



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09133/2019

THE IMMIGRATION ACTS

At Manchester Civil Justice Centre
On 6th March 2020

Decision & Reasons Promulgated
On 18th March 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

DHM
(anonymity order made)

Respondent

For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: Ms Brakaj, Iris Law Firm

DECISION AND REASONS

1. The Respondent is a national of Iraq born in 1984. On the 20th November 2019 the First-tier Tribunal (Judge O’Hanlon) allowed his appeal on humanitarian protection grounds. The Secretary of State now has permission to appeal against that decision.
2. The basis of the asylum claim before the First-tier Tribunal was that the Respondent faced a real risk of serious harm in Iraq arising from his illicit relationship with a young woman. It was averred that the family of this girl had

discovered that the Respondent had slept with her and that they had declared that they would kill him. A second limb of the case related to the Respondent's claim that since his arrival in the United Kingdom he had given information to the police here about another Iraqi national, a man held on suspicion of terrorist offences. The Respondent claimed to fear this man's family in Iraq.

3. The First-tier Tribunal found the Respondent's evidence about the young woman and the threat of "honour"-based violence to "lack all credibility". As for the actions of the Respondent in giving the police a statement about the terrorist suspect, the Tribunal considered it to be speculative that either the man or his family would know that the Respondent had done this. At its highest his evidence concerned the addresses of family members of the man and there was no reason to believe that the Respondent had incriminated him any further. The appeal was thereby dismissed on asylum grounds.
4. The Tribunal went on to consider whether the appeal should nevertheless succeed on humanitarian protection grounds. It notes [at §53] that the Secretary of State accepted that the Respondent was from Kirkuk, and that this was a 'contested area' such that Article 15 (c) of the Qualification Directive applied: AA (Article 15(c)) Iraq CG [2015] UKUT 00544. That being the case, the Tribunal directed itself that the next question was whether the Respondent could reasonably be expected to relocate somewhere else in Iraq in order to avoid the indiscriminate harm that he would face in Kirkuk. It recorded the Respondent's consistent evidence that his CSID and his Iraqi passport had been taken from him by the agents in Turkey [at §54]. Having had regard to its own findings on the evidence about the young lady the Tribunal was not prepared to accept the Respondent's evidence that his family had disowned him as a result of that affair [at §56]; it found that he retained the ability to contact his parents if he wished. His family would be able to assist him in acquiring a CSID: AAH (Iraqi Kurds - Internal Relocation) Iraq CG [2018] UKUT 00212 applied. With a CSID he could enter the IKR by air. The Tribunal then said this [at §58]:

"However AAH goes on to say that for those without the assistance of family in the KRI accommodation options are limited. The question of whether the appellant would be able to secure employment must also be assessed on a case-by-case basis taking into account factors such that the unemployment rates for Iraqi displaced persons living in the KRI is 70%, patronage and nepotism are important factors in securing employment and the fact that the appellant is from an area with associations with ISIS that may deter prospective employers. In this case having considered all of the information before me, although I find that the appellant could access a CSID card and thereby gain access to the KRI by air, taking into account the lack of assistance of family in the KRI and difficulties which the appellant may find in securing employment in the KRI I do find that taken cumulatively, internal relocation in the KRI for the appellant would be unduly harsh".

5. The Tribunal went on to make similar findings in respect of Baghdad, and the appeal was allowed on humanitarian protection grounds.
6. The Secretary of State's grounds of appeal are detailed and excessively long. The essence of her complaint is that in making its findings on internal flight the Tribunal failed to explain why the Respondent could not receive the material financial assistance of his family in Kirkuk thus lifting him above an unacceptable level of destitution.
7. I am satisfied that this error is made out. The Tribunal had already found that the Respondent was in touch with his family and that they would be willing to go to the trouble of getting him a replacement CSID and bringing it to Baghdad Airport so that he could fly to Irbil. Having made that finding it is not at all clear that the Tribunal turned its mind to whether they would also be willing or able to offer him some meagre financial assistance until such time as he was able to establish himself in the IKR. In AAH the Tribunal accepted that the presence of family members was a relevant factor for that very reason. I am therefore prepared to set the decision of the First-tier Tribunal aside to that extent.
8. Before me Mr Tan raised another matter that does not expressly feature in the grounds. As I have noted, the Tribunal proceeded to determine the appeal on the basis that the Secretary of State had accepted that Kirkuk remained contested territory. Paragraph 53 of the First-tier Tribunal records that the Secretary of State makes this concession in the refusal letter. It seems likely that the First-tier Tribunal was there referring to paragraph 77 of that decision:

"The security situation in Iraq has changed considerably since the decision in AA [2015] was promulgated. However, the most up-to-date information available confirms that your home area of Kirkuk governate still meets the threshold of article 15 (c)"
9. What the Tribunal did not appear to notice (and no Presenting Officer appeared before it in order to assist) was that the refusal letter goes on to reach precisely the opposite conclusion, at its paragraph 134:

"For the reasons given above, there are strong grounds supported by cogent evidence to depart from AAs assessment that any areas of Iraq engage the high threshold of Article 15(c)..."
10. Mr Tan submits that the failure to deal with the submission made at paragraph 134 was a discrete error of law.
11. This was not a point taken in the grounds, and it is not a criticism of the First-tier Tribunal that I am prepared to uphold. The Tribunal was faced with a protection appeal involving complex issues of fact and law, and no representative of the Home Office available to assist. The refusal letter runs to some 154 paragraphs and the First-tier Tribunal can be forgiven for stopping reading at paragraph 77 given that this was the key statement it was interested

in for the purpose of Article 15(c). From thereon in it was to be guided by the country guidance cases. If the Secretary of State wishes to have her case considered by the Tribunal, she should make sure that it is not flatly contradictory.

