



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/03790/2019 (P)

THE IMMIGRATION ACTS

At Manchester

Decision & Reasons Promulgated

On 1 August 2020

On 20 August 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AAH

(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

DECISION AND REASONS (P)

1. The Appellant is a national of Iraq born in 1993. He seeks protection in the United Kingdom. An anonymity order is in force.

Case History

2. The material history of this matter in the Tribunal is as follows

- 12 June 2019 First-tier Tribunal Judge Forster dismisses the Appellant's appeal on human rights and protection grounds
- 10 September 2019 The Appellant is granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Owens
- 25th October 2019 The matter comes before me at Manchester Civil Justice Centre. I find error of law in the First-tier Tribunal's approach and set the decision aside in its entirety. The 'remaking' of the appeal is adjourned pending the new country guidance on Iraq. A copy of my 'error of law' decision is appended.
- 20th December 2019 The decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) is published. (an administrative error leads to a delay in listing)
- 2nd April 2020 Upper Tribunal Judge Reeds gave Directions to the parties re disposal
- 20 April 2020 Hearing scheduled for this date adjourned due to Covid-19 pandemic
- 21st April 2020 The Appellant's representatives indicated that they considered an oral hearing to be necessary in the interests of justice
- 5th June 2020 I sent further directions to the parties asking the Appellant to clarify the matters in issue (see below)
- 19th June 2020 Directions amended¹
- 22nd June 2020 Appellant's solicitors indicate that they no longer require an oral hearing, and that they are content to narrow the scope of the appeal so as to rely on the findings of the Tribunal in SMO
- 29th June 2020 Further directions (see below)
- 15th July 2020 Secretary of State (by Senior Presenting Officer Ms Isherwood) makes further written submissions in

¹ In my original directions I had invited submissions on whether it was "reasonably likely that the Appellant will be able to get a CSID in London"; I am grateful to Ms Clarke of Broudie, Jackson and Canter for pointing out that the question was in fact whether he would be reasonably *unlikely* to do so. My directions were amended accordingly.

response to my directions, addressing the issues arising from the decision in SMO.

Decision on Rule 34: Hearing

3. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that the Upper Tribunal may make any decision without a hearing. It further provides that the Tribunal must have regard to any view expressed by the parties when deciding whether to proceed on that basis.
4. Both parties have now had an opportunity to request an oral hearing, but at this stage neither does so. Having considered my directions of the 5th June (amended 19th June) the Appellant has narrowed his grounds of appeal to the extent that the appeal may now be determined solely having regard to a) matters of fact as found by the First-tier Tribunal or otherwise uncontested by the Respondent and b) applying those facts to the country guidance given in SMO. There would in those circumstances be little utility in an oral hearing. I have further had regard to the overriding objective in the Procedure Rules and to the fact that there has already been some delay in this case. Having considered all of those matters I am satisfied that it would be in the interests of justice for the decision in this appeal to be remade on the papers and submissions before me.

The Remade Decision

5. As matters stood on the 25th October 2019 the Appellant pursued his case on two grounds.
6. First, he contended that he had a well-founded fear of persecution for reasons of his membership of 'particular social group' ie his family. This claim related to a claimed blood feud with members of his extended family living in Halabja. The Appellant no longer wishes to pursue this aspect of his claim.
7. Second, the Appellant submitted that his removal would be contrary to the United Kingdom's obligations under Article 15 of the Qualification Directive. As I noted in my Directions of the 5th June 2020, the ground upon which this submission was built has shifted under the Appellant's feet. In October 2019 the operative country guidance was AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). The Appellant had relied upon that decision to submit that he could not be returned to his home area of Tuz Khurmato because that was a 'contested area' where conditions on the ground were such that there was a real risk of civilians suffering indiscriminate violence by virtue of their presence there. The Appellant had relied on that, and upon the decision in AAH (Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC), to

submit that there was not a reasonable internal relocation alternative for him, an undocumented Kurdish man. In December 2019 the Tribunal issued fresh country guidance in the case of SMO. In SMO it was found that although Tuz Khurmato remains somewhat unstable, after the military defeat of ISIS conditions on the ground are not such that Article 15(c) is engaged. The Appellant can therefore no longer contend that he qualifies for humanitarian protection on this basis. SMO did however open up another possibility.

