



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

Appeal Number: PA/10749/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 12 March 2018

**Decision & Reasons
Promulgated
On 30 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**O O A
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole, Parker Rhodes Hickmotts Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, OOA, is a citizen of Iraq born in 1986. By a decision promulgated on 29 November 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for reaching that decision were as follows:

1. The appellant, OOA, is a male citizen of Iraq who was born in 1986. He arrived in the United Kingdom in April 2016 and claimed asylum. By a decision dated 22 September 2016, the Secretary of State refused to grant the appellant asylum. The appellant appealed to the First-tier Tribunal

(Judge Myers) which, in a decision promulgated on 7 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is a Kurdish male from Kirkuk. The judge found that the appellant would be at risk of serious harm in his home area. The appeal turned on the question of internal flight within Iraq. At [29], the judge found:

“In the appellant’s case, he gave evidence that he has a CSID which he left at home but it was not possible for his family to send this to him. There was no evidence submitted on his behalf to support this contention and, although the respondent has accepted in paragraph 37 of the reasons for refusal that at present return is not feasible, there is no reason why he could not provide a copy of the CSID to enable the Iraqi Embassy to provide him with a passport or laissez passer.”

3. Later in the decision [32], the judge addresses the question of the appellant obtaining a CSID from the consular section of the Iraqi Embassy in London. She noted that, “if the authorities in the IKR [Independent Kurdish Region) considers [the appellant] for return he should be able to provide his family registration details by contacting his family who are still in Kirkuk”. At [33], the judge noted that it may be difficult for the appellant to be returned to the IKR as she does not originate from that area. However, she repeated that she had found that it was “not unduly harsh for the appellant to be returned to Baghdad and I dismiss the appeal on humanitarian protection grounds”.

4. It would appear to be the case that this appellant would be returned to Baghdad given that he is not originally from the IKR. His ability to live in Baghdad would, even in the short term, depend upon his possession of a CSID. It would appear that the judge’s finding at [33] that the appellant could be returned to Baghdad is predicated on the appellant obtaining a CSID before he travels to Iraq. I find it was open to the judge to find that the appellant had failed to prove that his family would not assist him in locating and returning to him his CSID which he left in Iraq. However, I find [29] unsatisfactory. It is not clear why the judge has not addressed the possibility of the appellant’s family finding the CSID card where he had left it and then sending the original to him in the United Kingdom. That may indeed be impractical given the security difficulties. The paragraph is puzzling also because the judge seems to believe that, even if he could not obtain the original CSID, he would be able to obtain a copy of the document which he would use at the Iraqi Embassy in London to obtain a passport or laissez passer (or, presumably, a fresh original CSID). It is not at all clear from the judge’s reasoning how that copy of the CSID is to be obtained by the appellant. It is possible that the judge considered that, whilst it may be impossible to send the original CSID to the United Kingdom, a copy in the form of a photograph on a phone or similar device might be taken and transmitted by email to the appellant. However, if that is what the judge meant to say, then it is not clear why she has not said it. It is not for the Tribunal to fill in the gaps in a First-tier Judge’s reasoning. I find the judge’s handling of the question of internal flight and, in particular, the likelihood of the appellant obtaining a CSID before he travels to Iraq to be problematic; the reasoning is not as clear as it should be.

5. In the circumstances, I set aside the decision. I preserve all the judge's findings in respect of the appellant's asylum claim which are contained in the decision at [19-26]. The appeal will remain for determination in the Upper Tribunal following a resumed hearing. The only issue remaining is that of internal flight. Both parties may adduce evidence on that issue provided they send copies of the evidence to the other party at least ten days prior to the resumed hearing. Copies of any documents exchanged in this way should also be filed at the Upper Tribunal. I will, in particular, be seeking to determine whether or not the appellant can obtain a CSID before travelling to Iraq. In that regard, I see no reason to revisit the judge's finding that no evidence has been submitted to support the appellant's contention that his family cannot send the CSID to him. Whether the family is prevented from so doing because there is no postal service operating out of Kirkuk remains to be determined. I shall also seek to clarify whether, if an original document cannot be sent in the post, a copy may be taken of the CSID in the manner which I have described above. If that is the case then I would also expect to receive evidence which might indicate whether the Iraqi Embassy in London would, on the strength of a copy CSID, issue a new document or laissez passer to the appellant.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 7 March 2017 is set aside. The findings of fact at [19-26] are preserved. The appeal will be heard in the Upper Tribunal before Upper Tribunal Judge Lane which will remake the decision following a resumed hearing in Bradford on a date to be fixed.

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 their 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.

2. At the resumed hearing at Bradford on 12 March 2018, the appellant adopted a supplementary statement. There was no cross-examination of the appellant. After I heard the submissions of both representatives, I reserved my decision.
3. I find that the appeal should be allowed. The unchallenged evidence of the appellant in his supplementary statement is that he has no CSID in his possession, the agent having returned it to Iraq. The appellant's family in Iraq now claim that the passport and the CSID were never returned to them by the agent. Mr Diwnycz, for the Secretary of State, did not dispute that claim. The appellant will be returned to Baghdad where, as a Kurdish male, he will find conditions unduly harsh in the short or longer term. He cannot fly directly into the IKR. I have no evidence before me to show that he could gain access to the IKR even if such a flight were available. He could apply for a CSID whilst in Iraq, but whilst he applies for such a card, he would be exposed to risks. He cannot travel overland from Baghdad to

the IKR without a CSID as he will be unable to pass through numerous checkpoints.

4. The appellant's evidence and that of his family regarding the disappearance of the CSID has changed the circumstances of this appeal. I stress that the new evidence has not been challenged by the Secretary of State. In the circumstances, I accept Mr Cole's submission that this appellant will be exposed to risk and that he cannot exercise the option of internal flight to Baghdad nor can he rule out real risk to himself remain in Iraq whilst he either obtains a card or seeks to gain access to the IKR. It follows that, whilst his continued residence in the United Kingdom may prove to be relatively brief should circumstances in Iraq change, his appeal must be allowed.

Notice of Decision

The appellant's appeal is allowed on humanitarian protection grounds.

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

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Signed

Date 20 APRIL 2018

Upper Tribunal Judge Lane

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

Signed

Date 20 APRIL 2018

Upper Tribunal Judge Lane