



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

Appeal Number: PA/08307/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 November 2018**

**Decision & Reasons  
Promulgated  
On 28 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MR (SS)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Swain of counsel

For the Respondent: Ms Isherwood, a Home Office presenting officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Iraq who was born on 21 March 2000.

## **The appellant's immigration history and the history of the proceedings**

2. The appellant entered the UK on 8 April 2016, having left Iraq in November 2015 and travelled through a number of safe countries, including France, en route for the UK. The appellant claimed asylum on 8 April 2016.
3. His original claim was that due to an ISIS attack on his home town of Jalawla, which caused the death of his parents, he had to flee in 2014. However, the basis of the appellant's claim before the FTT was that he had been employed by one Sarwar who had effectively adopted him as a son. The appellant had started working for him at the young age of 11 - 12 but he did not have any sons of his own to take over his business. The appellant's grandmother and the appellant shared a bedroom with Sarwar's daughter, who was only about three - four years old at the time. Sarwar also had elder teenage children. The appellant was "accused of something he should not do" because of his relationship with Sarwar. He believed the accusations came from Sarwar's family, possibly his brothers. The appellant decided to leave the area. This occurred in 2015. The appellant claimed that Kurdish society is tribal in nature and is a lonely young man would arouse suspicion if he returned there.
4. The appellant appealed against the respondent's decision to refuse asylum and humanitarian protection on 18 June 2018. The appeal to the First-tier Tribunal (FTT) came before FTTJ Fox on 31 July 2018 sitting at Birmingham. On 17 September 2018 the Immigration Judge's decision to dismiss the appeal was promulgated.
5. The appellant was given permission to appeal against that decision to the Upper Tribunal (UT) by FTTJ Gibb on 9 October 2018, because he considered it arguable that the Immigration Judge had failed to apply the recent country guidance case of **AAH (Iraqi Kurds - internal relocation) Iraqi GC UKUT 00212 (IAC)**. The appellant's home appeared to be outside IKR. This might affect the appellant's ability to internally relocate as he would require a CSID card to do so. It was argued that without relatives who would be able to facilitate an application, and without a passport, and without having held a passport, the appellant faced the utmost difficulty in obtaining a CSID card. Secondly, Judge Gibb considered it to be arguable that the Immigration Judge had ignored certain facts about the appellant's home area. Judge Gibb declared the other grounds to be at least arguable. Those grounds (1, 2 and 3) state that the Immigration Judge had mischaracterised the core of the appellant's case, misunderstood his case in relation to the appellant's relationship with his employer's daughter and relied on a generalised assumption about the conduct of asylum seekers from Iraq by suggesting that it was commonplace for Iraqis to hide the true nature of their ties to their country of origin.
6. There was no response by the respondent under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

### **The hearing before the UT**

7. The appellant claimed that his home area of Jalawla was unsafe or impossible to live in as it had been destroyed by ISIS. Furthermore, the appellant would be destitute if he returned there. It was submitted that the Immigration Judge's decision to find that the appellant did not come from Jalawla was against the respondent's own finding that he probably did, but Ms Isherwood pointed out that all the respondent had said was that he had acknowledged that the appellant's account of having come from Jamala was consistent with the objective evidence including, now, objective evidence which confirms that town's destruction by ISIS.
8. It was also essentially argued that to find that the appellant had family members in Iraq was contrary to the weight of evidence, which established that there were no such relatives and that his parents were dead (having been killed in the ISIS attack referred to above). It was also submitted that the appellant's account had been internally consistent as well as consistent with the objective evidence. Mr Swain argued that there were in fact significant obstacles to the appellant removing to the IKR as he could not get a CSID card. **AAH**, which had been decided since the respondent's decision, had significantly updated the guidance but the Immigration Judge appeared not to take account of this.
9. The Immigration Judge chose to ignore the respondent's own concession that the appellant's account as far as his home area was concerned, was consistent with the objective material and instead found that the appellant had actually come from the IKR. This assessment appeared to be based on the appellant's adverse credibility, as the Immigration Judge found it to be. However, that have been based on general assumptions about Iraqi asylum seekers which were unjustified on the evidence. Mr Swain also submitted that it would not be possible for the appellant to obtain a CSID card from his home town of Jalawla because it did not operate any registry office due to its destruction by ISIS. This does not appear to have been part of the evidence before the FTT, but it may well be correct based on objectively verifiable material.
10. Ms Isherwood responded by saying that the suggestion that the appellant would be destitute in his home town of Jalawla had not been raised in the grounds of appeal. She pointed out that at paragraph 36 of the decision of the FTT it is recorded that Mr Bedford, who represented the appellant at the FTT, accepted that the main issue was internal relocation and that "it is accepted that the appellant's persecutors will not pursue him at another location". Given this concession, Miss Isherwood argued that the Immigration Judge was entitled to come to the decision he came to. She also referred to paragraph 44 of the decision, where it is recorded that it was not accepted that the appellant had "no male family members" and

