



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05150/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 3rd August 2017

Decision & Reasons Promulgated
On 18th September 2017

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

MR.N.M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Wilkins, Counsel
For the Respondent: Mr. Harrison, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a Kurdish Iraqi national who lived in Mosul. He said he was born in October 1990 and is single. He is of the Sunni branch of Islam.
2. His appeal against the refusal of his protection claim was heard by Judge of the First-tier Tribunal NMK Lawrence. It was dismissed in a decision promulgated on 18 April 2017. His claim was that he fled because Isis wanted him to fight for them. The judge referred to inconsistencies in his account and concluded the index events described were a fiction, concocted for the purposes of seeking asylum.

3. At paragraph 15 the judge referred to AA Iraq [2015] UK UT 544 and the Court of Appeal's comments in AA (Iraq) [2017] EWCA Civ 944) and concluded he could be removed to Baghdad city. The judge did not accept the appellant's claim he was not in contact with his family and concluded this was a lie in order to prevent his return. The judge found he is able to contact his parents and siblings in Mosul for assistance in securing the necessary CS ID document. The appellant could grant power of attorney to someone in Iraq to obtain documentation. The judge referred to the comments in AA Iraq [2015] UK UT 544 at para 177 of the difficulties in obtaining SSID from a contested area but made the point that the appellant could obtain the documentation before travelling. The judge found that having a CS ID the appellant could then obtain a passport or alternatively, a laissez passé.
4. The judge concluded it would not be unreasonable for the appellant to relocate to Baghdad city. On removal he would be provided with funds. This would help whilst he established himself there. There was no evidence he was confirmed in body or mind. The judge concluded he would not face destitution. The judge referred to the decision of BA(returns to Baghdad) Iraq CG [2017] UKUT 18 where it was stated at paragraph 118 that the incidence of targeted violence against Sunnis did not create a real risk on return.
5. In the alternative, the judge found that the appellant could travel to his home area in Mosul. There were no factors peculiar to him which would place him at risk.

The Upper Tribunal

6. Permission to appeal was granted on the basis it was arguable the judge erred in concluding the appellant could return to Mosul and had not considered whether it would be unreasonable or unduly harsh for him to relocate to Baghdad.
7. At hearing I was provided with a skeleton argument on behalf of the appellant. The skeleton argument confirms that no challenge is being made to the judge's adverse credibility finding. Ms Wilkins submitted that the judge had not applied AA Iraq [2015] UK UT 544 correctly. There was no evidence that the appellant spoke Arabic. She submitted that there was no means of access for the appellant to the IKR.
8. The presenting officer pointed out that the refusal letter raised relocation not only to Baghdad but also to the IKR. He accepted it was arguably an error to suggest the appellant could return to Mosul on the country guidance decision. However, the situation was fluid with the latest information being of Iraqi forces establishing their presence in Mosul. In any event, he submitted the appellant could relocate to Baghdad and start to make his life there. He submitted that within Iraq many had been displaced but they did

not all end up in refugee camps. He is a young, resourceful man who will be going back to trace his family.

