Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03060/2019

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 3 December 2019	**On 16 December 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR RHA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A W Khan, Fountain Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq, born on 1 January 1996, who appealed to the First-tier Tribunal against a decision of the respondent dated 22 March 2019 to refuse the appellant's protection claim. In a decision and reasons promulgated on 6 June 2019, Judge of the First-tier Tribunal Chapman dismissed the appellant's appeal.

Grounds of Appeal

2. The appellant appeals with permission from the Upper Tribunal on the one remaining ground (the judge granting permission having found that the first ground in relation to irrationality was not made out – such was not challenged before me).

3. The remaining ground argued that the judge erred in law in failing to apply the country guidance cases of **AAH [2018] (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212** and **AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944** in assessing how the appellant would be able to obtain re-documentation upon return. At [49] it was submitted the judge erred in his approach to **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** where Salah Al-din governorate was named as a contested area engaging Article 15(c), and in seeking to depart from the country guidance at [47] to [53], the judge relied on the respondent's Country Policy and Information Note (CPIN) and failed to give any cogent evidence or very strong grounds for departing from the country guidance and it was submitted that arguably the CPIN is a biased document prepared by the respondent.

Error of Law Hearing

4. Mr Khan relied on his grounds and submitted that in seeking to depart from the country guidance the judge had failed to give 'very strong reasons supported by cogent evidence' as required by **SG (Iraq) [2012] EWCA Civ 940**. In seeking to depart from the country guidance the judge relied on paragraph 2.3.27 to 2.3.25 of the November 2018 CPIN which is set out at page 312 of the appellant's bundle and, it was argued, failed to indicate what the material was as there was no independent material relied on.

5. It was submitted that the judge erred in stating that the appellant had family at [62] and [64] and stated that there was no basis for this finding. At question 75 and question 76 of the asylum interview the appellant had stated that he thought his family were in the IKR but he doubted it and therefore the highest that this could be put at is that we do not know and the judge therefore erred in finding that the appellant had family and that there was no evidence for the judge to state that the family were in the IKR. Although Mr Khan conceded, that at [55] and [57] the judge had rejected the appellant's account and had found that he did have family including in the IKR, Mr Khan attempted to distinguish these findings which he asserted were in relation to the core of the claim from consideration of risk on return.

6. In relation to the judge's departure from the country guidance Mr Khan reiterated that there was no source material in the CPIN in relation to the

judge's specific findings in stating that at [51] to [53] the appellant's home area was no longer under the control of Daesh and that it no longer reached the level required to justify a grant of humanitarian protection. Mr Khan submitted that this was simply the respondent's view with no source material and not sufficient to depart from the country guidance. In relation to the judge's findings on return, Mr Khan pointed out that the appellant would not be 'returning' to the IKR because he was not from the IKR and the judge erred in this respect. And that his findings at [57] were inadequate. The judge again departed from **AAH (Iraqi Kurds – internal relocation)** (above) in finding that the appellant could fly directly to Erbil.

7. Even if the judge's alternative findings were considered that he would be returned to Baghdad the judge failed to adequately consider **AAH (Iraqi Kurds – internal relocation)** including how the appellant could get to the IKR, how he could obtain documentation and other problems.

8. Mrs Aboni relied on the respondent's Rule 24 response, although she accepted it did not specifically address the CSID point. Mrs Aboni submitted that there was adequate evidence for the judge to depart from the country guidance including as set out in his finding at [51] and [52]. In addition, the judge had taken into account that the appellant himself had said that he had experienced no problems in Tuz between November 2017 and August 2018 which would support the Tribunal's finding. Even if the judge was in error in this finding this was not material as from [59] the judge had considered relocation to the IKR including to Baghdad and onwards to the IKR and it was submitted that this reasoning was adequate. Mrs Aboni underlined that the judge had made negative credibility findings and had found that there was no evidence the appellant did not have a family network both in Iraq and the IKR and that the appellant had failed to discharge the burden that he would have difficulty in obtaining documentation because he has family support to help him do so within a reasonable period of return and to support him so that he is not at risk of becoming destitute. Those findings were not challenged and stand.

9. In respect of documentation, Mrs Aboni submitted in respect of documents the judge further considered at [62] that the appellant had previously had a CSID and that it was open to the judge to find that the appellant could obtain such re-documentation. The reasons were adequate.

