



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05093/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> August 2017

Decision & Reasons Promulgated  
On 14<sup>th</sup> August 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAROON KADIR RAHIMI  
(NO ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Ms N Willocks-Briscoe, a Senior Home Office Presenting Officer  
For the Respondent: Mr P Oyemike of Samuel & Co Solicitors (Barking Office)

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to refuse him international protection as a Kurdish Iraqi from Kirkuk.
2. The preserved findings of fact in the decision of Deputy Upper Tribunal Judge Eshun are that the claimant's home area is Kirkuk, that that is no longer within the contested areas of Iraq but that the claimant cannot get there by road or air, that he has no CSID or passport and no family members in Baghdad and that without a

CSID he would face a very real risk of destitution in Baghdad entailing a breach by the United Kingdom of Article 3 ECHR.

3. At paragraph 37 of the contested decision First-tier Tribunal Judge C H Bennett said:
 

“I accept that if [the claimant] could be returned to Iraq (Baghdad), there is a reasonable likelihood that he would not be able to obtain a CSID there, either at all or within a comparatively short period of time after his arrival and that the chance that he would not be able to obtain a CSID there within a comparatively short period of time cannot be categorised as fanciful or a mere possibility. I reach those conclusions for the following reasons.

  - (a) I accept that [the claimant] is not in possession of current or expired passport. There is no reason to believe and I am not satisfied, that he knows the book and page number of his family registration details or that he has a note of those details. What I have said in paragraph 29 applies.
  - (b) In the light of what I have said in paragraph 23 and 25 I accept that there is a reasonable likelihood that [the claimant’s] home governorate, the governorate where he was born, is that of Kirkuk. ... I am not satisfied that it is feasible for [the claimant] to travel to Kirkuk by road or air.”
4. The First-tier Tribunal Judge was not satisfied that any risk of serious harm engaging international protection had been shown in Kirkuk, the IKR or Baghdad and he dismissed the protection claims. The Judge considered that there were very significant obstacles to his reintegration into Iraq on return, because there were no friends or relatives who could assist him in resettling in Baghdad, and no available employment, housing or medical assistance for him there. The Judge found that the applicant had no CSID and would not be able to obtain one within a reasonably short time by applying in Baghdad. The Judge allowed the claimant’s appeal on the sole ground that his removal would be unlawful under section 6 of the Human Rights Act 1998, as he qualified for leave to remain pursuant to paragraph 276ADE(vi) of the Immigration Rules HC395 (as amended), because the claimant would be destitute on return to Iraq.

### **Error of law**

5. The Secretary of State appealed. She argued that there was a material error of law in the decision, and that the ability to form a private life in Iraq (the Article 8 ‘foreign’ private life test), not the risk of destitution (which would engage Article 3 ECHR), was the test for paragraph 276ADE(vi). Designated Judge Murray granted permission on that basis. There was no cross-appeal and no rule 24 notice on behalf of the claimant.
6. On 12 June 2017, Deputy Upper Tribunal Judge Eshun found an error of law in the First-tier Tribunal decision. She held that the question which the First-tier Tribunal Judge should have asked himself was whether the claimant would be able to relocate to Baghdad or Kirkuk, and whether the effect of his having no csid would lead to a

breach of Article 3 ECHR. The core of Judge Eshun's reasoning is at [9]-[13] in her decision:

- “9. Mr Tufan [for the Home Office] submitted, and I accepted, that the question the judge should have asked himself was whether the [claimant] would be able to relocate to Baghdad or Kirkuk and whether the lack of a CSID would breach Article 3 of the ECHR. Mr Tufan submitted that the Court of Appeal remitted the case of *AA (Iraq) v SSHD* [2016] EWCA Civ 779 back to the other Tribunal for a decision on this very issue.
10. Mr Oshunrinade for the [claimant] agreed that the reasons given in the Secretary of State's grounds of appeal disclosed the judge erred in law. He, however, sought to argue that the judge's findings that a lack of CSID would lead to destitution coupled with the [claimant's] inability to travel from Baghdad to Kirkuk were enough reasons to allow the appeal under Article 3 of the ECHR.
11. I was not persuaded by Mr Oshunrinade's argument. The judge had specifically found that the [claimant] did not satisfy Article 3 of the ECHR. That is why he sought to allow the appeal under 276ADE of the Immigration Rules.
12. Mr Oshunrinade also sought to re-open the judge's findings in respect of the asylum and Article 3 appeals. He had not put in a Rule 24 response nor had he put in a cross-appeal. In the absence of a cross-appeal, I came to the conclusion that the judge's adverse credibility findings should stand.
13. Having found that the judge erred in law in the manner in which he allowed the [claimant's] appeal, namely on the basis that a lack of a CSID constituted a very serious obstacle to the respondent's integration into Iraq, the judge's decision cannot stand. It is set aside in order to be re-made. In view of the issues raised in this appeal I am of the view that this appeal should be heard in the Upper Tribunal.”

