Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05610/2018

THE IMMIGRATION ACTS

Heard at: Manchester CJC	**Decision & Reasons Promulgated**
On: 14 January 2019	**On: 25 January 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SK
(ANONYMITY DIRECTION MADE)

Respondent

Representation
For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Jagadesham, Counsel

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

1. I maintain the anonymity direction made by the First-tier Tribunal ('FTT'). The FTT was clearly concerned about the respondent's mental health – see

[6] of the FTT decision. This decision refers to the respondent's international protection claim and sensitive matters of a personal nature.

2. The respondent ('SK') is a citizen of Iraq, of Kurdish ethnicity who originates from the Iraqi Kurdish Region ('IKR'). He claimed asylum but this was refused by the appellant ('the SSHD') in a decision dated 25 April 2018.

Background

3. The appellant ('the SSHD') has appealed against a FTT decision (Judge Holt) dated 15 August 2018 in which she allowed SK's appeal on asylum grounds. The FTT carefully considered SK's evidence together with the country background evidence and country guidance in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 212 (IAC), and made findings of fact, inter alia, set out below.

   (i) SK's evidence was "*compelling and candid*". SK had deep-rooted problems as a result of the humiliation he felt following his disclosure to a friend in Iraq that his genitals were so small that he believed he had a medical or "*physical problem*" – see [18] of the FTT decision.

   (ii) SK's family had "*washed their hands*" of him. His mother refused to answer his calls and his brother advised him to commit suicide. They were angry because of the family shame and humiliation that SK's "*problem*" had brought on them – see [20] and [21] of the FTT decision.

   (iii) If returned to Iraq, SK would not have a CSID and his family would not assist him in replacing his identity documents – see [24] and [25] of the FTT decision.

   (iv) Given SK's particular circumstances, including the absence of a CSID, the absence of family support, the country conditions and the bizarre manifestations of his mental state, he would not be able to obtain employment or accommodation, notwithstanding his previous employment as a carpenter – see [20] and [26] of the FTT decision.

Grounds of appeal

4. The SSHD appealed against the FTT decision. Mr Bates accepted that when the pleaded grounds are read as a whole, they raise two grounds of appeal.

   (1) The FTT's factual findings, in particular SK's "physical problem" and his risk of suicide are inadequately reasoned and entirely unsupported by any medical evidence.

   (2) The FTT's findings on internal relocation fail to take into account that SK:

a) is a young healthy man who has been employed in the past;

b) disposed of his CSID, and this raises section 8 credibility concerns;

c) can obtain identity documents from the UK Embassy, having had a CSID in the past;

d) can avoid Baghdad by taking a return flight from the UK directly to Erbil.

5. The SSHD was granted permission to appeal by FTT Judge Parkes in a decision dated 7 September 2018. He observed it to be arguable that the FTT erred in law in (i) accepting SK's claim in the absence of supporting evidence, effectively at face value and (ii) in assessing his ability to return to Iraq and find employment.

Hearing

6. At the hearing before me, Mr Bates relied upon the grounds of appeal summarised above. He invited me to find that the key factual finding that SK's family had disowned him was not one that was open to the FTT. This is because, it was predicated firmly upon SK's demeanour at the hearing and not on any clear background or medical evidence.

7. Mr Jagadesham relied upon a rule 24 response dated 17 December 2018 and submitted that the decision was adequately reasoned, when read as a whole. This has been served late but for entirely understandable reasons. SK was not represented before the FTT or before me when the matter was first listed in the Upper Tribunal ('UT') on 26 October 2018. I adjourned the hearing to enable SK to instruct solicitors and issued directions requiring a rule 24 response to be filed. In these circumstances, I give permission for the rule 24 response to be admitted late.

8. After hearing from both representatives I reserved my decision, which I now provide with reasons.

Error of law discussion

Ground 1 - findings of fact

9. When the decision is read as a whole, I am satisfied that whilst the factual findings may be generous, they are not perverse and were open to the FTT. The FTT judge carefully considered all the evidence and having applied the lower standard of proof, as set out at [17] and having heard SK give evidence, was entitled to reach the findings of fact she did. The FTT clearly acknowledged the difficulties in SK's case. In particular:

(i) The judge was open about her initial skepticism upon reading the papers and before hearing SK give evidence at [5].

(ii) Having heard his evidence, the judge found it to be genuine, candid, disturbing and compelling at [6] and [18]. This was not just based upon SK's oral evidence and demeanour. Rather, the judge noted at [28] that "*from the outset*" he was consistent in his claim.

(iii) The judge properly directed herself to the fact that she was not medically qualified but that nonetheless SK's own credible evidence over the course of his asylum interview and at the hearing supported his claim to have significant emotional problems focused on his physical problem at [22].

(iv) The judge noted that SK's reasons for coming to the UK were to get a job to "*fix*" his "*physical problem*" at [19], but then properly went on to consider prospective risk not necessarily because of an inability to address this issue in his home area (the IKR) but by reference to the country guidance on Iraq and the situation he would face by reason, inter alia, of his lack of CSID at [26].

