



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/08629/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 February 2019

Decision & Reasons Promulgated
On 06 March 2019

Before:

Upper Tribunal Judge
John FREEMAN

Between:

SAEED [M]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Franck Magennis* (counsel instructed by Migrant Legal Project,
Cardiff)

For the respondent: Mr Tom Lindsay

DETERMINATION AND REASONS

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*
(2) *persons under 18 are referred to by initials, and must not be further identified.*

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge John Lever), sitting at Newport on 29 August 2018, to dismiss a protection appeal by a Sunni Kurdish citizen of Iraq, born 23 November 1989. Permission was given in the Upper Tribunal, on credibility and internal relocation grounds.

2. The decision of the very experienced judge is noteworthy for its clarity and concision: though Mr Magennis was inclined to criticize it for being too short for an Iraqi case, brevity is of course a virtue, so long as everything necessary is included. The judge's salient findings of fact were as follows, so far as he was prepared to accept the appellant's case as reasonably likely to be true.

FACTS

3. The appellant's father may have been a Ba'ath governing party member, under the Saddam Hussein régime, till that fell to allied forces in 2003. He had been an ordinary conscript soldier in Saddam's Army at various times, till his pay-book recorded his final discharge on 20 April 1991. He may have had a local rôle as an informant or collector of information for the Ba'ath party; but he did not have any high rank in the Army, or anywhere else. Nor was the judge prepared to accept that the appellant would have seen him in any uniform suggesting that, since he was less than 18 months old when his father received his final discharge.
4. From the fall of Saddam in 2003 till 2015, the appellant and his family lived in peace in their home city of Diyala, now a 'contested area' between the Kurds and the present Government. While some Sunnis, including former Ba'ath members, had turned to ISIS ['Islamic State of Iran and Syria', now more usually known as Da'esh], the appellant did not claim that his father had actually done so; and the judge was not prepared to accept that he had fallen under any such suspicion.
5. That meant that the judge was also not prepared to accept the *dénouement* of the appellant's case, which came, he said, when in 2015 persons unknown had killed his father outside the city. After the body was brought to the family house and they received threats, they had gone to live in another town called Kifiri (or Kefri), about 40 minutes' drive away in a hired pick-up from Diyala. There they had had no threats; but they were still worried about the risk they might run, because of the father.
6. However, and there is nothing to suggest that the judge did not accept this, the appellant couldn't get a job in Kifiri, so decided to leave Iraq altogether. He did not take any documents with him, as he was travelling illegally at night, and did not pass any check-points. The appellant's mother was too old to travel, but begged him to go. From Erbil the appellant went to the Turkish border, and was taken over by lorry on 4 August 2016.
7. From Turkey the appellant travelled through Greece, Italy (in both of which countries he was finger-printed by the authorities, but without claiming asylum, then by way of France and Belgium, arriving here on 1 April 2017 and claiming asylum two days later. The judge held the appellant's failure to claim *en route* against him, as an additional reason for not believing the main part of his account.

8. Finally the judge dealt with internal relocation, since he accepted that, whatever had or had not happened, the country guidance showed a general article 15 (c) risk in Diyala. That meant, since he did not come from or have family in the IKR [Independent Kurdish Region], that Baghdad was the only realistic alternative destination.
9. Dealing with return to Baghdad, the judge noted that the appellant had left his ID and passport with his mother, who had been able to send him his father's pay-book, when he asked her for documents to support his case during 2017. The judge was not prepared to accept that the appellant was no longer in touch with his mother, owing to losing his mobile phone in July 2018, and took the view that she would still be able to send him his CSID and passport.
10. This meant that, since the appellant could be returned to Baghdad with those documents, and was a healthy young man, the judge took the view that he could safely go there, without any breach of the Refugee Convention, article 15 (c) of the Qualification Directive, or his rights under the European Convention on Human Rights.

