Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06260/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 30 October 2018	**On 9 November 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

SAMAN [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard, Solicitor from Fountains Solicitors, Walsall
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 5 January 2018, the Upper Tribunal issued my error of law decision in relation to the proceedings in the First-tier Tribunal. For convenience, I reproduce that decision.

   DECISION ON ERROR OF LAW

   1. The appellant appeals with permission against the decision and reasons statement of First-tier Tribunal Judge RD Taylor that was promulgated on 4 May 2017.

2. Judge Taylor made a number of findings, which are unchallenged. At the end of paragraph 15, Judge Taylor rejects as "deliberately fabricated" the appellant's claim that he feared reprisals because of his father's past involvement with the Ba'ath Party in Iraq. At paragraph 16, Judge Taylor found the appellant could not be expected to return to his home village, near Kirkuk but outside the Iraqi Kurdish Region (IKR), because it was in a contested area. This led Judge Taylor to consider whether there was another part of Iraq to which it would be reasonable to expect the appellant to relocate.

3. At paragraph 17, Judge Taylor concluded that the appellant's inability to speak Arabic meant the appellant would have some very serious difficulties in relocating permanently to Baghdad. He moved on to consider whether it would be reasonable to expect the appellant to relocate to the IKR. Judge Taylor considered the three factors identified in the head notes of AA (Article 15(c)) Iraq CG [2015] UKUT 544 about the reasonableness of relocation: (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air), (b) the likelihood of securing employment, and (c) the availability of assistance from friends and family in the IKR. I mention that these parts of the head notes were not disturbed by the Court of Appeal's judgment in AA (Iraq) v SSHD [2017] EWCA Civ 944.

4. With regard to the second and third factors, Judge Taylor concluded that the appellant's lack of credibility meant the appellant had not shown that he would be unable to secure employment or have assistance from friends and family in the IKR. Those findings have not been challenged and are sound.

5. The central ground in this appeal relates to the first factor. Judge Taylor, in paragraph 17, asserts that the appellant, "would be able to relocate to the IKR via Baghdad." There is no evidence to support this assertion or any reasoning given. It must be borne in mind that it was not feasible at the time for the appellant to travel overland to the IKR, which Judge Taylor implies in his finding that the appellant could not relocate to his home area because it was a contested area. But Judge Taylor had no evidence the appellant would be able to take an internal flight from Baghdad. Mr Mills suggested a variety of sources of evidence he has gleaned from other cases and other sources. But that misses the point in that there was nothing before Judge Taylor on which he could base such an assertion.

6. It follows that I am not satisfied Judge Taylor carried out the necessary assessment on this issue. This is an error of law, and the decision needs to be set aside.

7. I discussed with Mr Howard and Mr Mills how the appeal might proceed. It was agreed that the decision should be remade in the Upper Tribunal because of the preserved findings. There would be no need to hear evidence from the appellant because the issues that need to be considered would rely on objective country information and not on his testimony.

8. There are, of course, two issues that need resolving. The first is whether the appellant could be expected to internally relocate. That question is now simply one of whether it would be reasonable to expect the appellant to travel from Baghdad to the IKR, which will depend on the ease of transport between those places. The second issue arises because the decision of Judge Taylor is set aside. It will be necessary to consider whether the appellant's home area remains a contested area. If it is not, then the question of internal relocation will not arise because the appellant does not have a well-founded fear of persecution in his home area other than it was a contested area.

9. Mr Howard and Mr Mills mentioned that there is a pending country guideline case regarding the issue of internal relocation to the IKR from Baghdad. The Upper Tribunal had intended to complete that case before the end of 2017. Mr Mills had been involved in the case early on, having represented the respondent at the error of law hearing. I indicated that this case may lag behind that guidance and both representatives agreed this would be prudent.

2. In preparation for the resumed hearing, the appellant provided a bundle of documents, which included a statement from the appellant dated 25 October 2018, a map showing the location of his home village in Kirkuk Province, the country guidance decision of the Upper Tribunal issued on 26 June 2018, *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 212, the UK Home Office *Country Policy and Information Note – Iraq: Internal relocation, civil documentation and returns* (CPIN, published 19 October 2018), together with other background country information. The respondent provided no additional evidence.

