's finding that the Appellant would be able to be in possession of a CSID, within a reasonable space of time, was properly reasoned. Furthermore referring to the further submissions, she pointed out that in evidence given to the FtT hearing, the Appellant agreed that he would be willing to attend the Iraqi embassy to try and obtain an ID.
14. Given these circumstances the decision was fully sustainable. The judge had carefully considered step by step the process outlined in **AAH** and the appeal should therefore be dismissed. The Appellant's grounds amounted to no more than a disagreement with the judge's findings. The Appellant has not attended to put a contrary argument before me.

Consideration

15. I find merit in Miss Isherwood's submissions. I find that the evidence before the judge was such that he was unarguably entitled to conclude that the Appellant was neither a credible nor consistent witness. That being the case, I am satisfied that the judge properly analysed the evidence before him and made findings which were properly open to him as regards the Appellant's claim to be from Kirkuk.
16. Following on from that I find that there was ample evidence before the judge which led him to the conclusion that the Appellant came from Sulaymaniyah and that his family remained there. I find he was entitled to conclude that the Appellant was in contact with his family.
17. In view of the non-attendance of the Appellant, I heard no argument to the contrary. However, I pay particular heed to the contention made in the grounds that many of the FtTJ's conclusions were plainly speculative and involved matters that had not been put before the Appellant. This refers in particular to the finding that the Appellant's family members would bring his existing CSID or a replacement to him upon his arrival in Baghdad. However, I find that this argument is unfounded for the following reason. The Appellant maintained that he is from Kirkuk and had lost contact with his family. If that were the case, his family would indeed be unable to assist him in this way. Therefore the Appellant could not be expected to acknowledge that they could do so. However, the FtTJ disbelieved the Appellant and concluded that he is from Sulaymaniyah and remained in contact with his family. Therefore the FtTJ was entitled to conclude that the family could assist, and, in these given circumstances, were likely to do so.
18. I am satisfied that using those clear findings the judge properly analysed the procedure and processes for return to Sulaymaniyah via Baghdad, as set out in **AAH**. He reached a sustainable conclusion that there was good reason to expect that it was reasonably likely that the Appellant would have access to, and be in possession of a CSID, shortly after arriving in

Baghdad. This would enable him to transit the airport and thereafter travel to the IKR.

19. It follows therefore the decision of the FtTJ is sustainable and stands.

