



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

Appeal Number: PA/08773/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 7 February 2018**

**Decision & Reasons Promulgated  
On 01<sup>st</sup> March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

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

Appellant

**and**

**S H M  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Sadiq, Adam Solicitors

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

**DECISION AND REASONS**

1. The Appellant is a national of Iraq, born on 25.3.84. He arrived in the United Kingdom on 16.2.15 and claimed asylum. The basis of his claim is that he is a Sunni Kurd from Tuz Khurmatu, in the province of Saladin. His family were supporters of the Pershmerga, as a result of which his father was killed by ISIS, who also put a bomb in his or his brother's car. The Appellant received three threatening phone calls from ISIS. His two brothers fled and he too decided to leave Iraq for his safety.

2. The Appellant's asylum application was refused in a decision dated 5.8.16, on the basis of his credibility due to major inconsistencies in his account and because of his immigration history, the Appellant having travelled to the UK via the IKR, Turkey, Greece, Belgium and France. He appealed against this decision and his appeal came before First tier Tribunal Judge Agnew for hearing on 17 March 2017.

3. In a decision and reasons promulgated on 30 March 2017, the Judge dismissed the appeal, finding that there were significant discrepancies in his account and that the Appellant was neither plausible nor credible. In light of the fact that the Appellant's home province of Saladin is in a contested area the Judge found the Appellant could return to Baghdad and internally relocate to Erbil.

4. The Appellant sought and obtained permission to appeal to the Upper Tribunal on the issue of internal relocation only.

5. In a decision and reasons promulgated on 13 February 2018, Deputy Upper Tribunal Judge Birrell concluded that the Judge had made material errors of law in that she failed to identify the relevant test to be applied ie whether it was reasonable to expect the Appellant to internally relocate; gave inadequate assessment of the factors set out in *AA (Article 15C) Iraq* [2015] UKUT 00544 (IAC) and failed to make a clear findings as to how the Appellant would obtain his CSID; the likelihood of him being able to find employment in the IKR in light of the number of IDPs there and as to whether he has family or friends in the IKR. Thus the decision was set aside in respect of internal relocation only, all other findings were preserved.

6. The appeal was adjourned for a resumed hearing and was then subject to a transfer order. It came before the Upper Tribunal for remaking on 26 November 2016 but unfortunately had to be adjourned due to the fact that no Kurdish Sorani interpreter had been booked.

### *Hearing*

7. At the resumed hearing before the Upper Tribunal, there was, again, no appearance by a Kurdish Sorani interpreter. Mr McVeety informed the Upper Tribunal that he would be content not to cross-examine the Appellant but simply to make submissions. The interpreter subsequently arrived, late and assisted by translating the submissions to the Appellant.

8. Mr McVeety submitted that the negative credibility findings made by the First tier Tribunal Judge had been preserved by Judge Birrell in her decision and reasons dated 13.2.18. Nothing the Appellant said had been believed. The previous Judge found at [40] and [42] that the Appellant had a CSID card at his family home and did not accept he was not in contact with his family. The Judge also accepted that the Appellant was not telling the truth about his financial circumstances and his family, nor that he had as few skills as he claimed.

9. Mr McVeety submitted that the Appellant does not originate from the IKR but is from Tuz Khurmatu, which is in a contested area and the Respondent accepts that this gives rise to an article 15C risk. However, he could reasonably be expected to internally relocate to the IKR.

10. Mr McVeety submitted that the Appellant's new witness statement must be considered in light of his overall credibility. The Judge found he was still in contact with his family and it is interesting that there is nothing from the Red Cross as to what the Appellant may or may not have said, despite the fact that this could have been extremely easily obtained and the Red Cross could have produced more to support what he said. He submitted that the Appellant has not produced anything that interferes with the Judge's finding that the Appellant is in touch with his family.

11. Mr McVeety further accepted that there are flights between the UK and Baghdad, however, he submitted that, given that the Appellant has been found to have a CSID at home in Iraq, he would fly to Baghdad and then go to the IKR. He would not be in Baghdad for any length of time and could go straight to the IKR.

