



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07971/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6<sup>th</sup> February 2018

Decision and Reasons Promulgated  
On 23<sup>rd</sup> February 2018

**Before**

DEPUTY UPPER TRIBUNAL JUDGE PARKES

**Between**

[A H]

(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

In person

For the Respondent:

Ms J Isherwood (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant first arrived in the UK on the 15<sup>th</sup> of January 2016 and claimed asylum shortly afterwards. His application was refused and his appeal was dismissed by First-tier Tribunal Judge Boyes in a decision promulgated on the 16<sup>th</sup> of February 2017. Following a challenge by the Appellant that decision was set aside by Upper Tribunal Judge Kebede for the reasons set out in the decision of the 30<sup>th</sup> of August 2017.
2. The Appellant's appeal was heard by First-tier Tribunal Judge Lever at Newport on the 17<sup>th</sup> of October 2017 and dismissed in his decision promulgated on the 1<sup>st</sup> of November 2017. In that decision Judge Lever found that the Appellant's account was not credible. The reasons were given in paragraphs 20 to 31. The Judge noted that it was accepted that the Appellant was an Iraqi Kurd and that the area he said he was from was not challenged. The Judge rejected the Appellant's claim of being of interest to ISIS, his detention and subsequent escape and had

regard to his failure to claim asylum when passing through a number of European countries. With regard to his return to Iraq the Judge found that the Appellant had lived in the IKR and could do so and had family members who could assist him in obtaining the necessary documentation.

3. The grounds of application argue that the finding that it was not credible that ISIS would hold someone for 9 months was unreasoned and not supported by objective evidence. The second ground was that Appellant's Facebook posts were public and would place him at risk, third and fourth grounds related to the safety of return, the lack of a safe route and the Appellant's lack of documentation. Permission was granted by First-tier Tribunal Judge E S Martins on the 7<sup>th</sup> of December 2017.
4. At the hearing the Appellant was not represented. The case was put back to obtain an interpreter in Kurdish Sorani to assist the Appellant. At the start of the hearing it was established that the Appellant and the interpreter understood each other and the procedure was explained. The grounds of application were taken as the basis of the Appellant's case and summarised for his benefit. The Appellant had nothing to add at the first stage of the hearing.
5. For the Home Office it was submitted that the challenge that findings were unreasoned, particularly paragraph 21, ignored the evidence that was summarised in paragraphs 5 and 6 and that had been produced by the Appellant's representatives. The Judge had referred to background evidence in paragraphs 20, 21, 47 and 48. The challenge overlooked the fact that the Appellant had not been found credible. The evidence showed the position in-country and the intensity of ISIS. The finding was consistent with that in paragraph 22.
6. With regard to the Appellant's Facebook posts many of those relied on did not show the globe icon, only page 13 did so, many had not been translated, others were the Appellant sharing posts. It was submitted that the findings were open to the Judge.
7. So far as the position under AA was concerned in paragraph 23 the Judge had considered the risk, the Appellant had stayed in the IKR for over 6 months and there was no well-founded fear from Arabs. The Appellant was a Kurd living in a Kurdish region and had worked. In paragraph 25 the Appellant's failure to claim on route reduced his credibility. The Appellant would be returned to Baghdad and the claim to have no family was rejected.
8. In reply the Appellant said that he had video evidence. In France he had decided to stay but the Police raided the camp and arrested them and the same happened in Dunkirk. I reminded the Appellant that the focus was on the Judge's decision. The Appellant maintained that he was an active member on Facebook. After the Newport hearing there had been fighting between Iraqi and Kurdish forces. ISIS had invaded Iraq and taken over 50% of the territory and victims had included Yazidis, Arabs and Kurds, a more thorough investigation would have seen a different decision. All the Appellant's documents had been left behind and the area was controlled by ISIS. He was smuggled as he did not have a passport.
9. The grounds complain that the Judge gave no basis for his observations on the nature of ISIS but the grounds do not point to any evidence that would support that a different conclusion would be justified. The Judge referred to the background evidence and sources are to the effect that ISIS is/was a brutal and uncompromising organisation, the well-publicised beheadings and mass slaughter of captured Iraqi troops, information clearly in the public domain, indicate that. The findings set out in paragraphs 21 and 22 were justified on the evidence generally available and public and open to the Judge in the circumstances that the Appellant had outlined including his ability to escape and emerge "unscathed".

10. The Facebook issue was discussed in paragraph 24. The timing of the setting up of the account was a relevant feature as was the flurry of activity described and the nature of the material being posted. The absence of translations would have reduced the weight that could be attached. The Judge did not consider this aspect superficially and rejected the claim that it was in the public domain and I bear in mind the observations about the globe icon recorded above. The Judge observed that there would be many millions of such posts in any event and rejected the suggestion that the Appellant would be identified by anyone within the IKR. The complaint made ignores the approach that the Judge took and does not demonstrate that the reasoning and findings were flawed.
11. In rejecting the Appellant's general credibility on contentious matters the Appellant's claims about his ability to obtain documentation were inevitably going to be approached with great caution. In addition to the Appellant's ability to live and work in the IKR, an uncontroversial aspect of his case, the Judge found that the Appellant had family in Iraq who could vouch for him in terms of obtaining the necessary documents.
12. The guidance in AA [2017] EWCA Civ 944 explicitly recognises the importance of family members in both obtaining documentation such as the CSID and in assisting in relocating to the IKR. In finding that the Appellant has family members he could turn to, a finding not challenged in the grounds, and one clearly open to the Judge following the other reasons for rejecting the Appellant's credibility, an application of the guidance in paragraph 10 of the 20 of the Court of Appeal's decision it would follow that with such assistance the Appellant would be able to return to Iraq and to relocate.
13. The grounds are a disagreement with findings properly made and open to the Judge for the reasons given. The grounds do not show that the Judge erred in law and I am satisfied that the approach taken by the Judge was appropriate and more than sufficiently reasoned and sustainable. The decision has to be read as a whole but the grounds do not take that approach.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### **Fee Award**

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 16<sup>th</sup> February 2018