Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03052/2017

THE IMMIGRATION ACTS

Heard at Field House
On 5th February 2018

Decision & Reasons Promulgated
On 10th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR. S A K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Home Office Presenting Officer.
For the respondent: Ms A Harvey, Counsel, instructed by Paragon Law.

DETERMINATION AND REASONS

Introduction

1. Although it is the Secretary of State who is appealing in these proceedings, for convenience, I will continue to refer to the parties hereinafter as they were in the First-tier Tribunal.

2. The appellant claimed he was an uneducated Iraqi Kurd. He lived with his family in a village in the Independent Kurdish Region. His

elder brother by almost a year had been in a relationship which included sexual intercourse with a local girl; S. Her family discovered the relationship and in 2013 threatened to kill his brother. In October 2014 their village was destroyed in a bombardment and all his family killed except for his brother who was out working in the fields. They lived with friends until January 2015 when they went to live in the city of Soran. In May his brother discovered that S's family had been trying to find him. They decided to leave immediately and with the help of an agent crossed into Turkey. In December 2015 they split up, with the appellant arriving in Paris some six months later. From there he went to Calais and then on to the United Kingdom, arriving in September 2016.

3. His claim is that he would be at risk in Iraq because of his association with his brother. The Refugee Convention was engaged on the basis this made him part of a particular social group.

The refusal

4. His claim was refused by the respondent with his account not considered credible. It was accepted he was an Iraqi Kurd. Although he claimed to have been born in 2000 an age assessment put him at being at least one and a half years older, albeit still a minor.

5. The account of his brother being a relationship with S was not believed, with inconsistencies noted. The respondent also did not accept his village had been destroyed in 2014 and located country information that there had been an attack but in 2016. His claim of being suspected of being a member of the PKK was rejected, based upon his general credibility.

6. Even if the claim were true there was sufficiency of protection or alternatively, the option of relocation with the IKR. Regarding AA (article 15(c)) Iraq CG [2015] UKUT 00544 his village is in Erbil, a none contested area. It was felt he could return there or go to another area in the IKR.

The First tier Tribunal

7. His appeal was heard by First-tier Tribunal Judge Thomas at Birmingham on 22 September 2017. In a decision promulgated on 31 October 2017 it was allowed. At the appeal stage his representatives had obtained a psychiatric report which diagnosed him as having depression and post-traumatic stress. It was argued on his behalf that this should be taken into account, along with his age, when assessing the credibility of the claim as

well as the reasonableness of relocation. A report had also been obtained from Dr George, a country expert.

8. First-tier Tribunal Judge Thomas found that the appellant lived in a small village of several houses and that S lived in a neighbouring town. The judge referred to the country information and a report from Dr George to the effect that both Turkey and Iran had shelled Kurdish villagers and accepted, given the appellant was from a small village, an attack on it would not be documented.

9. In the appellant's oral evidence he said that afterwards he and his brother went to live in the town were S was from. The judge accepted as credible they would take the risk of going there out of necessity.

10. The appellant had also said he and his brother had not been allowed out because of fear of S's family. However, his account had been they were away attending farmlands when their home was bombarded. The judge accepted the appellant's evidence that the farmland was nearby.

11. The judge also accepted their account that they could not produce documentation because of the bombing of their home and that they were initially suspected of being in the PKK.

12. The judge then referred to honour based killings being traditional in Iraq and that the local authorities avoid involvement. The judge concluded that there would not be sufficiency of protection from S's family and that relocation was not viable given the appellant's age; the lack of reception facilities and the absence of family or other support bearing in mind his mental health. The judge concluded there was a real risk he would fall into destitution.

<u>The Upper Tribunal</u>

13. The respondent sought permission to appeal on the basis the judge materially erred in law in finding the appellant would be at risk from S's family. He and his brother had been able to live in the same town as she was from and there was no evidence to suggest he would be of any interest to her family. It was also argued that the evidence did not justify a finding that he could not relocate. The medical evidence produced had stated that was treatment available and his mental state would not necessarily deteriorate if it was absent. It was pointed out he had been able to support himself and travel across Europe. Permission was granted on the ground sought.

14. At the outset of the hearing both representatives agreed the question of relocation was confined to the IKR. The appellant had initially indicated that he and S were from the same village but in oral evidence said he was from a village and she was from a town. Mr Melvin made the point that on his account he and his brother had been able to live for two months in the same town where S's family where after their home had been damaged without coming to harm. He could give no explanation as to what had happened to S. At paragraph 30 of the decision the judge found that after the bombing the appellant had been hiding in the town where S's family were for two months. However, at paragraph 20 of his statement he said that he and his brother stayed with a family friend in the town and during that time they helped farm their land and did not refer to being in hiding.

15. He submitted the judge had not considered if the girl's family had any influence outside their local area. A considerable time passed before the appellant left the country and the fact they came to no harm is not reflected in the judge's conclusions.

16. The presenting officer submitted that the appellant had changed his account at hearing. The diagnosis of post-traumatic stress disorder was queried in relation to the existence of any index incident. In any event, there would be treatment available for the appellant in his home country.

17. In response, Ms Harvey referred me to the rule 24 response. She submitted that the challenge was no more than a disagreement by the respondent with the judge's findings. She referred me to the country expert report and the complicated nature of feuds in Iraq. Regarding internal relocation, she submitted the judge had made sustainable findings that the appellant could well end up as an internally displaced person and would face undue hardship. She referred to the humanitarian situation in the country.

Consideration

18. The respondent had not accepted the underlying claim was true and questioned the appellant's credibility. The appellant had said after the girl's family approached his he and his brother did not go out yet they were out alone when their home was bombed. His explanation is that they were within eyesight, farming land. There was then the issue of them going to live in the same town as a girl was living with her family. Originally, it was recorded she was from the same village. Again, although he said they did not go out his evidence was not consistent.

19. The grounds are premised on the claim made being accepted and argue there was no evidence to show the girl's family were interested in him. It was pointed out that he and his brother lived

in the same town as her family after their own home was bombed and did not come to harm. Thereafter, they lived in a city for almost half a year without difficulty.

20. The First-tier Judge at paragraph 33 found the appellant would be at risk of an honour-based killing and in his home area the authorities would not offer him protection. Dr George, in his report acknowledged that whilst the account may be plausible the determination of whether it was true was a matter for the Tribunal. He pointed out this was not a blood feud because there had been no killing but would be considered an honour killing. He made the point that men are better placed to take evasive action and, on the question of relocation, indicated the person would need to have a profile to rule this out as an option. The appellant in his statement said that if his brother were not in the country as the only male survivor he would then be targeted.

21. The judge considered the question of relocation paragraph 34. The judge concluded this was not viable because of his youth; his lack of family support and his mental state. However, the psychiatric report provided indicated that if he received no treatment his condition was likely to be static. It was suggested he would benefit from medication and cognitive behavioural therapy. The report from Dr Pargeter indicates that public health care is available but is poor by Western standards. Generally, conditions are better in the IKR than outside in Iraq. Whilst there is a shortage of staff medication is available and there is some behavioural therapy.

22. The judge does not refer to the medical assistance available. Whilst at that stage the appellant was a minor he was approaching adult hood and had managed to support himself for extended periods and to settle in the United Kingdom.

23. I have considered the decision in its entirety. I find the judge has materially erred in law by not providing an adequate assessment of the risk for the appellant and the viability of relocation to avoid any localised risk. The appellant had not been directly threatened and there was no evidence that the family had links throughout the IKR. The judge did not factor in the assessment that medical treatment would be available and the extent of his disability.

Decision

24. I find the respondent's grounds are made out and that the decision of First-tier Tribunal Judge Thomas materially errs in law and cannot stand. The matter is remitted to the First-tier Tribunal for a de novo hearing. None of the facts are preserved.

Francis J Farrelly

Deputy Upper Tribunal Judge 2nd April 2018

Directions.

1. Relist for a de novo hearing before any First-tier Judge, except Tribunal Judge Thomas.

2. The appellant's representatives are to advise the First-tier Tribunal office if an interpreter is required.