he can turn and given the Immigration Judge's adverse credibility finding this was a justified conclusion. She also argued that, as far as the town he had come from was concerned, even though the respondent have accepted the appellant's account to be consistent with the objective material nevertheless it was open to the Immigration Judge not to believe the appellant's account having heard his evidence. The appellant had failed to provide reliable account and overall the Immigration Judge was entitled to reject it. Furthermore, the Immigration Judge had referred to the case of **AAH** and therefore had fully taken it into account.

11. In reply, Mr Swain argued that the Immigration Judge did not attach sufficient weight to the case of **AAH**. It seems that the appellant made some remark about having an uncle and this had been seized upon as indicating that he had relatives in Iraq to whom he could turn for assistance in relocating to the IKR. This was not in fact the case.
12. At the end of the hearing I reserved my decision as to whether there was a material error of law and if so what steps to take to rectify that.

## **Discussion**

13. The parties helpfully assembled in a bundle of documents which closely mirrored those before the FTT. In particular, it included the case of **AAH**. That case bears out a number of the submissions made by both sides. For an Iraqi national returnee of Kurdish origin, the key issue was whether the appellant had a CSID card. It remains possible to obtain a new CSID but whether or not the appellant will be able to do so in a particular case within a reasonable timeframe will depend on the individual circumstances. Those circumstances include whether he has an existing form of documentation such as a passport, current or expired, or other form of ID. There is also to be considered the presence or location of the civil registry office – and whether it is within an area of ISIS control. Is the civil registry operational? The next issue was: whether the appellant had male family members who would be able and willing to attend a civil registry with the appellant with a view to obtaining a CSID card? If he did, he could be safely returned to Baghdad and travel from there to the IKR relatively easily and certainly without a real risk of suffering persecution, serious harm or article 3 ill-treatment but without one it would be more difficult. A key question to ask is: whether the appellant had family members living in the IKR? Whether the appellant could obtain employment needed to be appraised on a case-by-case basis.
14. Within the framework set by **AAH**, the issues therefore were:
  - (i) Based on the objective and subjective evidence, was the Immigration Judge entitled to conclude that the appellant did not come from Jalawla but came from “an area (inside) the IKR” (see paragraph 47)?

- (ii) Does this matter, given that the Immigration Judge rejected the appellant's evidence as to the feud with Sarwar's family- i.e. whichever area the appellant was from, his claim was found to be false?
- (iii) Whether, given the concession that the appellant's persecutors would not pursue him to "another location" the Immigration Judge was entitled to conclude that another location was reasonably available to him?
- (iv) If that "other location" is inside the IKR but the appellant lives outside the IKR whether there were too many barriers to that to make it practical or realistic having regard to the evidence given before the Immigration Judge?
- (v) Was the Immigration Judge correct to record the appellant's evidence as having been that "he has maternal uncles who may be of assistance" (paragraph 45) to replace the CSID document that, he says, his agent chose to take from him (paragraph 46)?

