



IAC-AH-KRL-V1

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

Appeal Number: PA/08475/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 6 August 2018

Decision & Reasons

Promulgated

On 4 October 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RABAR [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard, instructed by Halliday Reeves Law Firm

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Rabar [M], was born on 10 October 1999 and is a male citizen of Iraq. The appellant claims to have entered the United Kingdom in February 2016 when he claimed asylum. By a decision dated 25 July 2016, the Secretary of State refused the appellant's application for international protection. The appellant appealed to the First-tier Tribunal (Judge Greasley) which, in a decision promulgated on 2 February 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge did not believe the appellant's account of past events in Iraq. However, credibility is not seriously at issue in this appeal which turns instead on the ability of the appellant to return safely to Iraq (he will be returned to Baghdad) and thereby travel onwards to the Independent Kurdish Region (IKR). At [36], Judge Greasley wrote:

“Alternatively, even if I were to accept the appellant's account were credible, and for the avoidance of doubt I conclude that it is not, I found there is also reliable evidence that the appellant would be able to relocate to the Iraqi Kurdish Region (the IKR). In this respect, I find that the appellant has a sponsor there, namely his father's friend, who is a married man with a wife and children. The appellant concedes that he was able to live in the area of Kalar in the IKR for a period of one year when he came to no harm whatsoever. I find that this is a particularly relevant factor in this appeal. The appellant asserts he cannot locate anywhere in Iraq or in the IKR but this is simply not the case. I find there is no reason why the appellant would not be able to relocate there and live in a Kurdish area with whose language traditions and culture the appellant remains entirely familiar.”

3. The appellant asserts that he would be at risk upon return to Iraq. Both parties accept that a Kurdish single male living in Baghdad without documentation (in particular, a CSID card) would be at risk of harm. The question in this appeal is whether the appellant would be able to obtain in Iraq the necessary documentation which he currently does not possess and whether he would be able to use that travel safely to the IKR where, it is claimed by the respondent, the appellant would be able to seek the sponsorship of his father's friend.
4. In what is otherwise a thorough analysis, I find that there are problems with the what the judge says at [36]. First, the judge, in my opinion, places excessive weight upon the fact that the appellant was able to live in Kalar in the IKR for one year where he “came to no harm whatsoever.” Indeed, the judge considered that to be a “particularly relevant factor” in the appeal. The finding is problematic because there is a difference between the appellant at some time in the past having lived in the IKR and his returning now from the United Kingdom via Baghdad to the IKR which will entail travelling over land from Baghdad to the Kurdish region. The parties accept that, whilst the appellant may or may not be able to access “appropriate documentation”, he does not have that documentation now and he cannot fly directly from the United Kingdom to the IKR nor can he transfer without leaving the airport in Baghdad and fly directly to Erbil. It does not appear contentious to say that, should the appellant be able to actually get in to the IKR safely, he would, whether or not he could access the sponsorship of his father's friend, be safe in that region; Judge Greasley's comment about the appellant having lived in Kalar is relevant here. However, the appellant's problem lies in reaching the IKR, not residing there and that is a problem which the judge's finding that the appellant had lived safely in the past in the IKR fails to address.

5. Secondly, I find that the judge has attached too much significance to the fact that the appellant's father's friend may be able to access his sponsor in the IKR. There is no evidence that this person would be willing to assist the appellant or, as importantly, exactly how he might be able to assist the appellant.
6. In my opinion, Judge Greasley has failed to adopt the approach urged by the Upper Tribunal in *AA (Iraq) [2017] EWCA Civ 944*). Given that it appears to be common ground between the parties that the appellant will be returned to Baghdad and that, as a single male Kurd, he will be potentially at risk in that city, then very considerable caution should be taken before the Tribunal concludes that the appellant would be able with a reasonable degree of certainty to travel onwards without suffering harm to the IKR. I have already explained why the appellant's previous residence in the IKR is not of particular relevance to determining his risk on return now. Likewise, the appellant's father may have a hundred friends living in the IKR who might, if asked, be willing to assist the appellant but their existence will not be of any use to him if there is not a reliable degree of certainty that they will be able to obtain the documents the appellant requires to travel safely between Baghdad and the IKR and that they will be able to convey those documents to the appellant either before he travels or after he reaches Iraq. Furthermore, if the friend is able to assist the appellant only after he has reached Baghdad there will inevitably be some delay before any documentation reaches the appellant there. By reference to the existing country guidance, the appellant would during that (possibly brief) period of delay be at risk.
7. In the light of my observations set out above, I found that Judge Greasley has erred in law such that his decision falls to be set aside. On the evidence before the First-tier Tribunal and, indeed, before the Upper Tribunal I am not satisfied that the appellant's residence in Baghdad will prove to be so short or free from risk that it would be in accordance with the United Kingdom's obligations under the ECHR to return the appellant at the present time. For that reason, I remake the decision allowing the appellant's appeal. However, the appellant should be aware that the situation in Iraq is changing very rapidly. It may be the case soon that individuals such as the appellant may be able to be returned directly to the IKR or alternatively with documents which will enable them to transfer within Baghdad Airport without risk. Should such developments occur then it is likely that the appellant will then be required to return.

Notice of Decision

8. The decision of the First-tier Tribunal which was promulgated on 2 February 2017 is set aside. I have remade the decision. I allow the appellant's appeal against the decision of the Secretary of State dated 25 July 2016 on human rights grounds (Article 3, ECHR).
9. There is no anonymity direction.

Signed

Date 26 September 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 26 September 2018

Upper Tribunal Judge Lane