Upper Tribunal
(Immigration and Asylum Chamber) PA/09431/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 25 July 2019

Decision & Reasons Promulgated
on 02 August 2019

Before

UT JUDGE MACLEMAN

Between

HAMADAMEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of Designated FtT Judge Murray, promulgated on 29 October 2018.

2. The appellant's grounds, set out in his application filed with the UT on 13 March 2019, are over lengthy, and contain much repetition of and insistence upon the appellant's case, rather than clear identification of error on points of law. They are advanced under headings - 1, failure to apply country guidance / provide adequate reasons [for departing from guidance], and 2, failure to grant an adjournment.

3. Permission was granted on 22 March 2019, on the view that in finding Kirkuk no longer to be a contested area, the judge arguably erred by failing to apply *AA* [2015] UKUT 00544. The grant does not specify any other arguable issue, but is not restricted.

4. Mr Forrest helpfully condensed and re-grouped the grounds of appeal into error on these issues – 1, departure from country guidance for insufficient or no reason; 2, no, or inadequate, reasons, for finding internal relocation not to be unduly harsh; and 3, not in the interests of justice not to adjourn the hearing.

5. Mr Govan said at the start of the hearing that the respondent accepted that error was disclosed by ground 1, but took the position that it would be immaterial, because the case turned on inability to relocate. Mr Forrest said that failure to follow a "factual precedent" was an error which led to reversal.

6. Having heard the submissions, I reserved my decision on issues 1 and 2.

7. I indicated that issue 3, whether the judge erred by not adjourning, would not be sustained. I deal with that next.

8. Paragraph 8 of the decision records that Mr Chaudry, for the appellant, asked to adjourn so that further attempts could be made to trace his family. The judge declined to adjourn, considering the time which had gone by since he began trying to make contact in 2016, and lack of progress.

9. The evidence of the appellant's efforts to trace his family begins with a referral to the Red Cross through his present representatives on 5 April 2018, copied at pp. 12 – 14 of his first bundle in the FtT. This provides the appellant's name and date of birth, and few further particulars about him. Under "reasons for referral" it states that he seeks assistance to find his parents and sister, from whom he separated in Turkey, and a brother from whom he separated in France. No names, dates of birth, past addresses, telephone numbers, or other information is supplied about these persons. No information is provided about relatives in Iraq, where the appellant has (at least) grandparents.

10. There was also before the FtT a copy of a "chaser" email sent by solicitors on 13 August 2018, when asking the Red Cross also for support for the appellant in the UK.

11. I was advised that solicitors sent a further email on 3 June 2019, without response. It was accepted that the matter would be no further forward if the decision were to be remade than it was before the FtT.

12. I observed that in light of the scanty details provided to the Red Cross it was unsurprising that there had been no result. Mr Forrest offered the explanation, on his instructions, that regular practice with the Red Cross is to make an initial approach, without providing details, following which they

revert for further information. That explanation does not advance the ground, because (a) it was not offered to the FtT; (b) the suggested practice of the Red Cross appears, on the face of it, unlikely, if not absurd; and (c) anyone anxious to trace relatives could be expected to provide all available useful details at the first opportunity. Such effort as has been made does not look like a genuine attempt to trace.

13. Refusal of the adjournment application by the FtT involved no procedural unfairness, as matters then stood. The passage of time, and information subsequently available, only reinforces the view that there was no good reason to adjourn.

14. I find ground 1 to be incidental, because despite the position taken on reversal, the submissions of both representatives centred on whether the judge's findings on internal flight were supportable. If internal flight is available to the appellant, it does not matter whether his home area was at the time of the FtT hearing a disputed area or not. Nevertheless, I will consider the merits of the ground.

15. Country guidance, published in 2015, categorised Kirkuk as a contested area.

16. The respondent's decision dated 12 July 2018 states at [17] that Kirkuk is no longer a contested area. The issue was squarely before the appellant from that time.

17. The refusal decision relies upon the respondent's "country policy and information note" (which, in turn, cites its sources). That was the position taken by the respondent at the hearing.

18. The appellant's representative in response said, as recorded at [31], that *AA* [2017] EWCA Civ 944 "still applied", and so the guidance had to be followed.