15. I will now consider these issues in turn.

#### *Credit*

- 16. Credibility had to be judged the context of a vulnerable elder child /young adult- the appellant being under 18 at the date of the claim but by the date of the respondent's decision (18 June 2018) was over 18. The Immigration Judge had regard Joint Presidential Guidance at 52 - 53.
- 17. It is important to note that the Immigration Judge did not accept that the appellant had a feud with Sarwar or his family and the alleged fear of ISIS was no longer made out because ISIS had all but been wiped out in Jalawla. Mr Swain argued that the appellant would be destitute if he returned there but, as Miss Isherwood pointed out, this is not an argument he had raised previously. Indeed, it was not a ground of appeal as such yet alone one he had permission to argue.
- 18. As the Immigration Judge pointed out, the appellant's case had shifted fundamentally. Since he made his claim for asylum ISIS had left his "home village" - being a reference to Jalawla. Therefore, as the Immigration Judge pointed out at paragraph 36 of this decision, it followed that "the appellant's claim is related to the general country conditions". Effectively, the appellant completely changed his case to base it on alleged "honour crimes" or the fear thereof. As the Immigration Judge pointed out, it was "an unusual feature of the evidence that the appellant should fail to mention the core of his claim at the screening interview". Even acknowledging the appellant's "potential vulnerability" it struck the Immigration Judge as a strange state of affairs that the appellant's principal claim had not been mentioned.

19. It was important to his findings that the Immigration Judge did not accept the appellant was at risk from Sarwar's family, pointing out that it was likely that Sarwar's family did not believe the allegation against the appellant. There was no reliable evidence of any repercussions. Sarwar "did not interpret the appellant's presence in his home area as a cause for concern". There was no reliable evidence the appellant ever engaged in relationship Sarwar's daughter and it was reasonable to expect that other people would not accept the allegation.
20. Therefore, the appellant had not established, even to the law standard of proof that applied, that he had been the subject of malicious falsehoods, nor would he be at risk from Sarwar's family. His claim was not credible in the round. Therefore, although the main issue was identified as internal relocation, it appears from the findings of the Immigration Judge, he decided the case on the evidence over the alleged relationship with Sarwar and his family and the issue of internal relocation did not arise.
21. The Immigration Judge's adverse credibility findings underline many of his conclusions - if the appellant was not at risk in his home area it followed that he did not need to relocate. Therefore, the presence or absence of a CSID card or the ability to travel within or without the IKR were irrelevant.
22. In any event, the adverse credibility findings tended to justify the Immigration Judge's findings in relation to having family members in Iraq, for example, but I will consider that issue in greater detail below.
23. The Immigration Judge clearly did not accept that just because the appellant was technically a child when he came into the country that he would accept all his account. In particular, the plea that he was under an agent's control, who was able to decide where he would claim asylum, was not accepted. The Immigration Judge clearly took a dim view of the appellant's account and in particular the assertion that he was able to travel to one of the furthest points in Western Europe to claim asylum, having travelled through several safe countries including France, was not accepted by him (see paragraph 43 of his decision). He did not accept the appellant was "a passive party" (see paragraph 43). Accordingly, the respondent had been entitled to raise the matters considered above as matters which harmed the appellant's credit for the purposes of Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004.
24. Perhaps more importantly to the present appeal, the fact that the Immigration Judge rejected the credibility of the appellant's account meant that he was not inclined to believe when he gave evidence about his lack of relatives in Iraq. He said explicitly at paragraph 44 "... I do not accept that he has no male family members to turn to upon return".

### *Family members*

25. Although not a specific ground of appeal, Mr Swain seemed to dispute that the appellant had given evidence that he had family members who could assist him in gaining a replacement CSID card. This evidence was recorded at paragraph 23. The appellant says there that his parents had told him about a paternal aunt, two maternal uncles and two maternal uncles. He had asked the social services in the UK to trace his grandmother, the relevance of this being that his grandmother was one of the persons he said he thought was alive in Iraq, at least when he was in Iraq (see question 7 in interview). In any event, this had been without success.
26. The respondent did not accept that the appellant's parents were dead (see paragraph 58 of the refusal) and it was possible they had fled to village and were still living in Iraq.
27. Furthermore, the appellant's somewhat vague answers as to his relationships had to be seen in the context of the comprehensive rejection of his credibility by the Immigration Judge, as has been discussed above.
28. In the circumstances the Immigration Judge had been entitled to conclude that the appellant had relatives in Iraq to whom he could turn.

