



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08275/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 24 July 2018
Prepared on 24 July 2018

Determination Promulgated
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

H. T.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Boyle, Solicitor, Iris Law Firm

For the Respondent:

Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who claimed to be a citizen of Iraq, claimed to have travelled to the illegally on 25 September 2015. He claimed asylum on 7 October 2015, and that protection claim was refused on 15 August 2017. His appeal against the decision to refuse him protection status was then dismissed on all grounds by decision of First Tier Tribunal Judge SPJ Buchanan, promulgated on 23 January 2017.

2. The Appellant was granted permission to appeal to the Upper Tribunal by decision of Upper Tribunal Judge Saffer of 27 February 2018 on the basis that it was arguable the Judge's decision failed to apply current country guidance.
3. There has been no Rule 24 response filed by the Respondent, and neither party has applied under Rule 15(2A) for further evidence to be admitted in the remaking of the decision. Thus, the matter comes before me.

Error of law?

4. When the matter was called on for hearing Mr Boyle (who did not appear below, and who did not draft the grounds of challenge) argued that the focus of challenge was not to the decision to dismiss the appeal on asylum grounds, but solely to the decision to dismiss the appeal on humanitarian protection grounds. As he accepted, the focus of the Appellant's challenge was upon the Judge's approach to the issue of internal relocation, since the Judge had accepted that the Appellant's home area was Mosul and that he could not be expected to return to it as a result of the internal armed conflict in that area.
5. After some discussion, it emerged that the Respondent did not in that event seek to dispute before me that the Judge had failed to make any reference to the country guidance decision of BA (returns to Baghdad) Iraq CG [2017] UKUT 18. Moreover, the Respondent did not dispute that the text of the Judge's decision failed to clearly show that the Judge had the guidance contained therein in mind. Accordingly Ms Pettersen accepted on behalf of the Respondent that the decision did disclose a material error of law in the Judge's approach to the issue of internal relocation in the context of the humanitarian protection appeal, and, that I should set aside, and remake, the decision upon that issue.

Adjournment?

6. The Appellant had not attended the centre when his appeal was called on, and Mr Boyle accepted that he was unable to apply for an adjournment on the information available to him.
7. In any event, Mr Boyle accepted that no application to admit new evidence had been made pursuant to Rule 15(2A), and that he had no new evidence to offer in relation to the issue of internal relocation (none having been filed or served).
8. Both representatives confirmed that they were ready willing and able to make submissions upon the issue of internal relocation in the context of a humanitarian protection appeal, and that this was the appropriate disposal for the appeal.
9. In the circumstances I was not satisfied that adjournment of the appeal would serve any useful purpose, and I proceeded to hear those submissions in order to remake the decision. As it happens, the Appellant did attend the hearing centre later in the day, after the appeal hearing was concluded.

Internal relocation

10. I have referred myself to the guidance to be found in BA, and to the guidance to be found in AA (Article 15(c)) Iraq CG [2015] UKUT 544 as supplemented

by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, and to the more recent guidance to be found in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.

11. Although the matter was disputed before the FtT, the Judge's findings were that the Appellant was a citizen of Iraq whose home area was Mosul. On the Judge's unchallenged findings, the Appellant was unable to return to Mosul, not because of any individual protection claim that would engage the Refugee Convention, or risk of breach of his Article 3 rights, but because of the situation of internal armed conflict in that area.
12. Since the Appellant is not said to be a Kurd, the only area identified by the Respondent within Iraq as suitable for the Appellant for the purposes of internal relocation, is Baghdad. It is Baghdad airport that will be the point of return to Iraq.
13. The Appellant's claims to have received threats of harm individually addressed to him by any group, or any individual, were all rejected as untrue by the Judge. In the circumstances he currently has no individual adverse profile.
14. The Respondent conceded that the Appellant had been employed as a hotel security guard, at a hotel on the outskirts of Baghdad by the Sandi Group, between 2003 and 2004, and that this employer was a US company [RFR #45]. At interview the Appellant said that this hotel was used to accommodate people working for the government, and with the Americans; who were mostly building contractors [Q40-1]. He claimed to commute from his home in Mosul to Baghdad in order to undertake such work, living in a house in the "Arab neighbourhood" when he did so [Q45]. It was not suggested that this accommodation was provided for him by his employer, and there is no obvious reason why he could not seek and find accommodation within this area once again upon return.
15. Upon the Judge's unchallenged findings, the 2003-4 employment does not engage the Refugee Convention. It is also agreed before me that such employment does not amount to involvement in either the activities of foreign coalition forces, or the activities of the Iraqi regime. Mr Boyle did not seek to argue that such employment would be perceived as involvement in such, or, that it would give rise to an individual risk of harm. I agree. In any event, notwithstanding the fact that the employer was a US company, it is plain that Baghdad is not an area under ISIL control, or suffering the high levels of insurgent activity that could give rise to such a risk.
16. Moreover, it is highly unlikely that anyone in Baghdad would know or care that the Appellant held such an employment some fourteen years ago. The prospects of his being recognised as having done so, are in my judgement extremely remote, since it has not been suggested or accepted that he did anything in the course of that employment to draw himself to the attention of anyone beyond the circle of fellow employees.
17. Although the Appellant had claimed to be employed by the same employer as an air conditioning engineer at the US airbase at Mosul between 2004 and 2010, it is agreed before me that the Judge did not accept this claim to be true. Even if the decision should be read as having done so, it is not argued before

