



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04421/2017

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre
On: 23rd November 2018

Decision Reasons Promulgated
On 13th December 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

FI
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Holmes, Counsel instructed by the Greater Manchester
Immigration Aid Unit
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1990. He appeals with permission the decision of the First-tier Tribunal (Judge IF Taylor) to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the

Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background

3. The Appellant has been in the United Kingdom since 2009. His first claim for asylum came and went, with the end result of a negative determination containing a swingeing rejection of his credibility as a witness, and his claim to be at risk by virtue of his father’s association with various political actors. The ‘fresh claim’ giving rise to this appeal was made in 2015. The crux of his case was a fear of return to his native Kirkuk on the grounds that there was there an internal armed conflict giving rise to a real risk that the Appellant, as an ordinary civilian, would be subjected to indiscriminate violence within the scope of Article 15(c) of the Qualification Directive.
4. Protection was refused on the 18th April 2017. The Respondent noted that the Appellant is from Chelan, Kirkuk, and that Kirkuk had been deemed to be a ‘contested area’ by the Upper Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). If that country guidance was correct, the Appellant would have made out his claim to be at risk of indiscriminate violence in his home area. The Respondent was not however satisfied that the country guidance should continue to be applied. Reliance was placed on the Home Office document entitled “Iraq: Security and Humanitarian Situation” published in March 2017. Specifically, the Respondent cited paragraph 2.3.21 of that document which states that Daesh has suffered, and continues to suffer, significant territorial losses; at 2.3.24 and 2.3.25 it states that security incidents in the areas formerly controlled by Daesh had either remained constant or had steadily declined. The Respondent considered that these assertions constituted “strong reasons” to depart from AA (Iraq) and refused protection. Since the Appellant had not established any risk to his person in his home governate, the Respondent did not go on to examine whether there was an internal flight alternative.
5. The First-tier Tribunal directed itself to the guidance in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940: “decision makers and Tribunal judges are required to take country guidance determinations into account and to follow them unless strong grounds supported by cogent evidence are adduced and justify their not doing so”. The Tribunal records that it has taken into account all of the evidence before it, but that it has given particular consideration to the Home Office March 2017 ‘Country Information and Guidance’ (CIG) cited in the refusal letter. The Tribunal notes:

“the basic thesis of the respondent is that where Daesh has suffered and continues to suffer significant territorial losses then in those areas where such losses have occurred the situation has improved significantly...”

Accepting that thesis, the Tribunal finds no risk to the Appellant in Kirkuk. The Tribunal addresses internal flight in the alternative, but finds no evidence to demonstrate that it would be unreasonable. Having satisfied itself that the Appellant would be able to access the appropriate documentation to make the journey and access services, the appeal is dismissed.

The Challenge

6. The Appellant now has permission to appeal against that decision on the following grounds:
 - (i) The CIG was not of itself capable of constituting ‘cogent evidence’ such as to justify departure from country guidance. The Appellant had engaged with the refusal letter and adduced country background material in direct conflict with the Respondent’s CIG but the First-tier Tribunal fails to engage with any of it;
 - (ii) The Tribunal does not engage with the submissions made as to how the Appellant would be able to get to Kirkuk;
 - (iii) The issue of internal flight, considered in the alternative, was never relied upon by the Respondent. The Appellant had not therefore had an opportunity, in his case preparation, to deal with the point.

Error of Law

7. The parties made their submissions on whether the decision of the First-tier Tribunal was flawed for error of law at a hearing before me on the 18th June 2018. Mr Holmes identified two key areas of complaint about the approach taken in the determination to Article 15(c). In his reply Mr McVeety took no serious issue with either.
8. The first is that the Tribunal nowhere weighed in the balance the opposing evidence introduced by the Appellant. The refusal letter had set out the Secretary of State stall, and the Appellant has responded. Submissions were made to rebut the conclusions drawn from the information reproduced in the CIG. For instance, at 2.3.21 of the CIG the Respondent reported that Daesh have suffered significant territorial losses; the Tribunal picks up this theme at its paragraph 21. Mr Holmes pointed out to the First-tier Tribunal, and now points out to me, that when the Upper Tribunal conducted its analysis in AA, Kirkuk was not under Daesh control: section 1.3.3 of the CIG dated August 2014 states that Kirkuk, a contested area, was under control of Kurdish Peshmerga forces at that time. In light of that, it is difficult to see how the fact that Daesh has lost some other territory could be determinative of the situation in Kirkuk. None of those submissions are considered in the determination. None of the Appellant’s evidence is weighed. That is an error of law.

9. The Appellant's second complaint follows from the first. In reaching its finding that it had before it cogent evidence that would justify departure from the country guidance, the Tribunal nowhere supplanted the reasoning in AA with its own. Having found that Daesh have lost territory and that the rate of security incidents in formerly contested areas were declining (itself a selective reading of the Respondent's evidence) the Tribunal concludes from this that Article 15 (c) conditions no longer prevail. Article 15(c) was the crux of the Appellant's case. It required some analysis of the actual evidence. The determination contains no evaluation of the current situation in the Kirkuk governate. No mention is made, for instance, of the fighting taking place between the peshmerga and Shi'ite forces loyal to Tehran, or to the stand-off between the Iraqi central government and the Kurdish Regional Governate over the oil rich, and long-contested, city. The fact that Daesh had suffered heavy military defeats was not a complete answer to whether this civilian would, by virtue of his presence alone, be at risk there.
10. For those reasons I found, by way of my written decision dated the 6th July 2018, that the determination of the First-tier Tribunal must be set aside.

The Re-Made Decision

11. At the resumed hearing Mr McVeety indicated that the Respondent did not have any more country background material to submit. Nor did the Respondent intend to make any further submissions inviting me to depart from the findings in AA (Iraq). As Mr McVeety realistically conceded, the evidence already adduced did not demonstrate - for the reasons discussed at my paragraph 8 above - that there were cogent reasons to depart from the country guidance. The Respondent therefore invited me to proceed on the basis that Article 15 (c) conditions continued to prevail in Kirkuk (or rather it could not be demonstrated that they did not). Mr Holmes, unsurprisingly, had no objection to this.
12. The Respondent's case now turned on whether the Appellant could reasonably be expected to avail himself of internal flight within Iraq, or more specifically to the Iraqi Kurdish Region (IKR). Mr Holmes did object to this. He pointed out that the issue had not been raised in the refusal letter, and that the Respondent was effectively moving the goalposts.
13. I was not prepared to exclude the issue of internal flight from my consideration of this claim. Whether a claimant can avoid harm by relocating within his country of origin is an integral part of the protection assessment: see Article 8 of the Qualification Directive. The Appellant has been on notice of this matter since at least the date of the 'error of law' hearing in June, and has indeed prepared for the resumed hearing on the basis that internal flight is a matter in issue. I therefore invited submissions on whether it would be reasonable to expect the Applicant to relocate to the IKR in order to avoid the risk of indiscriminate violence in Kirkuk. Relevant to that enquiry is the country guidance given in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC).

14. The guidance given by the Upper Tribunal in AAH is that the reasonableness of internal flight is to be assessed with the following factors in mind:

Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
 - i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*
 - ii) *The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?*
 - iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.*

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

2. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
3. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
4. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
5. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent*

the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*
7. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
8. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
9. *For those without the assistance of family in the IKR the accommodation options are limited:*
 - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
 - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
 - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
 - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
 - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
 - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*

- (iii) *P cannot work without a CSID;*
- (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers.*

15. Mr Holmes called the Appellant to give brief evidence to speak to those issues. The Appellant confirmed his identity and affirmed that he would tell the truth. He began his testimony by stating that he has been suffering from mental health problems for approximately four years now. He has been prescribed anti-depressant medication by his GP and has been diagnosed as suffering from anxiety. He suffers from regular black-outs, which he began by describing as epilepsy before conceding that in fact no positive diagnoses of epilepsy has been made. The first time it happened to him was in 2015. He was in the passenger side of his friend's car. They were having a conversation as normal when he was suddenly overcome with a severe headache and dizziness - he must have passed out because the next thing he can recall is hearing his friend shouting and asking him if he was OK. He woke up drenched in sweat. He sought medical help and it has been investigated. He has been told that it is connected to him feeling stress and anxiety. Such blackouts are now a frequent occurrence - sometimes as often as once a week. He also suffers from migraine-type headaches and finds that he has problems remembering things.
16. I was referred to a letter dated 1st October 2018 from Dr R. Belton of the Hawthorn Medical Centre which states that the Appellant has been receiving regular treatment over the past 18 months for depression and symptoms of post - traumatic stress. He has been investigated for recurrent blackouts and has been diagnosed with vertigo, migraine and syncope (passing out).
17. The Appellant was asked about whether he was in possession of any Iraqi identity documents. He said that he was not. He explained that when he arrived in this country he had not been carrying any passport or identity document but after he had arrived he had asked his brother to send him his CSID, or a copy thereof, so that he could prove his age and identity to the Home Office. The Appellant was referred to the written record of his original asylum interview, conducted on the 19th February 2009, when he had told the officer that he had received his Iraqi ID document from his brother and that he had given it to his (then) representative who had forwarded it to the Home Office. The Appellant confirmed that the transcript was accurate, save that it was not actually his card, but a copy. He had given it to his representative and as far as he was concerned, they had sent it in to the Home Office.