#### *Where the appellant is from*

29. The appellant is reasonably likely to be from where he says he is from—a village near Jalawla. This is because the account he gave to the respondent of the details of the village, including where it is near and so forth, was consistent with the known facts. Hence the respondent's accepted that the appellant was Kurdish and the consistency of his account with the objective evidence as far as the village of origin was concerned. However, there was no concession that the appellant was actually from the village concerned or indeed where Iraqi came from other than the fact that he was Kurdish in origin and that his account had been consistent. The relevance of this issue is questionable, having regard to the Immigration Judge's adverse credibility findings, as I have indicated.

#### *Travel to the IKR*

30. This went to the alternative case that the appellant feared persecution in his home area (be it Jalawla or another town or village outside the IKR) and whether he could travel into the IKR for an adequate degree of protection as a homeless Kurd.
31. The Immigration Judge was clearly sceptical about the destruction of his former CSID card, apparently by the agent in Turkey. The appellant had taken no steps to try and replace his CSID document.

32. For the issue of internal relocation to be relevant, the Immigration Judge would need to have concluded there was a reasonable degree of likelihood that the appellant was persecuted in his home area. If the Immigration Judge had found the appellant was from Jalawla as he claimed, and as he probably should have done, I would have taken some persuading that the appellant decided to give his CSID card to an agent. The adverse credibility lend support to the finding that he is reasonably likely to have retained his CSID card.
33. The issue of relatives, particularly male relatives, who could assist the appellant in obtaining a replacement card, was shrouded in mystery. However, given the adverse credibility findings the Immigration Judge was entitled to conclude that the appellant did have male relatives to whom he could turn to assist him in obtaining a replacement CSID card. This was Consistent with the respondent's own view that, following the death of his parents the appellant had other relatives in the area who he could turn to in order to obtain a replacement CSID card.
34. Since the core of the appellant's claim related to a family feud which the Immigration Judge found not to have taken place, it followed that it did not to give rise to any risk on return. But, if I am wrong about that, if he were to return to his home area the fact that the feud with Mr Sarwar's family had not taken place outside the IKR was irrelevant. If he was from outside the IKR, as appears to have been the case, he could move to another part of Iraq. If, as the Immigration Judge thought, he is from the IKR, the absence of e a CSID Card was irrelevant as he would be able to travel to a different area within the IKR. Either way, the appellant would not be at risk on return. If, contrary to this, the appellant were at risk in his home area he could move to a different part of Iraq.

## **Conclusions**

35. In conclusion:
- (i) The appellant's alleged fear of Isis arose as Isis had been occupying his home area. I understand it to be conceded that Iraq has effectively been crushed at least in that area;
  - (ii) The appellant's alleged fear of destitution in his home area did not arise as it has not been subject of any evidence before the FTT, is not subject grounds of appeal and has only appeared in the oral submissions of Mr Swain;
  - (iii) The Immigration Judge's adverse credibility findings underline his overall conclusion that the appellant had not been at risk in his home area. Therefore, the issue of internal relocation did not arise;
  - (iv) In case it did arise, and in so far as it was appropriate for the appellant to travel from the non- IKR part of Iraq to the IKR, I would



have decided the appellant came from Jalawla and could only travel to the IKR with a CSID;

- (v) The question whether the appellant could obtain a CSID card was quite finely balanced, but I consider the Immigration Judge was entitled, in the light of his adverse credibility findings, to find that there were male relatives to whom the appellant could turn to assist him in making an application if, indeed, his CSID card was ever taken by the agent.

36. As I have indicated, the internal flight alternative does not arise in fact though.

37. The appeal to the U T is therefore dismissed.

### **Notice of Decision**

The appeal to the UT is dismissed.

The decision of the FTT on asylum grounds/humanitarian protection grounds/human rights grounds stands.

An anonymity direction was made by the FTT and I continue that direction as follows.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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 21 November 2018

Deputy Upper Tribunal Judge Hanbury

### **TO THE RESPONDENT** **FEE AWARD**

No fee was paid or payable and the Immigration Judge made no fee award. Therefore there can be no fee award.

Signed

Date 21 November 2018

Deputy Upper Tribunal Judge Hanbury