Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07630/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 4 May 2016	**On 11 May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KAMIL KARIM KADER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mrs S Saddiq, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iraq, born on 14 April 1984. It appears that he is Kurdish and from the area of Tikrit. On findings reached in previous proceedings, he speaks at least some Arabic. He first sought asylum in the UK on 26 February 2009, which the respondent refused.

2. Judge Wood dismissed the appellant's appeal against that refusal by determination promulgated on 13 August 2009. The judge accepted that the appellant might be at risk on account of imputed political opinion as someone who had been providing support to the coalition forces, and that in absence of a sponsor he could not relocate to the KRG (the area of the Kurdish Regional Government, also referred to in various parts of the papers on file as the IRK, or as Iraqi Kurdistan). However, he could relocate in central or southern Iraq.

3. The appellant had exhausted his appeal rights by 19th November 2009. He was granted discretionary leave until 12 April 2014.

4. In further submissions through his solicitors he renewed his protection claim.

5. The respondent made a further decision dated 23 April 2015, holding that country circumstances had not deteriorated so as to entitle the appellant to asylum or humanitarian protection; that relocation to Baghdad or the south, while not ideal, remained available; and that there were no family and private life or other circumstances warranting a grant of leave, in or out of the immigration rules.

6. The appellant appealed to the FtT on lengthy grounds, contending essentially as follows, using the numbering of those grounds:

   (i) he was a target of terrorists; he would be in danger from insurgents throughout Iraq; it was settled that he could not go to Tikrit or to the KRG; he could not be expected to relocate anywhere;

   (ii) in any event, indiscriminate violence throughout the country entitled him to protection under article 15(c) of the Qualification Directive;

   (iii) – (iv) articles 2 and 3 of the ECHR provided protection, for similar reasons;

   (v) based on his relationship with a UK citizen partner, he met the requirements of the immigration rules;

   (vi) in any event, he had a right to leave to remain, based on the ECHR articles 2, 3 and 8.

7. Designated Judge Macdonald dismissed the appellant's appeal by decision and reasons promulgated on 30 December 2015.

8. The appellant sought permission to appeal to the UT, which was refused by the FtT, but granted by the UT. He contends essentially as follows, again using the numbering of his lengthy grounds:

   (i) the judge applied country guidance, resulting in injustice to the appellant; his case was to be set apart from the majority of the population; he was "of interest to ISIS, who are a caliphate and have significant reach and resources"; he was not trying to show risk from indiscriminate violence; he had established a specific risk "disregarded all too lightly by the judge with reliance placed on the country guidance";

   (ii) the conclusion that the appellant could go to the KRG contradicted the earlier determination, and in any event the appellant proved that he would be at specific risk there;

(iii) there was a risk from indiscriminate violence, going beyond country guidance;

(iv) the judge was wrong to find that the appellant speaks some Arabic, and it would be unduly harsh to expect him to relocate in central or southern Iraq;

(v) the judge ought to have found that removal would be disproportionate, in terms of article 8 of the ECHR.

9. Mr Martin relied upon the grounds.

10. Mrs Saddiq submitted as follows. It was not an error to apply country guidance, there having been no background evidence or analysis which might displace it. The judge had correctly taken the prior determination as a starting point. The group which the appellant feared, Ansar Al-Islam, had transformed into ISIS. The judge correctly went on to find at paragraph 55 onwards that the appellant had the option of relocating in central or southern Iraq. That was the effect of the country guidance. The appellant does not dispute that the respondent holds his expired Iraqi passport. It is settled that there is no such risk from indiscriminate violence as to qualify the appellant for protection. There was nothing to lead the judge to a different conclusion. The appellant had the further alternative of relocation to Baghdad City. There was no more for the First-tier Tribunal to consider regarding internal flight. The appellant insists again at paragraph 4 of his grounds that he speaks no Arabic, but he showed no error of law in that conclusion, and was not entitled to have his case considered on that basis. Both judges had concluded that he does speak at least some Arabic, and the grounds contained no proposition of legal error going to that finding. In any event, ability to speak Arabic was only one element in assessing internal relocation. Regarding ground 5 (the Article 8 ECHR claim) Mrs Saddiq adopted what was said by Designated Judge Manuell when initially refusing permission, “The judge gave all proper attention to the Article 8 claim, again on the basis of the current situation, and his conclusions were inevitable on the basis of law and statute.” The claim was based on private life only. It would have been extraordinary if any judge had thought that the appeal could succeed on that basis.

