Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA016812017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 June 2017	**On 23 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

HR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Fisher, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge A J M Baldwin) dismissing his appeal against the respondent's decision of 2 February 2017 refusing his application for asylum.

Background

2. In a brief outline the background to this appeal is as follows. The appellant is a citizen of Iraq born on [ ] 1990. He is Kurdish and speaks Kurdish Sorani and comes from Sulaimaniya Province in the Iraqi Kurdish Region

("KIR"). He claims that he left Iraq in either January 2015 or January 2016 passing through a number of countries including Turkey, Greece and France, before making a clandestine entry by lorry into the UK on 19 August 2016 when he claimed asylum.

3. He said that he would be at risk on return to Iraq because one of his uncles was injured fighting ISIS in 2014 and his son blamed him for the injuries because he had refused to fight alongside him and threatened to kill him. After he left Iraq, the family had discovered that he had had a secret relationship with his uncle's daughter in 2012 and he claimed that he would be killed or seriously ill-treated by his uncle or his uncle's son. There was also a background difficulty, so the appellant claimed, between the family due to the division of family lands and he believed that his uncle had killed his father as the killer was never identified. As a Kurd he could not live in Baghdad and as a Sunni Muslim he would be at risk from Shia Muslims. Were he to relocate within the Kurdish area, it would only be a matter of time before his uncle's family caught up with him.

4. The judge summarised his findings as follows in [25] of his decision as follows:

> "Having reviewed the evidence as a whole, I find that the Appellant has not proved to the low standard required that he would face a well-founded fear of persecution in Iraq on account of a relationship with a young woman there, or on account of an historic land dispute, or because of his refusal to accompany his uncle on military duties, or because the uncle and son want revenge because of the injuries the uncle suffered. Even if there is ill-feeling between the Appellant and these two people, I do not find it credible that the Appellant would be at real risk of serious ill-treatment from that quarter. The area from which the Appellant comes is not a contested area – as set out in AA UKUT 544 (30.10.15) – and there is nothing to show why he will not be able to approach an Embassy to gain the documents he needs in order to return to Iraq. If he wished to avoid what I find is at most only ill-feeling, there is no reason why he cannot relocate within the Kurdish Region, well away from them if he so chooses – for example in Dohuk or Sulaimaniya. As a reasonably well-educated adult male with work experience and in the prime of his life, there would be no reason why he should not be able to start afresh elsewhere if he does not wish to return to his home area. The Appellant, I find, has not proved that he has a well-founded fear of persecution or serious ill-treatment in Iraq and has made out no case for the grant to him of humanitarian protection. The Appellant apparently has no partner, children or family members in the UK and has only been here for around six months. Beyond that, there is no information concerning his private life in the U.K. Having rejected his claims, he has identified no very significant obstacles to him returning to Iraq, save for the issue of documentation which he should be able to gain from his Embassy. Whilst there are many reasons to be concerned about events generally in Iraq, there is I find nothing which applies to him in particular and no compelling circumstances have been identified for considering Article 8 outside the Rules."

Accordingly, the appeal was dismissed on asylum, human rights and humanitarian protection grounds.

The Grounds and Submissions

5. In the grounds of appeal it is argued that the judge erred in law by not dealing with the issue of the appellant lacking documentation which could leave him destitute if he was unable to be documented. The arguments in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 were put before the Tribunal but the judge did not mention them and had not engaged with the issue. The grounds then refer to the grant of permission to appeal by the Court of Appeal (at [2016] EWCA Civ 779) against the decision in AA (Iraq) on the basis that:

> "I have, however, come to the conclusion that AA should be given permission to appeal on ground 1, namely whether as part of an assessment as to whether an individual required international protection the decision maker is:
>
> (a) bound to consider whether the individual concerned had in his possession or could obtain a CSID either before he returned to Iraq or within a short period of returning there, failing which (in the absence and alternative means of support) his circumstances were likely to amount to a breach of Article 3; and
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> (b) not entitled to postpone any decision on that question if it was not feasible for him to be returned to Iraq".

6. Permission to appeal was granted by the First-tier Tribunal for the following reasons:

> "2. The grounds of application allege the judge failed to engage with or to follow the guidance provided in AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC) and AA (Iraq) v Secretary of State for the Home Department [2016] EWCA Civ 779.
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> 3. The author of the grounds appears to have overlooked the judge's reference to AA in the middle of [25]. It is clear from the content of that paragraph that the judge was alive to the existence of AA. However, the grounds are accurate in suggesting the judge failed to have regard to the issues identified in AA. For example, the fact that the appellant might be devoid of credibility in respect of his asylum claim does not mean he had access to a CSID.
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> 4. It is arguable, therefore, that the judge failed to make findings on material issues and permission to appeal is granted."

7. In her submissions Ms Fisher adopted the grounds. She accepted that AA (Iraq) was primarily concerned with returns to Baghdad, but nonetheless it was dealing with Iraqi nationals and this did not mean that Kurdish citizens would not need a CSID. She submitted that the judge had erred by not

pursuing the issue of whether the appellant would be able to obtain a CSID or what the consequences would be if he failed to do so. She referred to the Country Information and Guidance of November 2015 on Iraq: International Relocation (including documentation and feasibility of return) ("CIG November 2015") and in particular to para 9.1.10. The judge had failed, so she submitted, properly to deal with and consider the implications of a return to the Sulaimaniya area and to assess what the risks would be for the appellant if he were unable to obtain documents such as a CSID.

