Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: LP/00169/2020

THE IMMIGRATION ACTS

Heard at Bradford (via Microsoft teams)	**Decision promulgated**
On 20 August 2021	**7 October 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HMA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain, instructed by Bankfield Heath Solicitors
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. Following a hearing before the First-tier Tribunal at Bradford on 28 October 2020 First-tier Tribunal Judge Lodato ('the Judge') dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a male citizen of Iraq described by the Judge as being in his 20s, who claimed refugee status on the basis he would face persecution or serious harm as a result of his involvement in resisting Hashd al-Shaabi in his home area and due to his *sur place* activities in the UK.
3. Having considered the documentary and oral evidence the Judge sets out findings of fact from [53] of the decision under challenge.
4. The Judge expresses concerns about some aspects of the appellant's evidence but at [64] writes:

> 64. For the reasons already set out in the section above, in relation to the Facebook evidence, I have real doubts about whether the appellant truly hails from Tuz Khurmato. However, as there is limited positive evidence, that does not depend on the appellant's account, to demonstrate his home area, I will approach the issue of whether he is at risk of indiscriminate violence from the position that he would return to Tuz Khurmato. The respondent did not challenge that the appellant is a Sunni Kurd who has worked with the Peshmerga. Applying the sliding scale analysis provided in *SMO*, these factors would place him at risk on return to this city given the current security situation. In addition, the respondent did not challenge that the appellant was illiterate. When all of these considerations are taken into account, I am satisfied to the low standard of proof that the appellant will be at risk of indiscriminate violence if returned to the area where he claims to have originated. In view of this finding, I will proceed to consider whether it will be reasonable to expect the appellant to relocate to the IKR.

5. At [65 – 67] the Judge writes:

> 65. At paragraph 28 of the headnote of *SMO,* several factors were identified to assist in the evaluation of whether internal relocation to the IKR would be a reasonable option in a given case. I note first that there was no dispute that the appellant is an illiterate shepherd and that the unemployment rate for displaced individuals in this region is as high as 70%. The guidance is clear that it would be essential to have access to a CSID or INID card to access employment opportunities and the support network of a family may also be needed. As the appellant will be returning from the UK, there is no basis to conclude that he will be suspected by the authorities of involvement with ISIL. For the reasons I have outlined above, I have the gravest reservations about the credibility of the appellant. His evidence was tainted by inconsistencies that struck at the heart of his claim for asylum and I was left with no confidence that he was telling the truth about any matters of importance. In addition, his evidence about the existence of family members remaining in Iraq was marked by inconsistencies that I found impossible to reconcile with his providing a remotely truthful account. Considering these findings, I place no weight whatsoever on the evidence given by the appellant about whether he has access to identification documents or family members. It follows that if the appellant did not wish to return to his home area, whether that be Tuz Khurmato or elsewhere in Iraq, he could reasonably relocate to the IKR. He may encounter some difficulties due to a lack of skills but considering matters in the round I am satisfied that he would not encounter difficulties amounting to a breach of Article 3 of the ECHR.
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> 66. It is clear from the Facebook messages and posts I have seen that the appellant was openly critical about Iraqi leaders on a public facing social media platform. I have considered the background information relied upon by the appellant but I do not find to the applicable standard that the appellant would be reasonably likely to encounter prosecution or serious harm as a result of his political statements. The background

information relied upon was anecdotal and involved political actors of a significantly higher profile than the appellant. My attention was not drawn to any country guidance authorities that tended to suggest a political opposition of the kind engaged in by the appellant would bring about the risk of reprisals or repression.

67. I have considered matters in the round and find the appellant to be a witness who has not provided truthful evidence about the key facts underpinning his claim for asylum and humanitarian protection. If he genuinely hails from Tuz Khurmato, I am satisfied that he would be at risk of suffering indiscriminate violence due to the uncontroversial matters constituting his religion, ethnicity, and personal circumstances. However, I find that there would be nothing meaningful to prevent his internal relocation to the IKR. For these reasons, I dismiss the appeal.

