



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07693/2017

THE IMMIGRATION ACTS

Heard at Manchester
On June 27, 2018

Decision & Reasons Promulgated
on October 19, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR HUSSAIN JAMAL AMIN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, Counsel, instructed by Bolton 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 entered the United Kingdom clandestinely on August 28, 2015 and claimed asylum the same day. The respondent refused his protection claim on July 31, 2017 under paragraphs 336 and 339F HC 395.
3. The appellant lodged grounds of appeal on August 11, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of

the First-tier Tribunal Hudson (hereinafter called “the Judge”) on September 11, 2017 and in a decision promulgated on September 17, 2017 the Judge refused the appeal on all grounds.

4. The appellant appealed this decision on October 11, 2017. Permission to appeal was granted by Upper Tribunal Judge Reeds on January 17, 2018 who found it arguable the Judge erred (a) by failing to consider the risk to him at the date of return in light of the fact he did not have a CSID; (b) by failing to establish with certainty the appellant’s home area and whether it was in a contested area and (c) failed to set out why the Tribunal should depart from AA Iraq CG [2015] UKUT 00544.
5. At an earlier hearing on March 26, 2018 Ms Aboni (Senior Home Office Representative) accepted that it was arguable the Judge had erred:
 - (a) By failing to establish how the appellant could be returned to his home area bearing in mind he came from a contested area; and
 - (b) By failing to explain why the decision of AA could be departed from.
6. Thereafter, I took submissions from the two representatives and concluded as follows:
 - (a) The Judge’s finding that the appellant had not been trafficked was well reasoned.
 - (b) The Court of Appeal in AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 revised the Country Guidance. Regardless of the feasibility of the appellant's return, the Court stated that it would be necessary to decide whether he had a CSID, or would be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. Whilst it may be possible for the appellant to obtain such a document before he left the United Kingdom the Judge did not consider the feasibility of this in her decision.
7. As the appellant had been unrepresented at the original hearing, which took place on September 11, 2017, I agreed to adjourn the case to enable both parties to lodge further objective evidence regarding the general situation in Iraq, and in particular the Nineveh province, and how the appellant would obtain his CSID.
8. The appellant’s representatives filed an updated bundle which included a statement from the appellant dated April 30, 2018 and country evidence covering the period November 2017 to April 2018. There was no additional evidence submitted by the respondent save both parties relied on the country guidance decision of AAH (Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 00212 (IAC).
9. In his recent statement, the appellant stated:
 - (a) He would be unable to obtain a replacement CSID as he would have to go to his home area to obtain it. He lived in Shangal which is near Mosul.

- (b) He felt unable to settle in the IKR because he stated he did not have a sponsor, friends or relatives living in the area.
- (c) Even if he were given entry to the IKR he did not believe he would be able to support himself or obtain employment.

SUBMISSIONS

- 10. Mr Tan submitted that as the appellant spoke some Arabic and had family living in Iraq it would be possible for him to be returned to Baghdad, in line with the Home Office return policy. The Judge had rejected his account of what had happened to his family and he submitted that the appellant had options to obtain his CSID. His account of having his documents taken by the agent had been rejected and therefore his family would be able to obtain documents for him. Alternatively, he could try and obtain replacement documents in the United Kingdom or he could appoint an attorney to obtain them for him in Iraq as there was a civil registry for his home area in Baghdad. Mr Tan submitted that if the Tribunal was satisfied he could obtain a CSID then he would be able to return to Baghdad and from there he would be able to travel to the IKR. As a Kurd he would not be removed.
- 11. Ms Patel reminded the Tribunal that the credibility findings of the First-tier Tribunal had been preserved and importantly the appellant did not come from the IKR but originated from Mosul which remained part of a contested area. She submitted that the appellant had always claimed he did not have his CSID as the agent had taken it from him and he had always maintained that his family were no longer in Iraq. Whilst the Tribunal had rejected his claim that his father had been killed she submitted that obtaining a replacement would not be easy as it was likely all records had been destroyed in his home area which would make the obtaining of a CSID virtually impossible. Even if he could return to Baghdad there was no guarantee he would be able to obtain his CSID within a reasonable period of time. She further submitted that he would be unable to travel between Baghdad and the IKR without documentation because he would be at risk as he would travel through various checkpoints. Without a passport or CSID he would also be unable to fly. Even if he was admitted to the IKR she submitted that he would be treated with suspicion because he had come from an ISIL controlled area and he would have difficulties obtaining work bearing in mind his previous experience was that of a shepherd. Any suggestion that he could remain in Baghdad failed to take into account he had no family, no sponsor, he came from a minority community and he did not have a CSID that would enable him to obtain employment. She invited me to allow the appeal.

