



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11012/2016

THE IMMIGRATION ACTS

At Manchester Civil Justice Centre
On 1st March 2019

Decision & Reasons Promulgated
On 20th May 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

HA

(anonymity direction made)

Respondent

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr Schwenk, Counsel instructed by WTB Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Iraq born in 1990 who seeks international (humanitarian) protection.
2. The Respondent's appeal was allowed by the First-tier Tribunal (Judge VA Cox) on the 31st August 2017. The Secretary of State was granted permission to appeal by the First-tier Tribunal (Judge Dineen) on the 8th November 2017 and on the 9th October 2018 the matter came before me. Having heard from the respective representatives (the Respondent HA was that day represented by his solicitor Mr H. Pratt) I found

that the decision of the First-tier Tribunal was flawed for error of law and I set it aside. My reasons for so doing are explained below. At the resumed hearing on the 1st March 2019 I heard oral evidence from HA and submissions from the parties. I reserved my decision which I now give.

The Basis of Claim

3. HA claims to have left Iraq in December 2015 because his home area in Kirkuk governate had been taken over by ISIS. He states that he came under pressure from terrorists in Kirkuk and so he left. He travelled to Erbil in the Iraqi Kurdish Region (IKR) and from there he came on to Europe. He fears return to that area because the conflict there remains such that Article 15(c) of the Qualification Directive is engaged. He claims that his identity papers were left behind and that he has lost contact with his family. HA is Kurdish and practises Sunni Islam. He speaks Sorani and no Arabic. He avers that he has no connections in the IKR.

The First-tier Tribunal Decision

4. The First-tier Tribunal allowed the appeal on asylum grounds, and dismissed it on humanitarian protection and human rights grounds. Its key findings were:
 - HA's account of events before he left Kirkuk were a fabrication [FTT at §50-53, 56]
 - He is no longer in possession of a passport [§54]
 - It is not credible that he has lost contact with his family [§55]. There is no evidence to demonstrate that they are not still in Kirkuk [§60]
 - HA is from Kirkuk, an area outside of the IKR, and AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) continues to apply
 - His family might be able to assist him financially or in obtaining a CSID but this would take time, "which is potentially a risk" [§61]. By the time that they could get a copy of his CSID/get money to him he might be destitute [§63]
 - Although he has some work experience he does not speak Arabic, and has no connections with Baghdad [§62]
 - He could not afford to travel to Erbil from Baghdad [§64]

The Secretary of State's Appeal

5. Ground 1 is that the Tribunal materially misdirected itself in allowing the appeal on protection grounds. By its own findings the account given in the asylum claim was a

fabrication. Insofar as the Tribunal may have understood the risk of destitution to qualify HA for refugee status it was, as a matter of law, mistaken.

6. Ground 2 is that the First-tier Tribunal failed to take material evidence into account in reaching its findings on the risk that HA faced destitution. The 'reasons for refusal' letter had expressly stated that returnees can be given money to assist in their resettlement, and the Tribunal appears to have ignored its own findings that HA's family had given him substantial financial assistance in the past.

Findings on 'Error of Law'

7. For HA Mr Pratt had to concede that ground 1 was made out. The Tribunal clearly rejected the narrative of persecution and there was no basis in law for allowing the appeal on refugee grounds for the reasons he gave. I agree.
8. Mr Pratt submitted however that it was clearly open to the Tribunal to allow the appeal on humanitarian protection grounds, and this was the relevance of the findings on destitution. HA is from Kirkuk, which applying the country guidance in AA is a 'contested area' where the level of violence is such that Article 15(c) is engaged. This was the Tribunal's finding at paragraph 58. There is no suggestion that the Secretary of State had asked the First-tier Tribunal to depart from the guidance in AA. Having found that the risk pertained in Kirkuk it was the Tribunal's task to proceed to consider internal flight. It conducted that enquiry in light of its own negative assessment of the Appellant's credibility, but properly found that the obstacles were such to him resettling elsewhere in Iraq that he would end up destitute. The Respondent's own guidance acknowledges that this would not be a 'reasonable' situation for him to find himself in.
9. I accept Mr Pratt's submission that the Tribunal was obliged to find that HA faced a real risk of harm in Kirkuk, given that the country guidance in AA was agreed to apply. That finding is preserved. The only question left was whether it would be reasonable to expect HA to internally relocate
10. Having read the determination with care I am unable to accept that the Tribunal took all relevant information into account when it made its assessment of internal flight, or that it made intelligible findings.
11. It is not clear from the determination or the evidence why the Tribunal found it would take the unidentified family members an unacceptably long time to get to Baghdad to help HA: flight time from the north is only 45 minutes. Further the Secretary of State is correct in his complaint about the flight to Baghdad. The flight costs only \$80 and this is money that HA could easily have available to him: he needs only apply for the resettlement grant mentioned by the Secretary of State in the refusal letter. If his family can bring him the appropriate documentation he can board one of the many weekly flights without difficulty. These are all issues with the reasoning that the Secretary of State is legitimately entitled to complain about.

