



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07809/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 6 September 2018

Decision & Reasons Promulgated
On 5 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR B S K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Smith of Counsel, instructed on a direct access basis

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born on 26 June 1994. His appeal came before the Upper Tribunal for consideration of whether or not the decision and reasons of the First tier Tribunal was vitiated by an error of law on 25 June 2018 at Liverpool Civil and Family Court. In a decision promulgated on 2 July 2018, an error of law was found and the appeal was adjourned for a resumed hearing in Manchester Civil Justice Centre to be heard on 6 September 2018. A copy of that Decision and Directions is appended to this Decision and Reasons.

2. The issue to be determined is whether, it having been accepted that the Appellant is a national of Iraq of Kurdish origin and is from the area of Hawija, to which he cannot return, it is reasonable to expect him to internally relocate to the IKR. The appeal was adjourned in order for consideration to be given to the country guidance case in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) which was promulgated by the Upper Tribunal on 26 June 2018.

Hearing

3. At the hearing before the Upper Tribunal, Miss Smith sought to rely on her skeleton argument which was dated 30 August 2018. She submitted the only issue is whether it is reasonable to expect the Appellant to internally relocate. Although parts of his case, i.e. that his family were perceived as being Jewish because of their surname, had not been believed by the First-tier Tribunal Judge, the area of his origin, i.e. Hawija in Kirkuk province, and the fact that it had been taken by ISIS had been accepted. In light of AA (Article 15C) Iraq CG UKUT 00544 (IAC) Kirkuk governorate is a “contested area” and there are substantial grounds for believing that if returned there the Appellant faces a real risk of indiscriminate violence amount to serious harm within the scope of Article 15C.
4. Miss Smith accepted that there was no finding by the previous judge as to what had happened to the Appellant’s family. He was informed that his parents and siblings had been arrested and he has no particular knowledge of where they are. She invited the Upper Tribunal to accept at the lower standard that the Appellant does not currently know their whereabouts and it is a matter of record that there were mass displacements in Hawija and many families were arrested. It was therefore plausible or reasonably likely that the Appellant, particularly as he had shown efforts consistent with his claim to trace his family via the Red Cross, does not know where they are.
5. The issue, therefore, is whether in light of the country guidance decision in AAH, the Appellant having been returned to Baghdad could physically travel to the IKR. She submitted that the decisions of the Respondent and the First-tier Tribunal Judge were premised on the basis that the Appellant does not have a CSID. Miss Smith drew attention to evidence of Dr Fatah given to the Upper Tribunal in AAH which is essentially that there was no prospect of the Appellant obtaining a CSID in the United Kingdom as he did not have the requisite evidence. He would therefore be returned to Baghdad on a *laissez passer*, which would be taken from him on arrival. The Central Archive in Baghdad does not provide CSIDs and therefore there was no prospect of the Appellant being able to leave Baghdad in order to travel to and attend a civil registration office elsewhere. He has no family in Iraq but even if he did, the evidence in the country guidance decision suggests that there was real doubt that the authorities would hand over a CSID to a family member. She submitted that in any event the system is in disarray due to a backlog of registering births and deaths arising from former ISIS control, which precluded people from registering and therefore officials are unsympathetic and unwilling to assist: [104] to [106] of AAH refer.

6. Ms Smith submitted that the position is that the Appellant would be stuck in Baghdad without access to any basic services and this is accepted by the Respondent and in AA at [151] that this would be a breach of Article 3. In AAH the Upper Tribunal found that it would unduly harsh to expect somebody to remain in Baghdad without a CSID. In the alternative, Miss Smith relied on [16] of her skeleton argument in respect of the reasonableness of internal relocation to the IKR and she submitted that it would be unduly harsh to expect the Appellant to live in a critical shelter arrangement.
7. In his submissions, Mr Bates on behalf of the Respondent accepted the summary of facts and the summary of the country guidance decisions as set out in Miss Smith's skeleton argument. He submitted that the case hinges on the Appellant's claim to have lost contact with his family and he accepted that without contact it is difficult to see how the Appellant could obtain a replacement CSID. Mr Bates pointed out that the assertion by the Appellant in respect of having a Jewish family name was rejected by the First tier Tribunal and he invited me to find that, contrary to what the Appellant stated in his updated witness statement, which he adopted at the outset of the hearing, the Appellant had not lost contact with his family and has failed to give a credible explanation as to how this had come about.
8. Mr Bates drew attention to paragraph 106(i) of AAH, which sets out the process of obtaining a replacement CSID in relation to a *laissez passer*. He submitted that if the Appellant has family contact then he could be sent the original CSID or be provided with details from the family register that he could pass on to the Embassy in the United Kingdom. He submitted that it has not been proven that the Iraqi Embassy would be unable to assist him. It simply has not been tested. He submitted that it was more connected to the issue of whether or not the Appellant has lost family contact.
9. If his contention is correct, he submitted that the Appellant would be able to board a plane and would be admitted to the IKR as a Kurd and that this would not be unduly harsh nor would the financial cost of getting to the IKR be an issue as he would obtain an Assisted Voluntary Return package. In respect of the Appellant in AAH, whilst that person did not have any family support in the IKR he had a CSID and had work experience in a semi-skilled context, which had led the Upper Tribunal to find that it would not be unduly harsh for him to survive in the IKR.
10. Miss Smith in reply submitted that the Appellant is not wholly lacking in credibility, that he is believed in terms of his origins and that ISIS had taken his home town of Hawija. Miss Smith submitted that Mr Bates' submissions were essentially based on speculation and conjecture and that a finding was required as to whether he is in contact with his family, that they had not been displaced and they did not leave at short notice and that the family had their documentation. She pointed out that there was a lack of evidential basis for Mr Bates' contention and there was objective support for the position that the Appellant is not in contact with them, i.e. correspondence with the Red Cross, whom he had seen twice, having contacted them in May 2017.