FINDINGS

- 12. When this matter was dealt with in the First-tier Tribunal the appeal was dismissed and for the reasons set out above I am required to remake the protection decision although I indicated I would approach this issue by preserving the previous credibility findings and having regard to the latest country guidance decision.
- 13. The Judge made the following findings:

- (a) The appellant was found to be of Kurdish ethnicity but the Judge rejected his claim to be Yezidi.
- (b) The appellant gave inconsistent evidence about what happened in Iraq and in particular gave inconsistent evidence about what happened to his father. The Judge was not satisfied the appellant's father had been killed as described and he rejected the appellant's claim to have no connections in the country.
- (c) The appellant provided an inconsistent timeline to explain his journey from Iraq.
- (d) The appellant spoke both Kurdish Sorani and Arabic.
- (e) The appellant had some level of education and had previously worked in the farming industry.
- (f) As a Kurd he would be entitled to enter the IKR.

14. When this matter came before me in June I adjourned the case primarily because the country guidance decision of AAH was due to be handed down. The Tribunal 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.*

15. There is no dispute between the representatives that this appellant came from an area that is described as a contested area. Some Presenting Officers argue that Mosul is no longer in a contested area but Mr Tan took the pragmatic approach that there was insufficient evidence to depart from existing country guidance.

16. I have therefore approached this appeal on the basis the appellant came from a contested area and would be unsafe to require him to return to that area.

17. I raised with Mr Tan where this appellant would be returned. He submitted that unless he voluntarily returned under his own steam any forcible return would be to Baghdad.

18. 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.

19. Both Mr Tan and Ms Patel 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.

20. 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 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."

21. Taking into account the above information the conclusion appears to be that obtaining a CSID in the United Kingdom will be extremely difficult given the fact the appellant has no documentation whatsoever. Whilst Dr Fatah accepted some officials may turn a blind eye the Tribunal appeared to accept that without certain information it would be nigh impossible for the appellant to obtain the document in London. I take into account the fact the First-tier Tribunal were unimpressed with the appellant's account of what happened to his CSID but I am faced with the fact that he no longer has it and has no obvious means to obtain it despite the Tribunal's rejection that this father had been killed as alleged.

22. The second option is for the appellant to obtain a CSID from a designated Registry. The designated registry for people displaced from Mosul appears to be in Baghdad. The evidence about obtaining documents in Baghdad also raised concerns. The appellant comes from a contested area and according to the evidence presented to the Tribunal the chances of the appellant being able to obtain the information from the former Registry in Mosul are 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.
23. 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.
24. 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 such a document 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.
25. Mr Tan accepted that if this appellant could not obtain a CSID then he would succeed in his appeal under article 15(c) of the Qualification Directive.
26. The respondent cannot guarantee safe passage to the IKR for this appellant 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 that of a shepherd. 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.
27. I make it clear that if he had been able to overcome all the issues relating to his CSID then it may well be article 15(c) would not 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.
28. The only alternative would be for him to remain in Baghdad but due to the problems highlighted by Ms Patel in her submissions I find he would be at risk of serious harm if he remained in Baghdad.
29. In reaching this decision I have had regard to the preserved findings but given the current circumstances in Iraq for displaced persons I am satisfied that return would breach the appellant's rights under article 15(c) of the Qualification Directive.

DECISION

30. I have already set aside the Judge's decision and after reconsidering all the evidence about the general situation in Iraq for those persons who have no connection to the IKR I allow this appeal under article 15(c) of the Qualification Directive.

Signed

Date 06/10/2018

A handwritten signature in blue ink that reads "SPAR" with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

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

Signed

Date 06/10/2018

A handwritten signature in blue ink that reads "SPAR" with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis