Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03322/2019

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 26 February 2020	**On 23 April 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

BS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Boyle, instructed on behalf of the Appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. 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. The Appellant with permission, appeals against the decision of the First-tier Tribunal (Judge Hands) (hereinafter referred to as the "FtTJ") who, in a

determination promulgated on the 22nd May 2019, dismissed his claim for protection.

The factual background:

3. The background to the Appellant's protection claim is set out in the determination of the FtTJ at paragraphs 9-29 and in the decision letter of the Secretary of State issued on 22 March 2019.

4. The Appellant is a national of Iraq. He claims to have left Iraq in October 2014 and travelled to Turkey and then through several other countries. He was fingerprinted in Germany in October 2015. On release he travelled to France and then to the UK. He entered the United Kingdom on 24 September 2016 and made an application for asylum and/or humanitarian protection. His claim was referred to the Third County Unit and his claim was refused in 2016. However, it was later decided that the UK would be responsible for his claim and a decision was made on the 22 March 2019.

5. The basis of his claim was that he was a national of Iraq and of Kurdish ethnicity. Firstly, was in fear of his mother's family and her ex-husband because of a blood feud which had resulted in attacks on the family. Secondly, in 2003 as a result of his father having arrested a prominent member of the Kxx tribe, the appellant claimed that Daesh and members of the tribe took retribution by kidnapping and torturing him in 2003 or early 2004. When Daesh invaded Jalawla the appellant feared that he would be singled out personally and therefore fled the town.

6. The decision letter of the Secretary of State dated 22 March 2019 considered that he did not have a genuine subjective fear on return to Iraq. It was not accepted that the appellant had been involved in a blood feud or that his fears concerning Daesh were credible or consistent. The decision letter set out several issues of the credibility and consistency of his factual account.

7. The respondent to set out the country materials and the CPIN and consideration was also to the country guidance decisions in AA (Article15 (c) Iraq CG [2015] KUT 544 as amended by the Court of Appeal in AA Iraq v SSHD[2017] EWCA Civ 944 and AAH (Iraqi Kurds-internal relocation) CG [2018] UKUT 0212. Specific consideration was given to documentation and feasibility of return. Considering the factors identified in the case law and country materials, it was stated (wrongly) that his home area was in the IKR but that he could internally relocate to the IKR via Baghdad. As to documentation it was stated that as he had possessed documents such as his passport and that his family could assist him by attending at his the CSID office of his home governorate. His claim was refused on all grounds.

8. The appellant lodged grounds of appeal against that decision.

9. The appeal came before the First-tier Tribunal before FtTJ Hands. In a decision promulgated on 22 May 2019, the FtTJ dismissed his appeal.

10. Permission to appeal that decision was sought and was granted on the 21 June 2019 by FtTJ Andrew for the following reasons:

> "I am satisfied that there is an arguable error of law in this decision in that the Judge did not consider whether the appellant could return to his home area of Jalawla taking into account the country guidance case of AA (Article 15 (c) Iraq [2015] UKUT."

11. The appeal was therefore listed before the Upper Tribunal. Mr Boyle, who had not appeared before the FtTJ, appeared on behalf of the appellant and Ms Petterson, senior presenting officer, appeared on behalf of the respondent.

12. In his submissions he relied upon the grounds in which it was stated that the appellant had based his asylum claim on his political opinion, his fear of Isis and in respect of the blood and tribal feud. The appellant originated from the contested area of Jalawla within the Diyala province as confirmed by the country guidance decision of AA (Article 15(c)) Iraq CG [2015] UKUT and therefore he had claimed humanitarian protection in the alternative. However, the FtTJ erred in law by failing to consider the humanitarian protection claim and only focused on the appellant's asylum claim.

13. It was submitted that the FtTJ was required to consider the humanitarian protection claim in its own right following the refusal of the asylum claim. Mr Boyle submitted that the correct approach would have been to consider whether Diyala remained a contested area and if so, the FtTJ would then need to consider the issue of internal relocation. However, if the judge did not consider Diyala to remain a contested area, then the judge would have to give strong and cogent reasons to depart from the country guidance caselaw.

14. The grounds go on to state that whilst it was acknowledged that the judge discussed internal relocation in the context of the country guidance caselaw of AAH, this was solely in respect of the asylum claim.

15. In his oral submissions Mr Boyle sought to advance other grounds which were not set out in the application for permission to appeal and in particular sought to challenge the judge's assessment of internal relocation and also the issue of documentation. As to the issue of relocation to Baghdad, he submitted that at paragraph 35 of the decision the judge was in error by failing to consider his Kurdish ethnicity. He further submitted that the judge failed to consider issues of accommodation and employment is living in Baghdad itself. Thus, he submitted inadequate reasoning had been given by the judge when reaching a consideration that the appellant could relocate to Baghdad. When asked to point the tribunal to any objective evidence that made reference to the position of Kurds in Baghdad, he was not able to do so.