Error of Law Decision

10. Although Mr Khan sought to distinguish the judge's negative credibility findings including at [55], [56] and [57], that the judge was not satisfied that the appellant had lost contact with his family members, that the judge found that the appellant does have a family network of support both in Iraq and the IKR and that he had failed to discharge the burden that he would have any difficulty in obtaining documents, Mr Khan was attempting to draw a false distinction that such finding were separate from the

judge's findings on risk on return as the findings were made in the core of the appellant's account. There is no basis for such a distinction; the First-tier Tribunal made unequivocal evidence-based findings of fact. Those findings of fact are very relevant and go to the core of the judge's findings on risk on return.

11. Even if the judge erred in the adequacy of his reasoning for departing from country guidance, in finding that the appellant would not be at risk on return to his home area (although such is not a foregone conclusion as it is notable the judge also took into consideration, which he was entitled to do, that the appellant had experienced no problems in Tuz between November 2017 until August 2018) any such error is immaterial given the judge's findings on internal relocation via Baghdad.

12. Although the judge at [61] purported to departed from **AAH (Iraqi Kurds – internal relocation)** in relation to the fact that there was evidence that flights now can take place directly to Erbil and noted that this was not disputed by the appellant's representative, such a point was not argued in the grounds of appeal and was arguably not before me. Even if it was and even if that was an error (although the evidence in relation to flights to Erbil is perhaps in a different category) again it cannot be material given the judge's specific findings on risk on return via Baghdad.

13. The fact that the judge did not specifically set out each and every ground in **AAH (Iraqi Kurds – internal relocation)** does not mean that the country guidance was not correctly applied. The relevant question is the issue of the CSID which was considered in **AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212** as follows:

> "Section C of country guidance annexed to the Court of Appeal's decision in **AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944** is supplemented with the following guidance:
>
> (1) Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:
>
> (i) whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or on expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, or not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
>
> (ii) the location of the relevant civil registry office. If it is an area held, or formally held by ISIL, is it operational?

(iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relevant relative is from the mother or father's side. A maternal uncle in possession of a CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be born in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they would be of assistance. A woman without a male relative to assist with the process of the redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all."

14. The judge's consideration of the relevant factors is evident in my view, including from his findings in reference to the risks associated with a returnee being unable to obtain documentation such as a CSID and to access basic services in Iraq on return (paragraph [57]). The judge also makes reference to family support and the fact that such family support would be relevant which is a reference to the case law guidance.

15. The judge was also entitled to take into account that the appellant previously had a valid CSID, and Iraqi national identification and to take into account that this would assist with obtaining replacements, as would the fact he has 'family members who can assist'.

16. There was no error in the judge's finding that the appellant's evidence that he had no contact with his family in Iraq was not accepted and that he has a family network both in Iraq and the IKR. Even taking into account the appellant's claim that his documents were all burnt 'when Hash'd Al Shaabi attacked my house and burnt down my village' the judge comprehensively rejected the appellant's claims and found, inter alia, that it had not been established that he was of any adverse interest to Hash'd Al Shaabi [45]. This strongly suggests in my view that the appellant has his own CSID and other documents. Even if that is not the case there is nothing in the evidence to suggest that, at the very least, the appellant's remaining 'network' of relatives would not be able to assist in providing the information that would make obtaining a new CSID "straightforward".

17. The fact that the judge went on to find at [63] that the only relevant risk factor was at paragraph 7 of **AAH** in relation to the appellant being a single male of fighting age but went on to dismiss that for adequate reasons (which were not challenged before me) further highlights that the judge had in mind the relevant test and was satisfied that the appellant would be able to successfully obtain documentation and relocate through Baghdad if required. The judge's sustainable findings were available to him.

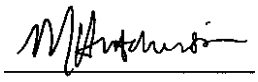
18. Therefore, any arguable errors in the judge's approach to the country guidance cases of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** as revised by **AA (Iraq) v SSHD [2017]** and **AAH**, are not in my findings material.

Decision

19. The decision of the First-tier Tribunal does not contain an error of law and shall stand.

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

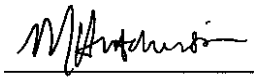
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date: 11 December 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As no fee has been paid and the appeal is dismissed no fee award can be made.

Signed  Date: 11 December 2019

Deputy Upper Tribunal Judge Hutchinson