Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03048/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 21st March 2019	**On 02nd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

RKH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Greer of Counsel instructed by Broudie Jackson & Canter Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant is an Iraqi citizen of Kurdish ethnicity born [~] 1997. He appealed against a decision of Judge O R Williams (the judge) of the First-tier Tribunal (the FtT) promulgated on 30th April 2018.

2. The Appellant claimed asylum on 18th March 2015 and his claim was refused on 5th August 2015. His appeal was initially heard by Judge Fox on 6th July 2016. He was not found to be a credible witness but his appeal was allowed to the limited extent that it remained outstanding before the Respondent to reconsider a decision made in relation to the Appellant's age, and for the decision in AA (Iraq) CG [2015] UKUT 00544 (IAC) to be considered by the Respondent.

3. The decision of Judge Fox was not appealed by either party, and the Respondent issued a fresh refusal decision dated 7th February 2018. The Appellant appealed against that refusal and his appeal was heard by the judge on 4th April 2018. The judge took findings made by Judge Fox as his starting point and did not find the Appellant's account to be credible. The judge found that the Appellant is of Kurdish ethnicity and originates from Kirkuk. The judge rejected his claim to be at risk from his family, and did not accept that he was a genuine Christian convert.

4. The judge found that because Kirkuk is a contested area, the Appellant could not return there and it would not be reasonable for the Appellant to internally relocate to Baghdad. The judge found that the Appellant did have a reasonable internal relocation option to the Iraqi Kurdish Region (the IKR). The appeal was dismissed on all grounds.

5. The Appellant was granted permission to appeal by Deputy Upper Tribunal Judge G A Black who found it arguable that the judge had made a material misdirection as to the application of Devaseelan [2002] UKIAT 00702, had failed to put material matters to the Appellant, and failed to consider material issues in relation to return to the IKR and the application of AA (Iraq) CG [2017] EWCA Civ 944.

Error of Law

6. On 11th December 2018 I heard submissions from both parties in relation to error of law. The Appellant relied upon three grounds. I found no error of law in relation to the first two grounds, but found that the judge had erred in relation to the third ground, which related to the country guidance decision of AA (Iraq) and whether the Appellant would be able to obtain a CSID, and whether the Appellant had a reasonable internal relocation option to the IKR.

7. Full details of the application for permission to appeal, the grant of permission, the submissions made by both parties and my conclusions and reasons are set out in my error of law decision dated 12th December 2018, promulgated on 18th December 2018. I summarise below my reasons for not finding an error of law in relation to the first two grounds, and for finding an error of law in relation to the third ground and setting aside the decision of the FtT.

8. I did not find that the judge had erred in law in taking findings made by Judge Fox as his starting point pursuant to the Devaseelan principles. The judge followed the correct legal approach.

9. The second ground contended that the judge had erred in law in describing the Appellant's account as lacking in detail and thereby attaching little weight to it. It was submitted that the judge failed to put the matters he found vague and lacking in detail to the Appellant at the hearing, thereby committing a procedural irregularity. I found that the issues referred to by the judge at paragraph 38 were issues that should not have taken the Appellant by surprise as they were raised in the Respondent's refusal decision dated 7th February 2018 at paragraphs 47–55. The refusal decision made it clear to the Appellant why his account was not accepted. It was then up to the Appellant to address the issues raised in the refusal decision, and not for the judge hearing an appeal "to enter the arena" and commence questioning the Appellant. The Appellant was aware of the issues in the refusal decision and had every opportunity to address them, and the judge was entitled to find the Appellant had not discharged the burden of proof upon him.

10. In relation to the third ground, I was persuaded that the judge had erred in law in his consideration of the Appellant's ability to obtain a CSID. I referred to AA (Iraq) [2017] EWCA Civ 944 and in particular Annex C. This confirms that regardless of the feasibility of return it is necessary to decide whether an Appellant has a CSID or will be able to obtain one reasonably soon after arrival in Iraq. A CSID is generally required in order to access financial assistance from the authorities, employment, education, housing and medical treatment. If the Appellant shows there are no family members likely to be able to provide means of support, he is in general likely to face a real risk of destitution amounting to serious harm, if by the time any funds provided by the Secretary of State to assist return had been exhausted, it is reasonably likely that the Appellant would still have no CSID.

