Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01365/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 October 2015	**On 4 January 2016**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR ARY MOHAMMED ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Stuart King of Counsel, instructed by J D Spicer Zeb
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1) This is an appeal against a decision by a panel of the First-tier Tribunal comprising Judge of the First-tier Tribunal Easterman and Mr M E Olszewski JP. The panel dismissed an appeal by the appellant on asylum and human rights grounds.

2) The appellant is a national of Iraq. His appeal was brought against a decision to deport him as a persistent offender. The panel of the First-tier Tribunal was satisfied that the appellant's convictions were sufficient to show that his presence in the United Kingdom was not conducive to the public good. The panel then turned to the question of whether the appellant should be protected from deportation either on the grounds of asylum or humanitarian protection or under Article 3.

3) The panel noted the appellant's original claim that he could not return to Iraq because of a fear of the regime of Saddam Hussein. By the time of the hearing this was no longer the appellant's case but he sought protection as a Kurd. The panel was not satisfied that the appellant was a refugee but considered the question of Article 3 protection or protection under the Qualification Directive on the basis that there was an internal armed conflict in Iraq which would put the appellant in danger merely by his presence.

4) The panel observed that the appellant comes from Kirkuk, which was currently in a conflict zone. The panel accepted that the appellant could not return to those areas of Northern Iraq which were currently overrun by ISIL forces. The panel noted from the country guidance case, HM & Others [2012] UKUT 00409, at paragraph 47, that Kurds would be safe in the Kurdish controlled area of Iraq and that there were a large number of Kurds living around Baghdad.

5) The panel rejected the suggestion that because the appellant was a Kurd he could not live in Baghdad. The panel were of the view that the possibility of internal relocation was viable for the appellant and he could return to Baghdad. The position in Baghdad was not easy but it was not a contested area.

6) The panel also considered the appellant's position under Article 8 and found that his deportation would not be a disproportionate interference with his private life.

7) The application for permission to appeal contended that the panel of the First-tier Tribunal had failed to have regard to evidence from the UNHCR dated 27 October 2014 on returns to Iraq. The panel had failed to have regard to the extent of the problems in Baghdad at the present time. In addition, the panel did not give adequate consideration to the question of the appellant's documentation. His Civil Status ID (CSID) could not be replaced in Baghdad and this had implications for the appellant which had not been taken into account by the Tribunal. The appellant would be returning to Iraq as someone without ID documents and without a CSID in particular. He would not be able to replace these. Without a CSID the appellant might not be able to attain an Iraqi nationality certificate or a public distribution system card. Reliance was placed on the case of MK (documents – relocation) Iraq CG [2012] UKUT 00126. The lack of a CSID would affect his entitlement to food rations and was plainly relevant to the reasonableness of requiring the appellant to relocate internally. In noting that many Kurds lived outside the Kurdish controlled area, the panel failed to distinguish between the situation of Kurds already established and a returnee who would be joining over two million internally displaced people in Iraq.

8) Permission was granted on these grounds.

9) A rule 24 notice dated 30 January 2015 was lodged on behalf of the respondent. This submitted that the panel's findings on the availability and

reasonableness of internal relocation were well made. Although the panel might have gone into greater detail regarding the reasonableness of internal relocation, any lack of consideration of this issue did not materially affect the outcome of the appeal.

Submissions

10) At the hearing before me, Ms Stuart King began by referring to the panel's alleged lack of regard to the UNHCR guidelines on returns to Iraq. She nevertheless acknowledged that since the panel's decision the position had been affected by the issuing in September 2015 of a decision in the country guideline case of AA (Article 15(c)) Iraq CG [2015] UKUT 00544. She suggested that in the light of this decision the panel's decision was perverse.

11) For the respondent Mr Melvin submitted that the panel had taken into account the UNHCR report in question, and he referred me to passages where the country information was mentioned, and, in particular, the UNHCR report at paragraph 103 of the decision. He submitted that the panel had given adequate consideration to all the country information and guidance.

12) He acknowledged that the panel had not mentioned this report specifically in relation to internal relocation but the panel's decision should be considered as a whole. The panel had found it was reasonable for the appellant to relocate to Baghdad where numerous Kurds resided.

13) There was then a discussion of the decision in AA. After this I indicated that I was satisfied there was an error of law in the panel's decision in relation to internal relocation because the panel had given inadequate consideration to the issue of reasonableness. I further indicated that the appeal would be allowed under Article 3. My detailed reasons would follow.

