



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

Appeal Number: PA/05766/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 25th January 2019

**Decision & Reasons
Promulgated
On 4th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR DARKO JALAL ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk (Counsel)

For the Respondent: Mr C Bates, (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Pickup, promulgated on 19 June 2018, following a hearing at Manchester on 7 June 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 12th March 1995. He appealed against the decision of the Respondent, dated 18th April 2018, refusing his application for asylum, and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he is of Iraqi Kurdish ethnicity, from southern Kurdistan, and that he comes from the Kirkuk area, which is outside the IKR. He could not be returned there directly. He would have to make his way there from Baghdad. His claim to protection arose from the fact that his brother had expressed anti-Kurd sentiments, speaking against Kurdish leaders and political parties and posting them on Facebook. He also claimed a fear of Farouk Ahmed, the security commander in the area. For the purposes of this hearing, this background information is not directly relevant.

The Judge's Findings

4. What is important for this determination, is that the Judge found the Appellant's claim to be lacking in credibility. However, the Judge made the following four findings that were of material consequences to him. These were that the Appellant was an Iraqi Kurd from the area of Kirkuk, outside the IKR. Second, that Kirkuk remains a contested area so that there is a risk of indiscriminate violence in that region. Third, ISIS is no longer a force to be reckoned with, but there are other conflicts undergoing there between the Iraqi government sponsored militia and the Kurdish forces. Fourth, that this may render the area unsafe for humanitarian protection standards (paragraph 79).
5. Nevertheless, the judge went on to conclude that the Appellant could be returned back to Iraq, because he would go in the first instance to Baghdad, and from there, on the basis that he had once been in possession of a CSID card, and that he had knowledge of his father's presence at home, that he would then be able to make his way to the IKR.
6. The appeal was dismissed on this basis.

Grounds of Application

7. The grounds of application state that the judge's conclusion in this regard was unsustainable. The judge had held that it was feasible for the Appellant to obtain a CSID card. The Appellant, however, contended that the judge had entered into speculation in this regard. There was no evidence to suggest that the appropriate civil registration office was operational in Kirkuk. A laissez-passer should not be counted for the purposes of the CSID card. These are in any event, confiscated upon arrival in Baghdad.

8. On 25th October 2018, permission to appeal was granted by the Upper Tribunal on the basis that the judge had found that the Appellant was from Kirkuk but could return to the IKR. The absence of family members in the IKR was an adverse factor. It had to be considered in the light of the more recent country guidance case of **AAH (Iraq) CG [2018] UKUT 0012**. However, the presence of family nearby who can give financial support may be sufficient.
9. A Rule 24 response was entered on 4th December 2018. This stated that **AAH**, was promulgated on 26th June 2018, which was a week after the judge had promulgated his determination in the Appellant's case. Nevertheless (at paragraph 84) the judge considered whether the Appellant would be able to establish himself within the IKR. The judge found that the Appellant would be able to do so. The judge gave weight to the Appellant's ability to obtain a CSID card in the UK or in Iraq. Consideration was given to the Appellant's resilience and determination. There was also the presence of the Appellant's immediate and wider family, as a means of support. They lived not very far from the border with the IKR. Accordingly, there could be no error.

Submissions

10. At the hearing before me on 25th January 2019, Mr Schwenk, appearing on behalf of the Appellant, submitted that there would be no challenge to the judge's credibility findings. The challenge was to the finding that the Appellant could return back to Iraq and find internal relocation, following entry into the country in Baghdad, and then making his way to Kirkuk from there. The judge had wrongly concluded (at paragraph 83) that the Appellant could obtain a CSID card to enable him to return. This was because the earlier country guidance case of **AA (Iraq) [2017]** demonstrates why this would not be possible. The relevant provisions here were paragraphs 173 to 177 of that determination. What was important to note here was that the process of obtaining a CSID card from Iraq was likely to be severely hampered if the person wishing to obtain such a document came from an area where serious harm was taking place, and this was the case in Kirkuk, which was a contested area (see paragraph 177 of **AA (Iraq)**). Second, the Appellant also could not succeed under the more recent country guidance case of **AAH [2018]**. This is because head note 4, of that decision, makes it clear that "P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport". Third, the judge wrongly attaches weight to the fact that "the Appellant would have to make his way to the IKR, if he is returned on, say an emergency travel document or laissez-passer issued by the Iraqi authorities" (paragraph 84). This was because a laissez-passer is not a CSID card. He would not be able to do precisely that which the judge suggested because the latest country guidance case of **AAH [2018]** makes it clear at paragraph 1(i) that "a laissez-passer should not be counted for these purposes" because it is "confiscated upon arrival at Baghdad". If it was confiscated upon arrival, submitted Mr

Schwenk, then the Appellant would not be able to travel on this basis to the IKR.

11. For his part, Mr Bates submitted that what paragraph 177 of **AA (Iraq) [2015] UKUT 00544** made clear, was that
“it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details”.
12. This the Appellant was able to do.
13. Second, the Appellant’s family were only just over the border. He would be able to elicit their help. The judge was clear about this, because he observed (at paragraph 84) that “the Appellant’s home area is not very far from the border with the IKR and I am satisfied that from within the IKR he will be able to make further contact with his family in his home area ...” (paragraph 84). Third, and in any event, the latest country guidance case of **AAH (Iraq) [2018]** was only promulgated a week after the judge’s determination, and therefore it could not be a material error of law, as far as that determination was concerned.
14. In reply, Mr Schwenk submitted that the judge had made no findings as to whether the Appellant’s family were contactable in Iraq. This could not be speculated upon. There had to be a clear finding on this. Second, there was no finding as to whether they had the money and the means to help him to approach the authorities in Kirkuk. Third, it was not even clear, as was being suggested in **AA (Iraq) [2017]**, that the Appellant’s family would be able to elicit the help of other people, such as an attorney, to get a CSID card for him.

No Error of Law

15. I am satisfied, that there is no error of law. I come to this conclusion despite Mr Schwenk making clear and well-crafted arguments before this Tribunal, suggestive of there being a case for real concerns about the ability of this Appellant to return back to his country in a place of safety. My reasons are as follows.
16. First, the judge was in no doubt that “the Appellant admits that he had a CSID and that this is with his father at home” (paragraph 83). This was a far cry from somebody not having a CSID, or claiming that it had been lost or misplaced. The judge had also stated that,
“I find that on his own account he has been in contact with his family by telephone from France and there is thus no reason why the details of his CSID cannot be forwarded to him in the UK electronically or by mail to the Appellant from this father”.
17. In the circumstances, therefore, the judge concluded that

“the Appellant will be at the very least able to obtain the book volume and page number information from his CSID to be able to make application for replacement either from the Iraqi Embassy in the UK or shortly after return to Iraq” (paragraph 83).

18. Second, such a conclusion is entirely consistent with what was said in **AA (Iraq) [2015] UKUT**, namely, that

“we conclude it is possible for an Iraqi national living in the UK to obtain a CSID through the Consular Section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details” (paragraph 177).

19. Third, and importantly, it needs to be recognised, that such a conclusion is subject to what was also stated in **AA (Iraq) [2015] UKUT 00544**, namely, that, “at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area when Article 15(c) serious harm is occurring” (paragraph 177). This was repeated in this same case later on in the determination as well (see paragraph 187). However, there are two observations to be made in relation to this. First, the Appellant already has a CSID. It is with his father, it is in the home. As the judge rightly observed, the Appellant could contact his family, with whom he is already in touch, and asked them to forward the essential details electronically or by mail so that he could approach the authorities in the UK (rather than in Iraq itself) to obtain the necessary documentation, on the basis of the book volume and page number information, so as to enable him to have the documentation to return back to Iraq. Second, however, it is also the case, as found by the judge, that the Appellant’s family is very close to the border. It was a matter for the judge to make a finding in this regard. He was clear that “the Appellant’s home area is not very far from the border with the IKR” and that “he will be able to make further contact with his family in his home area” so that he will be able to “arrange for documents to be brought, sent or collected” (paragraph 84). All things considered, therefore, I come to the conclusion that the judge’s determination was meticulous in the care and attention given to the necessary detail and there is no error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve an error of law. The determination shall stand.

This appeal is dismissed.

No anonymity direction is made.

Signed

Date: 3rd April 2019

Deputy Upper Tribunal Judge Juss