The Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07684/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 2nd June 2017	**On 6th July 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR.Y.J.O.

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Broudie Jackson Centre.
For the Respondent: Mr A McVettey, Home Office Presenting Officer.

DECISION AND REASONS

Introduction.

1. The appellant is a Kurdish national of Iraq and a Sunni Muslim. He gave his date of birth as January 1990. He was encountered by immigration officials and then claimed protection.

2. He said that he was from Daquq. He claimed his father was an informer for the Ba'ath party and was responsible for the deaths of two Peshmerga.Subsequently, the appellant and his friend was recruited by the Peshmerga to provide intelligence on Isis activity. In May 2015 he discovered that his friend had been caught by Isis and they knew of his involvement. Fearful, he travelled to Kirkuk. Shortly afterwards he discovered that his friend had been killed by Isis. A month later they had been to his home. Seven months later he left Iraq.

3. The respondent refused his claim in July 2016. The respondent referred to the country guidance case of AA(article 15 (c) Iraq CG [2015] UKUT 544 which recorded that the armed conflict in Kirkuk was such that as a general matter any civilian returned there faced a real risk of being subjected to indiscriminate violence within the scope of article 15 (c) of the Qualification Directive. It was accepted that he came from there and that it was a contested area.

4. It was not considered credible that he would be involved with Peshmerga if they were seeking revenge for his father's actions towards their comrades. It was not considered he was at risk from them. Regarding his claim about ISIS his account was considered to be inconsistent and his claimed fear of them was rejected.

5. Taking his claim at its highest the respondent considered the feasibility of his return to a different part of Iraq. The respondent concluded that he could live in the IKR, for instance in Erbil. He could be returned to Baghdad and then travel onwards.

The First tier Tribunal

6. At the outset of the hearing the presenting officer submitted additional country information with a view to demonstrating a change in country conditions. The suggestion was that Kirkuk was no longer a contested area. The reception this evidence was opposed on behalf of the appellant with the argument being if a new approach to the feasibility of return was being introduced then they would have to request an adjournment in order to prepare. The judge considered the information presented but was not prepared to depart from the position as stated in the country guidance decision

in relation to Kirkuk. The judge concluded that because of this the appellant could not be returned to Kirkuk.

7. The judge did not find the appellant credible. The judge referred to his failure to mention at screening his claim about his father. Furthermore, it was considered inconceivable if his father was an informer that the Peshmerga would recruit the appellant. A similar view was taken of the appellant's claim that he was to act as informant for Isis. The judge gave numerous reasons, set out in paragraph 16 of the decision. At paragraph 18 in summary the judge said there was no part of his account that could be accepted and there was no viable basis for a fear from imputed political opinion outside a contested area.

8. At paragraph 19 the judge went on to consider the question of return and internal relocation. The judge accepted in line with the country guidance decision and article 15 (c) that he could not return to Kirkuk. The judge referred to practicalities of return discussed in the country guidance.

9. On the basis the appellant did not have identification documents the judge concluded it was not at that point feasible to return him. The judge did say however that with some effort on his part he could obtain documentation through his family with whom he was in contact.

10. The judge then went on to consider return to Erbil via Baghdad. The country guidance decision indicated that the IKR was violence free. A Kurd who was not originally from there could obtain entry for a limited period, subject of finding employment.

11. The judge at paragraph 27 referred to the need to consider the appellant’s specific situation. It was accepted he had a very limited education and only spoke Kurdish Sorani. The judge referred to him as being resourceful and concluded he could establish himself in either the IKR or Baghdad. The judge did not accept he had no family support. The judge concluded at paragraph 28 that the appellant had failed to discharge the burden to the lower standard that there were no places where he could not safely live in the IKR.

The Upper Tribunal

12. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable the judge did not fully apply the country guidance given on internal relocation.

13. The respondent opposed the appeal by way of rule 24 response. Reference was made to paragraph 15 of the decision and the appellant’s circumstances. The judge had not accepted the

appellant was without family support. The judge had concluded that if he entered via Baghdad he could travel onwards to the Kurdish region where he should be able to secure employment.

14. The appellant's representative at hearing confirmed there was no challenge to the judge's negative credibility findings. Rather, the challenge remained as set out in the leave application and the consideration of relocation. In particular this required an assessment of the appellant's individual characteristics. It was submitted that the judge in considering relocation according to the Elgafaji decision and whether the appellant would face a risk of article 15 (c) harm the judge had set too high a threshold. Rather, the test was whether the appellant could reasonably be expected to stay in another part of the country rather than whether they would face a real risk of 15 (c) harm.

15. It was submitted that to simply describe the appellant as resourceful was inadequate. It was necessary to consider the mechanism of travel, the likelihood of employment and the support available from family or others.

16. It was also argued the judge factually erred in referring to the appellant returning to the IKR or Baghdad, being places where he had never lived.

17. In response, the presenting officer referred me to the judge's comments at paragraph 24 that the appellant could get documents sent from his family. Therefore he would not be undocumented on return. As someone with documentation he could access the labour market. He would not be required to turn to his family for ongoing support. In the IKR he would not need a sponsor. The judge found that he was resourceful and this was not an irrelevant consideration. It was relevant to his ability to access the labour market. Furthermore he would be returning with a package from the UK government which would help his integration. There are flights to Baghdad from London and from there he could make his way to Erbil. The presenting officer said he would not need to be in Baghdad for any length of time and that it was possible to go to Erbil directly from there as flights had commenced as of January 2017.

18. In response the appellant's representative acknowledged the finding that the appellant has relatives who could send him documentation. However documentation was only one of the factors relevant. He would not have the practical support of his family's presence because of where they where. He submitted that even with documentation but without links to the area it was questionable whether he could find employment in a short timescale.

Consequently, it was submitted the comment that he was resourceful was not adequate.

Consideration

19. No challenge has been made to the judge's conclusion that the appellant's underlying claim in relation to his father and Peshmerga and Isis was untrue. The only issue arising was a question of the appellant's return. The judge was not prepared to accept that the situation in Kirkuk had improved to the point where it was no longer considered a contested area. Consequently, the focus was upon the appellant's return to Baghdad and then from there to the IKR.

20. I find nothing turns on the judge's use of the phrase `return '. Although the appellant says he is from Kirkuk and so would not be returning to Baghdad or Erbil it is clear that the phrase `return' is not meant literally but rather is a reference to his country.

21. In terms of AA and as a matter of principle there is no obligation on the respondent to prove preclearance or any other mechanism of return. There was no challenge to the judge's findings that he has family who could provide him with documentation. There was no challenge to the judge's finding that with documentation the appellant could be returned to Baghdad by air. There was no challenge to the judge's statement at paragraph 26 that travel by air from Baghdad to Erbil is taking place. In Erbil he will be able to gain entry to the remainder of the IKR.

22. The principal challenge has been upon the reasonableness of the proposed relocation and the contention that the judge did not make sufficient findings of fact specific to the appellant. In such an exercise the practicalities are that only the most basic findings will most likely be available. The appellant's age was not disputed. He was a young man with no health issues. He spoke Kurdish Sorani. There was no finding he spoke Arabic. The judge found that he had some contact with his family. The judged posed the question as to whether it would be reasonable to expect the appellant to relocate. His return was premised on his ability to obtain documentation. The judge at paragraph 27 indicated an appreciation of the need to have regard to the individual's characteristics as set out at paragraph 15 of the country guidance decision. Reference was made to the background information about what he might face on return. It was accepted that he had a very limited education. No additional risk factors were identified. My conclusion from this is that the judge has set out a basic matrix for concluding that return was reasonable. That conclusion was open to the judge. Consequently, I find no material error of law established.

Decision

I find no material error of law established in the decision of First tier Judge Lloyd Smith. Consequently, that decision, dismissing the appellant's appeal on all grounds shall stand.

Deputy Judge Farrelly

5th July 2017