Upper Tribunal
(Immigration and Asylum Chamber) PA/12470/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 21 December 2018	**On 17 January 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ARI AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read as incorporating the decision on error of law issued to parties on 15 November 2018. As directed therein, the case came before the UT for remaking on the issue of whether the appellant had a right on private life grounds to remain in the UK.

2. The decision of FtT Judge Mrs D H Clapham, promulgated on 16 May 2018, was set aside because at [85] it applied to the private life case a test of "difficulties which cannot be overcome or would entail very serious hardship". No source was cited for that test. The grounds of appeal to the

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UT suggested that it was taken from EX.1 of Appendix FM of the rules, which does not apply to private life.

3. The decision issued on 15 November 2018 suggested that the question might be put this way: is the criterion whether the appellant will have a normal life by the standards of the UK, or by the standards of the IKR / KRG? Attention was drawn to possible points of reference in *Kamara* [2016] EWCA Civ 813 and in the respondent's guidance.

4. The rules prescribe thus:

> **Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> > (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
> >
> > (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
> >
> > (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
> >
> > (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
> >
> > (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
> >
> > (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

5. The respondent's decision said at [92] that there would be no very significant obstacles, because the appellant is Kurdish, speaks Kurdish Sorani, has been employed in Iraq, and has family in Iraq.

6. The appellant has not contended that he can meet all the requirements of the rules. He has argued that there would be very significant obstacles to his integration into Iraq, and that he therefore succeeds on human rights grounds, although the rest of the rule cannot be met. In his grounds of appeal to the UT he relied upon humanitarian factors, such as poverty rates and the need for food and medical aid. In his skeleton argument and in submissions he relied on these factors:

(i) absence of a CSID, leading to difficulty in getting from Baghdad to the KRG and in accessing services;

(ii) the high rate of unemployment in the KRG;

(iii) lack of higher education, having completed only the 6th grade; and

(iv) having no family members to assist him.

7. *Kamara* was a case about deportation, not private life, but it involved interpretation of the concept of very significant obstacles to integration. Sales J said at paragraph 14:

> “In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

8. Home Office Guidance carries no authority of its own, but may be useful to consider. The guidance is within a document entitled “Family Migration”, version 2.0, published on 19 December 2018. Pages 58 to 64 are relevant, particularly these paragraphs:

> A “very significant obstacle to integration” means something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision maker is looking for more than the usual obstacles which may arise on relocation (such as the need to learn a new language or obtain employment). They are looking to see whether there are “very significant” obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant. …
>
> The decision maker should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. The decision maker will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements, even if, for example, their job, or their ability to find work, or their network of friends and relationships may be differently constituted in the country of return.

> The fact the applicant may find life difficult or challenging in the country of return does not mean that they have established that there would be very significant obstacles to integration there. The decision maker must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration. …
>
> Lack of employment prospects is very unlikely to be a very significant obstacle to integration. In assessing a claim that an absence of employment prospects would prevent an applicant from integrating in the country of return, their circumstances on return should be compared to the conditions that prevail in that country and to the circumstances of the general population, not to their circumstances in the UK.

9. There is no reason for *Kamara* not to apply in the present context. The respondent's guidance is consistent with that case and with the terms of the rule. The issue of integration is approached by whether a person is an insider or an outsider, not by difficulties shared with persons of local origin in their own territory. The criterion is normal life there, not normal life in the UK. Private life is not to be used as if it opens up humanitarian protection by a lesser threshold.

10. The decision of the FtT has been set aside. The appellant has shown no reason to revisit its findings of primary fact. Accordingly, he has access to a CSID, has no difficulty in travelling or in accessing services, and has family members to help him in returning home. Standing those findings, and applying country guidance, he does not qualify for protection. For the reasons given above, he has not shown that the same facts constitute a private life claim.

11. As the case turns out on fuller inspection of the grounds, the FtT judge was not far wide of the mark in applying the test she did.

12. The decision is remade thus: the appeal, as brought to the FtT, is dismissed.

9 January 2019
Upper Tribunal Judge Macleman