



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02932/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 29<sup>th</sup> October 2018

Decision & Reasons Promulgated  
On 31<sup>st</sup> January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

SK  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss. G Patel, Counsel instructed by Oakmount Law Solicitors

For the Respondent: Mr. C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Garratt promulgated on 26<sup>th</sup> June 2018. The FtT Judge dismissed the appellant’s appeal against the respondent’s decision of 1<sup>st</sup> February 2018 refusing his claim for international protection.

2. There was no application for anonymity before First-tier Tribunal (“FtT”) Garratt. An anonymity order had however previously been made by FtT Judge Burnett. Although no application is made before me, the appeal concerns a claim for asylum and international protection and in my judgement it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. SK is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.
3. It is common ground that the appellant is a national of Iraq. His immigration history is set out at paragraphs [1] to [3] of the decision of the FtT Judge. For present purposes it is sufficient to note that the appellant arrived in the United Kingdom on 7<sup>th</sup> August 2015 and claimed asylum. The claim was refused and an appeal against that decision was dismissed by FtT Judge Burnett for the reasons set out in a decision promulgated on 24<sup>th</sup> November 2016. The appellant then made further submissions to the respondent, who, for the reasons set out in a decision dated 1<sup>st</sup> February 2018, again refused the claim for protection. It was that decision that was the subject of the appeal before the FtT Judge.
4. Before turning to the decision of FtT Judge Garratt, it is useful to note the findings previously made by FtT Judge Burnett. At paragraph [35] of his decision, FtT Judge Burnett notes that the respondent accepted that the appellant was from Kirkuk, a contested area, and that he is an ethnic Kurd. FtT Judge Burnett found, at [36], that the appellant is at risk of persecution in Kirkuk on the basis of his religious beliefs and on the basis that he does not support the ISIS movement. The FtT Judge referred to the country guidance set out in AA (Article 15 (c)) Iraq CG [2015] UKUT 00544 (IAC) and noted that that decision was the subject of an appeal before the Court of Appeal. At paragraph [45] of his decision, FtT Judge Burnett stated:

“45. The appellant in this case: he speaks Arabic among other languages; he is Male; he is a Kurd. He has no family support. The appellant has made no attempt to obtain a document from the Iraqi Embassy in London. This might be considered a "Bradshaw point" like in a stateless claim. (In short-A person who

makes no efforts to obtain a National document cannot show that they are stateless.)”

5. FfT Judge Burnett went on, at paragraphs [47] to [49], to conclude as follows:

“47. ... The appellant would encounter great difficulties in relocating to Baghdad, but in my judgment the level of risk and circumstances are not sufficient to cross the threshold required.

48. In the circumstances of this case, I consider that it is reasonable to expect the appellant to relocate to Baghdad. Any risk to the appellant is intertwined with the ability to get a CSID. The appellant will not be returned without any documents. With such documents it will not be unreasonable for him to relocate. I note he speaks Arabic and he has some skills which he could engage in order to survive. I consider it would not be unduly harsh for him to relocate, if it is feasible for him to return. He returned in 2011 and survived in Iraq for a number of years.

49. Considering the same factors as set out above, ability to obtain employment, language abilities and family support, I consider it would be reasonable to expect him to relocate to the IKR. I therefore dismiss the appeal on asylum grounds.”

#### The decision of FfT Judge Garratt

6. FfT Judge Garratt outlines the appellant’s claim as set out in the further submissions to the respondent, at paragraph [4] of his decision. The Judge notes that:

“... It was argued that there had been a significant change in the general situation in Iraq and the appellant’s personal circumstances had altered significantly. In particular, the appellant had no identity documents and had spent a considerable time in the United Kingdom and so would be at real risk owing to the high levels of violence throughout the country. Further, the appellant had no-one in Iraq who could assist him with his return or to accommodate him. He also could not speak Arabic sufficiently to communicate and live a life in an area of Arabic speaking people. He would also face discrimination as a Sunni Muslim and a Kurd.”

