Upper Tier Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08908/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 2 October 2020	**On 07 October 2020**

Before

Upper Tribunal Judge Pickup

Between

AJ
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms P Solanki, instructed by Kalsi Solicitors
For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DIRECTIONS ON ADJOURNMENT

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Herwald promulgated 24.10.19, dismissing his appeal against the decision of the Secretary of State, dated 29.8.19, to refuse his claim for international protection.

2. Designated First-tier Tribunal Judge Manuel refused permission to appeal on 4.12.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Coker granted permission on 9.1.20. Judge Coker considered it arguable that the First-tier Tribunal "failed to have adequate regard to the position of the two children and their access to potential identity documents and the differing situation the applicant would be in as a lone woman with two young children."

3. It is not entirely clear what the basis of the remainder of the grant of permission was and at an earlier hearing on 12.3.20 Ms Patel confessed to being confused by it. It may be that the Upper Tribunal was referring to the recent decision of the Upper Tribunal on Iraqi documents in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), though that is not made clear.

4. The matter was listed before me at Manchester Civil Justice Centre on 12.3.20 for an error of law hearing. Ms Patel, who represented the appellant at the First-tier Tribunal, also appeared as representative before the Upper Tribunal.

5. Amongst a number of preliminary issues, I raised with Ms Patel the assertion at [9] of the grounds that at [17] of the decision the Judge misreported the evidence of the appellant's supporting witness, Mr DA. The Judge there recorded that when asked whether it would be safe for the appellant to return (go) to the IKR, he said that "*it might well now be safe for her*." It appears that the judge relied on this piece of evidence as undermining the credibility of the appellant's claim.

6. The grounds assert that what the witness actually said in reply to the question was, "*I do not know anything about her circumstances, it might not be safe for her*." Ms Patel informed me that the grounds on this issue are based on her detailed note of the evidence at the First-tier Tribunal appeal hearing. However, I pointed out that she could not be a witness in this matter whilst still representing the appellant before the Upper Tribunal. I asked her to consider whether she needed to rely on that point or whether she was content to rely on the other pleaded grounds of appeal. After due consideration, Ms Patel told me that the point was central to the appellant's case on appeal. I explained that if she pursued the matter, she would have to become a witness, make a witness statement, and could no longer continue to act as representative, which she should have known. I also explained that the discrepancy as to what was said would have to be put to Judge Herwald for his consideration and response, and thus the matter would have to be adjourned. Ms Patel then made the adjournment application, which Mr McVeety did not oppose. He informed the tribunal that there were no notes from the presenting officer on the Home Office case file.

7. I noted that there were handwritten notes from the First-tier Tribunal hearing within the Tribunal's case file, which to my reading appeared to be consistent with that recorded at [17] of the decision.

8. In the circumstances, I granted the requested adjournment and issued directions on 17.3.20, providing for Judge Herwald to be offered the opportunity to comment on

Ms Patel's assertions and for Ms Patel to provide and serve a witness statement and exhibits as to what was said by the witness at the hearing.

9. A copy of Judge Herwald's ROP and notes of hearing was forwarded by the Tribunal to the appellant's representatives under cover of email dated 17.3.20. A further copy was sent under cover of email dated 10.8.20. Judge Herwald replied to the query directed to him, stating "*My recollection is that the witness said as I have recorded*." As stated, this appeared to be consistent with the judge's handwritten notes. The information referred to above was conveyed to the appellant's representatives by post sent on 13.5.20.

10. By 3.6.20, there had been no response from the appellant and in particular, no witness statement from Ms Patel had been provided, either within the time limit given in the directions or at all. In the circumstances, I issued further directions for the appeal to be set down for hearing of the error of law issue.

11. On 14.7.20, the Upper Tribunal received a letter from the appellant's representatives seeking further time to respond to my directions of 17.3.20. It appeared that the representatives did not seem to be aware of the further directions I had issued in June 2020 on the failure to comply with the directions issued in March 2020. Given the likely delay there would be in fixing a hearing date because of the difficulties caused by the Covid-19 pandemic, I refused an extension of time but pointed out that the remote hearing would likely not take place before 1.8.20, so that there would, in fact, be ample time to comply with all directions. This response was sent to the appellant's representatives by email on 15.7.20.

12. Under cover of letter dated 21.7.20, the Upper Tribunal received the appellant's consolidated bundle, including Ms Patel's statement of 20.7.20, together with a copy of her handwritten notes from the hearing, which I have carefully considered and taken into account. I note that the version of the evidence asserted in the ground is consistent with Ms Patel's handwritten notes of the hearing, although, because of the poor copying process, not all of the crucial statement has been copied.

13. On 1.10.20 I received the skeleton argument drafted by Ms Solanki, which I have carefully considered and taken into account, together with the oral submissions made to me at the hearing.

14. Ms Patel attended at the outset of the remote hearing but as neither Ms Solanki nor Mr Tan sought to ask any questions of her, she was released.

The Grounds

15. The first ground relates to the alleged mistake of fact in recording the evidence of the supporting witness, which has been the subject of much correspondence and Ms Patel's witness statement. As stated above, he judge has now had the opportunity to look at his note and has confirmed that his recollection of what was said is as recorded at [17] of the decision.

16. I do not agree with the submission made to me that the judge's notes "potentially" reads as 'it not now be safe [for] her'. In the way transcribed by Ms Solanki, the note makes little grammatical sense. What the judge recorded in answer to the question how safe is the IKR, was " i.d.n. I do casually travel but ≠ kno her circs. It mt now be safe 4 her." The ≠ symbol is a designation of not equal to and evidently was used by the judge throughout his record as shorthand for 'not'. The judge underlined this answer twice in red ink. If the judge had intended to record a 'not' in the answer, I am satisfied he would have used the same ≠ symbol, as appears to be his habit. I find that the handwritten note and what is recorded at [17] of the decision is consistent. What the witness stated was qualified and couched in terms that he first said in answer that he did not know (i.d.n.), and that he did not know the appellant's circumstances.

17. Ms Patel's account, based on her witness statement and handwritten notes is that the witness stated, "*I do not know anything about her circumstances, it might not be safe for her.*" This is what is recorded in handwriting, though the bottom part of the sentence has been missed off in the copying process. I note that there is no statement from the witness himself as to what he said. Ms Solanki referred me to the witness' statement, dated 2.2.19, contained in the respondent's bundle, asserting that he was asserting there that it was not safe for the appellant to return. However, it is impossible to separate out within this statement the issue as to whether it would be safe for the appellant to return to the IKR, from his assertion that she would be at risk of an honour killing if returned, a claim entirely rejected by the First-tier Tribunal.

18. In summary, I accept that Ms Patel's notes accord with what the grounds assert the witness stated but also find that the judge's notes accord with what is recorded at [17] of the decision as to what the witness stated. I accept that both Ms Patel and the judge have recorded their accounts in good faith, believing that is what they heard stated. However, both cannot be accurate.

19. It is possible that either the Judge or Ms Patel could have been mistaken as to what was said but, as Ms Solanki accepted, the burden is on the appellant to demonstrate that what the judge recorded is inaccurate. Having taken account of the evidence as a whole, including that of Ms Patel, I am persuaded by the judge's contemporaneous record and role as independent arbiter to record the evidence. I conclude that Ms Patel is mistaken in what she heard, although recorded in good faith, and find that the witness did state that it might now be safe for the appellant in the IKR. That seems to be consistent with not only the judge's handwritten notes but the context of the other questions and answers relating to that issue. I conclude, therefore, that the appellant has failed to demonstrate that there was any "*fundamental*" mistake of fact as Ms Patel has asserted.

20. The only remaining issue was the ability of the appellant to return to Iraq, which the judge addressed from [21] onwards of the decision, accepting that return to Diyala, a former contested area, was not safe. However, this appellant was educated and worked in the IKR for a number of years before leaving Iraq. The judge considered AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), noting

that the appellant had an Iraqi national identity card, and was satisfied that she had extensive family in Iraq, members of which would be able to support her with family registration details and, if necessary, relocation to the IKR. Specifically, the judge found that there were male family members who would be able and willing to attend the civil registry, if necessary. She had been able to travel with ease in and out of the IKR in the past and the judge concluded from the witness' own account of travel to and from the IKR that relocation there was feasible for her, based on his experience. The judge also took account of updated evidence since the Country Guidance that direct flights to the IKR were available.

21. The second ground alleges a failure to consider material matters, namely that the children are without documentation; that the family originate from Diyala, a former contested area, and may not be able to assist the appellant to obtain registration documentation; and that the appellant's ability to earn a living would be severely affected by her now being a single widowed mother of two young children.

22. Whilst it is argued in the skeleton argument that the appellant "*is unlikely to be willing to approach*" her husband's family members, the findings of the judge were that there was not a real risk that an attempt would be made by the family of her deceased husband to remove the children from her. It follows from the findings that the appellant will be able to use family members from both sides to obtain all necessary documentation, even though her own family originate from Diyala, outside the IKR, and that she would not be at risk of having her children removed from her by her husband's family.

23. The argument that the judge ignored that as a single mother and widow the appellant's ability to earn a living would be impaired, fails to acknowledge the finding of the judge that she would have support to relocate to the IKR from her own family. The judge also considered other relevant factors, including that she is a highly educated and skilled woman who was previously able to live and work in the IKR. The judge considered the appellant's circumstances, noting that whilst there may be difficulty obtaining work, she will have voluntary return financial assistance and at the least would be able to access a critical shelter or an IDP camp. The judge was not ignorant of the challenges and accepted that the situation may be difficult, but not such as to infringe Article 3 ECHR. In reality, the various concerns raised by this ground were fully taken into account by the judge and a careful assessment made of all relevant circumstances. The ground is little more than an attempt to reargue the point.

24. The third ground asserts that the judge failed to assess the appellant's claim in line with AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC) and to take into account that she would be returned to Baghdad rather than the IKR, and would be returning as a lone female. It is argued that the judge failed to consider whether a camp or critical shelter would accept the appellant. It is also submitted that the judge erred in concluding that the appellant could apply for voluntary assistance, when she does not wish to voluntarily return.

25. Once again, this ground is an attempt to reargue the appeal. The judge found at [21] of the decision that it was possible for an Iraqi national to obtain a CSID card in the UK, which was the effect of the then current country guidance in AA. She had a national identity card and family in Iraq to assist her and her children's return. With that assistance, she would be able to obtain CSIDs to be able to return to Iraq and travel between Baghdad and the IKR. Whilst Ms Solanki argued that the judge did not consider the difficulties there may be with getting CSIDs for the children, one of whom was born in the UK, that was not raised as a difficulty at the appeal hearing and the judge specifically found that the appellant would have the assistance of her family with registration details.

26. In relation to voluntary return, the judge was entitled to take account of the availability of this significant financial assistance which would help her secure accommodation and to maintain herself for a temporary period. This also has to be considered in the light of the judge's finding that she is well-educated and was previously able to work in the IKR, and has the assistance of her extended family. Contrary to the argument in the grounds, the reference in TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) does not establish as either a ratio of that case or as a precedent that assisted voluntary funds are to be excluded from consideration where an individual refuses to accept them. The fact that the appellant declares an intention to ignore available assistance is irrelevant. If the appellant closes her eyes to AVR, it does not mean that it no longer exists. She can be assumed to act reasonably when considering the reasonableness of relocation to the IKR. No error of law is disclosed.

27. The fourth ground is a clear attempt to reargue the appeal, making reliance on the appellant's case that her husband's family wanted to remove the children, when the judge had already rejected that aspect of the appellant's claim. The grounds state that the appellant "*also wishes to highlight other evidence which was in the bundles before the Tribunal and has not been considered by the Tribunal.*" However, the judge is not required to detail all of the evidence or make findings in respect of every item of evidence. As drafted, this ground is vague and insufficiently particularised so as to demonstrate any error of law.

28. Reliance is also made in the grounds on the changes in Country Guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), which was not promulgated at the time of the First-tier Tribunal decision promulgated in October 2019. These arguments are not relevant to the issue as to whether there was an error of law in the decision of the First-tier Tribunal.

29. On reading the decision of the First-tier Tribunal, I am satisfied that the judge took account of all relevant information provided and made a detailed and careful assessment. At [15] of the decision the judge confirmed that he had taken into account all the background material submitted by the parties and made specific reference to the CPIN and the Country Guidance authorities. The judge then went on to cite considerable extracts from the country background information. At [16] the judge confirmed that he had given careful consideration to all the documents put

before him and had considered the relevant evidence before making any of his findings.

30. In all the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed *DMW Pickup*

Upper Tribunal Judge Pickup

Dated 2 October 2020