11. Mr Martin responded thus. He acknowledged that country guidance is generally to be followed, but pointed out that the appellant asserts that he is outside the general category of those at risk from indiscriminate violence. He had shown a specific risk as a perceived collaborator of high army rank working closely with the coalition forces, who have since withdrawn. His home town is Dubs, which is in a contested area, and it is accepted that he cannot return there. Judge Wood found that he could not relocate to the KRG, but that he could go to central or southern Iraq. Judge Wood’s finding regarding the appellant’s home area and any Kurdish area remains sound. Judge Wood found that Ansar Al-Islam was active in the KRG. Judge Macdonald was wrong in finding that the appellant could

relocate there. Country guidance did not say that the KRG was entirely free of violence. The guidance was about indiscriminate not targeted violence. At paragraph 51 Judge Macdonald accepted that ISIS had issued further threats against the appellant and his brother. Such risk in Iraq had increased exponentially. ISIS was not restricted to the appellant's home area or to the KRG, and had formed a caliphate since June 2014. The judge was wrong at paragraph 58 to find that the appellant could be returned to the KRG or to Baghdad without facing a real risk. There should have been found to have been such a risk, given the deterioration in Iraq, the withdrawal of the coalition forces and the rise of ISIS. However, Mr Martin did not seek a finding based on indiscriminate violence, which he accepted was precluded by the country guidance. He said that the error was one of a failure to examine a risk based on the appellant's facts and circumstances being Kurdish, having served as a sergeant in the army and closely co-operated with the coalition, having been specifically targeted, and now being westernised and a self illuminating target perceived to be wealthy if he returned. It was significant that the respondent had conceded in the refusal letter that return to Baghdad was not ideal. The judge should have found that the risk existed throughout Iraq and could not be excluded by internal relocation to any part of the country. Ground 5 was also relied upon.

12. I indicated that in my view there was plainly no merit in Ground 5. Beyond that, I reserved my decision.

13. The grounds amount in substance only to insistence that the judge ought to have found that risk to the appellant extended throughout Iraq, and there was no area where he would be safe; or alternatively, that because he cannot speak Arabic his relocation elsewhere would be unduly harsh.

14. Those are factual issues, well settled in the decision by Judge Macdonald in accordance with current guidance. While the appellant's representative strove again to make the most of his case, the grounds do not disclose any legal error. The submissions for the respondent were generally sound. Little more needs to be said.

15. Judge Wood's finding that the appellant could not relocate to the KRG was based on country guidance ruling at that time which suggested that there was difficulty for a Kurd from another area settling there, although safety could be found among significant Kurdish communities in central and southern Iraq. Updated country guidance does not find there to be any barrier to returns to Iraqi Kurdistan, which is virtually violence free. There was no error in Judge Macdonald's declining to find that a risk to the appellant from ISIS extended throughout the whole of Iraq. Such a risk did not run in Iraqi Kurdistan or in Baghdad.

16. Although Mr Martin in submissions described the appellant as of high rank in the army, he was a sergeant, and the description by Judge Wood at paragraph 37 of his decision is accurate – not a particularly high profile, rather a relatively small cog.

17. The finding of Judge Wood that the appellant speaks Arabic is based on the appellant's evidence that he found an Arabic speaker in order to obtain directions to the respondent's office in Liverpool. That is a sensible reason which discloses no error. Judge Macdonald was entitled to adopt it at paragraph 60. The appellant continues to deny the point, perhaps because he thinks he must stick to his original statement, but it is inherently unlikely that someone educated and literate as he is, born in 1984 and going to school in Iraq at the usual ages, would not have been taught in Arabic or at least taught to speak Arabic. Findings in fact should not be preserved by finding reasons which are not in the original decision, but both decisions are sensible, and any further investigation is not likely to go in favour of the appellant's contention.

18. The determination of the First-tier Tribunal shall stand.

19. No anonymity direction has been requested or made.

5 May 2016
Upper Tribunal Judge Macleman