



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13980/2018

THE IMMIGRATION ACTS

Heard at Field House
On 15th May 2019

Decision and Reasons Promulgated
On 28 June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

M H O H
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Ms S Jones, Senior Presenting Officer.

For the respondent: Mr. Mustafa, Counsel, instructed by CB Solicitors

DECISION AND REASONS

Introduction

1. It is the Secretary of State who is appealing in these proceedings. However, for convenience I will continue to refer to the parties hereinafter as in the First-tier Tribunal.

2. The Secretary of State has been given permission to appeal the decision of First-tier Tribunal Judge Suffield-Thompson. In a decision promulgated on 30 January 2019 the judge allowed the appellant's appeal against the respondent's refusal to grant him asylum and dismissed his humanitarian protection claim.
3. The judge found that the appellant was a Kurdish national of Iraq. He was born in February 1987. The judge found he was from the town of TuzKhurmato in the Saladin Province.
4. His claim was that whilst at Sulaimaniyah University he began a relationship with a girl called Robar. She agreed to marry him and the appellant arranged to meet her family. After the meeting her father objected to the relationship. He was threatened with harm if he continued the relationship. However, he and Robar went to a village and stayed at his friend's house for almost 3 weeks. He claims the girl's family found them. Following this the appellant said he decided to leave the country fearful of her family. He said that her father was someone of influence and belonged to the PDK party.
5. He also claimed that his home area had been destroyed by the PMF. The country information indicated that there had been no attacks in his area since the referendum and Iraqi forces were relieving the PMF. Consequently the judge did not find the appellant to be at risk in his home area.
6. The judge did not find the appellant to be credible and rejected his claim of being in a relationship. The judge also referred to the refusal letter which indicated there had been no attacks in his home area since the referendum and the Iraqi forces were relieving the PMF. The judge concluded by finding the appellant would not be at risk in his home area.
7. The judge then considered the question of documentation. The appellant had claimed he had no documentation with him in the United Kingdom. He claimed not to know his ID number or his family page register. He said apart from his grandmother he had no other family to assist them with documentation. The judge accepted his claim saying he had been consistent about his family situation. The judge concluded without a CSID or passport he could not board a flight in Baghdad for the IKR. The journey overland to the IKR was not feasible given the danger at checkpoints.
8. The judge went on to find that even if the appellant could reach the IKR he would end up living in a critical shelter. He would not gain access to the refugee camps and could not afford to rent the property. The judge concluded it would be unreasonable to expect the appellant to live in those conditions.

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9. The application for permission pointed out that the judge had found his account to be a fabrication and that he would not be at risk in his home area. Therefore, no reason why advance as to why he would succeed under the Refugee Convention. Given that the judge had found he would not be at risk in his home area it was suggested the judge erred in focusing on the question of travelling to the IKR. If he were not at risk in his home area there was no need to consider travel to the IKR.
10. As an alternative ground it was argued judge gave no reasons for accepting the appellant was from TuzKhurmato, a claim not accepted by the respondent. The judge had referred to the appellant's substantive interview and found he had given accurate information about the surrounding town and the attacks it suffered. The judge failed to give reasons for accepting the appellant's evidence as accurate.
11. The grant of permission rejected the challenge in relation to the finding as to where the appellant was from. The judge had not dealt with how he would get there from Baghdad. It was also felt there was a lack of clarity on the part of the judge in relation to internal relocation without going to the IKR. The grant pointed out that the judge has failed to explain how the Refugee Convention was engaged.
12. At hearing, Ms Jones said that TuzKhurmato was not in a contested area. He had referred to having a grandmother who could help him obtain documentation.
13. In response, Mr. Mustafa said the territory was a disputed area between the Kurdish authorities and the Iraqi authorities. He referred me to the decision of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) in relation to returns and documentation.

Conclusions

14. I find the decision is unsustainable because of the lack of reasoning. Where reasons are given they are exceedingly brief and generalised with little reference to matters beyond the refusal letter.
15. The judge rejected the underlying claim and this is not been challenged on behalf of the appellant. Following from this the judge did not make it clear how the claim can be allowed under the Refugee Convention.

16. The judge found the appellant was from TuzKhurmato. The judge found that the appellant would not be at risk in his home area. There has been no challenge to this on his behalf, albeit the analysis is minimal. The judge does not refer to background information but refers to paragraph 53 of the refusal letter. However paragraph 53 does not refer to what the judge states.
17. At paragraph 42 the judge accepts the appellant does not have documentation. This is based on the generalised view that those seeking asylum are unlikely to bring documentation and would have been so advised by an agent. At hearing the appellant had asked if he had approached the Embassy about obtaining replacement documents. His claim was that he was unaware he could have done that. He then went on to claim he knew nothing about his personal details or the documents. The judge at par 44 simply states she does not find this implausible. She states he had been consistent in his account about having no male family members. The judge does not explain why she willingly accepts his claims given she found he was not credible elsewhere.
18. In his substantive interview he said he had Iraqi identity card and citizenship document. He said they were with his grandmother in Sulaimaniyah. He claimed not to have any other family. At question 35 he said he had a brother but claimed he had been missing since 2014. He claimed his parents were deceased. He claimed not to understand the tribal system.
19. He had been born he said in Sulaimaniyah but since 1997 had been living in TuzKhurmato. The ability to obtain documentation will depend on the individual circumstances. A laissez-passer can be issued without any other form of ID being available but these are confiscated upon arrival at Baghdad. There is a possibility his grandmother could forward the documentation. The appellant claimed he had lost contact with her and searches with the Red Cross have been unsuccessful. If he needed to obtain a replacement CSID then the location of the relevant civil registry office would be relevant and it would be necessary to consider if there were any male family members able and willing to attend the civil registry. Because the registration system was patrilineal it would be relevant to consider whether the relative is from the mother or father's side.
20. The decision does not deal with the question of the appellant returning to his home area or internally relocating within Iraq. Paragraph 45 judge refers to the possibility of relocation to the IKR. She refers to him having to fly to Baghdad and then onwards. In order to board a domestic flight she states he would require a CSI D or a passport. She then refers the humanitarian situation and concludes it would not be reasonable for him to live there. However

the judge does not explain why he is not entitled to humanitarian protection if this is so.

Decision

The decision of First-tier Tribunal Judge Suffield-Thompson materially errs in law and is set aside. The matter is remitted for a fresh hearing in the First-tier Tribunal.

Deputy Upper Tribunal Judge Farrelly.

Directions

1. Relisted for a fresh hearing in the First-tier Tribunal at Newport, excluding First-tier Tribunal judge Suffield-Thompson.
2. A Kurdish Sorani interpreter will be required.
3. The rejection of his underlying claim is maintained.
4. The finding that he is an Iraqi Kurd from TuzKhurmato is maintained.
5. The resumed hearing should consider whether he can return to his home area. This will involve consideration of whether the necessary travel documentation can be obtained and whether he can safely travel from Baghdad airport to his home area. It will be necessary to consider if he could live safely there.
6. If this is not feasible it would be necessary to consider if he can relocate within Iraq.
7. It will also be necessary to consider the possibility of him relocating to the IKR. This will involve consideration of his ability to gain entry and to sustain himself. Although the case law indicates that someone who did not originate in the IKR would be returned initially to Baghdad for a transit flight the parties should check to see if it is now possible to be returned directly to the IKR. The caselaw indicate that overland travel from Baghdad to the IKR is too dangerous.

Deputy Upper Tribunal Judge Farrelly.

Dated 26 June 2019

