Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/06787/2016**
PA/06602/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination & Reasons Promulgated**
On 4th August 2017	**On 18th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) A B S
(2) S B S
(ANONYMITY DIRECTIONS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms E Rutherford (Counsel)
For the Respondent: Ms H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Frankish promulgated on 6th January 2017 following a hearing at Bennett House, Stoke-on-Trent on 3rd January 2017. In the determination, the judge dismissed the appeals of the Appellants, whereupon the Appellants subsequently applied for and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are citizens of Iraq, are brothers, and were born respectively on 4th April 1992 and 1st January 1995. They are presently aged 25 and 23 currently. They arrived in the UK on 22nd January 2016 and claimed asylum on the same day.

The Appellants' Claim

3. The Appellants' claim is that, as far as the first Appellant is concerned that he is a Kurd from Kirkuk and fears ISIL because he is afraid that they would conscript him to fight for them. He also fears the KDP because his father was in the Ba'ath Party during the time of Saddam Hussein. The second Appellant's claim is that he is the younger brother to the first Appellant and that because his father was a captain in the Ba'ath Party, after the collapse of the regime his father started a car business in Kirkuk and Arab thugs visited his shop and demanded money. When his father refused this led to death threats.

The Judge's Findings

4. The judge highlighted the essence of the Appellants' claim before him. He noted that the account described by the Appellants was of targeted violence with the hand of the same group of Jihadists being responsible for threats to the father for money or manpower in the form of his sons, the destruction of the father's workshop, and the shooting dead of the elder brother, A (see paragraph 18). The judge did not accept however that there was the same guiding hand behind all the misfortunes that befell this family during their life in Kirkuk because the evidence was too vague to link that to the murder, attempted murder and attempted kidnapping of three of the brothers of this family. The judge considered that there was an element of "overegging the case" (paragraph 20).

5. More significantly, the judge took the view that it was not plausible that the Appellants had lost all contact with their family in Kirkuk. Indeed, the judge went on to say that, "the first Appellant in particular, has a lifetime of contacts in his home city. I do not accept he is unable to make contact with the family through them" (paragraph 21).

6. The determination ended with the observation that, as he had not accepted that there was a loss of contact with the family by these Appellants' brothers, he could not be satisfied that an approach to the Iraqi Embassy would fail to produce duplicate documents leading to a CSID, because following the guidance given in the case of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544**, it was not the case that this was "unachievable or disproportionate" (paragraph 26).

7. The appeal was dismissed.

8. On 11th May 2017, the Upper Tribunal granted permission to the Appellants on the basis that it was arguable that the judge did not consider whether relocation to the IKR was reasonable taking account of the Appellants' personal circumstances.

9. On 6th June 2017, a Rule 24 response was entered to the effect that the judge had dealt with the issue of internal relocation to the IKR with sufficient scrutiny of all aspects of what the internal relocation entailed. The determination dealt with internal relocation at some length culminating in an assessment of the feasibility of unskilled returnees at paragraph 23. Moreover the judge's findings at paragraph 26 make it clear that the Appellants were found to have the means to contact family members on return to Iraq.

Submissions

10. In her submissions before me, Ms Rutherford, appearing on behalf of the Appellants stated that the claims of both Appellants are based on the same events in Iraq. Judge Frankish rejected their claims, but failed to consider whether internal relocation to the IKR, with transit via Baghdad, was now available to the Appellants given their personal circumstances. Judge Frankish did consider whether the Appellants would be at risk in the IKR due to the activities of their father. He concluded that they would not be at risk. He was entitled to that conclusion. However, he did not consider the other arguments that were put forward on behalf of the Appellants, in particular those relating to internal relocation.

11. The issue of internal relocation was highly significant in the light of the expert report of Dr Rebwar Fatah who had identified a number of difficulties in the path of the Appellants were they to seek internal relocation in Iraq. These were as follows. First, there was a changing demography in the disputed territories and if the returnees were allowed to settle in the IKR then the number of the Kurds would reduce. Second, the requirement of a Sponsor to visit the IKR had been removed but non-professional Kurds such as labourers from the disputed territories, risked being barred from the IKR. The barring of such people was arbitrary and there was no pattern to it. Third, Kurds from the disputed areas were allowed to visit but they could not obtain identity cards relating to the IKR. Fourth, the public distribution system PDS for food rations could not be transferred to the IKR from outside the region. Fifth, there was confusion regarding the transfer of civil records and the civil records did not move from the Iraqi governorates to the IKR. Finally, if the Appellants were returned they would be removed from their kinship networks and in a country like Iraq most people rely on social connections or blood ties for accessing employment, housing, and social assistance, which would be denied to these Appellants.

12. All these issues are very important because the Country Information and Guidance Report on Iraq for August 2016 of the UK Government revealed that job opportunities in the IKR are very limited and the humanitarian situation in the IKR for IDPs was grim. Accordingly, the failure of the judge to give specific regard to these issues, in the form enumerated by Dr Rebwar Fatah, was an error of law.

13. Second, since the determination being handed down by Judge Frankish, the Court of Appeal had given fresh guidance in the case of **AA (Iraq) [2017] EWCA Civ 944**. The position now is that former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis would be returned to Baghdad. As far as the Iraqi

Authorities are concerned, they would allow an Iraqi national in the United Kingdom to enter only if such a person was in possession of a current or expired Iraqi passport relating to themselves or a lassiez-passer. No Iraqi national would be returned to Baghdad if they were not in possession of one of these documents. The Court of Appeal has made it clear that a returnee's ability to obtain a CSID "is likely to be severely hampered" if they are unable to go to the Civil Status Affairs office in the relevant governorate if there is a risk there of serious harm occurring contrary to Article 15(c).

14. On this basis, Ms Rutherford submitted that the Appellants cannot move about in Iraq, or gain access to the IKR, or obtain access to basic services because neither has a passport, and although Judge Frankish held that duplicate documents would be provided by the Iraqi Embassy, the ability of the Appellants to obtain a CSID will be dependent upon whether they know the page and volume number of the book holding their information and their ability to persuade officials that they are the two people named there. The Appellants in these circumstances would need the assistance of their family members. The judge held that, "I do not accept the loss of contact as described by the Appellants" and that "I do not accept he is unable to make contact with the family" through other contacts in their home city (see paragraph 21). The judge repeated this at the end of the determination stating that he would not accept that there was a loss of contact with the family (paragraph 26).

15. Nevertheless, the problem remained that the Appellants were without a passport. There was no evidence that they would be able to have a CSID. They have to go to Kirkuk to get a CSID. They would need to know the page and volume number of the book and they would need to be able to persuade the officials that they were the people they claimed to be.

16. For her part, Ms Aboni relied upon the Rule 24 response and she submitted that the judge had directed himself appropriately in this case. He had given adequate reasons. He had concluded that the Appellants were not targeted specifically. The judge had explained at paragraphs 24 to 26 that the Appellants would be able to travel to Baghdad, and they would still be able to make contact with their family (see paragraph 21), who would assist the Appellants to relocate to the IKR. The judge did address all the issues and there was no error of law.

Error of Law

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First and most importantly, notwithstanding the detailed manner in which the judge has compiled the determination, the fact is that there is now a new Court of Appeal judgment in **AA (Iraq) [2017] EWCA Civ 944** that sets down stringent requirements with respect to the feasibility of return of Iraqi nationals. Whereas the judge has been able to address many of the concerns that are raised in this latest judgment, what is set out at section C of the annex to the judgment bears further scrutiny. Here it is stated (at paragraph 9), that

> "It will be necessary to decide whether P has a CSID, or would be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the Authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm …" (paragraph 9).

18. Similarly, although section C of this annex goes on to say that even if P does not have a CSID, as a general matter it should be possible to obtain one from the Civil Status Affairs office in the returnee's home governorate, using an Iraqi passport, nevertheless,

> "if P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P" (paragraph 10).

19. Of course it is the case here that the judge took the view (at paragraph 21) that it was more than likely that the Appellant would be able to contact, through his community ties, his mother in the IKR.

20. Nevertheless, the annex in the Court of Appeal's judgment goes on to say that, "P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs office of P's governorate because it is in an area where Article 15(c) serious harm is occurring …" (paragraph 11).

21. Ms Rutherford's submissions before me have been that the difficulties in this regard are compounded for the Appellants because the CSA officers for Kirkuk have not been established in Baghdad and this would mean that the Appellants would have to travel to Kirkuk, a disputed area, in order to get their documentation.

22. If this is the case then plainly a more detailed consideration is required of the situation that faces these two Appellants. That is the position now in the light of the latest judgment of the Court of Appeal in **AA (Iraq)**.

23. Second, and following on from this, the expert report of Dr Rebwar Fatah plainly assumes a more heightened importance in the context of what I have just stated above, and would need to be specifically considered in relation to each of the five points that I have set out above, which the expert had highlighted, before it can be concluded that the Appellants' return would indeed be such that would not violate the Rules on internal relocation as set down by international law.

Notice of Decision

24. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the

decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Frankish under practice statement 7.2(b).

25. An anonymity direction is made.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Dated

Deputy Upper Tribunal Judge Juss 15th September 2017