**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/05799/2016**

**THE IMMIGRATION ACTS**

| **Heard at: Manchester** | **Decision and Reasons Promulgated** |
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| **On: 6th September 2017** | **On: 11th September 2017** |

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AF**
(ANONYMITY DIRECTION MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Sachdev, Solicitor, Bury Law Centre
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Iraq born in 1996. He appeals with permission against the decision of the First-tier Tribunal (Judge Herwald) to dismiss his protection appeal.

**Background and Findings of the First-tier Tribunal**

2. The Appellant is Kurdish. He claims to be a shepherd from a village close to Mount Sinjar in Nineveh province. He claims that he fled Daesh and that he would not be able to safely relocate within Iraq.

3. The Respondent rejected the entire claim for want of credibility and the Appellant appealed to the First-tier Tribunal.

4. At paragraph 14(a) of the Tribunal's decision it made an important finding in the Appellant's favour. The Respondent had rejected the Appellant's claim to be from Nineveh, but the First-tier Tribunal was satisfied that he was. Nineveh is a "contested area" where there is an Article 15(c) risk to the civilian population: AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). The Respondent now accepts that the Appellant cannot be returned there.

5. The question remained whether the Appellant could reasonably be expected to move to another part of Iraq in order to avoid Daesh, and the fighting that comes with them. It was the Respondent's case that Iraq is a big country and that the Appellant could safely live elsewhere; the refusal letter specifically posits Irbil, in the Independent Kurdish Region (IKR), as somewhere that he could reasonably be expected to live. The Appellant's response was that this region was not safe either, and that he had a specific reason why he did not want to go there. His father had left his mother and run away with a woman from the IKR. The woman's family had strongly objected to this. The Appellant would be at risk of retributive "honour" killing if he came into contact with this family.

6. The First-tier Tribunal accepted the Appellant's claim that his father had married a Kurdish woman from the IKR. It did not however accept that the Appellant had any fears in relation to her family. The Appellant had never met these people and there was no evidence that they would be able to locate the Appellant or know who he was. Further it was noted that the Appellant had made no mention of this issue when questioned at his 'screening interview' about the basis of his claim for international protection. As to whether relocation to Irbil/the IKR was otherwise practicable or reasonable, the Tribunal accepted that the Appellant did not have any identity documentation (CSID) and that he would not be able to obtain one from his contested home area. It accepted the Respondent's case that this would not present the Appellant with any difficulty. As a Kurd he would be admitted to the IKR for an initial period of ten days, leave which could be renewed, and he could stay longer if able to find employment. He had worked as a shepherd previously and the Tribunal was not satisfied that he would be unable to work. He could turn to his stepmother's family for assistance; the Tribunal was not persuaded that they would seek to harm him. It was not therefore unduly harsh to expect him to go to the IKR. The appeal was therefore dismissed on the grounds that there was a reasonable internal flight alternative in Iraq.

**The Appeal to the Upper Tribunal**

7. The Appellant applied for permission to appeal to the Upper Tribunal.

8. First, the Appellant challenged the First-tier Tribunal's credibility findings on the grounds that they are inadequately reasoned. His claimed fear of honour violence is apparently rejected on the grounds that his evidence was vague and he did not mention the matter in his screening interview. The Appellant submits that neither is a good reason and places reliance on YL (China) [2004] UKIAT 00145.

9. Second, the Appellant submits that in its assessment of the internal flight alternative the Tribunal did not consider all of the relevant factors, made contradictory findings and failed to make findings on key matters.

10. Permission was granted on the 16th January 2017 by Upper Tribunal Judge Canavan who said this:

> "It is at least arguable that the First-tier Tribunal may not have given sufficiently anxious scrutiny to the question of whether internal relocation was a reasonable option and/or would be unduly harsh. In particular, the Appellant's evidence appears to have been that his father left the country with him and the rest of the family. There was arguably no evidential basis to support the finding that he was likely to have friends and family in the IKR, which was accepted not to be home area. Nor was there any analysis of the practicalities of him arranging travel from to the IKR from Baghdad in circumstances where it was accepted that he is currently unable to obtain a CID and does not have a passport"

11. The matter came before me on the 14th June 2017 for a preliminary hearing into whether the decision of the First-tier Tribunal contained an error of law such that it should be set aside.