14) After the hearing Mr Melvin wrote to me requesting that I reconvene the hearing for further submissions to be made on behalf of the respondent in relation to AA. I considered, however, that the content of Mr Melvin's letter did not show that he had anything to add that had not been already discussed at the hearing. Accordingly, I have proceeded to issue my reasoned decision.

Discussion

15) In making a decision in this appeal the panel of the First-tier Tribunal were undoubtedly in a difficult position because it did not have the benefit of the up to date country guideline case of AA. The greater part of the panel's decision is, however, unaffected by any error of law. It was only when the panel turned to the question of internal relocation that an error was made. This error was that having regard to the available country information, including the UNHCR guidelines of 27 October 2014, the panel did not give adequate reasons for finding that it would not be unreasonable or unduly

harsh to expect the appellant to relocate to Baghdad in order to avoid indiscriminate violence in his home area of Kirkuk.

16) The other findings made by the panel in their decision, apart from internal relocation, are unchallenged and remain. It is therefore appropriate for the decision to be re-made on the sole issue of the reasonableness of internal relocation on the basis that the other findings made by the First-tier Tribunal are still intact.

17) Nevertheless the respondent's position at the hearing, as expressed by Mr Melvin, was that the panel of the First-tier Tribunal further erred by not taking proper account of the appellant's lack of Iraqi identity documentation. In this regard Mr Melvin relied, in particular, on paragraph 7 of the headnote to AA, which states:

> "7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from absence of Iraqi identification documentation, if the Tribunal finds that P's return is not currently feasible, given what is known about the state of P's documentation."

18) Essentially Mr Melvin's argument was that the panel erred in proceeding to consider internal relocation because, as an undocumented Iraqi, it would not be feasible to return the appellant to Iraq. As the appellant's return was not feasible, the issue of an alleged risk of harm arising from absence of Iraqi identification document did not require to be determined.

19) The rule 24 notice on behalf of the respondent was of course made eight months before the decision of the Upper Tribunal in AA. The rule 24 notice records, at paragraph 4, that the First-tier Tribunal properly considered the appellant's claim to come from Kirkuk, which was currently in a conflict zone, and made well reasoned and sustainable findings on the availability and reasonableness of internal relocation. There is then in the succeeding paragraph an acknowledgement that the panel might have gone into greater detail on the issue of reasonableness.

20) I have already stated that the reasoning or lack of reasoning, by the panel in relation to the reasonableness of internal relocation amounts to an error of law and this part of its decision must accordingly be set aside. This is, however, the only part of the decision which is set aside. There was no cross-appeal by the respondent challenging any part of the decision.

21) Nevertheless at the hearing Mr Melvin strongly disagreed with my approach and argued that the decision should be re-made in its entirety on the basis that the appellant was an undocumented Iraqi. I do not consider this is appropriate or necessary. I am supported in my decision by the terms of the decision in AA itself. In that case the appellant was also a Kurd from Kirkuk. The Upper Tribunal accepted that the appellant would face an Article 15(c) risk if he returned there. There was no evidence that the

appellant had access to Iraqi identity documentation and the Tribunal found that he would not be returnable until he was able to supply sufficient documentation to the Iraqi Embassy in London. Nevertheless, the Tribunal went on to state, at paragraph 207, the following in relation to internal relocation:

> "Given that the appellant's return is not currently feasible it could be said that it is unnecessary to hypothesise any risk to him upon his return to Iraq. However, as identified in paragraph 169 and 170 above, there may be cases where it will be evident that the person concerned would be at real risk of persecution or serious harm irrespective of the lack of documentation and that an applicant should not be precluded from pursing a claim to international protection in circumstances whereas the asserted risk of harm is not (or not solely) based on factors (such as lack of documentation) that currently render a person's actual return unfeasible."

22) The Upper Tribunal then remitted the appeal to the First-tier Tribunal for findings of fact to be made on these matters, including the question of relocation to Baghdad.

23) Accordingly, it is clear from the decision of the Upper Tribunal in AA that in some cases it will be appropriate to consider the question of humanitarian protection and internal relocation even for an undocumented Iraqi. It is not necessarily an error of law to do so, as Mr Melvin seemed to suggest. In this appeal it should be observed that the appellant's risk of serious harm arises not from his lack of documentation but from the indiscriminate violence in his home area of Kirkuk, similarly to the appellant in AA.

