Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02175/2017**

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 16th October 2018	**On 7th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR SIWAN AHMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Joseph of Counsel
For the Respondent: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 7th February 1985 is a citizen of Iraq. The Appellant who was present was represented by Mr Joseph of Counsel. The Respondent was represented by Mr Howells a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for protection in the UK and that application had been refused by the Respondent's decisions of 23rd January 2017 and 20th March 2018. The Appellant had appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Povey

sitting at Newport on 9th May 2018. The judge had allowed the appeal under the Qualification Directive.

3. Permission to appeal had been applied for by the Respondent and permission had been granted by First-tier Tribunal Judge Grant on 14th June 2018. It was said that it was arguable the judge had erred in law in his assessment of the feasibility of return to the IKR for the Appellant. Directions were issued for the Upper Tribunal first of all to consider whether an error of law had been made or not and the matter comes before me in accordance with those directions.

Submissions on behalf of the Respondent

4. It was said that firstly the judge had erred in paragraph 24 of the decision in terms of his findings on Kirkuk in that it was still a contested area. It was said that the Home Office CPIN September 2017 on internal relocation showed that that was not the case. I was also referred to the case of **Amin [2018]** which acknowledged that a change had taken place in Kirkuk.

5. Secondly it was said that even if Kirkuk was contested, then there had been an error in law in the consideration of internal relocation to the IKR. It was submitted the Appellant had not taken reasonable steps to get a CSID by contacting family in Europe. It was also said that the Appellant was unwilling to contact the embassy in the UK to further that matter.

Submissions on Behalf of the Appellant

6. Mr Joseph submitted that essentially the Grounds of Appeal were no more than a disagreement with the judge's findings. It was submitted that a factual finding had been made by the judge which had not been challenged, that firstly the Appellant had no CSID nor did he have family in Iraq those family members being in Europe.

7. In terms of paragraph 27 of the decision it was submitted that in terms of getting any form of CSID from a visit to an embassy in the absence of a passport, the only other way to get such a document was to provide the civil registry place and page number which the Appellant did not have and therefore it was simply pointless going to the embassy and there was no error made by the judge in that matter. It was further said that the case of **AAH** made the point that in the past at least Kirkuk had been contested and there was a question mark as to whether there was a civil registry office available. The judge at paragraphs 21 to 24 had given good reason as to why he believed Kirkuk was still a contested area and why it was not necessary to depart from the country guidance case of **AA [2017]**. In answer to a matter that I raised it was agreed by both representatives that in terms of the judge's final decision it was implicit when looking at the decision that he found that a return to Baghdad, i.e. any form of internal relocation would be a breach of Article 3.

8. At the conclusion I reserved my decision to consider the evidence and submissions and I now give my decision with reasons.

Decision and Reasons

9. It was agreed evidence that the Appellant was from Kirkuk and therefore any return to Iraq would initially be with Kirkuk in contemplation as his home area. The judge had considered the evidence before him and properly had made note of the evidence that was considered relevant. He had considered the position with regard to Kirkuk and had noted that in the country guidance case of **AA** it had been concluded that Kirkuk was a contested area that fell within the terms of Article 15(c) humanitarian protection. The judge thereafter had examined the country material provided by both the Respondent and the Appellant and had concluded at paragraph 24 that there were not strong grounds supported by cogent evidence to permit him to depart from the conclusion in **AA (Iraq)**. He acknowledged the situation in Iraq was uniquely fluid and there was evidence of a changing front line but did not find that there was a fundamental and durable change that would have allowed him to depart from the country guidance case. The judge was entitled to make that finding based on the evidence before him. The case of **Amin [2018]** was a judicial review case that was looking at a specific matter albeit in relation to Kirkuk. It is not a case that sets a precedent and it was entirely open to this judge to have concluded that there was insufficient evidence for him to depart from the guidance given in **AA [2015]** that had thereafter been considered in **AA [2017]** by the Court of Appeal.

10. It was said that the Appellant had not taken reasonable steps in order to get either an initial or replacement CSID. It was submitted that the Appellant could and should have contacted his family in Europe. This suggestion within the Respondent's Grounds of Appeal is in my view entirely speculative. If there had been evidence of a relative living in Iraq, particularly a male relative on the patriarchal side of the family, then that may well have been evidence for the judge to carefully consider in terms of whether there was potential family assistance to obtain a CSID for the Appellant. However, there was no such evidence. The agreed, or only evidence was that the Appellant's family had all left Iraq and were scattered in various countries within Europe. It is difficult to see how on any assessment it could be said that any of those family members living in Europe whatever status they may or may not have, could assist the Appellant in obtaining a CSID from Iraq and the suggestion is entirely speculative. There was no error made by the judge in not adopting that speculative approach stated by the Respondent. In like manner there was no evidence that the Appellant knew or had ever known the page number or reference for a CSID or even whether the civil registry in Kirkuk still existed or could be accessed. To that extent as the judge noted at paragraph 27 whilst a CSID could be obtained from the Iraqi Embassy in the UK, there was simply no information that the Appellant could provide to the embassy on the evidence given to the judge that would have allowed the Appellant to obtain a CSID from the embassy. Furthermore, as the judge noted the Appellant had in fact left Iraq fifteen years ago so it could not even be said that events and information would be remotely

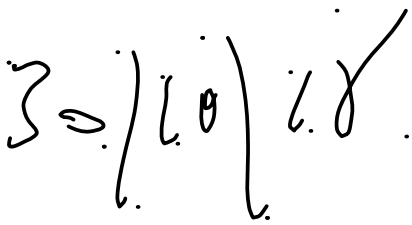
recent. The judge was therefore entirely correct to reach the views that he did in terms of the inability of the Appellant to access a CSID.

11. The judge was entitled to conclude that returning the Appellant to his home area of Kirkuk would be a breach of Article 15(c) and therefore continue to follow the guidance given in **AA**. In like manner in terms of an examination of internal relocation (effectively Baghdad) the judge at paragraph 25 had noted the difficulties that the Appellant would face and at paragraph 26 the judge reasonably concluded that the Appellant would have run out of funds provided by the Respondent before he had secured a CSID and would therefore be likely to face a real risk of destitution. That was in accordance with country guidance case law and as agreed by the parties before me. It is entirely clear and a proper inference the judge had therefore concluded this internal relocation to Baghdad would be a breach of Article 3. At paragraph 21 the judge had noted the Appellant was not from the KRI. It is the case the judge had not specifically looked at the issue of internal relocation to the IKR but given the case law of **AA [2017]** and in particular **AAH [2018]** the findings on fact and credibility made by the judge together with his views on internal relocation to Baghdad, necessarily means that there would not have been any different decision made had the judge found it necessary to consider internal relocation to the IKR and therefore even if a failure to make reference as such was an error of law, it did not amount to a material error of law.

Notice of Decision

12. I find that no material error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed  Date 

Deputy Upper Tribunal Judge Lever