11. If a return is feasible but an Appellant does not have a CSID, he should as a general matter be able to obtain one from the Civil Status Affairs Office for his home governorate using an Iraqi passport if he has one. If there is no passport, his ability to obtain a CSID may depend upon him knowing the page and volume number of the book holding his family information.

12. An Appellant's ability to obtain a CSID is likely to be severely hampered if he is unable to go to the CSA Office of his governorate because it is in an area where Article 15(c) serious harm is occurring.

13. With reference to the finding made by the judge that the Appellant could approach the Iraqi Embassy in the UK, this is dealt with in AA (Iraq) CG [2015] UKUT 544 (IAC) commencing at paragraph 173. At paragraph 174 an expert witness explains that if an individual had lost his CSID (as the Appellant claims to have done) and does not know the relevant page and book number for it, then the Iraqi Embassy in London will not be able to obtain one on his behalf. The judge did not adequately explain how the Appellant's family in Iraq would be able to assist him if they are in Kirkuk which the judge found to be a contested area.

14. I concluded that the judge had not provided adequate reasons for finding that the Appellant would be able to obtain a CSID either in the UK or shortly after arrival in

Iraq. This was the one area of the judge's decision where I found an error of law. I found the error to be material and therefore set aside the decision, but maintained the credibility findings which had been unsuccessfully challenged.

Re-making the Decision

15. At the resumed hearing Mr Greer indicated that although the Appellant had submitted a further witness statement dated 26th February 2019, it was accepted that this appeared to attempt to contradict preserved findings, and therefore would not be relied upon and the Appellant would not be called to give evidence.

16. No further documentary evidence had been submitted which had not been before the FtT. Mr McVeety indicated that the Respondent has issued a new Country Policy and Information Note in February 2019, but he did not seek to introduce this document for the purposes of this hearing.

17. Mr Greer indicated that no skeleton argument had been prepared, and therefore suggested that he commence by making oral submissions, so that Mr McVeety could respond to those submissions.

18. Mr Greer submitted that it was accepted that the Appellant does not have a CSID. This is a Civil Status Identity Card. The Respondent conceded this at paragraph 117 of the refusal decision dated 7th February 2018. It was not disputed that the Appellant had been issued with a CSID, but as explained in his witness statement dated 14th March 2016, he had lost this when he lost his bag travelling in Slovakia. The Appellant had not been issued with a nationality certificate.

19. The Respondent accepted in the refusal decision at paragraph 117 that because Kirkuk is the Appellant's home area and is a contested area, he would be unable to visit the CSA Office in Kirkuk and it was contended that he would have to apply for formal recognition of his identity via the National Status Court in Baghdad.

20. Mr Greer referred to paragraph 187 of AA (Iraq) [2015] in which it is stated that evidence does not demonstrate that the "Central Archive" which exists in Baghdad is in practice able to provide CSIDs to those in need of them. The operation of the National Status Court in Baghdad is described as unclear.

21. I was therefore asked to find that the Appellant would not be able to return to Kirkuk to obtain a CSID, and would not be able to obtain one in Baghdad. It was also submitted that the Appellant would not be able to obtain a replacement CSID in the UK. On this point Mr Greer referred to Annex C of AA (Iraq) [2017] and in particular paragraphs 10–11. The Appellant does not have a passport, and does not know the page and volume number of the book holding his family information. The Appellant does not have family members or other individuals who would be able to attend a CSA Office on his behalf. It was submitted that the Appellant would not be able to obtain a CSID while in the UK, and therefore would be returned without a CSID which would put him at risk of Article 3 ill-treatment.

22. If it was found that the Appellant could obtain a CSID, Mr Greer submitted that he would still not have a reasonable internal relocation option to the IKR. There is a 70% unemployment rate in the IKR, and the Appellant has no relatives in the IKR who could assist him. He would be disadvantaged, coming from a previously contested region.

23. It was therefore submitted that the appeal should be allowed, not on asylum grounds, but in relation to humanitarian protection and Article 3.

24. I then heard oral submissions from Mr McVeety who pointed out that the judge had found the Appellant not to be a credible witness. The judge had found that the Appellant was in touch with his family. Mr McVeety submitted that it was important to remember that the judge had found that the Appellant was not a witness of truth. I was reminded that the Appellant's family had been in Kirkuk and had been able to help him leave Iraq, according to the Appellant's account.

