



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01029/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 25 May 2018

Decision & Reasons Promulgated
On 30 October 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MAR

(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms K Smith	(Counsel)
For the Respondent:	Mr McVeety	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal. On 17 January 2017 the Secretary of State decided to make a deportation order in respect of him and to refuse a claim for international protection and a human rights claim. The claimant appealed but in a decision sent to the parties on 11 September 2017, the First-tier Tribunal (the tribunal) dismissed that appeal. The claimant then obtained permission to appeal to the Upper Tribunal and, in a decision sent to the parties on 6 March 2018, I set aside the tribunal's decision whilst preserving a number of its findings and conclusions. I directed a further hearing in the Upper Tribunal which would be concerned with the question of how the Upper Tribunal would remake the decision. That hearing took place on 25 May 2018. Thereafter, given that new Country Guidance had been issued by the Upper Tribunal in *AAH (Iraqi Kurds - internal relocation) Iraq* - CG UKUT 00212 (IAC) I directed the parties to provide further submissions, if wished, in light of that decision and to indicate whether they would like a further hearing. Both provided further written submissions and both indicated that they did not seek a further hearing. I have, therefore, decided this appeal on the basis of the written material before me and on the basis of what was said at the hearing of 25 May 2018.
2. The claimant, it is not disputed, is a national of Iraq of Kurdish ethnicity. It seems to have been accepted by all concerned that he is from Kirkuk.
3. The claimant entered the United Kingdom (UK) in a clandestine manner. He has given his date of entry as 26 February 2004. He claimed asylum and attended a screening interview on 3 March 2004. On 15 April 2004 his claim was refused. He attempted to appeal that decision but was out-of-time. In January 2006 he went to the Republic of Ireland and claimed asylum under a different identity. However, he was returned to the UK under the Dublin Convention on 5 May 2006. On 8 May 2006 he was convicted at Sheffield Magistrates Court of battery and failing to surrender to custody. He received a 12 months conditional discharge. In February 2007 he went to Sweden and, once again, applied for asylum under a different identity. Once again, he was returned to the UK. Upon his return, on 10 April 2007, he made a further claim for asylum which was refused on 6 September 2007. There followed a succession of further representations made by and on his behalf to the Secretary of State. All were refused until 24 November 2011 when he was granted three years discretionary leave to remain in the UK. That grant of leave, seemingly without any attempt to have it renewed, expired on 24 November 2014.
4. On 13 March 2015 the claimant was convicted, at Leeds Crown Court, of wounding with intent to do grievance bodily harm, assault and two counts of possessing an offensive weapon in a public place. He received a total sentence of six years and six months. It was that offending which led to the making of the deportation order. He sought to resist deportation on the basis that he was entitled to international protection and that his deportation would breach his rights under Article 8 of the European Convention on Human Rights (ECHR) principally on the basis of a claimed relationship with a female British citizen. But the Secretary of State took the view that he was not entitled to international protection and that deporting him would not breach his rights under Article 8. So, he appealed to the tribunal.
5. His appeal was heard on 23 August 2017. There were a lot of issues raised by the appeal and so a lot of matters which the tribunal was called upon to decide. It had to consider, first of all, whether in light of the claimant's offending and given the content of Article 33(2) of the Refugee Convention and Section 72 of the Nationality, Immigration and Asylum Act 2002, he was excluded from refugee protection. It was also required to consider, again in light of his offending, whether given the content of paragraph 339D of the Immigration Rules, he was excluded from humanitarian

protection. On the assumption that he was not so excluded it was required to consider whether he was entitled to asylum or to a grant of humanitarian protection. It was also required to consider whether deporting him to Iraq would bring about a breach of his rights under Article 3 of the ECHR. Of course, potentially he might succeed under Article 3 even if excluded from a grant of asylum and from a grant of humanitarian protection. Finally, it was required to consider whether his deportation would bring about a breach of his Article 8 rights with respect to family and/or private life in the UK.

6. The tribunal decided that the claimant was, in fact, excluded from protection under the Refugee Convention and that he was also excluded from a grant of humanitarian protection. The claimant has made no subsequent challenge to that part of the tribunal's decision.

7. The tribunal, although it had found the claimant to be excluded from the above, said that it would, for completeness, go on to address the question of whether or not the claimant might face persecution upon return to Iraq. It was, of course, obliged to do that in any event because it had to consider the position under Article 3. As to that, it rejected the claimant's argument that he would face a risk of reprisals from persons in Iraq due to what he claimed was his father's previous involvement with the Ba'ath Party. But it did accept that, if he were to return to what was accepted as his home area of Kirkuk, he would be at risk on the basis that conditions there were such as to bring him within the terms of Article 15c of the Qualification Directive (2011/95/EU). That meant it had to go on to consider whether he would be able to internally relocate to a different part of Iraq. It considered, in particular, whether he would be able to relocate to the part of Iraq which is under Kurdish administrative control (I shall call it the "IKR"). It decided that he could do that for reasons which it set out in a passage from paragraphs 89-99 of its written reasons. That was partly because of its view that the claimant was in touch with his family (though no clear finding was made that his family were still in Iraq), partly because he appeared to have financial resources at his disposal (the tribunal had in mind his ability to fund his travel to Ireland and Sweden) and partly because he would, it thought, be able to obtain an important identity document normally referred to as a CSID. I should add that the tribunal also rejected the claimant's contention that deportation would breach his Article 8 rights.

8. The claimant asked for and obtained permission to appeal to the Upper Tribunal. His grounds, in summary, were to the effect that the tribunal had failed to address the implications of the fact that he would be returned to Baghdad; had failed to consider matters touching upon "the safety and reasonableness of relocation" to the IKR and had failed to have regard to previous Country Guidance decisions but particularly *AA (Article 15(c)) Iraq* CG [2015] UKUT 544 (IAC) as adjusted by the Court of Appeal) and *BA (returns to Baghdad) Iraq* CG [2017] UKUT 00018 (IAC). As indicated, no challenge was made to the tribunal's reasoning and conclusions concerning exclusion from asylum or from humanitarian protection. No challenge was made to the tribunal's findings and conclusions regarding the lack of risk faced by the claimant due to his father's claimed involvement with the Ba'ath Party. No challenge was made with respect to the findings and conclusions concerning Article 8.

9. Permission to appeal was granted. Thereafter, as noted, I set aside the tribunal's decision. I did so because I decided that the tribunal had erred with respect to its consideration as to internal relocation. In explaining why I was setting aside the tribunal's decision I said this:

"13. I have decided that, notwithstanding the tribunal's generally careful and thorough approach, it did err in law when considering the ability of the claimant to live in Iraq away from his home area of Kirkuk.

14. I accept Ms Wilkins submission that the tribunal did not assess the matter of difficulties the claimant might experience in Baghdad. There had never been any suggestion that he was from the IKR (as I say it seems to have been accepted that he is from Kirkuk) so on the face of it, Baghdad would represent the only potential place of return. But the tribunal's written decision is silent about any of that and on one reading at least does appear to contemplate, although this is not expressly stated, that return would be returned direct to the IKR. In my judgment the tribunal was required to either explain why it was not considering the question of difficulties in Baghdad (at least in the sense of initial difficulties prior to his making his way to the IKR) or to actually carry out an assessment as to the nature, substance and extent of any such difficulties that there might be. Its failure to do so is sufficient, of itself, for the tribunal's decision to be set aside. Nevertheless, I shall consider the arguments concerning his ability to relocate to the IKR.

15. As to that, the key paragraphs of the tribunal's written decision are those running from 96-99. Here the tribunal did consider a range of factors. But it is not obvious that it had had regard to the relevant passages concerning relocation to the IKR as contained in AA. Perhaps its most relevant finding is that he has 'resources at his disposal'. But I do not read what the tribunal had to say about that as being indicative of anything more than an ability on his part to meet initial costs enabling him to settle and perhaps find accommodation within the IKR. As to anything beyond that the tribunal did not consider, for example, matters such as whether he would be permitted (his not being from that region) to live there on anything more than a short-term basis or whether he had prospects of securing employment there. Such would appear to be relevant considerations in light of what was said in AA. So, although I think this is really quite marginal, I have concluded that the tribunal did err in failing to adequately consider relocation to the IKR."

10. I also decided it was appropriate to preserve part of the tribunal's findings and conclusions. So, I went on to say this:

"16. Having decided to set aside the tribunal's decision I have also decided to preserve certain of its unchallenged findings and conclusions. I will preserve its reasoning and its conclusions concerning the exclusion of the claimant from refugee protection and from humanitarian protection. Such was comprehensively reasoned and not the subject of further challenge. I will preserve its reasoning, findings and conclusions concerning the claimant's assertions that he would be at risk upon return in consequence of his father's claimed previous involvement with the Ba'ath Party. I will also preserve the tribunal's reasoning, findings and conclusions to the effect that he remains in contact with his family members (though as I say I note there is no clear finding as to the current location of such family members). I shall preserve the tribunal's reasoning, findings and conclusions with respect to Article 8 of the ECHR."

11. So, the issues to be resolved at the hearing of 25 May 2018, were narrow ones. I was focusing only upon the claimant's ability to live in Baghdad or, if he could gain admittance to it, the IKR. A central consideration with respect to that, it was agreed between the parties, was whether the claimant had a CSID card or, if not, whether he would be able to obtain one within a reasonable time of returning to Iraq.

12. The claimant gave evidence before me. In his evidence in chief he simply adopted the content of a witness statement of 22 May 2018. It is appropriate, therefore, for me to summarise the relevant content of that statement. I do not seek to summarise all of it because, in my view, some of it is not relevant to the narrow issues which I am required to consider.

13. In his statement the claimant says that he has never lived in Baghdad or in the IKR. He knows no-one in Baghdad. His main language is Kurdish Sorani and he speaks a very limited amount of Arabic. He is a Sunni Muslim. He does not remember very much about documentation in Iraq but thinks he had a birth certificate when he was living there. But he does not have it now. Until these court proceedings he had never heard of a CSID card. He does not have one. Documentation was not regarded as being so important when he was living in Kirkuk in the past. His father passed away in 2003. He does not know the whereabouts of his family now but he did hear, at one point, that his mother and some of her relatives were living in Turkey. His family had been well off in Iraq. His travelling to Ireland and Sweden had been financed by friends of his.

14. The claimant was cross-examined. In cross-examination he said that he had entered Ireland and Sweden clandestinely. Friends had assisted him with associated costs. His family had been fairly well-off but, nevertheless, he had had limited education in Iraq because he had had some mental health difficulties after being injured as a result of a car accident. He has not been able to contact his family and is not in touch with them now. He has never had any family in Baghdad.

15. Having heard the oral evidence I received submissions from the representatives which I will now summarise. Mr McVeety, for the Secretary of State, pointed out that the claimant had not always been truthful in the past. He accepted that if he was unable to obtain a CSID document he would be “in real difficulty” but he argued that he would be able to get one because it appears he has had some form of identity documentation in the past and I should accept that he knows where his family are and could obtain assistance in becoming documented from them. Further, he comes from a wealthy background and appears to have access to funds enabling him to travel abroad (to Ireland and Sweden). If he is able to obtain a CSID any stay in Baghdad (the point of return) would be minimal and he could use his CSID card when travelling internally to the IKR.

16. Ms Smith, for the claimant, argued that without a CSID card the claimant would face Article 3 ECHR ill-treatment but that, even if that was not right, requiring him to take advantage of an internal flight alternative would be unduly harsh. I should accept the evidence that the claimant has not had a CSID card in the past. But even if he did have such a document, it would be unreasonable to speculate that such would still be in his possession or his family’s possession. It is well documented that there has been mass displacement of people who used to live in the areas of Kirkuk and Mosul where the claimant’s family were located. In such circumstances it is unlikely that documentation would have been retained by them. If the claimant’s family have relocated to Turkey it would be difficult for him to trace them now. It is very unlikely that they will still be in Kirkuk or Mosul given the upheavals which have taken place in those parts of Iraq. Even if his family had funds in the past it is unlikely that they would have them now such as to be able to enable them to support the claimant. He would be returned to Baghdad but could not be expected to live there, particularly, without a CSID card. Without such a card he could not successfully travel from Baghdad to the Kurdish administered area. Even if he could accomplish that travel and was able to gain admittance to that part of Iraq he would not be able to find employment and would have no family or other support there.

17. It is against the above background that I must now remake the decision in this case. The only issues for me are those of how the claimant would fare in Baghdad or in the IKR. Intrinsicly tied up with that is the issue of what documentation the claimant has or what he might be able to obtain within a reasonable time period if returned.

18. This is not a case where I feel able to uncritically accept all of what the claimant has to say about his situation. He has demonstrated dishonesty on a number of occasions in the past. He has

made false asylum claims in different countries under different identities as has been set out above. The claimant had clearly, on the tribunal's previous findings which I had preserved, sought to overstate the strength of his claimed relationship with his UK based girlfriend in order to buttress his Article 8 argument. He has convictions and although those are not for offences of dishonesty, they are probative as to his character. I have proceeded, therefore, on the basis that his word cannot necessarily be trusted and that he will be prepared to mislead if he sees an advantage, from an immigration context, in doing so.

19. Despite the above, it does not follow that everything the claimant says is untruthful. What it does mean, though, is that any assertions he does make which it might be in his interests to make have to be carefully scrutinised.

20. The claimant says that he does not possess a CSID card. Such cards are of considerable importance in Iraq. In *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944 this was said:

“39. The position with a CSID is different. It is not merely to be considered as a document which can be used to achieve entry to Iraq. Rather, it may be an essential document for life in Iraq. It is for practical purposes necessary for those without private resources to access food and basic services. Moreover, it is not a document that can be automatically acquired after return to Iraq. In addition, it is feasible that an individual could acquire a passport or a laissez-passer, without possessing or being able to obtain a CSID. In such a case, an enquiry would be needed to establish whether the individual would have other means of support in Iraq, in the absence of which they might be at risk of breach of Article 3 rights.”

21. Mr McVeety, as I have noted above, has accepted that the claimant would be in difficulties if unable to obtain a CSID card.

22. The claimant says that he does not have one and that he has never had one. He does acknowledge having had, at one point, some form of identity document which he says he thinks was probably a birth certificate.

23. The claimant was an adult at the time he left Iraq. Notwithstanding what he has to say in his most recent witness statement about documentation not being considered important when he was living in Kirkuk (see above) I have concluded that he would have had a CSID card when in Iraq. But he has not been in that country since 2004. It is now 2018. During the intervening period he has travelled, clandestinely, to a number of countries and embarked upon the no doubt difficult journey from Iraq to the UK. Given all of that I have concluded that, in all probability, the card will now no longer be in the claimant's possession. I find, therefore, that he does not have a CSID card.

24. I have next asked myself whether the claimant will be able to obtain a CSID card within a reasonable period following his return to Iraq. Here I have had particular regard to what was recently said about that by the Upper Tribunal in the Country Guidance case of *AAH*, cited above. In *AAH* a number of relevant considerations as to the ability to obtain a new CSID were identified. I shall now consider them in light of the circumstances of this case.