12. Conversely the determination also contains unsustainable findings which HA would like set aside. At its paragraph 61 the First-tier Tribunal finds that HA's family "might" be able to help him obtain a CSID. It is not clear what standard of proof the Tribunal here applied, or what factors it took into account. There is, for instance, no analysis of which family members HA is still in touch with (are they male, or from his father's side?), whether those relatives have in their possession the documentation to assist him, or whether the family registry in Kirkuk is in fact operational. Nor is there any consideration of the country background material on events in the Kirkuk area since 2015, that being key information in any assessment of whether HA has managed to retain contacts there. I am further concerned about the findings in respect of the situation in the IKR. The finding that HA could rent accommodation is wholly dependent upon whether he manages to re-acquire a CSID. There appears to be no evidential foundation for the Tribunal's finding that HA is from a "minority" and so would receive assistance in the IKR. HA is a Kurd, relocating to an area that is majority Kurdish. Although that decision was not of course available to the Tribunal, this finding is inconsistent with the findings of the Upper Tribunal in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC).
13. For those reasons I concluded, in my written decision of the 6th January 2019, that the Tribunal's reasoning on 'internal flight' would have to be set aside to be remade. The resumed hearing would proceed on the basis that the parties agreed that AA (Iraq) remained good country guidance.

The Re-Made Decision on Internal Flight to the IKR

14. The parties agreed at the outset that my framework for the applicable law and country background facts in this case is the country guidance decision in AAH (Iraq).
15. Some facts relevant to my enquiry are agreed. HA is of Iraqi nationality, and of Kurdish ethnicity. These matters were accepted by the Secretary of State in his letter of the 23rd September 2016. HA is from Kirkuk. Although that is not a matter expressly accepted in the refusal letter, there does not appear to have ever been any doubt about that. In his 2016 screening interview HA gives his last place of residence as 'Iskan', a neighbourhood of Kirkuk [B2], and he has consistently maintained that to be the case ever since.
16. In his oral evidence before me HA stated that he had never lived in the IKR, and that he knows no-one who lives there. He confirmed that after he had left his home he had travelled to Erbil where an agent had supplied him with false papers in order to leave Iraq. That was what he was referring to in his screening interview when he said that he had been given a 'passport'. He was in Erbil only a couple of hours. From there he proceeded directly to the Turkish border. His passage had been arranged by an uncle, who also lived in Kirkuk. Once he arrived in Turkey he managed to speak to his family to let them know that he had got out of Iraq safely.

17. HA said that when he left home he had a large number of relatives in Kirkuk. As well as the uncle who helped him he also had his mum, 2 sisters and a brother-in-law. They were spread across three households. HA explained that after that conversation with them when he was in Turkey he lost contact with his family. He obviously had numbers for them but when he called it just rang. He called and called but no-one ever answered. Once he was in the United Kingdom he tried to find them through friends and acquaintances travelling back to the Kirkuk area but no-one was able to locate them. He had not tried to find them using the Red Cross. If he tries those numbers today, the line is dead.
18. As to official Iraqi documentation, it is HA's case that he has none.
19. Mr Schwenk accepted that I must evaluate HA's evidence on the issues canvassed in this appeal in light of the evidence as a whole, and he accepted that as part of that assessment I would be entitled to take into account the First-tier Tribunal's view that he was not a credible witness.
20. For his part Mr McVeety conceded that I also had to have regard to the country background evidence about events in Kirkuk at the time that HA left, and since.
21. HA arrived in the United Kingdom on the 14th April 2016. At his screening interview he stated that he had been travelling for approximately 5 months. Asked to explain why he had made this journey, HA said:

"The situation in IRQ is unstable. The terrorist groups are fighting each other - and then addition to this ISIS is fighting and killing"

[Q4.1 screening interview]
22. The country background evidence about the Kirkuk region in 2015-2016 confirms that the situation was indeed unstable, and that fighting and killing were taking place. That this is so is uncontested: the Respondent agreed that to be the case during the May 2015 hearing of AA (Iraq) in May 2015, and that was found to remain the position in the August 2016 hearing of BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) (the decision promulgated on the 23rd January 2017).
23. In September 2017 the situation for Kurds in the Kirkuk area became yet more precarious, following the independence referendum in the IKR. At the date of the referendum the city and most of the governate had been under the control of Peshmerga forces under the command of the Erbil government. Within weeks the Government of Iraq had launched an offensive to drive them back across the IKR border, supported by Iranian-backed Shi'ite militias. The Danish Immigration Service/Landinfo put the figure of civilians fleeing the affected areas as approximately 150,000; online news channel Kurdistan24 put it at 180,000. All sources agree that the majority of those fleeing the Iraqi advance were Kurdish civilians.
24. In the months that followed there were numerous credible reports of systematic human rights violations against the remaining population. An article by Al-Jazeera

(cited in the 14th December 2018 EASO report) quotes a Kurdish man who fled the city: “at night they came out and beat the youth. They have burned houses. That’s why we got scared – because of our families, that’s why we left”. Amnesty International, in a report focusing on the nearby town of Tuz Khurmatu, found that heavy machine guns, RPGs, mortars and Kalashnikovs had all been used; between 300-400 Kurdish houses had been blown up by the use of explosives or burned down. Crowds of civilians trying to leave were subjected to gunfire. Kurdish news agency Basnews reported similar abuses occurring elsewhere in Kirkuk, perpetrated by Hashd al-Shaabi militiamen who sexually assaulted women, looted and burned bodies and reportedly ‘disrespected’ the bodies of murdered civilians.

25. Following this initial wave of violence it would appear that some of the civilians displaced from Kirkuk have now returned to the city. There is a significant disparity in the evidence about how many. The US Consulate in Erbil reported that ‘most’ of those who fled the city had subsequently returned; local NGOs interviewed by the Danish Immigration Service/Landinfo believed that at least 148,000 had not returned.
26. The various sources cited by EASO demonstrate that the area continues to be plagued by violence. Voice of America reported in October 2018 that ISIL remain active in pockets of resistance in the governate. The Center for Strategic and International Studies estimate that attacks in Kirkuk doubled from 2017 to 2018, there being 197 documented ISIL attacks during that year. The Middle Eastern Research Center for Reporting and Analysis (MERCA) reported in April 2018 that the security situation in Kirkuk deteriorates at night and that ISIL set up fake checkpoints on the outskirts of the city. Landinfo reported in October 2018 that these attacks are leading to further population displacement.
27. This then is the factual matrix. We know that HA is from a suburb of Erbil and that he left there sometime towards the end of 2015 when the area was subject to such heavy fighting that the Secretary of State accepted Article 15(c) to be engaged. We know that he had family in the area when he left, who assisted him with the money to get an agent in Erbil. We know that the area has continued to be the epicentre of the war in northern Iraq, and that there have been successive population displacements as civilians try to avoid ISIL, shelling by the Iraqi government forces, and human rights abuses perpetrated against them by Shi’ite militias. We know that when HA arrived in the United Kingdom he was not in possession of any identity documents. That much is uncontentious.
28. The question for me is whether it is reasonably likely that HA has lost contact with his family as he claims, and that he is without the means to obtain fresh Iraqi documentation.
29. I bear in mind that HA’s account of having come under pressure by ISIL in Kirkuk (to conduct what appears to have been a suicide mission against a Peshmerga position) was rejected by the First-tier Tribunal as being a fabrication. I am further satisfied that HA continued to tell untruths at the hearing before me, specifically in

respect of whether he ever had his own Iraqi passport. He gave evidence that he has never had such a document, and that he left Iraq using false papers given to him by the agent in Erbil, which he subsequently lost in Turkey. This is quite at odds with the evidence he gave in his screening interview. At 1.8 of the screening interview he said "I have lost *my* ppt in Turkey 5 months ago". At 3.3 he said "I left IRQ 5 mnths ago and I used *my* ppt only to go from IRQ to TUR" (emphasis added). Mr McVeety is entirely justified in asking me to weigh those matters against HA in my deliberations.

