



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03318/2016

**THE IMMIGRATION ACTS**

Heard at Manchester CJC  
On 30 May 2018

Decision & Reasons Promulgated  
On 14 June 2018

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**NAZAD ALI QADER**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Bremang of counsel instructed by Morgan Reiss  
For the Respondent: Ms Obomi Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is a resumed hearing. On 19 March 2018 I set aside the decision of First-tier Tribunal Judge Austin in so far as it related to the risk on return to Kirkuk or relocation to the IKR. I preserved the Judges findings in respect of his claim of those events in Kirkuk that he asserted caused him to flee in that the Judge rejected the credibility of that aspect of his history. The adjournment therefore afforded the Appellants representatives the opportunity to advance any material they wished to rely on that suggested there was insufficient reliable evidence to go behind the CG case of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) in so far as it relates to the safety of returns to Kirkuk.
3. An interpreter had been booked for the hearing as it was anticipated that the Appellant would give evidence. In the absence of the interpreter Ms Bremang indicated that she was content to proceed on the basis of submissions.
4. The interpreter then attended as Ms Bremang started her submissions. An issue arose as to how the Appellant had obtained a copy of his passport which had been produced to the Respondent at the time of his asylum interview and Ms Bremang asked, and was granted leave to call the Appellant in relation to that issue. In the course of being asked questions to clarify how he had obtained his passport the Appellant gave evidence that he had in fact got his original passport in his possession in the UK. He was unable to say how his uncle had come into possession of his passport. He has no contact with his family where the documents were kept. Ms Bremang had no more questions.

#### Submissions

5. At the hearing I heard submissions from Ms Obomi (prior to the arrival of the interpreter) on behalf of the Respondent that :
  - (a) She relied on the reason for refusal letter.
  - (b) She relied on the two CPINs of March and September 2017 and th High Court case of Amin [2017] EWHC 2417 where it was found that Kirkuk was no longer a contested area.

- (c) The country conditions in Kirkuk had changed since the promulgation of AA in 2015 in that it was no longer contested and was safe.
  - (d) In relation to the humanitarian situation she relied on what was said in the CPINs.
  - (e) The Appellant would be returned to Baghdad and could make his way to Kirkuk
  - (f) In relation to documentation the Appellant had a copy of his passport and could obtain further documentation from the Iraqi Embassy in London.
  - (g) Alternatively the Appellant could relocate to the IKR flying via Baghdad and would be entitled to 10 days entrance. He had previously worked as a taxi driver and could do that in the IKR.
  - (h) The Appellant had family in Iraq who had provided him with a copy passport and could provide him with support on return either to Kirkuk or the IKR.
  - (i) It was accepted that for this Appellant permanent relocation to Baghdad was not reasonable.
6. On behalf of the Appellant Ms Bremang submitted that :
- (a) She asked that I follow AA and find that Kirkuk is still a contested area.
  - (b) The Appellants father was dead and his mothers whereabouts were unknown.
  - (c) The Appellant could not remain in Baghdad even temporarily as he would be unable to obtain services without a CSID, he did not speak Arabic and had no family there.
  - (d) In relation to the IKR the Appellant had not been pre cleared by the authorities although she accepted that given his possession of his original passport this was now possible.

## Findings

7. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised

my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole.

8. I remind myself of those parts of Judge Knowles decision which I preserved as that provides some of the context in which the Appellants return must be assessed. The following findings were preserved:

(a) The Judge rejected the Appellants claim that he was at risk in Kirkuk from ISIS activists or opposition militia.

(b) The Judge rejected his claim that his father had been killed.

(c) The Appellants general credibility was undermined by his failure to claim asylum en route to the UK and by his claim when fingerprinted in Germany that he was a Syrian national.

9. I find that the Appellants return to Iraq is feasible given his admission before me that he has his original Iraqi passport.

10. I am also satisfied that the Appellant would be able to obtain a replacement CSID card if he does not have one. I am satisfied that he could either obtain this in the same way that he was able to secure the return of his original passport to him with the help either of his uncle or directly from his father it having been found that his father is still alive. I am satisfied that I am entitled to conclude that given the challenges to his general credibility he has significantly exaggerated the difficulty he would have in securing documentation from Iraq given his previous success in securing the return of his original passport. I do not accept that he has been truthful about losing contact with his family and this claim has been made to bolster his claim generally.

