



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

Appeal Number: PA/02743/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> December 2018**

**Decision & Reasons Promulgated  
On 6<sup>th</sup> March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR A P  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Mukherjee (Counsel)

For the Respondent: Mr S Kotas (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Phull, promulgated on 25<sup>th</sup> April 2018, following a hearing at Birmingham on 26<sup>th</sup> March 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is an Iraqi national, of Kurdish ethnicity from the area of Mala Abdullah, near Kirkuk in Iraq (paragraph 14 of the determination). He was born on 1<sup>st</sup> April 1998. He is a male. He appealed against a decision of the Respondent dated 9<sup>th</sup> February 2018, refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he fears persecution from ISIS and the Kurdish Peshmerga because his father worked for the Ba'ath Party. The Respondent Secretary of State does not accept that the Appellant's father worked for the Ba'ath Party because the answers that the Appellant gave in relation to this matter were vague and lacked in detail. The Appellant states, however, that an article published in the Institute for War and Peace dated 20<sup>th</sup> March 2018, confirms that Kurds did work for the regime of Saddam Hussein (see paragraphs 15 to 16 of the determination). As such, he would be at risk now of persecution if he were to be returned.

### **The Judge's Findings**

4. In a comprehensive and clear determination, the judge held that it was not made out that the Appellant's father worked for the Ba'ath Party for two essential reasons. First, that "the Appellant didn't have information about his father's involvement in the Ba'ath Party and said in interview that his father had not spoken to him about his involvement ...". What the Appellant had learned about his father's involvement came from his mother who had told the Appellant that "his father had a high-ranking position in the party". The Appellant had also said that his family moved from Haji Ava to Mala Abdulla, near Kirkuk, "where the population is majority Kurdish". However, the Appellant claims then to have said that his family left Haji Ava "because they feared the Kurdish authorities could find out about his father's role with the Ba'ath Party". This led the judge to make the second finding in relation to the Appellant's credibility. Secondly, therefore, it was said that it was not credible that the Appellant's father feared the Kurdish authorities "because had this been the case he would not have moved his family to an area, which was predominantly Kurdish" (paragraph 17).
5. The appeal was dismissed.

## **Grounds of Application**

6. The grounds of application state that the judge erred in law with respect to her findings at paragraph 17 in two vital respects. First, whereas the judge held that “the Appellant didn’t have information about his father’s involvement in the Ba’ath Party” (paragraph 17), this ignored the fact that the Appellant was only 5 years of age at the time. He was a minor both at that time and at the time when he claimed asylum. It was the Appellant’s case that it was his mother who had informed him on various occasions, upon enquiry by the Appellant as to why they had moved from Haji Ava to Mala Abdulla, that the move was necessary because “his father had a high-ranking position in the party”.
7. Secondly, the suggestion that the Appellant’s father would not have realistically moved the family for fear of “the Kurdish authorities”, to an area “which was predominantly Kurdish” (paragraph 17) was untenable because what the Appellant’s family feared, were not the Kurdish people themselves, but the Kurdish authority, which stood to persecute them for the father’s involvement in helping Saddam Hussein as an agent. This ignored the answers that the Appellant gave to questions during the interview (see questions 117 to 119; and questions 127 to 130). The Appellant had gone on to say that had they stayed where they were they would have been persecuted. They had stayed in Haji Ava. However the Ba’ath Party collapsed in 2003. He states “if he had stayed there, all of us, our family members would’ve been arrested” (see question 132).
8. Thirdly, the grounds go on to state that regard should have been had, in the circumstances of this case, where the Appellant was 5 years of age when he moved, to the fact that he was a minor. This is clear from paragraph 351 of the Immigration Rules, which makes it quite clear that,

“A person of any age may qualify for refugee status under the Convention ... However, account should be taken of the applicant’s maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child’s state of mind and understanding of his situation. An asylum application made on behalf of the child should not be refused only because the child is too young to understand the situation ...”
9. Finally, it is said that there was no clear evidence that the Appellant was returnable to the IKR, because he had not actually lived in the IKR since the age of 5. He had moved to Kirkuk, which was not in the IKR. The judge had overlooked this distinction (at paragraph 25).
10. Permission to appeal was granted by the Upper Tribunal on 14<sup>th</sup> September 2018, on the basis that it was arguable that the findings in respect of relocation disclose an arguable error of law.

