Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08058/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre (remote)	**Decision & Reasons Promulgated**
On 29 July 2021	**On 17 August 2021**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

ABB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Ell, Counsel
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

In this decision I re-determine the appeal against the respondent's decision dated 29 July 2019, in which she refused the appellant's asylum and human rights claims. In an earlier 'error of law' decision

dated 4 December 2020, I set aside a decision of First-tier Tribunal ('FtT') dismissing the appellant's appeal on asylum and humanitarian protection grounds and allowing his appeal on human rights (Article 8) grounds.

Background

The appellant's background can be stated succinctly because the FtT has already made findings of fact on significant matters, which have been preserved.

I expressly preserved the following aspects of the appellant's account, as accepted by the FtT: the appellant is a citizen of Iraq of Kurdish ethnicity; although he was born in Erbil in the IKR, he and his family moved to Makhmour when he was a child and he remained living there with his family until his departure from Iraq in 2015; the appellant worked with the Peshmerga up until his departure.

I also preserved some of the FtT's adverse findings of fact as summarised at [57] of the FtT's decision: the appellant did not have a credible or well-founded fear of harm from members of the Surshi tribe, and; the appellant remained in contact with or has the possibility of contacting his family members remaining in Iraq.

Issues in dispute

At the hearing before me both representatives agreed that the issues in dispute are narrow in the light of the preserved findings:

(i) Does the appellant face a real risk of serious harm in breach of Article 15(c) of the Qualification Directive in Makhmour, in the light of his accepted history, in particular as a Kurd and a former Peshmerga fighter, and the country guidance contained in SMO (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400?

(ii) If yes, can the appellant be reasonably expected to relocate to the Independent Kurdish Region ('IKR') without undue harshness, by reference to the country guidance in SMO?

Mr Ell clarified that although the appellant's statement referred to a discrete risk arising to him because of his desertion from the Peshmerga, he did not make any separate submission on the issue, albeit this formed part of the appellant's background and relevant to the wide-ranging assessments required for issues (i) and (ii) above. Mr Ell also clarified that while his skeleton argument placed reliance upon Article 8 of the ECHR and paragraph 276ADE of the Immigration Rules, upon reflection he no longer relied upon those submissions. That must be correct because it is difficult to see how there could be a free-standing Article 8 claim in this case, if I found against the appellant in relation to his primary submissions.

Evidence

The appellant relied upon a short 25-page bundle and two witness statements dated 14 April 2021 and 22 July 2021. He was asked a few additional questions by Mr Ell and cross-examined by Mr Diwnycz.

Submissions

Mr Diwnycz relied upon a position statement prepared on behalf of the respondent inviting me to resolve the two disputed issues against the appellant, whilst Mr Ell relied upon a skeleton argument inviting me to accept that the appellant faces an Article 15(c) risk in his home area and cannot relocate to the IKR without undue harshness. I refer to those submissions in more detail when making my findings below.

At the end of the hearing I reserved my decision, which I now provide with reasons.

Findings

Risk en route to home area

Mr Ell accepted that the proper approach to the un-appealed and preserved factual findings requires the case to be approached on the basis that the appellant is in contact with family members and would be able to obtain his CSID in advance from them, in order to make the journey from Baghdad airport to his home area in Makhmour. Mr Ell was right to do so. As noted in my 'error of law' decision, there was no cross-appeal against the FTT's findings of fact. The appellant's screening interview and asylum interview clearly indicate that the appellant left his CSID with his family in Iraq, who he remains in contact with.

I note the evidence in SMO to the effect that Makhmour has followed a very difficult history involving conflict on the part of various actors and has been in a period of flux for some time. This means that there is a possibility that his family fled the area. The difficulty with this proposition is that the appellant has provided unreliable evidence concerning contact with his family. Although many fled Makhmour and surrounding areas during the high points of the conflict, there is no credible evidence that this family left or have not returned. In any event they would have taken with them the important documents belonging to the family members. If they lived in a particularly dangerous area or had come to harm, the appellant would have given evidence about that.

Like the FtT, I do not accept that the appellant has had no contact with any family member since leaving in 2015 save for one call with his sister in 2018 when she told him that their mother had died. The appellant was entirely unable to explain why the family would be in danger by merely having telephone or email contact with him or how

the Surshi family / tribe would be able to find out about this. When answering questions, the appellant consistently referred to the risk posed by the Surshi family / tribe to himself and his family members, arising from his failed attempt to avenge a blood feud. He entirely failed to acknowledge that this claim has been found to be entirely incredible for the reasons provided by the FtT at [47] to [57] and that this adverse finding was preserved. Like the FtT, I am satisfied that the appellant has provided an inaccurate account regarding the absence of continued family contact. I do not accept his claim that all contact stopped for the reasons he has asserted to be reasonably likely. It follows that he continues to have contact with family members who, can provide him with his CSID to enable him to travel to his home area or anywhere else considered to be safe and reasonable.

Risk in home area

I accept Mr Ell's submissions in his skeleton argument that the appellant's risk of Article 15(c) harm must be assessed by reference to the country background in the light of his particular circumstances pursuant to the relevant 'sliding scale analysis', as set out in SMO – see headnotes (3) to (5). In this regard it is important to note that the risk of actual or indirect violence in the appellant's home governorate of Ninewa is higher than anywhere else, and the risk in and around Makhmour is particularly concerning because it is part of the disputed territories, being fought over by ISIS, Erbil and the PMU – see [60] and [259-261] of SMO. Notwithstanding this, SMO did not conclude that the risk of violence to civilians in Makhmour meets the Article 15(c) threshold.