7. The Judge sets out the evidence that he received at paragraphs [11] to [22] of his decision, and the parties submissions at paragraphs [23] to [27] of the decision.
8. The FfT Judge’s findings are set out at paragraphs [34] to [42] of the decision. As there had been a previous decision of the FfT, FfT Judge Garratt referred to, and followed the *Devaseelan* guidelines. FfT Judge Garratt noted at paragraph [34] of his decision, that the findings of FfT Judge Burnett as to whether the appellant has any family remaining in Iraq, are not entirely clear. He referred to the apparent

inconsistency between paragraphs [45] and [49] of the decision of FfT Judge Burnett. At paragraph [35] of his decision, FfT Judge Garratt States that he was dissatisfied with the evidence of the appellant about the claimed disappearance of his relatives in Iraq. He states:

“35. In my conclusion the appellant has not shown that he has no relatives in Iraq, or for that matter, other contacts, in that country. In the latter respect I bear in mind that the appellant has also said that he tried to make enquiries of the whereabouts of his relatives through others returning to Iraq. It follows that those individuals would be known to him and could act as a point of contact.”

9. FfT Judge Garratt noted the evidence of the appellant regarding the four years that he had spent in Iraq between 2011 and 2015. The appellant’s evidence, as recorded at paragraph [18] of the decision, was that when he left Norway to return to Iraq he still had his Iraqi passport, a work permit, identity card, and an Iraqi driving license. The appellant’s evidence, as recorded at paragraph [19] of the decision, was that he had remained in possession of his identity documents when he left Iraq in 2015, but they were taken away from him by an agent in Turkey. The appellant had claimed that he had been in contact with the Iraqi Consulate in Manchester, in writing, and the Consulate had called him by telephone. He claimed that he had informed the Consulate that he had no Iraqi identity cards, and he was told that without any identity papers, they could not help him.
10. At paragraphs [36] and [37] of his decision, FfT Judge Garratt, noted that the appellant has provided no evidence to satisfy the Judge, even to the lower standard, that he has made any enquiries of the Iraqi Embassy or its Consulate in Manchester, putting forward details of his possession of identity documents when he returned to Iraq, and subsequently left the country again. At paragraphs [38] to [40], FfT Judge Garratt concluded as follows:

“38. The appellant claims that, if returned to Iraq, the general situation in either Baghdad or his home region of Kirkuk would, having regard to his personal circumstances, be such as to put him at risk of serious harm. I am unable to agree. The appellant is a resourceful individual who has already returned to live in Iraq after claiming asylum in Norway. He is young and employable. Although, if returned to Iraq, he will be identifiable as a Sunni Muslim and Kurd, I conclude that it will be possible for him to obtain a CSID reasonably soon after arrival in Iraq (even if he does not already have identity documents to facilitate his return).

In reaching this conclusion, I take into account the finding of the first Judge that it would be reasonable to expect the appellant to relocate to Baghdad having regard to his personal circumstances. Despite the appellant's evidence before me, I can see no change to his situation from the time of the first decision to the present.

39. If the appellant is returned to Baghdad it will also, I conclude, be possible for him to find his way to his home region of Kirkuk. In that respect I bear in mind that it has not been shown that the appellant will be without assistance from relatives in the country or others who can help him. Whilst the appellant's representatives have produced information which suggests that the situation in southern Kirkuk and particularly the Daquq town remains unstable, the appellant's personal circumstances lead me to conclude that he could safely live in other parts of Kirkuk. He would be assisted, on return, by the respondent's resettlement package which will give him the funds to move location, seek employment and obtain any other necessary documentation.

40. Further, it is my conclusion that the appellant, as a Kurd, would be able to take advantage of short-term entry into the IKR where he would be able to obtain employment and extend his stay. In reaching that conclusion I have also had regard to the conclusions in AA (Iraq) about the entry requirements for the IKR."

