



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06046/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 June 2017

**Decision & Reasons
Promulgated
On 19 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

B A

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, Counsel instructed by Quality Solicitors (AZ Law)

For the Respondent: Mr M Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is an Iraqi national born on 10 April 1961. The background in this case is not in dispute and is set out in the papers. The appellant appealed to the first-tier Tribunal against the decision of the respondent dated 27 May 2016, refusing the appellant's application for asylum and humanitarian protection and his appeal under the ECHR.
2. In a decision promulgated on 23 February 2017, Judge of the First-tier Tribunal Miller dismissed the appellant's appeals under asylum and humanitarian protection and Articles 2 and 3 but allowed the appellant's appeal under Article 8.

3. The appellant appealed with permission from the Upper Tribunal on the basis that there was merit in the grounds that the judge had failed to consider all relevant risk factors in accordance with the country guidance in considering that the appellant would not be at risk in Iraq.

Error of Law

4. It was conceded at the outset by Mr Bramble that the decision contained an error of law. In particular Mr Bramble noted that the appellant is a Christian and would be perceived as a Catholic. Mr Bramble also indicated that he was not relying on the respondent's Rule 24 which sought to indicate that the decision was sustainable. Mr Bramble submitted that although the judge noted that the appellant had been westernised he did not deal with the issue of religion.
5. I am satisfied that the judge's decision in relation to the appellant's protection claim is unsustainable. Although the judge carefully analysed the appellant's Article 8 appeal there was no consideration of the risk to the appellant as a Christian or in relation to Article 3 generally. The respondent had accepted that the appellant is an Iraqi Catholic. Although the judge did not 'envisage him being targeted even though he might be 'westernised' the decision is silent as to the claimed risks to the appellant as a Christian. Judge Miller had also accepted at [36] that the appellant has no family and other ties whatsoever in Iraq and that he left Iraq when he was 9 years old and is now 55 years old but failed to give reasons why the appellant did not qualify for protection under Article 15(c), if that was the case given his individual characteristics.

Remaking the Decision

6. As already indicated there was no challenge to the judge's findings allowing the appellant's appeal under Article 8.
7. In relation to the appellant's appeal, other than under Article 8, it was not disputed that the respondent accepted the appellant's nationality, identity and religion. However, the respondent stated at paragraph 23 of the refusal letter that the appellant would not be targeted "above and beyond any other non-Sunni". The respondent stated that the appellant could relocate to Baghdad or another safe area in Iraq.
8. The appellant was born on 10 April 1961. His father was an official photographer for the former Iraqi royal family. King Faisal II was assassinated in 1958. In 1968 when the Ba'ath Party assumed control of Iraq the appellant's father was arrested and detained, being released from prison on payment of a bribe in 1969. The family including the appellant, his sister and his parents fled to Kuwait in 1970 and the appellant has not returned to Iraq since. The family subsequently moved from Kuwait to Abu Dhabi and then entered the UK in 1982 on visit visas when the appellant was 21 years old. The appellant has not left the United Kingdom since that time.

9. In assessing the risk on return I have had regard to the expert report of Sheri Laizer in the appellant's bundle together with the country guidance case law and the background country information in relation to the risk of persecution for Christians. Mr Bramble submitted that this was relevant to his concession that there was an error of law in the respondent's approach (and although Mr Bramble did not formally concede the appeal on remaking he made no submissions other than to direct me to the relevant material in support of the appellant's case).
10. At pages 392 to 393 of the appellant's bundle the respondent's country information dated August 2016 in relation to Iraq: religious minorities, sets out the abuses against Christians. In particular it was noted that groups targeting Christians:

"reportedly combined kidnappings or killings with criminal activities for profit ... Christian groups reported that militias and armed groups confiscated phones abandoned by community members who fled the country following the sectarian violence of 2006 to 2008".

The country information went on to state that a number of murders and kidnappings of Christians in Baghdad had been reported and that "the trend of Christian kidnappings in Baghdad had risen since the formation of the Popular Mobilisation Unit (MPU) Shia militia". Many Christians have left their homes and their properties were subsequently seized. Christians in other parts of Iraq also live in fear although they were never exposed firsthand to the effects of ISIS.