(v) The judge acknowledged there was a complete absence of medical evidence in a case "*crying out*" for it at [22] but an adjournment to obtain such would be futile in the particular circumstances of the case as set out at [23]. It is noteworthy that the SSHD's representative must have been of the view that the case could fairly proceed in the absence of medical evidence, as there was no application for an adjournment of the FTT hearing on his part.

(vi) The judge clearly "*agonised*" about the case and gave it very careful consideration given the paucity of expert evidence and relevant material to conduct a forensic analysis – see [26] and [28].

10. The factual findings I have summarised at [3] above have therefore been made notwithstanding and in the full knowledge of a paucity of supporting independent evidence. The immediate question raised in the first ground of appeal is whether the factual findings were rationally open to the judge in the absence of supporting medical evidence. I accept that the judge's observations that the chances of SK having access to the medical attention he believed he needed in the IKR to be very low at [19] and to genuinely be a suicide risk at [22], properly required supporting evidence if they were to form the foundation of prospective risk upon return to Iraq. However, when the decision is read as a whole, these are not matters that materially led the judge to find that SK is at prospective risk in Iraq. Rather, having made findings of fact open to her (as summarised at [3]), the judge properly applied those findings to the country guidance in AAH. The head note to AAH includes the following:

> *"1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
>
> > *i) Whether P has any other form of documentation, or information about the location of his entry in the civil*

register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;

ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

3. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

5. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being

> *detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command."*

11. AAH makes it clear at [100] that a critical part of the enquiry will be what documents the individual in question has or might be expected to get. The FTT accepted that SK does not have a CSID and would not be able to engage the necessary support of his family to get one. The suggestion in the grounds that he could obtain a CSID from the Iraqi Embassy in the UK, given the finding as to the absence of family support, is inconsistent with the country guidance – see [101-[106] of AAH. The assertion in the grounds that SK can get a direct flight to the IKR is patently inconsistent with headnote 2 of AAH, which unequivocally states that there are no flights to the IKR and all returns from the UK are to Baghdad. As headnotes 3 and 4 make clear, SK would be unable to board a plane from Baghdad to the IKR or travel overland safely without a CSID. It follows that the finding that SK would not be able to obtain a new CSID was sufficient to dispose of the appeal in his favour, irrespective of any suicide risk - see the first half of [26] of the FTT decision.

12. Mr Bates submitted that the finding that SK's family had disowned him following his disclosure of his "*problem*" was not adequately reasoned. He submitted that the FTT did no more than accept from SK's demeanour and presentation that he had a physical problem that his family were told about. When the decision is read as a whole, the FTT did not accept that SK in fact had small genitals. The FTT merely decided that SK perceived that he had a problem with his genitals and his family were told about this. The judge has provided adequate reasoning for accepting this evidence – she believed the evidence provided by SK. This was not just evidence given at the hearing, in relation to which there was cross-examination, but was also based on the consistent claims provided within the asylum interview. The judge gave sufficient reasons for believing SK having acknowledged that she was initially sceptical.

Ground 2 – internal relocation

13. The findings as to whether SK could live a "*relatively normal life*" in terms of accessing accommodation and employment in the latter half of [26] appear to be predicated on the erroneous assumption that he would be internally relocating to the IKR. However, the IKR was SK's home area. This is not a material error of law for two reasons. Firstly, the FTT was entitled to find that SK could not safely get out of Baghdad airport without a CSID. Second, the finding that SK would be unable to access employment and accommodation in the IKR is relevant to the alternative

finding that he would face a breach of Article 3 of the ECHR, if able to safely get to the IKR.

14. I can deal with the additional matters raised in ground 2 succinctly given my observations in relation to ground 1 above.

    a. The FTT was well aware that SK had been employed in the past – see [20] and [26] of the FTT decision.

    b. The grounds faintly criticise the FTT's approach to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, but the judge properly directed herself to this at [16] and gave adequate reasons why section 8 considerations did not influence her decision at [27]. In any event the decision letter did not invite adverse inferences from the disposal of the CSID and passport but only in relation to SK's failure to apply for asylum in France.

    c. Ground 2 fails to engage with the country guidance to the effect that SK would not be able to obtain identity documents from the UK Embassy having had a CSID in the past, without the assistance of family in Iraq, which he will not have.

    d. The only returns from the UK are to Baghdad and SK is unable to take a return flight from the UK directly to Erbil.

Decision allowing appeal on asylum grounds

15. The past treatment sustained by the respondent clearly does not cross the threshold required to constitute persecution. At most, he suffered humiliation which significantly impacted upon him. Notwithstanding this, the FTT was entitled to find that he was at prospective risk of serious harm given the relevant country guidance in AAH. The FTT has not clearly identified a Convention Reason for SK's fear of serious harm but the SSHD has appealed on this basis. There was no application to amend the grounds of appeal.

Decision

16. The FTT has not made an error of law such that its decision should be set aside.

17. I dismiss the SSHD's appeal.

UTJ Plimmer

Signed: Ms Melanie Plimmer Dated: 14 January 2019
Judge of the Upper Tribunal