



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10971/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 23 July 2018

Decision & Reasons Promulgated
On 10 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HR

(ANONYMITY DIRECTION MADE)

Respondent/Claimant

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer

For the Respondent: Mr J Greer, Counsel instructed by Broudie Jackson and Canter

DECISION AND REASONS

1. The Secretary of State appeals from the decision of the First-tier Tribunal (Judge Rosalyn Chowdhury sitting at Manchester on 28 November 2017) allowing the claimant's appeal against the refusal of his protection claim which he had brought on the basis that he was an ethnic Kurd from the town of Tuz Khormatu in the Salah Ad-Din Governate of Iraq, and that he had a well-founded fear of persecution in his home area at the hands of ISIL or the Shia militia dominated Hashid Al-Shabi, also known as the Popular Mobilization Forces ("PMF"); and that internal relocation to

the IKR was not a reasonable option having regard to the case law of **AA (Article 15c) Iraq CG [2015] UKUT 00544 (IAC)**. The Judge found that the claimant did not have a CSID; and, as Salah Ad-Din was a contested area, the claimant was unlikely to obtain a replacement CSID reasonably soon after his return to Iraq.

Relevant Background

2. The Secretary of State rejected the claimant's account of past persecution by the PMF because in her view there were a number of internal inconsistencies in his account.

The Grounds of Appeal to the Upper Tribunal

3. In the grounds of appeal, a member of the Specialist Appeals Team pleaded that the Judge had failed to give adequate reasons for his findings on the non-viability of internal relocation.
4. Firstly, the claimant's evidence was that his family remained in Tuz Khormatu, and that he was in contact with them. The Judge had thus not given clear reasons for her finding, at paragraph [20], that the family would be unable to assist the claimant in obtaining the identity documents that he left behind, or replacements of the same.
5. Secondly, the only reason given by the Judge was that the area was "*contested*". While Salah Ad-Din province was deemed to be contested at the time of the guidance given in **AA (Iraq) CG [2015]**, the Judge gave no reasons to support her conclusion that it remained a contested area over two years later, despite the well-reported expulsion of ISIL from Iraq, to which reference had been made at paragraph 50 of the refusal decision.
6. Thirdly, at paragraph [24], the Judge had found that the claimant was unable to relocate to the IKR, principally on the basis that he had no former links to the IKR. This conclusion was contrary to the guidance given in **AA**, which did not find that a sponsor or prior connection was required for a Kurd to gain entry to, or residence in, the IKR. The Judge's view appeared to be based upon a citation from paragraph 7.1.5 of the Secretary of State's Guidance Note of September 2017 on internal relocation. One source had indicated that entry to the IKR for Kurds from elsewhere in Iraq "*would depend on their political affiliation*". However, this was an isolated source, and there were several other sources mentioned in the same document which made no reference to political connections being necessary. Further, the Country Guidance in **AA** did not suggest that this was a relevant factor - still less a determinative one.

The Reasons for Granting Permission to Appeal

7. On 18 March 2018, Upper Tribunal Judge Macleman granted permission to appeal on all grounds raised.

The Claimant's Rule 24 Response opposing the Appeal

8. On 1 April 2018 the claimant's representatives served a Rule 24 respondent opposing the appeal. Mr Greer of Counsel was a co-author of this document.
9. Mr Greer submitted that the Secretary of State was wrong to assert that Judge Chowdhury had failed to give adequate reasons for concluding that the claimant's home area of Salah Ad-Din remained "15(c) dangerous". It was incumbent upon the Secretary of State to adduce cogent evidence of a durable change in conditions in Salah Ad-Din, but the Secretary of State had failed to do so. She had not expressly sought to persuade the First-tier Tribunal to depart from the guidance given in AA as to Salah Ad-Din Governate being a contested area, either in the reasons for refusal letter or in the Presenting Officer's oral submissions before the Tribunal. The Judge could not be criticised for failing to respond to submissions that were not made before her. The Secretary of State was now simply seeking to re-argue a case on a different basis to that put before the First-tier Tribunal. In any event, the Secretary of State did not place before the First-tier Tribunal any Country Information purporting to undermine the findings in AA. Conversely, the claimant's representatives had presented Judge Chowdhury with a voluminous bundle comprising a variety of up-to-date sources detailing the ongoing state of armed conflict in Salah Ad-Din Governate, and also ongoing sectarian and ethnic violence in the region.
10. The Judge gave adequate reasons for her findings on the CSID. The claimant had given unchallenged evidence before her that his CSID had been destroyed, and the only remaining close relative in Iraq was his mother. No evidence was placed before the First-tier Tribunal to suggest that the CSA for Salah Ad-Din had been re-opened.
11. Finally, the Judge had given adequate reasons for finding that it would be impractical for the claimant to travel from Baghdad to the IKR, in circumstances where he would be returning on a *laissez-passer*, which he would be unable to use for onward travel from Baghdad to the IKR.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether an error of law was made out, Mr Bates submitted that the Judge had not made a clear finding on the claimant's evidence that he had left behind his identity documents when he fled, and that these documents had subsequently been destroyed. The Judge had also not made a finding that the claimant was not in contact with his relatives in Tuz Khormatu. He referred me to what the Judge had said at paragraph [20]: "*I do not find that there is a reasonable degree of likelihood that his relatives who remain in Tuz Khormatu would be able to obtain replacements on his behalf.*"
13. Mr Greer submitted that the claimant's evidence before the First-tier Tribunal was that he had lost contact with his relatives, and he submitted that it was tolerably clear that his evidence of the loss of contact with his relatives - and his evidence about the destruction of the CSID - was accepted by the Judge.
14. Although the Judge had been wrong to direct herself at paragraph [23] that the claimant would require pre-clearance by the Kurdish authorities in order to be

admitted to the IKR from Baghdad, this error was not material, as travel to Erbil by air was not a realistic option in any event, due to the claimant not having a CSID or passport. The Judge's finding on the impracticality of the claimant undertaking onward travel to Erbil anticipated the subsequent decision of the Upper Tribunal in **AAH (Iraq Kurds - internal relocation) Iraq [2018] UKUT 00212 (IAC)**, which had been promulgated in June 2018.

