



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05150/2016

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre
On: 14th August 2018**

**Decision & Reasons Promulgated
On: 23rd August 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**NM
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Holmes, Counsel instructed by Greater Manchester
Immigration Aid Unit**
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iraq born in 1990.

Anonymity Order

2. This appeal concerns the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential

Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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”

Background and Matters in Issue

3. On the 18th April 2017 the First-tier Tribunal (Judge NMK Lawrence) dismissed the Appellant’s protection appeal. Judge Lawrence rejected the Appellant’s claims that he was at risk from ISIL in his home town of Mosul, and in the alternative found that he could reasonably be expected to internally relocate within Iraq. The Appellant was granted permission to appeal that decision in limited terms on the 16th May 2017 by First-tier Tribunal Judge Hodgkinson. Following an unfortunate judicial detour and attendant delay the matter came before Designated Judge of the First-tier Tribunal McClure on the 22nd February 2018. Judge McClure accepted, and the Respondent conceded, that the decision of Judge Lawrence was flawed. Whilst the Appellant had been refused permission to challenge the generally negative findings as to his credibility as a witness, Judge McClure was satisfied that the First-tier Tribunal determination had not adequately addressed the matter of internal flight. It had been accepted before the First-tier Tribunal that the Appellant faced, as a civilian, a real risk of harm in Mosul due to the indiscriminate violence arising from the state of armed conflict in that governate. Judge Lawrence had failed to have regard to all of the pertinent evidence in conducting his assessment of whether it would, in those circumstances, be reasonable to expect the Appellant to relocate within Iraq. The matter comes before me to remake that part of the decision.
4. The agreed facts are:
 - i) That the Appellant is from Mosul, in Ninewa province;
 - ii) That remains a contested area such that Article 15(c) of the Qualification Directive is engaged;
 - iii) The Appellant is a single healthy male;
 - iv) He speaks the Bahdini and Sorani dialects of Kurdish but very few words of Arabic;

- v) He has had no education and holds no qualifications;
 - vi) His only work experience is that he worked for his father in the family business (which he latterly ran himself) selling fruit and vegetables from a cart in Mosul;
 - vii) He is a Sunni Muslim
 - viii) He has never lived anywhere else in Iraq other than Mosul. He has never been to Baghdad;
 - ix) He has no relatives in either the IKR or Baghdad;
 - x) He is currently undocumented.
5. Those matters being agreed the parties identified, as matters in contention, whether the Appellant remains in contact with his family in Mosul, and whether he would be able to obtain identity documents either before or after arrival in Iraq.
 6. Mr Diwnycz confirmed that it remains the Secretary of State's intention to enforce the Appellant's removal to Baghdad International Airport. Although international flights to Erbil have resumed there is no indication that the appellant, as a non-resident of the IKR, would be removed directly to the region.

Discussion and Findings

7. At paragraph 2.4.9 of the Secretary of State's September 2017 Country Policy and Information Note *Iraq: Return/ Internal Relocation* the Respondent makes an important concession in respect of undocumented Iraqis:

A person who:

- a. is unable to replace their CSID or INC; and
- b. is unable to obtain support from family members or others

is likely to face significant difficulties in accessing services and humanitarian conditions which may reach the Article 3 threshold. In these circumstances a grant of Humanitarian Protection (HP) will be appropriate.

8. The Appellant submits, as a starting position, that he falls squarely within that policy and should accordingly be given leave to remain. He avers that he left his CSID and other documentation in his home in Mosul when he fled in November 2015. He had escaped the city concealed in a car and had thereafter been

transferred to a lorry where he was smuggled across the Turkish border. In his witness statement dated 16th February 2018 the Appellant maintains his earlier evidence to the effect that he has had no contact with his parents in Mosul since the date that he left the city. At the time that he escaped the (mobile telephone) networks were down as a result of the fighting and he has not been able to resume contact since. Nor has he had any contact with other family members or anyone else who would be able to try and retrieve his old papers, or help him get new ones.

9. Mr Diwnycz relied, in response, upon the findings made by Judge NMK Lawrence at paragraphs 17-18 of his decision:

“17.....In the instant appeal the Appellant claims he does not know the whereabouts of his father. But he went on to say his family is in Mosul. I do not accept the appellant is not in contact with his family. There is no logical reason for him to be. This is a lie in order to prevent his return to Iraq.

18. I find that he is able to contact his parents and siblings in Mosul. He could look to them for assistance in securing a CSID”.

10. Mr Diwnycz submitted that these findings had not expressly been set aside by Judge McClure and in those circumstances he was entitled to rely upon them. The Appellant could not now seek to re-open evidential matters that were closed in this remaking, which is confined to the issue of internal relocation.

