



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

Appeal Number: PA/05684/2017

THE IMMIGRATION ACTS

**Heard at Field House
On May 13, 2019**

**Decision & Reasons
Promulgated
On May 17, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR K A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The appellant originally entered the United Kingdom on March 16, 2008. He claimed asylum on the basis he was from Iran. That claim was rejected by the respondent and following an appeal that went before both the First-tier Tribunal and the Upper Tribunal his appeal was dismissed with a finding he was not an Iranian national. The appellant subsequently lodged additional grounds of appeal on the basis that he was an Iraqi national from the Erbil region of

Kurdistan. The respondent considered those further submissions but refused his application in a decision dated May 26, 2017.

The appellant appealed this decision on June 13, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Abebrese on March 26, 2018, who in a decision promulgated on April 27, 2018 dismissed the appeal on all grounds.

Upper Tribunal Judge Grubb granted permission to appeal and the matter initially came before me on December 21, 2018 for an error of law argument and subsequently came before me on March 25, 2019, when the appeal was adjourned further to enable a psychiatric report to be obtained.

In finding there had been an error of law on December 21, 2018 I noted that the Judge accepted the appellant came from Erbil but had approached assessment of risk on the basis he came from a different area. The Judge found that the appellant had previously lied in his earlier appeal and subsequently concluded that he would be able to travel from Baghdad to the IKR without difficulty. This finding amounted to an error in law based on the findings of the Upper Tribunal in AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212. I adjourned the matter on December 21, 2018 for up-to-date evidence because the First-tier Judge had considered the appeal prior to the decision in AAH.

The matter came back before me on March 25, 2019, when I anticipated the case could be concluded. It became apparent that a psychiatric report was necessary, and the case was therefore stood down for a report to be obtained.

When the matter came back before the Tribunal on the above date, I had the benefit of a psychiatric report prepared by Dr Balasubramaniam dated April 26, 2019. This was in addition to an updated expert report from Dr Laizer dated February 22, 2019, letter from Chloe Robinson, a social worker at Praxis Community Projects, dated February 13, 2019 and an updated statement provided by the appellant dated May 2, 2019.

Both Mr Tarlow and Mr Spurling had had opportunity to discuss this case before coming into court and their positions can be summarised as follows:

Mr Spurling submitted that this was not a case that would engage Article 15(c) of the Qualification Directive because the appellant was from the IKR. However, he submitted that the appellant was not returnable due to documentation issues and even if he could travel to Baghdad he was likely to have to remain there whilst additional documentation was obtained to enable him to travel to Erbil. Without a CSID he could simply not travel any further. He referred the Tribunal to the respondent's recently issued guidance entitled "Iraq: Internal relocation, civil documentation and returns" dated February 2019.

Mr Spurling referred the Tribunal to paragraph 2.6.22 of the guidance, which was under the subheading of "Where a person is unable to obtain a CSID". He

submitted that the respondent should consider applying the Discretionary Leave policy and to grant him leave in accordance with this policy pending future reviews of his ability to feasibly return to Iraq. This was a case where the appellant had cooperated with the Iraqi authorities in trying to obtain paperwork and he had also cooperated with the Red Cross in trying to contact his family. There was evidence to support his cooperation.

Mr Tarlow referred the Tribunal to the recently obtained psychiatric report and acknowledged that it was unlikely that the appellant would be able to survive in Baghdad. As there was evidence he had cooperated with the authorities and that the process had not been completed, through no fault of the appellant, he submitted that the Tribunal had to consider the appellant's position as at today's date. He accepted that the appellant had been unable to obtain a passport or a laissez passer for the reasons set out in the statements contained on the Tribunal file, had been unable to obtain a CSID for the same reason and due to his medical condition was at real risk of destitution based on that lack of documentation. As it was accepted, by Mr Spurling, that the appellant could not establish a need for protection because he came from the IKR he accepted the respondent should consider whether the appellant should be granted discretionary under the Discretionary Leave policy. He invited the Tribunal to grant the appellant leave to remain on human rights grounds in accordance with this policy, which in practice meant the appellant would be given 30 months' leave.

Mr Spurling confirmed that he was agreeable to this approach being adopted and would not be pursuing the appeal on any other basis if the Tribunal saw fit to grant leave on this basis.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 his 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.

FINDINGS

This is a long-running appeal which began in 2008 when the appellant claimed he was an Iranian national. That claim was quite properly rejected and ultimately, he lodged further submissions which led to a further appeal before the First-tier Tribunal in March last year. I previously found that there had been an error of law.

Mr Spurling accepted that because the appellant came from the IKR he could not establish a protection claim. He also accepted that the medical evidence on its own did not support an Article 3 ECHR claim.

This left an outstanding appeal on human rights grounds under Article 8 ECHR. I previously adjourned the case for an independent psychiatric report to be obtained and this was filed with the Tribunal on May 7, 2019. The doctor's conclusion was that the appellant suffered from a generalised anxiety disorder and he would benefit from further psychological counselling with a review in approximately twelve months. The type of treatment which would benefit him would be cognitive behavioural therapy which would address his fear of return to Iraq.

At today's hearing Mr Tarlow took a pragmatic view and accepted that the Tribunal was dealing with an appellant who had cooperated in trying to obtain documentation but was faced with a situation whereby he had no documents and his attempts to contact his family had thus far failed.

Whilst, in theory, he could be returned to Baghdad Mr Tarlow accepted that there was a real risk of destitution once he arrived in Baghdad and he accepted that the appellant's appeal should succeed on Article 8 private life grounds.

I do not have the power to grant the appellant leave to remain based on the respondent's Discretionary Leave policy but it is open to me to find that he should be granted discretionary leave under Article 8 ECHR on private life grounds. If the appellant were able to secure the documents and/or locate his family, he would potentially be returnable in the future.

I accept that as he has been unable to obtain documents and he is at real risk of destitution based on his lack of documents he has established a private life, bearing in mind he has been here since 2008 and there are medical reasons why he should continue to remain here in the interim because his medical circumstances would place him at a real risk of destitution were he returned to Baghdad without documents.

If the Iraqi government were accepting returns without CSID documentation direct to Erbil or even Baghdad, then this issue would not have troubled the Tribunal because clearly, he would be returnable. However, as documentation remains a live issue, this appeal should be granted outside the Immigration Rules under Article 8 as it would be disproportionate to remove him following the principles of Razgar [2004] UKHL 00027.

Decision

I have previously set aside the decision of Judge of the First-tier Tribunal Abebrese. I remake the decision as follows: -

- (1) I dismiss the protection claim.
- (2) I dismiss the appeal under Article 3 ECHR.
- (3) I allow the appeal under Article 8 ECHR.

Signed

Date

16 May 2019

A handwritten signature in black ink, appearing to read 'SPAR' with a flourish underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award is made as no fee was payable.

Signed

Date

16 May 2019

A handwritten signature in black ink, appearing to read 'SPAR' with a flourish underneath.

Deputy Upper Tribunal Judge Alis