Discussion

Whether error in continuing to treat the claimant's home area as contested

15. The refusal letter was dated 13 October 2017. Although there was published Policy Guidance to the effect that Salah Ad-Din Governate was no longer, in the opinion of the Home Office, a contested area, the case-worker who drafted the refusal letter did not rely on this guidance. On the contrary, the implication of paragraph 51 of the refusal letter, when read in conjunction with the preceding paragraph 50, was that the case-worker conceded that Salah Ad-Din Governate remained a contested area and so there remained an Article 15(c) risk.
16. The case worker set out the Country Guidance given in **AA** at the beginning of paragraph 50, and the case-worker continued in paragraph 51 as follows: "*Therefore consideration is given to whether you can relocate to a non-contested area such as Erbil or Sulaimaniyah. As outlined above, the situation in those areas does not reach Article 15(c).*"
17. Against this background, I do not consider that the Judge erred in treating Salah Ad-Din Governate as a contested area, and accordingly an area where it would be difficult for family members to obtain a replacement CSID from the local Civil Status Affairs Office, which was likely to be closed.

Whether error in finding that onward travel to Erbil from Baghdad was impractical

18. The Judge appears to have muddled the re-clearance requirement for Kurds seeking to fly directly from the UK to the IKR, with the requirements for undertaking a flight from Baghdad to Erbil. However, I do not consider that the error in this regard is material for the reasons given by Mr Greer. On the assumption that the claimant would be returning on a *laissez-passer* to Baghdad, he would not be able to undertake onward travel to Erbil by air without a passport. He cannot obtain a passport without a CSID. If he was unable to obtain a replacement CSID within a reasonable period after his arrival in Baghdad, he would not be able to obtain a passport so as to be able to undertake onward travel to the IKR.

Whether error in finding that CSID not obtainable despite the claimant still having relatives in his home area

19. However, I consider that the Judge has materially erred in one crucial respect, in that she had completely overlooked the possibility of relatives in Tuz Khormatu assisting the claimant with information or documents so as to obtain a replacement CSID, and indeed a passport, from the Iraqi Embassy in London.

20. While the Judge accepted the claimant's account of experiencing persecutory treatment from the PMF, she did not make a specific finding on his evidence that he had left behind his CSID when he moved with his mother to his aunt's house, which was 20 minutes away, twenty-five days after last being threatened by the PMF – but that he continued to work at the tea shop belonging to his uncle (Q&A 97); or on his evidence that, 15 days after moving to his aunt's house (Q&A 117), the PMF had bombed and burnt down the empty family home because they had hoped he would join them to fight against the peshmergas who were fighting ISIL - and who had successfully repelled ISIL's attempt to take over the town (Q&A 91) - and they were disappointed that he had not done so (Q&A 109).
21. In addition, if it was the claimant's evidence before Judge Chowdhury that he was no longer in contact with family members in Tuz Khormatu, there is no reference whatsoever to such evidence in her decision.
22. In his asylum interview, the claimant said that he remained in contact with his mother, who continued to live with his aunt. He also said in interview that Mr Ali (a very faithful and close friend to his dad) lived so close to his aunt that he considered that he was in the same house as his aunt. He said that he had moved next door to Mr Ali's house for eight days prior to his departure from Iraq, leaving his belongings at his aunt's house. He said that Mr Ali had arranged and paid for the agent who had taken him to the West.
23. The case advanced in the refusal letter, at paragraph 43, is that the claimant would be able to obtain his ID documents (including his CSID) because he had stated that he had these documents in Iraq and he still had family there.
24. It was open to the Judge to find, as she did, that in broad terms the claimant's account of persecution by the PMF was consistent with the background evidence. But it is not tolerably clear that she accepted the claimant's account of the sequence of events, or his evidence relating to his movements within the town. The Judge has not even made a clear finding as to whether the house and its contents were destroyed by ISIL, when ISIL attacked the city and gained control and his father was killed (Q&A 87); or whether ISIL failed in its attack (Q&A 90-91) and the house and its contents were destroyed much later by the PMF (see above).
25. The Judge also did not address the implications of the claimant having family in his home area who could potentially assist him with information and documents which he could use to obtain a replacement CSID from the Iraqi Embassy in London.

Conclusion

26. Accordingly, the upshot is that the Judge has not given adequate reasons for finding that internal relocation is not a viable option for the claimant.

Future Disposal

27. I consider that this is not an appropriate case for retention by the Upper Tribunal, but that the appeal should be remitted to the First-tier Tribunal for a fresh hearing, with none of the findings of fact made by the previous Tribunal being preserved. While the Secretary of State has not challenged the finding of past persecution by the PMF, I do not consider it is possible to preserve this finding in the particular circumstances. It is not possible to sever the positive credibility finding on the core claim from the issue of the credibility of the claimant's account of the chain of events which preceded his departure from Iraq.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside in its entirety.

Directions

This appeal is remitted to the First-tier Tribunal for a fresh hearing, with none of the findings of fact made by the previous Tribunal being preserved.

Signed

Date 29 July 2018

Judge Monson
Deputy Upper Tribunal Judge