Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04399/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 19 October 2017	**on 23 October 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

K S F

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss J Todd, of Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's claim for reasons explained in her letter dated 18 April 2016.

2. First-tier Tribunal Judge Farrelly dismissed the appellant's appeal for reasons explained in his decision promulgated on 24 May 2017.

3. In terms of the Tribunal Procedure (UT) Rules 2008, rule 23 (1A), the appellant's application for permission to appeal now stands as the notice of appeal to the UT. It sets out grounds which, read shortly, are as follows:

(1). Error at ¶36 in finding that the appellant has continued contact with family in Iraq, which overlooks his evidence that he was able to speak to his family by telephone 3 times since he came to the UK, but was unable to reach them again.

(2), (3) and (4). Error at ¶37 in finding that the appellant could return to Kirkuk, based on evidence that Isis no longer had a grip on the city, when country guidance stated that Kirkuk is a contested area. The one article relied upon by the judge was insufficient to depart from the country guidance in respect of Kirkuk no longer being a contested area. Case law emphasised the need for very strong grounds supported by cogent evidence in order not to follow country guidance.

(5) Error at ¶38 in finding the appellant would be able to relocate to the IKR, which overlooked the practicalities of travel from Baghdad to the IKR. The appellant said he did not have an Iraqi passport. He could return to Baghdad only on a *laissez passer*, a one-way travel document which would be taken from him on arrival. He would be unable to travel to the IKR as a travel document is required for internal flights, and would be unable to travel by land as he would have to travel through contested areas.

4. Submissions for appellant. It was not open to the judge, standing the country guidance, and on the one news article before him, to find it possible for the appellant to return to Kirkuk. The respondent relied on *Amin* [2017] EWHC 2417 (Admin) at ¶63, but that was a judicial review not a statutory appeal, was now under appeal, and was wrongly decided. The appellant's case was not correctly dismissed by the judge at ¶38 – 39, because there was no exploration of his circumstances by reference to guidance on relocation in Baghdad. It was accepted that he was a Sunni Kurd but not from the KRG, so return could only be to Baghdad. The judge made no express finding on the contact he had with his family and consequent ability to replace documentation and otherwise adapt to return. The guidance flagged these up as crucial issues, so they needed explicit findings and could not be left to inference. Rehearing was required, limited to the issues of family contact and the practicalities of internal relocation.

5. Submissions for respondent. The grounds did not challenge the finding that the appellant could relocate in Baghdad. That was decisive. There had been no application to amend and the widened challenge should not be admitted. In any event, the judge's findings at ¶30 and 36 were also unchallenged, and were sufficient to dispose of the case, as the appellant's claim to have no family or other connections in Iraq was plainly rejected. The Judge's findings on return to Kirkuk were open to him and were supported by *Amin* but the issue was incidental, as it had been found the appellant could relocate elsewhere. If he failed on his family contact point, the rest was immaterial.

6. I reserved my decision.

7. It is in the first place for an appellant to establish his case to the lower standard, not for a tribunal to achieve impossible insights into his true circumstances.

8. The judge rejected the appellant's credibility at ¶30, which includes a finding that he "has fabricated his claim in order to remain here".

9. At ¶36 the judge noted communications which the appellant admitted to having had with family and others, and his claim to have had a passport "which the agent took", and went on, "There would appear to be enough sources to establish his identity to the Iraqi authorities … the appellant has not demonstrated travel documentation cannot be obtained".

10. Reading the decision fairly and as a whole, the judge did not overlook the appellant's evidence on absence of useful contacts, or on absence of and inability to obtain documentation. Rather, the judge plainly rejected it.

11. The case at that point was bound to fail, due to availability of relocation to the KRG.

12. Even if travel was to be *via* Baghdad, the appellant had shown no difficulty in his way.

13. No error is shown in the finding that the appellant might relocate *in* Baghdad, but that was only in the alternative.

14. Ability to go home to Kirkuk (or somewhere around the city of Kirkuk; the appellant's case was rather vaguely put) is also not the crux. However, *Amin*, while not binding, is persuasive; no reason has been shown not to follow it; and if a further decision had to be reached regarding Kirkuk, that would be on up to date information. Country guidance does not purport to fix the boundaries of contested areas in time to come, but is subject to later evidence.

15. The decision of the First-tier Tribunal shall stand.

16. The FtT made an anonymity direction, although not apparently on the application of the appellant, and for no stated reason. The matter was not addressed in the UT, so anonymity has been preserved herein.

Hugh Macleman

20 October 2017
Upper Tribunal Judge Macleman