Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06163/2017

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunals, Liverpool	**Decision & Reasons Promulgated**
On 13th August 2018	**On 25th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

DANA [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Wilkens (Counsel)
For the Respondent: Mr M Diwnycz (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Alis, promulgated on 4th August 2017, following a hearing at Manchester on 26th July 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was

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granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant, a citizen of Iraq, appealed against the decision of the Respondent dated 13th June 2017 refusing his application for asylum and human rights protection under paragraph 339C of HC 395. The basis of the Appellant's claim is that he is a Sunni Kurd, who speaks Kurdish Sorani, and has limited knowledge of Arabic. He was born in Kirkuk where he lived with his family until around 2003. This is when he and his family moved to Adhbah, in the Nineveh province. His village was close to Mosul. His father had worked for the Ba'ath Party. Around November 2016 Daesh came to his village and tried recruiting young males. They knocked on all the houses and took details of who was there. Two days later, the Appellant, his mother and his sister fled the village. They went to Turkey. They remained for five weeks. From there, the Appellant came to the UK. He now claims that he cannot return to Kirkuk or to Adhbah because these are "contested areas". He cannot relocate to the IKR because he does not have the means of support and his father was a member of the Ba'ath Party and harmed the Kurdish so would be unable to return to the IKR. He would face persecution from the Peshmerga.

The Judge's Findings

3. The judge observed that the Appellant's fear of persecution from Daesh was based on the fact that they had entered his village in November 2016 and forcibly recruited young men. The judge found that it was surprising that the Appellant himself was not forcibly recruited, although the judge accepted that for a short period of time Daesh did recruit people in the village (paragraph 49). The judge also observed that as recently as the end of June 2017 it has been reported by numerous news sources that Daesh has been defeated in their final stronghold of Mosul and this was the last place in which they had a presence in Iraq (paragraph 52). The judge held that the Appellant was not entitled to protection especially in the light of the fact that Daesh were no longer there (paragraph 53).

4. The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the judge wrongly departed from established country guidance in **AA (Article 15(c)) Iraq [2015] UKUT 544** and the case of **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**. The judge failed to identify what country evidence provided "very strong grounds supported by cogent evidence" that entitled him to depart from country guidance. All that the judge had done was to refer vaguely to news reports in the public domain without identifying them. The Respondent did not submit that evidence nor rely on it. In fact, there was no evidence before the judge that supported his evidence (at paragraph

52) that Daesh no longer has a presence in Iraq. Accordingly, the judge wrongly found that the Appellant can internally relocate to the IKR.

6. On 12th December 2017, permission to appeal was granted by the Tribunal, on the basis that it was arguable that the judge failed to identify any particular evidence relied upon to displace the established country guidance. The judge also failed to assess the durability of the situation in Iraq upon which he based the dismissal of the appeal.

7. On 17th January 2018, a Rule 24 response was entered by the Respondent to the effect that the Appellant had failed to demonstrate why internal relocation to the IKR would not be possible. The judge had given clear and concise reasons as to why the appeal could not succeed (see paragraphs 66 to 71) and that internal relocation to the IKR would not be unreasonable. The Appellant was 32 years of age and in good health and it was clearly open to the judge to find that he would not need his family to support him in Iraq.

Submissions

8. At the hearing before me on 13th August 2018, Miss Wilkens, appearing on behalf of the Appellant, relied upon the grounds of application. The judge needed to show that there was evidence of "very strong grounds supported by cogent evidence" if country guidance was to be displaced. The country guidance established that both Mosul and Kirkuk were contested areas. Second, internal relocation was wrongly dealt with by the judge, because the judge failed to deal with tribal issues and employment issues. The official position of the Respondent Secretary of State is that enforced return is only to Baghdad, which would mean that the Appellant would need a CSID, which he had left in his home village, and it was unclear what had happened to it, but the judge does not deal with this issue at all. The judge has to consider the availability of CSID, whether from family or friends, or otherwise.

9. For his part, Mr Diwnycz submitted that he would rely upon the Rule 24 response dated 17th January 2018. He submitted that at the date of the hearing, there were no international flights to Erbil and Sulaimaniya, but they had now been reinstated as of 28th March 2018. Even so, he accepted that enforcement proceedings only apply with respect to returns to Baghdad. He would have to accept also that the refusal letter therefore made it clear that the Appellant could return to the IKR, but without considering whether a CSID would be available to him, once he had arrived back in Baghdad. The judge did not consider this question.

10. In reply, Miss Wilkens submitted that the Appellant does not have connections in the IKR. He does not have any work experience. He would not be able to seek employment there. He has lost touch with people.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

12. First, as Miss Wilkens makes clear in her detailed and helpful skeleton argument, the judge does not point to any "very strong grounds supported by cogent evidence", such that it enables him to depart from the country guidance given in **AA (Article 15(c)) Iraq [2015] UKUT 544** as well as **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018**. The judge also does not give consideration to **AA (Iraq) [2017] EWCA Civ 944**. A reliance upon other evidence, on the basis that it is "openly reported within the public domain" (paragraph 52) is insufficient to displace the requirement that country guidance is to be followed.

13. Second, the judge does not give consideration to the Appellant's ability to procure a CSID card. These issues have been important, particularly since the 2017 case of **AA (Iraq)**, which has now been refined by the more recent case of **AAH (Iraq) [2018] UKUT 212**, which was not available at the time of the hearing or the decision, being promulgated only more recently on 26th June 2018, but which is relevant to the issue of the CSID when it falls to be reconsidered again by a judge other than Judge Alis.

14. Accordingly, although I make a finding on an error of law, I do not proceed to re-make the decision, because this matter must return back to a judge other than Judge Alis under Practice Statement 7.2(b) so that the position of the Appellant with regard to the availability of a CSID card (which is not to be confused with the possession of a laissez-passer) can be considered properly upon the evidence.

Notice of Decision

15. The decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be heard by a judge other than Judge Alis, pursuant to Practice Statement 7.2(b) of TCEA 2007.

16. No anonymity direction is made.

17. This appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd September 2018