7. That was the basis on which this appeal came before me for remaking.

### **Remaking the decision**

8. At the beginning of the hearing, I clarified with the representatives what findings of fact in the First-tier Tribunal decision would form the basis of my decision. The following facts and matters were found by the First-tier Tribunal and are not in dispute: the claimant is an Iraqi Kurd, whose home area is in Kirkuk, which is no longer within the contested areas of Iraq. However, he cannot get there by road or air, and he has no CSID or passport. When the claimant left Iraq, his mother and sister were in the Kurdish Regional Governorate.
9. The respondent does not dispute the First-tier Tribunal's finding that the claimant has been unable to establish any form of contact with his family since coming to the United Kingdom (see [37] of the First-tier Tribunal decision). The claimant has no family members in Baghdad, where he would be returned and the First-tier Tribunal Judge found that there was a very real risk of destitution for him on return there, because of the lack of family support.

## Discussion

10. The First-tier Tribunal Judge when making the present decision did not have the benefit of the revision of the Upper Tribunal's country guidance on Iraq by the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944, set out in full at Annex A to this decision, which was handed down on 11 July 2017. I apply it to the facts set out above. The material parts of the revised guidance are as follows:

*"...C. The CSID*

*9. 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.*

*10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.*

*11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.*

*D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)*

*14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*

*15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*

*(a) whether P has a CSID or will be able to obtain one (see Part C above); ...*

*(c) whether P has family members or friends in Baghdad able to accommodate him;...*

*(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs. ..."*

11. The Secretary of State's appeal is confined to the insurmountable obstacles test under paragraph 276ADE(vi). The way in which the Secretary of State frames her argument is that the test in 276ADE(vi) is the foreign Article 8 private life test and is concerned with whether an appellant could establish a private life upon return and not about risk or harm. The point is further made in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813:

"15. The idea of integration calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life. It is the [claimant's] ability to form a private life that is in question under 276ADE(vi) and not the question of destitution."
12. On the facts of this application the distinction drawn appears to me to be a distinction without a difference. The finding of the Court of Appeal in *AA (Iraq)* is that a person in the claimant's position in this appeal will not be able to obtain a CSID before his money runs out in Baghdad and will therefore face a real risk of destitution. A real risk of destitution at Article 3 level, albeit not the subject of an Article 3 finding in this decision, must by definition amount to an insurmountable obstacle at the Article 8 level in establishing a new life in Baghdad, it being accepted for this purpose that the claimant cannot get back to Kirkuk where all his family links and his social contacts are.
13. Accordingly, and despite the inability to deal directly with Article 8, I find that the guidance in *AA (Iraq)* indicates that there is a risk of destitution at the Article 3 level and that that also meets the paragraph 276ADE(vi) test of being an insurmountable obstacle to reintegration into Iraq (Baghdad).
14. The decision of the First-tier Tribunal has been set aside with the exception of the findings of fact identified above. I remake the decision by allowing the claimant's appeal against the Secretary of State's decision to refuse him leave to remain under paragraph 276ADE.
15. For the avoidance of doubt, I wish to make it clear that had I been seised of the Article 3 or Article 8 arguments which are excluded by the decision of Upper Tribunal Judge Eshun, I would also have allowed the appeal on human rights grounds.

## Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I re-make the decision in the appeal by allowing it.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Date: 10 August 2017

## ANNEX A

The guidance we give is as follows:

### A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*
2. *The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.*
3. *The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).*
4. *In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.*

### B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. *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.*
6. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
7. *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.*
8. *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.*

### C. The CSID

9. *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.*

*10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.*

*11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.*

#### D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

*14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*

*15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*

*(a) whether P has a CSID or will be able to obtain one (see Part C above);*

*(b) whether P can speak Arabic (those who cannot are less likely to find employment);*

*(c) whether P has family members or friends in Baghdad able to accommodate him;*

*(d) whether P is a lone female (women face greater difficulties than men in finding employment);*

*(e) whether P can find a sponsor to access a hotel room or rent accommodation;*

*(f) whether P is from a minority community;*

*(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*

*16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

#### E. IRAQI KURDISH REGION

*17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.*

*18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.*

19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.

20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.

21. As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.

F. EXISTING COUNTRY GUIDANCE DECISIONS

22. This decision replaces all existing country guidance on Iraq