Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11919/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 19th February 2019

Decision & Reasons Promulgated
On 28th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

C H A
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: No appearance.
For the respondent: Mr Tan, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a Kurdish national of Iraq who claimed to be a minor on arrival but following an age assessment by the local authority it was concluded he was over 18. He made an unsuccessful claim for protection in November 2007. His appeal was heard in March 2009 was dismissed on credibility grounds. He unsuccessfully sought to appeal that decision and subsequent submissions in May 2014 were unsuccessful.

2. In June 2017 he made further submissions to the effect that he was from Kirkuk and conditions there would breach article 15 C of the European Directive and to return him would breach article 3.He claimed that he could not live in Baghdad as he was a Sunni Kurd with no support. He also claimed he could not reasonably relocate to the IKR.Finally, he suggested he was nonreturnable because he did not have documentation, notably the CSI D, necessary to avail of basic services and had no family members who can assist to obtain a replacement.

3. Those further representations were rejected by the respondent on 28 September 2018. The refusal letter suggested that because of changes in the country the guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) should no longer be followed.

The First tier Tribunal

4. His appeal was heard by First-tier Tribunal Judge Pickup at Manchester on 8 November 2018. In a decision promulgated on 15 November 2018 the appeal was dismissed. The appellant attended and had legal representation in bringing the appeal and producing a bundle but was unrepresented at hearing. The respondent was represented. It was accepted that he was a Sunni Muslim from Kirkuk and was Kurdish.

5. The judge had regard to the information referred to in the refusal letter about conditions in Kirkuk. Having considered this the judge was not prepared to take a different view from the country guidance decision whereby Kirkuk is a contested area and because of the 15 C risk it would not be reasonable to expect the appellant to return there.

6. This left two possible destinations for the appellant to establish himself in: Baghdad, or via it, the IKR. The judge found at paragraph 36 it would not be reasonable to expect him to relocate to Baghdad. This was because he was a Kurdish Sorani speaking Sunni Muslim with no contacts or family there.

7. The judge concluded he could be expected to relocate to the IKR. This was a safe region and he could travel there via a transfer flight from Baghdad airport. The judge found he would be entitled to at least temporary admission and in reality would not be required to leave.

8. The removal of the appellant was premised upon him being able to obtain the necessary documentation. The presenting officer conceded at the time of hearing his return was not currently feasible because of this. However the judge concluded he could obtain documentation and he had family members in Iraq who could assist.

The Upper Tribunal

9. Permission to appeal was granted on 6 December 2018 on the basis it was arguable the judge failed to give reasons for finding the appellant could obtain the necessary documentation for his return and that he could live in the

IKR.The permission indicated it was arguable the judge failed to consider whether documentation could be obtained within a reasonable time. It was also arguable the judge failed to place his ability to obtain replacement documentation against that background of the circumstances in Kirkuk and his claimed loss of contact with family members.

10. There is a letter from the appellant's former solicitors, dated 10 October 2018, stating they were no longer acting for him. There is a form of authority from another firm of solicitors dated 26 November 2018. They were advised of the hearing. There is then a letter from dated 1 February 2019 indicating they are no longer acting.

11. There is a rule 24 response on file dated 2 January 2019 opposing the appeal. Reference is made to paragraph 38 of the decision whereby the judge concluded the appellant could obtain documentation within a reasonable time or even before leaving the United Kingdom. The judge referred to evidence that he had previously provided identification documentation and that copies were held by his former representatives. Reference was also made to the adverse credibility points which impacted upon his claim to have lost contact with his family and no longer to have documentation.

Conclusions

12. The judge went into considerable detail on the question of documentation. At paragraph 20 the judge recorded that after the appellant arrived in the United Kingdom his evidence was that his father had sent him his CSID and his father's employment documents. He indicated he gave these documents to his then legal representatives. He assumed they had been sent by them to the Home Office. However, the judge noted that neither the appellant nor representatives he had acting for him made any effort to contact the previous solicitors to find out about the documentation. The judge referred to the earlier appeal decision which included consideration of the appellant's age. In response to a local authority age assessment it was recorded that the appellant produced identification documents, albeit these were not relied upon. First-tier Tribunal Judge Pickup accepted that the appellant did produce some form of documentation at his appeal hearing in March 2009 but the case file had been destroyed.

13. The appellant claimed he did not have contact with his father since 2008 when the documents were sent. This was contradicted by a Red Cross document wherein he claimed no contact since 2007. In the previous appeal it was recorded that his oral evidence was that in March 2009 he had spoken to his father. His evidence had been that his father told him his mother and siblings were in Europe. This contradicted his claimed he had no knowledge of their whereabouts and had been separated from them in Turkey. The judge did not find his explanations credible and was not satisfied he had lost contact with his family.

14. The judge referred to the previous decision whereby the appellant was found to lack credibility and had made a false asylum claim. At paragraph 29 the judge rejected the appellant's claim he lost contact with his father in 2008.He had been inconsistent as to what family he had in Iraq. The judge referred to belated contact with the Red Cross family tracing service and concluded that if he had genuinely lost contact this would have been done much earlier. The judge referred to an earlier reference by the appellant in a form dated 2014 that his maternal grandparents were Sulaimaniyah and his paternal grandparents in Kirkuk. He also had a maternal uncle and Sulaimaniyah and a paternal uncle in Kirkuk. At paragraph 32 the judge concluded that the appellant had not been truthful about his family contacts and was satisfied he has family in Iraq with whom he is in contact. The judge concluded they could help him obtain the necessary documentation.

15. At paragraph 38 the judge concluded that he would be able to obtain a copy of his CSID and could do so before leaving the United Kingdom or at least within a short time of arrival in Iraq.

16. I am satisfied these were findings were properly open to the judge and were based upon evidence. Consequently, I see no error arising in respect of his obtaining documentation within a reasonable time.

17. In terms of establishing himself, the judge at paragraph 38 pointed out that he would not need a sponsor in the IKR as he is Kurdish and found he had family members living there who could vouch for him. The judge recorded that he was young and healthy and, with this family support, could reasonably expect to obtain employment. There was also State-based support. The judge's comments should not be read in a vacuum but in light of the documentation prepared for the appeal. Again, I find no material error of law here.

18. In summary, I find the 2 main arguments advanced in the grounds namely the ability to obtain documentation and to relocate to the IKR do not demonstrate a material error of law. The grounds also raise other arguments but these are secondary to the main points and in many ways attempt to reargue points adequately covered by the judge. Overall, this is a well-constructed decision in which the judge demonstrates even handedness by not departing from the country guidance and finding Baghdad on suitable. The key issues are carefully analysed and proper referencing made.

Decision

The find no material error of law established. Consequently the decision of First-tier Tribunal Judge Pickup dismissing the appellant's appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge. Date: 25th March 2019