Upper Tribunal
(Immigration and Asylum Chamber) PA/08104/2019 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh by *Skype for Business* on 9 December 2020	Decision & Reasons Promulgated **On 30 December 2020**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

L O T

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Komorowski dismissed the appellant's appeal for reasons given in his decision promulgated on 10 August 2020.

2. The appellant's grounds of appeal to the UT are set out in his application dated 24 August 2020. It is narrated that the judge found it reasonably likely that the appellant would face persecution in his former home outside the IKR but he had not established what difficulties he would face in that region and so could relocate there; and that the grave hardship which many or most would face there was not determinative.

3. The challenge is to the last sentence of [52], which says:

> That many or most will face grave hardship is not determinative of whether the appellant will face hardship and the very unsatisfactory nature of the evidence regarding his own particular circumstances leaves an important part of the equation blank.

4. The grounds go on:

> [3] … the judge left out of account the submission … that the apparently genuine militia identity [which the appellant] provided was a clear indication that when returned to Erbil previously the appellant had been unable or unwilling to live in the … IKR … a material matter … in the assessment whether the appellant could be expected to safely and reasonably live in that region …
>
> [4] … the judge concluded that the appellant had not displaced the possibility of obtaining assistance from his family … the judge failed to provide adequate reasons why … his family would be willing and able to provide … support to an individual who has effectively abandoned them …
>
> [5] … the judge failed to provide … reasons for his conclusion that because an individual was able to provide him with assistance a great many years ago the individual (Sirwan) would be able to do so in 2020…
>
> [6] Both these errors undermine the judge's conclusion the appellant could take life up in the IKR and … of the appellant not facing very significant obstacles to integration in that region.

5. FtT Judge Ford granted permission on 28 August 2020, on the view that the tribunal arguably failed to assess whether it was reasonable to expect the appellant to relocate to the IKR, given his accepted background of working as a chef for Hashd Al Shaabi in Tuz Khurmatu, and having no history of living in the IKR.

6. I was referred to, and have considered, the written submissions made by parties on 9 March, 28 May, and 29 June 2020. However, these are parts of the case put to the FtT, not about error by the FtT in resolving it.

7. Mr Caskie said that the FtT erred on internal flight, but that the appeal turned on paragraph 276 ADE (vi) of the immigration rules.

8. That sub-paragraph of the rules enables an appellant to show a right to remain on grounds of private life if there are "very significant obstacles to [his] integration into the country to which he would have to go if required to leave the UK". This provision overlaps with internal flight considerations, but it essentially raises the question whether an appellant would be an "insider" or an "outsider" on return. The appellant would plainly be an insider. The sub-paragraph does not provide an easier alternative to success on grounds of undue harshness of internal flight, and I do not consider that reference to it tends to show any error by the FtT. If the evidence did not show that relocation would involve undue harshness, it could not realistically lead to succeed on private life grounds.

9. Mr Caskie in submissions stressed these points: when previously returned, the appellant did not remain in the IKR, but promptly left; there has been a massive influx there, increasing the population by 1/3; 10% of the population depends on humanitarian assistance, with many living in tents; it is perfectly possible that a large number of people are unable to integrate; the appellant has family in Iraq, but not in the IKR; there was no evidence of support available to him there; there was no one to take him in, and no prospect of a job. He said there was no foundation for the finding that the appellant could live in the IKR, that assessment of the

hardships he would face there under his particular circumstances was "simply absent", an absence which "could not be laid at the door of the appellant".

10. Mr Avery pointed out that the grant of permission was made on the misapprehension that the appellant is not originally from the IKR. That is correct, although it leaves the issue whether the grounds disclose any error on a point of law.

11. Having considered all that was said in support of the grounds, I agree with the submission by Mr Avery that they are no more than insistence on the case which was put to the FtT and disagreement with the outcome.

12. The FtT's decision is notably careful, clear, and thorough. The appellant's account was found reasonably likely in many respects. On matters such as his family and other contacts in Iraq, and his documentation, however, the judge explained at [39] – [45] why he was unable to make any findings of fact in his favour. No error has been suggested in any of that reasoning. That is the foundation for stating at [52] that the FtT was unable to find that relocation would be unduly harsh, and for stating at [53] that there was no basis for finding very significant obstacles to integration.

13. The argument for the appellant amounts to placing the burden of proof on the respondent, or even on the tribunal. Contrary to the submission, the absence of a favourable assessment does lie squarely with the appellant. He has shown no error of law in the FtT's conclusions, which simply followed from his failure to establish the primary facts, even to the lower standard.

14. The decision of the First-tier Tribunal shall stand.

15. The FtT made an anonymity direction, which is preserved.

Hugh Macleman

9 December 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the

Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.