25. Mr McVeety referred to AAH (Iraq) CG UKUT 00212 (IAC) and head note 1(ii) which relates to the location of the relevant Civil Registry Office, and whether it is in an area held, or formerly held by ISIS, and whether it is operational. Mr McVeety pointed out that Kirkuk had not been controlled by ISIS, is presently not controlled by ISIS, and there was no evidence to indicate that the CSA Office in Kirkuk was not operational.

26. Mr McVeety submitted that while it had been found that the Appellant could not return to Kirkuk, his family were in that city, and could attend the CSA Office, and arrange for a replacement CSID to be sent from Iraq.

27. Alternatively, the Appellant could approach the National Status Court in Baghdad. It was submitted that the Appellant has a reasonable internal relocation option to the IKR. He is in contact with his family. He would receive funds from the Voluntary Returns Scheme. The Appellant would not be disadvantaged because he would not be regarded as coming from an area previously controlled by ISIS, as ISIS had not controlled Kirkuk, and in any event he would be returning from the UK.

28. In responding to Mr McVeety, Mr Greer pointed out that the Appellant's case was that he had lived with his mother and had no contact with his father, and at paragraph 1(iii) of the head note to AAH, the question was posed whether there would be any male family members who would be able and willing to attend the Civil Registry with the Appellant, as the registration system is patrilineal, it would be relevant to consider whether the relative is from the mother or father's side.

29. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

30. It was not submitted that the Appellant was entitled to a grant of asylum, but was entitled to a grant of humanitarian protection, and to return him to Iraq would

breach Article 3. The burden of proof is on the Appellant, to the lower standard, that being a reasonable degree of likelihood.

31. I am considering this appeal, based on preserved findings made by the FtT. Those are summarised at paragraphs 43–47 which for ease of reference I set out below;

> "43. I must assess the evidence as a whole in the light of the relatively low standard of proof. I have to look at the evidence in the round [44–47].
>
> 44. For the reasons given above, I find that the Appellant is an Iraqi national, to be a Kurd from Kirkuk.
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> 45. For the reasons given above, I find that the Appellant is of no specific ongoing adverse interest to his father/any actor/ISIS, but left Iraq due to the general security situation prevailing at that time.
>
> 46. For the reasons given above, I am satisfied the Appellant remains in contact with his family in Iraq.
>
> 47. For the reasons given above, I am not satisfied that the Appellant is at any risk as a consequence of any Christian activities."

32. Another preserved finding made by the FtT, is that Kirkuk remains a contested region. This was not challenged by the Respondent. An accepted fact is that the Appellant previously held a CSID. There was no challenge to his evidence that he lost this in Slovakia.

33. I find that the CSID would have been issued in Kirkuk as that is where the Appellant and his family lived.

34. I find that there is no evidence to indicate that the CSA Office in Kirkuk is not operational. Annex C of AA (Iraq) [2017] refers to alternative CSA Offices which were set up for areas where the CSA Offices were not operational, those areas being Mosul, Anber, and Saluhaddin. There was no alternative office set up for Kirkuk, which indicates the Kirkuk office remained operational.

35. The Respondent has accepted that the Appellant cannot return to Kirkuk. I must consider whether the Appellant could obtain a CSID while in the UK. Expert evidence was given on this issue to the Upper Tribunal in AA (Iraq) [2015], by Dr Fatah, who also gave evidence to the Upper Tribunal in AAH. Dr Fatah confirmed that the guidance given in AA (Iraq) [2015] remains accurate but added two caveats. Firstly, it must be recognised that the Iraqi civil registration system is in disarray. Between 2014 and 2017 ISIS closed down all of the relevant offices in areas under its control, damaging or destroying many of them. No marriages, births or deaths were recorded in these offices during that period and officials today are preoccupied with trying to register and re-document many hundreds of thousands of people in need of assistance in Iraq.

36. Secondly, the anecdotal evidence on the willingness of officials to assist undocumented IDPs is not promising.

37. The evaluation of whether there is a reasonable likelihood that an applicant will not be able to obtain a new CSID either directly or by way of proxy, must be assessed against that background. Whilst it remains possible for an undocumented returnee to obtain a new CSID, whether he is able to do so, or do so within a reasonable time frame will depend on his individual circumstances.