12. It nevertheless remains for me to remake the decision in respect of Article 15. Accepting as I must that the operative country guidance is now SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) I make the following findings.
13. It was accepted by the First-tier Tribunal that the Respondent has no CSID nor Iraqi passport. No findings are made on whether he is in a possession of an INC but I am satisfied that it is highly unlikely that he is. It has been his consistent evidence that he handed over his documents to an agent in Turkey. It made sense that he should do this: he had no need for them himself anymore and presumably such documents have a relatively high value on the black market. It seems wholly probable that had the Respondent been in possession of his INC that too would have been handed over. There is no reason to suppose that he would have left that document at home, but taken the more important passport and CSID with him with the intention of giving them up once over the border. I am satisfied that it is reasonably likely that the Respondent has no identity documents nor copies thereof.
14. Following the concession made in SMO, the relevance of documents in Iraqi cases is, for the Secretary of State, that without them an individual may face conditions of such socio-economic deprivation so as to engage the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) of the Qualification Directive. To that end the concession made in AA, AAH and repeated in SMO remains Home Office policy:

“... it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR.”
15. It is therefore important to establish whether or not it is reasonably likely that the Respondent would be able to obtain new identity documents, either a CSID or one of the new biometric 'INID's.
16. Mr Tan suggested that as a starting point the Respondent would be able to acquire a CSID before he leaves the United Kingdom, by approaching the embassy in London. He referred me to paragraph 383 of the decision in SMO (Iraq):

“We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the

respondent's CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity."

17. Mr Tan relied on this passage to submit that the Upper Tribunal in SMO clearly envisaged that it remained *possible* to obtain a new CSID in London. The passages in AA to which the Tribunal refer are these:

"173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application".

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act "as a proxy" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad. "In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi

embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

177. 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".

18. The supplementary evidence given by Dr Fatah in AAH was as follows:

"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 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.

..."

19. Applying that guidance, and in particular the evidence of Dr Fatah, I find as follows. There is no obstacle to the Respondent signing a statement explaining

why he does not currently have a CSID. Whether he could get that countersigned by the head of his family remains debatable. The First-tier Tribunal found that he will still have some contact with his family in Kirkuk but it is far from clear whether that this includes his father. Assuming for the sake of argument that the Appellant's father is alive and well and living in Kirkuk, and that there is no reason why he could not countersign the application form, there remains the matter of the colour photocopy of the INC. The Respondent does not have such a document and it is at least reasonably likely that he would not be able to obtain one. I have considered whether embassy staff might be prepared to overlook that requirement, if for instance the Respondent was able to give them the relevant details of his 'family book', but this seems unlikely given that the strict evidential requirements appear to be there for a reason, and it was Dr Fatah's overall conclusion that embassy staff in London are "generally very unhelpful". Having considered all of those matters in the round I am satisfied that there must be a reasonable likelihood that the Appellant would not be able to acquire a new CSID in London. The application process explained by Dr Fatah must be viewed in the context of the very great number of Iraqi nationals who are undocumented, and Dr Fatah's evidence that the problems of an individual returnee are regarded as "trivial".

20. This means that there is at least a reasonable likelihood that the Appellant will find himself at Baghdad airport with no means of onward travel. He cannot board a domestic flight to Kirkuk, and cannot pass through the many checkpoints on the road north. In order to do so he would need a CSID, or one of the new generation of identity cards - the INID - being progressively rolled out across the country.
21. The next question is whether the Appellant would be able to secure such identity documents within a reasonable time frame. Assuming that his family in Kirkuk would be able to assist him by approaching the civil status office in that city on his behalf, and that one male family member would be able and willing to make the journey to Baghdad airport to greet the Appellant and bring to him a replacement card, I must nevertheless consider the likelihood of such a card being issued to a proxy. It was the clear evidence of Dr Fatah that the new generation of cards are not being issued to proxies. Although the Tribunal was not expressly told whether the Kirkuk civil status office is issuing INIDs or CSIDs, it was its assumption that it is the former, given the evidence that it is largely 'rural areas' that have been left behind: see paragraphs 389 and 431 SMO. That being so it does not appear to be at all likely that the Appellant will be able to obtain a INID from his home city Kirkuk, given that he cannot get there and any family member who might be willing to help will not be assisted by the authorities. Applying the guidance in AAH and SMO it follows that the Appellant would, on arrival, be exposed to conditions amounting to a violation of Article 15(b) and his appeal must be allowed on that basis.

Anonymity Order

22. This appeal concerns a claim for protection. 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”

Decision

23. The decision of the First-tier Tribunal is set aside.
24. There is an order for anonymity.
25. I re-make the decision in the appeal as follows: the appeal is allowed on protection grounds.



Upper Tribunal Judge Bruce
6th March 2020