



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08458/2016**

THE IMMIGRATION ACTS

**Heard at Manchester
On February 26, 2018**

**Decision & Reasons
Promulgated
On March 01, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**ALI [J]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Bates, 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 July 6, 2015 and claimed asylum the following day. His claim was based on the fact he was a Sunni Muslim of Kurdish ethnicity who lived in Zumar in the Nineveh Governorate. In August 2014 Zumar was attacked by ISIS and the appellant fled. The appellant feared that if he was returned he would be killed by ISIS who posed a risk throughout Iraq. He also claimed he would be unable to return to the IKR because his

grandfather was a member of the Baath party under Saddam Hussein and he would face persecution because of this.

3. The respondent refused his protection claim on December 4, 2015 under paragraphs 336 and 339F HC 395.
4. The appellant lodged grounds of appeal on August 10, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Pickup (hereinafter called "the Judge") on January 17, 2017 and in a decision promulgated on January 31, 2017 the Judge refused the appeal on all grounds.
5. The appellant appealed this decision on February 7, 2017. Permission to appeal was granted by Upper Tribunal Judge Plimmer on June 29, 2017 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 finding he could return to Baghdad when arguably he satisfied risk factors (a) to (f) as set out in AA Iraq CG [2015] UKUT 00544 and (c) by making contradictory findings.
6. In a Rule 24 response dated July 18, 2017 the respondent accepted there was an error in law and invited the Tribunal to list the matter for a decision to be taken on remittal.
7. This matter came before me on December 8, 2017. The appellant was unrepresented and whilst he spoke some English he clearly was not proficient enough to take part in a full hearing. He needed an interpreter.
8. In light of the concession above I found there was an error of law and listed the appeal for submissions on the feasibility and risk on return. I advised the appellant he should seek legal advice and details of legal firms in Liverpool were provided to him.
9. At today's resumed hearing he indicated that although he had sought representation neither of the firms he had approached were able to assist him due to workload. As this case was based on submissions with reliance placed primarily on case law and country evidence I indicated to the appellant that I intended to proceed with today's hearing and would have regard to all relevant information. The appellant indicated that he was content for the hearing to proceed.

SUBMISSIONS

10. Mr Bates relied on the original decision letter and submitted that the appellant's appeal was factually straightforward. He had claimed a fear of ISIS and that as this organisation no longer posed the risk they had when he left, he submitted there was no article 15(c) risk to the appellant. He submitted that the appellant would in due course be returned, as a Kurd, to the IKR and that his return would be via Baghdad airport. He argued that the appellant would not have to remain in Baghdad but would transit through the airport. Whilst he denied having knowledge of the location of

his family it was important to note that he had had the financial support of his father who had now been granted British citizenship. Mr Bates also submitted that the appellant had taken no steps to trace his family through the auspices of the Red Cross. Although he now claimed he was estranged from his father, Mr Bates invited me to attach no weight to this and described it as convenient. He submitted that as a Kurd he would be able to enter the IKR and obtain documents. He would not be removed as a Kurd and he had the option of financial support from his own father. Applying case law and the latest country evidence he submitted the appellant could be returned to Iraq.

11. The appellant maintained there was still an outstanding problem with ISIS and wherever he returned to Iraq he would be at risk. He also highlighted the fact that his grandfather was a member of the Baath party and consequently he would be unsafe in the IKR. He maintained that he had been estranged from his father since just after the decision letter and he could not turn to him for financial or moral support. He had no contact with his uncle, mother or sister and did not know whether they were alive or dead.

FINDINGS

12. The appellant left Iraq on May 27, 2015 and arrived in the United Kingdom on July 6, 2015 and claimed asylum the same day. The respondent accepted his account was consistent with background evidence. During the hearing before the First-tier Judge the appellant raised, in oral evidence, that he was unable to travel to the IKR because his grandfather was a member of the Baath party. The Judge had noted that he had told the interviewing officer that he had no fear of persecution on the basis of his grandfather and the Judge found his oral evidence to be entirely inconsistent with his asylum interview.
13. In challenging the Judge's decision no issue was taken with this finding. His grounds of appeal were based on a return to Baghdad or his home area. Upper Tribunal Judge Plimmer gave permission that it was irrational to suggest the appellant could relocate to Baghdad and on the basis the Judge had made contradictory findings on the appellant's ability to speak Arabic.
14. In the circumstances I am satisfied that in remaking this decision I am only concerned with those matters highlighted by Upper Tribunal Judge Plimmer and conceded by the respondent in the Rule 24 letter dated July 18, 2017.
15. Mr Bates accepted the appellant could not be returned direct to Erbil because he neither had the relevant documents that would enable such a return nor did he originate from the IKR. However, Mr Bates submitted that a return via Baghdad would be possible.

16. The issue in this appeal is not whether ISIS continue to present a threat to the appellant or the public at large but whether he can be returned to Iraq. Case law does not support the appellant's fear of persecution. The real issue is whether there is an article 15(c) threat.
17. In AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) the Tribunal gave guidance on return to Baghdad. At section D(15) of the head note the Tribunal provided guidance to assist in determining whether a person could be returned to Baghdad. The appellant did not have a CSID, he spoke limited Arabic, he had no family members or friends in Baghdad who would be able to accommodate him or sponsor him and he was from a minority community (Sunni Muslim with Kurdish ethnicity).
18. In AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 the Court of Appeal held (amending AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) by consent) that a CSID was not simply a return document. It was feasible that someone could acquire a passport or a laissez-passer without possessing or being able to obtain a CSID. The country guidance was revised as follows:
 - (a) Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer;
 - (b) No Iraqi national will be returnable to Baghdad if not in possession of one of these documents;
 - (c) In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents;
 - (d) Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.
 - (e) Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will 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. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

19. Based on the case law above and the fact the appellant has many of the factors highlighted in section D(15) of the head note to AA (Article 15(c)) Iraq CG it seems to me that the appellant would be unable to return to Baghdad.
20. The fact the appellant may be able to obtain employment would not be sufficient to counter the concerns highlighted above. There is the possibility of some financial support from his father but firstly, the appellant maintains he is currently estranged from his father and secondly, there is no evidence that his father would be able to support him to any extent even if they were in contact with each other.
21. I find that even if he had financial support from his father requiring him to permanently reside in Baghdad would be a breach of Article 15(c).
22. The second argument advanced is that the appellant would be returned to the IKR. The respondent accepts that he did not live in the IKR and she also accepted that people fled Zumar, his hometown, in August 2014 after an attack by ISIS. The appellant claims that he lost contact with his family and applying the lower standard of proof I accept this is reasonably likely.
23. The appellant was criticised by Mr Bates for not seeking to locate his family using the Red Cross and whilst I take on board that submission the reality is that he is not in contact with any family in Iraq and there is a question mark over what support is available from his father.
24. He has no documents that would be acceptable to the authorities on return. In particular, he does not have a passport or laissez passer.
25. In light of the fact he is not a former resident of the IKR his initial return will be to Baghdad. Mr Bates invited me to find that whilst permanent residence in Baghdad may not be possible, temporary residence, before travelling to the IKR, may be possible.
26. According to AA (Iraq) v SSHD [2017] EWCA Civ 944 no Iraqi national will be returnable to Baghdad if not in possession of either a passport or a laissez passer. However, a protection claim cannot succeed simply due to the absence of such a document.
27. The appellant does not have a CSID. Such a document is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. I do not find it reasonably likely that he will be able to obtain one, reasonably soon after his arrival in Iraq.
28. As I accept there are no family or other members to whom he can turn to in Iraq then he is likely to face a real risk of destitution which would amount to serious harm.
29. There is no evidence his father would be able to support him and the Court of Appeal stated in AA that funds provided by the Secretary of State or her

agents to assist his return are reasonably likely to have been exhausted before he would have been able to sort out a CSID.

30. Accordingly, whilst in theory he is returnable to the IKR, I find that given his own personal circumstances he will have difficulties in obtaining a CSID and that assumes he overcame the hurdle of obtaining a passport or a laissez passer.
31. I therefore find return to either Baghdad or the IKR would place him at risk of serious harm thus entitling him to protection under Article 15(c).

DECISION

32. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
33. I have set aside the previous decision and I remake it allowing the appeal on humanitarian protection grounds.

Signed

Date 26/02/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 26/02/2018



Deputy Upper Tribunal Judge Alis