



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08574/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 6 September 2018

Decision & Reasons Promulgated
On 21 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M F M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Smith, Counsel instructed on a direct access basis
For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr M F M who is a national of Iraq whose appeal came before the Upper Tribunal on 15 June 2018 to decide whether there was an error of law in the decision of First-tier Tribunal Judge Williams. In a Decision and Reasons promulgated on 28 June 2018, the Upper Tribunal found an error of law but adjourned the appeal for consideration of the viability of internal relocation in light of the pending country guidance decision in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC). An anonymity order is appropriate in light of the fact that this is an asylum claim. A copy of the error of law decision is appended.

2. At the hearing before the Upper Tribunal, the Appellant adopted his witness statement dated 30 August 2018 and was questioned as to whether he knew where his uncle was working when he left Turkey, to which the Appellant stated that he did not go to his place of work very frequently and helped him sometimes, but he lost his uncle's contact number and everything when he left Turkey, that he does not speak Turkish and is not able to subsequently get in touch with him, but although he knew the restaurant where his uncle was working and where he occasionally assisted doing washing up in the evening, he did not know the specific location except that it was in Istanbul.
3. In cross examination, the Appellant clarified that the smuggler confiscated his belongings and whilst he had had his uncle's phone number the smuggler made him throw it away and that is how he lost contact with his uncle.
4. Miss Smith sought in her submissions to rely on her skeleton argument which is dated 13 August 2018. She pointed out that the Appellant had previously been found to be credible by the First-tier Tribunal and that positive findings had been made that he had no CSID, that his family at Mosel had been killed and he had no family in Iraq but only his uncle in Turkey with whom he had no contact. She submitted in terms of applying the country guidance decision in AAH (op cit) the Appellant would not be in a position to leave Baghdad in order to go to the IKR as it has been accepted he does not have a CSID, that he is not someone who has family who could provide documents or accompany him in attending at a registration office. He simply would not be able to get a replacement CSID in Baghdad. She pointed out that the First-tier Tribunal Judge had found it would be unduly harsh for the Appellant to remain in Baghdad. The finding was the Appellant could go to the IKR, however this is clearly unsustainable in light of the country guidance decision in AAH. She submitted that there were sufficient findings made by the First-tier Tribunal to allow the appeal. In the alternative, if it is necessary to go on to consider return to the IKR, this would be unduly harsh given that he is from Mosel and it has been accepted he has no family. He will be unlikely to secure any regular employment and in terms of any financial support the only suggestion would be that this could be provided by his uncle in Turkey, however he has lost contact with him and it cannot easily be assumed that the uncle would either wish to return to Iraq or could be expected to financially support him, given the lack of contact.
5. In his submissions, Mr Bates accepted the clear-cut findings made by the First-tier Tribunal Judge and that the only challenge that he could make was in relation to whether the Appellant is credible in the sense of having lost contact with his uncle with whom he had fled to Turkey. He submitted that the First-tier Tribunal was not satisfied that the Appellant had lost contact with his uncle, that the Appellant clearly knows where his uncle works and so it is up to the Appellant to contact the restaurant in Istanbul to enquire whether his uncle is still working there and to find someone who speaks Turkish. Mr Bates accepted this was the only realistic route, the Appellant would not be in a position otherwise to go the IKR, and even if he did, the question would be whether remittances from his uncle would be sufficient to support him without him falling into destitution.

6. In reply, Miss Smith submitted that even if the Upper Tribunal did not accept lack of contact between the Appellant and his uncle, that did not impact on the primary argument, which is that even if the uncle is in contact with the Appellant he is not in Iraq. It was highly speculative to find that the uncle would be able to return to Iraq. It is not known if the uncle has documents to travel to Iraq and it is only with documentation that the uncle could assist the Appellant in becoming redocumented, which is not known, particularly given that he is a displaced person. Even if it is assumed the Appellant is in contact with his uncle, there is serious doubt whether or not he would be able to obtain a CSID. All of this requires a considerable amount of speculation. Miss Smith submitted that the case must succeed on preserved findings, and that is that the Appellant has no CSID in order to get himself out of Baghdad. The Appellant does not know the name of the restaurant from the area in Istanbul where his uncle worked and it was not reasonable to expect the Appellant to track down his uncle via this route.
7. I reserved my decision, which I now give with my reasons.

Findings and reasons

8. I find that on the basis of the unchallenged and preserved findings of fact by the First-tier Tribunal Judge that the Appellant is from Mosel, that his village of Al Rashsh was attacked by ISIL and his relatives killed. The Appellant cannot return to Mosel, as it is a contested area. It was accepted by the First tier Tribunal that the Appellant does not have a CSID. At the time of the hearing before the First-tier Tribunal it was the position that flights were direct to the IKR and it was on that basis that the judge found the Appellant could internally relocate to the IKR. However, in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) the Upper Tribunal found expressly that absent a CSID, and given there are no international flights to the IKR, all returns would be to Baghdad, thus the Appellant will essentially remain in Baghdad.
9. The Upper Tribunal found that it would not be possible to board a flight between Baghdad and the IKR without either a CSID or a valid passport. Thus essentially, in light of the fact that there is no realistic possibility absent a CSID or passport that the Appellant would be able to travel to the IKR, I find that his appeal is made out on the basis that it is not reasonable to expect him to remain in Baghdad and that would be a breach of Article 3 in light of the Respondent's policy, set out at [151] of AA (Iraq) [2015] UKUT 00544 (IAC) that:

"A person returned to Iraq who was unable to replace their Civil Status ID Card or Nationality Certificate [who would] be likely to face significant difficulties in accessing services and a livelihood and would face destitution which is likely to reach the Article 3 threshold."

10. In the alternative, I find that it would be unduly harsh for him to relocate to the IKR, even if he were able to travel there, in the absence of family support and the means of durable and meaningful financial support. Whilst the Appellant has an uncle in Istanbul he says and I accept that he has lost contact with him. I accept the submission of Ms Smith that it is speculative to assume that the Appellant would be

able to find his uncle and even more speculative to assume that his uncle would accompany him back to Iraq or be in a position to financially support him.

11. In the absence of any family or “special circumstances” there is a reasonable degree of likelihood that the Appellant would have to resort to a critical shelter arrangement and the Upper Tribunal found in AAH that this would be unduly harsh.
12. The Upper Tribunal further found that that it is not possible to work without a CSID and thus the Appellant would have no access to the means of supporting himself, even if he were able to find employment, in light of the fact his work experience is limited to helping his father, who was a shepherd, as a child; one year’s training as a barber and helping wash dishes in a restaurant in Istanbul, given that the unemployment rate for IDPs living in the IKR is 70%.
13. Consequently, in light of the unchallenged findings of fact by the First tier Tribunal and the country guidance decision AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) the appeal falls to be allowed on the basis that removal of the Appellant to Iraq would be contrary to the United Kingdom’s obligations in respect of Article 3 of ECHR.

Notice of Decision

The appeal is allowed on humanitarian protection grounds.

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 *Rebecca Chapman*

Date 20 September 2018

Deputy Upper Tribunal Judge Chapman