



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

Appeal Number: PA/04865/2019

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Decision & Reasons Promulgated
Justice
On 9 September 2019 On 27 September 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**ABDULLAH [O]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel, instructed by Freemans Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a national of Iraq who says he was born in 1994. He claims to have entered the UK in or about 2004, when he was 9 or 10 years old and he was included in a claim for asylum made by his mother, who arrived in the UK a little later. Although the asylum claim was refused they were both granted indefinite leave to remain outside the Immigration Rules on 15 April 2009. The appellant's mother was granted citizenship on 11 October 2010, but the appellant's application for citizenship was refused, because of his offending.

It is not necessary for the purposes of this decision to list the numerous convictions which this appellant has recorded against him but it is sufficient to note that it would be very difficult to mount an argument that he was anything other than a “persistent offender” as referred to in paragraph 398(c) of the Immigration Rules.

A list of the appellant’s numerous offences is contained within the file and is also referred to in the decision of First-tier Tribunal Judge Hembrough, which is the subject of this appeal. In a decision promulgated on 8 July 2019, following a hearing at Harmondsworth on 24 June 2019, Judge Hembrough dismissed the appellant’s appeal against the respondent’s decision dated 10 May 2019 refusing to revoke a deportation order dated 18 September 2019 made by the respondent on the basis that the deportation of the appellant from the UK was conducive to the public good and in the public interest because he was a persistent offender who shows a particular disregard for the law (as provided by paragraph 398(c) of the Rules).

The appellant has had previous appeals refused by the First-tier Tribunal but the basis of this appeal was that he would be at risk of serious harm on return to Iraq for a number of reasons among which was that he would be unable to obtain a Civil Status Identity Document (generally referred to as a “CSID”) as a result of which he would be unable to carry on life within Iraq.

At paragraph 43 of his decision, Judge Hembrough referred to the appellant’s current lack of a CSID but stated as follows:

“43. The appellant is not presently in possession of a CSID but hypothesising that his return to Iraq was feasible because he had been provided with travel documents by the embassy and having regard to paragraphs 12 and 13 of the headnote above [this is a reference to the headnote in the Upper Tribunal country guidance set out in *AA (Article 15(c)) Iraq* CG [2015] UKUT 00544 (IAC)] and my above findings I am satisfied that he would be able to utilise such documents and his family connection in Baghdad so as to obtain a CSID from the Civil Status Affairs Office in Baghdad”.

Paragraphs 12 and 13 of that headnote referred to is as follows:

- “12. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P’s home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P’s ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P’s information (and that of P’s family). P’s ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.
13. P’s ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P’s Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad

and Kerbala. The evidence does not demonstrate that the 'Central Archive', which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear".

At paragraph 37 of the decision, it should be noted, the judge had found as follows:

"37. Having regard to what is said at paragraphs 5 and 6 of the headnote above and insofar as it is material I find that as matters stand the appellant's return to Iraq is not presently feasible. I accept that he came to the UK as a child using the services of an agent and that he has never held an Iraqi passport. Whilst there is a suggestion at paragraphs 33 and 34 of Judge Grant's [earlier] decision [concerning this appellant] that the appellant was added to his mother's passport and indeed his father's passport there was no evidence to suggest that he was able to access an expired Iraqi passport or a birth certificate so as to be able to satisfy the Iraqi Embassy of his citizenship. His mother's evidence, which I accept, was that the appellant's birth had not been registered in Iraq".

Notwithstanding the reference to the Upper Tribunal decision in *AA (Iraq)*, the judge did not in his decision refer to the subsequent decision of the Court of Appeal in this case [*AA v SSHD* [2017] EWCA Civ 944], in which the Upper Tribunal's country guidance had been amended by the Court of Appeal. In particular, with reference to the importance of obtaining a CSID, at the Annex to this decision, the amended guidance is set out as follows:

"C. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.
10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has

family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the 'Central Archive', which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear".

Although this guidance at paras 10 and 11 repeats the guidance previously given by the Upper Tribunal, it is expanded by the addition of paragraph 9 and on behalf of the respondent at the hearing before this Tribunal, Ms Everett stated as follows:

"Judge Grant's finding [in the previous decision concerning this appellant which had been relied upon by the judge at paragraph 42] was not quite as simplistic as implied at paragraph 42 in relation to who they are in contact with in Iraq. Also, it is noted that the appellant's mother travelled to Iraq in 2013 but it is accepted that she did this to attend her own mother's funeral. Also, it is an accepted fact that the appellant's birth had not been registered so that these facts will feed into the issue of whether the appellant can obtain a CSID card and attention must be drawn to the most recent policy of the respondent in what is required to be considered [which is at pages 2 to 4 - 5 of the appellant's bundle]".

Ms Everett continued as follows:

"It seems to me on looking at the respondent's policy, that the judge's reliance on the Upper Tribunal guidance given in *AA (Iraq)* without taking account of the Court of Appeal's updating, was such as to make this decision unsafe".

Ms Everett stressed that she did not concede that the appellant had shown that he could not get a CSID but nonetheless she accepted that there was a material error in this decision because this was not an issue which had properly been considered by the judge when reaching his decision.

In this case, the appellant could theoretically be returned to Iraq without a CSID but in these circumstances, unless he was subsequently able to obtain a CSID (which on the facts he might be, but this will have to be properly considered) his return would arguably be in breach of his Article 3 and Article 8 rights.

Accordingly, and regrettably on the facts of this case it follows that the decision will have to be remade and in the circumstances the appropriate course is for the appeal to be remitted back to the First-tier Tribunal for a fresh hearing by

any judge other than Judges Hembrough or (because she has previously been involved in this case) Judge Elizabeth Grant.


Accordingly, I make the following Decision:

Decision

I set aside the decision of First-tier Tribunal Judge Hembrough as containing a material error of law and direct that it be remitted to the First-tier Tribunal sitting at Taylor House for rehearing (with no facts retained) by any judge other than Judges Hembrough or Elizabeth Grant

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig", is centered on the page. The signature is written in a cursive style with a long, vertical tail on the final letter.

Upper Tribunal Judge Craig
2019

Dated: 23 September