



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11040/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11th June 2018

Decision & Reasons Promulgated
On 19th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[R P]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer
For the Respondent: Mr A Burrett, Counsel instructed by Turpin & Miller LLP

DECISION AND REASONS

1. Although this is the Secretary of State's appeal, I shall refer to the parties by their original status before the First-tier Tribunal for ease of comprehension. The Secretary of State appeals against the decision of First-tier Tribunal Judge Juss allowing the Appellant's appeal on the basis of Article 3 and Article 8 in respect of a decision made by the Respondent on 13th October 2017. The decision of Judge Juss was promulgated on 20th March 2018. The Secretary of State appealed against that decision and was

granted permission to appeal by First-tier Tribunal Judge Hodgkinson in the following terms:

“The grounds argue that the Judge erred as follows: Ground 1, in making a material mistake of fact with reference to the identity documentation available to the Appellant; Ground 2, having rejected the facts of the Appellant’s asylum claim, in failing to give adequate reasons why the Appellant could not rely upon familial support, or her husband’s support, on return to Iraq. For the reasons stated in the grounds, [21] of the Judge’s decision being the most pertinent paragraph relating thereto, it is arguable that the Judge erred in law in his assessment of the Appellant’s ability to return to Iraq. Permission is granted on the grounds as pleaded.”

2. I was not provided with a Rule 24 reply by the Appellant’s representative but was addressed by her Counsel in submissions whom indicated that the appeal was resisted.

Error of Law

3. At the close of the hearing I indicated I had reserved my decision which I shall now give. I do not find that there is a material error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
4. In support of the grounds, Ms Pal effectively argued that the findings by the First-tier Judge at paragraph 21 did not show an awareness of the identity documentation held by the Appellant. However, as I pointed out to Ms Pal, the third sentence of paragraph 21 of the Judge’s decision states that “the Appellant can technically speaking, return but will need a CSID, even if she currently has an Iraqi ID” [my emphasis]. In that respect, I find the judge was plainly aware that the Appellant held an Iraqi ID card and the submission in the grounds that the judge failed to give consideration to the fact that the Appellant was in possession of her Iraqi ID card and the details from the Appellant’s family page book, is plainly incorrect as the judge was aware at least of the Iraqi ID card (which is a far more substantial document than the details from the family page book relied on by the Respondent in her bundle). Furthermore, Mr Burrett argued that as the Appellant did not possess a passport, an ID card was relevant to the assessment of her risk on return in respect of her needing to obtain a CSID which was discussed in the recent decision of the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944 which the Judge also discussed. In that decision the unanimous judgment of the Court of Appeal was that the appeal presented an unusual situation which the Country Guidance cases did not address, namely whether an Appellant could on return obtain an Iraqi civil status identity document (“CSID”).
5. In that respect the parties relied on various passages of the Court of Appeal’s judgment and its annex. For the Secretary of State Ms Pal relied upon paragraphs 17-21 of the annex and for the Appellant Mr Burrett relied upon paragraphs 9-11 and 15 of the annex. Both parties agreed that [38] to [39] of the judgment were relevant in that those passages highlighted that in respect of a CSID it is not a document that can be used to

merely achieve entry to Iraq but rather it was an essential document for life in Iraq and for the practical purposes necessary for those without private resources to obtain access to food and basic services. The judgment further stated that a CSID cannot be automatically acquired after return to Iraq and that if an individual could acquire a passport without possessing or being able to obtain a CSID, an enquiry would need to be established whether the individual would have other means of support in Iraq in the absence of which it would result in a breach of their Article 3 rights.

