



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06188/2016

THE IMMIGRATION ACTS

Heard at Manchester  
On October 2, 2018

Decision & Reasons Promulgated  
On October 19, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

HERSH [K]  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Wilkins, Counsel, instructed by CAB

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is an Iraqi national. He left Iraq on October 27, 2015 and entered the United Kingdom clandestinely on October 30, 2015 and claimed asylum the same day. The respondent refused his protection claim on May 18, 2016 under paragraph 336 HC 395.

3. The appellant lodged grounds of appeal on June 15, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Boylan-Kemp MBE (hereinafter called "the Judge") on May 10, 2017 and in a decision promulgated on June 19, 2017 the Judge refused the appeal on all grounds.
4. Upper Tribunal Judge Perkins granted permission to appeal on November 1, 2017 finding it arguable the Judge had arguably ignored expert evidence, provided by Dr Fatah, that relocation would be either impossible or unreasonable.
5. When this matter came before me on June 26, 2018 Mr Tan accepted that in considering internal relocation the Judge had failed to have any regard to the expert report of Dr Fatah and as this case was all about internal relocation he accepted there had been an error in law.
6. Both Mr Tan and Ms Wilkins also agreed the Judge erred by failing to address the issue of whether the appellant could be a member of a particular social group and both accepted the Judge was wrong to find that being part of a blood feud could not engage the Refugee Convention.
7. I adjourned the case for up to date country evidence and directed that evidence be submitted prior to the next hearing. The decision of AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC) has provided up to date guidance on how Iraqi Kurd cases should be dealt with.
8. At the resumed hearing I heard submissions from both representatives.

### SUBMISSIONS

9. Mr Tan accepted that people who are part of a blood feud can be members of a particular social group but he submitted that if the appellant was able to internally relocate to the IKR then there was no direct evidence that members of the appellant's ethnicity (Kakai) were targeted by the Bayati. Dr Fatah had considered in his report, dated January 31, 2017, the issue of blood feuds noting that blood feuds were a regular occurrence within Kurdish society but commented at paragraph 46 of his report that where members of the other tribe/family (the Bayati tribe) were unable to reach their target then it was possible that they would kill another member of that person's family but there was no evidence that this has happened despite the appellant having left Iraq at the end of October 2015. There was no evidence that they had attempted to trace the appellant and Mr Tan submitted that Dr Fatah findings at paragraphs 49 and 50 were unsubstantiated especially as the CPIN (Iraq: Blood Feuds) August 2017 report made no reference to the Bayati being present or having any influence in the IKR. Dr Fatah also did not specifically consider whether the Tribal Council would be able to resolve any ongoing tribal dispute especially as the CPIN confirms that tribal chiefs will take effective measures to settle a conflict before it assumes serious proportions. Mr Tan submitted that internal relocation was a viable option in this appeal and the appellant was not entitled to a refugee status.

10. Mr Tan thereafter addressed the issue of the appellant's lack of a CSID and noted that in his interview the appellant accepted that he had a brother in law and that this brother in law had sent him documents and it was therefore perfectly reasonable either for him or other family members in Iraq to forward to him sufficient information that will enable him to obtain his CSID documentation in Baghdad or to appoint a power of attorney.
11. Finally, with regard to article 8 Mr Tan adopted what the Judge had stated in the First-tier Tribunal and although there was now a third child the situation was unchanged.
12. Ms Wilkins adopted the content of her skeleton argument and submitted that returning the appellant would either entitle him to protection on refugee or humanitarian protection grounds or in the alternative under section 6 of the Human Rights Act 1998. The respondent had accepted that the appellant was Kurdish and of the Kakai ethnicity and that it would be unsafe for him to return to his home area. This had been accepted by the Judge in the First-tier Tribunal and the Judge had also accepted that the appellant had been threatened by the family of a man who had died after visiting the appellant shop. She submitted that this was capable of being a blood feud and therefore engaging the Refugee Convention. She submitted that internal relocation to the IKR was neither practically possible without a CSID nor would it be safe based on the findings of Dr Fatah.
13. With regard to whether the appellant's claim engaged the Refugee Convention because of the blood feud Ms Wilkins submitted that as the appellant could not safely or reasonably relocate to the IKR his appeal should be allowed on refugee grounds. She submitted that the appellant would be unable to receive protection in the IKR and as the appellant did not have a CSID or passport he would be unable to travel to the IKR and in such circumstances internal relocation would not be possible. She pointed to the fact that he would be unable to replace his CSID in the United Kingdom because he did not have the relevant documentation to obtain it and he would be unable to complete the necessary paperwork especially as the Consulate in London are "very unhelpful". He would also be unable to obtain the documentation in Baghdad because he had no contact with any family and there would be no male family member or documentation which would enable him to obtain a replacement CSID.
14. When considering reasonableness Ms Wilkins submitted that the Tribunal had to have regard to the fact the appellant and his wife had three young children and given the timeframe to obtain documents in Baghdad he would have insufficient resources to support his family was trying to obtain the documents and/or persuade officials to overlook some the requirements all trawl through volume after volume for his family records.
15. Once in the IKR he would find work difficult as he had no experience in the "legal" job market having previously run a shop selling alcohol and completing only three years of primary school. With no family connections in the region the likelihood of