11. She submitted that the Respondent's reading at [106] of AAH is not the correct one and it concerned what a Tribunal ought to take into account when considering the documentation, which would be a passport and marriage or birth certificate, for an expired CSID. She submitted that there was no suggestion that having the information contained in the CSID would assist in obtaining a replacement, i.e. you actually need to have the document, not just the information. She submitted that there was no suggestion in this case that the Appellant's family lived anywhere other than in Hawija or that he had family in the IKR and she submitted that any remittances would have to be meaningful and durable to prevent or preclude the Appellant from having to stay in a critical shelter arrangement.
12. Miss Smith submitted that there was a massive distinction between the Appellant in AAH and this Appellant. She submitted that it would be unduly harsh for this Appellant to live in the IKR with his employment history, given that his last job was as a generator operator, which was a semi-skilled role likely to be affected. The Appellant's only other experience of working was as a cleaner in a barber shop and a car wash, which are areas of employment likely to be affected by the downturn in Iraq and that he was distinguishable from the Appellant in AAH.

Findings

13. I proceed to determine the appeal on the basis of the following findings of fact made in light of the aspects of the decision of First tier Tribunal Judge Cruthers unaffected by error of law:
 - 13.1. The Appellant is an Iraqi Kurd from Hawija and return to his home town would be contrary to Article 15C of QD;
 - 13.2. The Appellant is not in possession of a CSID [63].
14. Since the promulgation of his decision, the Upper Tribunal have handed down further country guidance in the case of AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC), which made the following findings

“Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
 - i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any*

assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;

ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.
3. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
5. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.
6. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.
7. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P

is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

8. *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.*

9. *For those 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.*

10. *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;*

(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."

15. I make the following findings:
 - 15.1. there is a reasonable likelihood that the Appellant's birth family of his parents, brother and sister in Hawija have either been taken by ISIS as the Appellant was told and/or if they survived that they have been internally displaced;
 - 15.2. I accept the Appellant's evidence to the lower standard of proof that he has been unable to locate them. There is evidence in the bundle submitted by Ms Smith [pages 12-25] that he submitted a tracing request with the Red Cross in Liverpool on 18 May 2017 in an attempt to locate them and I accept his evidence at [6] of his statement that he had returned to see the Red Cross twice and they have no news about his family;
 - 15.3. I accept that the Appellant has never been to the IKR and that he has no known connections there in terms of his friends or family. He has been consistent in his evidence in this respect.
 - 15.4. Consequently, I find that in the absence of a CSID or any material documents or information, such as the page and volume number of his CSID and in the absence of the known whereabouts of any male relatives, there is a reasonable degree of likelihood that the Appellant would be unable to obtain a replacement CSID in Iraq.
 - 15.5. In light of the findings in AAH the Appellant would be returned to Baghdad as there are no international flights to the IKR, the Appellant would be unable to board a flight to the IKR without a CSID. Nor is it reasonable to expect him to travel by land in the absence of identity documents.
 - 15.6. The Respondent's policy as set out at [151] of the Upper Tribunal decision in AA(Iraq) [2015] UKUT 00544 (IAC) is 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."
 - 15.7. Consequently, I find that removal of the Appellant to Iraq would be in breach of the United Kingdom's obligations contrary to Article 3 of the ECHR, in the absence of any family or a support network in Baghdad.
16. For the avoidance of doubt, I find that it would unreasonable and unduly harsh to expect the Appellant to internally relocate to the IKR. Whilst the First tier Tribunal Judge rejected the Appellant's evidence and found at [62] that he could access assistance from family and friends in the IKR, I found that there was no or no proper evidential basis for this finding, bearing in mind the Appellant's evidence, which was accepted at [49] that the Appellant has never been to Kurdistan and there was no evidence upon which the Judge could base his finding, which was essentially

speculative. In the absence of any family or “special circumstances” there is a reasonable degree of likelihood that he would have to resort to a critical shelter arrangement and the Upper Tribunal found in AAH that this would be unduly harsh.

17. 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 he is uneducated and illiterate and the unemployment rate for IDPs living in the IKR is 70%.
18. For the reasons set out above, I allow the appeal on the basis that removal of the Appellant to Iraq would be contrary to Article 3 and he is thus entitled to humanitarian protection.

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 18 September 2018

Deputy Upper Tribunal Judge Chapman