8. The Tribunal gave guidance on an entirely new factual matrix in Iraq – the introduction of new biometric identity cards known as ‘Iraqi National Identity Cards’ (INIDs), set to replace the current system of ‘Civil Status Identity Documents’ (CSIDs). Whether or not an appellant can obtain one of these cards within a reasonable time of arrival in Iraq is today relevant to the question of whether he qualifies for humanitarian protection under Article 15(b) of the Qualification Directive. If he cannot, and cannot access support in another way, then it is accepted that his living conditions may fall below a level acceptable in humanitarian terms: the risk of destitution is such that Article 15(b)/ Article 3 ECHR would be engaged [see paragraph 317 SMO]. It is upon these findings that the Appellant now rests his case.
9. The only firm factual foundation that I have in this case is the apparently uncontested evidence that the Appellant is a Kurd who has lived in Tuz Khurmato since he was a child. For the purpose of the remade decision the material matters in issue are whether it is reasonably likely that the Appellant:
 - a) Has no family members to whom he could turn in Iraq;
 - b) Will be returning to Iraq undocumented;
 - c) Will remain undocumented for an unacceptably long period after his arrival.
10. In making my findings I have had regard to the country guidance cases SMO, AA and AAH, and where relevant I have set out specific passages herein. I have read the Appellant’s evidence in the context of those authoritative decisions, bearing in mind that the burden of proof lies on him. The standard of proof is lower than the ordinary civil standard: it is for the Appellant to demonstrate that there is a real risk that he will face conditions amounting to a breach of Article 15(b) if returned to Iraq.
11. The Appellant’s home area of Tuz Khurmato is in Iraq proper, so as matters stand it is the Respondent’s intention to remove the Appellant to Baghdad. Although not directly relevant to the question of risk I begin by considering how that removal will be effected: what document will he travel on?
12. I am satisfied that the Appellant is not in possession of an Iraqi passport. When he left Iraq in 2018 he was a labourer who had never before left the country. He came from an area accepted to have been heavily contested, and occupied by ISIL fighters. He made the journey with the assistance of people

smugglers. In those circumstances it seems to me extremely unlikely that he would ever have had a passport.

13. I am satisfied that the Appellant is not currently in possession of a CSID, nor indeed an 'Iraqi National Card' (INC). He arrived in the United Kingdom in the back of a lorry and was on the same day interviewed at Swinton Police Station. He had no documents with him that day. I note that the Respondent appears to have proceeded, in the refusal letter, on the basis that this was the case. It was also accepted by the First-tier Tribunal, which noted that the Appellant would have been well aware that a lack of documentation could frustrate removal. In those circumstances it seems to me to be extremely unlikely that the Appellant would have brought his CSID or INC with him from Iraq.
14. I am nevertheless satisfied that in the absence of either a passport or a CSID the Appellant's removal will be facilitated by the Iraqi Consulate in London co-operating with the Secretary of State to issue the Appellant with a *Laissez-Passer*. The decision in SMO outlines how this process works, and neither party has given me any cause to doubt that such documentation would be issued upon request in this case. I can therefore be satisfied that the Appellant will arrive in Baghdad with a *Laissez-Passer*.
15. It is no part of the Respondent's case that the Appellant could be expected to remain in Baghdad, a city with which he no connection; he has no contacts there, is undocumented and does not speak the language. Having arrived in Baghdad the Appellant would therefore need to make his way from the airport to Tuz Khurmato. In AAH the Tribunal accepted the evidence of Dr Fatah (and other sources) to the effect that there are at least two checkpoints on the road out of the airport, and numerous others at regular intervals on every main route in the country. There will certainly be a good number on any road leading into what was until recently contested territory. Before the Tribunal in SMO Dr Fatah reiterated the evidence that he had given in AAH: a traveller would be required to produce identity documentation at each of these checkpoints, and if he could not do so, he would be held in detention by the soldiers - or militia - manning that post. What documentation might suffice has been the subject of some debate. In AAH the Secretary of State appeared to accept that only a CSID or valid Iraqi passport would do; very shortly after that decision was promulgated new evidence came to light indicating that in fact it may be possible for returnees to use their *Laissez-Passers*, or alternatively a 'pass' letter issued to them on arrival. In SMO the Tribunal robustly rejected those suggestions:

"12. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity."

16. What then, could the Appellant do to get home?
17. He could try and obtain a CSID from the Iraqi embassy in London before he left. In SMO the Tribunal referred back to the earlier country guidance on the point [at §383]:

“We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent’s CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual’s identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity.”

18. Whilst the Tribunal in this passage clearly envisage that it remains *possible* to obtain a new CSID in London, the question is of course whether it is reasonably likely that an applicant will be *unable* to do so. The likelihood of an individual application succeeding must be assessed in light of the evidence, in particular the accepted expert opinion of Dr Fatah on the matter. The passages in AA to which the Tribunal in SMO refer are these:

“173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application”.

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer

in Iraq to act "as a proxy" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad. "In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring."

19. That was the evidence in 2015. In 2018 Dr Fatah updated it for the Tribunal in AAH:

"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.

..."

20. Having taken all of that evidence into account I find the Appellant could provide a signed statement explaining why he does not have a CSID. I assume for these purposes that he is in contact with family members in Iraq who would be willing, and have the standing, to countersign his application. There would be no difficulty in him providing the 10 colour photographs required. After that his application becomes more problematic. In his research prior to AAH Dr Fatah made contact with the consulate in London and having done so he included in his list of necessary documents the individual's Iraqi passport and four colour photocopies of his INC. As I have already found, this Appellant has neither of these items. These evidential requirements must be viewed in the context of the very great number of Iraqi nationals who are undocumented, and Dr Fatah's evidence (see AAH) that the embassy in London is "generally very unhelpful" and that the problems of an individual returnee are regarded as "trivial". I accept that it is reasonably likely that the embassy would be unwilling or unable to process an application that required any particular effort, for instance if the applicant's identity could only be verified with reference to records in Iraq. Accordingly I am satisfied that there is a reasonable likelihood that the Appellant will not be able to get a CSID before he leaves the United Kingdom. Although neither party has brought it to my attention, I note that my findings are here consistent with the conclusions reached by the author of the latest CPIN on Iraq *Internal relocation, civil documentation and returns* published in June 2020 which at [2.6.16] concludes "it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK".
21. Another option would be for the Appellant to get a member of his family to help him, either by bringing to him at the airport an existing identity card, or obtaining for him a new one. I do not think it necessary for me to make a finding on whether the Appellant has family members left in Iraq for reasons that will become clear. Assuming for the purpose of my decision that he does, I am satisfied that they are today extremely likely to in possession of his CSID. As the First-tier Tribunal acknowledged in its decision, the Kurdish community in Tuz Khurmato has had a very difficult few years. Many thousands were subject to persecution or fled under ISIS, and in the months which followed many more were subject to forced eviction, looting and

shelling by Shi'a militias loyal to the Government of Iraq, with as much as 90% of the population at one point being displaced. Kurdish homes were burned down and destroyed. The chances of family members taking the trouble to retain and protect the CSID of someone who has left the country – and therefore has no need for it – would in those circumstances be remote.

22. There remains the question whether any family members remaining in the area would be able to obtain a new identity document for the Appellant, and bring it to him at the airport. It is here that the new evidence about INIDs set out in SMO becomes relevant. The pertinent part of the headnote sets out the Tribunal's findings:

“The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.

...

Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.

An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.

The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.”

23. The consequence of those findings for the Appellant is this. If the civil registry in his home area is now issuing INIDs, his appeal must be allowed, since he is caught in an administrative Catch-22 which will leave him in Baghdad destitute and in conditions engaging Article 15(b): unlike their predecessor CSIDs, INIDs cannot be issued to proxies, and so it would not be possible for

anyone to get one, and bring it to the Appellant. The final matter that I must consider is therefore what the position is in the Appellant's home town of Tuz Khurmato.

24. In SMO the Tribunal was not given specific evidence on the locations of these terminals. As the decision makes clear, such a list would have been quickly outdated as the programme is rolled out across the country. What the Tribunal was able to say is that it has been the towns and cities that have been provided with terminals first: the Respondent's position was that CSIDs were still being issued in "rural areas" [at §389]. Even in the absence of specific confirmation that Tuz is one such a city, I find it to be reasonably likely that it is so, for the following reasons.
25. Tuz Khurmato falls at the southernmost tip of the areas of northern Iraq populated by Kurds – its mixed population includes Sunni Turkmen and Shia Arabs. At one time it was part of the Kurdish governate of Kirkuk, until Saddam Hussain hived it off to become part of largely Arab Salah al-Din. As such it has been heavily contested for years. It fell under ISIL control in 2014, was retaken by the Kurds in 2015, and in 2017 was the scene of widespread killing and human rights abuses as militias under the control of the Government of Iraq drove out the Peshmerga, and most of the Kurdish population. During this period the area suffered "significant infrastructure damage" [see SMO §262]; we know that ISIL routinely destroyed civil registration offices [see AAH §104]. As such it appears likely that the existing registration infrastructure would have been destroyed, or at the very least seriously compromised. This being a city where the priority of the Government of Iraq is to consolidate central control from Baghdad it is inconceivable to me that they would simply have replaced the old civil registry. It is far more likely that the new system would have been installed.
26. My analysis has found support in new evidence provided by the Appellant for the purposes of the remaking in the Upper Tribunal: a screenshot from the website of the Iraqi Government 'National Card Affairs Directorate', made on the 22nd June 2020, which contains text in both English and Arabic. The English is not easy to follow and it is apparent, once one follows the live link (<http://www.nid-moi-gov-iq/index.php?name=News&file=article&sid=241>), that the exclusively Arabic text in the actual website has been translated for the purpose of the screenshot by an automatic translation function online. The meaning is nevertheless clear:

"In the district of Tuz Khurmato, which is characterised by its many components and its peaceful coexistence, the Tuz Conditions [*this should read 'Tuz State Administrator'*] continues to issue the National Card to citizens. The director of the department, Lieutenant Colonel Mustafa Qanbar confirmed that his department has issued more than 68,000 cards so far, while he indicated that there was heavy demand by

the people of the judiciary [administrative area] to issue the national card....”

27. I do not accept Ms Isherwood’s submission for the Secretary of State that this is vague. The clear import of this article is that, as my analysis above concludes, Tuz Khurmato is a city where the government is now issuing the new national card.
28. The consequence of that, for this Appellant, is that he has no means of travelling from Baghdad to his home city where he could be issued with new identity documents enabling him to work, live and receive basic services. It is the Respondent’s stated position that without such a card an Iraqi returnee faces a real risk of falling into destitution such that his living conditions would violate the United Kingdom’s obligations under Article 3 ECHR/ Article 15(b) QD. The appeal falls to be allowed on that basis.

Anonymity Order

29. The Appellant is entitled to international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

30. The determination of the First-tier Tribunal contains material error of law and it is set aside.
31. The decision in the appeal is remade as follows: the appeal is allowed on protection and human rights grounds.
32. There is an order for anonymity.

Upper Tribunal Judge Bruce

1st August 2020