30. That said I must also bear in mind that one lie, or even two, does not mean that the entire account is a fabrication. As Sir John Dyson put it in MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49:

"21. For appellants who appeal to the AIT in Refugee Convention or Article 3 cases, the stakes are often extremely high. The consequences of failure for those whose cases are genuine are usually grave. It is not, therefore, surprising that appellants frequently give fabricated evidence in order to bolster their cases".

In this case those 'grave' consequences are known: HA has fled from, and fears return to, a city where Article 15(c) conditions persist. To that extent the core of his claim is based in truth, and his untruths must be viewed in that context.

31. Having considered all of those matters in the round, and having reminded myself that the standard of proof is low, I am satisfied that it is reasonably likely that HA has lost contact with his family as he claims. Mr McVeety is right to say that we could expect a young man setting off across Europe to want to stay in touch with his family, and to tell them he is alright, and to let them know when he reached Dover. That is all true. What I must however bear in mind is the intervening five years of civil war, unrest and population movement. These events are likely to have caused damage to the infrastructure and I find nothing implausible in HA's evidence that previously operational phone lines suddenly went dead. His evidence is that he did not have a phone himself and so there was no way for relatives – remaining in Kirkuk or otherwise – to stay in touch with him.
32. Nor am I satisfied that it is reasonably likely that without such family members (either still in possession of the original documents or able to assist HA in obtaining new ones) HA will be able to obtain a CSID himself. In AAH Dr Fatah explained the difficulties returning Iraqis are facing in re-acquiring documents [§30]:

"... Iraq is presently facing significant challenges in maintaining the system in the north of the country, however. Under ISIL control all recording of official events was banned, and some civil register offices, such as that in Mosul, were damaged or destroyed. The effect is that there is now a huge backlog for the bureaucrats to catch up on. Between 2014 and 2017 no marriages, births or deaths were recorded. Catching up will be a mammoth task. In Mosul alone there are 1.5 million Iraqis who will need their records updated. In addition to recording the names of those who have died in the conflict there will be tens of thousands of children whose births have not been registered, or who were not entered into the record before ISIL took power. Their families are now desperate to have their existence recorded, because without that, they cannot obtain CSID cards; without

CSID cards the children are not entitled to PDS cards; without PDS cards they cannot receive food rations. In addition many people lost their documents during the conflict when homes were destroyed or 15 when fighting broke out, causing people to flee at short notice without them. In light of this, the problems of one individual returnee are likely to be given short shrift. No procedures have been implemented to assist the re-documentation of returnees and in the view of Dr Fatah this is because their issues are considered to be trivial compared to the position of IDPs already on the ground. These returnees are a “totally insignificant problem” for the authorities, whose efforts are further hampered by the fact that many of the more experienced civil servants, whose skills could be helpful at this point, were sacked in the “de-Ba’athification” programme. The likelihood of persuading an official to spend precious time trying to find an individual’s records are even further diminished”.

33. HA’s civil registration office is in Kirkuk. HA cannot return to Kirkuk because it remains contested. The only way he could obtain new documentation would be if he had someone in Kirkuk to help him get it. Having had regard to the country background evidence I am satisfied that it is reasonably likely that he is telling the truth when he says that he does not.
34. Applying the guidance in AAH I therefore find as follows.
35. HA would not likely be sent directly from the United Kingdom to Erbil because he is not a resident of the IKR, but supposing that the Secretary of State managed to effect removal that way, I assess whether it would be unduly harsh to expect HA to remain in Erbil, or elsewhere in Kurdish territory. There is no evidence to indicate that he has any connections there, excepting the agent who arranged his passage 5 years ago. I am not satisfied that this is an individual to whom HA could turn for assistance. As a Kurd he would have no difficulty in entering the territory, and would face no legal impediment to doing so. Once there, however, HA is likely to face significant difficulties in establishing himself in the absence of any external support or a CSID. Without support from friends or family (either in Iraq or abroad) HA would have to fend for himself. As a young man with no connections he is unlikely to be able to enter an IDP camp. He would therefore be left to secure accommodation, and work, himself. Without a CSID he would not be able to book into a hotel, or rent accommodation. He would therefore likely end up in what are described by the aid agencies as ‘critical shelter arrangements’ [at §127 of AAH]:

“Approximately 26% of IDPs in the IKR are living in abandoned or unfinished buildings, makeshift shelters erected on spare ground, or are squatting in government or religious buildings. The conditions in such shelters vary. You may be living in a mosque where you have access to clean water and sanitation facilities and are fed at least one hot meal every day; on the other hand, you may be living in a makeshift tent on the verge of a busy road and not know where your next meal is coming from. In the middle of those extremes there will be buildings in various stages of dilapidation or development, some with roofs, some with access to water or heating, and some without. Some of these living arrangements will be of a comparable standard to those widely found elsewhere in Iraq, where basic standards of sanitation and protection from the elements are provided; some fall substantially below such standards”.

36. Referring to the Secretary of State's policy not to return those Iraqis facing destitution we concluded in AAH that the litmus test of whether life in such accommodation would be 'unduly harsh' would be food security:

"128. If the Respondent accepts that an individual facing destitution – by which we understand to mean living on the street and having no food security – cannot be returned to Iraq because to do so could violate the United Kingdom's obligations under Article 3 ECHR, it must logically be the case that living conditions coming close to, or occasionally touching, such depths could be described as 'unduly harsh'. It seems to us that the key determinant of where a returnee is likely to fall on that spectrum is whether he or she is reasonably likely to find regular employment, or receive income from another source.

129. The unemployment rate for Iraqi IDPs is startling. The materials before us uniformly state that up to 70% of the IDP population is unemployed. That is to be contrasted with the national average of approximately 15%, a figure that rises to 20% in the IKR, for both the host population and the other group of statistical significance, Syrian refugees. Whether an individual returnee is likely to be able to get some employment – even if it is only a few days per month – is likely to depend on the confluence of the following factors:

- i) Gender. Women with male guardians face discrimination in obtaining and keeping work, but women on their own are very unlikely to be able to secure legitimate employment. Social stigma and prejudice would present very significant obstacles for prospective employers. Lone women may be forced into prostitution or situations of sex trafficking.
- ii) Any returnee seeking lawful employment must be in possession of a CSID. As Dr Fatah makes clear, and the Respondent accepts, this document is vital. Employers are legally obliged to inform the Asayish of the identity of their employees, and they cannot be confident of that information unless they have seen the individual's CSID.
- iii) As we note above, family or other connections are of substantial assistance in getting work: DFAT find that "patronage and nepotism significantly influence employment opportunities, making it difficult to internally relocate to the Kurdish region without existing networks".
- iv) Skills and experience. It is perhaps self-evident that in a stagnating economy it will be of particular advantage to have proficiency in a core sector, such as food production or education. The evidence before us indicates that the oil industry has been severely impacted and that the construction boom of the past decade has come to an abrupt halt. Those at the greatest disadvantage are the unskilled, who are now competing for fewer and fewer opportunities in roles such as labouring.
- v) Where they are 'from'. Although we think it unlikely that this factor would on its own be determinative, we recognise Dr Fatah's evidence that some potential employers may be suspicious of IDPs who are from areas of intense ISIL activity such as Diyala or Ninewa.

37. Having regard to those factors I find that HA would have some advantage in that he is an able bodied young man. He claims to have had some experience in working as a labourer, and states that he had a job delivering food for a restaurant. He is

therefore unskilled and would face what Dr Fatah regards as the “greatest disadvantage”. He would also be distinctly disadvantaged by the lack of connections to the area, and that fact that he has no CSID. It is the confluence of these two latter factors which make it very likely, in my view, that he will face prolonged periods where is unable to obtain work in order to provide himself with basic necessities such as clean water, food, clothing and heating. That would be unduly harsh and it follows that his appeal must be allowed.

Anonymity Order

38. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

39. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
40. I re-make the decision in the appeal by allowing it on humanitarian protection and human rights grounds. The appeal is dismissed on refugee grounds.
41. There is an order for anonymity.

Upper Tribunal Judge Bruce
9th May 2019