IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001771
First-tier Tribunal No: PA/52547/2021
LP/00360/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wilson of Refugee and Migrant Centre.
For the Respondent: Mr Gazge, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 23 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and/or member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Following a hearing at Birmingham on 22 October 2022 the Upper Tribunal found a judge of the First-tier Tribunal had erred in law limited to the issue of the

failure to consider the reasonableness of the proposed internal relocation. The findings made by that judge in relation to all other aspects were preserved.

2. The appellant is from Sulamaniyah in the Kurdish region of Iraq. He claimed to face a real risk on return as a result of a blood feud. At [22] the First-tier Tribunal judge found:

> 22. I accept according to the supporting documents provided, that the appellant's family are embroiled in a blood feud and that his father was recently kidnapped and killed by the family they are at odds with. I accept the appellant's account to the extent, that his sister was kidnapped, and his father was killed in 2019. Accept according to the media reporting, that the family they are at odds with, is influential; the article states the family have 'influence over government'. No further details have been provided however, to qualify or explain this, it is therefore not clear what precisely is meant by this, that is, what influence they have; however, given the context in reference to the PUK, I find it is likely it is referring to the government authorities within the IKR region. On this basis, I accept that a risk may arise in the appellant's home area.

3. The Judge finds at [26] that the authorities in the appellant's home area, the PUK, would be unwilling or unable to protect the appellant if required and goes on at [26 – 28] to find:

> 26. Although, I find it is open to the appellant to relocate to a different region within the IKR or elsewhere in Iraq; I find the appellant has failed to show why he cannot safely relocate. According to the CPIN, there is now part of Iraq to which a Kurdish person cannot relocate. Although the appellant is shown the family he is feuding with are considered influential, the appellant has not shown, that there reach or influence extends throughout the entire territory.
>
> 27. The appellant accepts he remains in contact with his family members in the IKR, as the 2008 Tribunal found, namely his mother, sister and the uncle who informed him via Facebook about his father's death. I find on his return, the appellant can seek the help of his family members, in securing the necessary documentation to facilitate his entry. The appellant claims his CSID and other identity documents were returned to the IKR, I find arrangements can be made to retrieve them or secure replacements.

4. The appellant was questioned by Mr Gazge and I do not find, especially in light of the fact he has contact with family members, that he has established that he is unable to trace the identity documents that he claims he returned to his family in Iraq. I find that it was not established that the appellant could not arrange for his identity documents to be sent him in the UK or for a family member, such as his uncle or others, to meet him at Irbil airport on his return and hand the documents to him.

5. As noted in the error of law decision, there has been a substantial change to the Secretary of State's arrangements for return and it is likely even if the appellant cannot return to Sulamaniyah that he can be returned to Irbil, an area within the control of the KDP. The evidence does not support the claim the family of whom

it has been found the appellant has a blood feud with has influence throughout the whole of the Kurdish regions of Iraq.

6. The correct approach to internal relocation under the Refugee Convention was set out by Lord Bingham of Cornhill in Januzi and others v Secretary of State the Home Department [2006] UKHL 5 at [21] where it was stated:

> "The decision maker, taking into account all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so".

7. In Secretary of State for the Home Department v AH (Sudan) and others [2007] UKHL 49, at [22], Baroness Hale of Richmond stated:

> "Further, although the test of reasonableness is a stringent one - whether it would be "unduly harsh" to expect of the claimant to return - it is not to be equated with a real risk that the claimant will be subjected to inhumane or degrading treatment or punishment so serious as to meet the high threshold set out by article 3 of the European Convention on Human Rights. As Lord Bingham points out, this is not what was meant by the reference to article 3 in Januzi, including what was said by my noble and learned friend, Lord Pope of Craighead, when he referred to "the most basic of human rights that are universally recognised" at paragraph 54. Obvious, if there were a real risk of such ill-treatment, return will be precluded by article 3 itself as well as being unreasonable in Refugee Convention terms. But internal relocation is a different question.

