



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08875 /2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2017**

**Decision & Reasons
Promulgated
On 11 October 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**REKAWT HUSAMADIN JALAL
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs F Mustapha of Wai Leung Solicitors

For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is an Iraqi national of Kurdish ethnicity from Kirkuk born on 29 February 2000 who left Iraq in January 2016 and claimed asylum here in May 2016. Although the application was refused on 9 August 2016, he was granted limited leave until 1 August 2017 as an unaccompanied minor. His 'upgrade' appeal was dismissed by First-tier Tribunal Judge Abebrese by way of a determination promulgated on 13 February 2017.

2. The appellant challenged the decision on the basis that the judge had arguably (1) failed to properly consider the issue of risk on return in accordance with the country guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) (now overtaken by the Court of Appeal's decision) particularly as he had no Civil Status identity document (CSID) and (2) erred in his finding that the applicant would be able to relocate to the IKR. Permission to appeal was granted by Judge Page on 25 May 2017 and the matter came before me on 14 July 2017. Having heard submissions from Mrs Mustapha (who has ably represented the appellant throughout his appeal proceedings) and Mr Clarke who both agreed that the judge had not adequately dealt with the issue of whether the appellant would be able to obtain a CSID card, I set aside the decision. Full reasons are set out in my determination promulgated on 25 July 2017.

The hearing

3. One of the complaints made about the proceedings before the First-tier Tribunal was that the appellant's foster carer, Mr Calder, had not been permitted to give oral evidence with respect to the appellant's attempt to contact the Red Cross to locate the whereabouts of his relatives in Iraq. Mr Calder was unable to attend the substantive hearing before me due to various commitments but he submitted a letter in which he confirmed his reliance upon his earlier statement and explained that the appellant was no longer in foster care.
4. Mrs Mustapha informed me that the appellant lived in semi-independent accommodation and was still supported by Kent Social Services.
5. The appellant was present and gave oral evidence in Kurdish Sorani through an interpreter whom he confirmed he understood. A social work assistant was present throughout the hearing as his responsible adult.
6. The appellant confirmed his name, date of birth and address. He confirmed the contents of two witness statements and the asylum interview were accurate and truthful and adopted them as his evidence in chief. He was referred to the letters from the Red Cross contained in the evidence. He stated that the letter dated 14 June 2017 was the last one he had received. He said he had not had any contact with (Jamal) the friend of his father who had helped him to leave the country. He stated that his parents had passed away. The only relatives he had in Kurdistan were two younger brothers. He had provided the Red Cross with the address of Jamal's cousin, Azad, because that was the only address he knew. That completed examination in chief. He was then tendered for cross examination.
7. In reply to Mr Staunton's questions, the appellant said that after the death of his parents he had gone to live with Jamal who lived in

Topzawa, a village about half an hour's drive from Mullah Abdullah, his home village. He thought there were 150-200 households in Jamal's village. He had not told the Red Cross about his home village because he thought it had been bombed and so assumed no one still lived there although he conceded he did not know for certain.

8. The appellant stated that he had left Jamal's village to work at a petrol garage about 25-30 minutes away by car. He worked there for 9-10 months as an assistant/handyman. Initially he lived in some disused metal shelter but was then given a room in the garage. His friend (Hiwa) who found the job for him would come to visit him from time to time. The appellant was not in contact with him. He lived in Kirkuk but the appellant did not know where. Jamal took the appellant and the friend to the garage. When asked why he had not mentioned this friend at interview or that Jamal had taken them to the garage, he said he had not been asked. He denied having said at interview that he had gone to Jamal's mother's house.
9. The appellant stated that his brothers had been born in 2002 and 2005. When asked where they had been when he left Iraq, the appellant said they were supposed to go and stay with a neighbour. He did not know where. When he was pressed further, he said the person had been a neighbour of his grandparents and had known his (the appellant's) father. He confirmed that his grandparents' village was Mullah Abdullah but when asked whether the neighbour lived there, he said she did not. She had been a neighbour "before". His grandparents had died before he was born. He did not know who took his brothers to her. He knew they had gone there because he had spoken to them on the phone a few days before leaving Iraq with Jamal's help. He said one of three people could have taken them to the neighbour - Jamal, his cousin Azad or Salam, a family friend. The appellant said he had not asked his brothers who had helped them when they spoke. He said they were children. He did not speak to the person they were living with. They mentioned where they were living but he had forgotten.
10. The appellant was asked whether his brothers had used a mobile phone to take the call. The appellant replied Jamal had said they were safe. The question was repeated. The appellant said Jamal had told him he needed to leave. The question was put a third time and the appellant was reminded he needed to answer the questions put to him. He confirmed that it had been a mobile phone. He was asked how he had left Iraq without making a note of their number. He said it was not easy and he had not wanted to leave. At this point the appellant became distressed and a short break was taken. On resuming the appellant confirmed he was happy to continue.
11. The appellant stated that Jamal was a family friend. He had known the appellant's father since they were children. Jamal had been beaten

up. He did not know the details but it was because of him. He left Iraq about 3 days later.

12. The appellant was asked whether Jamal had sold the appellant's father's car to fund his journey. He replied: "that is what I am told". He said it was a new Nissan pick up. Jamal had been using it before it was sold. When asked whether Jamal had told him who had bought it, the appellant said that he had been with Jamal when it was sold. They went to a place in Kirkuk that sold cars. This took place between the time Jamal was beaten and the appellant left. At the time the car was sold, the appellant had returned to live in Jamal's house. He had run away from his place of work because "they had come to get me at work". The appellant was asked to clarify his evidence as at interview he had not made reference to anyone coming to his place of work. He said that the men had gone to Jamal's house and beaten him up. They then called the appellant using Jamal's mobile phone and made threats. Jamal was at home when he had been beaten. The appellant was afraid they would come for him so he left work and went to Jamal's house where he stayed in the basement. He said he did not think they would come back there and he did not stay there long.
13. The appellant stated he had suffered from thalassemia since childhood. He had received treatment in Iraq. He now went to the hospital every three weeks. In Iraq, it had been every three months.
14. The appellant said he was studying English, Maths, citizenship and computing at college which he attended three times a week. He lived in accommodation which he shared with a Moroccan and an Afghani or Egyptian. He did his own washing but did not cook much, preferring to buy food outside. That completed cross examination.
15. In re-examination, he was asked again about the call to his brothers. He said the conversation lasted a few minutes. They were crying. They did not know he was going to leave Iraq. He did not ask Jamal for the telephone number so that he could call them. When asked why, the appellant said: "Can you understand how I felt?". The matter was pursued and he said that he had been threatened and he ran away and slept in the woods. His brothers had been at Jamal's mother's house but the house had been shot at. He was worried about them and wanted to know they were safe. He said he had called Jamal from the woods and Jamal had come to collect him.
16. I then put questions to the appellant for clarification. I asked him to describe what happened during his visits to hospital. He said that he would be there all day. They took his blood pressure, examined his blood and then gave him a transfusion.
17. I asked for the name of Azad's village. The appellant said it was in a district of Kirkuk called Shoraw.

18. The appellant said that his brothers had lived with Jamal's mother until they were taken to the neighbour's house some 9-10 months later. He never visited them. When asked why, he said it was because the Kurds would know him and he would be recognised thereby placing his brothers at risk. He had been 14-15 when he had been seen and recognised by those who were now after him.
19. The appellant said that he had gone with his brothers to Jamal's mother's house but after a few hours they said he should not stay so his friend, Hiwa, told him he would take him to his place of work and Jamal took them there. The appellant confirmed that Hiwa worked at the same garage. The appellant was given work.
20. The appellant said he was given a mobile phone so that Jamal could call him. He did not know how to make out going calls so the phone was only used to receive calls. Those were my questions.
21. Mr Staunton then put some questions arising from mine. He asked whether the phone had been taken away from him at any time. The appellant said Jamal had taken it when they left the woods. He broke the phone and the sim card. The agent then gave the appellant another phone. Jamal, Azad and Salam arranged the agent and Hiwa might have helped.
22. The appellant said his brothers would not be recognised because they were younger than him. He said he had been seen with his father. He knew this because his mother had told him to be careful when he went out whereas his brothers went out and to school without problems. The appellant said that he left school at 7 after a year because he did not like his teacher.
23. Mrs Mustapha had no questions arising and that completed the oral evidence.
24. I then heard submissions. Mr Staunton relied on the credibility issues raised in the refusal letter. Areas of concern were the claim of threatening phone calls, the issue of the appellant's brothers and why they would not be at risk if the appellant was and the evidence of their whereabouts. There were also inconsistencies between the oral evidence and the evidence at interview with respect to being at Jamal's house, being collected from the woods, over the sale of the car, how he found work and whether Hiwa worked at the garage or just came to visit him there. Taken cumulatively, these inconsistencies demonstrated that the claim had been falsified.
25. With respect to the risk on return, Mr Staunton submitted that the situation had changed since AA had been heard by the Tribunal. The Court of Appeal's judgment in AA made changes to the Tribunal's determination and there was no longer any risk in the IKR, no danger

