



IAC-FH-CK-V1

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

Appeal Number: PA/09064/2019

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 3 February 2020

Decision & Reasons Promulgated  
On 11 March 2020

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

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

Appellant

**and**

**MR M A  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr A Tam, Home Office Presenting Officer

For the Respondent: Mr K Wood, I A S (Liverpool)

**DECISION AND REASONS**

1. The Respondent, to whom I shall refer as the Claimant, is a national of Iraq born on 16 December 1985. He arrived in the UK clandestinely on 26 August 2015 and made a claim for asylum the same day. This application was refused in a decision dated 5 September 2019. The Claimant appealed against this decision and his appeal came before First-tier Tribunal Lang in Manchester for hearing on 23 October 2019. In a Decision and Reasons promulgated on 30 October 2019 the judge allowed the appeal essentially on the basis that the Appellant would face destitution on return if he

attempted to relocate in light of the country guidance decision in *AAH* (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) and *AA*, (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC): see [35] and [36].

2. Permission to appeal was sought, in time, by the Secretary of State on the basis: firstly, that the judge had made a material misdirection of law on a material matter in allowing the appeal with regard to humanitarian protection in light of the judge’s previous findings at [33] that the Claimant did not have a well-founded fear of persecution on return to Iraq and at [35] that the Claimant would be able to obtain the original or a replacement CSID card within a reasonable time and secondly, that the judge failed to give adequate reasons for finding that it would be unduly harsh for the Claimant to return to the IKR in light of the fact that as a Turkman he is a member of a well-established minority in Iraq.
3. Permission to appeal was granted by First-tier Tribunal Judge Bulpitt in a decision dated 13 December 2019 in the following terms:

- “3. *The central reasoning for the judge’s finding that the Appellant is entitled to humanitarian protection comes at [36]. It is arguable that this paragraph is inadequate to enable the losing party to know why they have lost (see MD (Turkey) [2017] EWCA Civ 1958) particularly in light of the judge’s earlier findings that the Appellant would not be at risk of persecution and would be able to obtain a replacement CSID card. There is nothing in the paragraph to suggest that the issues identified at paragraphs (9) and (10) of the headnote of AAH (Iraqi Kurds - internal relocation) Iraq (CG) [2018] UKUT 00212 have been considered.*
4. *It is hard to decipher what is the error of law suggested in the first ground which appears to have little merit. Nevertheless all grounds may be argued.”*

#### *Hearing*

4. At the hearing before the Upper Tribunal, I asked the parties to address the impact, if any, of the recent country guidance decision on Iraq, that is *SMO, KSP & IM* (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), which was published on 20 December 2019. Mr Tam on behalf of the Secretary of State submitted that the decision in *SMO* did materially impact on the Respondent’s grounds of appeal, given that at the time of the hearing before the First-tier Tribunal, Kirkuk was, according to the country guidance then in force, in a contested area and now it is not. Mr Tam drew attention to the fact that the Home Office Country Policy and Information Note was before the First-tier Tribunal Judge, Judge Lang, which set out that position. He submitted that this was a plain and obvious point and it was clear that the judge had erred in law in failing to find the Claimant could return to Kirkuk.
5. Mr Tam acknowledged the other points relied on by the Secretary of State in the grounds of appeal had not been set out in the clearest form but it was clear from the grant of permission to appeal by Judge Bulpitt that the consideration of risk on return is really confirmed to [35] and [36] of Judge Lang’s decision and the question of whether the Claimant would be able to get his CSID within a reasonable

timeframe. The judge noted that the Claimant was previously employed and that he speaks various languages, but consideration of return to Baghdad was extremely brief, merely confined to half a sentence, and the Claimant could invoke the assistance of his uncle to obtain a CSID. Mr Tam, in response to a question from the Upper Tribunal, stated that any forced return would be to Baghdad, but it was the Secretary of State's position that the Claimant could then travel back to Kirkuk, which was an ethnically diverse region and was no longer part of what was considered to be a disputed area in Iraq.

6. Mr Tam also sought to rely on the second ground of appeal, which was the lack of consideration by the judge of relocation to the IKR in line with the country guidance decision in *AAH* (op cit) that the major factors which needed to be considered had not been, i.e. whether the Claimant would be able to access any form of financial or familial support and that he had an uncle in Iraq who could assist him, nor was there any exploration of factors relating to employment and the reasoning provided by the judge for allowing the appeal was clearly inadequate.
7. In his submissions on behalf of the Claimant, Mr Wood invited the Upper Tribunal to find no error of law or no material error. He submitted that it was difficult to ascertain what the Secretary of State's grounds of appeal were arguing and that they appear to be more of a critique of Judge Lang's decision. Mr Wood sought to rely on the country guidance decisions in *AA* and *AAH*, which set down a number of criteria that need to be considered. He submitted that the issue of a CSID is not a silver bullet. In terms of ground 2, it was unclear what the argument is, merely asserting that a Turkman can return to Iraq does not begin to demonstrate a material error of law. The fact that there are other Turkmen in Iraq does not necessarily mean that this Claimant would be safe.
8. Mr Wood submitted that the losing party, i.e. the Secretary of State, can understand from the Decision and Reasons why she has lost. There are three country guidance decisions which are material and which the judge applied. In light of *AA* the question is whether there are any family members in Baghdad. The judge at [36] found that there were not, that the Claimant was from a minority community from an area associated with ISIS, i.e. Kirkuk, that he was a Sunni Muslim. Following the decision in *BA* (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) the Iraqi authorities would not be willing to provide him with protection. The judge found that the claimant could obtain a CSID but would have other problems. The Claimant is not from the IKR. He is from Kirkuk. There were no family members that he could live with and concerns about the conditions that he would return to. Any assistance from the Voluntary Return scheme would not take him very far if he was unable to find employment and there was no-one who could assist him in obtaining work. The fact that the Claimant is from Kirkuk, which is associated with ISIS, may deter future employers. Mr Wood submitted that the outcome was open to the judge on the evidence before her.
9. Mr Wood further submitted, with regard to the relevance of *SMO* that the Secretary of State's grounds of challenge did not seek to challenge the judge's findings of fact that Kirkuk was unsafe at the date of hearing of that appeal. There had been no

