



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

Appeal Number: PA/04056/2015

THE IMMIGRATION ACTS

Heard at Stoke

**Decisions and
Promulgated**

Reasons

On 10 August 2017

On 06 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**DLOVAN AZIZ MAHMUD
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fraczyk of Counsel instructed by Fountain Solicitors

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

DECISION AND REASONS

- 1 The Appellant, a national of Iraq, appeals with permission against the decision of Judge of the First tier Tribunal P J M Hollingworth dated 31 January 2017 dismissing his appeal against the Respondent's decision of 29 November 2015 refusing his claim for protection.

- 2 The Appellant's claim was that he was a Sunni Muslim, of Kurdish ethnicity, and spoke Kurdish Sorani and Arabic. Those matters are not in dispute.
- 3 The Appellant claimed to have been born in Jalawla (Central and Southern Iraq) (Screen, q 1.15; SEF q 11) and had moved with his family when young to Batnaya town, north of Mosul (both of which are in Ninevah province, Central and Southern Iraq). He claimed to fear harm in Batnaya due to ISIS having taken over that area in or around 2014, and he set out various experiences at the hands of ISIS there, and at the hands of Shia militia after the Iraqi army had forced ISIS out of Batnaya in or around 2015. The Appellant also claimed that his father had worked for the former Ba'ath government before 2003.
- 4 The Judge held at [66]:

"I do not accept that Appellant's account of the events which he claims transpired in Iraq. I find that his credibility has been damaged by the inconsistencies to which I have referred above and for the reasons which I have given to the point whereby his account of events fall to be rejected."

The Judge specifically rejected that the Appellant was at risk because of any imputed political opinion from ISIS, and rejected the Appellant's account that his father had worked for the Ba'ath party [67] and that the Appellant had had problems with Shia militia [68]. The Appellant would not suffer serious harm in Baghdad because of his Kurdish ethnicity or Sunni faith [70]. There is no challenge against any of those findings.

- 5 The Judge had been referred to AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC) (30 October 2015) during the hearing and submissions (paras 29, 35). On the issue of what documentation the Appellant might have to enable him to return, and to assist him after his return, the Judge observed that the Appellant had accepted that he had at one time been issued with an Iraqi passport [69/70]. The Judge was also aware that a person named Hussain, a business colleague of the Appellant's father had, since the Appellant had been in the UK, been able to post to the Appellant the Appellant's father's identity card and nationality card (or copies thereof) (para 13, 18). The Judge held at [71]:

"71. I find the Appellant would be able to live in Baghdad City or be able to relocate to other parts of Iraq. I find that the Appellant would be able to obtain a CSID reasonably soon after arrival in Iraq, given the fact that an Iraqi passport was issued to the Appellant. I have rejected the Appellant's account. I do not accept that he has no family members whom he could contact in Iraq. I have set out above the constitution of the Appellant's family. I do not find that is a real risk or serious possibility or likelihood of the Appellant suffering destitution or facing a real risk of destitution amounting to

serious harm. I find that there are those in Iraq who would be able to vouch for the Appellant. The Appellant has referred to Hussain. The Appellant has referred to his family members.

72. An alternative CSA office for Mosul has been established in Baghdad. There is a National Status Court in Baghdad to which application could be made for formal recognition of identity. The Appellant has confirmed that he can speak Arabic. It has been pointed out that those who cannot are less likely to find employment. I do not find that it would be unreasonable or unduly harsh in the light of the matters to which I have referred for the Appellant to relocate to Baghdad. I have taken into account that the Appellant is Kurdish, in weighing other factors which are relevant to this and to which I have referred. The Appellant described the scope of the business interests of his father with his partner Hussain and I find that these business interests would embrace their ability to assist the Appellant in Baghdad.”

- 6 The Judge dismissed the appeal at paragraph 77.
- 7 In grounds of appeal dated 12 February 2017, the Appellant averred that the Judge had erred in law, in summary, in:
 - (i) conflating the availability of ID documents with prior existence of documents: the fact that the Appellant had previously held an Iraqi passport did not mean that he currently had any of the necessary documentation to obtain a CSID; past possession of a passport does not mean that it is reasonably likely that the Appellant will be able to obtain a CSID;
 - (ii) taking into account immaterial considerations/failing to take into account material considerations: erring in finding that a CSID could be obtained via the alternative CSA office for Mosul in Baghdad or National Status Court in Baghdad, given that the Central Archive that exists in Baghdad is unable to issue CSID's and the operation of the National Status Court in Baghdad is unclear;
 - (iii) failing to take into account the material consideration that the Appellant's CSA office was in Mosul; he could not travel there, and nor could any family members;
 - (iv) arriving at a conclusion (that the Appellant would be able to obtain a CSID card and would not be at risk of destitution) that was irrational.
- 8 Permission to appeal on those grounds was granted on 22 May 2017.
- 9 On 11 July 2017, the Court of Appeal gave judgment in AA (Iraq) v SSHD [2017] EWCA Civ 944, amending the Country Guidance given by the