### Error of Law

11. The appellant advances three grounds of appeal, although there is some overlap between the first two grounds. First, the FfT Judge erred in his approach to the determination and findings previously made by FfT Judge Burnett. FfT Judge Garratt considered that the "... findings of the first judge in this case, are not entirely clear in relation to the appellant's family remaining in Iraq", but in reaching that conclusion, the Judge failed to have regard to paragraphs [40], [43] and [45] of the decision of FfT Judge Burnett, in which he had clearly found that the appellant does not have family remaining in Iraq. Applying the *Devaseelan* guidance, as the Judge claims to do, there was no good reason to depart from that finding. Second, FfT Judge Garratt erred in his assessment of the credibility of the appellant's account regarding relatives in Iraq. Quite apart from the fact that there was no good reason to depart from the previous finding made by FfT Judge Burnett, the appellant had maintained that he believes that his sister and brother-in-law were killed and the failed searches for them, in fact demonstrate that he has no family to return to. It was irrational for FfT Judge Garratt to conclude that the appellant could approach random contacts, whose whereabouts details and own resources were not at all considered by the Tribunal. It was

common ground that the appellant's home the area is in a contested area, and that the area was attacked by ISIS. In reaching his decision, FfT Judge Garratt failed to consider the likelihood of the family having been killed or displaced in light of that background. The Judge also erred if his assessment of the appellant's evidence as to the approaches made to the Manchester Consulate. Finally, it follows from the erroneous findings, that the Judge failed to properly address the risk upon return.

12. Permission to appeal was granted by FfT Judge Haria on 27<sup>th</sup> July 2018. The matter comes before me to consider whether the decision of FfT Judge Garratt involved the making of a material error of law, and if so, to remake the decision.
13. On behalf of the appellant, Miss Patel submits that FfT Judge Burnett had made clear findings regarding the appellant's lack of family in Iraq. She submits that at paragraph [49] of his decision, FfT Judge Burnett simply referred to relevant factors having previously found, at [40], that the appellant does not have family that remain in Iraq, that could be approached to assist with obtaining an ID document. She submits that it was not properly open to FfT Judge Garratt to go behind that finding of fact. In any event she submits, FfT Judge Garratt did not properly engage with the country guidance, and at paragraph [38] of his decision, FfT Judge Garratt failed to consider how the appellant would obtain the necessary ID documents. She submits that applying the country guidance in AAH (Iraqi Kurds - Internal relocation) Iraq CG UKUT 00212 (IAC), it is clear that the appellant could not obtain the necessary CSID document because he has no male family members that could assist him. She submits that removal would be to Baghdad, and the appellant would be unable to safely travel from Baghdad to the IKR without a CSID document.
14. In reply, Mr Bates submits that the previous findings of FfT Judge Burnett are, as FfT Judge Garratt noted, unclear insofar as the appellant's family is concerned. FfT Judge Garratt had proper regard to the lack of clarity regarding that issue and it was open to FfT Judge Garratt to resolve that matter in the way that he did. He submits that the key issue in the appeal was whether the appellant can internally relocate to the IKR and whether he could obtain the necessary CSID document.

15. I reject the claim that it was not open to FfT Judge Garratt to reconsider the issue about the claimed disappearance of the appellant's relatives in Iraq. I have carefully read the decision of FfT Judge Burnett.
16. FfT Judge Burnett noted at paragraph [35] of his decision, that the appellant claimed that his family had been killed. At paragraph [40] of his decision, it is correct to note that in addressing the question as to whether the appellant has any form of ID documents, FfT Judge Burnett states "*... He does not have family that remain in Iraq who could possibly be approached to assist with this.*". In that paragraph, FfT Judge Burnett appears to be addressing the submission made by the respondent, that the appellant's return to Iraq is feasible. FfT Judge Burnett does not state whether he accepts or rejects the appellant's evidence that his family had been killed. If the evidence had been accepted, FfT Judge Burnett does not explain why that evidence was accepted. He does not for example, say that he had found the appellant to be entirely credible.
17. At paragraph [43] of his decision, FfT Judge Burnett states "*... I note though that the appellant does not have family in Iraq. He stated that his family have been killed...*". Again, having noted the evidence of the appellant, the Judge does not state whether he accepts or rejects the appellant's evidence that his family had been killed. At paragraph [45] of his decision, FfT Judge Burnett appears to set out what he considers the profile of the appellant to be. He states "*... He has no family support ...*", but that is then at odds with what is said at paragraph [49]. Paragraphs [48] and [49] of the decision of FfT Judge Burnett must be read together. In addressing whether it is reasonable to expect the appellant to relocate, the Judge noted that any risk to the appellant is intertwined with the ability to get a CSID. In considering the relevant factors, at paragraph [49], FfT judge Burnett refers to the appellant having "*family support*".
18. In my judgement, FfT Judge Garratt was right to note that the findings of the first Judge are not entirely clear in relation to the appellant's family. It was open to FfT

