



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06795/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2019

Decision & Reasons Promulgated
On 10 September 2019

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

K I
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Capel of Counsel

For the Respondent: Mr Turfan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq born in 2000. He appealed against a decision of the respondent made on 4 July 2017 to refuse his claim to asylum.
2. He is a Sunni and a Kurd born in Sulaymaniyah in the Iraqi Kurdish region of Iraq (IKR) where he lived until he left the country in October 2016. He entered the UK by lorry in January 2017 and claimed asylum at the port.
3. The basis of his claim was that in 2015 he began a relationship with a girl. Her family did not approve. In September 2015 he was stabbed by the girl's brother. He went into hiding. His father received threatening phone calls from the brother demanding to know where he was. The decision was made that he had to leave Iraq for his safety. If returned he fears he will be killed because of his relationship.

4. The respondent did not believe that there had been a relationship. Even if the account was true the appellant had not established that he would be of interest to the brother now.

He appealed.

First-tier Hearing

5. Following a hearing at Hatton Cross on 28 January 2019 Judge of the First-tier Tribunal Randall dismissed the appeal.
6. The judge, in summary, found established the central element of the claim, namely, that the appellant had been stabbed by the girl's brother in revenge for his relationship with the brother's sister. However, he went on to find that the appellant had not established that if returned he would be at risk from the brother or the family in Sulaymaniyah or even if he was, he could relocate elsewhere in the IKR.
7. The judge then went on to consider the issue of return. At [30] the judge found it to be the case that the appellant has no passport or CSID with him here.
8. The judge next noted the guidance given in the headnote of *AAH (Iraqi Kurds - internal relocation)* [2018] UKUT 212. He found that the appellant has patrilineal relatives in Iraq who could assist. It had not been shown why the appellant could not attend the civil registry in Sulaymaniyah with a male relative and thereby get a CSID. Accordingly, he would not face a real risk of destitution.
9. At [32] noting that international removals are to Baghdad he next considered the dangers facing the appellant on the journey from there to IKR. The headnote of *AAH* was noted:

"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 or 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".

10. The judge's findings on this matter are brief. He stated:-
"It was not suggested to me that the appellant's father or great uncle could not assist on his journey from Baghdad to the IKR ..." [counsel] *did not address this option. "Thus the appellant has not established, on the lower standard of proof that for him to be returned to Baghdad without a CSID, so that he would have to undertake a land journey north, would be a breach of the UK's protection obligations."*

11. As a result the judge dismissed the claim under Article 3.
12. He sought permission to appeal which was granted on 28 March 2019 by a judge who considered it arguable that the issue of return had been inadequately dealt with. Permission was refused on a claim that the judge failed to consider Article 8.

Error of law hearing

13. At the error of law hearing before me on 24 April 2019 counsel renewed the application in respect of Article 8. I refused the application. The judge did not require to consider Article 8 as it was recorded at paragraphs 1.3, 3.1, 8.1 and 8.16 of his decision that Article 8 was not being pursued. There was no requirement on the judge to consider this matter in the circumstances.
14. Having heard submissions on the return point (there being no other issue in dispute) I found material error as follows:

“The judge misdirected himself (at [32]) by failing fully to assess the risk to the appellant on return to Iraq in light of AAH in being able to get from Baghdad to IKR even with the assistance of a relative. Also, the consequences of remaining in Baghdad without a CSID as a Sunni Kurd from the IKR who does not speak Arabic and does not have friends, community or family in Baghdad.”

15. The case was put down for a resumed hearing.

Resumed hearing

16. Thus the matter came before me on 31 July 2019 when I heard submissions.
17. Ms Capel made an adjournment request to allow time for an expert report. She said the issues were first whether the appellant would be returned to Baghdad or the IKR. There are now direct flights from UK to IKR but she understood that enforced removals continue to be made to Baghdad. Second, whether it is possible to get from Baghdad to IKR with a laissez passer. Third, how quickly redocumentation can be done in Baghdad. Fourth, what risks might result in Baghdad if a returnee is unable to document himself there. Fifth, absent being documented with a CSID can a returnee get safely to IKR. The country guidance cases did not deal with the redocumenting of returnees in Baghdad who are from IKR.
18. Other reasons for an adjournment were that although a note detailing the error of law had been made it had not been sent out. Also, there had been pressure of work on the firm. Further, counsel who had been due to deal with the matter was away.
19. Mr Turfan clarified that whilst voluntary removals are to IKR, enforced removals are to Baghdad, 150 dollars being given for onward travel. The issue was whether the appellant can be documented. If he can the claim falls away.