25. There has been, in the past, an operating Civil Status Office in Kirkuk. It seems to me that there is little room for doubt that that office would have had identity details containing the claimant in its records. However, as I understand it that office has not been operating as a result of the difficulties experienced in Kirkuk which led to its being accepted that persons there faced an Article 15c risk (see above). So, it may be that the office is still not operating; but even if it is it would not be reasonable to expect the claimant to go to a part of Iraq where he would face an

Article 15c risk; and in any event, for reasons I shall say more about below, the claimant would not be able to travel from Baghdad to Kirkuk so as to access that office. So, I find he would not be able to ask that office to verify his identity and issue him a new CSID card.

26. But even if that office was open and he were to be able to get there, whilst I have concluded that he did once possess a birth certificate, and indeed a CSID document, I have found that he will subsequently have lost all of his documentation. It was explained in *AAH* that a person without a current CSID would be assisted in demonstrating his identity and getting a new one, by other identity documentation including a passport or a birth certificate. But, as I say, I have found he does not have any such documentation.

27. There is the possibility of his attempting to obtain a CSID document in Baghdad. There is, in fact, a Central Registry in Baghdad and details are sent from other offices to that registry. That was the expert evidence of Dr. Fatah in *AA (Iraq)*, cited above. However, it was said in *AA* that the evidence did not demonstrate that the Central Registry in Baghdad was, in practice, able to provide CSIDs to those in need of them. But there might be the prospect of family assistance in obtaining a CSID card.

28. As to that, the Upper Tribunal in *AAH* said that, because the registration system used in Iraq is patrilineal, certain male relatives might be able to help with the redocumentation process. That leads me on to consider the claimant's contention that he no longer has family in Iraq.

29. The tribunal which heard the claimant's appeal on 23 August 2017 and went on to dismiss it, did not believe the claimant had lost touch with his family. It noted information contained in an OASYS report, which had been prepared by a probation officer who had become involved with the claimant as a consequence of his offending, to the effect that his family had left Iraq but had travelled to Turkey. When I set aside the tribunal's decision I preserved its finding to the effect that the claimant had remained in contact with his family members but I noted that what had been said in the tribunal's written reasons did not amount to a clear finding as to the current location of those family members. The matter was not visited to any significant extent in the oral evidence before me though in his witness statement of 22 May 2018, the claimant sought to maintain his position that, in fact, he was not in touch with his family at all. He did acknowledge having received some second-hand information to the effect that his family had gone to Turkey but asserted he had not been able to contact them there.

30. Given the difficulties there have been in Kirkuk and in Iraq generally, it is certainly not implausible that his family would have left Kirkuk and, indeed, would have left Iraq. Given the evidence in the probation report I find that that is what happened and that the claimant knows that that is what happened. I also find that he has maintained at least some degree of ongoing contact with them. But as to where they are now, that is a more difficult issue. I am not assisted by what I find to be the claimant's lack of candour on the point. Of course, many people will have fled Iraq because of the instability in that country and, while some of them will have returned, others will have chosen not to. Given the ongoing difficulties that there have been in Iraq I conclude it is reasonably likely that the claimant's family, having successfully made their way to Turkey, have stayed there. So, I conclude that they will not be immediately on hand to assist the claimant in any redocumentation process. But even if they were, given what I have found to be his complete absence of documentation, I find that they would not be in a position to afford concrete assistance. In any event, whatever remains of his family, I think it reasonably likely at least that there are no appropriate male family members remaining. As to possible assistance they might be able to provide with, for example, informing the claimant as to the relevant volume and page number of his

records kept in the Central Registry, there is simply no reason to conclude that such relatives would have that knowledge. It may be that information they are themselves able to provide might lead to a person searching the registry records finding relevant entries for the claimant but, putting everything together, I find that to be a significantly remote possibility and, in any event, there is the point made above that the Central Registry in Baghdad does not seek to issue CSIDs to those in need of them in any event.

31. So, I have concluded that it is reasonably likely that the claimant does not have a CSID document and it is reasonably likely that he will not be able to obtain one within a reasonable time period.