him obtaining work was further reduced especially as prospective employers may be deterred from taking on someone from a contested area. The appellant would also have no accommodation for himself and his family and no means to rent a property.

16. With regard to article 8 ECHR the appellant has been in the United Kingdom for three years and has two children aged 12 and seven and an eight-month old child. It would be disproportionate to require them to return to Iraq.
17. Having heard submissions, I indicated would give a written decision.

### **FINDINGS**

18. The appellant ran a shop selling in alcohol and after purchasing alcohol from the appellant's shop AH was shot and killed by an unknown person upon leaving the shop. AH's family blamed the appellant for his death and AH's family attended at the appellant's home address and attacked the appellant and his family. The appellant's home was later burnt down.
19. The appellant and his family (wife and two children) fled Iraq and claimed asylum in the United Kingdom.
20. After hearing the evidence, the Judge concluded the appellant had given a credible account both of what happened at his shop and what had subsequently happened. The Judge further accepted that it was plausible that AH's family could choose to direct their anger and frustration on the appellant and his family.
21. Mr Tan, contrary to the position of his colleague in the First-tier Tribunal, accepts that a person involved in a blood feud can engage the Refugee Convention but whether this appellant would engage the Convention is a factual assessment.
22. The Tribunal in EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) gave guidance on the correct approach to considering whether a person involved in a blood feud is at risk of persecution. The following factors should be considered:
  - (a) The history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud.
  - (b) The length of time since the last death and the relationship of the last person killed to the appellant.
  - (c) The ability of members of the aggressor clan to locate the appellant if returned to another part of Iraq.
  - (d) The past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Iraqi authorities.
  - (e) In order to establish that there is an active blood feud affecting the appellant must establish: (a) his profile as a potential target of the feud identified and

which family carried out the most recent killing; and (b) whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Iraq.

23. In this particular case the respondent has accepted that the alleged incident took place but Mr Tan has submitted there was no evidence that the appellant's family members had suffered as a result of what happened and Mr Tan submitted the appellant would be able to return to Iraq (the IKR in particular) which was an area where there was no evidence that members of the other family or their tribe held any power or influence.
24. In dealing with the appeal the Judge accepted it was plausible that the family of the deceased male could choose to vent their anger and frustration on the appellant's family. Dr Fatah was asked to consider the issue of a blood feud but his report makes no reference to problems involving the appellant's extended family. At paragraph 44 of the report Dr Fatah referred to attempts that could be made to kill a prominent male member of the family but there was no evidence that anybody else, apart from the appellant, had been targeted.
25. Applying the guidance suggested by the Tribunal in EV I find as follows:
  - (a) The history of the feud is limited.
  - (b) There is a lack of evidence that there has been any other attempts to target any of the appellant's family.
  - (c) This incident occurred in October 2015.
  - (d) Dr Fatah suggests that the appellant could be traced to the IKR but the Country Information Report July 2017 does not suggest the Bayati tribe are based in the IKR. Dr Fatah's report is speculative about the risk that could be occasioned to the appellant in the IKR from this family.
  - (e) Dr Fatah refers to the Tribal Council and the fact that they do wield influence within society. The aforementioned Country Information Report confirms that Tribal Courts settle disputes in accordance with tribal customary law including the settlement of feuds. This issue was not properly considered by Dr Fatah.
26. Accordingly, whilst I accept the appellant is capable of being a member of a particular social group I am not satisfied on the evidence submitted that the facts of this case support the submission advanced by Ms Wilkins. I do not therefore accept the appellant has a Refugee Convention claim.
27. I turn now to the other issue which I feel has more merit namely claims under article 15(b) and 15(c) of the Qualification Directive. The appellant and his family came from a contested area and I accept, as did Mr Tan, that return to that area is currently impossible.
28. The Tribunal in AAH issued the following guidance:

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances.*

*Factors to be considered include:*

- i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*
- ii) *The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?*
- iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.*

*Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*

2. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
3. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
4. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
5. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*

6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*
7. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
8. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
9. *For those without the assistance of family in the IKR the accommodation options are limited:*
  - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
  - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
  - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
  - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
  - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
  - (iii) *P cannot work without a CSID;*
  - (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those*

*contacts to make introductions to prospective employers and to vouch for him;*

- (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.*

29. This appellant no longer has his CSID and whilst he clearly had one in the past it is clear from the decision in AAH that obtaining a replacement is not straightforward. The Tribunal accepted that civil registries in the contested areas have been left in utter chaos and there is evidence that many documents have been either lost or destroyed.
30. Both Mr Tan and Ms Wilkins agreed that unless the appellant had a CSID he would be in difficulties. The options available to this appellant are to (a) try and obtain a CSID in London or (b) obtain a CSID in Baghdad.
31. The Tribunal recorded the issues facing applicants seeking CSID in both London and Baghdad:

“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.

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.”

32. Taking into account the above information I am satisfied that obtaining a CSID in the United Kingdom will be extremely difficult given the fact the appellant has no documentation whatsoever. Dr Fatah gave evidence to the Upper Tribunal in AAH that suggested some officials may turn a blind eye but the Tribunal concluded that without certain information it would be nigh impossible for the appellant to obtain the document in London.
33. The second option is for the appellant to obtain a CSID from a designated Registry in Baghdad. The evidence about obtaining documents in Baghdad also raised concerns. The chances of the appellant being able to obtain the information from the former Registry is slim. He would have to be able to produce evidence from a family member, at the very least, to obtain his CSID and whilst in theory this may be possible it seems highly unlikely that such a document would be obtained within a reasonable period of time especially as the appellant would be returned with a wife and three young children.
34. The appellant has no family in Baghdad and bearing in mind where he lived before he came to the United Kingdom it seems highly speculative to suggest that he would have access to any family in Baghdad. Without a CSID he would be unable to leave Baghdad and he would be unable to obtain any employment.
35. Whilst the appellant is a Kurd he is not someone who originates from the IKR. He would be unable to fly to the IKR because the Tribunal accepted that without a CSID a flight would not be possible. There is the alternative of travelling to the IKR overland but there would be problems for this appellant because he would have to travel through a number of checkpoints and without a CSID he would again face significant problems as detailed in AAH.
36. The respondent cannot guarantee safe passage to the IKR for this appellant and his family and even if he was able to travel to the IKR and avoid the problems considered by the Upper Tribunal the chances of him obtaining employment within a reasonable period of time are slim as his only work experience was selling alcohol in a shop. There are high levels of unemployment in the IKR and whilst he may not be forcibly removed due to his ethnicity I accept that he would experience problems in the IKR.
37. I make it clear that if he had been able to overcome all the issues relating to his CSID then it may well be neither article 15(b) nor 15(c) would be engaged but based on the problems highlighted in AAH I am satisfied that this appellant will not be able to

travel to the IKR because he will not be able to secure a CSID within a reasonable period of time. The only alternative would be for him to remain in Baghdad but due to the problems highlighted by Ms Wilkins in her submissions I find he would be at risk of serious harm if he remained in Baghdad.

38. I accordingly find that returning this appellant, and his family, to Iraq would engage articles 15(b) and (c) of the Qualification Directive. It also follows that it would be both unreasonable and unduly harsh to require the appellant and his family to return to Iraq and thus article 8 ECHR would be engaged. My reasons for finding it both unreasonable and unduly harsh are based on the findings made above. In reaching this decision on article 8 ECHR I have taken into account the statutory factors set out in section 117B of the 2002 Act.

### **DECISION**

39. I have previously set aside the Judge's decision and I remake this decision and grant the appellant humanitarian protection as set out above.
40. I also allow the appeal on article 8 ECHR grounds.

Signed

Date 08/10/2018



Deputy Upper Tribunal Judge Alis

### **FEE AWARD TO THE RESPONDENT**

I do not make a fee award as no fee was payable.

Signed

Date 08/10/2018



Deputy Upper Tribunal Judge Alis