Judge Garratt to reach his own conclusions as to whether the appellant has family remaining in Iraq.

19. There is however some force to the appellant's claim, as Mr Bates appeared to accept before me, that *FtT* Judge Garratt did not properly engage with the country guidance, and at paragraph [38] of his decision, *FtT* Judge Garratt failed to consider how the appellant would obtain the necessary ID documents to establish whether internal relocation to the IKR might be possible
20. The Judge referred to the country guidance set out in AA (Article 15(c)) [2015] UKUT 5441 (IAC) as amended by the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944. The Court of Appeal supplemented the guidance provided by the Upper Tribunal. The Court of Appeal confirmed that whilst it remains possible for an Iraqi nation to obtain a new CSID, whether the individual is able to do so, within a reasonable time frame, will depend on the individual circumstances. The Court of Appeal identified relevant factors.
21. For an Iraqi national returnee of Kurdish origin, the key issue is whether the appellant had a CSID card. It remains possible to obtain a new CSID but whether or not the appellant will be able to do so in a particular case, within a reasonable timeframe, will depend on the individual circumstances. Those circumstances include whether he has an existing form of documentation such as a passport, current or expired, or other form of ID. There is also to be considered the presence or location of the civil registry office, whether the office is operational and whether it is within an area of ISIS control. Another issue is whether the appellant has male family members who would be able and willing to attend a civil registry with the appellant with a view to obtaining a CSID card. If he does, he could be safely returned to Baghdad and travel from there to the IKR relatively easily, and certainly without a real risk of suffering persecution, serious harm or article 3 ill-treatment but without one, it would be more difficult.
22. At paragraphs [38] to [39] of his decision, *FtT* Judge Garratt conflates a number of issues and fails in my judgement, to give adequate reasons for his conclusion that the



appellant could remain in Baghdad or find his way to the IKR. In fact, at paragraph [39], FfT Judge Garratt refers to the appellant making “... *his way to his home region of Kirkuk ...*”. That is to ignore the previous findings of FfT Judge Burnett and the country guidance in AA (Iraq) that the internal armed conflict in certain parts of Iraq comprising the governorates *inter alia* Kirkuk, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his presence there, faces a real risk of being subjected to serious harm within the scope of Article 15(c).

23. In my judgement, the decision of FfT Judge Garrett is infected by a material error of law and must be set aside. I must then consider whether to remit the case to the FfT, or to re-make the decision myself. On the same day that the decision of FfT Judge Garratt was promulgated, the Upper Tribunal issued updated country guidance in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC). I do not preserve any of the findings made by FfT Judge Garratt. In reaching my decision, I have also taken into account paragraph 7.2 of the Senior President’s Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

### **Notice of Decision**

1. The appeal is allowed, and the decision of FfT Judge Garrett is set aside.
2. The appeal is remitted to the FfT for a fresh hearing of the appeal with no findings preserved.

Signed

Date 10<sup>th</sup> December 2018

Deputy Upper Tribunal Judge Mandalia

**FEE AWARD**

No fee is paid or payable, there can be no fee award

Signed

Date 10<sup>th</sup> December 2018

Deputy Upper Tribunal Judge Mandalia