32. The claimant will, as I have said, be returned to Baghdad. In *AA Iraq* consideration was given as to what factors might be relevant to the question of whether or not it would be unreasonable or unduly harsh to expect or require a claimant, not from Baghdad, to relocate there. As to those, I have already concluded that the claimant does not have a CSID card and will not be able to obtain one. He has said that whilst he does speak some Arabic, his ability to do so is extremely limited. That would not be implausible for an Iraqi Kurd from Kirkuk. He was not challenged on that point before me. I accept that he is not generally able to converse in Arabic and that his limited command of that language is not likely to be useful to him. I have found it is reasonably likely that he does not have family in Iraq. It follows that he does not have family in Baghdad. Given that he is from Kirkuk there is no reason for me to conclude that he has friends who might be able to support or accommodate him in Baghdad. Similarly, there is no reason to suppose he might be able to find a sponsor who would be able to assist him in accessing hotel, hostel or rental accommodation. He is, as a Kurd, from a minority community and it may be that his position as Sunni Kurd creates further difficulties in that regard.

33. In light of the above I would conclude that, in fact, the claimant would be destitute upon return to Baghdad, his not being able to access services due to the lack of a CSID card and his being bereft of family or other support. As to the evidence that his family was once wealthy, that was in 2004. Much has altered in Iraq and I find it reasonably likely that whatever family members there are in Turkey, and I accept that there are some, will not be able to provide him with finance such as to stave off such destitution.

34. There is then the question of whether or not he will be able to make his way to the IKR. There is the possibility of a journey by air or by road. As to the former, the tribunal in *AAH* decided that a potential traveller by air from Baghdad to any of the airports in the IKR would have to possess a valid passport or a CSID. I have concluded that this claimant possesses neither. Without such documentation the claimant would not be able to board a plane (see paragraph 114 of *AAH*).

35. As to journey by road, the tribunal in *AAH* received expert evidence from Dr. Fatah regarding potential difficulties that might be caused by road blocks. At paragraph 111 it was pointed out that a CSID or valid Iraqi passport would be required before a claimant could leave Baghdad airport by road. At paragraphs 114 and 115 the Upper Tribunal in *AAH* explained that even if a claimant without appropriate documentation was able to find a way out of the airport the difficulties then faced in travelling from Baghdad to the IKR would be substantial. There would likely be numerous checkpoints and there would be the risk of detention of any person trying to get through them without being documented. This could potentially happen at each check point. Whilst documented male relatives might be able to attend such a checkpoint where a traveller is detained, vouch for him and thereby secure his release from detention, I have found that this claimant does not have such relatives in Iraq. In those circumstances I would conclude that

embarking upon such a journey with the risk of persistent and perhaps extensive detention would not be a reasonable way to secure access to a place of internal refuge. So, it is not necessary for me to consider whether, if he got there, the claimant could actually enter the IKR.

36. I have concluded, in light of the above, that if the claimant is returned to Baghdad he will face destitution there. Such would breach his rights under Article 3 of the ECHR. I have concluded that he will not be able to avoid such destitution by going to the IKR because, practically speaking, he would not be able to get there. Further, the treatment he would be at risk of in attempting to do so would also breach Article 3 of the ECHR.

37. The claimant does not, though, succeed on asylum grounds or upon humanitarian protection grounds. He is excluded from such protection. So, he succeeds on human rights grounds only.

38. I realise that the outcome might, when looked at from certain perspectives, be viewed as unattractive. That is because the claimant has been less than honest and because he has committed offences in the UK one of which was of significant gravity. But nevertheless, the legal position is that he cannot be deported if there would be a real risk of Article 3 ill-treatment upon return. That is why his appeal succeeds.

Decision

The decision of the First-tier Tribunal involved an error of law and has been set aside.

In remaking the decision, I allow the claimant's appeal against the Secretary of State's decision of 17 January 2017 on human rights grounds (Article 3 of the ECHR) only.

Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the claimant 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 claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 23 October 2018

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

Since no fee is payable and no fee has been paid, there can be no fee award.

Signed:

Date: 23 October 2018

Upper Tribunal Judge Hemingway