8. It is therefore settled law that decision-makers should not equate "unduly harsh" within an article 3 risk.

9. Although the appellant has been in the United Kingdom for some time, the life they will face on return has to be considered in the context of standards prevailing generally in the appellant's country of nationality. The question is whether the appellant and the family could return to live a life which is normal in that context and free from the well-founded fear of persecution or ill treatment found by the First-tier Tribunal.

10. In AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) the Tribunal held that there is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a wellfounded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings. *It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there.*

    (*my emphasis*)

Discussion

11. For the purpose of the Resumed hearing the appellant has provided an additional witness statement dated 31 January 2023. Although this was only seen by Mr Gazge on the day he was able to read the same did not object to it being filed outside the time limit provided in the directions attached to the error of law finding.

12. In that document the appellant states:

> I NMA born in Sulaymaneyah-Darbandykhan, I have no relatives or friends in the Irbil governorate. In order even to rent a property I would need the consent of the local mukhtar. I could not get this without someone to act as a reference. I would also need an INID. The CSID would not be sufficient.
>
> My wife and children have no identity documents. They will need INID for everything; to register in school, GP, hospital. They would have to go back to our home area, near Sulaaymneyah, to register their biometrics and get INID. I would also go there to get an INID.
>
> I could not get employment in Irbil because I have no contacts. I could not get government or non-government employment. Previously I had an import/export business. I had a partner but I have not been in touch with him up for 4 or 5 years. Even if the business still exists, it is based in the Sulaymaneyah area, under PUK control. I could not carry the business on in the KDP area. A business needs the support of the KDP or PUK, who would take a percentage. KDP will be suspicious if I tried to carry on the business in their area.
>
> My family have no social contacts in the Irbil area. They would stand out because of the differences in accents and vocabulary. It will be difficult for them to integrate and the children would face problems at school.

13. The appellant entered the United Kingdom in 2016. The appellant's application for asylum was refused and claims based upon his further submissions refused on 28 October 2020. The appellants wife, SMAQ born on 7 April 1981, is a dependent on his application as are their children, MNM born on 18 January 2004, HNM born 20 October 2010, and HNM born 23 September 2013.

14. Both advocates placed reliance upon the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns.

15. It is a preserved finding, not disturbed by any evidence or submissions made before me, that the appellant will have access to his identity documents. This appears to relate to a CSID. The claim the appellant would not be able to function with such a document has no merit, especially in light of the recent information that has become available from the authorities in Iraq that there are still a substantial number of CSA offices in Iraq still issuing CPIN, including 21 in Sulaymaniyah Governorate. The appellant has not identified his local CSA office or established it is not one of those still issuing that document. The failure of the appellant to specifically identify the local CSA office also means that there is no barrier made out to the appellant's wife renewing her CPIN either, although there is no finding of any risk targeting the appellant's wife and children by the First-tier Tribunal that would prevent her from travelling to obtain the necessary documents if required, in any event. There was insufficient evidence before the First-tier or this tribunal to establish that the family with whom the appellant

has the blood feud would have sufficient contacts to know the family had returned or one or other was travelling to obtain or renew identity documents.

16. The appellant has provided insufficient evidence to establish he could not change his relevant place of registration to Irbil for the purposes of providing biometrics and obtaining an INID if required. The country material speaks of arrangements being made for displaced persons being able to obtain replacement identity documents in places other than their home area, a point not satisfactorily addressed in the appellant's statement or evidence.

17. Reference was also made to the current country guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) and specifically to the headnote at [32 – 34] by Mr Wilson, in which it is written:

> *32. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
>
> *33. For Kurds without the assistance of family in the IKR the accommodation options are limited:*
>
> *(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
>
> *(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;*
>
> *(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
>
> *(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
>
> *34. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*

(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID or INID;

(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.

18. It was not disputed by Mr Wilson the appellant is likely to be able to benefit from the return scheme but he submitted that the funds that this would provide would not enable the appellant and his family to live a relatively normal life, as it was likely to only cover accommodation and food for a maximum of about six months after which a private source of income will be needed.

19. The appellant has a work ethic and has clearly worked in the past. He ran a successful import-export business and it is not made out that he would not be able to re-establish such work in the future. He claims not to have been in contact with the person with whom he previously worked in relation to continuing the business relationship and so has not established that if he made contact he would not be able to do so. The claim in relation to inability to set up such a business in the KDP is not supported by evidence. There is no evidence the appellant has, or will be suspected of having, any association with ISIL.

20. The claim in the appellant's statement that dialect or other regional issues may hamper the family is not made out. There has been such a substantial movement of people within northern Iraq, as a result of ISIS and the resultant internal displacement, that many are having to re-establish their lives in areas other than where they previously lived. There is insufficient evidence to establish that coming from one part of the IKR to the other will make relocation unreasonable.

21. As found by the First-tier Tribunal, the appellant has family within Iraq with whom he is in contact. The appellant has not established that there will be no support from these family members available to him, his wife or the children.

22. I do not find it reasonable to suggest that the appellant and his family, especially the children, could reasonably be expected to relocate to one of the IDP camps. As it is not made out there are family members within the Irbil Governorate the appellant and the family will be required to rent accommodation. It is also the case that although in SMO there is reference to £1500 payments, the voluntary return scheme financial support can provide up to £3000. It is more likely, as the appellant has family members including children, that the higher amount is likely to be made available to him.

23. Taking the figures provided in SMO, an apartment in a modern block in a new neighbourhood being available to rent at a cost between $300 and $400 per month, this will provide accommodation for between 9 to 12 months, during which time it has not been shown the appellant could not obtain sufficient access to resources, work or otherwise, to support his family.

24. The appellant has not provided any evidence that the family would not be able to access ad hoc charities or PDS rations on return whilst he was developing his economic profile, if needed.

25. Even if the appellant has no contacts within the Irbil Governorate, which would assist in securing introductions to prospective employers, it is not made out this would prevent him or those with no contacts from being able to find work or to establish themselves in a self-employed capacity.

26. Mr Wilson also referred to the CPIN at 6.3.1 referring to a January 2021 UNHCR report. This refers to residency requirements. The reference to Erbil and Sulaymaniyah Governance is to Iraqis not originating from the IKR who must approach the local Asayish in the neighbourhood in which they seek to reside in order to obtain a residency permit. It is stated a sponsor is not required and that such permit is usually valid for a year. The appellant in this appeal does originate from the IKR and has access to the necessary documentation to prove this.

27. It was not made out that the children who are in education would not be able to obtain places if returned to Iraq and continue with their studies.

28. This is a family who lived in Iraq until leaving to come to the UK, according to the evidence, and who are well versed in the reality of life within that country, particularly within the IKR. No member of the family has an adverse profile such as to create a real risk from either of the government bodies within the IKR and, in particular, there is no evidence of any real risk to any family member within the KDP controlled area of Iraq from any identified source.

29. It is not made out the family are such outsiders that it prevents them re-adapting to life in Iraq. They clearly can.

30. As noted above, the burden is upon the appellant to establish that relocation to the area identified would be unreasonable. I find on the evidence that although the appellant establishes it would be difficult and that there may be obstacles, he has not established that such obstacles cannot be overcome or that it will be unreasonable to expect the family to internally relocate on the facts of this case. Even if some aspects may be harsh, it has not been established that relocation will be unreasonable or unduly harsh. It is not made out the family will not be able to live a life which is normal within the context of life in the KDP controlled are of the IKR.

31. On that basis, when combining this finding relating to the specific issue of reasonableness of relocation with the preserved findings made by the First-tier Tribunal, I find that the only sustainable outcome is that the appeal is dismissed. The claims of the family members, who are dependents of the appellant, fall in line.

Notice of Decision

32. I dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 February 2023