24) This brings me to the factors set out by the Upper Tribunal in AA to be taken into consideration in assessing whether it would be unreasonable or unduly harsh to expect an Iraqi national to relocate to Baghdad. The factors are summarised at paragraph 15 of the headnote as follows:

> "(a) Whether P has a CSID or will be able to obtain one…;
>
> (b) Whether P can speak Arabic (those who cannot are less likely to find employment);
>
> (c) Whether P has family members or friends in Baghdad able to accommodate him;
>
> (d) Whether P as a lone female (women face greater difficulties than men in finding employment);
>
> (e) Whether P can find a sponsor to access a hotel room or rent accommodation;
>
> (f) Whether P is from a minority community;
>
> (g) Whether there is support available for P bearing in mind there some evidence that returned failed asylum seekers are provided with the support generally given to IDPs."

25) In the present appeal the First-tier Tribunal found the appellant was from a minority Kurdish community. The appellant performed national service in Iraq and it may be assumed that he has some knowledge of Arabic. In his evidence the appellant claimed that his parents were dead and he had lost contact with his brother and sister. He was brought up in Kirkuk and there is no evidence that he has family members or friends in Baghdad able to accommodate him, or any sponsor there. There is no evidence of any support available for him there taking into account, in particular, that the appellant does not have a CSID and will not be able to obtain one. According to AA, a person's ability to obtain a CSID is likely to be severely hampered if the person is unable to go to the Governorate where his or her CSID was originally issued because it is an area of conflict. Without a CSID there is a serious possibility that the appellant would not be able to access financial systems, employment, education, housing and medical treatment. On the issue of medical treatment the appellant's evidence was that he has a back problem that he suffers from Hepatitis B, and from depression.

26) If I have understood Mr Melvin's argument properly, it was that in terms of AA the appellant's lack of a CSID or any other Iraqi documentation would make his return to Iraq unfeasible and therefore it was not necessary to consider his entitlement to humanitarian or Article 3 protection. For the reasons I have already given, I do not consider Mr Melvin's argument to be material because it is only the question of internal relocation which has arisen in the appeal from the decision of the First-tier Tribunal. It is clear that the lack of a CSID is relevant both to the feasibility of return and to the question of internal relocation but it is only the issue of internal relocation which is before me. I am satisfied that the appellant's lack of a CSID is a crucial factor in finding it would not be reasonable to expect the appellant to internally relocate to Baghdad.

27) How is the decision to be re-made? Although the First-tier Tribunal was satisfied that the appellant would be at risk of Article 15(c) serious harm in his home area, he would not necessarily on this basis be entitled to humanitarian protection were he to be subject to exclusion under paragraph 339D of the Immigration Rules. This provision states that a person is excluded from a grant of humanitarian protection where one of several considerations applies, including where there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom. The Tribunal is required to consider the application of paragraph 339D even where it has not been raised by either party, having regard to the decision in LP (St Lucia) [2010] EWCA Civ 493.

28) It is not suggested in this appeal that the appellant constitutes a danger to the security of the United Kingdom but there is a question based on his convictions of whether he is a danger to the community. The First-tier Tribunal found at paragraph 101 that the matters of which the appellant had been convicted were sufficient to show that his presence in the United Kingdom was not conducive to the public good. He is a persistent offender. Taking this into account I am satisfied that the appellant should be excluded from humanitarian protection as a danger to the community.

29) Nevertheless, as the appellant is at risk of indiscriminate violence in his home area and as I have found, contrary to the finding of the First-tier Tribunal, that it would not be reasonable to expect him to relocate to Baghdad, he is accordingly entitled to the protection afforded by Article 3 of the Human Rights Convention.

30) I therefore substitute for the decision of the First-tier Tribunal a decision that the appeal is allowed under Article 3.

Conclusions

31) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

32) I set aside the decision.

33) I re-make the decision in the appeal by allowing it.

Anonymity

34) The First-tier Tribunal did not make an order for anonymity. I have not been asked to make such an order and I see no reason for doing so.

Fee Award Note: This is not part of the determination

No fee was paid or is payable and therefore no fee award is made.

Signed Date

Upper Tribunal Judge Deans