in Kirkuk and CSID documents were not required in order to enter. The issue of a likelihood of employment was fact sensitive. The appellant had family there. He had been able to receive medical treatment when in Iraq. The appeal should be dismissed.

26. Mrs Mustapha relied on the skeleton argument. She asked for a finding that the appellant was an orphan, pointing out that the respondent had not taken issue with this part of the claim. She submitted that Kirkuk had been under the control of Daesh in 2014-2015 and so the appellant's claim of the village being raided and his parents being killed was credible. The claim of having found work was credible as the country evidence confirmed there were child workers. He had to work to support himself and help his brothers. With respect to the claim of his father's enemies pursuing him, he could only repeat what he had been told. He did not know all the details as he was a child at the time. Mrs Mustapha referred me to the Home Office policy on children and the difficulty in obtaining evidence from a young person. The appellant had returned to Jamal's house as he had nowhere else to go. It was plausible. He had gone with Jamal to sell the car. He was a credible witness and he had explained why he would be recognised more easily than his brothers. The evidence was consistent and the core claim stood.
27. Mrs Mustapha submitted that there were still concerns about the situation in Iraq. Daesh still operated in some areas. There was no guarantee that Iraq was safe. It would be unduly harsh to expect the appellant to return to Iraq. He was not from the IKR and so could not be returned there. If returned to Baghdad, he would be sent there as a child with no family and no knowledge of Arabic. He would need CSID documents to work and to access services. He did not know what had become of his birth certificate and had no documents to use to obtain identity documents. I should consider the practicalities of getting from Baghdad to the IKR. The appellant had no sponsor there and so could not get pre-clearance. His medical condition added to his vulnerability. He was an orphan. The Red Cross had been unable to locate his brothers but enquiries were ongoing. His appeal should be allowed. There was no reliance on article 8.
28. At the conclusion of the hearing I reserved my determination which I now give.

Discussion and conclusions

29. I have considered all the evidence with care. This includes the written and oral evidence, both before this court and before the First-tier Tribunal, and the submissions of the parties. I also bear in mind that the appellant is not yet 18 years old and I have regard to the practice directions, the UNHCR guidelines on unaccompanied children and the Home Office policy on young people when assessing the evidence. I

appreciate that the appellant was even younger when the alleged events took place. I accept that he suffers from thalassemia and that this is an added factor of vulnerability. I have assessed all the evidence in the round, applying the lower standard of proof and I reach the following conclusions which I list in no order of priority.

