



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

Appeal Number: PA/02664/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice
Centre
On 2 January 2020**

**Decision Promulgated
On 13 January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**ZM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Jones, Counsel instructed by NLS Solicitors
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

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

1. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

2. This is an appeal against the decision of Judge Howard in which he dismissed the appeal of ZM, a citizen of Iraq, against the decision of the Secretary of State (having made a deportation order) to refuse the Appellant's international protection and human rights claims.
3. The Secretary of State's decision was made on 4 March 2019. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Howard on 30 May 2019 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. His application was granted by First-tier Tribunal Judge Ford on 8 August 2019 in the following terms

"It is argued that the tribunal erred in finding at paragraph 46 that the appellant can be returned on a direct flight to Erbil and Sulamaniyah and can get safely from there to Duhok should he choose to do so voluntarily. Should he not do so voluntarily reliance was placed by the tribunal on paragraph 2.7.7 of the February 2019 guidance in which it is stated that responsibility for immigration in the whole of Iraqi has now been centralised with the Baghdad authorities and those who do not return voluntarily returned to Baghdad "from where they will travel to their destination".

It is arguable that this finding was contrary to the country guidance in the case of AAH (Iraqi Kurds – internal relocation)n Iraq CG [2018] UKUT 00212 (IAC), and that the evidence relied on by the tribunal to depart from that guidance did not justify the tribunal in departing from it."

Background

4. The history of this appeal is detailed above. The Appellant is a citizen of Iraq who came to United Kingdom in 2003 and made an unsuccessful claim for asylum. He left the United Kingdom in 2005 and made a new claim for asylum in the Netherlands before moving on to Germany and from there being returned to the United Kingdom. His repeated claim for asylum was again unsuccessful but in 2010 he was granted indefinite leave to remain. On 18 July 2018 he was convicted of arson and sentenced to 10 months imprisonment with the additional period of two months for a Bail Act offence. As a result of this conviction a deportation order was made against him and the Appellant responded with a protection and human rights claim. This claim was refused by the Secretary of State and his appeal against that refusal was dismissed.
5. In dismissing the appeal the judge found that the last place of residence of the Appellant in Iraq was in Dohuk in the Kurdish autonomous region (KRI) and that the Appellant did not face persecution or a risk of serious harm in the KRI. The judge found that the Appellant could be returned to the KRI either directly if his return was voluntary or via Baghdad if his return was enforced.
6. The grounds of appeal do not challenge the Judge's findings as to the credibility of the Appellant's claim or risk on return asserting only that the Judge's conclusion that the Appellant could return directly to Erbil or Sulamaniyah was in direct contradiction of the country guidance case of

AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC) and it was on this basis that permission to appeal was granted.

7. The new country guidance decision SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) was published on 23 December 2019 and replaces all existing country guidance.

Submissions

8. For the Appellant Ms Jones said that the grounds of appeal are very narrow dealing only with return to the KRI. Country guidance at the time of the First-tier Tribunal hearing was fairly express in stating that all flights were via Baghdad. With the new country guidance things have changed and this poses a difficulty for the Appellant. The country guidance case, SMO, KSP & IM, says direct return to the KRI can now take place. It's a very recent case but at the time grounds were lodged the law was supportive.
9. For the Respondent Mr Howells agreed that the grounds are on a narrow point. It is said that the Judge erred at para 46 in following AA (Iraq) [2017] EWCA Civ 944 when the later case, AAH (Iraqi Kurds - internal relocation) Iraq CG says there are no international flights to the KRI. However, AAH was based on the situation existing in August 2018. The hearing was in May 2019 and the CPIN of February 2019 refers to flights to Erbil and Sulamanyah. There was no challenge to risk on return and no challenge to the finding that he is able to contact his family. The question of direct flights to the KRI was reconsidered in SMO, KSO & IM.
10. Ms Jones added that the Appellant has instructed that he anxious for the Tribunal to know that he runs a barbershop in Plymouth and employs two people. He wants a further chance. At Ms Jones' request I put the matter back to enable her to seek further instructions.
11. When the hearing resumed Ms Jones applied to adjourn. She had been unable to contact her instructing solicitors. She suggested that an application for permission to amend the grounds could be made. Mr Howells responded to say that he could not support the application. Permission to appeal was given in August more than 4 months ago and no application has been made. I refused the application. There was no indication prior to the hearing that there would be any application to amend the grounds and indeed the request now being made was speculative to the extent that the adjournment request was being made only on the basis that the Appellant's representatives may wish to amend the grounds with no indication of the basis upon which they would apply to do so.
12. Ms Jones said that in relation to appeal itself the appeal was lodged prior to recent case of SMO, KSO & IM. The grounds are valid. The decision taken was not in accordance with country guidance and this was a misdirection in law. The Judge may have had knowledge of the CPIN but AAH was not followed. Country guidance now says there are direct flights

but there is a lack of information in relation to those. There is a lack of information on what someone would face if returned. Although SMO, KSO & IM says that there is a direct route to the KRI the refusal letter does not mention a designated location. It only says return to Iraq. On that basis the appeal should succeed. The final point relating to flights is that enforced flights were via Baghdad, only voluntary returns could go direct. The Judge should have found that going via Baghdad the Appellant was not safe. Appeal should succeed.