11. The expert report of Sheri Laizer at page 120 to 144 of the appellant's bundle before the First-tier Tribunal detailed that as a Chaldean Catholic Christian the appellant would present as a non-practising Muslim, from a known Christian family in an environment where radical groups are increasingly in control outside the KRI area. The expert indicated that family records can show the family to have been Christian and born as such and that there were no family in Baghdad that could assist the appellant. The expert also indicated that this had to be considered in the context where Christians increasingly live in fear in their traditional areas of residence, many fleeing the Islamic militant groups both Sunni and Shia.
12. At page 266 of the appellant's bundle, the "no way home: Iraq's minorities on the on the verge of disappearance" highlights the difficulties experienced by Christians in Iraq:

"Many minority communities in Iraq are now on the verge of disappearance. The Christian population, which before 2003 numbered as many as 1.4 million, had dwindled by 350,000 by early 2014, and since the ISIS advance is now estimated as under 250,000".

13. I have considered the country guidance including **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018** which provides:

- “(i) The level of general violence in Baghdad City remains significant, but the current evidence does not justify departing from conclusion of the Tribunal in **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**.
- (ii) The evidence shows that those who worked in non-security related Western international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have higher levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the government of Iraq.
- (iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. Insofar as there may be a low level of risk of such groups in Baghdad it is not sufficient to show real risk solely as a perceived collaborator.
- (iv) Kidnapping has been and remains, a significant persistent problem contributing to the breakdown of law and order in Iraq. Instance of kidnapping are likely to be underreported. Kidnappings might be linked to political or sectarian motive; other kidnappings are rooted in criminal activity for purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target of a kidnapping made Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive on the principle the longer a person has spent abroad the greater the risk. However the evidence does not show a real risk to a returnee in Baghdad on this ground alone.
- (v) Sectarian violence has increased since the withdrawal of the US-led coalition forces in 2012, but is not at the level seen in 2006-2007. 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 Article 3 ECHR if assessed on accumulative basis. The assessment would depend on the facts of each case.

(vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are unlikely to be unwilling to provide sufficient protection”.

14. I have taken into consideration all of the evidence including the expert report and the background country information. In light of the appellant’s 47 year absence from the country, his Westernisation and the fact in particular that he is from a religious minority I am satisfied that these cumulative factors indicate that the appellant is at risk of persecution on the basis of his membership of a religious minority. In particular the appellant is likely to be perceived as a potential target for kidnaping in Baghdad given how long he has been away from Iraq and that he is from a Christian minority. Although **BA (Returns to Baghdad) Iraq** is authority that there was not a real risk to returnees on the basis alone of the fact that they had been abroad for a significant level of time, taken together with the fact that the appellant has never lived in Iraq as an adult and left as a child together with the evidence of growing difficulties for ethnic minorities including Christians in Iraq I am satisfied that the cumulative factors mean that the appellant is at real risk of persecution on return to his home area of Baghdad.
15. It was not submitted by Mr Bramble that the appellant could safely relocate elsewhere in Iraq. Even if the respondent’s contention in the refusal letter that the appellant could relocate was maintained I am not satisfied that the appellant could safely relocate outside of Baghdad. The appellant is not from the Iraqi Kurdish Region (IKR) and as a non-Kurd at risk in his home area in Iraq he is unlikely to be able to relocate to the IKR (**AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** applied). I find that he cannot. Although it was not specifically argued that the appellant could relocate to (certain parts of) the Baghdad belts, even if this were safe I am satisfied that it would be unduly harsh/unreasonable given all the factors, including that the appellant has no family members or friends that might accommodate him/assist him; that I accept that he has largely lost his Arabic skills, that he is from a minority community and I accept that he lacks proof of identity documents; has no sponsor or other support available.
16. Further in the alternative if I am wrong in relation to the convention reason I am satisfied that the appellant would be entitled to a grant of humanitarian protection both on the same factual matrix.
17. I have also considered whether in the alternative the appellant qualifies for humanitarian protection under Article 15(c). In reaching this finding I have applied the relevant country: **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** and have considered **R(on the application of H) v The Secretary of State for the Home Department (application of AA(Iraq CG) IJR [2017] UKUT.**
18. The country guidance sets out the position on indiscriminate violence in Iraq and confirms that decision makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection in

order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm. In relation to feasibility of return:

B DOCUMENTATION AND FEASIBILITY OF RETURN (excluding IKR)

- “5. Return of former residents of the Iraqi Kurdish region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.
6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.
7. In the light of the Court of Appeal’s judgment in **HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276**, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification documentation, if there Tribunal finds that P’s return is not currently feasible, given what is known about the state of P’s documentation.

C POSITION ON DOCUMENTATION WHERE RETURN IS FEASIBLE

8. It will only be where the Tribunal is satisfied that the return of P to Iraq is feasible that the issue of alleged risk of harm arising from an absence of Iraqi identification documentation will require judicial determination.
9. Having a Civil Status Identity Document (CSID) is one of the ways in which it is possible for an Iraqi national in the United Kingdom to obtain a passport or a laissez passer. Where the Secretary of State proposes to remove P by means of a passport or laissez passer, she will be expected to demonstrate to the Tribunal what, if any, identification documentation led the Iraqi authorities to issue P with the passport or laissez passer (or to signal their intention to do so).
10. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport or other form of Iraqi identification document.
11. Where P’s return to Iraq is found by the Tribunal to be feasible, it will generally be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. 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 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 her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

..."

19. The respondent in the refusal letter concluded that the appellant could return home and that the situation of internal security conflict within Baghdad was not such as to give rise to indiscriminate violence. The respondent noted that the appellant did not have a national identity card but the respondent concluded that the appellant would be in a position to obtain replacement documents via the embassy in London. However, the appellant has not provided a passport or expired passport and there was no evidence that he has access to the necessary documentation to obtain a passport or laissez passer (a CSID or Nationality Certificate). I am not satisfied that return is not currently feasible.
20. **AA** at paragraph 7 of the headnote states that 'an international protection claim made by an appellant cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification documentation, if the Tribunal finds that P's return is not currently feasible'. A finding, as is the case in my findings with this appellant, that he cannot currently be returned, owing to a lack of particular travel documentation, will not be determinative of the claim for international protection if the appellant faces a risk of serious harm other than solely by reason of the appellant's lack of such documentation (**R(on the application of H) v The Secretary of State for the Home Department (application of AA(Iraq CG) IJR [2017] UKUT** applied).
21. I have considered whether I can go on to consider the risk to this appellant on return and whether he could internally relocate, given that his return to Iraq is not currently feasible. I am satisfied that I can and I am supported in this conclusion by **AA**. In that case the appellant was a Kurd from a disputed area and the Tribunal accepted the appellant would face an Article 15(c) risk there. As with this case there was no evidence that the appellant had access to Iraqi documentation and the Tribunal found that he would not be returnable until he was able to supply sufficient documentation to the Iraqi Embassy but nevertheless the Tribunal remitted the case to the First-tier Tribunal for findings of fact on relocation, finding:

207 'Given that the appellant's return is not currently feasible it could be said that it is unnecessary to hypothesise any risk to him upon his return to Iraq. However, as identified in paragraphs 169 and 170 above, there may be cases where it will be evident that the person concerned would be at real risk of persecution or serious harm irrespective of the lack of documentation and that an applicant should not be precluded from pursuing a claim to international protection in circumstances where the asserted risk of harm is not (or not solely) based on factors (such as lack of documentation) that currently render a person's actual return unfeasible.'

22. The appellant in this case faces a risk, otherwise than due to the lack of documentation, as he is from a Christian minority and has been outside of Iraq most of his life (and I rely on my findings above in relation to his circumstances on return). All Iraqis not from the IKR will be returned to Baghdad. If I am wrong in my above conclusions in relation to internal relocation, I have considered that the appellant does not have a CSID and I am not satisfied, given his particular circumstances that he would be able to obtain one reasonably soon after arrival, given that it is accepted that he has no family or friends who would likely be able to provide means of support. I am satisfied therefore (in line with C11 of the headnote of **AA**) that the appellant, given his individual characteristics, is likely to face a real risk of destitution mounting to serious harm, as it is reasonably likely that he will still have no CSID by the time any funds provided to him by the Secretary of State, to assist return, have been exhausted.

Conclusion

23. The decision of the First-tier Tribunal is set aside. I remake the decision allowing the appellant's appeal on asylum grounds. As I have allowed the appeal on asylum grounds I make no finding in relation to the Qualification Directive.
24. If I am wrong in relation to the Refugee Convention grounds the appellant qualifies for Humanitarian Protection, under the Qualification Directive, including Article 15(c).
25. I similarly allow the appeal under human rights Articles 2, 3 and preserve the First-tier Tribunal's findings in relation to Article 8.

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 their 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: 15 June 2017

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT **FEE AWARD**

No application was made for a fee award or is applicable.

Signed

Date: 15 June 2017

Deputy Upper Tribunal Judge Hutchinson