Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01127/2019**

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 30th September 2019	**On 2nd January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SFA
(ANONYMITY DIRECTION MADE)

Claimant

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondent: Ms I Hussain of Counsel instructed by Bankfield Heath Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Fowell dated 17 April 2019. To ease following this decision, I shall refer to SFA as the Claimant. I was provided with a helpful bundle prepared by Bankfield Heath Solicitors which contains within it the important documentation, including a Rule 24 response drafted by Ms Hussain dated 14 June 2019

2. The Secretary of State was granted permission to appeal by First-tier Tribunal Judge Keith. Judge Keith had said, insofar as is relevant, as follows:

"The grounds of appeal assert that:

(1) The judge had applied an impermissibly high standard assessing that the Appellant would not be able obtain employment if returned to the IKR; and

(2) that the judge had been inconsistent in concluding that the Appellant's religion be a bar to his obtaining employment."

3. In relation to ground 2 the judge referred at {24] to it not being suggested that people of the Appellant's faith were unable to obtain employment, despite suffering discrimination. This was in the context of a finding that he had historically obtained employment. However at [43] there was a finding that the Appellant's faith could hamper his employment prospects and that this was a balancing factor, in concluding that he was not satisfied that the internal relocation was a viable option. The apparent contradiction in the two statements discloses an arguable error of law.

4. In relation to ground (1), this appears to be weaker as the Judge had reminded himself at [44] of the test being of no real risk or possibility of harm, which was the overall test. Nevertheless, all grounds may be argued on appeal."

5. In submissions before me today, Mr Mills said that there are a number of findings which were not challenged by the Secretary of State and there were other aspects which were indeed not challenged by way of cross-appeal by the Claimant either For example, Mr Mills said he would refer to paragraph 35 of the Judge's decision that there was an aspect against the Claimant in relation to documents and CSID or the modern equivalent. Mr Mills said the issue was internal relocation. He referred to the case of **AAH**. In the Claimant's Rule 24 response it is said at paragraph 2 that the recent case of **SS v Secretary of State for the Home Department [2019] EWHC 1402** had been confirmed that the case of **AAH** ought to be followed. That is a decision of His Honour Judge Cole QC with which I am familiar.

6. Mr Mills said that the question before the First-tier Tribunal Judge was whether it was unduly harsh for there to be internal relocation against a backdrop whereby there were hundreds and thousands of other internally displaced persons. The complaint here was in respect of this aspect of what the judge had said is that because the Claimant said he was of a minority religion and so he would not be able to find employment.

7. Judge Keith had granted permission to appeal on what he said were two grounds but Mr Mills said it was, in reality, just one ground. Mr Mills submitted that the First-tier Tribunal Judge was wrong when it was said that there had to be a sufficiently high chance of obtaining employment

and this was higher than reasonable. It was also highly relevant that this was a situation in which, and this was a matter raised in the refusal, that despite being of a minority religion that this Claimant is able to rise to the ranks of being a bodyguard for a General in the Peshmerga. There was no evidence to show that persons of the Kakai faith could not find employment but the judge had found the exact opposite. Mr Mills said if there had been background evidence to show that there could be employment problems then that would be different but indeed there was the opposite. The IKR was a haven for minorities and minority religions and now in addition there was legislative protection as well. Therefore the chance of finding employment needs to be assessed with that background and the judge had not squared that circle. It was right to say the effectiveness of the legislation also needs to be considered. Mr Mills said that this appeal concerned a narrow area of challenge if I had concluded that the error of law was such that the decision ought to be set aside then the appeal could be dismissed.

8. Ms Hussain in her submissions said that she disagreed with the Secretary of State's submissions. She said there was no error of law. The holding of the two views was not contrary. The judge was able to find what he did. The current situation is always changing in Iraq and the situation is insecure. At the time that the decision was written there was no guarantee that the Claimant will be able to find his contacts. In any event he could not go back to his area.

9. Ms Hussain said that Mr Mills had admitted that the appeal centred on a narrow issue. She said if I was against her then the matter ought to be remitted to the First-tier Tribunal and for there to be a reassessment. I asked Ms Hussain to deal with paragraph 44 of the judge's decision which italicised what had been said in relation to the possibilities. Ms Hussain responded to say that the judge had considered all of the case law and that was why the judge had used the word "court".

10. Mr Mills in reply said that it was wrong for it to be submitted that the Appellant could not return to his home area because at paragraph 31 the judge said he could. The Claimant has connections to the area of relocation and indeed he has connections to the Peshmerga as well and that too would assist him. If those of a minority faith are to suffer some discrimination it had to go to a state of the minority being so marginalised that they would not be able to obtain employment and/or for example work for the authorities.

11. Mr Mills said it just did not make sense that from 2008 until around 2014/15 and at a time prior to the passing of the legislation that the Claimant was able to get the level of work that he did but now with the passage of time he could not do so. Mr Mills said I should set aside the decision of the First-tier Tribunal and I should go on to dismiss the Claimant's appeal.

12. I have carefully considered the rival submissions of the parties. In coming to my decision I turn to the judge's decision and I consider it as a whole

and it is worthwhile making these observations in respect of it. It is a well-crafted decision. It properly and fully refers to the burden and standard of proof. It sets out the latest case law. The evidence is set out in a coherent and clear fashion. I of course remind myself that just because a decision presents itself well does not necessarily mean that there is not an error of law within it.