18. At this point Mr McVeety indicated that the Home Office were not in possession of any identity documents relating to the Appellant, and as far as he could see from the materials in front of him, never had been. The Appellant was asked whether he had kept a copy himself. He was unsure but said that all of the documents relating to his asylum claim had been taken from him in a theft. After his first asylum claim failed he had spent some time living in unsecure accommodation and sometime in 2014 a bag containing all of the documents had been stolen from his room. He had reported this. He relied on a printed screenshot from the Respondent's records showing that on the 24th May 2014 the Home Office received a telephone call from Longsight Police Station in Manchester. The police informed the officer who took the call that the Appellant was in attendance at the police station stating that all of his Home Office paperwork had been stolen. The log further shows that on the 27th June 2014 an organisation called 'Asylum Support Housing Advice' contacted the Home Office on the Appellant's behalf to ask that he be issued with a new ARC because his had been stolen. The Appellant relied on this printout as contemporaneous corroboration of his evidence that his documents, including his copy of the CSID, had been stolen. Asked why none of this had featured in his evidence thus far the Appellant said that he had no cause to mention a card that no longer existed, or at least was not in his possession. He had not been asked, and if he had been, he would have referred the questioner to the Home Office record now produced.
19. There then arose some discussion between Mr McVeety and Mr Holmes about whether there was any prospect of obtaining a copy of the CSID from the files of the Appellant's 2009 representatives. Mr Holmes submitted that there was not. The Appellant had at that time been represented by the Immigration Advisory Service (IAS) who had subsequently gone into administration. Some of their clients had managed to retrieve their files, or request that they be forwarded to new representatives, but the Appellant had not. At the time that the IAS closed down in 2012 he was no longer in contact with them, his original claim having been refused and his case closed. He was therefore unaware of the difficulties at the IAS or the importance of retrieving his file. Unfortunately the opportunity to do so has now passed, since all the remaining materials held by the administrators were destroyed following an order by Chief Bankruptcy Registrar Stephen Baister made on the 27th February 2012.
20. The Appellant stated that he has never worked. He was 16 when he left Iraq and so has no experience of working in that country. He last spoke to his family there in 2014 and has not been able to contact them since. He confirmed that he has not contacted the Red Cross or any similar organisation because he did not think that they would have any chance of helping him.
21. As well as the Appellant's current evidence I was also asked to have regard to his earlier written statements, interviews and by Mr McVeety, the fact that the First-tier Tribunal in 2009 had found the Appellant to be a wholly incredible witness. Mr McVeety also questioned the Appellant's claims to have 'lost' the copy of his CSID, noting that since that event allegedly occurred in 2014 the Appellant has made witness statement in which he makes no mention of it.