12. In respect of ground (1) my findings are as follows. I note that the screening interview took place on the 20th November 2016. Asked to BRIEFLY explain why he could not return to his home country (emphasis in original) the Appellant said:

> "I cannot return because of the war and because of ISIS. ISIS were in the area in which I lived. I do not wish to relocate to another part of IRQ as there is fighting everywhere and it is not safe. If I return I fear ISIS will kill me"

No mention is made of his father eloping and starting an honour feud.

13. The substantive asylum interview took place on the 17th May 2016. He reiterated his fear of ISIS and the basis of his claim. There is then the following exchange [from Q20]:

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| "When did your problems start? | When ISIS came on 3/8/14. |
| Did you have any before3/8/14? | Yes my real mother died when a woman from Kurdistan ran away with my father. |

There follows over one hundred questions and answers about where the Appellant was from, and why he fears ISIS. At Q126 it is put to him that he could go to Kurdistan in order to avoid any difficulties with ISIS. It is here that the Appellant explains that he fears going to Kurdistan because that is where the woman's family are from, that they are angry and that his father (with whom he left Iraq) could not take him there for fear of retribution. His father was also afraid that he would be arrested because he had eloped. Asked to explain why he had not volunteered this information at the screening interview the Appellant said that he had not been asked. He also explained that the screening interview had been conducted with an interpreter over the phone.

14. It seems to me that this is a paradigm YL case. In that decision the Upper Tribunal considered the factors to be considered when evaluating discrepancies arising in from screening interviews. The Tribunal says this at paragraph 19:

> "When a person seeks asylum in the United Kingdom he is usually made the subject of a 'screening interview' (called, perhaps rather confusingly a "Statement of Evidence Form – SEF Screening–). The purpose of that is to establish the general nature of the claimant's case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated".

15. In this case the Appellant was asked to explain why he cannot return to Iraq. He quite understandably mentioned ISIS and the war. Those were the reasons that he feels unable to return to Iraq. He was not asked whether there were

any other issues, or whether he was able to go to Kurdistan. When he was asked those questions, he answered them. It has been accepted that this Appellant is an uneducated shepherd; he could hardly be expected to have an awareness of Article 8 of the Qualification Directive, ie he could not have been aware that he needed to explain why he was afraid of returning *everywhere* in Iraq. I accept Ms Sachdev's submission that it was an error to have placed weight on the omission in the SEF.

16. I am not however satisfied that this was a material error. By the Appellant's own admission he has never met the family of his stepmother. He has no idea where they are from or who they are. It would follow that they are in equal ignorance about him. I note the terms in which he has expressed his fear in the substantive asylum interview. He stated that he and his father were unable to go to Kurdistan at the time that they fled ISIS because his father was afraid. There is no evidence at all that the Appellant himself would be identified, or be at risk, from these unknown people. Even if this part of the account is true, it can add nothing to the claim.

17. The issue remained as to whether the Tribunal dealt appropriately with the question of internal flight to the IKR. For the reasons which follow I was satisfied that this ground was made out.

18. In AA the Tribunal found that the IKR was "virtually violence free"[at 112]. The issue of relocation to Kurdistan is dealt with at 171:

> We have found at paragraphs 112 and 113 above that there is no Article 15(c) risk to an ordinary civilian in the IKR. What, though, of internal relocation? So far as a Kurd is concerned, the evidence of Dr Fatah was not seriously challenged by the respondent and we, in any event, accept it (see esp. paragraph 24 above). The position of Iraqi Kurds not from the IKR is that they can gain temporary entry to the IKR; that formal permission to remain can be obtained if employment is secured; and that the authorities in the IKR do not pro-actively remove Kurds whose permits have come to an end. Whether this state of affairs is such as to make it reasonable for an Iraqi Kurd to relocate to the IKR is a question that may fall to be addressed by judicial fact-finders, if it is established that, on the particular facts, permanent relocation to Baghdad would be unduly harsh. In such circumstances, the person concerned might be reasonably expected to relocate to the IKR. In this scenario, whether such further relocation would be reasonable will itself be fact sensitive, being likely to involve (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of securing employment; and (c) the availability of assistance from friends and family in the IKR.