30. Although the appellant was unable to answer detailed questions about Kurdistan at interview, the respondent noted that he could answer some and that he spoke Kurdish Sorani so his ethnicity was accepted. It follows that it has also been accepted that he is from Kirkuk. Although his date of birth of 29 February 2000 differs significantly from the date of 16 July 1995 given to the German authorities when he claimed asylum there in January 2016, the respondent has not sought to challenge it and I, therefore, proceed on the basis that the appellant is not yet 18 years old. I am also prepared to accept that he is an orphan as again the respondent has not taken issue with the claim that his parents were killed in a Daesh attack on the village in January 2015.
31. The appellant claimed in his statement of 21 July 2016 that he had never used a passport (at paragraphs 3 and 18) and he gave evidence to Judge Abrebese that he had not used any passport or documents for his journey from Iraq to the UK (at paragraph 22). According to the German authorities, however, the appellant has a passport which is held by their office in Erding.
32. The appellant claimed in the same statement that he could not apply for asylum in Greece or Germany because he was under the control of the agent (at paragraph 5). However, the evidence from Germany shows that he made an asylum application there on 28 January 2016, within three days of leaving Iraq. Quite how he got to Germany so fast when his long journey was by lorry and on foot (July 2016 statement; paragraph 18) is unexplained.
33. Contrary to what Mrs Mustapha submitted, the appellant does have a basic knowledge of Arabic which he learnt from his father who spoke Arabic (July 2016 statement; paragraph 6).
34. The appellant claimed in his July 2016 statement that when Daesh/ISIS attacked his village and killed his parents, he and his brothers were visiting Jamal in Topzawa. After a two day visit, they heard that their parents had perished in the attack. The bodies were brought to them by Kurdish peshmergas and they conducted a funeral. The appellant and his brothers then remained with Jamal for several weeks until Jamal received a telephone call from two brothers who threatened him. They had lost their whole family some years earlier and held the appellant's father responsible.

35. The appellant claimed Jamal took him and his brothers to his (Jamal's) mother's house on the other side of the same village (at 14). At the hearing, the appellant said he did not know where the mother lived. Whilst he had also confirmed at his interview that he had gone to Jamal's mother's house, at the hearing he denied having made such a claim. No explanations were offered for these contradictions.
36. The appellant claimed in his statement that he was afraid to remain at Jamal's mother's house for fear of being recognised by the two brothers so he found a job at a petrol station (at 14) where his friend Hiwa came to visit and took money from him for the support of his brothers (at 15). At interview, he confirmed that he had found the job himself (Q.89). In evidence to me, however, the appellant said that Hiwa had found him the job. The appellant told Judge Abebrese that he worked at the garage for two months (at 22) but he told me that he worked there for 9-10 months. These inconsistencies remain unresolved.
37. In his statement, the appellant said that on 19 January 2016 he received a call informing him that Jamal had been killed and he then left the workshop as he was afraid (at 15). The following day he was called by Jamal who was alive and made arrangements for them to meet at a house (at 16). The appellant told me he had hidden in some woods and Jamal had collected him from the main road nearby. At the asylum interview the appellant said that when he received the phone call he had been told his two brothers had been killed as well as Jamal (Q.62). I would not expect the appellant to forget such a distressing piece of news. Yet it was not mentioned in his statement or in evidence when he gave details about the call.
38. In his statement, the appellant said that when he met Jamal, his father's car had already been sold to raise funds for the appellant's departure (at 16) but he told me that he had gone with Jamal to Kirkuk after he returned to Jamal's house and they were together when the car was sold. Earlier in evidence to me, the appellant said he had been told the car had been sold. In his July statement, he said he believed his father's belongings had been sold to raise funds for his journey (paragraph 19).
39. The appellant said in his statement that he was told he had to leave immediately and that Jamal would make sure the appellant's brothers were safe (at 17). He claimed that he did not know where Jamal sent his brothers (at 17). There is no mention at all that the appellant spoke to them as he told me, that they were with a neighbour or that the house had been targeted and shot at.