## **Submissions**

11. At the hearing before me on 6<sup>th</sup> December 2018, Mr Mukherjee emphasised the grounds of application in detail taking me carefully through what had been said there. For his part, Mr Kotas laid emphasis on two essential points. First, he submitted that in relation to the credibility point, the question was not that the judge had chosen to disbelieve the Appellant, without taking into account that the Appellant was 5 years old, but the fact that the judge did not find it credible that the Appellant's father would have moved the family to a predominantly Kurdish area in the way that was being suggested, on the basis that he had feared the Kurdish authorities now. It must not be forgotten that the Appellant stayed with his family right the way up to 2014 in any event. The judge was correct in stating that, "I find that it is not made out that the Appellant's father feared the Kurdish authorities ...". The issue was not what the Appellant knew but what had actually happened.
12. Secondly, there was a question of the viability of return, and it was entirely open to the judge to conclude that the Appellant could be returned to the IKR, for the reasons that the judge had given. The judge had made it clear that,

"I find he can return to IKR. He has an uncle in Haji Ava in the IKR. He could ask his uncle to help to secure his CSID and provide support, as he did in the past. I do not find the Appellant's evidence plausible that his uncle would not have maintained contact with him given the lengths his uncle was prepared to take to help the Appellant relocate from his home area ...". (paragraph 31).
13. In reply, Mr Mukherjee submitted that one must not ignore the difference between living amongst Kurdish people and being governed by the Kurdish authorities, because it is the latter who stood to persecute the Appellant's father in this case. It was not at all clear from paragraph 17 that the judge did take into account the Appellant's minor age when making findings that, "the Appellant didn't have information about his father's involvement in the Ba'ath Party ...". The judge should have been explicit about this. The Appellant should have been asked why it was the case that he did not know what his father did, and why it was that what he learnt, he only learnt from what his mother told him.
14. Secondly, the judge had to make proper findings about the Appellant's ability to procure a CSID card, and then to seek accommodation, and employment, and have the ability to work, and this was a requirement that had to be followed before it could realistically be concluded that the Appellant was indeed returnable to Iraq, in the manner envisaged by the judge.

## **Error of Law**

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
16. First, the judge observes (at paragraph 28) that,

“Currently the KRG will consider for return all persons of Iraqi Kurdish ethnicity who are from an area currently under the administration of the KRG, i.e. the three Governorates of Dohuk, Erbil and Suleimaniah and some parts of Kirkuk Governorate (but not persons from Kirkuk city).”
17. The Appellant is not from Kirkuk. He had, from the age of 5, relocated. He had gone to Mala Abdulla. It is not clear that this particular place, which is on the southern outskirts of Kirkuk, is actually currently covered by the IKR. If it is not, then the Appellant would have the same difficulties, which would otherwise apply to him in terms of the viability of return to Baghdad or elsewhere.
18. Second, the Appellant had stated that he did not have a CSID document with him (paragraph 30). He had said that his uncle was not in contact with him, but the judge had disbelieved this (paragraph 31). It is nevertheless important to enquire into whether the maternal uncle would be in a position to sufficiently help the Appellant to obtain a CSID document. These matters may not otherwise have been as important as they are in this case, given that in this case the judge had accepted that the entirety of the Appellant’s close family were killed and disappeared by ISIS in 2015 (see paragraph 20 of the determination). Accordingly, the onus was on the Secretary of State to show that the maternal uncle would be in a position to support the Appellant. The grounds of application state that this had been done in **Ali (J) v SSHD (PA/08458/2016)**, and this would have included an assessment of whether the maternal uncle would be able and willing to provide the necessary help and support.
19. Third, I accept that there does appear to be a confusion between the Kurdish authorities and the Kurdish people. The Appellant had made it clear (at paragraph 134) that his family left Haji Ava which was in the IKR, in order to escape the Kurdish authorities, because his father had been identified as a Ba’ath member and supporter. They then moved to an area, where there were no Kurdish authorities, although there were Kurdish people, and this was in the time of Mala Abdulla. It cannot, accordingly, be so confidently stated that the father would not have had a fear of the Kurdish authorities simply on account of having moved from an area controlled by the Kurdish authorities, to an area where the Kurdish people predominated.

## **Notice of Decision**

20. The decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Phull, so that evidence can be provided as to the Appellant's ability to procure a CSID card, in order to enable him to travel in the manner that is normally envisaged, particularly in the light of the fact that the Appellant is not actually from Kirkuk, and may well not therefore be automatically returnable to Kirkuk.
21. An anonymity order is made.

**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 him 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.

22. The appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

4<sup>th</sup> March 2019