13. In answer to my question Mr Howells said that in the light of SMO, KSO & IM the return of this Appellant would be to the KRI.
14. I reserved my decision.

Decision

15. Both Ms Jones and Mr Howells agreed that the grounds of appeal were narrow and relate only to returnability to the KRI. Permission was granted on the basis that it was arguable that the Judge had failed to follow the decision in AAH (Iraqi Kurds – internal relocation) Iraq CG.
16. The decision of the First-tier Tribunal deals with the core asylum claim between paragraphs 25 and 32 and the Judge reaches the straightforward conclusion at paragraph 33 that there is nothing to cause him to reach any different conclusions to those made by the Tribunal in 2006. The decision in this respect is not challenged. From paragraph 34 onwards the Judge deals with the question of the Appellant's return in the absence of identity or other documents. The Judge notes that the Appellant last lived in the KRI and adds (paragraph 35) "the two known destinations for internal travel are Baghdad and Erbil."
17. The Judge appropriately self directs to AAH and thereafter that the Appellant does not have the appropriate documentation to enable him to travel from Baghdad to the KRI. The decision clearly follows AAH at paragraphs 37 to 40.
18. Paragraph 42 refers to direct flights to the KRI and although the Judge does not, at this point, refer to it it seems that this information must come from the February 2019 CPIN. At paragraph 45 the Judge finds that the Appellant cannot relocate to Baghdad. This remains in accordance with the country guidance. The finding that the Appellant can return directly to the KRI comes at the end of paragraph 46 and, for the first time, the Judge quotes the February 2019 CPIN as follows
"previously the KRG authorities had responsibility for immigration; this is now centralised with the authorities in Baghdad deciding on immigration matters for the whole of Iraq. Former residents of the KRI who do not return voluntarily return to Baghdad, from where they will travel to their destination. Those who are prepared to obtain a travel document can return to the KRI voluntarily, to either Erbil or Sulamaniyah, without having to transit Baghdad."

In my judgement there is no error of law in paragraph 46. Having self-directed earlier to AAH the Judge is now quoting from the CPIN. It is uncontroversial that those returning voluntarily could travel directly to the KRI.

19. It is the next part of the decision (paragraph 47) where there is a seeming jump of logic. Having quoted from the CPIN the Judge finds

“there is no evidence from which to conclude that if requested he would not be given that which would allow his return to the KRI”

and this leads to the conclusion at paragraph 49 that the Appellant does not have a real and well-founded fear of persecution “if returned to the KRI”.

20. This really leads us back to the only issue which is whether the Appellant can return to the KRI. In my judgement there is no error of law in the Judge’s conclusion that the Appellant does not face persecution or an Article 3 risk in the KRI. At the time of the decision the Judge was clearly following the CPIN which noted, and as I have said above uncontroversially, that direct voluntary return to the KRI was possible. Equally the finding that the Appellant could “if requested” obtain the necessary document to enable his return is not controversial when read with the clear (and unchallenged) finding that he is in contact with his family.

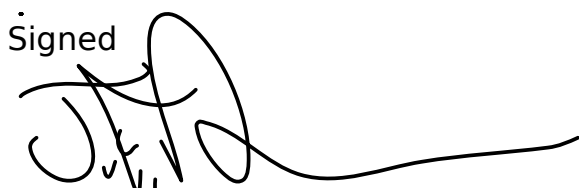
21. The new country guidance decision of SMO, KSO & IM makes matters even clearer. There are “regular direct flights from the UK to the Iraqi Kurdish region “and “it is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah”. Mr Howells, on behalf of the Respondent, has said that this Appellant will be returned to the Iraqi Kurdish Region. The country guidance adds that once at the border of the Iraqi Kurdish Region, subject only to security screening and registering with the local mukhtar entry and residence would be permitted.

22. My conclusion is that on the basis that this Appellant is to be returned to the Iraqi Kurdish region there was no arguable error of law in the decision of the First-tier Tribunal at the time that the decision was made and the new country guidance of SMO, KSO & IM emphasises that direct return to the KRI is realistic. On that basis the appeal must fail.

Summary of decision

23. Appeal dismissed. The decision of the First-tier Tribunal stands.

Signed

A handwritten signature in black ink, appearing to be 'J. A.', with a long horizontal flourish extending to the right.

Date: 3 January 2020

J F W Phillips
Deputy Judge of the Upper Tribunal