6. The appellant sought permission to appeal, which was initially refused by another judge of the First-tier Tribunal, but granted on a renewed application by the Upper Tribunal on ground 4 only, which is pleaded in the following terms:

Ground 4 – inadequate consideration of arguments relating to internal relocation

18. The IJ has approach the question of internal relocation from an Article 3 ECHR perspective and has failed to consider whether internal relocation will be unduly harsh or unreasonable. That is legally erroneous:

"He may encounter some difficulties due to a lack of skills, but considering matters in the round, I am satisfied that he would not encounter difficulties amounting to a breach of Article 3 of the ECHR." (paragraph 65)

19. Furthermore, in respect of the IKR, there isn't a full analysis by the IJ at paragraph 65 of the Determination of the factors set down by the Upper Tribunal in SMO at the paragraphs 21 to 28 of the headnote. The IJ has failed to consider in this context his finding that the Appellant is illiterate, worked only as a shepherd, has no family in the IKR nor has he ever lived in the IKR which is fundamental to the analysis of whether he will be able to secure accommodation (see paragraph 27 Headnote, SMO) and employment (see paragraph 28 Headnote, SMO). The issues highlighted at Ground 5. below are also relevant to the safety of relocation to the IKR but have not, for the reasons set out in Ground 5, being adequately considered by the IJ.

7. Paragraphs [27 – 28] of the headnote of the country guidance case of SMO, which accurately reflect the findings made by the Upper Tribunal in that decision, read:

1. For Kurds without the assistance of family in the IKR the accommodation options are limited:

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It

would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

2. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*

(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID or INID;

(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.

Error of law

8. Mr Hussain in his opening address stated that the Judge was required to apply the correct test as per SMO but had failed to do so.
9. On behalf of the Secretary of State Mr Bates argued that the Judge had applied the test of reasonableness, referring specifically to [65] of the decision under challenge where the Judge refers to the headnote of SMO and considers whether internal relocation was an option in this appeal. Specific reference is made to the finding in [65] that if the appellant could not return to his home area "*he could reasonably relocate to the IKR*" a finding, in part based upon the unchallenged findings of the Judge that the appellant has family in Iraq and a CSID.
10. The Judge at [67] also finds there was nothing 'meaningful' to prevent the appellant's internal relocation to the IKR which can be reasonably inferred as the Judge's assessment of the reasonableness of internal relocation.
11. It is important to consider the decision as a whole. It was not made out before the Judge that the appellant is an undocumented asylum seeker unable to return to Baghdad. It was not made out he will be unable to travel within Iraq, especially in circumstances in which his claim to have no relatives in Iraq was found to lack credibility.

12. It was not made out the appellant does not have a male relative in Iraq able to meet him at the airport to assist in travel back to his home area or, in accordance with Kurdish custom and tradition, to provide him with the necessary accommodation and support to enable him to re-establish himself elsewhere.
13. The Judge expresses grave reservations about the appellant's claimed home area but proceeded to consider the reasonableness of internal relocation. No legal error is made out in the clear finding made by the Judge that it was not unreasonable in all the circumstances for the appellant to relocate with the assistance of family members. The submission of the appellant's behalf in the grounds seems to ignore this important factor.
14. The appellant did not establish before the Judge, in accordance with SMO, that he is an undocumented Iraqi. It was not made out the appellant would have to seek accommodation in one of the IDP camps as he has family members in Iraq and had not established before the Judge that they will be unable or unwilling to provide him with the required degree of support.
15. The Judge makes clear findings supported by adequate reasons that the appellant had not discharged the burden of proof upon him to show he was entitled to a grant of international protection or leave to remain in the United Kingdom on any basis, a finding clearly open to the Judge in the light of the lack of credibility in the appellant's claim. The pleadings do not establish this is a finding outside the range of those reasonably available to you the Judge on the evidence sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

16. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 27 August 2021