Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12117/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 19th March 2019	**On 12th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NKT
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr. McVeety, Home Office Presenting Officer
For the Respondent: Ms. G Patel. Counsel instructed by Bolton Citizens Advice Bureau

DECISION AND REASONS

1. The First-tier Tribunal ("F*t*T) judge did not make an anonymity order. Although no application is made before me, the appeal concerns a claim for asylum and international protection and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. NKT is granted anonymity throughout these proceedings. No report of these

proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant in the appeal before me is the Secretary of State for the Home Department and the respondent to this appeal is NKT. However for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the F*t*T. I shall in this determination, refer to NKT as the appellant, and the Secretary of State as the respondent.

3. The respondent appeals against the decision of First-tier Tribunal ("F*t*T") Judge Siddiqi promulgated on 28th November 2018, allowing the appellant's appeal on Article 2, 3, and humanitarian protection grounds.

4. The background to the appellant's claim is summarised at paragraphs [15(a)] to [15(h)] of the decision of the F*t*T Judge. I do not repeat that background in this decision, but broadly stated the appellant relies upon events that he claims occurred, whilst he was living in Iraq between May and August 2015, when he was introduced to a woman, SB, by a member of a group linked to Daesh. At paragraph [15(h)], the F*t*T Judge summarises the appellant's fear as follows:

> "The appellant avers that he has a well-founded fear of persecution from the group linked to Daesh because he reported them to Asayish. He also avers that he is at risk of serious harm from the brother of Ms *SB's* ex-husband as the appellant entered into a relationship with Ms *SB* against the wishes of her ex-husband's family."

5. The Judge's findings of fact and conclusions are set out at paragraphs [21] to [36] of the decision. Having heard the evidence, the F*t*T Judge rejected the appellant's account of the events that led to his leaving Iraq. The F*t*T Judge found that the appellant had been inconsistent as to his marital status, and his evidence regarding his relationship with Ms *SB* was generally vague. The appellant was unable to provide any detail regarding Ms *SB's* child from her previous marriage and he has a very poor knowledge of someone he claims to have been married to. He was

unable to provide any details of the tribe that Ms *SB* belongs to, despite referring in his witness statement to the importance of tribal traditions. The Judge noted that the background material refers to Kurdish marriage arrangements being very complex, and defined by tribal traditions, and describing marriage as one of the most important events for establishing alliances and creating social hierarchies within, and between tribes. At paragraph [24], the F*t*T Judge states:

> "Having considered the evidence before me in the round, I am not persuaded that the appellant married Ms *SB*. As a result, it follows that I am not satisfied that [A] obtained videos of the appellant with Ms *SB* and threatened him as a result."

6. At paragraph [28], the Judge states:

> "I must consider the evidence and the round and in doing so I apply the lower standard of proof. There is very little about the appellant's evidence that I find to be credible. I am not persuaded that he entered into relationship with Ms *SB*. I am not persuaded that he would become friends with [A] and a group linked to Daesh, knowing the risks of this. I am not persuaded that he was threatened or shot at by that group. As I am not persuaded that he entered into a relationship with Ms *SB*, it follows that I am not persuaded that he is at any risk from the family of her ex-husband.".

7. Having rejected the appellant's account of events, the Judge found, at [29], that the appellant has not established that he would be at risk of persecution on the grounds of his political opinion or membership of a particular social group. The Judge went on to consider the claim for humanitarian protection and on ECHR grounds, by reference to the Country guidance set out in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) and AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC), in particular.

8. At paragraph [33] of his decision, the Judge notes that the respondent does not dispute that the appellant comes from Kirkuk. The respondent had invited the F*t*T Judge to depart from the guidance set out in AA that the intensity of the conflict in the so-called "contested areas" comprising, *inter alia*, Kirkuk, is such that as a general matter, there are substantial grounds for believing that any civilian returned there solely on account of his or her presence there, faces a real risk of

being subjected to indiscriminate violence, and serious harm within the scope of Article 15(c). The F*t*T Judge declined to depart from that country guidance, and states, at [34], as follows:

> "AA remains country guidance and I am not persuaded that the limited evidence referred to in the March 2017 CPIN amounts to very strong grounds supported by cogent evidence that I should depart from the country guidance… I also take into account that in both BA (returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) and AAH, the Tribunal did not suggest that AA should no longer be followed."

9. At paragraphs [35] and [36] of the decision, the Judge concludes as follows:

> "35. In the Asylum Decision, the respondent does not suggest that the appellant could relocate to either Baghdad or the IKR. Therefore, the only issue I must consider is whether he could return to Kirkuk. I have found that little about his account is credible and therefore I am not persuaded that he has no access to his CSID at this time. I find it is not credible that he was able to remain in contact with his family in Iraq since he left in 2015 but that contact was suddenly ceased around the time of his asylum interview. However, as is evident from AA, he would be unable to travel to Kirkuk as it is a contested area. As a result, I consider that he is entitled to humanitarian protection.
>
> 36. I note at this juncture that I would have found there was nothing about the appellant's profile which would have made it unduly harsh on him to relocate to the IKR. However, as noted above, the respondent has not raised this in the asylum decision and therefore, the appellant has not addressed this in his evidence. It is for the respondent to put forward the basis upon which it is submitted that the appellant could not return to Iraq; the sole arguments put forward by the respondent is that Kirkuk is no longer a contested area and therefore, this is the only argument I have considered in respect of the appellant's claim for humanitarian protection. Therefore, I make no finding that he could relocate to the IKR."

The appeal before me

10. The respondent claims that in allowing the appeal, the F*t*T Judge failed to address whether the appellant has access to, or is able to obtain a CSID, and that's the failure to address that issue is material, because it has an impact upon the assessment of whether the appellant could return to Iraq. Furthermore, the assessment as to whether the appellant could return to Iraq proceeds solely by reference to return to Kirkuk, and in reaching his decision, the F*t*T Judge failed to consider whether the appellant could internally relocate. The respondent claims

that the Judge's reasons for not considering returning to the IKR, are inadequate and factually incorrect.

11. Permission to appeal was granted by First-tier Tribunal Woodcraft on 14th December 2018. The matter comes before me to consider whether or not the decision of F*t*T Judge Siddiqi involved the making of a material error of law.

12. On behalf of the respondent, Mr McVeety accepted that the Judge was not invited to consider internal relocation outside the Kirkuk area. In the respondent's decision of 4th October 2018, the respondent accepted that the appellant comes from Kirkuk, and that he is of Kurdish ethnicity. The respondent proposed that the appellant will be returned to Kirkuk, via Baghdad airport, and noted that the appellant has a mother, brother and sister in Kirkuk, and would be able to obtain his CSID. At paragraph [72] of the respondent's decision, the respondent concluded that the appellant had not shown that it would be unreasonable to expect him to return to Kirkuk. However, Mr McVeety submits that if it were found that the appellant could not return to his home area, it was incumbent upon the Judge to consider whether the appellant could internally relocate. Here, he submits, the Judge notes, at paragraph [36], that there is nothing about the appellant's profile which would have made it unduly harsh for him to relocate to the IKR. The Judge simply failed to address that issue because of his view that the respondent had not raised this in the decision, and the matter has therefore not been addressed in the appellant's evidence.

13. In reply, Ms Patel relies upon the matters set out in a Rule 24 response settled by her and dated 18th January 2019. She maintains that the decision of the F*t*T Judge discloses no material error of law, when read as a whole. She submits that the F*t*T Judge carefully considered the case advanced by the respondent, and the background material relied upon by the respondent. It was open, she submits, to the Judge to conclude that the respondent has not established that the limited evidence set out in the March 2017 CPIN, amounts to very strong and cogent evidence such that the Judge should depart from the established country guidance.

She submits the Judge properly applied the relevant country guidance, and it was open to the Judge to allow appeal on Article 2, 3, and humanitarian protection grounds. Ms Patel submits that the question of internal relocation is not a *Robinson obvious* point, and the F*t*T Judge was only required to deal with the case advanced by the respondent. She submits that the appellant had no opportunity to deal with the issues relevant to internal relocation. Had internal relocation been a part of the respondent's decision, the appellant would have wished to adduce evidence regarding his ability to travel to the IKR, and live there.

Discussion

14. It was common ground between the parties that the appellant comes from Kirkuk. It is correct, as Mr McVeety readily conceded, that at paragraph [72] of the respondent's decision, the respondent concluded that the appellant had not shown that it would be unreasonable to expect him to return to Kirkuk.

15. Although the F*t*T Judge was not assisted in his consideration of the issues in the appeal by the vague terms of the respondent's decision, particularly concerning the risk upon return, in my judgement, although the respondent's focus appeared to be on the ability of the appellant to return to Kirkuk, the respondent did not entirely rule out relocation elsewhere in Iraq. I note that at paragraph [73] of the respondent's decision, the respondent claimed that the appellant has already demonstrated considerable personal fortitude in relocating to the UK and attempting to establish a life here. The respondent went on to state; "*.. You have offered no explanation as to why you could not demonstrate the same resolve to re-establish your life in Iraq. It is therefore concluded that you have skills that you could utilise upon your return to Iraq. As such you do not qualify for international protection.*". At paragraph [82] of the decision, the respondent claimed that "*.. internal relocation is, in general, possible to all areas of Iraq except … the parts of Kirkuk governorate in and around, Hawija.*".

16. The internal flight doctrine is effectively an assertion that although an applicant may risk persecution or a breach of the fundamental rights in their home area, the individual claiming international protection, could find safety somewhere else in their own country. If that is established, then their claim for international protection is likely to fail. The enquiry is directed to the identification of a possibility of meaningful protection within the boundaries of the home state. Having found out that the appellant could not return to Kirkuk, it was in my judgement incumbent upon the Judge to consider whether it will be unduly harsh to expect the appellant, who the Judge found, could not return to Kirkuk, to move to a less hostile part of the country. Paragraph 339C of the immigration rules provides that a person will be granted humanitarian protection in the UK if they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 but there are substantial grounds for believing that the person concerned, if returned to the country of return, will face a real risk of suffering serious harm and, is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

17. In R v SSHD ex parte Robinson (1998) QB 929 the Court of Appeal held that, since the appellate authorities are obliged to ensure that the appellant's removal would not breach the UK's obligations under the Refugee Convention, where there was a readily discernible and obvious point, the appellate authority should nevertheless apply it. An obvious point, per Lord Woolf MR at [946] is one that has a strong prospect of success. Although I accept that the respondent's focus, in his decision, appeared to be on the ability of the appellant to return to Kirkuk, the respondent had, at the very least hinted, in the decision refusing the appellant's claim for international protection, that the appellant could re-establish his life in Iraq. The fact that the question of whether the appellant could internally relocate to the IKR, was relevant to the question of whether or not the appellant's removal would breach the UK's obligations under the Refugee Convention, was plainly recognised by F*t*T Judge. He noted, at [36], that he would have found there was nothing about the appellant's profile which would have made it unduly harsh for him to relocate

to IKR. The Judge made no finding as to whether the appellant could relocate to the IKR, simply because in his view, the respondent had not raised that, in his decision. In failing to address that issue, in my judgement the F*t*T Judge erred in law. That error of law, is clearly one that is capable of affecting the outcome of the appeal.

18. The Court of Appeal in AA (Iraq) -v- SSHD [2017] EWCA Civ 944 confirmed that return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. In AAH, the Upper Tribunal replaced section E of the Country Guidance annexed to the Court of Appeal's decision in AA. The Upper Tribunal confirmed that whilst it remains possible for an Iraqi national returnee to obtain a new CSID whether the individual is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. The Tribunal set out the relevant factors, including *inter alia* whether the individual has any other form of documentation, or information about the location of his entry in the civil register, and the location of the relevant civil registry office and whether it is operational.

19. The Country guidance confirms that even a Kurd who does not originate from the IKR may enter the IKR lawfully for up to 10 days, and then extend his stay to settle there, having found employment. There is a need to consider wider issues such as travel between Baghdad and the IKR, the documents that will be available to an individual, whether the individual will be at particular risk of ill treatment during the security screening process, and the options available for accommodation and employment.

20. It follows that in my judgment, the decision of the F*t*T Judge is infected by a material error of law and must be set aside. As to the disposal of the appeal, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

21. Subject to any representations made by the parties to the F*t*T Judge at the rehearing of the appeal, in my judgement, the findings of F*t*T Judge concerning the account of events relied upon by the appellant, are to be preserved. In particular, the following findings are preserved.

    a. The appellant did not enter into a relationship with SB.

    b. The appellant did not become friends with [A] and a group linked to Daesh and the appellant was not threatened or shot at by that group.

    c. The appellant is not at risk upon return from the family of Ms SB's ex-husband.

Notice of Decision

22. The appeal is allowed and the appeal is remitted the F*t*T for a fresh hearing. The issue for the F*t*T will be whether the appellant can internally relocate to the IKR, if he cannot return to his home area.

23. I have made an anonymity direction.

Signed Date 2nd May 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter for re-hearing before the F*t*T. In any event, no fee was paid and there can be no fee award.

Signed Date 2nd May 2019

Deputy Upper Tribunal Judge Mandalia