Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07564/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 March 2019	**On 18 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

M R H M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Jesurum, Counsel instructed by Irving & Co Solicitors
For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iraq, date of birth 2 March 1991, appealed against the Respondent's decision, dated 14 May 2018, to refuse an asylum claim or seeking Humanitarian Protection under the Immigration Rules. His appeal came before First-tier Tribunal Judge G Clarke (the Judge) who on 31 October 2018 dismissed his appeals.

2. Permission to appeal was given by Deputy Upper Tribunal Judge McGeachy on 31 January 2019.

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3. The Appellant was represented in the First-tier Tribunal by Ms E Daykin of counsel who also settled the grounds seeking permission. Mr Jesurum was not previously involved in the case and looking at the grounds he noted that the principal ground which involved the issue of Article 15(c) of the Convention was an argument that could not really effectively be run at the present time in the light of the extant country guidance. He also noted that aspects of the remainder of the grounds were not wholly arguable, at least so far as he was concerned, I think rightly. Rather the argument which had attracted Mr McGeachy in granting leave, was the question of whether or not a structured approach had, as identified in the case of AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212, had been applied?

4. By way of introduction to the background of this case, the Appellant had previously made a claim which had been considered and eventually dismissed by the Upper Tribunal in a decision of Deputy Upper Tribunal Hanbury and Upper Tribunal Judge Craig as long ago as 2013.

5. The Judge, in considering this matter, plainly identified by reference to Devaseelan [2004] UKIAT 00282 the certain starting point and certain adverse conclusions which had been arrived at against the reliability of the Appellant's evidence as to what he had claimed had happened to him in his circumstances in his long journey to get into the United Kingdom.

6. The difficulty the Appellant faced before the Judge was that there had been damaging adverse findings and points taken against the reliability of the Appellant's evidence and/or its credibility. Somewhat unfortunately the Judge refers to some of these matters by reference to the word 'plausibility' which does not fairly reflect that he was not believed on a number of issues, particularly buttressing his claim that he could not safely return to his home area of Kirkuk, which was not part of the IKR, although it was said that in substance there was no real difference in terms of safely getting to and from either area.

7. Mr Jesurum sought to persuade me that the absence, as he would put it, of a structured approach gave rise to the concern that first AAH has not been

followed as it should be, or absent of good reason given why it was not being followed. Further Mr Jesurum, was concerned that on a remaking of this matter there might be issues which could give rise to a different decision.

8. I take those points into account because it seemed to me that the Judge, [D63 to 79] and [D80 to 87], certainly made an assessment of the reliability of the Appellant's evidence. In particular, the claim that the Appellant did not have any appropriate identity documents (CSID) and that he would not be able to obtain a substitute so as to safely relocate on return to Baghdad back to Kirkuk and the home area.

9. I concluded that this was one of those cases where, bearing in mind the low standard of proof of evidence required to identify the real risk of persecution or proscribed ill-treatment, namely serious harm, always runs into the difficulty of trying to prove or disprove a negative. Rather I concluded what had happened was that the Appellant did not adduce the evidence of an acceptable level of reliability to show the real likelihood of risk on return. Mr Jesurum, with good and obvious reason, said in the absence of a CSID or appropriate identity document, the inference must be that you could not safely return to the home area: This, to some extent, relies on the evidence advanced in AAH which the panel carefully considered. Whilst paragraph 116 of AAH was helpful it was not conclusive as to how a Tribunal should look at the matter. In this case, in the context of the earlier decision of the Upper Tribunal and the evidence that was advanced before the Judge, I conclude the Judge did properly consider whether or not the Appellant could return to the home area and did consider the availability/ accessibility of family support in the home area which would assist, if it was truly required, the Appellant to obtain an identity document. I bear in mind, that the Judge did not accept the Appellant's evidence as to the loss of his documentation.

10. I do not go behind that Judge's findings, he heard the evidence, he heard the Appellant's case, the case was put to him by experienced counsel. Mr Jesurum, working hard with the material he had, still had the underlying

difficulties of the insufficiency of the evidence to show the Appellant would face the real risk of persecution or proscribed ill-treatment.

11. Accordingly, I concluded that the argument, as put by Mr Jesurum, as attractive as it could be made, did not persuade me that the Judge made a material error of law. I do not think that to slavishly repeat paragraphs of decisions identified errors of law. In this case it was quite clear that the Judge understood the issues raised by AAH and recited a great deal of the headnote which, whilst not, as Mr Jesurum correctly says, the ratio of that case, it was a fair summary of the considerations that the Tribunal concluded.

12. Therefore, I conclude, in the light of the fact that the Judge also had the evidence/ background evidence before him it was a decision he was entitled to make. It was not said that the Judge has not failed to properly address the evidence or made any material omissions from the consideration of the evidence in the round. The Original tribunal made no material error of law. The Original Tribunal's decision stands.

NOTICE OF DECISION

13. The appeal is dismissed. The Original Tribunal's decision stands.

14. There was an anonymity direction made and I continue that.

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.

Signed Date 14 March 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has failed therefore there can be no fee award.

Signed Date 14 March 2019

Deputy Upper Tribunal Judge Davey