



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

Appeal Number: PA/02914/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 August 2019**

**Decision & Reasons Promulgated
On 03 September 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AMKI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan, instructed by Legal Justice

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1989 and is a male citizen of Iraq. By a decision promulgated on 11 April 2018, Upper Tribunal Judge Hanson found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. He preserved the findings of fact of the First-tier Tribunal (including a finding that the appellant is not a credible witness) and limited the resumed hearing before the Upper Tribunal to the issue of internal flight within Iraq (in particular, to the Independent Kurdish Region (IKR)). Following the making of a transfer order, the matter came before me at Bradford and 3 June 2019. I adjourned hearing on that occasion in order to enable the expert witness of the appellant to attend and give oral

evidence. The expert duly attended at the adjourned hearing on 30 August 2019. At the end of that hearing, I told the parties' representatives and the appellant that I intended to allow the appeal on humanitarian protection grounds. I shall, therefore, be brief in giving my reasons since I explained these at length in court.

2. The appellant gave oral evidence at the resumed hearing in the Upper Tribunal. I was asked by Ms Khan, who represented him, to treat the appellant as a vulnerable witness. There is a medical report dated 4 April 2019 which indicates that the appellant is suffering from PTSD. Ms Khan told me that the only adjustment which the appellant might require was for breaks in his oral testimony should he become distressed. I told the appellant that he should notify me should you require a break. As it happened, when the appellant became distressed, I adjourned the hearing briefly without being requested to do so to enable him to collect himself. The appellant then proceeded to the end of his oral testimony without further difficulty.
3. Even allowing for the appellant's medical condition, I did not find him to be an impressive witness at all. The appellant had only recently contacted the Red Cross with a view to locating his relatives in Iraq. Under cross-examination, the appellant confirmed that he had not contacted or asked the Red Cross to contact his brother in Iraq ostensibly because the brother has his own family and would therefore not be concerned with assisting the appellant. This explanation was not persuasive. Likewise, the appellant was unable to explain why he had not told the Red Cross that he had heard from a friend in Iraq (concerning whom the appellant was particularly vague) that his mother and sister had been living in a refugee camp. Indeed, he gave to the Red Cross no details at all of the likely whereabouts of any family member thereby making it highly unlikely that they could be located and contacted. I find that the appellant's contact with the Red Cross was perfunctory and half-hearted, at best. It did not represent a serious attempt to contact his relatives in Iraq, assuming that he has, as he claims, lost touch with them.
4. The appellant's expert witness, Dr Kaveh Ghobadi, attended court from his home in Exeter and gave oral evidence. He has produced a report dated 29 May 2019 upon which the appellant relies. The report details the problems which the appellant may face seeking to obtain replacement identity documents in Iraq. Cross-examined by Mr Diwnycz, who appeared for the Secretary of State, Dr Ghobadi explained that he is essentially an expert in Kurdish culture and literature. He has no forensic qualifications enabling him to comment authoritatively regarding the authenticity of Iraqi documents. His method is to contact individuals in Iraq, some of whom he appears never to have met, to ask them to comment on the authenticity of documents and to advise him regarding the feasibility of refugees in the United Kingdom obtaining identity documentation in Iraq. Whilst I was grateful to the doctor for attending court and for the frankness with which he explained his methodology, I find it hard to accept that he has any personal expertise in the matters which are the subject of

his report in this appeal. Rather, he acts as an intermediary for individuals, some of whom have not been named or whose exact roles within Iraqi government administration have not been elucidated, who provide him with their own opinions. I am aware that expert witnesses often rely upon external sources but it appeared to me that in this instance the expert witness had little, if any, means of judging whether the information provided by supposed experts in Iraq (of whose own expertise he seemed uncertain) could be relied upon; he was obliged to adopt the opinions of his Iraqi sources. To that extent, he was little more than a conduit for the opinions of others who have not indicated that they were aware of the duties which they may owe to a court or tribunal in the United Kingdom. In the light of these observations, I have treated his evidence with some caution although it is also fair to say that, in general, his report contains rational and appropriately measured observations.

5. As I explained to the representatives, neither the weight appropriately attaching to the expert's report nor the appellant's own lack of credibility and his unhelpful contact with the Red Cross constitute the determinative issue in this case. As at the date of the hearing, no fresh country guidance is available and the guidance set out in *AAH (Iraqi Kurds - internal relocation)* Iraq CG UKUT 00212 (IAC) and *AA (Iraq)* [2017] EWCA Civ 944 remains valid. The so-called 'embassy letters' (issued with the authority of the Iraqi ambassador in London) annexed to the latest versions of the CPIN are written in general terms and do nothing to contradict the guidance contained in the cases referred to above (see *SS [2019]* EWHC 1402 (Admin) in which the letters were not found to contradict existing country guidance.) The appellant, therefore, would be returned to Baghdad. His home area lies in the province of Mosul which, as at today, remains a contested area. He cannot be expected to travel there from Baghdad and, even if he were able to enlist the support of his brother, the evidence background material indicates that the latter would also need to travel to Mosul to obtain replacement documentation for the appellant. It would not be reasonable to expect him to do so. Whilst the appellant may be able to obtain a *laissez passer* while still in the United Kingdom, this would not get him beyond Baghdad where he would inevitably be delayed in seeking to arrange documentation for onward travel and where, by application of the current country guidance, he would, as a Kurdish man without friends or family in Baghdad, be exposed to a real risk of harm. There is also force in Ms Khan's submission that, even if the appellant did reach the IKR, there is no evidence that he has any relatives there whilst his own mental health condition might well impede his efforts to find accommodation and work.
6. In the light of what I say above, I find that the appellant's appeal should be allowed on humanitarian protection grounds. I do, however, find that the appellant is not a truthful witness and I am not satisfied that he is either lost touch with his family in Iraq or that he has made a proper effort to re-establish contact with them. The appellant should not expect to receive a lengthy grant of leave to remain given the rapidly changing situation in Iraq; indeed, he should be aware that the Secretary of State may soon

reconsider his case in the light of any future country guidance issued by the Upper Tribunal.

Notice of Decision

The Upper Tribunal has remade the decision. The appellant's appeal against the decision of the Secretary of State dated 8 March 2016 is allowed on humanitarian protection grounds. The appeal is dismissed on all other grounds.

Signed

Date 30 August 2019

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.