GROUNDS

11. I shall briefly review the appellant's rather lengthy grounds, before dealing with them in what seems to me logical order.
 1. raises a point on what is said to be the background risk to Sunnis suspected of ISIS sympathies.
 2. suggests that all Sunnis are at risk of kidnapping in Baghdad, and generally from 'popular mobilisation forces' belonging to the Shi'a.
 3. blames the judge for not considering the appellant's submissions about his route of return to the IKR. I fail to understand the point of this, as the judge accepted he could not go there.
 4. deals with the appellant's prospects of getting his own, or a replacement CSID.
 5. is about the correct test for internal relocation, and the factors to be considered.
 6. refers to the appellant's family coming from a contested area, and the difficulties they are said inevitably to have faced there.
 7. is about the risk to the appellant in his home area from what had happened to his father; however I do not read the judge as accepting this (see 5).
 8. suggests that Ba'ath Party sympathies would be imputed to the appellant, whether he had them or not.
 9. is about whether the appellant could have been expected to know what his father had been doing after his discharge from the Army.
12. Those grounds which are about the risk to the appellant in his home area are essentially irrelevant to the result, since the judge accepted that he could not be expected to return there. There is no indication that any of them would lead to a risk, or an increased risk, or to its being more 'unduly harsh' than otherwise for him to return to Baghdad. That is of

course the correct test (see *Januzi* [2006] UKHL 5), though it is understandable that the judge should have dealt with return there mainly in terms of risk.

13. The relevant grounds are 2, 4 and 5, and the logical starting-point is 5. At a late stage in the hearing, Mr Magennis sought to argue that the appellant's CSID had not been among the papers kept for him by his mother when he left. However, this point was not raised in the grounds, and in any case the judge was fully justified in taking the references to ID at paragraphs 13 – 14 of the appellant's statement in that way.

CONCLUSIONS

14. At paragraph 13 the appellant described how he had asked his mother to send over any papers which might help his case, and she had duly sent his father's pay-book. He went on to say that he had not asked for his ID card or passport "... because I did not think I would need them". Clearly he did not think they would help his case, and the judge was also justified in rejecting his explanation that he had lost touch with his mother, together with his phone.
15. It follows that the judge needed to deal with the appellant's situation on return to Baghdad as a Sunni Kurd, with a CSID, in the light of the 'unduly harsh' criterion and the factors set out in the country guidance. While the judge certainly referred to the relevant country guidance (*AA (Iraq)* [2017] EWCA Civ 944, *BA (Returns to Baghdad Iraq CG)* [2017] UKUT 18 (IAC), and *AAH (Iraqi Kurds - internal relocation) (CG)* [2018] UKUT 212 (IAC)), he did not discuss any particular factors, apart from the appellant's youth, health and potential possession of a CSID. No doubt he knew what he was looking for in the country guidance; but there is nothing in his paragraph 27 to let the reader know what he considered, or considered relevant, or what view he took on it.
16. Looking at the country guidance factors set out in the appellant's skeleton argument before the judge, the relevant points for present purposes are these (*AAH* is essentially about returns to the IKR):

AA

14. *As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City ...*

15. *In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*

(a) ...

(b) *whether P can speak Arabic (those who cannot are less likely to find employment);*

(c) *whether P has family members or friends in Baghdad able to accommodate him;*

(d) ...

(e) *whether P can find a sponsor to access a hotel room or rent accommodation;*

- (f) *whether P is from a minority community;*
- (g) *whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*

BA

(iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.

17. Dealing first with the kidnapping point (ground 2), there was some evidence before the judge (in an Amnesty International report from 2014) that Sunnis face an increased risk of it. However that is not referred to in the country guidance in *BA*, as might have been expected if it had still been relevant; and there is said to be no real risk on this ground alone. The passage cited also suggests that those who have been away for longer than this appellant, and so may be expected to offer more money, are the ones mainly at risk.
18. Nor, from *AA*, is there any risk on return to Baghdad generally: however the ‘unduly harsh’ factors listed at 15 (b), (c), (e), (f) and (g) were clearly relevant. It is not clear what the judge would have made of these points, if he had set them out in terms of the ‘unduly harsh’ test. There is however nothing wrong with the rest of his decision on return to Baghdad, and I see no reason why he should not be asked to resume his hearing and deal with these factors.

**Appeal allowed: decision on return to Baghdad set aside
Resumed hearing before Judge Lever, on this point only**



(a judge of the Upper Tribunal)
Decision signed: 26.02.2019