It remains necessary to go on to undertake the sliding scale analysis. I do so bearing in mind the particular risks and uncertainties that accrue in Makhmour as part of the disputed territories.

Kurds are not in de facto control of the area and probably face a raised risk from ISIS and the PMU wherein the local balance of power is contested and fluid, and ISIS remains active. However, as explained at [300] of SMO, membership of an ethnic or religious minority may increase the risk to an individual but a contextual evaluation rather than a presumption is required. Mr Ell made no meaningful effort to take me to any evidence to enable me to evaluate the basic proposition as a Kurd, this appellant is at enhanced risk in Makhmour, beyond the fact that it is part of the disputed territories. I nonetheless accept that being a Kurd raises risk in the Makhmour area.

In addition, as a former Peshmerga the appellant might be perceived as part of the security apparatus on the part of ISIS, particularly in the context of Makhmour, where ISIS remains active. However, as SMO notes at [298] a current actual or perceived association with security

apparatus is more likely to enhance risk than a former association, given ISIS's goal of unsettling the existing apparatus, rather than to punish former association. This appellant left the Peshmerga many years ago in 2015. I do not accept his claim that he is well-known or that he will stand out. He based this upon his feud with the Surshi family, which has been found to be wholly incredible. I therefore do not accept that the appellant's history of being a Peshmerga raises his risk.

Mr Ell faintly suggested that the appellant might stand out or be perceived to be Westernised by reason of his residence in the UK from 2016. There was no indicator within the appellant's evidence that he would be perceived as Westernised either by reference to his personal appearance, linguistic / dialect peculiarities or social habits. Mr Ell was unable to take me to any country background evidence linking mere residence in the West to a person being perceived as Westernised in Iraq, such as to raise risk. I note the observations at [311] of SMO and find that there is insufficient cogent evidence to support the appellant being at raised risk beyond his Kurdish ethnic origin and associated religion.

I am satisfied that when all the relevant factors are considered individually and cumulatively the risk to this particular appellant does not engage Article 15(c). As a former Peshmerga with a large family presence in Makhmour, he knows the area well and will have links and contacts to reduce the risk of violence. I note that in a statement dated 13 June 2019 the appellant explained that he came from a family that enjoyed a good level of financial means. Although his risk is raised as a Kurd, he will have the knowledge, experience and contacts to navigate the area in a manner which means that he does not face serious harm in breach of Article 15(c).

For the avoidance of doubt, I do not accept that the appellant deserted the Peshmerga. The FtT did not clearly resolve the issue and focused upon risk of persecution if there had been desertion. The appellant's claim to have deserted the Peshmerga before me and the FTT is entirely inconsistent with his claim at the asylum interview (Q124-130) that he asked to leave and was told that he must leave because of the risk from the Surchi tribe.

Internal relocation

In case I am wrong about risk in home area, I have gone on to consider internal relocation.

There is no reasonable likelihood that the appellant will be at risk of ill-treatment during the screening process at the IKR border. Although he is a single man of fighting age who comes from an area associated with an ISIS presence, he comes from a family with clear links to the Peshmergas and Erbil. He worked as a Peshmerga and has

not deserted from them. He would be able to evidence that he recently arrived from the UK and not after any stay in ISIS associated territory. He also has a sister to turn to for assistance and to vouch for him in the IKR. As set out above his other family members would be able to provide him with his CSID in advance.

I note that the FtT had concerns as to whether or not the sister in Erbil would be able to provide support in the absence of the consent of a male relative, albeit there was no clear finding that that the appellant could not turn to his sister for support. Indeed, I note from SMO at headnote (26) and [55] that cultural norms within the IKR are such that families would be expected to help with accommodation, and in such circumstances returnees would in general have sufficient assistance so as to lead a 'relatively normal life'. I have had regard to the particular family in question to assess whether his sister would in practice offer the appellant material assistance. I note that cultural expectations in the KRI are such that a woman who has married into a different family may not be able to extend a welcome. The appellant asserted that his sister simply would not be allowed to do so because her husband would not let her. This was based upon speculation only because the appellant has had no clear conversation with his sister about this. His sister cared enough about the appellant to inform him of his mother's death. I do not accept his blanket assertion that his sister would be unable or unwilling to help.

In these circumstances the appellant would have access to accommodation, support and contacts to enable him to begin to lead a 'relatively normal life' in the IKR. Although employment is difficult to find he has demonstrated resilience and determination in the past both as a Peshmerga and in his journey to the UK, and will be able to access some form of employment in the IKR.

Conclusion

For these reasons the appellant does not face an Article 15(c) risk or Article 3 of the ECHR ill-treatment in his home area but if he does, he can safely and reasonably relocate to the IKR.

Mr Ell acknowledged that if I found against him on the reasonableness of internal relocation, he could not properly argue that the appellant would face very significant obstacles to his reintegration in the IKR, and in these circumstances withdrew reliance on Article 8 of the ECHR. For the avoidance of doubt, for the reasons I have outlined in relation to internal relocation, the appellant is unable to demonstrate the requisite very significant obstacles.

Anonymity

The appellant continues to seek international protection. As such I am satisfied, having had regard to the guidance in the *Presidential*

Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the terms set out above.

Decision

The appeal is dismissed on protection (Article 15(b)) and human rights (Article 3 and Article 8) grounds.

There is an order for anonymity.

Signed: UTJ Melanie Plimmer
Upper Tribunal Judge Plimmer

Dated: 30 July 2021