8. Mr Avery submitted that AA (Iraq) did not address the situation in the KIR, but was about whether the lack of a CSID would lead to the risk of a breach of article 3 on return to Baghdad. The respondent's intention was to return the appellant to the KIR and this would be done by pre-clearing his removal with the authorities there. Issues which might arise if an appellant did not have a CSID if returned to Baghdad did not arise in respect of a return to the KIR.

Consideration of whether the First-tier Tribunal erred in Law

9. Permission to appeal was granted on the basis that it was arguable that the judge failed to have regard to the issues identified in AA (Iraq). These were referred to in Counsel's skeleton argument prepared for the hearing before the First-tier Tribunal, in particular at paras 20 and 21 which cite the first eight paragraphs of the italicised head note. The Tribunal in AA (Iraq) drew a distinction between cases where return was feasible and where it was not feasible.

10. In [7] of the italicised head note the Tribunal said, in the light of the Court of Appeal's judgment in HF (Iraq) & Ors v Secretary of State for the Home Department [2013] EWCA Civ 1276, that an international protection claim made by P [an Iraqi national] cannot succeed by reference to an alleged risk of harm arising from an absence of Iraqi identification document if the Tribunal finds that P's return is not currently feasible, given what is known about the state of P's documentation, and in [8] that it will only be when the Tribunal is satisfied that the return of P to Iraq is feasible that the issue of an alleged risk of harm arising from an absence of Iraqi identification documentation will require judicial determination. Permission to appeal has been granted against this part of the Tribunal's decision by the Court of Appeal for the reasons already set out above.

11. Permission was granted on the basis that it was arguable that the judgment in HF had failed to take into account and was inconsistent with the judgment of the Court of Appeal in JI v Secretary of State [2013] EWCA Civ 279 where the Court held that it had been unlawful for SIAC, having expressed concern as to whether an appellant returned to Ethiopia could be effectively monitored by the Ethiopian Human Rights Commission, to leave it to the Secretary of State to determine whether and when the necessary monitoring capability had been achieved. The Court held that

SIAC could not simply leave it to the Secretary of State to decide when it would be safe for JI to return and that issue should be decided by the Court on the hypothetical basis of a return at the time of hearing.

12. The Court of Appeal when granting permission to AA accepted that it was arguable with a realistic prospect of success that the want of a CSID was not simply a technical impediment to return, but was capable of supporting an argument that, if a CSID could not be obtained, there would be a reasonable likelihood of a breach of article 3.

13. The rationale of the argument is that an applicant should not be deprived of asylum or humanitarian protection in circumstances where there would be a real risk of persecution or a breach of article 3 on return simply because at the date of decision or hearing it was not feasible or possible for him to be returned. International protection claims must be assessed by a consideration of what the applicant's position would be on the hypothetical basis of a return at the time of the hearing.

14. Whatever the outcome of the appeal on the issue on which permission was granted in AA (Iraq), I am not satisfied that it has any bearing on the outcome of the present appeal. The significant difference is that it is not proposed to return the appellant to Baghdad but to the KIR. Returns to the KIR were considered in AA (Iraq) (where it is referred to as the IKR) and the country guidance is summarised at [17]-[21] of the italicised head note, which reads as follows:

> "17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.
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> 18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.
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> 19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.
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> 20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.
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> 21. As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR."

15. I was referred in submissions to the CIG November 2015 and particularly to para 9.1.10 which deals with entry arrangements via Erbil International Airport and Sulaimaniya Airport. There is nothing to indicate that a return to the KIR requires a CSID or that the information in the CIG undermines the guidance given by the Tribunal in AA (Iraq) on returns to the KIR. I am therefore satisfied that there was nothing before the judge which required him to consider whether the fact that the appellant did not have in his possession a CSID had any bearing on the risk on return. It is accepted that on return to Baghdad an applicant without a CSID and without third party support may be at risk of finding himself destitute. However, the appellant is to be returned to the KIR not Baghdad.

16. In any event, the judge found that the appellant was a reasonably well-educated adult male with work experience, in the prime of his life and that there was no reason why he could not start afresh in the KIR and his comment that the appellant could relocate in the KIR was made in the alternative. He found that the appellant would not be at real risk of serious ill-treatment from other members of his family but commented that if he wished to avoid what amounted at most to ill-feeling, there was no reason why he could not relocate within the Kurdish region, well away from his home area.

17. In summary, any problems the lack of a CSID might have in obtaining a passport do not arise so far as the appellant is concerned. His return will need to be pre-cleared with the KIR authorities. The issues of obtaining a CSID whilst in the UK were considered in AA (Iraq) at [173]-[176] and within Iraq at [178]-[203]. There is nothing in these paragraphs to support an argument that the appellant, even assuming he did not have the evidence to obtain the issue of a CSID in the UK would have any difficulties in obtaining a CSID if it was needed when returned to the KIR. The risk that he might become destitute without a CSID also has no bearing on the appellant's case as he is not to be returned to Baghdad. In any event, the appellant at interview accepted at Q44 that he had had a CSID and an Iraqi nationality certificate, but he did not still have them. He was asked at Q46 whether if required he would he be able to go to an Embassy and attempt to obtain the documents and he replied that he did not know. The judge was entitled to comment that there was nothing to show that the appellant would not be able to do so to gain the documents he needed to return to Iraq.

18. The grounds do not therefore satisfy me that the judge erred in law by failing to deal more fully with the issues of documentation and feasibility of return. Even if he had, it would not have made any difference to the outcome of the appeal. The judge did not err in law in any way requiring the decision to be set aside.

Decision

19. The First-tier Tribunal did not err in law and its decision stands. The anonymity order made by the First-tier Tribunal remains in force until further order.

Signed H J E Latter Date: 21 June 2017

Deputy Upper Tribunal Judge Latter