



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05620/2016

THE IMMIGRATION ACTS

**Heard at Birmingham
On 11 August 2017**

**Decision & Reasons Promulgated
On 17 August 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**BB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzam, Sultan Lloyd Solicitors

For the Respondent: Mr Mills, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, BB, was born in 1998 and is a male citizen of Iraq. By a decision dated 20 May 2016, the respondent refused the appellant's protection claim. The appellant appealed to the First-tier Tribunal (Judge Shanahan) which, in a decision promulgated on 30 January 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Granting permission, Judge Page, summarised the grounds as follows:

“If the judge has made a mistake and applied the wrong Immigration Rules or Rule that would amount to an arguable error of law. It is further arguable that the judge’s conclusions that the appellant would be able to obtain a CSID card on return were not realistic. The appellant complains that the judge’s findings that the appellant could retain contact with his family members is perverse and that there is real doubt that the appellant could obtain a CSID card or INC on return. These grounds appear arguable so permission to appeal is granted.”

3. The appellant was 18 years old at the time of the First-tier Tribunal hearing. He had been granted leave as an unaccompanied asylum seeking child. The judge recorded [14] that Counsel for the appellant informed the First-tier Tribunal that the appellant would not give evidence. He explained that this decision had been taken on the basis that the “key facts” of the claim as to identity, age and home area had been agreed by the respondent. However, as is apparent from the subsequent paragraph, several of the parts of the appellant’s claim were not accepted by the respondent. In particular, the respondent did not accept that the appellant had lost touch with his family members in Iraq.
4. The judge found [23] that no group or individual within Iraq or the Iraqi authorities would seek to harm him on his return. At [24], the judge observed that the respondent had accepted that the appellant would be in danger of Article 15(c) harm if returned to his home area of Sinjar in the Ninewah Governate. The Secretary of State accepted that this home area lay within one of the contested areas identified in *AA (Iraq) CG* [2015] UKUT 00544 (IAC). Accordingly, the judge went on to consider the internal flight alternative. The appellant is a Kurd of Sunni faith. The judge recorded that the appellant claimed that he had lost contact with his family in Iraq, a claim disputed by the Secretary of State. The judge relied on *EU (Afghanistan)* [2013] EWCA Civ 32. At [10], the Court of Appeal stated:

“Lastly, I should mention a point made by the Secretary of State which I consider to have substance. Unaccompanied children who arrive in this country from Afghanistan have done so as a result of someone, presumably their families, paying for their fare and/or for a so-called agent to arrange their journey to this country. The costs incurred by the family will have been considerable, relative to the wealth of the average Afghan family. The motivation for their incurring that cost may be that their child faces risk if he or she remains with them in Afghanistan, or it may simply be that they believe that their child will have a better life in this country. Either way, they are unlikely to be happy to cooperate with an agent of the Secretary of State for the return of their child to Afghanistan, which would mean the waste of their investment in his or her journey here.”

5. At [35], Judge Shanahan wrote:

“I have considered the Appellant’s account of leaving Iraq. He states that when ISIS attacked his village his uncle grabbed him and told him he had to leave the village. They walked to Mosul where his uncle left him with a friend. The Appellant stayed in Mosul for 1 - 1.5 years with this friend of his

uncle's and would go to work with him from time to time. The Appellant says in his statement that his uncle got in contact with the friend and told him it was getting worse in the village and asked him to find an agent to assist the Appellant to leave the country. The friend duly made the arrangements. From this account I note the Appellant says he did not know what happened to his family but also that his uncle returned to the village. The friend was in contact with the uncle and therefore it is reasonable to assume the uncle would have told the friend what was happening in the village and given information about the Appellant's family. I also consider that for the friend to make the arrangements for the Appellant to be taken out of the country by an agent a significant sum of money must have been paid to the agent. I take into account that the Appellant's description of his father is he was a contractor and worked for high ranking people and therefore again it is reasonable to assume that he had a comfortable standard of living. I have considered the fact the Appellant says he has no contact with his family in Iraq but a significant sum of money must have been paid to the agent, by either his father or uncle. Taking into account that his father was a person with a good job and comfortable standard of living, the Appellant's leaving was an arranged and organised affair as opposed to a sudden and urgent flight I am satisfied that appropriate communications methods would have been settled before he left the country. I have taken into account the attempts the Respondent made to trace the Appellant's family but on the limited information provided I am not satisfied that this demonstrates the Appellant cannot make contact with them. Accordingly I am satisfied that the Appellant does have the means to contact his family in Iraq."

6. This paragraph is significant as it clearly led the judge to conclude that the appellant could return safely to Iraq. The judge went on at [36] to state:

"Given I am satisfied the Appellant has the means to contact his family it is open to him to seek their support if returned there and for them to assist him in obtaining the necessary documentation such as the CSID card and INC, either while he is still in the UK or on return to Iraq. Also they would be able to provide him with the family book details to assist him with obtaining the CSID and INC. Accordingly I am not satisfied that would be unduly harsh on account of not having these documents."

At [38], the judge concluded:

"I am satisfied that the Appellant has the means to contact his family in Iraq and through them acquire the relevant documents, he has previously held a passport and an ID card and these can be renewed. Therefore if it were feasible to return him to Iraq I am satisfied the Appellant could be returned to Baghdad without it being unduly harsh or unreasonable."

7. The judge went on to consider whether the appellant could relocate to the IKR. At [42], she wrote:

"I have considered section 8 of the Home Office guidance document and note that it provides conflicting information about whether or not a sponsor would be needed to allow for the Appellant to enter the IKR. However even if a sponsor is required given my findings in relation to the Appellant's family and his contact with them I am satisfied that

his father would be able to make appropriate arrangements for a sponsor to act for the Appellant. I refer back to the Appellant's answers in interview in which he said that his father was a contractor who worked for high ranking people and ministers and accordingly I am satisfied that he has connections which would enable him to facilitate the Appellant's entry to the IKR."

At [45], the judge wrote that it was "fair to say that the appellant has not said that his family are in the IKR or are from there but the appellant has indicated in his statement that his family worked in Kurdistan (para 15 - witness statement) and also earlier that he had worked for high ranking people and ministers and therefore I am satisfied that the family will have some connections within the region [IKR] from whom he could seek support and assistance".

8. Mr Mohzam, for the appellant, submitted that the judge had erred in her finding regarding the ability of the appellant to make contact with and be received by his family should he return to Iraq. He submitted that the judge's findings were speculative at best, that the judge should have assessed risk and the internal flight alternative on the basis that the appellant would be returning alone to Iraq and would not have support. Mr Mills, for the respondent, submitted that it was significant that the appellant had not been tendered for cross-examination; the judge had been entitled, on the basis of the evidence she did receive, to find that the appellant had family members who would assist him on the basis of the written evidence before her.
9. I agree with Mr Mills. The judge did not have the benefit of seeing the appellant cross-examined and so she was compelled to make findings on the basis of the written evidence, including the appellant's interview record and statement. It is clear from the decision that she has considered that evidence in the context of the background material relating to Iraq. The findings set in paragraph [35] and which I have set out in full above are, in my opinion, legally sound. The judge was entitled to find that the appellant would be able to make contact with his family in Iraq. Also of significance is the judge's finding that amongst the appellant's close family members are individuals of means who had been able and willing to pay for the appellant to be sent to the United Kingdom. Further, the judge did not err by relying in this appeal upon the Court of Appeal's judgment in *EU (Afghanistan)*; the Court of Appeal acknowledged that establishing contact with an asylum seeker's family in the country of origin is likely to be hampered by the fact that that family, put bluntly, may not wish to have the asylum seeker returned to it.
10. I find, therefore, that the judge's findings regarding the appellant's family in Iraq are legally sound and should stand. The question thereafter is whether, against the background of that factual matrix, the judge correctly assessed risk and the ability of the appellant to exercise the option of internal flight. The judge relied upon paragraphs 151-153 of AA:

“151. The Respondent's position is that, save for those returnees in the category identified below, it would in general be reasonable, and not unduly harsh, to expect a person to relocate to Baghdad city if there is an Article 15(c) risk in their home area. The exception to this generality is identified by the Respondent as being:

"A person returned to Iraq who was unable to replace their Civil Status ID Card or Nationality Certificate [who would] be likely to face significant difficulties in accessing services and a livelihood and would face destitution which is likely to reach the Article 3 threshold. [6]"

152. Having considered the entirety of the evidence before us, we have come broadly to the same conclusions as the Respondent - save that we observe that there will undoubtedly be persons who do not have a CSID and who have been returned with a passport or an expired passport who will not be destitute in Baghdad, and for whom there are no other reasons why relocation there would not be reasonable. In this regard, whilst Dr Fatah provides evidence, which we accept, that a CSID is required to access income/financial assistance, employment, education, housing, a pension, and medical committee documents, there will be persons who do not have a CSID but who nevertheless have access to an adequate support mechanism in Baghdad; for example those persons with family or friends in Baghdad who are willing and able to provide such assistance to them. Such matters will, of course, require careful consideration of the evidence, and a reasoned finding to be made, in each case.

153. The number of persons for whom it is not reasonable, or for whom it would be unduly harsh, to relocate to Baghdad is, we think, likely to be small.”

11. Judge Shanahan found that the appellant was a “person who did not have a CSID but who nevertheless has access to an adequate support mechanism in Baghdad”. She has, as exhorted by the Tribunal in AA, carried out “careful consideration of the evidence” and has made “reasoned findings”. The judge acknowledged that she did not know where in Iraq the appellant’s family were living but I do not consider, on the particular facts in this case, that her findings that the appellant could fly from the United Kingdom to Baghdad and there be received by his family are either speculative or perverse. Furthermore, given that the judge found the appellant’s family are individuals of means, he would, after he has entered their care, not have any pressing need to obtain a CSID in order to avoid becoming destitute. The judge observes [38] that the appellant previously held a passport and ID card; it was reasonable for her to conclude that, in those circumstances, the appellant would, if he needed to do so, be able to obtain a CSID card after his arrival in Iraq.
12. I have set out above the judge’s findings at [45]. If the family needed to relocate to the IKR, then the judge found that the father’s connections with that region would enable the family to do so. Once again, on the limited evidence which she had before her, I do not consider that finding to be speculative, as the appellant asserts.

13. The country guidance provided by the Upper Tribunal in AA has now been amended by the Court of Appeal (AA [2017] EWCA Civ 944). The country guidance now 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."

14. I observe that [9] the amended country guidance provides that returnees are generally likely to face a real risk of destitution amounting to serious harm if there are "no family or other members likely to be able to provide means of support". The appellant will not find himself in such a position. It is apparent from the country guidance of AA in the Upper Tribunal and now the amended guidance from the Court of Appeal that a distinction is to be made between returnees who have no family or other support in Iraq

and no CSID card and those who, whilst they may lack a CSID card, will enjoy support on return. Judge Shanahan has firmly found that the appellant falls within that latter category. I find that she has carried out a sound assessment of the appellant's ability to relocate from his contested home area. I reject the submission that her findings regarding the appellant's family are speculative.

15. At [47], the judge considered the appeal on Article 8 ECHR grounds. The judge correctly considered the appellant as an individual 18 years or older at the date of the hearing and applied the provisions of paragraph 276ADE of HC 395 (as amended). Considering the appellant's circumstances under sub-paragraph (vi), she did not accept that there were very significant obstacles to the appellant's integration in Iraq [48].
16. Again I find the judge's analysis to be legally sound. Mr Mohzam submitted that the appellant should be granted Article 8 leave because his position within the United Kingdom was uncertain given that it was not currently feasible for him to be returned to Iraq. I find that submission difficult to understand. As required by the country guidance (see the amended country guidance at [9] - AA in the Court of Appeal) an assessment of the risk to the appellant on return should be carried out regardless of the feasibility of return at the present time. In common with many thousand asylum seekers, the appellant will remain on temporary admission. Until he either obtains leave to remain or becomes appeal rights exhausted, his continuing residence in the United Kingdom should not entitle him to a grant of Article 8 leave.
17. For the reasons I have given, I find that the appeal should be dismissed.

Notice of Decision

18. This appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 15 August 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 15 August 2017

Upper Tribunal Judge Clive Lane