



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

Appeal Number: PA/02612/2018

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice  
On 07 January 2019**

**Decision & Reasons  
Promulgated  
On 01 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**S M**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity should have been granted at an earlier stage of the proceedings because the case involves protection issues. 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.

**Representation:**

For the appellant: Mr T. Melvin, Senior Home Office Presenting Officer

For the respondent: Ms G. Loughran, instructed by BHT Immigration Legal Services

## **DECISION AND REASONS**

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant before the Upper Tribunal.
2. The appellant entered the UK on 14 October 2008 as an unaccompanied asylum seeking minor. His protection claim was refused but he was granted Discretionary Leave to Remain until 10 August 2010. A subsequent appeal was dismissed on 15 May 2009. He made an in-time application for further leave to remain, which was refused on 27 October 2010. On 07 July 2011 the First-tier Tribunal allowed his appeal on limited human rights grounds. The Secretary of State agreed to reconsider the case and to make a fresh decision. On 08 November 2011 the human rights claim was refused. The appellant appealed the decision. The appeal was allowed on 08 March 2012, again, on limited grounds. It is said that the respondent was to consider the route and method of return to Iraq. The respondent issued another decision letter on 29 April 2013. A further appeal was dismissed on 11 November 2013 and permission to appeal to the Upper Tribunal was refused. On 18 July 2014 the appellant made a fresh protection and human rights claim. The respondent refused to treat the further submissions as a fresh claim in a decision dated 30 June 2015.
3. At the end of July 2015 the appellant made a voluntary departure. He says that he travelled, irregularly, to his aunt's home in Kirkuk district via France, Italy, Turkey and the Iraqi Kurdish Region (IKR). He says that he stayed with his aunt for five days. She told him that it was dangerous to remain. She gave him jewellery to fund his return journey to Europe. He travelled illegally through Europe and arrived in Ireland, where he claimed asylum. The appellant was returned to the UK on 22 February 2016 under the terms of the Dublin Regulation. On 02 February 2017 he made further submissions to the Secretary of State.
4. On 07 July 2017 the appellant was convicted of making threats to kill to his GP and was sentenced to 22 months' imprisonment. He had a previous conviction for threatening, insulting words or behaviour with intent from 30 December 2014 for which he was sentenced to a community order with a 10 week exclusion requirement. As a result of these convictions the respondent issued a notice of intention to make a deportation order on 25 July 2017. The deportation order was signed on 19 October 2017. The appellant appealed the Secretary of State's decision dated 19 October 2017 to refuse a protection and human rights claim in the context of deportation proceedings.
5. First-tier Tribunal Judge Lever ("the judge") allowed the appeal in a decision promulgated on 17 October 2018. The judge noted the appellant's immigration history [2-3] and summarised the documentary and oral evidence and submissions [4-13]. He identified the correct legal framework relating to automatic deportation under the UK Borders Act 2007 and the relevant grounds of appeal [16]. In assessing the appellant's protection and human rights claim the judge used the previous First-tier

Tribunal decisions as a starting point according to the guidance in *Devaseelan (second appeals – ECHR – extra-territorial effect) Sri Lanka* [2002] UKAIT 00702 [19]. The judge went on to consider further evidence produced since the previous First-tier Tribunal decisions including the appellant's account of voluntary departure to Iraq, a psychiatric report and evidence relating to the situation in Iraq at the date of the hearing [20].

