



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

Appeal Number: PA/13061/2018

THE IMMIGRATION ACTS

**Heard at Bradford
on 11 June 2019**

Decision & Reasons Promulgated
On 17 June 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**EMAD HASAN FATAH
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering instructed by Legal Justice Solicitors.

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of a panel of the First-Tier Tribunal composed of First-Tier Tribunal Judge Kelly and First-Tier Tribunal Judge Forster ('the Panel') promulgated on 31 January 2019 in which the Panel dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Iraq born on 6 September 1990. The Panel set out the core of the appellant's case between [3 - 9] of the decision under challenge. It is noted the appellant left Iraq at the end of December 2017/early 2018 and flew using his own passport to Turkey from where he travelled to Greece. The appellant remained for four months before travelling across Europe by lorry to arrive clandestinely in the United Kingdom on 4 May 2018; where he claimed asylum.
3. The Panel set out their primary findings of fact from [19] noting that as the appellant's account was accepted by the respondent who did not challenge the factual basis of the claim they were bound to do likewise. At [26] having considered the appellant's case the Panel find that applying the standard of a reasonable degree of likelihood they find the appellant does not establish any Convention ground that warrants a claim for asylum or that he faced any real risk of serious harm in Iraq. Thereafter the Panel went on to consider the feasibility of return between [27 - 31] in which they find:

“27. Given our above findings, the appellant would be returning to the IKR as a young, single man with no children, relatively well educated, who has previously worked is able to speak some Arabic in addition to his native language of Kurdish Sorani. He will reasonably have acquired skills which are transferable. We find that the appellant has maintained a relationship with some members of his family, in particularly one of his sisters and his brother-in-law who took him in and helped him to leave Iraq. He will be able to contact those members of his family more easily from the IKR and he will find it easier to arrange to see them or obtain any further documentation or support he may need. He has shown himself to be resourceful in making his way to the UK. His ability to secure employment is reasonably good, and this will enable him to find and pay for accommodation.

28. We refer ourselves to the relevant Country Guidance in AA (Iraq) v SSHD [2017] EWAC Civ (944): which is that *“the IKR is virtually violence free. There is no Article 15 (c) risk to an ordinary citizen in the IKR”*. In all the circumstances, we find that the Appellant can safely and reasonably be expected to return to the IKR. We must next consider whether the Appellant's return to the IKR is feasible.

29. The Court of Appeal in AA found that *“the respondent will only return P to the IKR if P originates from the IKR and P's identity has been “pre-cleared” with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez-passer”*. The appellant is from the IKR and can be returned there directly by the preclearance procedure referred to in the Country Guidance, but he will have to be returned via Baghdad because current guidance is that there are no direct flights to Erbil. We need to consider what, if any difficulties, the appellant would have in making his way to the IKR.

30. The key document is a CSID. The appellant was clear that he had a CSID, but it had been burned by his father after they fell out. The appellant did not seek a replacement card whilst he was living and working in Darbandikhan because he said the he did not need one. That goes against the accepted wisdom that the card provides access to services and it is also a gateway to obtaining other documents such as a passport. The appellant flew from Iraq using his own passport, but he handed it over to the agent when he arrived in Turkey. The appellant needs to renew rather than apply for a CSID and passport. In all likelihood, the appellant can reasonably apply for a replacement CSID and passport and any relevant travel documents prior to leaving the UK. He can contact the Iraqi embassy, which he has not yet done. The appellant will have the assistance of his sister and brother in law in Darbandikhan, who will be able to help him to obtain the documents from the relevant authorities. On the facts of this case return to Iraq is feasible.
31. With a CSID, the Appellant will be able to make his way to the IKR from Baghdad as that document will allow him to board a plane from Baghdad to the IKR. He does not need to undertake a land crossing to the IKR. There are flights between Baghdad and Erbil or Sulaymaniyah. The appellant will be no more than a transit passenger at Baghdad Airport. On the Country Guidance, for an Iraqi National returnee of Kurdish origin in possession of a CSID or Iraqi passport, the journey from Baghdad to the IKR, is affordable and practical and can be made without a real risk of the claimant suffering persecution, serious harm, or Article 3 ill-treatment. Nor would any difficulties on the journey make the relocation unduly harsh. In making these conclusions, we adopt and follow the findings in AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212 (IAC)."
4. The appellant sought permission to appeal which was initially refused by another judge of the First-Tier Tribunal but granted on a renewed application by a Deputy Judge of the Upper Tribunal who considered it arguable that the First-Tier Tribunal erred in the conclusion the appellant will be able to obtain a CSID and had misapplied the guidance in AAH (Iraq).
5. The respondent filed a Rule 24 reply, dated 15 May 2019, the material part of which is in the following terms:
- "4. The respondent will submit that these grounds are not made out. The FtTJ properly considered the objective and subjective evidence before him and given that the Appellant's evidence was that he has contact with family in Iraq (namely his sister and brother-in-law) it was properly open to the FtTJ to find that as the Appellant was previously in possession of a passport (taken by agent) and an CSID document (burned by his father over an argument) that his sister or brother in law could help him to obtain relevant information regarding his identification

documents to make his return feasible (Paragraph 30 - 31). Indeed it was properly open to the FtTJ applying the principles in AAH (Iraq) to find in the absence of evidence to the lower standard of proof that the Appellant would be able to obtain a replacement CSID and Passport in the UK from the Iraq Consulate to make his return to Iraq feasible.

5. The respondent will submit that the grounds advanced failed to disclose a material arguable error of law capable of vitiating the appeal outcome.”

Error of law

6. The appellant originates from Darbandikhan, a town in the province of Sulaymaniyah, Kurdistan in the IKR.
7. Relevant cases considered by the Panel included AA (Iraq) v SSHD [2017] EWCA Civ 944, as amended, in which the Court of Appeal found that a CSID was not simply a return document, and AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 in which section C of the AA guidance is supplemented with guidance about the factors to consider when considering whether it is possible for the returnee to obtain a CSID or obtain it within a reasonable time frame. Section E of the country guidance is replaced - the new guidance explaining that all returns are currently to Baghdad but a returnee of Kurdish origin in possession of a valid CSID or passport can journey by land or air practically and affordably without real risk and without relocation being unduly harsh. Domestic flights to the IKR cannot be boarded without either a CSID or a valid passport and if the returnee has neither there is a real risk of his being detained at a checkpoint if he travels by land (other ways of verifying identity at checkpoints such as calling upon “connections” were discussed).
8. Regardless of the feasibility of return, the Panel recognised it was necessary to decide whether appellant would either be returned to Iraq with a CSID or will be able to obtain one, reasonably soon after arrival in Iraq.
9. In AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 section C of the AA guidance is supplemented with guidance about the factors to consider when considering whether it is possible for the returnee to obtain a CSID or obtain it within a reasonable time frame. Factors to be considered include whether the returnee has any other form of documentation or information about the location of his entry in the civil register. If someone is in possession of an INC, passport, birth/marriage certificate or an expired CSID this would be of substantial assistance and the process should be straightforward. A simple laissez-passer however is taken on arrival in Baghdad. It needs to be considered if the relevant civil registry office is operational and whether there are male family members who would be able and willing to attend the civil registry with the returnee. As the registration system is patrilineal it will

be relevant to consider whether the relatives are from the father's or the mother's side. A maternal uncle would be able to provide details to locate the mother's registration and from there the trail would have to be followed to where the mother's records were transferred upon marriage. Undocumented IDPs are themselves unable to be likely to help and a woman without a male relative to assist may face very significant obstacles in that officials may refuse to deal with her case at all.

"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.

27. If you are in Iraq, and have all of the required documents, in normal circumstances the process is straightforward and quick and should take no more than three days. Dr Fatah's own daughter was born in the United Kingdom and he managed to obtain her a CSID in one day from the office in Sulaymaniyah, upon payment of a small fee. Dr Fatah was less optimistic about the efficiency of the process if in the United Kingdom. He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful.

28. If some of the documents were missing it might generally take you up to a month to collate and replace them all. In his live evidence, when pressed by Mr Singh, Dr Fatah acknowledged that it may be possible, when dealing with some officials, to obtain a CSID even if one does not have all of the documents listed above. He conceded that an official might be 'persuaded' to overlook the official requirements, and that there may be some degree of flexibility about the process in some governates. He maintained however that it would normally be the case that these documents would be required. The key piece of information that the individual would however have to have would be his family's volume and page reference number

in the civil register. Without that, the individual “is in trouble”. He could only obtain a new CSID if the Registrar was prepared to trawl through volume after volume looking for the family record. In his evidence before the Tribunal in AA (Iraq) Dr Fatah wondered if such an official would be willing to undertake such a task, or could be “made willing”. The Tribunal concluded that this was not likely. The only way that a totally undocumented Iraqi could realistically hope to obtain a new CSID would be the attendance at the civil registry of a male family member prepared to vouch for him or her. The production of a CSID from, for instance, an uncle, would enable the Registrar to trace back through the record to find the individual’s father, and in turn him.

29. As to whether one would need to attend the office of the civil registrar in person, Dr Fatah reiterated the evidence he gave in AA (Iraq). One could delegate the task to a relative or trusted friend, assuming of course that he was in possession of the relevant documents and/or information. Alternatively, Dr Fatah agreed that it was theoretically possible that one could engage a lawyer and grant him or her power of attorney. He had however never known of anyone who had actually done that, but like everything else in Iraq, it depended on whether you had contacts whom you could trust. Dr Fatah was asked about the possibility of attending alternative offices, such as the Central Archive in Baghdad, discussed at paragraphs 180 to 187 of AA (Iraq). He maintained the evidence that he gave in that case: he has never heard of anyone obtaining a CSID from the Central Archive. In his main report Dr Fatah cites the research of NGO ‘Ceasefire Centre for Civilian Rights’ to the effect that IDPs attempting to recover lost documents are being met with indifference, corruption, incompetence and even sarcasm by the authorities.
30. Dr Fatah explained that this complex bureaucracy has existed in Iraq for many years. The family registration books, and their contents reflected on the CSID, are the foundation of the state’s control. Iraq is presently facing significant challenges in maintaining the system in the north of the country, however. Under ISIL control all recording of official events was banned, and some civil register offices, such as that in Mosul, were damaged or destroyed. The effect is that there is now a huge backlog for the bureaucrats to catch up on. Between 2014 and 2017 no marriages, births or deaths were recorded. Catching up will be a mammoth task. In Mosul alone there are 1.5 million Iraqis who will need their records updated. In addition to recording the names of those who have died in the conflict there will be tens of thousands of children whose births have not been registered, or who were not entered into the record before ISIL took power. Their families are now desperate to have their existence recorded, because without that, they cannot obtain CSID cards; without CSID cards the children are not entitled to PDS cards; without PDS cards they cannot receive food rations. In addition many people lost their documents during the conflict when homes were destroyed or

when fighting broke out, causing people to flee at short notice without them. In light of this, the problems of one individual returnee are likely to be given short shrift. No procedures have been implemented to assist the re-documentation of returnees and in the view of Dr Fatah this is because their issues are considered to be trivial compared to the position of IDPs already on the ground. These returnees are a “totally insignificant problem” for the authorities, whose efforts are further hampered by the fact that many of the more experienced civil servants, whose skills could be helpful at this point, were sacked in the “de-Ba’athification” programme. The likelihood of persuading an official to spend precious time trying to find an individual’s records are even further diminished.”

- 10.** Miss Pickering in her submissions asserted there were two issues one of which related to the ease by which the appellant will be able to obtain a CSID. It was submitted the Panels determination focused only upon an ability to obtain this document in the United Kingdom, but it was accepted the appellant had not approached the Iraqi Embassy in the United Kingdom to see whether a replacement CSID could be obtained, despite the burden of proof being upon the appellant.
- 11.** Miss Pickering asserted the Panel did not look at whether the appellant could obtain the document on return to Iraq and that if this was feasible the Panel would have said so. In response to questions from the Bench Miss Pickering also submitted that the requirement for male family members to assist is ‘familial’ and that it was not made out the fact the appellant had a brother-in-law in the IKR meant there was a person capable of obtaining the documents on his behalf.
- 12.** A further issue that arose during the course of the hearing flowed from a submission made by Mr Diwnycz regarding the October 2018 CPIN and documents annexed thereto by way of copy letters from the Iraqi Embassy in the United Kingdom dated 5 September 2018 and 2 October 2018, scanned copies of which appear at Annex A and B of the report. It was submitted by Miss Pickering that this was not evidence before the First-Tier Tribunal and that there had been some discussion at the hearing regarding the documentary evidence that had been provided. It is not disputed, however, that within the appellant’s appeal bundle at [58 -104] is a copy of the October 2018 CPIN. The two letters referred to by Mr Diwnycz are specifically referred to by reference to Annex A and Annex B at [94] of the appellant’s appeal bundle. The difficulty that arose is that it does not appear that whoever prepared the bundle copied the letters or included them within the evidence submitted.
- 13.** Miss Pickering submitted there was no evidence this was a deliberate act undertaken with the intention of suppressing evidence, or that what occurred was the deliberate provision of incomplete evidence ignoring a significant portion of related evidence that may contradict the appellant’s position. Whilst some may argue that the omission of such

documents clearly indicates an intention to suppress evidence that could lead to a complete picture, in which all reasons opposing the appellant's case are omitted, no evidence has been provided to suggest that Miss Pickering's submission of mere error does not provide a plausible explanation.

