



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10069/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 9th May 2019

Decision & Reasons Promulgated
On 10th June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR K N
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms McKeeve of McGlashan MacKay Solicitors

For the respondent: Mr A Govan, Presenting Officer.

DECISION AND REASONS

Introduction

1. This is a resumed hearing from 8 February 2019 and should be read with the earlier error of law decision. On that occasion I found a material error of law in the decision of First-tier Tribunal Judge AMS Green. The judge found the underlying claim not credible. That finding had not been challenged. The

error found related to how the judge dealt with the practicalities of the appellant's return to Iraq.

2. The appellant is from a fairly large village in the Sala Al Din Province of Iraq. This is a contested area as identified in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944. That decision found that any civilian returned to that Province faced a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
3. The refusal letter is dated 18 August 2018. It suggested that country conditions have changed whereby it would be safe for him to return to his home area. An alternative would be for him to travel via Baghdad to the IKR and seek to establish himself there.

The Hearing

4. I acknowledge the careful preparation made by both representatives in presenting this appeal. There was a bundle of 20 documents running to over 500 pages produced on behalf of the appellant in the First-tier Tribunal. I have also been provided with an index of key passages. I have also received a copy of the skeleton argument used. Mr Govan has provided me with a map illustrating disputed areas in Iraq as at September 2018.
5. There was some misunderstanding following the error of law hearing as to where the appeal was to be heard. Apparently both representatives understood after the error of law hearing it would be returning to the First-tier Tribunal with a view to further factual findings being made. This related as to whether the appellant had any family members who can assist; particularly whether there was any evidence that his immediate family members had died whilst fleeing as he claimed. However, both representatives indicated they were prepared and ready to proceed. Ms McKeeve acknowledged that it would be difficult to obtain evidence, for instance, by way of death certificates, about the fate of his parents. The appellant was present and an interpreter had been arranged. In fact the appellant did not give further evidence and the appeal proceeded by way of submissions.

Consideration

6. The appeal at this stage still gives rise to a number of issues. The 1st issue is whether country conditions have so changed that I would be entitled to depart from the country guidance case in relation to the appellant's home area.

7. In the alternative, it has not been suggested that Baghdad would be a viable alternative for the appellant. Rather, the suggestion was he could travel from Baghdad to the peaceful Kurdish region. AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC) set out that possession of a valid CSID or Iraqi passport is necessary for travel from Baghdad to the IKR, and that a displaced person cannot work without a CSID.
8. There is a need to enquire about a number of matters before it could be concluded that requiring the appellant to relocate to the IKR would not be unduly harsh. That enquiry begins with consideration of how likely it is that the appellant will be able to acquire a CSID.
9. AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC), as revised and replaced by the annex to the judgment of the Court of Appeal(reported as AA (Iraq) [2018] 1 WLR 1083) emphasised the importance of having or being able to obtain a Civil Status Identity Document ("CSID"), reasonably soon after arrival in Iraq. Paragraph 9 of the guidance states:
 9. ...A CSID is generally required in order for an Iraqi to access financial assistance from the authorities: employment; education; housing; and medical treatment. If P shows that there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it reasonably likely that P will still have no CSID.
10. What is required to obtain a CSID is addressed at paragraphs 10 and 11 of the guidance:
 10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.
 11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where ["serious harm" as is defined in article 15 (c) of Council Directive 2004/83/EC (the Qualifications Directive)] is occurring. ...There is however a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

11. A significant difficulty in considering these issues is the establishing of the factual matrix. There is no documentary evidence. In the First-tier Tribunal the appellant was found to lack credibility. He was found to have told lies on a number of significant matters. For instance, he changed the timeline of events after his original account was undermined by the objective evidence. He failed to disclose he had claimed in Germany. When he arrived, he claimed to be a minor. Given that he has been untruthful in certain aspects which could be established then his evidence about matters which cannot be checked must be circumspect. However, it is an accepted principle that the fact someone has told lies about certain aspects of their claim does not mean that all their evidence must be untruthful.

The Facts

12. I bear in mind that it is for the appellant to establish his claim. With this in mind I will attempt to set out findings on the factual background. There is no dispute that the appellant is an Iraqi national of Kurdish ethnicity. He was interviewed in Kurdish Sorani. Whilst expressing an interest in Christianity he was raised as a Muslim. He claims to be from a village in in the Sala Al Din Province. This is not been challenged.
13. In an attempt to establish the basic facts return to what was said at his screening and substantive interview. He is a young man of 25. He states he only living working alongside his father is a farmer.at question 35 he said he was only educated to primary school level and said the family were not well off financially and so he had to assist his father on the farm. This could be correct. He has no medical conditions beyond an old injury to his right elbow.
14. Some aspects of his claim are much more questionable. He claims that his family, consisting of his parents and sister, fled towards the start of 2016.He claimed the precipitating factor was the fear that Isis would attack and occupy their home area, they having attacked at the end of 2015. The country information indicates that his village was liberated from Isis the year before. As this is based upon country information reliance can be placed upon this. This calls into question whether his family would have departed. Against this there is a possibility that the region was experiencing ongoing difficulty and they decided to leave when they could. At 4.1 he referred to the town being destroyed.
15. He then claims that they travelled to Turkey and then on to Greece by boat. However the boat capsized and he awoke in hospital. He claimed not to know what had happened to his family members but understood that his father drowned. He refers to ta refugee organisation in Greece assisting his onward passage. There is the possibility of supportive evidence by way of media coverage of this incident; information from the authorities and refugee organisation he referred to, in support of the claim. However, this was not

been forthcoming. I acknowledge there is no requirement to provide corroborative evidence but the more supportive evidence available then the easier the fact finding. In his substantive interview at question 89 he indicated he was separated from his family during the journey. This is not pursued in questioning because he claimed to be upset talking about his family.

16. I have considered the evidence recorded in the original hearing. There is reference to mentioning having a CSI D in cross-examination. However, he said this was in his home village. It was recorded he was not involved in obtaining it and had never used it. This reflects what he said at question 27 of his interview. The judge at paragraph 20 acknowledged the importance of a CSI D. At paragraph 23 the judge, based upon his negative credibility finding elsewhere, did not accept the appellant would be unable to obtain a replacement. The judge referred to the country information suggesting he could return to his home area and that family members or friends could help him obtain a duplicate.
17. At his screening at 1.8 he indicated he had a passport but it was in Iraq. At question 34 he retreated from this, saying he had no passport. At question 22 of his substantive interview he said he had no family in Iraq. He was asked about extended family and he said he had relatives but did not know if they were there are not. He referred to paternal uncles and an aunt who had been living in the same village. He claimed to have no other family elsewhere. I accept as credible that if his home area had been ravaged by Isis they may well also have moved. He claimed not to be in contact with anybody in Iraq.
18. The appellant has been away from his home country now for over 3 years. The country information indicates that Isis had occupied is area but had been subsequently repulsed. Given that his home is in a contested area and there was a documented background of occupation I would accept is likely that there was considerable ongoing disruption in the area. I find it credible that some locals may have been fearful of a return of Isis and some decided to leave when they could.
19. As stated, he has not been found reliable in some respects but it does not follow none of his evidence can be accepted. Bearing in mind the low standard of proof applicable I would accept as possible that his family left with him and they subsequently became separated. His claim that he has had no contact with them subsequently or with other family members is based solely upon his evidence. It is possible his family came with him and they became separated. His family may have perished on route as has happened with other families. It is also possible with the general disruption that his remaining relatives have scattered and he cannot contact them. Again, this is largely dependent upon his say-so.

20. I would accept he has limited education. There is nothing at screening interview which would suggest to the contrary. The same applies in respect of his claim not to have documentation.

Return

21. Against this background I turn to consider the possibility of return. As a generality at the present moment the evidence indicates Isis are still a serious source of threat but their operations have contracted in the face of combined military opposition. The respondent's Policy Note of November 2018 contains the map that Mr Govan provided, showing the gradation of risk areas. 8.5.2 shows a decline in the number of security incidents in 2018. 8.6.1 is a graph showing civilians killed in the 6 worst affected Governorates between June 2014 and October 2018. Para 8.1.1. states:

The Congressional Research Service (CRS), in a paper dated 4 October 2018, explained 'Iraq's government declared military victory against the Islamic State organization (IS, aka ISIS/ISIL) in December 2017, but insurgent attacks by remaining IS fighters threaten Iraqis as they shift their attention toward recovery and the country's political future. Security conditions have improved since the Islamic State's control of territory was disrupted, but IS fighters are active in some areas of the country and security conditions are fluid.

22. The report also contains a resume in respect of the disputed areas. In September 2017, the Kurdistan Regional Government (KRG) held a referendum on the independence of the Kurdistan region and the areas disputed between the Kurdish authorities and the Iraqi government (GoI). In response to the referendum, the Iraqi government sent in troops to retake areas. The focus was upon the cities and oil centres.
23. Ms McKeeve has referred me to the United Nations report of 3 May 2019. It refers to a background of continuing insecurity in parts of Iraq. There is mention of widespread destruction of homes and agricultural lands. It does confirm that there has been a steady decline in attacks over the course of 2018 and military operations against Isis have largely ended. However, the beginning of 2019 saw a renewed increase in Isis attacks. The view was that security gains were mixed with continued insecurity in former Isis held areas.
24. There is reference now to forced returns to contested areas which has resulted in secondary displacement. Humanitarian needs remain high with an estimated 18% of the population requiring assistance (page 20). The article goes into further detail of ongoing difficulties.
25. The premise behind a country guidance case is to provide guidance to be followed about a country situation following detailed consideration of

background material. Naturally, the situation in a country can change and the guidance can become outdated. I am advised that an updated country guidance is anticipated in the relatively near future. However, based upon the information presented I cannot confidently depart from the existing country guidance. The evidence does not demonstrate a sustained settlement. Consequently, I find the appellant cannot return to his home area because of the general risk for civilians there which meets the 15 C threshold.

26. I then turned to consider the possibility of relocation with a view to settlement in the IKR. This in turn requires consideration of documentation. I have been referred to the respondent's Operational Guidance of February 2019, version 9. The issues in relation to documentation are twofold. There is the basic travel documentation which enables the person to get into Iraq. In itself this is not the end of the matter. The case law illustrates the need to have a CSI D in order for a person to establish themselves.
27. If the appellant's family have fled, as he claims, then given the conflict which occurred in his home area there would be difficulties in obtaining the original documentation. He claims not to know the whereabouts of his extended family in the area. As stated they may well have dispersed given the conflict. If he had a means of contacting them or friends they may well not wish to travel into an unsettled area in the hope of finding his papers. This then leads on to the question of redocumentation.
28. 2.16 of the Guidance refers to AA which recorded that offices for Salahuddin have been established in Baghdad. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which the person could apply for formal recognition of identity. The precise operation of this court is, however, unclear. Clearly this suggests it is not a straightforward process. There are also other practical difficulties given the appellant's background for him spending time in Baghdad.
29. The guidance covers entry requirements to the Kurdistan Region of Iraq. Those arriving by air must report to the nearest Asayish office to regularise their stay. Admission is at the discretion of Kurdish immigration and border officials. A variety of documents needed. The IDP must find a place to live and get a support letter from the local mukhtar.
30. Whilst the appellant is Kurdish there is no evidence to suggest he has any connections with the IKR. He may be viewed with suspicion given the area he originates from. There is no evidence he has any particular skills. On his account his education has been limited. Given the large displacements of people that has taken place it is likely that those without particular skills or family support would be at risk of ending up in an IDP camp and the conditions are recorded as extremely difficult. The background material refers

to the high number of displaced people in the IKR and the strains placed upon the infrastructure and the competition to establish a livelihood. Details are set out at page 551 of the United Nations report of 3 May 2019 onwards. There is reference to the Kurdish region boasting around 30% of all IDP's as well as refugees from Syria. Obviously this will place considerable strain upon the region's resources. There is also information that faced with this the IKR authorities have sought to promote returns.

Conclusions.

31. The appellant has been found to lack credibility in respect of a number of significant aspects of his claim. I would be prepared to accept, bearing in mind the low standard of proof applicable, his assertions about certain facts relevant to the issues now arising. Principally, I accept his claim that his family were displaced and are either dead or missing. I also accept his claim that there is no individual in Iraq a position to assist him. I also accept his claim that he does not have access to his documentation and does not have anyone to assist him obtaining a replacement. Although he is Kurdish I accept his claim that he has no support in the IKR.
32. I am not prepared to depart from the country guidance and following this a 15 C risk exists in the appellant's home area. It has not been suggested he could relocate to Baghdad his background. It is my conclusion that it would be unreasonable and unduly harsh to expect him to relocate in the IKR. As stated he has no connections there. He has no particular skills. The area is under strain with the influx of people.
33. The appellant does not have the necessary documentation, viz, a CSID to settle in the IKR. The evidence does not indicate that it would be reasonably practicable for him to obtain replacements in any sort of timely fashion.
34. Following from these conclusions I find the appellant is entitled to humanitarian protection. This is because of the 15 C risk in his home area and the fact he cannot relocate elsewhere.

Decision

The appeal is allowed.

Deputy Upper Tribunal Judge Farrelly.

Dated: 6th June 2019