



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/10436/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 14th March 2018**

**Decision & Reason
Promulgated
On 10th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**[G S]
(No anonymity direction)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C McGinley, Gray & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal McGrade dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Iraq. He is of Kurdish ethnicity and was brought up near Mosul. According to the appellant, in 2014 his

family became involved in a land dispute which became violent. A few months later Isis attacked the appellant's village but the appellant and his family had already fled. In December 2016 the appellant left Iraq. He is undocumented.

3. The Judge of the First-tier Tribunal did not accept as credible the appellant's evidence of his family's involvement in a violent land dispute. The judge accepted, however, that the appellant had given a plausible account of being forced to flee the vicinity of Mosul owing to Isis attacks. His account was consistent with country information. The judge also accepted that following the attacks the appellant had lost contact with his family.
4. The judge then addressed the question of the appellant's lack of documentation. The judge accepted that the appellant has no Civil Status Identity Document (CSID) and that there would be very considerable difficulties for him in obtaining this. In addition the appellant had neither a passport nor a laissez passer. The judge observed that a CSID was required to obtain a passport or laissez passer. It was therefore not feasible to return the appellant to Iraq and in consequence of this the judge rejected the appellant's claim to humanitarian or Article 3 protection.
5. Permission to appeal was granted by the Upper Tribunal on the basis that an arguable error arose in consequence of the Court of Appeal's decision in *AA (Iraq)* [2017] EWCA Civ 944, which was handed down shortly after the Judge of the First-tier Tribunal gave his decision in the present appeal. The issue arising relates to the position of undocumented Iraqis, in respect of whom the Court gave the following guidance, summarised at paragraph 9 of the Annex to the judgment:

"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."

6. Mr McGinley referred me in addition to paragraph 39 of the body of the Court's judgment, which reads as follows:
"The position with a CSID is different. It is not merely to be considered as a document which can be used to achieve entry to Iraq. Rather, it may be an essential document for life in Iraq. It is for practical purposes necessary for those without private resources to access food and basic services. Moreover, it is not a document which can be automatically

acquired after return to Iraq. In addition, it is feasible that an individual could acquire a passport or a *laissez-passer*, without possessing or being able to obtain a CSID. In such a case, an enquiry would be needed to establish whether the individual would have other means of support in Iraq, in the absence of which they might be at risk of breach of Article 3 rights.”

Submissions

7. At the hearing before me Mr McGinley submitted that the Judge of the First-tier Tribunal erred in not allowing the appeal. The judge found the appellant had lost contact with his family members. There was no one from the contested area of Iraq able to assist the appellant in obtaining a CSID.
8. For the respondent, Mrs O’Brien observed that it seemed to have been accepted that the appellant had left his home area because of an attack by Isis and he had no family support, in which case the *dicta* of the Court of Appeal at paragraph 39 of AA (*Iraq*) would apply and he would be entitled to Article 3 protection. Mrs O’Brien further observed that only a short interval of time had elapsed between the Judge of the First-tier Tribunal issuing his decision in this appeal and the Court of Appeal handing down its judgment.

Discussion

9. There was some discussion at the hearing before me of the precise basis on which Article 3 applied. Following the guidance at paragraph 9 of the Annex to AA (*Iraq*), the basis of the risk of serious harm to the appellant is not indiscriminate violence in terms of Article 15(c) of the Qualification Directive but destitution, amounting to inhuman or degrading treatment. On the basis of such a risk the appellant is entitled to humanitarian protection under paragraph 339C of the Immigration Rules, there being no suggestion he is excluded under paragraph 339D.
10. Although in the circumstances the Judge of the First-tier Tribunal should not be blamed for applying what appeared to be the relevant country guidance at the time of hearing the appeal on 3rd July 2017, only a few days later on 11th July 2017 the Court of Appeal handed down its decision stating that the approach taken by the Upper Tribunal to the relationship between the feasibility of return and the lack of a CSID was incorrect. Regardless of the feasibility of return the issues arising from the lack of a CSID should be addressed.
11. In the present appeal, in the course of an admirably concise and clear decision, the judge erred by failing to address the issues arising from the lack of a CSID on the mistaken assumption that it was not necessary to do so as return was not feasible. The judge nevertheless made appropriate findings, on the basis of which a

decision allowing the appeal should be substituted for the decision of the First-tier Tribunal.

Conclusions

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
13. The decision is set aside.
14. The decision is re-made by allowing the appeal.

Anonymity

The Judge of the First-tier Tribunal made an anonymity direction. I have not been asked to continue this direction and I see no reason of substance for doing so.

Fee Award (N.B. this is not part of the decision)

No fee has been paid or is payable and therefore no fee award is made.

Deputy Upper Tribunal Judge Deans
April 2018

4th