Consideration

9. The appellant has been found not to be credible in respect of his claim about events in Iraq. Consequently, his account elsewhere must be treated with caution. He may not be disclosing the true situation in respect of matters such as education; employment; family and the documents he can obtain. I note at screening 1.7 he said he could get documents to confirm his identity but he did not have a passport. He claims never to have received an education and to have always helped his father and selling produce in the market. At para 7 of his substantive interview he said he only spoke Kurdish. At question 87 he said he did not know if his parents and sister were still in Mosul.
10. The judge concluded that the appellant could obtain the necessary documentation for travel and a CS ID. The focus of the challenge has not been on this conclusion but upon the reasonableness of returning him to Baghdad. The judge had concluded the appellant was lying when he said he had no contact with his family in order to prevent his return to Iraq.
11. On the judge's findings the appellant is being returned as a young Iraqi who had sought to remain here by deception and who had no profile in his home country.
12. In AA Iraq [2015] UK UT 544 the focus of the Upper Tribunal was upon paragraph 15(c). Mosul is in the Nineveh governorate. Baghdad is some 250 miles north. The country guidance case had concluded that Nineveh was a contested area where the intensity of the armed conflict was such that as a general matter 15 (c) applied.
13. The judge at paragraph 21 had said that once returned to Baghdad the appellant could make his way to his home city if he wanted. This obviously is at odds with the country guidance. Any failure to follow a clear and applicable country guidance case will be regarded as grounds of appeal on a point of law. (See R(Iran and Ors -v- SSHD [2005] EWCA Civ 982). If there is fresh evidence a judge can depart from the country guidance but must be able to justify this. There is nothing to suggest evidence was led justifying such a departure. Consequently, in this regard the judge did err in law.
14. However, the principal issue was the appellant's return to Baghdad and his ability to establish himself there. It was the judge's conclusion that he could. Paragraph 14 of the head note of AA points out that generally it will not be unreasonable or unduly harsh for someone from contested areas such as the appellant to relocate to Baghdad. The decision gives guidance on relevant

factors. It is of note that these are listed as factors and are not determinative. The reasons advanced by First-tier Tribunal Judge Lawrence were limited. In fairness, this was because the information volunteered by the appellant was limited and is very difficult to test by the respondent or the judge.

15. The judge said he would have documentation. He would also have a financial package. He may have help through his family though there was nothing to suggest they were present in person in Baghdad. The judge did consider the difficulty being a Sunni in Baghdad presented. Those who speak Arabic a better placed to find employment. The appellant stated he only spoke Kurdish. I cannot find a finding on this point by the judge but there was nothing to suggest he could speak Arabic. He is male and as the judge pointed out he is fit and healthy. The judge had referred to a financial package until he established himself. It is my conclusion there were sufficient factors referred to for the decision to be sustainable.
16. The judge did not go on to consider the possibility of the appellant treating Baghdad as a transit point to the IKR. This was dealt with in the Refusal and AA found the area was virtually violence free. There is no dispute that he is Kurdish. He would gain entry, albeit possibly for a limited period.
17. Ms Wilkins had mentioned possible difficulties with onward travel from Baghdad to the IKR. The nature of a laissez-passer is that it is issued by the Iraqi authorities here to facilitate return. If this is taken from the appellant on arrival at Baghdad airport the country guidance case is silent as to the need for documentation for onward travel within the country. Put another way, I have not been referred to any evidence that further documentation is required for travel within Iraq. The onus is not on the respondent to prove in each case what documents are required to board an internal flight from Baghdad to the IKR. Nor does she have to show that the appellant has them or can access them.
18. Paragraph 170 of the Country Guidance case was a discussion on internal relocation which does not make its way into the head note. The Court of Appeal's comments on para 170 (AA (Iraq) [2017] EWCA Civ 9440 about the CSID being not just a travel document but a necessity does not undermine the present decision because the judge concluded he could obtain this document.

Conclusions

19. The judge did err in suggesting the appellant could return to Mosul. This was inconsistent with the Country Guidance decision. There was no indication of a basis for departing from that guidance. It may be the position is different now but nevertheless the parties must be given a chance to respond and the evidence led.

20. However, I do not find this error to be material to the outcome and the comments made were obiter. The decision was primarily premised on the appellant's relocation to Baghdad. The judge concluded he could do this and whilst limited detail is available the judge did consider the principal factors. It is my conclusion that this aspect of the decision is sustainable.
21. It would have been helpful for the judge to consider in the alternative going to the IKR. However, I do not find this to be a material error of law as the decision is sustainable on relocation to Baghdad alone. For completeness, a consideration of the IKR would most likely have confirmed the outcome, albeit in the alternative.

Decision

The appeal is dismissed. The First Tier Tribunal decision dismissing the appeal shall stand.

Signed

Dated

Deputy Judge Farrelly of the Upper Tribunal
8th September 2017