



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04546/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 9<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HJ

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mrs C Johnrose (Counsel), instructed by Broudie Jackson & Canter  
For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge McAll, promulgated on 21<sup>st</sup> May 2018, following a hearing at Manchester on 4<sup>th</sup> May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female, and a citizen of Iraq, and was born on 23<sup>rd</sup> January 1999. She appealed against the decision of the Respondent dated 23<sup>rd</sup> March 2018 refusing

her application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that she originates from Krovvia, near Shengal in Mosul. She is of Kurdish ethnicity and a Sunni Muslim. She was engaged to be married to a cousin much older than herself at the age of 35 years, when she was just 16 at the time, but she had fallen in love with a man of her own choosing and had then gone on to have sex with him, such that if she was now returned to Iraq she would be at risk of ill-treatment and persecution for having transgressed social mores and would attract the wrath of her father in particular. A critical aspect of the case is that she would be required to return now as a lone female and therefore would have no way of protecting or supporting herself in the risk of ill-treatment and harm that she would now face. She could not return to the Iraqi Kurdish Region (IKR) as she could not return to Baghdad.

### **The Grounds of Application**

4. The grounds of application state that the judge failed to give sufficient regard to the fact that the Appellant was returning as a lone woman and this would place her at risk. The core issue was that her father intended her to marry her cousin (see paragraph 14 of the grounds) and the traditions and cultural aspect to the Appellant's case was something that had not been given sufficient weight in circumstances where she had a sexual relationship with her boyfriend, although this was not accepted by the judge. However, the judge did not make any finding on the question of whether she was betrothed to marry her cousin. More importantly, the refusal letter states that her return is to Baghdad in the first instance. However, given that the judge had already found at paragraph 14 that she could not return to Baghdad, it was not then subsequently open to him to state, in the absence of cogent evidence to this effect, that she could safely return to IKR, and from there make her way to a safe place.
5. On 15<sup>th</sup> June 2018 permission to appeal was granted.

### **Submissions**

6. At the hearing before me on 9<sup>th</sup> August 2018, the Appellant's representative, Mrs Johnrose, submitted that the judge had failed to have material regard to the contents of the Appellant's evidence and the country information supporting her claim. She submitted that the judge fell into error in omitting to make a finding concerning the risk of forced marriage, which had been an aspect of her claim. Moreover, she submitted that her status as a young female person meant that she could not be returned, given what had been said in AA (Iraq) [2017] EWCA Civ 944. She went on thereafter to explain that the Secretary of State had not actually intended to return the Appellant to IKR. The refusal letter had in terms stated that she should be returned to Baghdad. However, the judge had said at paragraph 40 that the Appellant was a lone female of Kurdish ethnicity and of Sunni faith, and did not speak Arabic so that "return to Baghdad is not feasible for this Appellant as the Respondent has not established how the Appellant would transfer from Baghdad Airport to the IKR" (paragraph 40). However, subsequently the judge had then gone on to say, in response to a submission from the Presenting Officer, that the Appellant could take a direct flight to

Sulaymaniyah, and then an internal flight to Erbil and onward travel to her home in Duhok. Even at the time, Mrs Johnrose submitted that she had objected to this, arguing that this was not feasible because the Appellant was a lone female and she could not go to a safe area anywhere in Iraq. It was therefore, submitted Mrs Johnrose now, not open to the judge to conclude that the Appellant could go to the IKR directly on a flight to Sulaymaniyah and from there on to Erbil.