12. Mr McVeety in reliance on the CG decision in *AAH* (Iraqi Kurds – internal relocation) [2018] UKUT 00212 (IAC) at [9] of the headnote, submitted that the Appellant has the ability to access accommodation and that the AVR scheme would give him the ability to rent in the IKR. The First tier Tribunal Judge also found the Appellant could receive remittances from his family and use these to assist him in the IKR. The Judge did not accept the Appellant's claim about his background, therefore, he cannot rely on the fact he said he was unskilled as this was not accepted by the Judge. He has family; he could rely on remittances from them and his CSID and thus the Appellant could internally relocate to the IKR.

13. In his submissions in response, Mr Sadiq stated that the focus of his submissions must be to do with where his client comes from, which is a particularly problematic area, even within what is known as contested areas and that this was accepted by the Respondent: see [16] and [17] of the refusal letter. The level of disruption and ongoing trouble and violence is extreme and continues to this day. Mr Sadiq submitted that it was also important to note and what is also clear from the evidence, is that the word genocide has been used in relation to the Kurdish community in Tuz Khurmatu. All the evidence pointed to his client's family having been displaced. The relevant objective evidence is that over 10,000 IDPs are in refugee camps in Kurdistan. This highlights their position and the ongoing risk to them. Even if the Appellant is in touch with his family, this does not mean he can access their support or documentation or his CSID. Mr Sadiq submitted that, given the level of violence against Kurds in Tuz Khurmatu, it is highly likely that his family will not be there now.

14. Mr Sadiq sought to rely on the CG in *AAH* (op cit) at 1.(iii) of the headnote, which provides:

*“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.”*

15. Whilst it may be the majority of IDPs are undocumented, Mr Sadiq submitted that there is an easy jump to the conclusion that CSID documentation is accessible when there is a good deal of evidence that, even if one is inside Iraq, documentation is not at all easily available. Therefore, the Appellant's family cannot be of assistance. Mr Sadiq sought to rely on background evidence set out in the Appellant's supplementary bundle at 19-22 and 46-48, where there is reference to 60% of IDPs not having access to their own CSID documentation.

16. Mr Sadiq submitted that relocation to Kurdistan without the CSID will mean it is unreasonable to expect the Appellant to return and make his way to Kurdistan. Even assuming there is a CSID card that can be got, he submitted that there is still a significant question around whether it is reasonable to expect this man to make his way in Kurdistan. Even with the preserved negative findings, Mr Sadiq submitted that it would still be unreasonable to expect the Appellant to be able to safely relocate to the IKR. If he has a CSID he would be able to enter the IKR and receive ARV but beyond that, despite the finding of the Tribunal as to access to some monies, there remain real question marks over whether a man with his profile, single, with no children, would be able to access accommodation.

17. In respect of [9] of *AAH* (Iraq) (op cit) he submitted that it is unlikely the Appellant would be able to access a camp and that it is likely, given his situation as a single man, that he would end up in that critical shelter. He only has primary education [Q47 of the AIR]. The examples of work he gave were basically low skilled and itinerant. Mr Sadiq submitted that it would not be at all easy for him in Kurdistan in terms of securing employment.

18. He further submitted that, given the objective evidence in relation to Tuz Khurmatu and pages 92-112, which is the Amnesty International report of late 2017, it is particularly telling and it is not possible for this court to conclude that Kurds are still in Tuz Khurmatu as they have become IDPs. Mr Sadiq further sought to rely on the country guidance decision in *AAH* (op cit) as to an assessment of the Appellant's employment prospects. The Appellant is from an area that had a marked association with ISIL, who controlled that area. He will

not be able to get on and have a stable life in Kurdistan. He has no connections in terms of family in the IKR.