16. A further ground which had not been pleaded in the application for permission related to the issue of documentation. He submitted that paragraph 32 of the decision was in error by stating that he had left Iraq

with documents but had made no finding on this he submitted that the assessment made which concluded that he would be able to obtain a passport was not consistent with the country guidance.

17. As to internal relocation to the IKR, he submitted that the judge did not consider the headnote at paragraphs 9 and 10 of AAH as to how he would be able to live in the IK are without the assistance of family and whether he would be able to secure employment.

18. Ms Petterson on behalf of the respondent relied upon the rule 24 response which responded to the grounds for permission and the grant of permission which related solely to the issue of humanitarian protection.

19. In the rule 24 response it was submitted that the FtTJ had dealt with all aspects of the appellant's claim and that it was open to the judge to dismiss his claim to fear persecution or serious harm by virtue of the claimed tribal feud and the risk of honour killing and that the judge provided adequate and sustainable reasons in this respect.

20. Furthermore, it was submitted that the appellant had not been fully open about his family connections in Iraq at paragraph 21.

21. The respondent submitted the contrary to the grounds advanced and looking at the determination holistically, whilst it is clear that in the context of Article 15 (c) element of humanitarian protection the judge failed to expressly make findings regarding his ability to return to his home area this was not a material arguable error because the judge had gone on to consider internal relocation and that it was open to the judge to find that he had documents in the past and could be re-documented in the UK.

22. Ms Petterson submitted that the grounds had not sought to challenge the assessment of internal relocation nor had it sought to challenge any findings made by the judge relating to the issue of documentation either and solely relied upon the issue of humanitarian protection. Therefore, she submitted the grounds should not be widened at this stage to encompass those additional issues when no permission had been granted on that basis.

23. Dealing with the grounds as pleaded, she submitted that whilst there was no dispute that he was from a contested area, there was no material error capable of affecting the outcome of the appeal because the judge had gone on to consider internal relocation in any event.

24. When considering the submissions made for which no permission had been granted, she submitted that in respect of relocation to Baghdad, that the appellant's representative had not pointed the tribunal to any material concerning problems expressly for Sunni Kurds but in any event the judge had made a proper assessment as to why the appellant could relocate to the IKR where he had family members.

25. By way of reply Mr Boyle submitted that the grounds were sufficiently pleaded for the tribunal to take into account the issue of relocation. He accepted that the grounds should have been fuller but that it was necessary to consider whether the consideration of relocation was correct.

26. The conclusion of the hearing I reserved my decision.

Discussion:

27. I remind myself that I can only interfere with the decision of a FtTJ if it is demonstrated that the FtTJ made a decision which involved the making of an error on a point of law.

28. The FtTJ set out her findings of fact at paragraphs [13]-[28]. The FtTJ rejected the appellant's account as to the events in Iraq and gave adequate and sustainable reasons for reaching the conclusion that the appellant overall had not given a credible account as to events in Iraq and those reasons were based on the evidence before her. There is no challenge to those factual findings.

29. The grounds raise one issue only and that is in respect of the failure by the FtTJ to make an assessment of his humanitarian protection claim. That is also made clear by the grant of permission by Judge Andrew who identified that it was an arguable error of law for the judge to fail to consider whether the appellant could return to his home area of Jalawla taking into account the country guidance of AA (article 15 (c)) Iraq CG [2015] UKUT.

30. I cannot accept the submission made by Mr Boyle that the grounds do seek to challenge the issue of internal relocation and the issue of documentation. There is no assertion made in the grounds that relate to the issue of internal relocation by reference to the judge's determination or by reference to the country guidance decision. The reference to internal relocation at paragraph 4 is in the context of the error alleged to have been made by failing to consider humanitarian protection.

31. There has been no application to amend the grounds either before the hearing with a written application or indeed at the hearing itself.

32. In the decision of Das (paragraph 276B - s3C - application validity) [2019] UKUT 00354 (IAC) the Upper Tribunal stated at [16]:

> "16 It has recently been necessary for the Court of Appeal to underline the importance of adherence to proper standards of appellate advocacy in immigration appeals. It is not permissible, whether in that court or in the Upper Tribunal, for advocates to consider that they are at liberty to advance any argument which occurs to them, whether or not it appears in the grounds of appeal and whether or not any notice of the argument has been given to the respondent or the Upper Tribunal. The grounds of appeal frame the arguments which are to be advanced. As Hickinbottom LJ said in Harverye [2018] EWCA Civ 2848, the grounds are the well from which the argument must flow: [57].