19. Ms Sachdev submitted that those three factors (a)-(c), identified as being particularly relevant to any fact-finding exercise on internal flight, have not been dealt with adequately in the First-tier Tribunal's determination. The Tribunal had already accepted that the Appellant did not have a CSID. It conducted no analysis of whether or not that meant that the Appellant would be able to board a flight from Baghdad to Irbil, or indeed gain entry to the IKR. The finding that as a shepherd he was not unemployable did not amount to a

proper analysis of whether or not he would in fact be able to support himself, particularly given the country background evidence indicating a severe economic crisis in the region. The finding that the Appellant had relatives to whom he could turn – his stepmother's family – appeared to be at odds with the Tribunal's acceptance, at paragraph 14(b), that he did not know these people, know where they were from, nor even know their name.

20. I accept that there would appear to be a contradiction in the Tribunal's finding on the stepmother's family: it is difficult to see how he could turn to them for support if he does not know who they are. If the Appellant did not have relatives, did not have a CSID, was readily identifiable as a non-local (he speaks Bahdini, a dialect of Kurdish spoken in Nineveh, as opposed to the Sorani more widely spoken in the IKR) and had no discernible skills other than being a shepherd, it is arguable that upon closer analysis he could have made out his claim that he would face destitution if forced to relocate there.

21. In a written decision promulgated on the 22nd June 2017 I therefore set the decision of the First-tier Tribunal aside to a limited extent.

**Internal Flight to the IKR**

22. The hearing proceeded for remaking on the issue of internal flight on the basis of the agreed facts:

- The Appellant is Kurdish
- He speaks Bahdini
- He is a Sunni Muslim
- He is from Ninevah, near Mount Sinjar
- He worked as a shephard (and has no other work experience)
- He has had no formal schooling
- He has no CSID
- His stepmother was originally from the IKR but he does not know who her relatives are and has never had any contact with them
- He has no relatives of his own in the region. His natal family's last known whereabouts were Mount Sinjar; he does not know where they are today.

23. Ms Sachdev placed reliance on a new bundle of country background information. This was admitted into the evidence without objection by the Respondent. The bundle contained two items of particular significance. The first is a report dated 22nd August 2017 by recognised country expert Dr Rebwar Fatah. Although he did point to certain deficiencies in the report (matters which I address below), Mr Harrison took no issue with Dr Fatah's expertise or objectivity. The second document was the Respondent's most recent Country Policy and Information Note (CPIN), published in June 2017 and entitled 'Iraq: Return/Internal Relocation'. The parties made submissions on the effect of this

new country information and I reserved my decision. My conclusions are as follows.

24. The agreed facts are that the Appellant does not have a CSID and nor can he reasonably be expected to get a replacement, since that would involve him returning to Ninevah, a region in the grip of an armed conflict where he would face a personal risk to life and limb as the result of indiscriminate violence. Nor does he have a passport. Applying the findings in AA, it is accepted that he would be returned to Baghdad on a *laissez-passer*, or an emergency travel document.

25. In AA the Tribunal recommended that the practicality of travel between Baghdad and Irbil be considered as part of the assessment of internal flight. It made no findings on the matter itself, and I was shown no direct evidence on the point. I suggested at the hearing that common sense would tend to indicate that the Appellant would be able to board a domestic flight to Irbil using his *laissez-passer* as identification. If such a document can be used on international departures I find it difficult to see why it would not be considered acceptable on a short-haul domestic route. I note UNHCR's evidence [cited in the CPIN at 5.3.2] that "generally, it is not possible to travel without ID documents" but I am satisfied, for the purpose of this determination, that a *laissez-passer* would in these circumstances serve as a document establishing identity.