attempt by the Secretary of State to vary the grounds of appeal so as to include a challenge to the judge's findings. Consequently, *SMO* was not relevant in determining whether there was an error of law. Mr Wood submitted that the entirety of the decision should be left intact. If, in the alternative, I was to find an error of law he submitted that the finding that Kirkuk is not safe for this Claimant should be preserved.

10. In reply, Mr Tam agreed with Mr Wood that the CSID issue was not a silver bullet but submitted, however, it is a material factor to consider in respect of return. Mr Tam submitted that the arguments based on *AA* and *AAH* are not reflected in Judge Lang's decision at [36] and the case would be different had those decisions been properly considered. Mr Tan submitted if an error was found that any reconsideration could not be limited solely to internal relocation and a *de novo* hearing would be required.

#### *Findings and Reasons*

11. I reserved my decision, which I now give with my reasons. I find that there are material errors of law in the decision of First tier Tribunal Judge Lang, in light of the country guidance decision in *SMO (op cit)*. This is because whilst the Judge did not find the Claimant's fear of persecution to be credible [33] in light of the country guidance then in force she found that as his hometown is Kirkuk, which was a contested area, he would be at risk of indiscriminate violence there [34] and internal relocation would be unduly harsh [36].
12. In *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)* which was promulgated on 20 December 2019, the Upper Tribunal issued updated country guidance, holding *inter alia* as follows:

#### *"A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE*

*1. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*

*2. The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*

*3. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an*

*individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*

*4. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*

*5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*

- Opposition to or criticism of the GOI, the KRG or local security actors;*
- Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
- LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
- Humanitarian or medical staff and those associated with Western organisations or security forces;*
- Women and children without genuine family support; and*
- Individuals with disabilities.*

*6. The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

## **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

*7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*

*8. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

*9. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any*

*alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*

*10. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

### C. CIVIL STATUS IDENTITY DOCUMENTATION

*11. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.*

*12. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*

*13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*

*14. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

*15. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*

*16. The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including*

*fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

#### D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

*17. Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.*

*18. Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.*

*19. Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, i.e. a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq).*

#### E. IRAQI KURDISH REGION

##### *Non-Kurdish Returnees*

*29. The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in*

*Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

#### F. EXISTING COUNTRY GUIDANCE DECISIONS

30. *This decision replaces all existing country guidance on Iraq."*

13. It is apparent from the country guidance that Kirkuk is no longer considered to be in an area of internal armed conflict and that, as a person from a formerly contested area, the Claimant's case will involve 'a fact-sensitive, "sliding scale" assessment.'
14. Thus consideration needs to be given as to whether the Claimant can properly be returned to Kirkuk, in light of the finding of the First tier Tribunal Judge at [35] that the Claimant would by himself or with the assistance of his maternal uncle, be able to obtain his original CSID or a replacement.
15. For the avoidance of doubt, even if the new country guidance had not been promulgated, I find that the Secretary of State's first ground of appeal is made out in light of the Judge's previous findings at [33] that the Claimant did not have a well-founded fear of persecution on return to Iraq and at [35] that the Claimant would be able to obtain the original or a replacement CSID card within a reasonable time.
16. I accept Mr Tam's submissions that the Judge failed to give adequate reasons for finding that it would be unduly harsh for the Claimant to internally relocate to either Baghdad or the IKR and which aspects of AAH she sought to rely upon to substantiate her findings in this respect.
17. It is further apparent that the issue of internal relocation is also impacted by SMO if it is found that the Claimant cannot safely return to Kirkuk and that his ethnicity as a Turkman will be key in assessing his ability to internally relocate, either within Iraq or to the IKR.

#### **Notice of Decision**

The appeal by the Secretary of State is allowed to the extent that the appeal is remitted to the First tier Tribunal for a hearing to determine in light of the country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC):

- (i) whether the Claimant can safely be returned to Kirkuk; and



- (ii) if not, whether it would be reasonable and not unduly harsh to expect him to internally relocate.

The unchallenged findings by the First tier Tribunal Judge that the Claimant does not have a well founded fear of persecution and that he would be able to obtain his original CSID or a replacement within a reasonable time frame are preserved.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*  
Deputy Upper Tribunal Judge Chapman

Date 16 February 2020