> And as Lewison LJ stated in ME (Sri Lanka) [2018] EWCA Civ 1486, the arguments which can be raised on appeal are limited by the grounds of appeal for which permission has been granted: [22]. These observations apply with equal force to appellate proceedings before the Upper Tribunal. An application may be made to vary the notice of appeal but, in the absence of such a notice, advocates should expect that scope of their argument will be restricted to the grounds upon which permission was granted."

33. I therefore consider the grounds as drafted. Dealing with the grounds, it is clear that the FtTJ did not refer to the appellant's home area as a "contested area". However, I accept the submission made by Ms Petterson and as set out in the rule 24 response that when considering the decision holistically whilst the judge found that the appellant faced no risk of serious harm in his home area, the judge did not end her consideration there but went on to consider internal relocation to another area (not his home area) to either Baghdad or to the IKR and therefore any error in that regard was not material. The error identified in the grounds would not have affected the outcome of the appeal because even if the judge had expressly stated that his home area was situated in a "contested area" the judge would have to then consider issues of internal relocation which is what the judge in fact did.

34. Consequently, I am satisfied that there is no material error of law in the decision as asserted in the grounds.

35. Even though no application has been made by Mr Boyle to amend the grounds, and even if I were to waive any procedural requirement for the amendment of the grounds, I am not satisfied that the judge erred in law in her assessment of the issues of documentation or relocation.

36. The most recent country guidance case on the return of Iraqi Kurds is AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC) which concerned an ethnic Kurd from Kirkuk. The redocumentation question was not an issue for that particular appellant, however, as he was in possession of his Civil Status Identity Document (CSID). Nevertheless, the issue was considered with the Tribunal recognising that the Iraqi civil registration system was in disarray and that the possibility of an applicant to obtain a new CSID had to be assessed against that background and on various factors which required specific consideration (at 104-107).

37. It is clear from the country guidance decision in AA (Iraq) v SSHD [2017] EWCA Civ 944, where the amended country guidance set out in an Annex, that:

> "an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents **.**"

38. The basis for that guidance, amended by the Court of Appeal on a consensual basis, is set out at [36]-[41] of the judgment. It is based upon that court's earlier decision in HF (Iraq) v SSHD [2013] EWCA Civ 1276 (see [38]-[39] of AA). The context means that a claim cannot succeed where an individual assert that they are at risk in Iraq because they lack the very documentation needed to return to Iraq, *the absence of which* would put them at risk (see [38] of AA). However, if the absence of a document, once in Iraq, creates a risk in the country, then it is a live issue as to whether or not an appellant will be able to obtain such a document. That, of course, is the basis of the country guidance in both AA and AAH, that possession of a CSID is an important document when considering an international protection claim based upon an individual's circumstances once in Iraq.

39. The following guidance from AA (Iraq) CG [2017] EWCA Civ 944

> "*D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)*
>
> *As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*
>
> *In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
>
> *(a) whether P has a CSID or will be able to obtain one (see Part C above).*
>
> *(b) whether P can speak Arabic (those who cannot are less likely to find employment).*
>
> *(c) whether P has family members or friends in Baghdad able to accommodate him.*
>
> *(d) whether P is a lone female (women face greater difficulties than men in finding employment).*
>
> *(e) whether P can find a sponsor to access a hotel room or rent accommodation.*
>
> *(f) whether P is from a minority community.*
>
> *(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*
>
> *There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

40. In **AA (Iraq) [2017] EWCA Civ 944** - in particular I note the following:

> "*9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. ...*

> *10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.*"

41. Paragraphs 9 to 11 of the annex to AA (Iraq) CG [2017] EWCA Civ 944 deals with the importance of, and availability of, a CSID.

42. As explained by the Court of Appeal in *AA (Iraq) v SSHD* [2017] EWCA Civ 944 "A CSID is generally required in order for an Iraqi to access financial assistance from the authorities, employment, education, housing and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to fail and face a real risk of destitution amounting to serious harm if by the time any funds provided to P by the Secretary of State or agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID."

43. The FtTJ considered that the appellant may be able to obtain a CSID from the Iraqi Embassy in London (at paragraph 32). Contrary to the submissions made on behalf of the appellant, in *AA (Article 15(c)) Iraq CG* it was said that a person who is able to produce a current or expired passport and/or the book in page number for their family registration details may be able to obtain a CSID in the UK through the consular section of the Iraqi Embassy in London.

44. Ms Petterson, for the respondent, submitted that the FtTJ had before her the Upper Tribunal decision of *AA (Article 15(c) Iraq) CG* [2015] UKUT 544 (IAC)**.** Whilst the FtTJ did not expressly refer to this section, the decision expressly refers to 'Obtaining a CSID whilst in the UK'. It recites the expert evidence upon which the judge relied, which included the evidence of Dr Fatah and ties the various strands together with a concluding paragraph [177]. This is replicated in the CG decision of AAH (Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 00212 and which reads:

> "177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details.".

