Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02703/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 January 2020	**On 05 February 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

SARWAN [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Aitken
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision which was promulgated on 11 April 2018, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

> "1. The appellant, Sarwan [R], was born on 1 August 1988 and is a male citizen of Iraq of Kurdish ethnicity. He appealed to the First-tier Tribunal (Judge Burns) against a decision of the respondent to refuse him international protection. The decision is dated 24 February 2017. The First-tier Tribunal, in a decision promulgated on 20 September 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I shall deal first with the challenges to the judge's findings on credibility. The first ground of appeal challenges the decision on the basis that the judge failed to give adequate reasons. The judge did not accept as reliable documentary evidence adduced by the appellant. The judge observed [23] that the documents produced by the appellant could have been produced easily through the internet. Mr Aitken, who appeared for the appellant, submitted that it was not enough for the judge to observe that such documents were available on the internet; he had to make a proper finding that the documents were not reliable and give reasons for so finding.

3. I disagree with Mr Aitken's submission. A careful reading of the decision reveals that the judge has properly applied the principles contained in *Ahmed* [2002] UKIAT 00439. The judge has not considered the documents on their own but has considered them in the context of all the evidence, including the appellant's oral testimony. The judge has quite properly observed that the appellant, after he had reached the United Kingdom, could have taken steps to obtain other documents to corroborate the documentary evidence. It was open to the judge to take that fact into account when assessing the evidence. I find that the judge has given adequate reasons and that his findings as to the appellant's credibility, including the credibility of his documentary evidence, is sound.

4. The judge's assessment of risk on return is more problematic. As Judge Canavan observed when granting permission, it was necessary for the judge, if he were to depart from existing country guidance, to show that there had been a durable change in country conditions and to give full reasons identifying the evidence before him as to why he wished to depart from the country guidance. Whilst I accept that the judge has stated why he preferred the evidence of the Secretary of State regarding the conditions in Kirkuk to that adduced by the appellant, a problem arises over the fact that the judge has referred to Kirkuk and Erbil (the de facto capital of the IKR – Independent Kurdish Region) as if they were one and the same place. The judge states at [39], "I do not regard this [evidence adduced by the appellant from the internet] as reliable information about the situation which the appellant would face on being returned to Kirkuk city or Erbil". Later at [43] the judge refers to the appellant returning to "Erbil/Kirkuk". I am not at all clear why the judge has used this expression. At the time of his decision, those living in Kirkuk had been found by the Upper Tribunal in AA to be exposed to Article 15(c) harm. Erbil, on the other hand, lying firmly within the IKR, was generally safe for Kurds of Iraqi origin who were able to reach the city and obtain work or support there. The position is complicated by the fact that the appellant has a civil identity card (CSID). This would be of no use to him in Erbil but might be relevant in assessing the risk which he might face in Kirkuk or, indeed, on internal flight to Baghdad. The judge's repeated references to Erbil and Kirkuk as if the considerations concerning both cities were the same has distorted his analysis.

5. In the circumstances, I set aside the First-tier Tribunal decision. For the reasons I have given, the judge's findings of fact as regards the appellant's credibility and that of the evidence which he has adduced shall stand. The only issue which remains to be determined is that of risk on return of this appellant either to Kirkuk (his home area) or by

> way of internal flight within Iraq. It will be necessary to consider internal flight to the IKR (Erbil) and also whether the appellant, notwithstanding his Kurdish ethnicity, may, given that he possesses a CSID, reside safely in Baghdad. The First-tier Tribunal should have considered these issues but did not do so.
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> **Notice of Decision**
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> 6. The decision of the First-tier Tribunal which was promulgated on 20 September 2017 is set aside. The findings of fact shall stand save the judge's findings as regard the risk on return of this appellant to his home area or by exercising internal flight within Iraq to the IKR or to Baghdad. Those issues will be considered further by the Upper Tribunal (Upper Tribunal Judge Lane) at a resumed hearing on the first available date at Field House (time estimate: 1.5 hours).
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> 7. No anonymity direction is made."

2. There has been a delay since the promulgation of the error of law decision which has been caused at least in part by an attempt to determine the validity of an identity document which the appellant brought to the United Kingdom and which remains in the possession of the Secretary of State. In particular, I made a direction on 21 January 2019 providing for the appellant to visit the Iraqi Embassy in London with a copy of the identity document certified by me (the Secretary of State would not allow the original to leave his possession). The appellant now claims that he has visited the embassy and therefore the appeal has been brought back for a resumed hearing.

3. The burden of proof is on the appellant. The evidence which I heard concerned the appellant's visit to the Iraqi Embassy. I have tested that evidence by reference to the standard of proof of the balance of probabilities. I heard evidence from the appellant himself who spoke in Kurdish Sorani with the assistance of an interpreter. I heard also from Mr [BS], a Kurdish Sorani/English interpreter employed by the appellant solicitors. Mr [S] accompanied the appellant on his visit to the embassy. Mr [S] gave his evidence in English.