6. With that in mind, turning to Ground 2 which formed the brunt of the submissions made on behalf of the Secretary of State, Ms Pal submitted that the judge had not assessed whether the Appellant could rely upon her family support from Erbil. Ms Pal accepted that Baghdad was the correct point of assessment for the risk on return in respect of Article 3 but nonetheless submitted that given that the judge had found that the Appellant's family was not estranged she could have the support of her own family in Erbil as well as the support of her in-laws as stated in the Grounds of Appeal. In respect of the Appellant's in-laws, as stated by the Appellant in the Asylum Interview Record at AIR 183-184, the Appellant's father-in-law is deceased and her mother-in-law is bedridden and they are both located in Erbil. In my view the bedridden mother-in-law would not be able to provide any practical support to the Appellant such that it would alleviate her need for a CSID card and her basic needs. In respect of the Appellant's own family, they are also located in Erbil and whilst they are not estranged from her, Mr Burrett did correctly point out that when the Appellant was living in Iraq with her husband they were living together *away* from both of their families and therefore the Appellant would not be returning to the same *status quo* of living with either her own family or her in-laws in Erbil but she would be returned to Baghdad which was the point at which the First-tier Tribunal should assess the risk on return to her in her inability to obtain a CSID.
7. With that in mind I observe that the annex to AA (*Iraq*) from the Court of Appeal which contains the guidance given by the Court of Appeal for lower courts moving forwards, does state in paragraphs 9-11 *inter alia* that a CSID is generally required for an Iraqi to access financial assistance from the authorities, employment, education, housing and medical treatment and if there are no family or other members likely to be able to provide means of support a person is generally likely to face a real risk of destitution amounting to serious harm if by the time any funds provided by the Secretary of State have been exhausted. As an aside, I note Ms Pal was unable to tell me whether the Secretary of State would provide any funds or not and with that in mind the Appellant's predicament might foreseeably be even worse than expected given that the First-tier Judge found that she would not have any support in Baghdad and given that she also may not have any funds provided to her by the Secretary of State.
8. Furthermore, according to paragraph 10 of the annex, if a person does not have a CSID or a passport such as this Appellant the person's ability to obtain a CSID may depend upon whether the person knows the page and volume number of the book holding their information and the person's ability to persuade officials that they are the same person named on that relevant page will depend upon family members or other individuals. There is no evidence that the Appellant knows the page and volume

number of any book potentially holding her or her family's information. Furthermore, the ability to obtain a CSID is likely to be severely hampered if the person cannot go to the Civil State Affairs Office of the governate for their area. Mosul, which is not far removed from Erbil, has had its alternative CSA office established in Baghdad. However, the difficulty that arises with that CSA office is that the central archive which exists in Baghdad does not seem to be able to provide CSIDs to those in need of them in practical terms as confirmed by the Court of Appeal's annex. It is said that there is a national status court in Baghdad which one could apply for, for formal recognition of identity, but it is unclear how the court operates. That is as far as the Court of Appeal goes in assessing the ability to obtain a CSID in respect of those from the northern region of Mosul or Erbil, and in light of that guidance, in my view the Judge has not erred in his assessment that the Appellant will be unable to obtain a CSID given that the CSID will need to be obtained in Baghdad and this Appellant does not have any family support in Baghdad, but solely in Erbil.

9. I am further fortified in my decision as paragraph 15 of the annex states that in assessing whether it will be unreasonable or unduly harsh for a person to relocate to Baghdad, a relevant factor would be, according to paragraph (c), whether the person has family members or friends in Baghdad that are able to accommodate him. As paragraph 15 of the annex and its subparagraphs indicate, the assessment of relocation is entirely premised upon it being to Baghdad (as opposed to Erbil) and consequently, with that in mind, the judge's consideration of the support available to the Appellant is not flawed in that the evidence before the First-tier Tribunal showed that she did not have family or any other support in Baghdad anyhow.
10. Finally, I observe that the appeal was not challenged on Article 8 grounds in any event as accepted by both parties and consequently even if there had been an error of law revealed in respect of Article 3, it would have been immaterial to the ultimate outcome of the appeal given that the appeal succeeded on human rights grounds on the basis of Article 8 also in respect of the Appellant's child and Section 117B(6) of the 2002 Act being met.
11. Therefore, in light of the above findings, the Secretary of State's appeal against the findings of the First-tier Tribunal do not reveal material errors of law such that the decision should be set aside and the appeal to the Upper Tribunal is dismissed.

Notice of Decision

12. The appeal to the Upper Tribunal is dismissed.
13. The decision of the First-tier Tribunal is hereby affirmed.
14. No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Saini

Date