45. At [34] Dr Fatah's evidence was recorded that it would be for an individual to satisfy the consular staff as to his identity and nationality but having a CSID or passport, current or expired would be of great assistance. If the

applicant did not have such document, he could demonstrate his identity by calling on documented relatives to vouch for him.

46. The assessment made by the FtTJ was that the appellant did hold an Iraqi passport and had identity cards he identified as Karti Zanyary and Jensya (at paragraph 31) and the FtTJ began her assessment on the basis that he had previously been issued with an Iraqi passport which the judge found was “either still in his possession” or in the alternative “if he genuinely no longer does, I am satisfied that he could apply for a replacement passport to the Iraqi Embassy”.

47. There is no challenge in the grounds to any of the factual findings made by the FtTJ who found that the appellant to have fabricated his account in order to substantiate his claim for protection and that that he had planned his journey to the UK (see paragraph 28). Against that background it was reasonably open to the FtTJ to reach the conclusion that he had also not been truthful about whether the passport was still in his possession. At paragraph 21 the FtTJ found that the appellant had not given a truthful account of the whereabouts of the other family members. Furthermore, in his interview he had stated that he had his members of his mother family and his uncle living in the IKR (Sulaymaniyah) (Q36). Consequently, it was open to the FtTJ to reach the conclusion that he had his passport or had information concerning the details on his passport which, combined with assistance provided from his family relatives in Iraq would enable him to obtain a CSID either in the UK or as stated at paragraph 33 “ comparatively quickly on his return”.

48. As the judge considered that the appellant would be able to obtain a CSID within a reasonable timeframe if in Iraq this is consistent with the decision of AAH.

49. The second issue raised by Mr Boyle, although again the issue was not set out in the grounds, relates to the assessment of internal relocation to Baghdad. In the decision of the FtTJ at paragraph 35, the judge applied the guidance set out in the decision of BA (returns to Baghdad) and reached the conclusion that it would not be unduly harsh for the appellant to relocate to Baghdad as a single, male of Kurdish ethnicity and as Sunni Muslim. Mr Boyle submitted that the FtTJ was in error because the FtTJ did not consider his Kurdish ethnicity or the issues of accommodation or whether he had support from friends or family. He submitted that the assessment took no account of his ethnicity as a Kurd.

50. Ms Petterson on behalf of the respondent submitted that there was no separate assessment of Sunni Kurds beyond the headnote in BA (returns to Baghdad) relating to ethnicity but in any event that Mr Boyle had not referred the Tribunal to any objective material as to whether there were any Kurdish communities in Baghdad. She further submitted that that even if the assessment as to Baghdad was in error, it was not material as the FtTJ had gone on to consider that the appellant as a Kurd could internally relocate to the IKR at paragraphs 36-37 of her decision.

51. The decision of BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) states in the head note:

> "(v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012 but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.
>
> (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article of the decisio3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.
>
> (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection."

52. At paragraph 35 the FtTJ did consider the appellant's "individual characteristics" in accordance with the guidance which included his ethnicity as a Kurd (as the FtTJ expressly referred to him as "Sunni Kurd"). Whilst it was accepted that he had no family links to that city or any family members there who could support him, the FtTJ found that he could avoid destitution by being provided with the funds provided by the UK for those returning to Iraq and the assistance available to returnees from the Iraqi authorities holding a CSID. In view of the FtTJ's finding that he could obtain a CSID and that he would have the assistance form family relatives in Iraq, the assessment made by the FtTJ was reasonably open to her.

53. Even if the FtTJ was in error in reaching her conclusions that the appellant could internally relocate to Baghdad, I accept the submission made by Ms Petterson that any error would not be material to the outcome because the FtTJ also found , in the alternative that it would not be unduly harsh for him to relocate to the IKR (see assessment at paragraphs 36-37). The FtTJ applied the country guidance in AAH and that the appellant as a Kurd, but not from the IKR, he could obtain entry as a visitor and then renew his entry permission for a further 10 days. Whilst the FtTJ did not expressly refer to the whereabouts of the appellant's family members, the appellant had members of his mother's family and his uncle living in Sulaymaniyah (Q36) and therefore he would be able to access assistance from them. On the evidence before the FtTJ the appellant had experience as a labourer and therefore had the likelihood of obtaining employment in addition to family members in the IKR who could provide assistance to him.

Conclusion:

54. In summary, the assessment made was one reasonably open to the FtTJ on the evidence, both oral and documentary, and I am not satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law

to justify the setting aside of the decision. The decision to dismiss the appeal shall stand.

Notice of Decision

55. The decision of the FtTJ did not involve the making of an error on a point of law; the appeal is dismissed.

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

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.

Signed Date 30/3/2020

Upper Tribunal Judge Reeds