19. I reserved my decision, which I now give with my reasons.

*Findings and reasons*

20. I turn first to the preserved findings of fact by First tier Tribunal Judge Agnew. Those which are material to my assessment are that:

(i) the Judge did not accept that the Appellant's father was a former spy for the Ba'ath Party and that this was known to the Kurdish people, thus he could not live in the IKR [25];

(ii) he has not established that he has lost contact with his family and therefore does not have any family members in Iraq willing to support him on return or that he does not have the necessary documentation or cannot obtain it in order to return to his country of nationality [34];

(iii) the Appellant is not credible or plausible in terms of the basis of his claim as to why he left Iraq [34].

21. I also bear in mind the fact that the Appellant did not have the benefit of legal representation at that hearing. I also bear in mind that the Appellant claimed to have been shot in the head whilst in France and he provided a consent for dated 31.1.17 agreeing to a procedure to remove a pellet from his head, right side [12. refers].

22. Whilst Judge Agnew found at [40] that the Appellant claimed he had a CSID at home and had not established that he could not obtain the documents he needed from his family in order to travel to Baghdad and on to Erbil, this finding was expressly overturned by Judge Birrell.

23. Mr McVeety declined to cross-examine the Appellant thus I make my findings of fact, bearing in mind the lower standard of proof, on the basis of the evidence given to the First tier Tribunal, in light of the background and supporting evidence.

24. Mr McVeety's submissions were predicated on the basis that the Appellant has, or could obtain, a CSID card. The Appellant's evidence is that he had a CSID card at home in Iraq [5] of his witness statement refers. His home is in Tuz Khurmatu, which is in a contested area *viz* Saladin province. In his updated witness statement prepared for this hearing, which is signed but undated, the Appellant states that he has attended the Red Cross office in Liverpool to try to assist him in locating his family. He has also appended a Red Cross business card from the international family tracing section in Merseyside, with the names of the manager and service co-ordinator. The Appellant also states that he last spoke to his mother after he left Iraq but before he came to the UK and she told him that she had re-married and was not in contact with his brother and that he has no means of being able to contact her or any of his family members now.

25. In his submissions, Mr Sadiq made reference to a document from the website [www.rudaw.net](http://www.rudaw.net) entitled "Iraq's Rapid Response Force withdrawing from Tuz Khurmatu" dated 9.9.18 which states that the Rapid Response Force who were deployed to Tuz Khurmatu in January 2018 in a bid to reduce tensions that skyrocketed during the withdrawal of Kurdish forces in the area after Shi'ite militia groups took it over, would be replaced by a regular army brigade. *"Kurdish residents fled the ethnically diverse town and their homes and businesses were looted and burned in acts condemned by the Kurdistan Region parliament as genocide."*

26. Mr Sadiq also sought to rely on an article from [www.basnews.com](http://www.basnews.com) dated 19.11.18 which provides that: *"more than 10,000 internally displaced persons (IDP) are still living in Kurdistan region's Garmiyān Administration and reluctant to return to their homes in Tuz Khurmatu under the rule of Shi-ite militias of Hashd al-Shaabi. Last year in October the Iraqi army and Iranian-backed Hashd al-Shaabi overran Kirkuk, Tuz Khurmatu and other disputed Kurdish territories to push the Peshmerga forces out of the region. The offensives led to a humanitarian crisis which left hundreds of thousands of Kurdish civilians displaced ... There are also people among the IDPs whose homes, shops or factories are burned down by the militia, and they have no motivation to return to their hometown."*

27. In light of the background evidence as to the displacement of thousands of Kurds from Tuz Khurmatu I find that it cannot be assumed that the Appellant would be able to obtain his original CSID from his family home because there is a serious risk that his family home may have been destroyed and that any family members remaining there ie either his mother, who has re-married or his brother, have been internally displaced. I find in light of the new evidence and bearing in mind the background evidence, that the Appellant has contacted the Red Cross to help him trace his family that he is not currently in contact with any family members in Iraq.

28. Thus the question is, bearing in mind the guidance set out in *AAH (Iraqi Kurds - internal relocation) Iraq* CG UKUT 00212 (IAC), which post dates the decisions of Judge Agnew and Judge Birrell, whether the Appellant could obtain a new CSID. Headnotes 1 - 5 provide:

*"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.*

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."*

29. I find that the Appellant could not reasonably be expected to attend the civil registry in Tuz Khurmatu, due to the fact that it is in a contested area and in light of the above he would, in any event, be unable to travel there safely without a CSID. In the absence of any of the relevant documentation and in the absence of any male family members who could meet the Appellant in Baghdad in the hope of persuading the civil registry office there to provide him with a CSID, I find that the Appellant would simply be unable to obtain a CSID. Thus the issue is internal relocation to Baghdad, because it is clear from AAH that he would be unable to travel onwards to the IKR without a CSID.

30. As the Upper Tribunal made clear in *BA (Returns to Baghdad) Iraq* CG [2017] UKUT 00018 (IAC) at headnote 5-8 the fact that the Appellant is a young, Sunni male is a risk factor, due to sectarian violence, although Sunni identity is not sufficient to give rise to a real risk of serious harm the authorities are unable and unwilling to be able to provide sufficient protection.

31. On the facts of *BA (op cit)* the Appellant was returning to his home town of Baghdad and thus the issue of internal relocation did not arise. However, in *AA (Article 15(c)) Iraq* CG [2015] UKUT 00544 (IAC) the Upper Tribunal held:

*“14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*

*15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*

- (a) whether P has a CSID or will be able to obtain one (see Part C above);*
- (b) whether P can speak Arabic (those who cannot are less likely to find employment);*
- (c) whether P has family members or friends in Baghdad able to accommodate him;*
- (d) whether P is a lone female (women face greater difficulties than men in finding employment);*
- (e) whether P can find a sponsor to access a hotel room or rent accommodation;*
- (f) whether P is from a minority community;*
- (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.”*

32. Whilst *AA* was appealed to the Court of Appeal, on the manner in which the Upper Tribunal treated the issue of obtaining a CSID, the paragraphs cited above were not subject to challenge and were preserved on appeal. I thus assess this Appellant’s case in light of the factors set out above. I find that:

- (i) the Appellant does not have a CSID nor will be likely to be able to obtain one;
- (ii) he cannot speak Arabic;
- (iii) he does not have family or friends in Baghdad who are able to accommodate him;
- (iv) he is not a lone woman;



(v) it is unlikely that he would be able to find a Sponsor, given his provenance and former residence in Tuz Khurmatu;

(vi) he is a Sunni Kurd and thus could be considered to be from a minority community;

(vii) he may be able to access some general support as an IDP.

33. Bearing in mind the finding in *BA* (op cit) at [121] that there are a large number of legal and illegal checkpoints across the city, which would give rise to a reasonable degree of likelihood that the appellant would be stopped at a checkpoint on a fairly regular basis and in light of the background evidence shows that checkpoints are largely manned by Shia militias, I find that there is a risk to the Appellant, albeit small, on the basis of his Sunni religion. The Upper Tribunal found in *BA* that there was no sufficiency of protection in such circumstances. I further find that he is unlikely to find somewhere to live in Baghdad, apart from provision for IDPs or to find employment; he has no family or friends to turn to for support, he is not an Arabic speaker and does not possess a CSID.

34. In light of the factors extrapolated from the country guidance judgments, I find that it would be unreasonable and unduly harsh to expect the Appellant to internally relocate to Baghdad. His asylum claim succeeds on this basis, despite the fact that his original basis of claim was found to lack credibility. Further or in the alternative, I find that the Appellant is entitled to humanitarian protection pursuant to Article 15C of the QD for the same reasons, on the basis of his individualised risk factors.

#### *Decision*

35. The appeal is allowed on the basis that the Appellant has a well-founded fear of persecution on account of his membership of a particular social group *viz* young Sunni Kurdish men and that it would be unduly harsh and unreasonable to expect him to relocate to Baghdad. The appeal is allowed in the alternative on humanitarian protection grounds.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

28 February 2019