19. The judge at [47] said simply that the appellant's area is no longer contested. That is presumably based on accepting the respondent's position and rejecting the submission for the appellant, but it is unreasoned – perhaps because this was not the crux of the case.

20. Country guidance is a unique species of "factual precedent". The Practice Directions are relevant:

> 12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:
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> (a) relates to the country guidance issue in question; and
>
> (b) depends upon the same or similar evidence.

> 12.3 A list of current CG cases will be maintained on the Tribunal's website. Any representative of a party to an appeal concerning a particular country will be expected to be conversant with the current "CG" determinations relating to that country.
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> 12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.

21. For obvious reasons, country guidance is liable to updating. It does not purport to freeze history. If the evidence about the issue has changed, then the guidance is no longer authoritative and may be shown no longer to apply: PD 12.2(a), 12.4.

22. See also *Macdonald's Immigration Law and Practice*, 9th ed., 20.119.

23. The submission that *AA* in the Court of Appeal governs the current position in Kirkuk was and is misconceived. The Court of Appeal engaged in legal analysis, not in updating the facts.

24. The appellant had been put on notice that it was contentious whether the guidance remained factually accurate. If he did not agree that Kirkuk is no longer contested, he required to counter with a critique of the evidence underpinning the respondent's position, or by producing further evidence on his side, not by reliance on guidance. He did not base his case, either in the FtT or in the UT, on any evidence.

25. The principle can be illustrated by the appellant's acceptance in the UT that, contrary to the position set out in guidance, and at the time of the FtT hearing, there are now direct flights to the IKR, and it is not necessary to travel through Baghdad.

26. On internal flight, the grounds generally reassert the appellant's case and say the judge's reasons are inadequate. It was common ground before me that possession of or ability to obtain a CSID was a key issue. It was said again for the appellant that he has "no / limited family members" in Iraq to obtain one for him, that he "cannot live with a family member", and that there was "no evidence that he knows his family" in Kurdistan. It was submitted that it was irrational to say that he might ask his grandparents to assist.

27. Mr Govan submitted that it was important to bear in mind that it was for the appellant to establish the primary facts, and to look at what he proved, or failed to prove, rather than ongoing unproven assertions. Those points were well taken.

28. The judge found at [47] that there were credibility issues under section 8 of the 2004 Act. No error is suggested therein.

29. In the same paragraph, the judge found it to lack credibility that the appellant lost his passport and CSID because his father had them when they became separated. She thought that as the appellant is an adult, there was no reason for his father to have those documents. That is well within sense. I do not accept that it is not legally a good reason.

30. At [48], the judge found no sense in the claim that the appellant might be the victim of an honour killing. There is no error in that. It was reasonable to hold in consequence at [49] that he could seek support from his paternal grandfather's family. It was also reasonable to note at [50] that the appellant made no apparent attempt to contact his paternal grandfather, but there was no reason not to, and he was likely to be traceable.

31. Similarly, at [31], there was no reason for the appellant to have problems with his maternal family.

32. The judge did not find the appellant generally credible, and no error is shown in that. She recorded his evidence that he had lost his passport and CSID, but rejected his explanation. She did not make (and perhaps could not make) a positive finding that he still has them, but her analysis of whether he could obtain replacements is in the alternative.

33. The judge expressly rejected at [52] the contention of no family in Iraq to help. That is a good reason for finding that the appellant was not assisted by the report from Dr Fatah, being based on absence of family. She also says there that she does not understand why the appellant limited his tracing request to the Red Cross, which is another sound point. The finding at [53] that he could obtain replacement documents is well founded.

34. At the heart of this case there is not a failure by the FtT to make reasoned findings on internal flight, or any other legal error. There is a failure by the appellant to give candid evidence about the availability to him of documents and of family contacts. He is concerned to conceal rather than to disclose the true position. It is unsurprising, and involves no error on a point of law, that the FtT did not make the findings in his favour which he sought. His grounds are, in essence, only insistence on matters on which he offered no credible evidence.

35. The decision of the First-tier Tribunal shall stand.

36. No anonymity direction has been requested or made.

Hugh Macleman

26 July 2019
UT Judge Macleman