



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

Appeal Number: PA/08351/2019

THE IMMIGRATION ACTS

**Heard at MANCHESTER CJC
On 13th January 2020**

**Decision & Reasons Promulgated
On 7th February 2020**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MR HAWRE IMAD RASOOL
NO ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard (Solicitor)

For the Respondent: Mr Tan (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. I shall refer to the parties using the titles in the First tier Tribunal. The respondent appeals against the decision of the First tier Tribunal (Judge Buckwell) (FtT) promulgated on 9th October 2019 in which the appellant's protection claim was dismissed and his human rights claim was allowed under Article 3 ECHR.

Background

2. The appellant claimed asylum on the grounds that he was at risk on return to Iraq because he was wanted by HAS and by the Peshmurga. The FtT found his account not to be credible [95] and there is no challenge thereon.
3. The FtT considered the issue of relocation and referred to **AA** Iraq CG [2017] UKUT 544 (IAC), **AAH** Iraq and **BA** Iraq [23]. The FtT considered the issue of obtaining a CSID and in that context considered Article 3 [84 & 96].
4. The FtT considered that the appellant's return to Baghdad gave rise to significant difficulties because he did not have the documentation (CSID or other) needed to live in Iraq and he would face significant challenges in travelling out of the city and through checkpoints. As a Kurd he could not relocate to Baghdad [98]. At [100] the FtT found that the appellant would not reasonably be able to secure the issue of a replacement CSID and would find himself in significant difficulty in Iraq. The FtT relied on caselaw in concluding that Article 3 was engaged in such circumstances.
5. There was evidence before the FtT that the appellant had a brother in Iraq, that he had close friends who he remained in contact with and who had provided him with documents obtained from his family home, where his old CSID was kept. The appellant had previously lived in Erbil. He had friends in IKR.

Grounds of appeal

6. In grounds of appeal the respondent argued that the FtT erred by failing to give adequate reasons as to the engagement of Article 3 ECHR by reference to the issue of documentation [104]. No assessment was made of the relevant caselaw **AAH** and **AA**, in particular where the UT found that as a general matter *"it will not be unreasonable or unduly harsh for a person from a contested area... to relocate to Baghdad"*.
7. The FtT failed to assess all relevant factors including that the appellant could seek assistance from his brother to obtain or renew his CSID or even why the appellant could not approach the Iraqi Embassy in the UK, and/or why the appellant could not approach his friends in his home area to obtain the old CSID from his family home. Further it was argued that the FtT failed to consider that it was open to the appellant to use the process involving a power of attorney.
8. The FtT's finding that the appellant's return would not be voluntary was irrelevant in the light of his claim being found not credible. The FtT failed to properly consider return to IKR.

9. The FtT failed to explain the relevance of Article 3 in particular where it dismissed the asylum and humanitarian protection claims.

Permission to appeal

10. Permission to appeal to the Upper Tribunal (UT) was granted by Designated First tier Tribunal Judge Woodcraft on 19.11.2019. He considered that given the credibility issues it was arguable that the FtT ought to have explained in more detail why the appellant could not obtain a CSID, particularly when it had been submitted that his friends had been willing to assist the appellant to obtain documentation [71]. The FtT's focus was on return to Baghdad when arguably that was not the main issue. The appellant's reluctance to return was not a good reason to allow the appeal either [97].

Rule 24 response

11. The FtT adequately considered the evidence under Article 3 and made findings that were open to him to make. The appellant would be returned to Baghdad without documentation and could not obtain a CSID which would lead to a breach of Article 3.

Submissions

12. At the hearing before me Mr Tan representing the respondent expanded on the grounds of appeal. He submitted that the FtT failed to consider return to IKR, that the appellant had previously lived in Erbil and there was evidence that he was educated and had worked in IKR. The FtT had not explored all possible avenues by which the appellant could either have obtained his old CSID or a new CSID. The FtT had not provided detailed reasons for supporting his decision that Article 3 was engaged and that it was following Country guidance.
13. In response Mr Howard relied on the Rule 24 response and submitted that the FtT had fully considered all the evidence and found that it was not possible for the appellant to access his old CSID or to obtain a new one. The approach to focus on return via Baghdad was correct. The Article 3 threshold was met.

Discussion and conclusion

14. As to error of law I found that there was a material error of law by the FtT in terms of its failure to consider all the evidence as to avenues open to

the appellant to obtain a CSID and to that extent did not follow the country guidance cases of **AA** and **AAH**. The FtT dealt with the issues largely at [100] which was inadequate in terms of giving reasons to the respondent as to why the appeal was allowed.

15. The FtT heard evidence from the appellant that he had contact with family and friends who had obtained documents for him for the appeal. Given that evidence the FtT ought to have considered return to IKR rather than to focus solely on a return to Baghdad. Further the FtT failed to look at all factors relevant to consideration of whether or not there were sufficient difficulties so as to reach the high threshold under Article 3.
16. There is a material error of law disclosed in the decision which shall be set aside. The decision under Article 3 will be remade following submissions.

Re making the decision & submissions

17. At the outset Mr Howard considered whether there was further evidence that he wished to adduce but made no application. He relied on the recent country guidance in **SMO**.
18. Mr Tan submitted that notwithstanding that there was new country guidance (**SMO**) the position remained that the appellant would be able to obtain the old CSID or a replacement. The appellant would be in a position to recall personal details to enable him to obtain a replacement. He provided documentary identity evidence from the authorities to show that he was employed which would reasonably support his identity. He had not shown that he had taken any steps to apply from within the UK. **SMO** did not change that situation - CSID were still issued and so there was no requirement to return to Iraq. The appellant faced no risk factors in his home area; he lived in Erbil previously, was employed and had a friend N who was resident in IKR who could provide assistance of a financial and practical nature.
19. Mr Howard relied on the skeleton argument before the FtT and **SMO**. He contented that the appellant would not be able to return to Baghdad. He would not be able to rely on assistance from his brother or otherwise gain access to his old CSID. **SMO** confirmed that there would be difficulties where a person did not have the CSID or other documentation. There was no evidence of family support. The fact that the appellant had been educated and employed was not sufficient to reduce the risk of ill treatment. The appellant would not access the basic necessities and therefore Article 3 was engaged. Counsel appearing at the FtT cited the court of appeal judgment in **SS (2019) EWCA 1402** in support of the Article 3 argument and with reference to **AA**.

Discussion and decision

20. The FtT dismissed the appellant's claim under the Refugee Convention and on humanitarian protection grounds having found the core of the appellant's claim to be lacking in credibility. The key issues thereafter were risk on return and the ability to obtain a CSID card.
21. It was in the context of the negative findings that the appellant faced no risk on return to his home area that the FtT ought to have considered return and relocation. In other words the feasibility of return to IKR rather than to focus on return to Baghdad only. The evidence before the FtT was that the appellant's CSID was at the family home. There was evidence that he had approached a friend S who had obtained some documentation for him which had been sent to the UK [37 & 71]. There was evidence that the appellant had been educated and worked in IKR. There was evidence that he had a brother in Iraq but he had not contacted the Red Cross as he believed that his brother would not want to be contacted. He last had contact with him before leaving Iraq [38]. He had an ID document that had been sent to him by another friend NA [42 & 43] who lived in Tahkoha village Zago city in the IKR area [44]. He had not been to the Iraqi Embassy or Consulate and was not aware that there was one in Manchester [53]. He previously held a passport. He claimed that he had no close friends [54].
22. I am satisfied that the evidence that was before the FtT established that it was reasonably likely that the appellant would have been able to take steps to obtain either his old CSID or a replacement. In those circumstances he would not have to return to Baghdad where he would face significant difficulties in the event that he had no CSID. He would have been able to request further assistance from his friend NA, make efforts to contact his brother and or approach the Embassy in the UK and utilise his ID documentation and use the process to obtain a power of Attorney with assistance from friends. Given that the appellant has close friends in IKR he would be able to secure support and practical assistance such that he would not be destitute. He previously lived in Erbil. He is a young educated man who faces no risk in his home area. There is no difficulty in return to IKR for those who previously came from that area. I conclude that overall there was sufficient evidence to show that the appellant would be able to return safely to IKR and/or that he would be able to obtain his old or a replacement CSID and would not be at risk at checkpoints on his way to the KRG area where he would face ill treatment contrary to Article 3.
23. I have taken into account **SMO, KSP & IM (Article 15(c) ; Identity documents) Iraq CG [2019] UKUT 00400 (IAC)** - see headnote 7,9 in respect of return to IKR (20 - 29) and 11-16 as to replacement CSID which can still be obtained through Iraqi Consular facilities at headnote 13. It is acknowledged that the use of a proxy has reduced due to the introduction of the INID system.

Decision

24. Accordingly I have allowed the respondent's appeal and remade the decision and I dismiss the appeal.

Signed

Date 17.1.2020

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER MADE

NO FEE AWARD

Signed

Date 17.1.2020

GA Black
Deputy Judge of the Upper Tribunal