6. The judge found that the fact that the appellant was able to contact his aunt in Kirkuk belied his earlier claim that he was unable to trace her and underscored "the correctness of the earlier decisions" relating to the protection claim [22]. He went on to consider the psychiatric report prepared by Dr Briffa, a consultant psychiatrist, on 17 August 2018. The judge noted that she had seen the appellant on one occasion, and after having taken a history, diagnosed "enduring personality change after catastrophic experience". The history taken by the psychiatrist was based on the appellant's account of long term-abuse by his uncle and fear of recruitment by ISIS or the government. He noted that other judges rejected the account on previous occasions. He expressed surprise, if the appellant's psychiatric condition was as serious as claimed, that a psychiatric assessment was not provided on previous occasions [24]. The judge observed that the psychiatrist appeared to be aware of the fact that the appellant returned to Iraq but made no mention of this fact as part of her assessment of suicide risk. He noted that she assessed the appellant to be at high risk of suicide if deported to Iraq but contrasted this assessment with the prison medical records, which recorded no thoughts of self-harm and an attempt to hang himself "a few years ago". The judge also noted that there was evidence to show that he discontinued counselling services offered to him as long ago as 2011 [25]. The judge concluded that there was little in the psychiatric report that might alter the consistent set of credibility findings made in previous decisions of the First-tier Tribunal. The doctor's opinion that he was at high risk of suicide contrasted with observations made by other people over a period of time [26].
7. The judge then turned to the third aspect of the fresh evidence relating to the current situation in Iraq. It was accepted that the appellant's home area is Diyala, an area identified by the Upper Tribunal in *AA (Article 15(c)) Iraq* CG [2015] UKUT 00544, where there would be an Article 15(c) risk. The judge considered the Secretary of State's CPIN report dated September 2017 and concluded that the evidence indicated that there continued to be a risk in the appellant's home area [28].
8. The First-tier Tribunal went on to consider whether internal relocation would be a reasonable option with reference to the more recent country guidance decision in *AAH (Iraqi Kurds – internal relocation) Iraq* CG UKUT 00212. He made the following findings relating to the appellant's ability to obtain a CSID document:
 

"29. ... I note the Appellant has not said that he has had a CSID in the past although he was aware of his details being in the civil registry in Diyala. He claimed not to know the page or reference number. I find no evidence to indicate that the Appellant had

previously had a CSID or other form of document, and I also bear in mind the age when he left Iraq, namely 15. I note that the civil registry is within Diyala which is a place that the CPIN notes remains an exception to relocations as does the case of **AA [2015]**. The only relative that emerges with consistency in the account is the aunt, a female relative and not therefore necessarily of assistance in going with the Appellant to a civil registry ... I have looked at **Amin [2017] EWHC 2417** which was drawn to my attention, where it was said that country guidance cases must give way to reality. The judge found the Home Office were entitled to have changed their position on Kirkuk. However so far as I can see the CPIN still refers to the Baghdad Belts bordering Diyala as being an exception. **AA [2015]** also refers to Diyala. Therefore whilst I entirely agree with the decision in **Amin**, it is case-specific and does not deal with the circumstances before me.

30. I do not find evidence that the Appellant could immediately or in a reasonable time scale obtain a CSID. I have looked at **AA [2015]** section C. I take account of the money available to the Appellant on return. I also take account that his aunt in Kirkuk clearly has funds and has assisted him in the past. I also note earlier findings that the Appellant had cousins in Iraq and his uncle. The CSID is needed to acquire housing, [employment], education, medical treatment and assess financial support from the government. I have also taken account of the fact that the Appellant does have some mental health issues, is a Sunni Kurd who does not speak Arabic. There has never been any finding that the Appellant has relatives or friends in Baghdad and indeed has been outside of Iraq now for nine or so years.
31. I find when applying the appropriate standard of proof and following guidance within country guidance cases and the CPINs that the Appellant could be returned to Baghdad. I have noted at paragraph 11 that if it is feasible to return a person to Iraq then if there are no family or other members likely to be able to provide support then such an individual is likely to face a risk of destitution amounting to serious harm if by the time funds from the UK have gone he still does not have a CSID. Whilst he may be housed by his aunt in Kirkuk there is no evidence I can rely upon as to how the Appellant would travel without ID to Kirkuk. I appreciate he says that he did it three years ago but I must follow the law and country guidance cases on such issues. I do not find when looking at **AAH [2018]** that circumstances indicate the Appellant could relocate from Baghdad to the IKR. He has never lived there and has no relatives or connections to that part of the country."

9. The Secretary of State appealed the First-tier Tribunal decision on the following grounds:
  - (i) The judge could not rationally conclude that the appellant would face ill-treatment amounting to a breach of Article 3 on the facts of the case. The judge failed to take into account the possibility that the appellant may have had some form of ID in order to pass through

checkpoints when he travelled to Kirkuk in 2015. The judge failed to reconcile the appellant's evidence recorded at [11] that he left his CSID at his uncle's house in Iraq and his finding at [29] that he did not have a CSID in the past. The First-tier Tribunal failed to give adequate reasons to explain why the appellant's aunt could not assist him to obtain a new CSID. The judge failed to explore the possibility that other male relatives might be able to assist the appellant to obtain a CSID. In assessing whether it would be reasonable to expect the appellant to relocate to Baghdad the judge failed to consider whether the appellant might have a basic understanding of Arabic given that he was able to travel illegally to Kirkuk through various checkpoints.

- (ii) The judge erred in his assessment of Article 15(c) risk by failing to address the Secretary of State's submission, made in the decision letter, that the conditions in both Diyala and Kirkuk no longer meet the Article 15(c) threshold.

### **Decision and reasons**

10. Mr Melvin argued that the judge could not rationally come to the conclusions that he did on the evidence before him and that he failed to take into account relevant considerations relating to family members who might be able to assist the appellant to obtain a new CSID. Ms Loughran accepted that the judge made a mistake at [29] of the decision in failing to acknowledge what he recorded at [11], that the appellant left a previous CSID at his uncle's house. However, she argued that it made no material difference to the outcome given the appellant was only 15 years old when he left his uncle's house as long ago as 2008.
11. Although the appellant returned on a voluntary basis to his aunt's house near Kirkuk, he travelled overland from the north and by irregular means. For the purpose of assessing a claim under the Refugee Convention, the Tribunal must consider the relevant avenue that a Signatory State would take to return a person to their country of origin. In this case, it is not disputed that the only avenue of return would be by air to Baghdad.
12. It was open to the judge to conclude that the new evidence was not sufficiently strong to take a different view to the two previous Tribunals in relation to the credibility of the appellant's account of past events.
13. In assessing whether there was a potential risk of ill-treatment for the purpose of Article 15(c) of the Qualification Directive in his home area of Diyala, the relevant country guidance was AA. The judge considered the country guidance and the evidence relied upon by the respondent to assert that there had been a change in circumstances in the appellant's home area [28-29]. Section 3 of the Home Office Country Policy and Information Note (CPIN) on "Iraq: security and humanitarian situation" dated March 2017 set out the respondent's view about the security situation in those regions. The respondent's view appeared to be based on an empirical assessment of the number of security incidents recorded in the worst affected regions since the Upper Tribunal decision in AA (see section 11).

14. The judge did not conduct a detailed analysis of the background evidence relating to the potential security situation in Diyala. At [29] he considered one of the two CPIN reports before him (although he does not say which one). After having looked at both reports, the one the judge refers to appears to be the CPIN “Iraq: Return/Internal relocation” dated September 2017 in which the respondent states at [2.2.4] that internal relocation was possible to all areas of Iraq save for some exceptions. Among the areas still considered to pose a risk of ill-treatment under Article 15(c) were “the parts of the ‘Baghdad Belts’ (the residential, agricultural and industrial areas that encircle the city of Baghdad) that border Anbar, Diyala and Salah al-Din.” This is not a reference to Diyala province itself, but the areas of the Baghdad Belts bordering with Diyala. To this extent the judge may have misunderstood the evidence contained in the CPIN report.
15. I have considered whether this undermines the judge’s assessment of Article 15(c) to a degree where the decision must be set aside. However, I find that the misunderstanding of the evidence would not have made any material difference to the outcome of the decision on Article 15(c) given the appellant would be returned to Baghdad and would have to travel through those areas of the Baghdad Belts the respondent still considered posed a risk in order to reach his home area. Although the CPIN report from March 2017 noted a drop in the number of recorded security incidents in Diyala the Upper Tribunal in *AAH* considered evidence in February 2018 which indicated that there were mounting attacks on Shi’a militias, particularly in Diyala, where there was believed to be a “considerable ISIL presence”. The situation was predicted to prevail for some time [14].
16. Even if there might have been some misunderstanding of the evidence, the judge’s overall conclusion that the appellant would be at risk under Article 15(c) outside Baghdad was sustainable. There was at least a serious possibility that the appellant would have to travel through a territory that still posed a risk under Article 15(c) in order to reach his home area. The evidence before the First-tier Tribunal indicated that there had been some change of control in Diyala, but in light of the evidence showing that ISIL continued to have a considerable presence there, it could not be said that there had been a significant and non-temporary change in the circumstances such that it would be appropriate to depart from the country guidance in *AA* as it related to the situation in Diyala.
17. The judge went on to consider whether it would be reasonable to expect the appellant to relocate to Baghdad. Although he did not make specific reference to the country guidance decision in *BA (Returns to Baghdad)* [2017] UKUT 18 it is apparent from his findings at [30-31] that he considered relevant factors. He considered whether the appellant could obtain a new CSID, whether he had any connections in Baghdad, the fact that he was a Sunni Kurd, the fact that he had some mental health issues (albeit they were not sufficiently compelling to come to a different conclusion about the credibility of his account of past events) and the length of time that he had lived outside of Iraq.