22. My findings are as follows.
23. The Appellant will be returned to Iraq using a *laissez-passer* obtained by the Home Office from the Iraqi Embassy in London. Although I understand that direct flights to Erbil have resumed since the publication of AAH (Iraq), it is likely that the Appellant would be removed to Baghdad: he is not from the IKR so it is unlikely that he would be 'pre-cleared' for landing there.
24. Upon his arrival in Baghdad his ability to prove his identity by production of a CSID assumes great significance. Without a CSID he cannot board an internal flight to Erbil. He would have to make the journey to the IKR by land. In order to do so he would need to get through numerous checkpoints; he could routinely expect to be stopped and required to show his CSID at each. The accepted evidence in AAH was that a failure to provide a CSID, or to produce a male relative to vouch for you - who is himself documented - will result in detention. The first question I must therefore answer is whether the Appellant is in possession of his CSID or alternatively, the means to get one.
25. On the 20th January 2009 the Appellant told an immigration officer that his identity card was with his brother in Iraq [10.2 screening interview]. On the 19th February 2009 he told another immigration officer that his brother had posted him that card and that he had handed it over to his representatives [Q1-6 asylum interview]. The parties before me were in agreement that the Appellant was likely telling the truth to those officers, for the simple reason that there was no incentive for him to lie. Even back in 2009 there would have been an obvious advantage to any cynical claimant asserting that he was *undocumented*: even if the significance of the CSID had not yet been recognised by the Tribunal¹ it was apparent that any identity document assisted the Home Office in effecting removal.
26. What then happened to that card? I find that it was never received by the Home Office: there is no reference to it in the refusal letter and it would appear that the First-tier Tribunal had proceeded, in the Appellant's appeal in 2009, on the basis that he was not in possession of a CSID or any other identification document. As to why it never found its way to the Home Office, three possibilities arise. First, that it was sent and it was lost in the post. That is statistically unlikely, but always possible. Second, that IAS made a mistake and failed to do what they had assured the Appellant they would. Again, that is a possibility but in my view not a likely one: as Mr Holmes and Mr McVeety agreed, the IAS were generally a competent organisation who conscientiously represented the interests of their clients. It would be unusual for an IAS caseworker to have so markedly failed in his or her responsibilities. The third possibility is this. That having made their own assessment of the CSID card the IAS decided that it should not be submitted to the Home Office because it did not aid their client's case. The Appellant was at that time in an age

¹ The earliest reference I can find to the CSID and its importance is MK (documents - relocation) Iraq CG [2012] UKUT 00126 (IAC), published in April 2012

dispute with Kent Social Services (and so the Home Office). He stated that he was 16 on arrival, whereas Kent believed him to be over 18. The Appellant may well have been of the view that a document showing him to have been born in 1992 (his claimed year of birth) would have assisted him, and so the card was produced. It is a possibility that having assessed the card themselves, the IAS were not satisfied that it was a genuine or reliable document, and declined to rely upon it. That would be consistent with Kent County Council's *Merton* compliant age assessment that the Appellant was not a minor was claimed; it would also explain why, by the date of the Appellant's appeal in April 2009, the IAS had withdrawn their representation.

27. Whatever the truth of the matter, the fact is that the Home Office does not now have that card, and that the last time that the Appellant can be said with certainty to have possessed it was February 2009 when he attended his asylum interview. Ordinarily one might expect a copy to be obtainable from the former representatives' files, but for the reasons explained by Mr Holmes (see paragraph 19 above) the IAS files have all now been destroyed. That leaves the Appellant himself. It is his case that his copy of the document was stolen sometime in early 2014. Mr McVeety points out that this is all very convenient, that the Appellant has previously been found willing to lie, and that he has not mentioned this theft in any earlier witness statements. Those are all good points. Against them is the document indicating that between the 15th May and the 27th June 2014 the Respondent was informed, first by an officer at Longsight Police Station and then by a support worker at 'Asylum Support Housing Advice', that the Appellant had been victim to a theft, and that all of the documents relevant to his immigration status had been stolen. I accept Mr Holmes' submission that it is likely that in those years the Appellant was, as a failed asylum seeker with no right to work and no access to state benefits, living in insecure accommodation where his possessions could have been lost, or were vulnerable to crime. In light of this contemporaneous corroboration of the claimed theft I am prepared to accept that if the Appellant himself did ever have a copy of the missing CSID, it would have been in the bag with the other documents that were taken sometime in or around early May 2014. I therefore conclude that on the lower standard of proof, the Appellant has established that he is not in possession of a CSID, either in copy or original form.
28. My next consideration must therefore be whether it is reasonably likely that the Appellant would be able to obtain a CSID either before, or after, he returns to Iraq.
29. I am not satisfied that there would be any realistic prospect of the Appellant obtaining a CSID before he leaves the United Kingdom. In AAH the unchallenged evidence of country expert Dr Fatah is summarised at paragraph 26:

"If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must be countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a

representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity."

At paragraph 105 Dr Fatah further describes the embassy staff as 'unhelpful'. In a case such as this, where the applicant has little to go on and is unable (or unwilling) to provide the relevant documents and details, the prospects of success are negligible.

30. As to whether the Appellant would be able to obtain a CSID once back in Iraq, the parties before me agreed that this would turn on whether he is in fact in contact with his family, in particular his brother.
31. I turn to the detail of the Appellant's evidence on this matter below, but I preface my assessment by a general finding on the Appellant's credibility. I do so because I accept Mr McVeety's submission that it is important to assess the Appellant's evidence in the round. In 2009 the First-tier Tribunal rejected virtually all of the Appellant's evidence, accepting little more than his name, nationality and ethnic origins. He was found to be willing to lie in order to gain status in this country and I am satisfied that this remains the case today. In evidence the Appellant told me that he had never worked in Iraq, because he was a child when he left. Both of those things are patently untrue. The Appellant's date of birth has long ago been determined to be 1990 rather than 1992; in dismissing the appeal in 2009 the First-tier Tribunal found him to be "substantially older than 18". In his screening interview [at 2.11] when asked about his normal occupation he said that whilst he was in Kirkuk he was "selling and buying stuff like cloths etc". If the Appellant's claim to have never attended school is true, it would appear to be manifestly unlikely that as a young man he wouldn't have been expected to work and bring some income into the household. I am satisfied that he did not tell me the truth about his lack of previous work experience.
32. I now turn to the evidence about family contact.
33. In his original screening interview the Appellant said that his family in Iraq consisted of his brother (born in 1975), and three sisters aged between 25 and 18, all of whom were married. He had stayed with his elder sister in her marital home for a number of years before he left Iraq. She lived in a village outside of Kirkuk called Hawija. In his asylum interview he confirmed that he had been in contact with his brother. At Q151 he explained that he had managed to speak to him on one occasion; he had called the 'telephone office' in Kirkuk, and they had called his brother to come to the

telephone. I assume that this was the call in January 2009 when the Appellant asked his brother to post him the CSID.

34. In May 2017 the Appellant gave a witness statement in the present proceedings. He states therein that he had not managed to speak to any member of his family since 2014. Earlier that year he had spoken to his brother, his elder sister and her husband. They had all been in Hawija at that time. Although he had tried their numbers many, many times since he had not been able to establish a connection. He expressed a fear about what would have happened to them, since Hawija had since fallen under ISIS control. He states that they all had his number yet he had heard nothing from them for over three years. The Appellant's most recent statement is dated 10th September 2018. He reiterates his evidence that he has not had any contact with his family since 2014. He has tried to use the numbers he had but none work. He has asked Kurds in Manchester who are from the same area as him and they have asked their contacts in Kirkuk if anyone has heard anything about the Appellant's brother and sisters but he has had no results from these enquiries. No-one has heard of them.
35. Mr Holmes asked me to evaluate this evidence in light of the country background material. In AA (Article 15(c)) CG [2015] UKUT 00544 (IAC) the Secretary of State for the Home Department accepted that Kirkuk and its environs were 'contested' to the extent that Article 15(c) was engaged. That concession, and the conclusions in that case, was largely based on evidence covering the year leading to the hearing date in May 2015. Mr Holmes relies on this to demonstrate that it is reasonably likely that the Appellant's family may have fled their home, or have been injured or even killed, sometime in or around spring 2014. I note the Appellant's evidence that his sister's home village of Hawija (where he himself was living immediately prior to leaving Iraq) came under ISIS control during that period. This evidence was not challenged by Mr McVeety but for the sake of completeness I record that the village was taken by ISIS in early June 2014². By the date that AA was published (April 2015) the governate had been retaken by Kurdish *peshmerga*, but as the evidence in AAH demonstrates, conditions for Kurdish families in and around Kirkuk remain precarious. The Government of Iraq re-took Kirkuk from Kurdish forces in October 2017 and there were reports of government troops, aided by Shi'ite militias such as *al-Hashd al-Shaabi* and the PMF attacking Kurdish - Sunni - homes with a view to driving out the population of non-Arab, non-Shi'a, Iraqis. News reports cited in AAH indicated that as many as 100,000 Kurds fled the area in October 2017 alone.
36. I have considered the evidence in the round, and have done so bearing in mind that it is to the Appellant's advantage to deny any contact with his brother. The Appellant has been found to be someone prepared to lie, and that he has done so before me. I have noted Mr McVeety's point that the Appellant has made no effort to contact his family by means of approaching the Red Cross or Red Crescent. Against this I must weigh the following. First, the Appellant's admission, and consistent evidence, that he was able to maintain contact with his brother for five years between 2009 and 2014 - a period when it would similarly have been to his advantage to deny any contact.

² <https://middleeastmonitor.com/20140611-isis-takes-control-of-kirkuk>

Second, the fact that his evidence has consistently been that contact ceased in the early part of 2014. This chronology coincides with his sister's village being seized by ISIS and conditions on the ground becoming so dangerous for ordinary civilians that the Secretary of State recognised Article 15(c) to be engaged. Third, that conditions in the Kirkuk governate have remained difficult and uncertain even after the defeat of ISIS, with huge numbers of Kurdish families being displaced. Applying the lower standard of proof I am satisfied that it would be reasonably likely that families such as this one would lose contact with one another. I note the Appellant's evidence that he did not approach the Red Cross or similar because he did not see how they could possibly help, deciding instead to make efforts through the community. Whilst I am unable to make any finding about what might have happened to the Appellant's brother and sisters, I am satisfied that the Appellant has lost contact with his family as he claims.

37. I return to the circumstances of the Appellant's notional return to Baghdad. He has no CSID and no family to contact. He has no-one to whom he could turn in the city itself. He may be able to talk his way through the checkpoints on the airport perimeter by producing Home Office documents and his ticket, and explaining that he has just been returned. He would, if he so applied, be in possession of up to £1500 with which he could pay for a taxi, and presumably use for bribes. He would however have to cross many, many such checkpoints all the way to Erbil, a distance of some 400km. The default position of the troops/police/militia manning such checkpoints would be to detain a traveller not in possession of a CSID until such time that the individual could satisfy them of his identity, either by the production of the CSID or other identity document such as a passport, or by the attendance of a documented male relative who would be able to vouch for the individual concerned. In AAH Dr Fatah assured the Tribunal that the conditions faced by such detainees were "nothing scary" but it is a fact that the undocumented traveller with no one to call is in a very difficult position, since he has no means of securing his release. Even if, for instance, one commander took a bribe to release him, he would face the whole ordeal again at the next checkpoint. In AAH it was accepted that this was not a safe, or reasonable, means of accessing an internal flight alternative: see paragraph 5 of the headnote. Such repeated, and likely prolonged, detentions would particularly difficult for an individual such as the Appellant, who has been diagnosed and treated for stress and anxiety related conditions.
38. In the event that the Secretary of State manages to arrange direct removals to Erbil in the future, I make findings in the alternative on whether it would be unduly harsh for the Appellant to live in Erbil or elsewhere in the IKR. Having regard to the relevant factors identified in AAH I find as follows. The Appellant is likely to remain undocumented. He has no family or connections in the IKR to whom he could turn for support or references. He is not going to be able to access a refugee/IDP camp in the region because they are all full and already overcrowded. He will not be able to rent an apartment without a CSID. It is very likely therefore that the Appellant will have to resort to living in a 'critical shelter arrangement'. This may involve squatting in an unfinished or abandoned building, constructing his own shelter (ie cardboard/corrugated iron/tarpaulin), staying in a mosque or church or taking

shelter in one of the government buildings requisitioned for the purpose of housing IDPs. Whether such living arrangements would fall to the level of 'undue harshness' will depend on whether the Appellant is able to provide for himself basic necessities such as clothing and regular food, and whether he is able to access clean water. His ability to do so will depend on whether he is able to secure a regular income. As far as I have been made aware the Appellant has no one in this country or elsewhere who would be able to support him by way of remittances. Without a CSID he would not be able to obtain employment. He has no family to whom he can turn. In those circumstances his circumstances are likely to be destitution. This would be unduly harsh, and it follows that I must allow the appeal.

Decisions

39. The appeal is allowed on protection grounds.
40. There is an order for anonymity.

Upper Tribunal Judge Bruce
6th December 2018