Upper Tribunal in AA Iraq. In light of that, I caused directions to be issued to the parties in the following terms:

- 1 The Appellant shall by 4.00 pm Friday 4.8.17 file and serve a skeleton argument setting out his case as to whether or not there is a material error of law in the decision of the First tier Tribunal; in particular addressing the effect that the decision in AA (Iraq) v SSHD [2017] EWCA Civ 944 (11 July 2017) has on the appeal.
- 2 The Respondent shall by 4.00pm on Tuesday 8.8.17 file and serve a skeleton argument by way of reply."

10 I am obliged to Mr Fraczyk for providing a skeleton argument as requested, given the short notice, and make no criticism of Mr McVeety that he had not been able to do so. Before me, both parties appeared to be in agreement that the amendments made by the Court of Appeal to the Country Guidance in AA Iraq made no material difference in the present case.

11 Mr Fraczyk addressed me by adopting his grounds of appeal and skeleton argument. In relation to the second ground in particular, he referred me to paragraphs 183 and 187 of the Upper Tribunal's decision in AA. For ease of reference, I set out the whole of that particular passage of AA:

"183. This is confirmed to some extent by the fact that the Iraqi government has set up two Alternative Civil Status Affairs Offices to issue CSIDs to IDPs from governorates which have been captured by ISIL. One office has been set up in Najaf to issue copies of CSIDs archived from Mosul, and another office has been set up in Baghdad to issue copies of CSIDs to individuals from Anbar and Salahaddin. These offices are only authorised to issue CSIDs to IDPs from these governorates.

184. Dr Fatah was further informed by a source at the Norwegian Refugee Council that the Ministry of the Interior had refused to open up more Alternative Civil Status Affairs offices so as to protect civil records from fraud, to protect confidentiality and to avoid duplication, as there was no database or electronic system.

185. UNHCR-Iraq provides some support to those without a CSID through its Protection, Assistance and Re-integration Centres ("PARC"), but such support is limited to providing guidance and legal advice on required procedures and documents needed to obtain a CSID. It did not issue these or other documents itself. It also confirmed that Harikar and Qandil [8] have indicated that they do not issue CSIDs. The

Norwegian Refugee Council told Dr Fatah that there is a network of legal aid clinics in Iraq, which is funded as part of USAID's Iraq Access to Justice Programme. They also provide legal advice, but do not issue CSIDs.

186. Drawing all of this together we conclude that an Iraqi national should as a general matter be able to obtain a CSID from the Civil Status Affairs Office for their home Governorate, using an Iraqi passport (whether current or expired), if they have one. If they do not have such a passport, their ability to obtain a CSID may depend on whether they know the page and volume number of the book holding their information (and that of their family members). Their ability to persuade the officials that they are the person named on the relevant page is likely to depend on whether they have family members or other individuals who are prepared to vouch for them.

187. An Iraqi national's ability to obtain a CSID is likely to be severely hampered if they are unable to go to the Civil Status Affairs Office of their home Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which a person could apply for formal recognition of identity. The precise operation of this court is, however, unclear."

12 Mr Fraczyk argued that the decision in AA is in fact unclear where the alternative CSA office for Mosul is; paragraph 183 suggests that it is in Najaf, and paragraph 187 being ambiguous, referred to alternative CSA offices for Mosul, Anbar and Saluhaddin having been established in Baghdad and Kerbala. I queried with Mr Fraczyk whether his ground of appeal was, therefore, so as to challenge the clarity or sustainability of the country guidance given in AA. He stated that he did make such challenge, although I observed that this had not formed part of the his grounds of appeal.

13 Further, Mr Fraczyk submitted that the Judge had erred in law in failing to make findings of fact which were sufficiently clear as to whether the Appellant had family members in Iraq that could assist him to obtain documentation, and where those family members were. I observed that this was also not a ground of appeal that had been raised against the Judge's decision.