14. The October 2018 CPIN is not a document in relation to which only the respondent had exclusive access as it is a document in the public domain to which all parties have access. It is also a document that was before the Panel of which they too would have been aware.
15. I do not find it made out that the Panel concluded the appellant would not be able to obtain the necessary documents on return to Iraq and reject as unfounded Miss Pickering's submission, on the facts of this case, that just because this issue was not mentioned in the body of the determination the Panel must be taken to have concluded accordingly. The primary finding of the Panel is that the necessary documents could be obtained before the appellant left for Iraq, i.e. within the United Kingdom.
16. The letters from the Iraqi Embassy in the following terms:

'Annex A

5 September 2018

Re: Visit of the Iraqi Migration and Human Rights Committee to the United Kingdom:

29 July - 2 August 2018

Dear []

In reference to your letter dated 4th of September, I would like to assure you that all the returnees' papers are checked on arrival and they are received with courtesy at Baghdad International Airport and may be provided with a certification letter.

The arriving returnees can continue their onward journey to their final destination in Iraq by domestic flights or road using their Laissez Passer or letter (if provided) which help them to pass through other designated checkpoints. Please note that most of them may be in possession of copies of their national IDs which may have not been disclosed previously.

The returnees can re-document themselves and apply to their local Civil Status Department for a national ID card on arrival using copies from his/her old documents or family records with reference to the page and register number holding the returnee's information or that of their family.

We can confirm that all the Civil Status Records are preserved and held ... each Governorate of Civil Status Affairs and are accessible to assist in determining a returnee's identity with reference to the register and page.

Sincerely

Dr Salih Husain Ali

Ambassador of the Republic of Iraq to the United Kingdom.

Annex B

02/10/2018

Dear []

In addition to our clarification outlined in our letter 5 September, please note that same procedures are applied to all the returnees onward to travel from Baghdad to KRG or any city in Iraq. The certification letter is issued on a case-by-case and depending on availability/unavailability documentation (sometimes requested by the returnee), the letter is issued by Baghdad International Airport Police, and contains information about the returnees including name, date of birth and clarification that the returnee landed with a Laissez Passer and his repatriation procedure is completed at the Airport, this letter is sufficient to pass through checkpoints in case of enquiry, please note that in rare occasions they may be questioned at checkpoints. This letter usually not always issued for all the cases, but individually case-by-case. All Civil Status Records have been preserved nationally and there is a central register backup in Baghdad that includes all the civil records of all the provinces in the event of any form of damages or destruction. This civil registration backup (microfilm) covers all records from 1957.

Representatives from the repatriation committee will be available in Baghdad International Airport and ready to receive a returnee even at the weekends if we are informed in advance that the returnee is on board of a flight. The officers are fully qualified dealing with the repatriation process and they can deal with it with the last minute notes.

Kind regards

Councillor

Embassy of Iraq - London'

- 17.** The weight to be given to a document from a diplomatic source was considered extensively in the case of *NA v the United Kingdom* [2008] ECHR 616 which found that such evidence should not be accepted or rejected because it comes from diplomatic sources but it should be considered with and related to the evidence as a whole. The weight to be given to this evidence is a matter for the Tribunal. Taking such evidence in combination with the country guidance decisions and CPIN I find it is appropriate in all the circumstances to attach the weight to the same and accept the evidence from the Iraqi Embassy as a reliable country information upon which the weight may be given.
- 18.** The appellant's date of birth of 6 September 1990 which means that the evidence required to obtain the necessary documentation will have been included in the central database in Baghdad as well as being available to him in the IKR. As the appellant has not approached the Iraqi authorities in the United Kingdom it is not made out the Panel's

conclusions he will be able to obtain the necessary documentation is infected by arguable legal error although, even if this was so, the country information clearly supports a finding that the appellant will be able to obtain a replacement CSID within a reasonable period of returning to Iraq with the assistance of his family members in the IKR if required. The Panel's conclusions the appellant will be able to travel to the IKR from Baghdad have not been shown to be outside the range of findings reasonably open to them on the evidence. Accordingly the conclusion the appellant is both returnable, and that such a return will not engage the United Kingdom's international protection obligations, have not been shown to be findings outside the range of those reasonably available to the Panel on the evidence.

- 19.** No arguable legal error material to the decision to dismiss the appeal is made out sufficient to warrant a grant of permission to appeal to the Upper Tribunal.

Decision

- 20. There is no material error of law in the Panel's decision which shall stand.**

Anonymity.

- 21.** The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 12th June 2019