40. The appellant confirmed the accuracy of the statement at the asylum interview and in evidence to me. He also adopted his witness statements.
41. At interview, the appellant stated he went to Kirkuk hospital every 18 days by car or taxi (Q.21, 22, 24 and 40). In evidence to me he said he went every 3 months. He was able to continue his regular trips throughout his time at the garage.
42. It may thus be seen that there have been numerous contradictions in the evidence and that there are no explanations for any of these matters. I have borne in mind that the appellant is a young man and that he was even younger on arrival and when he gave his statement and interview but even making allowances for his youth, it is difficult to understand how he can be so contradictory over so many key elements of his claim.
43. Turning to the specifics of the application, I deal first with the claim that the appellant would be at risk on return because he would be pursued by his father's enemies; i.e. those who accused him of co-operating with Saddam Hussain and specifically two brothers who held him responsible for the loss of their relative.
44. The appellant gave a very confusing answer to the question of why his father was suspected of co-operating with Saddam Hussain (at 57). If the appellant's father and grandfather had helped the Kurdish fighters and had been arrested as a result, it makes no sense that they would be suspected of collaboration with the Iraqi regime against the Kurds.
45. Given that Saddam Hussain was executed in 2006 when the appellant would have been 6 years old, it is not credible that these two brothers would make threats some 16 years after any possible co-operation could have taken place and after the appellant's father was dead. Nor was it explained why they would attack Jamal several months after the appellant had left his house.
46. The appellant stated at interview that his father had been killed by those seeking revenge (Q.64) but in his statement, he claimed they died in a attack on the village by ISIS. Later in his interview he admitted that he was not sure about his parents' deaths and that they might have been killed during the ISIS raid (Q.97).
47. The appellant claimed he would be recognised if he went to Kirkuk and would then be at risk but notwithstanding that claim he accompanied Jamal to Kirkuk to sell the car. Given that there was no

need for him to go with Jamal, the journey would appear to be an unnecessary risk and undermines the claim that he would be in danger if he showed his face there. His regular visits to hospital in Kirkuk also appear to have caused him no problems. Moreover, as he claimed it was his appearance that would lead to his recognition, changing his name whilst he worked at the garage in Kirkuk (for some ten month)s would have offered little if any protection.

48. The appellant gave contradictory evidence over whether the people allegedly seeking him out came to his place of work or made telephone calls to him there. He also contradicted himself over where he had been reunited with Jamal; whether they had met up at a pre-arranged house or on the roadside by the woods. He gave discrepant evidence over whether Jamal's mother's house had been targeted, over whether he had ever been there and whether he knew where the house was situated. He was also contradictory over where he had been living in the year prior to departure. At his screening interview, he claimed to have lived in his home village until 2016 (he left Iraq in January 2016) but he later claimed at his asylum interview that he had been living away from home since the death of his parents a year earlier. His claim that he only attended school for a year as a very young child is undermined by his ability to attend a college in the UK and study IT, English, Maths and Computing.
49. Even allowing for the appellant's youth, his alleged lack of education, cultural differences and any difficulties arising as a result, there are simply too many serious contradictions over simple matters which the appellant could be expected to remember. All these inconsistencies lead me to conclude that the claim over being sought by two enemies of his father is a fabrication. I do not, therefore, find that there would be any risk to the appellant from these unknown men. The claim of imputed political opinion has not been made out.
50. There are also serious inconsistencies over the appellant's account of his departure and events immediately leading up to it.
51. At interview, the appellant claimed that the agent who helped him leave was arranged the same day that he (the appellant) received the call from Jamal to meet him (Q.98). In his evidence to me, he said it was about 4 days after he got back to Jamal's house. He gave inconsistent statements about when and how the funds for his travel were raised and he contradicted himself about whether or not he used a passport or travel documents during his journey. His claim that he had been under the control of the agent is undermined by the evidence from the German authorities that he made an asylum application in Germany and that he had a passport which was retained.

52. I also have concerns over whether the appellant has told the truth about having no contact with his brothers. He was very evasive when questions were put to him about them (see paragraphs 9, 10 and 15) and questions had to be repeated several times but still achieved little in the way of coherent answers. It is difficult to accept that the appellant would have forgotten where his brothers said they were living when they are, according to his evidence, the only living relatives he has. It is also difficult to accept that during the 10 months they were living apart from each other after the death of their parents that they would make no contact particularly when the appellant was working in order to send them money for support and when they both had access to mobile phones. Although the appellant claimed not to know how to use one to make outgoing calls, this is difficult to believe especially when he was used to making calls for a taxi to take him to and from hospital every 18 days and when he obtained a "better phone" for his journey so he could use the internet. Even more inexplicable is the claim that although the appellant and his brothers did eventually speak before the appellant left Iraq, he did not keep a note of their mobile telephone number or ask Jamal for it.
53. I take account of what has been said about contact with the Red Cross and I have had regard to Mr Calder's evidence and the Red Cross letters. The fact remains, however, that the appellant could have been much more expansive in the information provided to the Red Cross. He only gave them the name of Jamal's cousin's village but for reasons which he could not satisfactorily explain he did not provide the details of the home village or Jamal's village. He claimed this was because he only "knew" the cousin's address but as it transpired that the address amounted to no more than the name of the village, it is not explained why Mullah Abdullah and Topzawa were not mentioned to the Red Cross. It may be that the appellant was instructed to remain vague and give out no information so as to increase his own chances of a successful asylum claim. Certainly, the appellant's distress when speaking about leaving his brothers appeared to be genuine and I have no doubt he misses them but it does not follow that he left in the circumstances claimed or that he has no knowledge of their whereabouts or has no contact with them. For the reasons I have given, I do not believe that the appellant left for the reasons claimed or in the manner claimed. I do not accept that there is no contact between the appellant and his brothers.
54. When assessing the asylum claim, I therefore conclude that the account of fearing two men who blamed the appellant's father for the deaths of their relatives is a fabrication. I find that the appellant was not in danger from them or anyone else when he left Iraq. I find that there is still contact between the appellant and his brothers. That is not, however, the end of the matter. As the respondent has not disputed the appellant's claim of being an orphan, I must proceed on the basis that the only relatives the appellant has in Iraq are his two brothers. Even though I have found that the appellant knows where they are, they are younger than him and would not be in any position

to assist him to obtain CSID documents. No issue has been taken with the fact that the appellant has no identity documents with him. Nor is it suggested that he has some in Iraq and could access them. Whilst there is confirmation from the German authorities that they have retained his passport, which no doubt could be used to obtain CSID documents, until it is obtained from them the appellant is without any documents.

55. I now apply the guidance given in AA (Iraq) [2017] EWCA Civ 944 to the facts of this case as per my findings. As the appellant is not from the IKR, he would be returned to Baghdad. It is not suggested that he has any form of support there or that he has ever been there. As an adolescent, not yet 18, of Kurdish ethnicity, a mainly Kurdish Sorani speaker and with a medical condition that requires regular treatment, I find that it would not be safe for the appellant in Baghdad. I do not find that it would be reasonable for the appellant to relocate there. He is without a CSID, he has only a basic smattering of Arabic, he has no family or friends there, he is from a minority community and there is no suggestion that he would be able to find a sponsor in order to access accommodation. Mr Staunton suggested that the appellant could make his way to Kirkuk, no longer a contested area, or Irbil, but it is unclear how someone in the appellant's position would be able to do that. I accept that notwithstanding the fabricated case put forward, he is a vulnerable young person. It would not be feasible for him to make arrangements for a flight to the IKR where he has never been and has no support and, indeed, he would be unable to travel without a CSID (5.4.7 Home Office Country Policy and Information Note).
56. With respect to the issue of a CSID, which I have touched on above, I accept that this is not needed to enter Iraq however, as Mrs Mustapha emphasised in her submissions, it is required to access financial assistance from the authorities, employment, education, housing and medical treatment. The appellant does not have one and I have already found that his two young brothers would not be able to assist him to obtain one. Unless he were to obtain his documents from the German authorities, the chances of obtaining a CSID having entered Iraq are very slim. Moreover, given the accepted destruction of his home area, it is unlikely, even if he made it home, that there would be any accessible local records. On that basis, therefore, I find that the appellant cannot be returned to Iraq. His article 3 claim is made out.
57. Mrs Mustapha made no separate submissions on humanitarian protection and indeed the evidence does not suggest that there is any armed conflict at the present time in Kirkuk.
58. No reliance was placed on article 8.

Decision

- 59. The appeal is dismissed on asylum grounds.
- 60. The appeal is allowed on article 3 grounds.
- 61. The appeal is dismissed on humanitarian protection grounds.

Anonymity

- 62. No anonymity order was made by the First-tier Tribunal and no request for such an order was made before me.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 9 October 2017