



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/12355/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2019**

Decision & Reasons Promulgated
On 01 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WALID [M]

Respondent

Representation:

For the Appellant: Mr Whitwell, Home Office Presenting Officer

For the Respondent: Mrs Smeaton, Counsel for Kamberley Solicitors, London

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-Tier Tribunal.
2. The appellant is a dual national of Egypt and Iraq born on 3 March 1970. He appealed the decision of the respondent dated 16 November 2017 refusing his asylum, humanitarian protection and human rights claims. His appeal was heard by Judge of the First-Tier Tribunal Oxlade on 4 and 7 March 2019 and was dismissed on asylum grounds but allowed on

humanitarian protection grounds and human rights grounds under Articles 3 and 8 ECHR, in a decision promulgated on 15 March 2019.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Robertson on 8 April 2019. The permission states that it is arguable that the Judge misdirected himself in law in only considering the length of the appellant's absence from Iraq when assessing the feasibility of relocation to Iraq, particularly as it is specifically stated in ***BA (Iraq)*** [2017] UKUT 00018 (IAC) that length of absence alone is insufficient to establish risk on return. The permission states that it is also arguable that inadequate reasons were given for finding that the appellant would not have assistance in Iraq from family with accommodation and the securing of a CSID card, particularly as he has an expired Iraqi passport. The permission states that inadequate reasons were given for the appellant being destitute if returned to Iraq.
4. There is no Rule 24 response.

The Hearing

5. The Presenting Officer submitted that he is relying on the grounds of appeal. He submitted that the First-Tier Judge made a finding that this appellant will be an obvious target for kidnapping based on ***BA*** [2017] UKUT 00018. This is at paragraph 58 of the First-Tier Tribunal decision. The Judge, because of this risk, allows the appeal under Article 3 of ECHR. The Presenting Officer submitted that the conclusion in the said case of ***BA*** has been overlooked and I was referred to paragraphs 55 to 58 of ***BA*** which state that Article 3 will not be breached based on a risk of kidnapping alone.
6. The Judge also finds that the appellant will be at risk of destitution and the Presenting Officer submitted that again this is not a sufficient reason for Article 3 to be engaged.
7. With regard to the Judge's reasoning the Presenting Officer submitted that it is inadequate. The appellant is a male, he speaks Arabic, he is healthy, he is of working age, he has half-siblings in Baghdad and he has had previous employment. The appellant's evidence is that he is a musician and has also done humanitarian work. The Presenting Officer submitted that relocation to Baghdad would be reasonable in this case. He submitted that if the appeal is to succeed adequate reasons have to be given and the Judge has not given these.
8. He submitted that at paragraph 58 of the decision the Judge states "I am not satisfied that the appellant can rely on family support in Iraq for accommodation or work or in obtaining his CSID card." The Presenting Officer submitted that the appellant's family has helped him in the past and I was asked to consider the case of ***AA (Iraq)*** [2017] EWCA Civ 944 and ***AAH (Iraq)*** [2018]. He referred to Dr Fatah's evidence in this. The doctor finds that the appellant can apply for a CSID card by proxy. In the

said case of **AAH** it is stated that all the documents required for entry can be obtained within a very short period of time. He submitted that this is an appellant who has an expired passport and so it should be straightforward for him to get a CSID.

9. The Presenting Officer submitted that although there is a high unemployment rate in the IKR in Iraq, the appellant will not be living there and this is irrelevant. He submitted that this appellant will be returning to Baghdad. He submitted that all the reasons given in paragraph 58 of the First-Tier Tribunal's decision are inadequate. It is speculation when the Judge states that the appellant's family may not support him.
10. The Presenting Officer referred to the case of **Saeed** [2016] EWCA Civ 442, which refers to destitution and states that where the cause of that destitution is not on the part of the state, this is not a reason for Article 3 being breached and he submitted that paragraph 60 of the First-Tier Tribunal's decision must be wrong.
11. The Presenting Officer submitted that the Judge states that there are very significant obstacles to this appellant going to Iraq but there is inadequate reasoning about this relating to Articles 3 and 8 of ECHR.
12. Counsel for the appellant made her submissions referring to the case of **Saeed** and Article 3 of ECHR. She submitted that this is an appellant who has PTSD based on the evidence on file, so Article 3 has to be considered on medical issues. She submitted that it would be difficult for this appellant to integrate in Iraq as he has never stayed there. She submitted that the Judge has not considered the country guidance case of **AA** dated in 2017 and she submitted that this is a later case than the said case of **Saeed**. She submitted that the Judge has carefully considered the appellant obtaining a CSID. She submitted that the case of **Saeed** is very different from this case. She submitted that there is a real risk of destitution in this claim and the Judge has given very detailed reasons about this in his decision.
13. She submitted that this appellant cannot go back to Egypt and this has been accepted and not challenged. She submitted that what the Judge is considering is the appellant going back to Iraq and I was referred to paragraphs 52 and 54 of the decision. She submitted that the Judge refers to the cases of **AAH** and **BA** and gives proper reasons for his findings and she submitted that the grounds of application are merely a disagreement with the Judge's decision.
14. Counsel submitted that with regard to the case of **BA** at paragraph 68 onwards, kidnapping could be a real problem for this appellant. I was referred to Dr George's report. He is concerned about the kidnapping situation and she submitted that the case of **BA** does not state that there is an absence of risk but submits that many situations are not reported and if the appellant is found to be Westernised he would be at heightened risk. She submitted therefore that it was open to the Tribunal to find that

there is a risk of kidnapping in Iraq for this appellant. She submitted that what has to be considered is cumulative risk. Although kidnapping on its own might well not be enough for there to be a real risk, the Judge is stating that there are other reasons which should be considered along with the real risk of kidnapping. The appellant is Westernised, he does not have a local accent, he has no local knowledge, he will be returning from his Egyptian upbringing, he has never been to Iraq, and she submitted that there must be a real risk to him on return when all these matters are considered together.

15. She submitted that the Judge has used a holistic approach. His decision is not perverse and relating to this aspect of the claim there is no error of law.
16. With regard to the risk of destitution and Article 8, Counsel submitted that again all the evidence in the round has to be taken into account. She submitted that the Judge has made it clear in the decision why he has reached the decision she has and it cannot be right to say that once the appellant has obtained a CSID or is able to get one, there will be no risk of destitution under Article 3. She submitted that although the case of **AA** in 2015 was reconsidered in 2017, this particular point has not been changed.
17. Counsel submitted that there is no evidence that the appellant's family in Iraq can support him. The Judge has properly considered this and has stated that if the appellant is returned to Baghdad, irrespective of whether he has a CSID or not this does not mean that he will be able to get employment.
18. She submitted that the Presenting Officer stated that the Judge has not properly considered the case of **AAH** but I was referred to paragraph 7 of the decision in which the Judge states that the appellant might well get a CSID if he gets help from his family, but finds that this might be very difficult. The Judge refers to the appellant being a musician, never having lived in Iraq and the high unemployment rate in the IKR. She submitted that at paragraph 57 proper reasons are given by the First-Tier Tribunal Judge and it is not clear whether the appellant has actually broached the subject of asking his step-brother in Iraq for help if he is returned there.
19. She submitted that the Judge states that this appellant cannot rely on family support and this finding was open to the Judge. The Judge has properly considered whether this appellant can get family support in Iraq and has found that it is unlikely that he will be able to do so and she submitted that the Judge has given proper reasons for the finding that the appellant cannot rely on his step-family to help him. Counsel submitted that the reasons given in the First-Tier Tribunal's determination justify the Judge's decision and the appellant will be at risk of an Article 3 breach if he goes to Iraq. With regard to Article 8 Counsel submitted that the same findings are relevant.

20. She submitted that the case law has been referred to by the Judge. He has taken into account that this appellant is 50 years old and he has given reasons for finding that there are very significant obstacles to his integration in Iraq. This is not a young man who will be able to get work easily. She submitted that there are clearly significant obstacles to his integration in Iraq and these have been pointed out in the decision. She submitted that the Judge has considered unemployment, accommodation and the fact that the appellant has never stayed in Iraq. She submitted that Article 8 will be engaged if this appellant is sent there.
21. Counsel submitted that as the appellant has not stayed in Iraq he will require assistance to get work or help and he will therefore, as an outsider, be at risk of kidnapping. Counsel submitted that the decision of the First-Tier Tribunal Judge should stand.
22. The Presenting Officer submitted that at paragraph 57 in the Judge's decision, although the Judge has referred to issues which could be a problem without a CSID, this appellant is likely to be able to get a CSID quickly, so these matters will not be a problem for him. He submitted that in Baghdad the unemployment rate is only 9.7% and the appellant has a family who can help him when he gets to Iraq. He submitted also that the appellant, if he is unable to get a job, could well set up his own business and become self-employed.
23. I was asked to find that the Judge has not given proper reasons for his decision and I was asked to allow the Secretary of State's appeal.

Decision and Reasons

24. The grounds of application state that the Judge has insufficiently addressed the appellant's feasibility of return to Iraq. The grounds state that all the material facts were not considered by the Judge relating to humanitarian protection and Articles 3 and 8 of ECHR.
25. First of all I am going to consider the risk of kidnapping in Baghdad. The Judge has carefully quantified all the reasons why this appellant could be at risk of kidnapping. The grounds state that the reasons are too speculative but I find that although there is no real risk on this ground alone to the appellant, when this risk is taken into account with other matters, this is relevant.
26. The appellant speaks Arabic and the family he has in Iraq are half-siblings but although they are in touch he has never met them and there is no evidence of their ability to assist him if he is returned to Baghdad. The grounds state that the Judge's reasons are speculative but I find they are relevant.
27. With regard to the obtaining of a CSID, the grounds state that the appellant can obtain a CSID through the Iraqi Embassy with the documentation he possesses, being an out of date passport. The

appellant has not met his relatives in Iraq and I find that he is likely to have difficulty getting them to vouch for him if he has to get documentation from Iraq. I also find that even with a CSID, based on the objective evidence and the case law there could still be a risk of destitution. The appellant could get a job other than as a musician and he has experience in humanitarian work but, this is an appellant aged 50, going to Iraq where he has never been and I do not find that it is speculative to find that it would be extremely difficult for him to find alternative work or even similar work to that which he has done and I certainly do not believe he could set up his own business.

28. All these matters have to be considered in the round. There is a risk of kidnapping, there is a risk of destitution, there is a risk of the appellant being unable to obtain a CSID either in this country or through his relatives in Iraq. It is speculative to think that his half-siblings who he really does not know well, will help him if he goes to Iraq. There is no evidence about their situation there and I find that it would be unduly harsh for this appellant to have to go to Iraq at his age with these issues based on the situation in Iraq at present and the fact that he has never stayed there.
29. The Judge has considered all the relevant case law and has detailed the issues which he finds go against the appellant's return to Iraq, in the decision. There is no inadequate reasoning and all the matters raised in the grounds have been properly dealt with in the First-Tier Tribunal decision.
30. I have considered the case of ***Treebhawon*** [2017] UKUT 0013 which deals with the unduly harsh test and I have considered the case of ***SSHD v Kamara*** [2016] EWCA Civ 813 which states that the concept of integration into a country is a broad one. It is not confined to the mere ability to find a job or sustain life whilst living in the other country. What has to be decided is whether the individual, the appellant in this case, would be enough of an insider in terms of understanding how life and the society in that other country was carried out and whether he would have an opportunity to be accepted there. He would have to be able to operate on a day to day basis in that society and build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life. I find that based on these cases the First-Tier Tribunal's decision allowing the appeal on humanitarian protection grounds and human rights ground (Articles 3 and 8) should stand.
31. There is no material error of law in the Judge's decision and must stand. The appeal of Walid [M] should be allowed, not on asylum grounds but on humanitarian protection grounds and human rights grounds.

Anonymity has not been directed.

Signed

Date 28 June 2019

Deputy Upper Tribunal Judge IAM Murray

A handwritten signature in cursive script, appearing to read "Isabel Murray".