- 14 In relation to the Judge's reference to the National Status Court, Mr Fraczyk argued that this could not be of any assistance to the Appellant, given that the Upper Tribunal had observed that the precise operation of the court was unclear.
- 15 Mr McVeety relied on a Rule 24 Response which argued that there was no error within the Judge's decision. He further argued that even if there was lack of clarity in the Upper Tribunal's decision in AA about where the alternative CSA office for Mosul was, the cities of Najaf and Kerbala were no great distance from Baghdad. It was also not clear whether the Judge had actually made a finding that the Appellant had lost his ID card (as opposed to his passport) and the Appellant may well therefore still have an ID card. There was no necessity to make a finding of fact about the location of any family members, which were any more specific than the findings made by the Judge, in the particular circumstances of his case.

Discussion

- 16 Paragraphs 163 and 170 of AA appear to indicate that without a current or expired passport, travel to Iraq may be facilitated by the issuing of a laissez-passer by the Iraqi embassy in the UK, and that a CSID card is needed to achieve that. The Judge also appeared to consider whether the Appellant would be able to obtain a CSID reasonably soon *after* returning to Iraq. (para 70). It seems to me that the Appellant will require a CSID *before* departure, in order to obtain a laissez-passer. Having read the relevant extract of AA (173-187), I cannot see that the Upper Tribunal has stated that past possession of a passport would make that process any easier. To that extent, I accept that the Judge may have misdirected himself as to the application of AA.
- 17 However, I find that any such error was not material to the outcome of the appeal. It is to be recalled that the Appellant's past account was rejected, and the only positive findings made in relation to him were that he was Iraqi, Kurdish, Sunni, and (impliedly) from Mosul.
- 18 Paragraph 177 of AA provides that a person without a current or expired passport, or CSID in the UK, may be able to obtain a CSID by knowing the book and page number where his family's registration details are recorded. Given the Judge's findings that he did not accept that the Appellant has no family members whom he could contact in Iraq, and that there are those in Iraq who would be able to vouch for the Appellant, and given also that the Appellant has already been sent some of his family's identity documentation from Iraq, I find that even if the Judge had not erred in (i) appearing to find that past possession of a passport was relevant, and (ii) failing to acknowledge that the CSID would be needed prior to departure from the UK (to obtain the laissez-passer), and not simply after arrival in Iraq, I find that the Judge would inevitably have arrived at the same conclusion; that the Appellant would not be destitute

in Iraq, because he would be able to obtain the relevant information from Iraq for a CSID card to be issued to him in the UK.

- 19 Further, to the extent that the Appellant's relatives may have to attend at the alternate CSA office for Mosul, and to the extent that the Judge has found that they will be able to do that, I find that the possible ambiguity in AA about where the alternative CSA office for Mosul actually is, is (i) something not raised in the Appellant's grounds of appeal, and therefore not before me, and (ii) in any event immaterial; Baghdad, Najaf and Kerbala are indeed no great distance from one another.
- 20 Further, insofar as the Judge relied on the relatives' ability to attend at the alternative CSA office for Mosul (wherever that may be), I find that the fact that it is not possible to obtain a CSID from the Central Archive in Bagdad is irrelevant, because these entities appear to be distinct from one another; there is no evidence that the Central Archive, and the alternate CSA offices that have been set up, are the same thing, or that the alternate CSA offices have the same problem the Central Archive does in not being able to issue CSID documents.
- 21 Further, I find that insofar as the Judge relied on the functioning of the National Status Court in Baghdad as a matter relevant to the Appellant being able to obtain relevant documents, I find that he was entitled to do so. The Upper Tribunal refer to the existence of that Court as a means of possible relief to those needing to obtain relevant documentation. If it was the view of the Upper Tribunal in AA that the Court offered no assistance, I am of the view that the Tribunal would have stated so. The mere fact that the precise operation of the Court is unclear does not establish any ground to argue that the Judge was not entitled to make reference to its existence.
- 22 Further, given the unchallenged rejection of the credibility of the Appellant's account, I find that the Judge was required to state no more than that he did not accept that the Appellant has no family members whom he could contact in Iraq, and that there are those in Iraq who would be able to vouch for the Appellant. No more specific findings of fact were required. The Appellant's account of past events in Iraq was unreliable (para 66). The Judge was not obliged to fill in the blanks which have been left by the Appellant's deception.
- 23 Finally, I find that the Judge did not find that either the Appellant or his family members would have to travel to the CSA office in Mosul, and the Judge thus did not err in law in that respect, and there is simply nothing in the Appellant's complaint that the Judge's finding that the Appellant was not at risk of destitution was irrational.

Decision

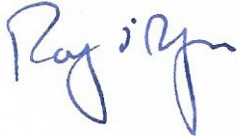
The making of the Judge's decision did not involve the making of any material error of law.

I do not set aside the decision.

I dismiss the Appellant's appeal.

Signed:

Date: 5.10.17

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan