



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03786/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21st May 2018

Decision & Reasons Promulgated
On 19th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

DASHTI RASHID HAMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Iraq born on 29th December 1994. He entered the UK illegally on 3rd October 2016 and applied for asylum two days later. That application was refused on 5th April 2017 for the reasons given in an Asylum Decision

of that date. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Lawrence sitting at Hatton Cross on 18th May 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 12th June 2017. The Appellant sought leave to appeal that decision and on 19th March 2018 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because as he stated at paragraph 13 of the Decision he found the Appellant's claim that it was impossible for him to return to Iraq safely as a fabrication to prevent his removal. However, the Judge found that the Appellant was an ethnic Kurd from a place called Basiqa, but that he would be returned to Baghdad. The Judge was satisfied that it would be reasonable to return the Appellant to Baghdad following the decision in **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**. The Judge found that the Appellant could obtain a CSID enabling him to return to Baghdad. The Judge also found that in any event it would be safe for the Appellant to return to Basiqa following the decisions in **AA** and also **BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC)**.
4. At the hearing before me, Mr Gilbert argued that the Judge had erred in law in coming to these conclusions. He argued that the Judge had wrongly based his decision on the assumption that the Appellant would be returned to Baghdad. However, the Appellant was from a Kurdish region in the district of Mosul and therefore a return to Baghdad would be contrary to Home Office policy. Mosul was now in an area of conflict and according to the latest Home Office Policy Guidance, the Appellant would not be returned there as it was not safe to do so. As there was no Home Office policy to return Kurds to Baghdad, the Appellant could not be returned to a safe area. In any event, the Appellant could not obtain a CSID in order to return to Baghdad.
5. In response, Mr Tufan acknowledged that the Judge had made a number of mistakes of fact, but in his submission there was no material error of law in his Decision. Although the Appellant was an ethnic Kurd, Basiqa had been occupied by Kurdish forces in 2014, but had been re-taken by Kurdish forces in October 2017 and was therefore now part of Iraq proper. Therefore, in accordance with Home Office policy the Appellant would be returned to Baghdad. Following the decision in **AA** as modified by the decision in **Amin, R (on the application of) v SSHD [2017] EWHC 2417 (Admin)** it was safe and not unreasonable for a Kurd to return to Baghdad. As further decided in **Amin**, the Appellant would be able to obtain a CSID.
6. In response, Mr Gilbert referred to his Skeleton Argument and submitted that the ability to obtain a CSID or otherwise has been resolved in the decision in **AA (Iraq) v SSHD [2017] EWCA Civ 944**.
7. I find no material error of law in the decision of the Judge which I therefore do not set aside. There are a number of unfortunate factual mistakes in the Decision, but there

are no factual errors amounting to an error of law in the basic facts of this case which are that the Appellant is an ethnic Kurd from a place called Basiqa in the district of Mosul. Whether or not it is safe to return the Appellant there is not material because the Judge made a clear finding that it would not be unreasonable by way of being unduly harsh for the Appellant to return to Baghdad. As Mr Tufan explained, it is not and never has been the policy of the Home Office not to return ethnic Kurds to Baghdad. The issue of the Appellant's ability to obtain a CSID enabling him to return to Baghdad was decided by the Judge without error of law. He found incredible the evidence of the Appellant that he could not obtain a CSID in accordance with the Country Guidance case of AA, and that finding of credibility has not been challenged in this appeal.

8. For these reasons I find that despite the errors made by the Judge, those errors do not amount to a material error of law requiring the decision of the First-tier Tribunal to be set aside.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 15 June 2018

Deputy Upper Tribunal Judge Renton