18. The respondent is correct to point out that there is an unresolved inconsistency between the evidence recorded at [11] and the finding at [29] that he has not had a CSID. On closer inspection the highest the appellant's evidence went was to say that he saw some form of ID document at his uncle's house when he was a child. Even if this evidence was taken at its highest the appellant last lived at his uncle's house in 2008 and left when he was only 15 years old. It does not appear to be disputed that he does not have a CSID in his possession and would have to obtain a new one.
19. In assessing whether the appellant had relatives who might be able to assist him to obtain a new CSID the judge noted earlier findings that the appellant had "cousins in Iraq and an uncle" [30]. Unfortunately, the decision of First-tier Tribunal Judge Blum does not appear to be in the papers for me to assess what findings he made about this issue. The decision made by a panel of the First-tier Tribunal in November 2013 indicates that Judge Blum accepted that the appellant's father and siblings were killed and that his mother abandoned him. Judge Lever was correct to find that the only relatives who were last known to be in Iraq was the appellant's uncle and his elderly aunt who lives near Kirkuk. The only reference to cousins in the First-tier Tribunal decision from 2013 is to his aunt's two daughters [15]. The appellant's original claim to be at risk from his uncle was rejected, but there was no evidence to indicate that the appellant has had any contact with his uncle after he left his uncle's house in 2008. When the appellant returned to Iraq in 2015 the only relative that he appeared to have any contact with was his elderly aunt who lives near Kirkuk. On this evidence, it was within a range of reasonable responses to the evidence for Judge Lever to conclude that the "only relative that emerges with consistency in the account is the aunt, a female relative and not therefore necessarily of assistance in going with the Appellant to a civil registry." [29]. I find that it was open to the judge to conclude that the appellant's aunt would not be in a position to help him to obtain a new CSID, which would have to be obtained from the registry in his home area of Diyala. His findings were open to him on the evidence and were generally consistent with the country guidance in *AAH*.
20. Although the First-tier Tribunal decision would have benefited from more structured findings with clearer reference to the relevant legal framework, I conclude that the findings that were made were adequate and sustainable and do not disclose any errors of law that would have made any material difference to the outcome of the appeal. It was open to the judge to conclude that there would be a risk of ill-treatment under Article 15(c) in or travelling to his home area. It was also open to the judge to take into account a combination of factors, including the lack of any prospect of renewing his CSID, lack of family connections in Baghdad, his religion, his ethnicity and his mental health in concluding that it would be unreasonable to expect the appellant to relocate to Baghdad. The decision in *AAH* makes clear that without a CSID or a valid passport it is unlikely that the appellant could relocate to the IKR.

21. I conclude that the First-tier Tribunal decision did not involve the making of an error of law that would have made any material difference to the outcome of the appeal.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand

Signed  Date 28 February 2019  
Upper Tribunal Judge Canavan