20. I refused an adjournment. It was evident from the file that the reasons why the decision was being set aside was sent to the parties on 3 June 2019. There was no explanation why a report was not sought sooner. Further, there was no pressing need for an expert report as submissions on the appellant's circumstances could be made within the context of the existing case law.
21. Ms Capel then sought to lodge statements by the appellant and his foster carer. There was no objection by Mr Turfan and I allowed them to be received. Mr Turfan said he had no challenge to their contents.
22. Mr Turfan then made his submissions. He referred me to the Iraqi ambassador's letters referred to in the Country Policy and Information Note which indicated that assistance is provided to returnees in getting a CSID and in respect of onward travel from Baghdad. There was no reason why his father and the father's uncle could not meet him in Baghdad and help him.
23. Making several references to *AAH* he said there was no reason why the appellant could not get a CSID via the Iraqi Embassy in London. His father could provide the relevant information. If necessary power of attorney could be given to a lawyer in IKR to act as a proxy.
24. The appeal should be dismissed.
25. Ms Capel said that the First-tier Tribunal had found that the appellant has no documents. Nor she submitted can the family provide such. It would not be possible to get a CSID either directly or via a proxy. Further, the Iraqi civil registry system is in disarray.
26. Turning to what might happen if the appellant was returned to Baghdad she said the indication was that a returnee would not be able to travel to IKR by air with a laissez passer. He needs a CSID. The Embassy letters referred to in the CPIN were vague and departed from *AAH*.
27. As for the question of whether he could redocument himself quickly in Baghdad there is no indication that there is a IKR civil registry office there. He would have to get to IKR to get documents. If he had to remain in Baghdad he would struggle not least because of his young age, he is a Sunni, he had been outside Iraq for some time and he has mental health issues which would be likely to get worse. He would be at real risk of serious harm amounting to a breach of Article 3. Even if his father or uncle were able to come to Baghdad they might face difficulties. Much would depend on the attitude of those in charge of the checkpoints. The situation would be made more difficult because the father would not be in possession of a CSID for the appellant.
28. Ms Capel was not able to assist on whether the father would be able to renew the appellant's passport and whether a CSID was necessary to do so.

29. Ms Capel invited me to remake the decision by allowing the appeal on refugee grounds or under Article 3.
30. Following the hearing I received a note from the appellant's solicitors seeking to address the issues of whether details of a person's children are included on their CSID, and whether a CSID is required to obtain a passport.

Consideration

31. As indicated the sole issues in this case are documentation and return. The country guidance is *AAH* which explains that returns are to Baghdad but a returnee of Kurdish origin in possession of a valid CSID or passport can journey by land or air practically and affordably without real risk and without relocation being unduly harsh. Domestic flights to the IKR cannot be boarded without either a CSID or a valid passport and if the returnee has neither there is a real risk of his being detained at a checkpoint if he travels by land. Other ways of verifying identity at checkpoints such as calling upon "connections" were discussed. In *AAH* the respondent accepted that returnees who were not in possession of a CSID and were not able to obtain one, would face a risk of destitution such that Article 3 would be engaged.
32. The fundamental issue is whether the appellant's male relatives, his father and great uncle, would be able to get or assist in getting him a CSID.
33. Ms Capel relied heavily on the report of Dr Fatah which was referred to extensively in *AAH* and was found to be "*insightful and helpful*" [91] by the Upper Tribunal.
34. The thrust of Mr Turfan's submission was that the appellant could get a CSID from the UK.
35. Dr Fatah's evidence about applying for a CSID through a consulate abroad is at [26]ff. The Upper Tribunal's conclusions on the evidence are at [100]ff. At [100] the UT stated that "... a critical part of a decision-maker's enquiry will be what documents the individual in question has, or might reasonably be expected to get. The first question to be asked is whether the proposed returnee is in possession of a CSID; if he is not, the second question is whether it is reasonably likely he will not be able to obtain one." At [101] the UT noted that the ability to obtain a new CSID was considered in *AA (Iraq)* [173 to 187]. The evidence on consular assistance was summarised as follows:-

"173. As regards those who have an expired or current Iraqi passport but no CSID – Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality – Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his

representative in order for that person to “follow up on the progress of the application”.

174. *However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of giving power of attorney to a lawyer in Iraq to act “as a proxy” is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.*

...

176. *There is a consensus between Dr Fatah’s evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID’s from abroad.*

“In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorisation granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality.”

177. *In summary, we conclude 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. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate ... 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 where Article 15(c) serious harm is occurring.”*

36. Before the First-tier Judge the appellant was unable to clarify why his father could not get him documentation. Ms Capel asserted that his family could not provide documents such as to allow for the getting of a CSID. It was not explained why such should be so. It was not explained why his father and great uncle would not have the relevant family registration details. There is no evidence that the appellant’s father and great uncle are living anything other than a normal life in IKR. As Dr Fatah explained at [23] the CSID card *“the physical representation of the information in the family record book – is a crucial document for adult life in Iraq.”*
37. The appellant has not established to the lower standard that these family members do not have a CSID and other documents necessary for day to day living. I find no reason why *“the book and page number for their family registration details”* could not be

produced such that a CSID could be got through the consular section of the Iraqi Embassy in London.

38. Even if that were so no adequate reason has been given why a proxy through a power of attorney could not be used. The Civil Status Affairs Offices in IKR are not in an area where Article 15(c) applies. That there are such offices in IKR is clear from the CPIN (section 5).
39. I thus conclude from the material before me that it is reasonably likely the appellant will be able to obtain a CSID via the Embassy here, via his father or via a proxy. The result is he will be able to return to Baghdad and thence by air or land to IKR without risk of serious harm.

Notice of Decision

40. The decision of the First-tier Tribunal showed material error of law. It is set aside and remade as follows.

The appeal is dismissed.

An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway

05 September 2019