



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

Appeal Number: PA/12430/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
on 24 October 2019**

**Decision & Reasons
Promulgated
On 15 November 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**B H I
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzan of Burton & Burton Solicitors.

For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision the First-Tier Tribunal Judge Gribble promulgated on 10 April 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

- 2.** The appellant is a citizen of Iraq who arrived in the UK in January 2016 illegally. The Judge noted that in his screening interview on 15 January 2016 the appellant claimed he was in fear of persecution from ISIS if

- returned to Iraq because they had come to his village. It was also noted the appellant had previously claimed asylum in Austria in 2015.
3. A decision refusing the appellant's application was issued which the appellant appealed. In his documents the appellant also claimed to be a convert to Christianity stating he may face a real risk on that basis too. The respondent did not give consent to the Judge considering this new matter. An application by the appellant's representative for an adjournment to allow the respondent to consider additional submissions on that issue, sent on 7 March 2019, was refused.
 4. Having assessed the evidence, which was in the form of documentary and oral evidence, the Judge set out findings of fact from [44], in which it is found the appellant's evidence has not been coherent at all. At [57] the Judge finds:
 57. Therefore I do not accept his account beyond that he is from a village near Dooz Khormato and that Da'esh/ISIS fighters arrived in late 2014. He left the village with sufficient funds to get into Europe. I do not accept his parents are dead or that his siblings were taken, or that his parents and siblings were killed and his maternal uncle was kidnapped. I do not believe that his uncle is in Austria. [BHI] has a CSIDs in his home village. He left, as many thousands of young men did, to escape the fighting and sought to reach Europe for a better life.
 5. The Judge notes ISIS is no longer a force in Iraq and that the appellant cannot be considered to be a refugee on the basis of his political opinion at the date of the hearing. The Judge therefore considers whether the appellant's home area is one to which Article 15(c) of the Qualification Directive applies and whether returning the appellant to his home area or relocating to another part of the country will breach article 3 ECHR.
 6. The Judge considered the evidence provided in relation to the appellant's home area noting they pre-dated the CPIN of October 2018. The Judge finds that the current situation in Salahuddin Provinces is that ISIS are a spent force in the area, which is safe.
 7. The Judge did not find the appellant's overall account reasonably likely to be true in that although there was fighting in the appellant's home area in the past things have settled down and people started returning there to rebuild their lives. The Judge finds there is no force in saying the appellant's home area is a place where simply being present creates a risk of violence or harm. The Judge finds the appellant is unable to succeed under Article 15(c).
 8. The Judge notes the appellant's removal will be to Baghdad and finds there should be no difficulty in his obtaining a replacement CSIDs before he has to return as he has relatives in Iraq and the Judge did not accept his account that his parents were dead and that his uncle could not be located. The Judge notes that recent guidance says that all civil records for Salahuddin Province are held in Baghdad enabling the appellant to obtain a copy of his CSID and obtain a travel document which he could use to pass through Baghdad on return to his home area.

9. The Judge considers the question of internal relocation in the alternative at [65] finding that the same is available to the IKR.
10. Article 8 ECHR and any ability to succeed under the Immigration Rules is considered at [66 – 68] in which the Judge finds the appellant had not established an ability to succeed either within or outside the Rules.
11. The appellant sought permission to appeal which was granted by another judge the First-Tier Tribunal on 3 May 2019, the operative part of the grant being in the following terms:
 2. It is arguable that the Judge has misdirected herself (a) in that whilst Country Guidance case of AA(Iraq) [2015] states that Salah-al-Din is a contested area, the Judge finds that the country situation has changed by placing reliance on the CPIN report which arguably has not been properly made out to show that there was significant evidence before the Judge to show that the current country guidance case law was no longer valid guidance; (b) by relying on the case of Amin v SSHD [2017] CSOH without stating what principle applied to the Appellant's claim when it is not a country guidance case nor does it make any findings as to the substantive circumstances in Iraq apart from the situation in Kirkuk and (c) by failing to consider whether the Appellant could obtain his CSID documentation within a reasonable time with particular reference to paragraph 104 of AAH Iraq.

Error of law

12. The appellant asserted the Judge erred in law in departing from the country guidance decision heard in 2015 which found the appellant's home is in a contested area. It is not disputed that country guidance determinations should be followed unless there are very strong grounds supported by cogent evidence for not doing so. The Upper Tribunal is currently reviewing the situation in Iraq with a view to providing up-to-date country guidance but the same was not before the Judge and has not yet been published.
13. It is also the case that there have been substantial changes in relation to Iraq with the removal of ISIS by the Iraqi authorities and their partner groups. The CPIN specifically refers to the appellant's home area which is said to have seen consistent and significant decline in security incidents and civilian fatalities and injuries with current numbers being typically 10 times lower than they were in mid-2014. The Judge clearly analysed the evidence provided by the appellant as the same is specifically referred to in the determination under challenge. The Judge notes, however, that the appellant's material predated the CPIN which was issued in October 2018. Whilst a CPIN is not a country guidance decision it refers to a number of sources providing credible country information. The Judge's finding at [62] is that the situation in the appellant's home area has changed significantly since October 2017 and that in the appellant's home area ISIS is a spent force and that the area is now safe. The Judge recognises that the Scottish case of *Amin* dealt with Kirkuk but was entitled to conclude that the principles applied in that decision equally applied to the appellant's home area; as they were based upon the

threat from the same group. This has not been shown to be a finding outside the range of those reasonably available to the Judge on the evidence.

- 14.** The Judge's conclusion at [63] that there is no risk to the appellant in his home village from ISIS in 2019 has not been shown to be an irrational conclusion.
- 15.** In any event, the Judge also considers the position in the alternative at [65] in the following terms:

65. If he could not return to his home area I need to look at whether there is another part of Iraq he could reasonably relocate to. Here I note it has been said he is from 'Kurdistan' but I do not make that finding. With a CSID he could get transport via air to Erbil in IKR. He could then choose to join his family or he could stay and ask them to join him. He is a Kurd who could enter with documentation and stay for a period of time. He has the potential of obtaining work being a fit and healthy young man and I find he would not face the risk of destitution or treatment contrary to Article 3 ECHR.

- 16.** The Judge clearly considered the evidence in the round with the required degree of anxious scrutiny and the findings are adequately reasoned.
- 17.** The appellant also asserts the Judge failed to consider whether he would be able to obtain documentation with a reasonable period of time asserting the Judge failed to consider the country guidance case of AAH (Iraq) at [104]. In that paragraph the Upper Tribunal was recording the evidence of Dr Fatah rather than making clear findings. Those findings appear later in the decision at [106] where it was found:

"The evaluation of whether there is a reasonable likelihood that an applicant will not be able to obtain a new CSID, either directly or by way of a proxy, must be assessed against that background. Whilst it remains possible for an undocumented returnee to obtain a new CSID whether he is able to do so, or do so within a reasonable time frame, will depend on his individual circumstances."

- 18.** Guidance in relation to factors to be taken into account are set out by the Upper Tribunal.
- 19.** The Judge did not accept the appellant's account that his parents were dead or that his siblings were taken or killed and did not believe his uncle was in Austria. The Judge clearly found that the appellant has male relatives who remain in Iraq and at [64] writes:

64. In terms of article 3, removal at present will be to Baghdad. There should be no difficulty in obtaining a replacement CSIDs before he has to return. This is because he has relatives in Iraq and I did not accept his account that his parents were dead and that his uncle could not be located. The most recent guidance says that all civil records for Salahuddin Province held in Baghdad so he could ask his male relatives to attend to get a copy of his CSID to allow him to get a travel document. With this

document, the guidance is clear that he could pass through Baghdad and return to his home area.

- 20. Whilst the appellant disagrees with the Judge's conclusions they have not been shown to be outside the range of those reasonably open to the Judge on the evidence. The Judge found parts of the appellant's account to be incoherent and to lack credibility. The Judge finds the appellant is not a person targeted and facing a real risk of serious harm in Iraq. The adverse credibility findings and conclusions arising have not been shown to be infected by legal error.
- 21. The determination shall stand.

Decision

- 22. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 23. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 29 October 2019