3. As previously agreed (see para. 7 of my error of law decision), the appellant was not called to give further evidence. Mr Howard accepted the appellant's latest witness statement added nothing material to the case, given the findings made by Judge Taylor that are preserved.

4. After discussing the issues with Mr Howard and Ms Aboni, and after listening to their submissions, I made the following findings which disposed of the appeal.

5. First, I am satisfied the appellant's home village (Abu Naim), which is some 30 miles south of Kirkuk, is in an area that remains contested. This is primarily because I have insufficient reason to depart from existing and binding country guidance.

6. The Upper Tribunal gave country guidance in *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 that the Province of Kirkuk was a contested area. Ms Aboni reminded me the respondent's policy position expressed in the UK Home Office *Country Policy and Information Note – Iraq: Security and humanitarian situation* (March 2017) was that the Province of Kirkuk was no longer in a contested area. Despite this policy note, the Upper Tribunal in *AAH (Iraq)* commented at paragraph 2 that the guidance in *AA (Iraq)* in respect of the contested areas and article 15(c) remained good law. It is noted that the Upper Tribunal was examining the situation in Iraq in February 2018. The respondent did not seek to challenge the country guidance regarding contested areas. Ms Aboni has not provided any evidence to show that the situation in the contested areas has materially changed since the guidance in *AAH (Iraq)* was given. As a result, I am satisfied the guidance in *AA (Iraq)* remains good law and binds me.

7. The second issue is whether the appellant could obtain a CSID or other suitable document that would facilitate his travel in Iraq (such as a laissez-passer), which would enable him to relocate to the Kurdish region. I recall that Judge Taylor found the appellant had no identity documents in the UK and that finding is undisturbed. It follows from the CPIN October 2018 that the appellant would not be able to obtain a CSID or laissez-passer from the Iraqi Embassy in London (see paragraphs 2.7.12 and 2.7.13).

8. The question, therefore, turns on whether the appellant would be able to obtain such a document in Iraq. Ms Aboni reminded me that Judge Taylor found that because he did not find the appellant to be credible, he did not accept the appellant had no contacts in Kurdistan or someone who could act as guarantor to enable his to settle in that region. She asked me to infer from this that the appellant probably had someone he could contact in Iraq who could obtain a CSID, bearing in mind that the appellant admitted to having had a CSID previously (see question 35 of the asylum interview).

9. Although I acknowledge that Judge Taylor found the appellant to lack credibility, I find it would be speculative to infer from that conclusion that the appellant has someone in Iraq who could help him obtain a CSID. Ms Aboni suggested a family member may have taken his CSID with them when they left their home area but that suggestion is pure speculation. There is no reason to suppose that a family member would take the identity documents of someone else. The only substantive evidence I have is that there are significant difficulties for anyone to obtain a CSID from a contested area. That is the best evidence I have. It is objective, and forms part of the Upper

Tribunal's country guidance, as recorded as paragraph 2.6.12 of the CPIN October 2018.

10. I conclude the evidence indicates that it is reasonably likely that the appellant would not be able to obtain a CSID in Iraq.

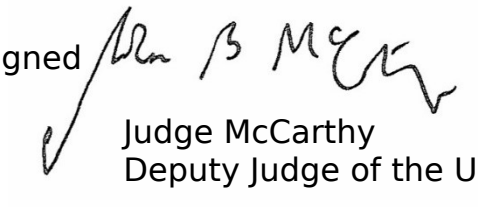
11. The final question is whether it would be unreasonable to expect the appellant to relocate in Iraq. Judge Taylor found, and his finding is not disturbed, that it would be unduly harsh to expect the appellant to live in Baghdad because he does not speak Arabic. I add to that finding that he would not be able to obtain a CSID. The country information indicates that a person without a CSID cannot be expected to travel without risk to their life and freedoms within Iraq and therefore the appellant would be unable to travel to the Kurdish region, as explained by the Upper Tribunal in *AAH (Iraq)*.

    For these reasons, therefore, I find the appeal is allowed because the e appellant is entitled to humanitarian protection.

Notice of Decision

The decision of Judge RD Taylor contains legal error and is set aside.
I remake the decision and allow the appeal because the appellant is entitled to humanitarian protection.

No anonymity direction is made.

Signed  Date 30 October 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal