Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13768/2017**

THE IMMIGRATION ACTS

Heard at Bradford
On 15 February 2019

Decision & Reasons Promulgated
On 25 March 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR SUBHY RASHID FAIQE
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Abdullah (Solicitor)
For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. On 12 December 2017 the Secretary of State refused to grant the claimant, with his wife and two infant children as his dependents, international protection. In a decision sent to the parties on 9 February 2018 the First-tier Tribunal (the tribunal) dismissed his appeal. In a decision sent to the parties on 13 December 2018 I set aside the tribunal's decision (whilst preserving certain of its findings as set out below) and directed that the decision be remade in the Upper Tribunal after a further hearing. That hearing took place on15 February 2019 and what follows below is my explanation as to how I have made the decision and why I have done so in the terms that I have.

2. I have not directed anonymity in this case. No such direction was made by the tribunal and none was sought on behalf of the claimant by his representative before me. In any event, it is not apparent that this is a case where anonymity would be appropriate.

3. By way of brief background, the claimant is an Iraqi national of Kurdish ethnicity and he was born on 1 July 1968. He is married to Parween Ali Muhamad, herself a Kurdish citizen of Iraq, who was born on 10 March 1970. The couple have two minor children. Shorn of all but essential detail the account underpinning the claim for asylum is as follows: The claimant is from Kirkuk whereas his wife is from Sulaymaniyah, the latter city being located within the part of Iraq which is governed by the Kurdish authorities. I shall refer to that part of the country as 'the IKR'. The claimant says he experienced difficulties in Kirkuk, where the family resided, as a result of two men asking him to repair a truck which they had brought to a garage which he owned. Whilst working on the truck he discovered some grenades secreted in it and contacted the security forces. This led to his safety coming under threat from one of those men (the other was arrested) and from possible associates who may be linked to the organisation sometimes called ISIS. He and his wife decided to flee Kirkuk. Although they initially travelled to the IKR they could not stay there, it was said, because of a fear of the claimant's wife's family. As to that, it was asserted that she had been disowned by her family because she had married the claimant against their wishes and this had resulted in an ongoing family dispute of gravity. There had been consequent danger from her family to the extent that she had felt unsafe even in Kirkuk (which is outside the IKR) and would take precautions so as not to draw attention to herself. So, it was said, there was no viable possibility of the family relocating within the IKR. It was also contended, with respect to Kirkuk, that conditions there were such that the claimant (and indeed his wife) would fall within the test contained within Article 15c of the Qualification Directive. The claimant also asserted he and his wife did not have identity documentation and, in particular, said that neither possessed a CSID card. That is a very important identity document in Iraq which is used to access many services and to access employment. There is no dispute as to its importance. It was effectively contended that without CSID cards he and his wife would face destitution and would not be able to internally relocate.

4. The Secretary of State disbelieved the claimant's account almost in its entirety. It was accepted that he is a national of Iraq and it was seemingly accepted that he and his wife are Kurdish. But it was concluded that neither would be at risk upon return to Iraq either at the hands of ISIS or the claimant's wife's family. So, the international protection claim was refused.

5. As noted, the tribunal dismissed the appeal. Amongst its conclusions was a comprehensive rejection of the contention that there had been a family dispute involving the claimant's wife and her family members as a result of her marriage. Although I did not preserve anything else from the tribunal's decision, I did preserve its conclusion as to that. It said this:

> "36. The appellant and his wife are not credible in their account of their fear of her family in the IKR. When screened Parween was asked to briefly explain all the reasons she cannot return to her home country and she said at 4.1 that it was because they have been threatened by ISIS; her husband was approached by ISIS to work for them and he refused; he knew better than she about the matter. She made no mention of her family. I accept that screening is just that but her screening answers are detailed and I would have expected her to make mention of something so apparently important.
>
> 37. She said in her witness statement that she felt like a prisoner in Kirkuk and covered herself on the journey to work to avoid being recognised by her family or their associates. However, she had worked at a public government owned hospital in Kirkuk for some 7 or 8 years 3 days pw 8 hour night shifts treating patients in the emergency department and was working up until the family left Iraq. She travelled to and from work alone on foot.

> It was only when the family had lived further away that the appellant drove her to work. She said in her witness statement that she was in constant fear and would wear a hijab when she went out and did not make many friends or socialise. She avoided going out alone. She explained in oral evidence that when she went out of the house she wore a hijab and burka so not to be recognised but at work she wore the hijab not the burka and her face was uncovered although she was careful at work avoiding anyone connected to her brother and his friends and acquaintances. She never saw anyone she recognised.
>
> 38. This claim to have lived in hiding, in fear from her family and to avoid being recognised is totally contrary to and at odds with her ability to work as she did treating patients in an emergency department when anyone could be brought in; she made a friend at the hospital; she went out alone. The appellant did not profess to know anything about her family's links with the security forces or the Peshmerga and she gives no details whatsoever merely asserting that her brothers and their friends had influence or links. She has not seen them or contacted them for 10 years. The appellant and his wife experienced no problems in Kirkuk from her family. They claimed to have lived in hiding and to have changed their home address 3 or 4 times within Kirkuk; her family looked for them but did not find them. I do not find the account to be reasonably likely given her and his openly working in public places for long periods of time without any difficulty. They were not hidden in Kirkuk; quite the reverse. It would have been easy to find them. She claimed to have relatives in Erbil and throughout Kurdistan but gave no details."

6. So, those findings represent my starting point. But it is necessary for me to make my own findings and reach my own conclusions as to the various other strands to the appeal as set out above. I have been aided in my task by the provision of documentation which, by the end of the hearing of 15 February 2019, included the various documents which had been before the tribunal when it heard the appeal; a supplementary bundle provided on behalf of the claimant for the purposes of the hearing before me; and a copy of the Home Office Country Policy and Information Note relating to Iraq which had been released in October 2018, and another similar document which had been released in November 2018. During the course of the hearing I heard oral evidence from the claimant and his wife and I received oral submissions from the representatives. In remaking the decision in this case, I have taken all of that into account. In considering whether the claimant is entitled to international protection either on asylum or humanitarian protection grounds, or whether he is eligible for protection in consequence of the content of article 3 of the European Convention on Human Rights (ECHR) I have applied the lower standard of proof often described as the "real risk test".

7. Since I have preserved the adverse findings concerning the claimant's wife's family, I shall say nothing further about that. But I must consider what to make of the claimant's account concerning the claimed events in Kirkuk involving the two men and the truck. Even to the lower standard referred to above I do not accept that the claimant has told the truth about this. That is because it is inherently improbable that the men would take a car to a garage to be repaired and leave incriminating articles such as grenades in the car to be found by a person they did not know. To my mind, this is a very damaging credibility point. Additionally, the claimant has asserted that although he was frightened of the second of the two men (the one who had not been arrested) he nevertheless returned to the garage the following day. I do not think he would have done that if he feared, as he claims, that serious harm might be done to him. I conclude, therefore, that it has not been shown to the necessary standard that the claimant would be at risk at the hands of any particular individuals if he were to return to Kirkuk.

8. That, then, leads on to a consideration as to whether Kirkuk remains a "contested area" as the term was used by the Upper Tribunal in the Country Guidance decision of *AA (Article 15c) Iraq CG*

[2015] UKUT 544 (IAC). It is common ground that if it does then the claimant cannot be expected to return there because he would face a real risk of indiscriminate violence amounting to serious harm due to a state of internal armed conflict. Since *AA* is a Country Guidance case it follows that he will make out this part of his case unless the stringent requirements for departure from Country Guidance are met. As to that, Country Guidance should be followed unless certain specific criteria are satisfied. The exception potentially relevant here is recorded in the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No 2 in these terms "If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case…". The same Guidance records that where Country Guidance has become outdated by reason of developments in the relevant country "It is anticipated that a judge of the First-tier Tribunal will have such credible fresh evidence…". It seems to me the same must apply to the Upper Tribunal when it is setting about remaking a decision in the circumstances in which I am now doing so.

9. When the Secretary of State refused the claim for international protection he expressed the view, in a very short paragraph contained in the reasoned written decision (paragraph 63) that the area in which Kirkuk is located is no longer a contested area but offered no actual explanation other than by making a reference to an internet citation. It does not seem to me that a barely buttressed assertion of that sort is capable of showing that the above test for departure has been met. Before me Mr Diwnycz concisely asserted that the relevant region was no longer contested because the threat there from ISIS had diminished. He mentioned the November Country Policy and Information Note (CPIN) referred to above but he did not orally draw my attention to any provisions specifically relating to that issue, though he did provide me with a copy which had a number of relevant pages flagged.

10. It is well known that and has been extensively reported that ISIS has sustained heavy defeats recently when fighting various forces opposed to it in Iraq. But in terms of the actual evidence before me, I do not think it shows that the conditions for departure have yet been met. At paragraph 8.1.2 of the latter CPIN reference is made to some limited ongoing fighting in parts of northern Iraq albeit not the Kirkuk region. At paragraph 8.3.2 there is a suggestion of ongoing tension in that region between Government and Kurdish forces. So, there is some evidence of ongoing instability. I note the overall tenor of the CPIN to the effect that ISIS was, at the time that CPIN was released, in significant retreat and had effectively been defeated in at least most parts of Iraq. But I am not persuaded that the evidence before me is sufficiently cogent (though perhaps it comes close) to show that the test for departure has yet been met. I therefore apply *AA* and conclude the claimant will not be able to safely return to his home area of Kirkuk.

11. I now move on to consider identity documentation. There is reason to doubt the claimant here because he has, on my findings, sought to mislead about the incident involving two men and some grenades. There is reason to doubt what his wife says about the couple not having such documentation because I have preserved findings which show she has sought to mislead regarding risk from her family. Those matters do not, though, mean that the claimant and his wife have been dishonest about everything. So, I must still make findings about identity documentation but against a background of previous dishonesty.

12. The claimant told me in oral evidence, and also in his witness statement of 19 January 2019, that he gave his own and his wife's identity documents including passports and CSID cards to the people smuggler involved in bringing them to the UK. He has been consistent about that. He says the identity documents were demanded by the people smuggler and suggests that he had wanted them as insurance as to payment of his fees. The claimant says he was never given them back. But his wife, in her screening interview, is recorded as having said that her passport (a document the claimant says he handed to the agent) was in fact left with her family in Iraq. Unsurprisingly Mr

Diwnycz relies upon this inconsistency to a significant extent. I have noted that the claimant's wife also said at a later point in the same screening interview, that she had used her passport to fly from Erbil to Turkey. So, she is not internally consistent in that same interview.

13. I have found it difficult, applying the lower standard, to decide what I should make of all this. Both of them have lied about other things. But it seems to me to be plausible that a people smuggler would demand that identity documents be handed over, possibly to seek to ensure eventual payment or possibly to retain control over his customers, before embarking on the journey from Turkey to the UK. The content of the claimant's wife's screening interview seems damaging but the fact she could not even be internally consistent suggests to my mind she was not seeking to trot out a pre-planned deliberate lie but that rather, she was, as is suggested by her and on her behalf, fatigued and lacking in concentration after a long and probably difficult journey during an interview conducted shortly after its completion. Mr Diwnycz in cross-examination, focussed his fire upon the claims concerning the lack of documentation but, in my judgment, his careful questioning did not damage either the claimant or his wife. Indeed, notwithstanding my conclusion they have lied about other matters, I felt strongly that each of them appeared to be telling me the truth about this aspect of the case. There answers were internally consistent and consistent with each other. Although I am hesitant about this I have concluded to the lower standard that I should believe them. I find, therefore, that neither of them has any identity documentation whatsoever including passports and CSID's.

14. So, where does all of this leave the claimant and his family? Following what is said in *AAH (Iraqi Kurds-internal relocation) Iraq CG* UKUT 00212 (IAC) return will be to Baghdad. That is so even though the claimant's wife is from the IKR. There is nothing to suggest they will be able to obtain CSID cards in the UK via the Iraqi Embassy absent some other form of identity documentation. In any event I accept the evidence they gave to me that they have tried and failed. I do not see how, absent any documentation, any family members could obtain CSID's for them in Iraq and send them to the UK. Nor do I see how they might be able to obtain such documents in Baghdad and, indeed, it has not been suggested that they could. Without such documents they will not (following *AAH*) be able to travel by air to either Kirkuk or the IKR because they will not be permitted to board a plane. Mr Diwnycz argues I should decide otherwise, relying upon the content of two letters sent on behalf of the Iraqi Embassy to (I think) the Home Office, copies of which are attached to one of the CPIN documents. Those letters suggest that travel would be much easier by air or road and that there would not be a need for a CSID or passport to board a flight or pass through checkpoints. But the letters are brief and unsourced. Travel issues were extensively considered in *AAH* which is Country Guidance. I am not able to depart from *AAH* on the basis of those brief letters so, instead, I apply it. In doing that, I find that the claimant and his family will be unable to travel by air and unable to safely travel by road. That would leave them stranded in Baghdad. So, I must ask whether they can safely relocate to Baghdad and, if so, whether it would it be unduly harsh to expect them to do so.

15. I consider the claimant's will not be at risk of persecution in Baghdad as they have no enemies in that city. But I consider that requiring them to relocate there would be unduly harsh. That is because without CSID cards they would be unable to officially work; they would similarly be unable to access services; they would lack family or other support in Baghdad; they are from an ethnic minority group in that part of Iraq; and they would be unable to economically support themselves and the children. So, although they cannot point to a 1951 Refugee Convention reason, they succeed on humanitarian protection grounds and under article 3 of the ECHR.

Decision

The decision of the First-tier Tribunal has been set aside. In remaking the decision, I allow the claimant's appeal against the decision of 12 December 2017 on humanitarian protection grounds and under article 3 of the ECHR.

No anonymity direction is made for the reasons set out above.

Signed: Date: 20 March 2019

Upper Tribunal Judge Hemingway

To the Secretary of State
Fee Award

No fee is payable so there can be no fee award.

Signed Date: 20 March 2019

Upper Tribunal Judge Hemingway