13. I then turn to the further detail in respect of the decision and it is in my judgment very clear that the judge carefully analysed both parties' positions. At paragraph 31 the judge made it clear that he was not accepting certain parts of the Claimant's case and at paragraph 28 the judge said he had misgivings about certain parts of the Claimant's case but ultimately applying the lower standard he accepted that the Appellant was a bodyguard as claimed. That reassures any reader of the decision that this was certainly not a one-sided decision in favour of one party or the other. The judge clearly considered both respective parties' submissions and the evidence.

14. In respect of the case law the judge clearly showed that he was well aware of the latest position. The judge after dismissing the asylum claim at paragraph 31 then went on at paragraph 36 to consider the humanitarian protection claim. The judge correctly referred to the decision in **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 (IAC)** and set that out in some detail. The judge said at the end of paragraph 39 as to what he had to consider:

> "There is no clear or cogent evidence about conditions in that area which would enable me to depart from that country guidance and so I conclude that the risk in that area is still sufficiently high to deserve humanitarian protection unless internal relocation is available."

15. The judge then quite properly referred to the leading authorities in respect of internal relocation including **Secretary of State for the Home Department v AH (Sudan) [2007] UKHL 49**. The judge also dealt with his finding against the Claimant when he dealt with the issue of being able to access the IKR relating to the issue of documentation. Importantly at paragraph 42 the judge considered at some length the Upper Tribunal's decision in **AAH** and he had referred to various paragraphs within that those including assessing whether or not an individual have family within the area of relocation, what the options are in terms of short term and longer term, the costs for relocation, the issue of critical shelter arrangements, that the employment rate for Iraqi IDPs is startling. The judge considered the issue of the lawful employment and the possession of a CSID, family or other connections might be of substantial assistance in obtaining work, skills and experience are going to be an advantage for those with skills and experience and ultimately the question of where the returnee is from.

16. The judge then in my judgment was very clearly applying that case law at paragraphs 43 and 44. At paragraph 43 the judge dealt with the subjective matters, that the Claimant was a male, a young and active male

at that and that he would be returning with a CSID. That the Claimant does not have family connections but that he does have connections through his military service with the Peshmerga and this would be the Claimant's strongest card, enough to outweigh any suspicions that he is from Diyala and that he is not an ISIS fighter, not least because the faith that the Claimant follows is of a branch of the Shia faith and therefore could not possibly be part of the ISIS which follow the Sunni faith.

17. The judge also noted that it may also be open to the Claimant to resume his military service. At paragraph 44 the judge dealt with matters to further explain his reasoning and the italicised quote is of importance here. The judge said there are reasonable grounds to conclude that he "*could obtain employment within a reasonable period and so avoid falling into destitution but there is a degree of speculation about all this"* and it is this which has to be read fully and in context. So what the judge in my judgment was clearly saying was although there is a possibility of a person such as this obtaining employment there was a degree of speculation about it and thereafter the judge then assessed whether or not the prospects for employment were realistic or not.

18. The real complaint from the Secretary of State is that the reference to the chance of obtaining employment has to be "sufficiently high" was well above the requirement to be a real possibility. In my judgment this argument is misconceived. The judge had fully explained from paragraph 42 onwards what the test was. The judge had already referred to the Supreme Court decision of **AH (Sudan)**. At paragraph 40 he referred to the proper burden and standard of proof but the judge then enumerated at paragraph 44 what the difficulties would be. The Judge clearly knew what the correct test was and he clearly applied it. He referred to authority for the point.

19. In my judgment therefore dealing with part 1 of the ground of appeal, that ground is misconceived because the judge was not saying two different things. He was explaining with the italicised quote the task he had to undertake in relation to the assessment that he had to make.

20. The other (part 2) ground of appeal is that, in effect, why would it not be possible for this Claimant who had worked for so long as a minority for the general to now not be able to use his contacts and such like and his history and experience on return? In my judgment the judge did deal with this and there is no conflict in his decision. As the judge said, although the Claimant's faith may protect him from suspicion of the ISIS involvement it may well bring with it other difficulties. Not least that he would still be a member of a minority religion in a predominate society where prejudice against non-believers was close to the surface.

21. The judge therefore did consider this aspect. I of course accept Mr Mills' point that mere discrimination is not sufficient to support a claim for protection but ultimately the judge provided adequate reasoning in his clear and detailed decision. It is clear why he came to the conclusion that he did. He did so for lawful reasons.

22. In my judgment the judge was entitled to come to the decision that he did. It may well be that another Tribunal would have come to a different decision, but obviously that is not the appropriate test for me to apply.

23. In the circumstances I conclude that there is no error of law in the judge's decision and accordingly the decision of the First-tier Tribunal which had allowed the Claimant's appeal shall stand.

Notice of Decision

There is no error of law in the First-tier Tribunal's decision. That decision allowing SFA's appeal shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant (Claimant) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: A Mahmood Date: 30 09 2019

Deputy Upper Tribunal Judge Mahmood

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed: A Mahmood Date: 30 09 2019

Deputy Upper Tribunal Judge Mahmood