7. Secondly, the judge had not made any findings at all in relation to the risk of a forced marriage, which was a feature of this particular society in Iraq. Finally, Mrs Johnrose directed my attention to the Appellant's bundle of 117 pages, where, at the end of the bundle, there is the country guidance case of **AA (Iraq) [2017] EWCA Civ 944**, which is dated 11<sup>th</sup> July 2017. Mrs Johnrose submitted that the Appellant could not return to Baghdad. This is because (at page 112 of the bundle) there is a reference in this case to a section headed "Documentation and Feasibility of Return (excluding IKR)". That states that "return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad" (see paragraph 5). On this basis, submitted Mrs Johnrose, the Appellant could not be said to be a "former resident" of the Iraqi Kurdish Region. Therefore, she would have to go through Baghdad. However, the judge had already found that she could not be returned to Baghdad.
8. Thirdly, she went on to say that if one then looks at what follows (at page 113) it is clear from the section headed "Internal Relocation within Iraq (other than the IKR)", it is made clear that "as a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad city ..." (paragraph 14). It is also then stated that "in assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant" (paragraph 15), and this then goes on to refer to such matters as whether P has a CSID or would be able to obtain one. Thereafter, Mrs Johnrose submitted that if one looks at the end of the section headed "Iraqi Kurdish Region", it is clear that for someone who is of Kurdish origin the possibility of return only materialises if one is relocating after having re-entered through Baghdad so that one can consider internal relocation.
9. This is clear where it is stated at the outset (at paragraph 17) that "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. ..." This was a case where the Appellant did not originate from the IKR, submitted Mrs Johnrose.
10. Moreover, it was made clear (at paragraph 20) that:
 

"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 Erbil 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."

In all these respects, Mrs Johnrose submitted, there were acute difficulties, which had not been properly explained by the judge, and it could just not be assumed that return was feasible on this basis.

11. For her part, Mrs Pettersen submitted that the refusal letter said that the Appellant had been raised in Kirkuk. The judge had found that the Appellant was not estranged from her family (see paragraph 44). Therefore, this meant that with the assistance of her family, which the judge had found to be readily available, the Appellant would be able to go back to the IKR because she had, in a sense, originated from the IKR, where she had been raised.
12. In reply, Mrs Johnrose emphasised that any return in the context of the provisions that have just been outlined by her was only feasible if one really “originates from the IKR” and additionally also one’s “identity has been ‘pre-cleared’ with the IKR authorities”. None of this was the case here. Finally, she submitted that the latest country guidance case of **AAH [2018] UKUT 212** only made it clear that a person such as the Appellant could not realistically return back to Iraq.

### **Error of Law**

13. I am satisfied that the making of the decision by the judge did not involve 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 quite simply as follows. Notwithstanding Mrs Johnrose’s valiant and creditable attempts to persuade me otherwise, this is a case where the Appellant has two particular distinguishing features to her case.
14. First, she has been raised in Kirkuk, and therefore is a person who can be said to have origins in that area. Second, the judge made it quite clear, when considering the possibility of whether she could go to Iraq by virtue of a direct flight to Sulaymaniyah and then an internal flight to Erbil, that:
 

“I have found the Appellant originates from the IKR and she could return to the IKR as she has nothing to fear there. The Appellant does have a CSID card, she says it is in Iraq with her family and if that is the case then she has access to it as she has nothing to fear from her family. The country information available to me and the country guidance case of **AA** suggest that return to Iraq is therefore feasible for this Appellant and I find that in all of the circumstances of this particular Appellant’s case that it is” (paragraph 44).
15. What is clear from this is firstly the recognition that the Appellant “originates from the IKR”.
16. Secondly, it is recognised that the Appellant has her “family and if that is the case then she has access to it as she has nothing to fear from her family”. Mrs Johnrose drew my attention to the passage at paragraphs 19 to 20 in **AA (Iraq) [2017] EWCA Civ 944**, but it is relevant to note here that these provisions make it clear that:
 

“A Kurd (K) who does not originate from the IKR can obtain entry for ten days as a visitor and then renew this entry permission for a further ten 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 ...” (paragraph 19).
17. In circumstances where the judge has found that the help of the Appellant’s family is readily available to her, there is no reason why reliance cannot be placed upon this provision. Even when talking, the latest country guidance case of **AAH [2018] UKUT 212** makes it clear that:

“Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

- i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. ...”

18. This is a case where the judge has found that the claimant does have a CSID card or at the very least she has information about its location. The latest country guidance case also goes on to say that: “iii) Are there male family members who would be able and willing to attend the civil registry with P?” This is a case where there is no evidence that any of her family members will not be able to attend the civil registry, should there be any emerging problems, to ensure that registration is undertaken.

All in all, therefore, there is nothing in the determination of the judge that is not sustainable. It has to be recognised that a challenge has to meet the standards of **R (Iran) [2005] EWCA Civ 982**, where Brooke LJ made clear that “it is well-known that ‘perversity’ represents a very high hurdle” (paragraph 11). This test of perversity is not here satisfied.

### **Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

An anonymity order 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 her or any member of her 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

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2018