26. The evidence on what might happen on arrival in Irbil has significantly changed since the Tribunal gave its guidance in AA. At that time Dr Fatah stated that Kurds from Iraq would be given an initial period of entry for 10 days, and that after that they would be able to register to extend their leave in the IKR. The decision does not indicate that either a CSID or sponsor would be required, or that there would by any particular difficulties in Kurds deciding to stay in the region. That was the state of the evidence in May 2015. The evidence presented today departs from that in three important respects.

27. First, many of the sources cited, by both Dr Fatah and the Respondent in the CPIN, state that Kurds from outside of the IKR may now be required to have a sponsor in the region before they are permitted to enter or remain there:

> "The Erbil governate only allows the entry of IDPs from the Ninewa governate, such as [the Appellant] if they have the sponsorship of a Kurd who is local to the Erbil governate. These instructions were put in place after the Mosul offensive began in October 2016, and they apply to people from the Ninewa governate regardless of ethnic or religious background, though in practice the restrictions may apply more stringently for Turkmen from Tel Afar and Arabs than other ethnic and religious groups. As a Kurdish IDP from the Ninewa governate, [the Appellant] may still be subject to these restrictions. It is not clear how many people are able to obtain sponsorship to enter Erbil governate".

[Dr Fatah, paragraph 67]. See further the evidence cited at section 7 of the CPIN, where sources are varied as local journalists, Kurdish human rights organisations and the IOM concur that the sponsorship requirement, withdrawn in 2012 due to concerns about corruption, has been reintroduced.

28. Second, there has now emerged clear evidence that the absence of a CSID is as significant in the IKR as it was considered in AA to be in respect of Baghdad. Dr Fatah considers it to be a legal and practical requirement [at 68] and the Respondent herself says this [at 3.3.1 CPIN]:

> "A Civil Status ID (CSID) and the Iraqi Nationality Certificate (INC) are key documents which establish a person's identity. The CSID enables a person to access services such as financial assistance, employment, education, housing and health. A person whose return is feasible but who does not have a CSID or cannot obtain one, and who does not have support of family or friends, is likely upon return to face destitution amounting to a breach of Article 3 of the European Convention on Human Rights (ECHR)"

29. Third, as the foregoing indicates, there is evidence to indicate that the socio-economic conditions in the region have significantly deteriorated, with the massive influx of IDPs placing an increased pressure on the local economy. Dr Fatah states [at 96-99] that it will be very difficult for the Appellant to find employment, partly because he is uneducated with only sheep-herding experience, and partly because he has no connections locally: "kinship and social networks are important for obtaining employment, housing and accessing social services in Iraq" [Fatah, para 99]. Even if the Appellant were able to secure accommodation without a CSID (for instance through bribery) it is difficult to see how he would be able to pay the rent week to week if he is unable to obtain formal permission to work. As an unskilled labourer entering a market where there are already high rates of unemployment, I accept that the Appellant is likely to be further hampered by his lack of connections to Irbil.

30. I cannot be satisfied, in light of this new evidence, that there is a reasonable or practicable internal flight alternative in the IKR. The Appellant has neither sponsor nor CSID with which to secure entry or permission to remain. Even if those requirements were overlooked and he managed to get into Irbil, he has no skills to speak of, no connections there and no CSID. Unemployment, and therefore homelessness and destitution, appear to be reasonably likely. I agree with the Respondent's assessment that this would breach Article 3 and that in those circumstances internal flight would not be a reasonable alternative.

**Decisions and Orders**

31. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

32. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside to the limited extent identified above.

33. The decision is remade as follows:

"The appeal is allowed on protection grounds".

Upper Tribunal Judge Bruce
7th September 2017