11. Whilst Mr Diwnycz’s reliance on the passages in question is entirely understandable, I am unable to read Judge McClure’s decision in the manner he suggests. In that brief decision the Tribunal simply records that the decision of Judge Lawrence insofar as it relates to internal flight, is to be set aside upon agreement of the parties:

“those credibility findings in respect of the substance of the appellant’s claim to asylum, humanitarian protection or relief on the grounds of Articles 2 and 3 were to stand save and except insofar as they related to the issue of relocation”.

12. Since the finding in question – the likelihood of the Appellant having retained contact with his family and so to be able to retrieve his CSID – is directly connected with the question of internal flight, I can only read Judge McClure’s decision (and the concession upon which it was based) to mean that these passages were set aside. For my part I would do so on the basis that they are entirely unreasoned. There is no contradiction in the Appellant’s evidence that his father’s last known whereabouts was Mosul, but he cannot say where he is today. The finding that there is “no logical reason” why contact would have

been lost rather overlooks the fact that Mosul was, in November 2015, a war zone. Given the extent of the damage to the city it is entirely plausible that mobile telephone masts would have been destroyed or put out of use, as described by the Appellant in his earlier witness statement.

13. Mr Diwnycz went on to make a further submission on this point. Beyond saying that he has been unable to contact his family by telephone, the Appellant gives no indication that he has attempted to contact his family by any other means. He has not, for instance, said that he has contacted the Red Cross.
14. I have considered the evidence in the round. I note that the Appellant has consistently claimed to have lost contact with his family immediately upon departure from Mosul. That evidence is consistent, I accept, with the very difficult security situation in Mosul at the time of his departure. Although I can find no specific contemporaneous reference to mobile telephone masts in the objective material I note the evidence in the August 2016 Country Information and Guidance note *Iraq: Security Situation in the Contested Areas* (in the Appellant's original bundle) which reports that civilian infrastructure was destroyed by both ISIS and the ISF and aligned forces [section 8.4]. The extensive damage to the city was commented upon by country expert Dr Fatah in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) [see for instance at paragraph 30]. The file further contains a newspaper article by Patrick Cockburn, (the Independent's foreign correspondent with long-standing involvement in the Middle East) who reported in March 2017 how the devastation of the city was such that residents in the Old City were dying of hunger and how the "weak mobile phone signal" prevented civilians from contacting their relatives in besieged areas of the town.
15. I bear in mind that Judge Lawrence did not accept the Appellant's claims to have been directly approached and threatened by the Taliban, and to that extent his credibility has been impugned. I also bear in mind that there is no evidence before me of the Appellant using any other means to contact his family (whilst recognising that this point was not put to him). I am however satisfied that the Appellant's consistent account of having lost contact with his family is supported by the country background material. Applying the lower standard of proof I am satisfied that this element of his account is true. It is plausible and credible that family members would lose touch in such circumstances.
16. I therefore turn to consider the next element of the Home Office concession: is the Appellant able to secure either his original CSID (abandoned when he left Mosul) or a replacement?
17. I am satisfied that there is no realistic prospect of this Appellant managing to obtain a replacement CSID prior to his return to Iraq. I make that finding having had regard to the guidance on consular assistance given in AAH (Iraq), which

built upon the earlier guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). I make that finding for the following reason:

- i) The Appellant has no copy documents or information thereof;
- ii) He is not able to provide the requisite form signed by the head of his family (ie his father);
- iii) He has no-one in Mosul whom he can contact to assist him there;
- iv) Even if the Appellant were to find his father, or someone in Mosul who was able and willing to act as a proxy, their ability to do so would be severely hampered:
 - a) Because the registry office in Mosul was destroyed/severely damaged under ISIL occupation [see para 30 AAH];
 - b) The registrars operating the system in Iraq face a huge backlog because no civil status events were recorded during the entire ISIL occupation and the ensuing war. In Mosul alone there are 1.5 million people who need their records updated [ibid]
 - c) The Iraqi authorities have not implemented any policies or processes to assist IDPs with the redocumentation process [para 105 AAH].

18. For the same reasons I am not satisfied that there is any realistic prospect of the Appellant being able to obtain documentation within a reasonable time frame following return to Iraq. Given the agreed framework of this remaking the Respondent does not suggest that the Appellant could travel to Mosul himself. It is difficult to see, in those circumstances, how the Appellant can remake contact with his parents, his only possible hope of being able to obtain his old CSID card or, in the absence of any of the relevant information, a new one.

19. For those reasons I find that the Appellant falls within the terms of the Secretary of State's policy as set out above. It follows that his appeal must be allowed since it would not be reasonable to expect him to relocate to either Baghdad or the IKR without family support or a CSID.

Decisions and Directions

20. The decision of the First-tier Tribunal contains errors of law such that the decision was set aside to the extent identified above.

21. The decision in the appeal is remade as follows:

‘the appeal is allowed on protection grounds’.

22. There is an order for anonymity.

Upper Tribunal Judge Bruce
15th August 2018