



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11189/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 9th April 2019

Decision and Reasons Promulgated
On 16th April 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

HA
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Madubuire, Broudie Jackson and Canter
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as HA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant, an Iraqi citizen born in Sulaymaniyah in 1991, made a protection and human rights claim in June 2016. Her husband had previously made an asylum claim which had been refused and his appeal (with her as his dependant) dismissed. Her husband was her dependant in this claim and appeal, together with their child born in the UK in 2016.

2. Her claim was refused by the respondent for reasons set out in a decision dated 5 September 2018. Her appeal against that decision was heard by First-tier Tribunal judge Cox and, for reasons set out in a decision promulgated on 22nd November 2018, was dismissed.
3. Permission was sought and, in a succinct summary, granted by UTJ Smith in the following terms:

...

4. Ground one concerns the judge's findings about the appellant's conversion to Christianity. Although the judge provides a number of reasons for not accepting the appellant's word on this, he does accept at [77] and [78] of the decision that the appellant's husband (who is dependent on her claim) is a genuine convert and that she attends church with him to support his conversion to that faith. This is not therefore a claim which is found to be fabricated. It is arguable that the judge thereafter has failed properly to consider the risk on this account (see in particular [95] and [96] of the decision).

5. Ground two concerns the return of the appellant and her husband to Baghdad and route thereafter to IKR (given the judge's "concerns" about them remaining in Baghdad at [95] of the decision). Although the judge does not say, as it appears to be asserted, that the appellant would be able to return to IKR travelling on her husband's documents, it is arguable that the judges approach to return of the appellant (whose identity documents are said by the respondent to be false) is inconsistent with Country guidance.

4. The paragraphs of the First-tier Tribunal Judge's decision referred to in the grant of permission read as follows:

77. On the totality of the evidence, I find that the appellant may follow Pentecostalism in that she attends Sunday service regularly. However, this is because her husband follows the faith and does not reflect a genuine conviction on her part. The appellant claimed that she attended church prior to [her husband's] arrival in the UK, but she has not provided any evidence to support this aspect of her claim and I note that one of the churches she claimed to have attended was Church of England.

78. As can be seen, although I have treated [her husband's] evidence with considerable scepticism, I find that he does follow Pentecostalism. However, in the absence of a baptism certificate and because he had not raised the change in his faith at his appeal, I am not satisfied that he was baptised in the UK in 2013 or 2014. I do not know if (or when) he was baptised. Nevertheless, I found striking that within a few weeks of [her husband's] arrival in the UK, the family start attending their nearest Pentecostal church. Further, Mr Meggers has had the opportunity to see and listen to [her husband] for over 16 months and is satisfied that [her husband] genuinely follows the faith.

...

95. Overall, I would be concerned if the family had to stay in Baghdad. However, as the appellant's husband has appropriate documentation and the appellant will only be removed if she has similar documentation, I am satisfied that the family would not have to remain in Baghdad. As was noted in AAH, the family can get to the IKR relatively easily. In my view, if the appellant and her husband were prepared to hide their religion, when they were married, then they have no reason to disabuse the notion that he is a Muslim whilst they travel to the IKR. Obviously I do not expect him to be discreet in the IKR.

96. The evidence relating to the situation for Christians in the IKR is limited and a country expert report may have assisted me. Unfortunately, I do not have such a report available, and having carefully considered all the evidence, I find that the appellant has not established that there is real risk of her or her family being persecuted because her husband follows the Pentecost faith.