- me that it would engage the Refugee Convention, or, that there was a real risk that anyone in Baghdad would know of it.
18. Although the Judge's decision does not refer to the fact, it was not disputed before me that the Appellant is a Sunni Arab, who is a fluent Arabic speaker.
 19. As one who the Judge accepted originated in Mosul, was educated in Mosul, and lived there to the age of 29, it is highly likely that he has some Kurdish Sorani in addition - although I note that he did not admit to it at screening interview [D2].
 20. The Appellant accepted at interview that his wife and children, his parents, and his married sisters and their respective families all remained living in Iraq [Q17]. He accepted that he was in contact with them by telephone [Q18]. The Judge did not make any finding as to where they were living at the date of the hearing. Given the lack of reliable evidence I am unable to make any finding as to precisely where they are now living, or, their circumstances. I do note however that the Appellant said at interview they were then living in a refugee camp which he identified as "Dibka camp" [Q118 Q176], and which he located as lying to the east of Mosul; between Mosul and the KRG. He did not identify with clarity whether or not that camp was within the KRG [Q119]. However, he did say that they had moved to this camp to avoid Deash's seizure of Mosul. There appears to have been no evidence before the FtT (and none is drawn to my attention by either party) to suggest the location of a camp of this name. Thus, the question of whether they are in truth currently resident in the KRG is one that I am unable to answer.
 21. Accordingly, I approach the appeal, as invited by Mr Boyle to do so, on the basis that the Appellant's position should be considered on the basis that he will be a single male returnee in Baghdad, who is without family members or friends in Baghdad who will be able to provide him with accommodation and support, and who will be unable to relocate to the KRG. Should the first of those assumptions be in truth incorrect, then his relocation to Baghdad would be much easier. Should the second be incorrect, then it may mean that he would also be able to relocate to the KRG.
 22. Although the Judge's decision does not refer to it, the Appellant accepted at interview [Q8] that he had previously been issued with a legitimate Iraqi passport. There is no obvious reason on the Judge's findings why he would be unable to approach the Iraqi Embassy in London for a replacement, since he could give both his biographical details, and his fingerprints to confirm who he is, and to allow him to be matched to the biographical details already held by the passport department of the Ministry. Despite the fact that there is no evidence that he has done so yet, I am therefore satisfied that his return is feasible, and, that he will be able to return to Iraq upon a current legitimate passport, if he were to co-operate with the Iraqi authorities. It would be in his interests to do so, because otherwise he would be returned to Iraq upon a laissez passer which would be confiscated upon return to Baghdad; AAH.
 23. The Judge found that the Appellant could obtain the issue of a CSID. That finding is unchallenged. It was open to the Judge to make such a finding because, even being in mind the most recent country guidance of AAH the Appellant would be able to obtain such a document either in the UK in

- advance of his return to Iraq, or, immediately upon arrival in Baghdad, since he is able to obtain the issue of a replacement passport.
24. In the circumstances Mr Boyle accepted that the Appellant was unable to advance any strong case that he would face a real risk of destitution through unemployment upon return to Iraq, or, of being forced into a life within an IDP camp because of an inability to access the housing market. He would be able to access the funds available from the Respondent and IOM, to those who accept a voluntary removal. In addition, with the issue of a CSID, he would be able to access the support provided by the Iraqi government to its citizens. As a fluent Arabic speaker, with a legitimate Iraqi passport, and a CSID, and some fluency in English, the Appellant would in any event be much more likely to be able to access employment within Baghdad than one who did not have those advantages.
 25. On the other hand, whilst he would be likely to be able to find employment and support himself adequately, the level of education to which the Appellant has admitted, and the relatively short length of time spent outside Iraq, are not factors that are likely to lead to the Appellant being perceived as being sufficiently wealthy to be worth kidnap for financial gain.
 26. Instead Mr Boyle put the Appellant's case on the basis that it was the cumulative effect of three factors that created a level of risk of harm to the Appellant that rendered it unreasonable to expect him to relocate to Baghdad. It was accepted that none of those factors were individually sufficient to create a sufficient risk to render relocation unreasonable; BA.
 27. The three factors were; (i) the three years he had spent outside Iraq; (ii) the fact that he was a single Sunni male of fighting age from Mosul who would face attention and difficulties at Shia militia checkpoints as a result, and, (iii) the employment in 2203-4 by an American company.
 28. On the other hand, on my findings, unlike the majority of IDPs, the Appellant would have a legitimate Iraqi passport, and he would be able to show that he had recently returned from the UK if challenged at a Shia militia checkpoint as to what his activities had been in recent years. Nor has he suggested that any member of his family has any association with ISIL. Thus, it is highly unlikely that he would be perceived as a recent arrival from ISIL territory, since mere production of his passport would show that not to be the case.
 29. Standing back to look at the evidence in the round, and balancing the various factors set out above, I am satisfied that it is reasonable to expect the Appellant to relocate to Baghdad to avoid the internal armed conflict in Mosul. I therefore remake the decision upon the humanitarian protection ground of appeal, so as to dismiss it.
 30. As set out above the decision of the FtT to dismiss the appeal on asylum and human rights grounds is confirmed.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 23 January 2018 did involve the making of an error of law that requires the decision upon the humanitarian protection appeal to be set aside and remade.

The appeal is dismissed on humanitarian protection grounds.

The decision to dismiss the appeal on asylum and human rights grounds is confirmed.

Deputy Upper Tribunal Judge JM Holmes

Dated 25 July 2018

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 25 July 2018