4. Although there was a discrepancy as regards the length of time at two men spent at the embassy during their visit on 6 August 2019, both accounts were broadly consistent. I discount the fact that the appellant indicated that the visit lasted somewhat longer than Mr [S] recalled. I accept that the appellant took with him the certified copy of the identity document (which the parties agree is either a valid or expired CSID) and that the officials at the embassy took no account of the certified copy but told the appellant that they could not issue him with a valid identity document or passport. I accept also that the officials told the appellant that they could not or would not record their decision in writing. Given the nature of the enquiry and the likely heavy volume of asylum seekers attempting to obtain passports and identity documents from the embassy, I consider that it is highly likely that embassy officials have taken a policy decision not to provide written evidence of any rejected applications.

5. The other area of evidence which was addressed at the resumed hearing concerned the appellant's claim that he has lost touch with his family in Iraq. The appellant was cross examined on this issue by Mr Whitwell, who appeared for the Secretary of State. The appellant said that he had last had contact with his family in Iraq by telephone on 15 October 2017, that is after the First-tier Tribunal hearing. Since that date, all attempts which he had made to contact his family had been unsuccessful. The appellant has contacted the Red Cross and has another appointment with that organisation in London in February.

6. Mr Whitwell urged me to reject the appellant's evidence regarding contact with his family. The First-tier Tribunal had made findings, which I had preserved, to the effect that the appellant's account of past events in Iraq was not accurate or truthful. The Upper Tribunal should not, therefore, accept that face value the appellant's claim that he has lost contact with family members. There is some force in that submission. However, the appellant has been consistent regarding the date following which he had lost contact with his family. That date is after the First-tier Tribunal hearing; whilst it might appear a convenient coincidence that the appellant lost contact with his family immediately after the hearing, he had not attempted to deceive the First-tier Tribunal judge regarding his family contact even though the absence of such contact might have proved to his advantage even at that stage of his appeal. I take into account also the fact that communications between family members and friends within Iraq and with those living abroad may well have been dislocated by the conflict in that country over the past few years. Moreover, I was urged by Mr Whitwell to reject the appellant's appeal on the sole basis that his claim to have lost contact this family should not be believed. Mr Whitwell did not challenge the appellant's account of his visit to the embassy and he did not suggest that the appellant would be able to obtain an identity card other than with the support and assistance of his family in Iraq. Without the ability to obtain such a document the appellant would be at real risk. Accordingly, since the success of the appellant's appeal rests on this issue family contact I have, whilst not for that reason giving the appellant the benefit of the doubt, exercised particular caution in reaching my findings. On balance, I accept the appellant's claim that he is not currently in contact with his family. I find that he does not have any access to (nor does the Secretary of State possess) any existing identity document which will assist him in Iraq. I find that he does not have family in Iraq who would be able to assist him and I find that he cannot obtain an identity document before he returns that country.

7. I have to consider whether the appellant, having the particular characteristics which I have identified in [6] above, may return safely to Iraq. We now have the benefit of new country guidance (*SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 (IAC)). In the light of that guidance and background material relating to Iraq, I have considered whether the appellant will be at risk and return. The Upper Tribunal at [386] noted:

> "There is no evidence before us which satisfactorily establishes that a returnee who is not from Baghdad would be able to apply for a CSID or an INID in that city. Dr Fatah's oral evidence was that only those from Baghdad would be able to apply for replacement documents there. The Danish Immigration Service report of November 2018 records the Kafkaesque consequence of the requirement to apply for a replacement document in one's own area in the following paragraph:
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> > 'In order for the IDPs to return, they must have ID-documents that are issued in the areas of origin. If they have lost their ID-documentation, they must travel back to the area of origin to have them re-issued. However, without documents it is very difficult to travel anywhere and pass the checkpoints, because people without documents more often face arbitrary arrests and detentions.'"

Whilst individuals in the appellant's home area or Kirkuk no longer face an Article 15 risk of harm, my findings lead me to conclude that the appellant cannot obtain any identity document after arriving in Baghdad and that, without such a document, he would be unable to return to his home area. In addition, without an identity document (CSID or the new INID) the appellant would be unable to obtain work in the IKR, an area where he does not have family or other contacts. As a consequence, I find that, whilst the appellant may in theory be able to travel directly from the United Kingdom to the IKR on a *laissez passer*, it would be unduly harsh to expect him to live there given his very poor prospects in obtaining either work, support from third parties or the local authorities or accommodation.

8. I have considered the possibility of the appellant relocating to Baghdad. No such possibility appears to exist for the appellant, a lone male Kurd without family or other support, in the light of the country guidance of *SMO* at [48] of Section H:

> "Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq)."

9. In the light of what I say above, I find that the appellant would be at risk of Article 3 ECHR harm if returned to Iraq. It would be unduly harsh for him to relocate to the IKR. He would be at real risk of harm in Baghdad in the light of the characteristics which I find he possesses. He would not be able to obtain either before departure or after arrival in Iraq any identity document which would enable him to travel to and live in his home area of

Kirkuk notwithstanding the fact that violence in that area is now significantly decreased. In the light of those conclusions, he is entitled to international protection.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 24 February 2017 is allowed on human rights (Article 3 ECHR) grounds.

Signed Date 3 February 2020

Upper Tribunal Judge Lane