38. Dr Fatah explained at paragraph 177 of AA (Iraq) [2015] that an Iraqi national living in the UK could obtain a CSID through the consular section of the Iraqi Embassy in London if able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport or who are unable to produce the relevant family registration details, such as the Appellant, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID from the CSA Office in their home governorate. At the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain it is from an area where Article 15(c) serious harm is occurring.

39. Dr Fatah indicated that an individual in the UK would either have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain the CSID. Dr Fatah described the process of giving a power of attorney to a lawyer in Iraq to act as a proxy as commonplace and Dr Fatah had done this himself. The power of attorney could be obtained through the Iraq Embassy. The CSID could then be obtained at the appropriate office which in the Appellant's case would be Kirkuk, and sent from Iraq to the UK. It may have to be sent to the Iraqi Embassy.

40. I must take into account the finding that the Appellant is in contact with his family in Iraq as his evidence to the contrary on that point was disbelieved by the judge. His family were in Kirkuk. The CSA Office is operational in Kirkuk, and the Appellant could appoint a member of his family, or a lawyer who is already in Kirkuk, to attend the office to obtain a replacement CSID and arrange for that to be sent to the UK.

41. I therefore conclude that the Appellant could obtain a CSID while still in the UK.

42. If a CSID was obtained, the Appellant would be returned to Baghdad. It is confirmed in AAH that a returnee of Kurdish origin in possession of a valid CSID could make the journey from Baghdad to the IKR, whether by air or land without a real risk of suffering persecution, serious harm, Article 3 ill-treatment, nor would any difficulties on the journey make relocation unduly harsh. The journey is described as affordable and practical.

43. At the IKR border a Kurdish citizen would normally be granted entry subject to security screening and registering presence with the local mukhtar, the individual would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.

44. Additional factors that may increase risk would not in my opinion apply in this case. The Appellant does not come from a family with a known association with ISIS, nor does he come from an area associated with ISIS. While he is a single male of fighting age, the Appellant would be able to provide evidence that he had recently arrived from the UK, which would dispel any suggestion of having arrived directly from an ISIS territory.

45. There is no evidence that the Appellant has family members living in the IKR. Therefore, accommodation options would be limited. However, the Appellant would have access to £1,500 under the Voluntary Returns Scheme. I find that the Appellant would also be able to receive support from his family. His case was that he was able to travel to the UK because one of his uncles funded the journey.

46. Although the unemployment rate is high, the Appellant would have a CSID, and therefore would be eligible to look for employment. Taken together with the grant of £1,500, and support from his family, I do not find that the Appellant would be destitute, and I find that he would have a reasonable internal relocation option within the IKR. There are no relevant medical issues, and there would be no risk within the IKR, and there would be no language or cultural difficulties.

47. In conclusion, I do not find that the Appellant is entitled to a grant of asylum, or humanitarian protection, and there would be no breach of Articles 2 or 3 of the 1950 Convention. This is because the Appellant has a reasonable internal relocation option to the IKR. Article 8 was not argued before me. For the avoidance of doubt I find that the Appellant has not established a family life in the UK that would engage Article 8. He has established a private life since his arrival. He is not eligible to rely upon paragraph 276ADE(1)(vi) because he was not 18 years of age at the date of application, which was 18th March 2015. The Appellant attained the age of 18 years on 1st April 2015. In any event, the evidence does not demonstrate that there would be very significant obstacles to his integration into Iraq.

48. I do not find any exceptional circumstances which would result in unjustifiably harsh consequences if the Appellant had to return to Iraq. I have taken into account the considerations in section 117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of effective immigration control is in the public interest. It is in the public interest that a person seeking leave to remain can speak English and is financially independent. I accept that the Appellant is able to speak some English, but he is not financially independent. I must attach little weight to a private life established when a person has been in the UK with a precarious immigration status, which applies to the Appellant.

49. With reference to Article 8, I find that the weight to be attached to the public interest in maintaining effective immigration control, outweighs the weight to be attached to the wishes of the Appellant to remain in the UK.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. I substitute a fresh decision.

The appeal is dismissed on all grounds.

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 his 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.

Signed Date 25th March 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date 25th March 2019

Deputy Upper Tribunal Judge M A Hall