



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

Appeal Number: PA/11137/2017

THE IMMIGRATION ACTS

Heard at Bradford

On 14th January 2019

Decision & Reasons

Promulgated

On 7th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

H A R

(ANONYMITY DIRECTION MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Monaghan made following a hearing at Bradford on 27th March 2018.

Background

2. The appellant is a citizen of Iraq born, as found by the Immigration Judge, on 1st October 1999. He arrived in the UK on 23rd December 2015 and claimed asylum. On 17th October 2017 a decision was made to refuse his

application, and it was this decision which was the subject of the appeal before the Immigration Judge.

3. The appellant left Iraq on 1st September 2015. He comes from Mullah Abdullah which is in the Kirkuk Governorate. His claim for asylum was on the basis of a conversion from Islam to Christianity but this was rejected by the Immigration Judge and there is no appeal against that aspect of her decision.
4. The appellant says that he cannot return to Iraq because he would be at risk of treatment contrary to Article 15(c) of the Qualification Directive since he cannot return to his home area, which is under the control of Daesh, and cannot relocate to Baghdad. He does not have a CSID and would not be able to obtain a replacement.
5. The Immigration Judge cited AA (Article 15(c)) Iraq CG [2015] UKUT 544 which held that there was at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds and the Islamic Islamist group known as ISIL.

“The intensity of this armed conflict in the so-called contested areas comprising the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah al-Din is such that as a general matter there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.”

6. She then relied on the Country Policy and Information Note entitled “Iraq: Return/Internal Relocation June 2017”, which concluded that the security situation had changed, and on that basis she departed from the findings in AA. She said that he could return to his home area.
7. She accepted that the appellant does not have the relevant documentation for a return and does not have a CSID card.
8. At paragraph 40 she wrote:

“40. The appellant was asked all the relevant questions about his CSID card in a letter from the respondent dated 22nd August 2017 to which his legal representatives sent a response on 5th September 2017. He said that he did not know what had happened to his parents or his home village or if his parents were alive or not. He maintained in his oral evidence that he had been unable to make any contact with them or hear any news of them despite asking other Iraqis he came into contact with. He does not know the number of his CSID card nor the volume number or details of his family members CSID cards. Therefore whilst he may be able to get to the necessary office in Kirkuk, given I find that this is no longer a contested area, he asked me to find that there is no evidence that there is a family member who can vouch for him or that he will be able to persuade officials that he is who he says he is as he will not be able to provide the relevant details to obtain a

copy CSID. As a CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment and there are no family or other members likely to be able to provide means of support it is submitted that the appellant is in general likely to face a real risk of destitution, amounting to serious harm on return to Iraq.

41. However given that it will be clear from my findings in relation to his claim to be a Christian convert and my findings that he was fingerprinted and claimed asylum in a European country on his journey to the UK it will be clear that I find the appellant not credible as a witness. Further I note that he has made very little effort to trace members of his family or find out whether his village was attacked and/or destroyed by Daesh as he claims. The only effort he has made is to ask other Kurdish people whom he has come across if they have heard anything of his family. The appellant gave no further details of this; neither as to whom he had asked, how many times he had asked and where he was when he made such enquiries. There is also no suggestion that he has attempted to trace his family through any voluntary organisation, charity, or through any official means. In summary therefore he has made very little effort indeed which must be weighed adversely against him in terms of his overall credibility.
42. I therefore find that the appellant has failed to establish that he does not have immediate family members still residing in the Kirkuk Governorate due to his lack of general credibility and his very limited efforts to find them.
43. I therefore find that it is reasonably likely that he does still have family members in Kirkuk Governorate who may have his original CSID card which he said he left at home when he fled or if not that they can vouch for him and assist him to obtain a replacement CSID card soon after arrival in Iraq.”

9. On that basis she dismissed the appeal.

The Grounds of Application

10. The appellant sought permission to appeal on the grounds that the judge had failed to properly apply the current country guidance case law.
11. In AA the Tribunal found that there was a state of internal armed conflict in the Kirkuk Governorate, a conclusion which was confirmed in the decision in BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 which was decided in January 2017. It was not challenged by the Secretary of State in the Court of Appeal decision in AA (Iraq) v SSHD [2017] EWCA Civ 944. The annex to AA [2017] makes it clear that the country guidance on the contested regions stands.
12. Even though the Secretary of State was now, before this judge, relying on CPINs dated March 2017 and June 2017, arguing that the situation had changed since the country guidance in AA, this was not an argument made to the Court of Appeal when AA was decided there in July 2017. The judge

did not address the argument that the only evidence relied on by the respondent concerned a single document which predated the decision in the Court of Appeal and not challenged by the Secretary of State in that case.

13. Second, the judge had failed to provide any reasons as to why the respondent's CPIN amounted to cogent evidence sufficient to allow a departure from the existing country guidance case law, and failed to properly consider whether he had an CSID or would be able to obtain one reasonably soon after his arrival in Iraq.
14. Permission to appeal was granted by Judge Haria on 25th May 2018 for the reasons stated in the grounds.
15. Mr Diwnycz, for the respondent, accepted that the judge had erred in law and that the decision had to be remade. He made no substantive submissions in relation to the appellant.

Findings and Conclusions

16. The Immigration Judge erred in law for the reasons stated in the grounds, in particular she did not provide cogent reasons sufficient to allow a departure from existing country guidance case law. The decision will have to be remade.
17. The appellant is a Kurd from Kirkuk Province. He does not speak Arabic. His interview was conducted in Kurdish. He does not have a CSID.
18. There is no proper basis for departing from the current country guidance case which concluded that appellants such as Mr R would face a real risk of Article 15(c) indiscriminate violence in Kirkuk simply as a civilian returning there.
19. I am informed that a new country guidance case on this issue is to be heard in May but on the present state of the law the findings in AA should be applied. The appellant cannot return to Kirkuk, and will be returned to Baghdad.
20. He cannot return to Kirkuk to attempt to obtain a replacement CSID because it remains a contested area. In any event travel to Kirkuk from Baghdad is hazardous. His parents live in his home area as does his sister but there is no evidence that he has any male family member who would be able to travel from Kirkuk to Baghdad and could attend the civil registry with him.
21. I conclude that the appellant is not therefore in a position to obtain the relevant documents needed to apply for a CSID card. He would therefore be an undocumented internally displaced person in Baghdad.
22. In AA it was the respondent's position that it would in general be reasonable and not unduly harsh to expect a person to relocate to

Baghdad city if there was an Article 15(c) risk in their home area except where:

“A person returned to Iraq who was unable to replace their Civil Status ID Card or Nationality Certificate who would be likely to face significant difficulties in accessing services and a livelihood and would face destitution which is likely to reach the Article 3 threshold.”

The appellant has additional factors, cited in AA, which would point to his having particular difficulties in Baghdad, namely that he does not speak Arabic, is from a minority group, has never been to Baghdad and has neither family nor friends nor access to a sponsor there.

23. Accordingly, at the present state of the law, the appellant is entitled to succeed in his appeal in relation to the Qualification Directive since return to his home area would expose him to a real risk of being subjected to indiscriminate violence and, without a CSID or the ability to obtain one, he could not internally relocate to Baghdad as he would be exposed to treatment contrary to Article 3 of the ECHR.

Notice of Decision

24. The original judge erred in law. Her decision is set aside. It is remade as follows. The appeal is dismissed on asylum grounds. The appeal is allowed on humanitarian protection grounds and on Article 3 grounds.

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

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

Deborah Taylor

Signed

Date 4 February 2019

Deputy Upper Tribunal Judge Taylor