11. Also if securing his original CSID proved impossible in this way I am satisfied that on the basis of what is said in paragraph 177 of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 the Appellant could secure a replacement CSID from the Embassy in London

*“In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their*

*family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring.*

12. Given the preserved finding about his father and the fact that assistance has been obtained previously I am satisfied that if knowing the book and page number where his family's registration details are recorded is a required part of the process of obtaining a CSID he will be able to obtain these details from his father.
13. I now turn to the question of where the Appellant would return to. The Respondent urges me to go behind the finding in AA that the security situation in Kirkuk was such that it was unsafe to return people there. The Respondent relies on the case of Amin and the two CPINs. The Appellant urges me to find that AA still applies but although given the opportunity in the adjournment to provide more up to date country material has provided nothing: the only 'background material' was provided by the Appellants previous representatives and is now old, dated 8.3.2017, very brief and very general in nature so is of little assistance.
14. I find the decision of Amin unhelpful: that part that relates to the situation in Kirkuk is extremely brief and merely asserts '*Kirkuk is no longer a contested area.....There are apparently still dangers there, but nothing like the position when AA was decided.*' Thus there is no identification of the material that persuaded the court that the situation had not only changed but that the change was more than transient and that the situation there no longer engaged Article 15© a point taken by counsel in submissions before the High Court.
15. I note that the court in AA 2017 affirmed that Kirkuk still engaged Article 15(c). I also find that the threats of instability in the CPINs both of March 2017 at 2.3.20 onwards and in the September 2017 one at 2.2.3 onwards focus on the risk posed to peace by ISIL but it important to note that that the conflict in the area is not simply between two opposing parties, ISIS and everyone else, but that Kirkuk is 'disputed' because the IKR lays claim to it aswell. Essentially Kirkuk was in the

hands of the Kurdish Peshmerga from 2014 but as recently as 16 October 2017 ie after the date of the most recent CPIN the Iraqi national army and various militias retook control of Kirkuk so it cannot reasonably be argued that the September CPIN reflects the most up to date position or that the situation in Kirkuk is stable. I am not persuaded that there is therefore sufficient reliable and strong evidence that enables me to go behind the decision in AA.

16. I take into account what is said in section E of the headnote of AA 2015 and affirmed in 2017

*“19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*

*20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K’s securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.”*

17. I also take into account what is said in the September 2017 CPIN at 4.2.1 that it is possible to pre clear entry of Iraqi nationals who have provided a passport and Ms Bremang conceded this in submissions. I have therefore considered whether the Appellant as a fit and healthy young man could relocate to the IKR as he is of Kurdish ethnicity although he has never lived there although it is clear from his passport that he has been there as there is an exit stamp from there to Turkey. I find no evidence to suggest that he could not travel to Erbil airport in the IKR via Baghdad airport as he has all of the necessary travel and identity documents, could be pre cleared for entry and travel there is a journey that he has previously undertaken. Thus there would be no requirement for him to spend any time in Baghdad as suggested by Ms Bremang. The Appellants evidence which was accepted by the First-tier tribunal was that he had worked as a taxi driver and had worked prior to that. He was clearly successful in that endeavour as he had \$12,000 in savings that he used to pay the agent to leave Iraq. The Appellant therefore has a clear and positive work history and I find it reasonably likely that

he would be able to find work as a taxi driver in the IKR I have already indicated that I do not accept his claim to have no contacts within Iraq: I am satisfied that his parents are alive although I accept of course that they do not live in the IKR. There is however the potential for some financial assistance from them if he were to relocate. Taking all of the Appellants circumstances into account I am satisfied it would not be unduly harsh for the Appellant to relocate to the IKR.

### **Conclusions on Asylum**

18. I find that the Appellant has not discharged the burden of proof on him to show that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the Appellant's removal would not cause the UK to be in breach of its obligations under the Geneva Convention.

### **Conclusions on Humanitarian Protection**

19. On the basis of the facts found in this appeal, the Appellant has not discharged the burden of proof on him to show that on his return he would face a real risk of suffering "serious harm" by reference to paragraph 339C of the Immigration Rules (as amended).

### **Conclusions on ECHR**

20. On the facts as established in this appeal, there are no substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

### **Decision**

21. The appeal is dismissed on asylum grounds.
22. The appeal is dismissed on humanitarian grounds
23. The appeal is dismissed on human rights grounds.
24. No anonymity direction is made

Signed  
Deputy Upper Tribunal Judge Birrell

Date 5.6.2018