Ground 1

5. Mr Madubuire amplified the grounds of appeal relied upon and drew my attention to the sections of the Country Information and Guidance dated August 2016 that referred to the IKR. In particular he referred to sections 5.3, 5.4, 5.5 and 6.2.4 to 6.2.9. The finding by the judge did not, he submitted take proper account of the evidence that was before him such evidence being sufficient to support a finding that the appellant would, because of her support for her husband's conversion, be at risk of being persecuted. He referred to the comment of the judge that there was inadequate documentation and that he might have been assisted by an expert report.
6. It is correct that the First-tier Tribunal judge might have been assisted by other evidence, but the burden of proof, albeit a low burden of proof, is on the appellant. There was no request by the appellant for an adjournment to obtain further evidence.
7. The finding by the judge in [96] is not a finding made in isolation without consideration of the evidence before him. The appellant's solicitors had submitted a full bundle of background material and the judge refers in detail to this earlier in his decision. The judge considers the Country Information Guidance: Iraq, religious minority groups and the references in that document to the UNHCR report assessing protection needs and refers to the Gospel Herald report. It is clear that the judge did not only consider the sections of the CIG referred to above but gave his full attention to the whole report.
8. As Mr Tan said, the evidence in connection with the IKR and converts that was before the First-tier Tribunal judge was thin. The source quoted in 5.5.2 is referring to Ninevah province, which is not in the IKR. Although there is reference to political isolation and dis-proportionate under-representation of minority religious groups, there was simply insufficient evidence before the First-tier Tribunal judge to enable a finding that either the appellant's husband (as an accepted convert) or his wife as a supporter would be at risk of being persecuted in the IKR.
9. There is no error of law by the First-tier Tribunal judge in his finding that the appellant had not established that she was at real risk of being persecuted in the IKR as the spouse of a Christian convert who supported her husband; there was insufficient evidence to support a finding that her husband was at real risk of being persecuted in the IKR as a Christian convert .

Ground 2

10. The First-tier Tribunal judge expressed "concerns" over the possible risks if the family had to remain in Baghdad.
11. The head note of *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 212 (IAC) reads, where relevant, as follows:

Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:
 - i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
 - ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
 - iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.
3. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
5. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member

and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*

....

12. The appellant's husband has a CSID. In support of her asylum claim, the appellant produced her marriage certificate and what she submitted was her Iraqi Nationality Certificate No XXXXXX which gave her place of birth as Sulaymaniyah. That Certificate was found to be counterfeit by the respondent. The appellant does not state that the information on the Certificate is correct, even though she does not dispute that the Certificate itself is not genuine. Her marriage certificate shows her folio number. Also produced in support of her asylum claim were her husband's ID documents, the validity of which has not been disputed, which state that he was born in Erbil.
13. The appellant's claim to be at risk of honour crime has been roundly rejected. She has not sought to challenge those findings by way of onward appeal. She has paternal uncles and cousins in the IKR. Her husband has family members in the IKR. Her husband was in the IKR in 2014 and was issued with his personal documents there – after their marriage. There was no evidence submitted that could support the contention that the appellant would not be able to obtain a CSID within a reasonable timescale either on arrival in Baghdad or before leaving the UK – she is in a better position than many Iraqis in that she not only has male relatives in the IKR who would be able to assist but she does not come from a contested area and her folio numbers are known and available to her.
14. Although the respondent has stated that he would not remove her without relevant documents, perfectly lawfully, and would aim to remove them as a as a family, there is, in my view, nothing to prevent her husband from returning to the IKR and obtaining her CSID for her. That he would prefer not to travel and be away from his wife for a short time is not a sustainable reason, without more, for finding that she could not obtain a CSID. In any event, as referred to above, there are other family members who could assist. There was no submission that the couple's children would not be able to obtain relevant documentation despite having been born outside the IKR.
15. Put another way, it is open to the appellant to put in place arrangements so that the family can be removed together. That she may choose not to put those arrangements in place, does not mean that her husband is not liable to be removed as a failed asylum seeker. If that does happen it is a consequence of her not doing that which is reasonable for her to do namely call upon her and/or his family to obtain the documents that she requires to enable her to travel.

16. The First-tier Tribunal judge could possibly have expressed his findings with more clarity, but the evidence before him was not that she could travel on her husband's documents or that she would not be able to obtain documents with ease. Having obtained documents, the case law, which has not been distinguished remains that she can travel from Baghdad to the IKR by air. There was no challenge to that finding of the First-tier Tribunal.
17. There is no error of law by the First-tier Tribunal judge as relied upon in Ground 2.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal dismissing her appeal

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make an order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 12th April 2019



Upper Tribunal Judge Coker