



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

Appeal Number: PA/03245/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On 6<sup>th</sup> August 2019**

**Decision & Reasons Promulgated**

**On 16<sup>th</sup> August 2019**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BARHAM [F]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

*For the Appellant: Mr McVeety, Senior Home Office Presenting Officer*

*For the Respondent: Miss J Mason, a Solicitor's Clerk from Broudie Jackson & Canter*

**REASONS FOR FINDING AN ERROR OF LAW**

1. The Secretary of State for the Home Department challenges the decision of First-tier Tribunal Judge Alis, promulgated on 13<sup>th</sup> May 2019 in the appeal of the respondent. To avoid confusion I shall refer to the Secretary of State for the Home Department as being "the respondent" and to Barham [F] as being "the appellant", as he was before the First-tier.

2. The appellant is an Iraqi national from Kirkuk who claims to have left Iraq illegally in March 2018 and who entered the United Kingdom on 23<sup>rd</sup> July that year and claimed asylum the following day. His application was refused by the Secretary of State on 27<sup>th</sup> March and the appellant appealed to the First-tier Tribunal, claiming that his removal would involve the United Kingdom in a breach of the Refugee Convention on the basis of his well-founded fear of persecution for reasons of imputed political opinion.
3. The judge did not believe the appellant's account and at paragraph 41 of the determination said, "*Accordingly, I did not find his account of events in Iraq to be credible. Such a finding also raises questions about whether his mother had fled Iraq, as claimed, or whether she remained in her home area.*"
4. The judge considered *AA Iraq v Secretary of State for the Home Department* [2017] Imm AR 1440 and *AAH (Iraqi Kurds - internal relocation) Iraq CG* [2018] UKUT 00212 (IAC).
5. At paragraph 51 of his determination the judge found that obtaining a CSID card in the United Kingdom would be extremely difficult for the appellant, because he has no documentation. The judge said, "*Whilst I do not find his account credible I accept that in the absence of me being satisfied he has contact with family he will struggle to obtain the necessary documentation*". The judge appears to have applied the wrong test. It was not necessary for the judge to be satisfied that the appellant had family in Iraq, but for the appellant to prove that he did not have family in Iraq.
6. The judge went on at paragraph 54 to say this:-

"The appellant would have to be able to produce evidence from a family member, at the very least, to obtain his CSID but it seems highly unlikely that such a document would be obtainable within a reasonable period of time as the appellant comes from a contested area. He has no family in Baghdad as he has never been there and were he to be returned to Baghdad, in line with government policy, he would be unable to leave Baghdad or be able to obtain any employment without a CSID".
7. At paragraph 55 and 56 the judge said this:-

"55. Whilst the appellant is a Kurd, he is not someone who originates from the IKR. He would be unable to fly to the IKR because the Tribunal has accepted that without a CSID a flight would not be possible.

56. There is the alternative of travelling to the IKR overland but there would be problems for this appellant because he would have to travel through several checkpoints and without a CSID he would again face significant problems as detailed in *AAH*."
8. The judge allowed the appellant's asylum appeal. The Secretary of State challenged the decision on the basis that given that the judge found the

appellant's account not to be credible, his finding that the appellant did not have contact with family members was insufficiently reasoned.

9. It was suggested on behalf of Miss Mason who appeared on behalf of the appellant today that the appellant does not have any documentation in the United Kingdom and that the First-tier Tribunal Judge has correctly considered the findings in the current country guidance case law of *AAH Iraq*. Judge Alis has helpfully included the relevant paragraphs relating to the difficulties in obtaining a CSID document, both in the UK and Baghdad, in his determination. The Secretary of State claims that "the appellant clearly has family in Iraq", but it was submitted that it is not clear whether the appellant has family in Iraq, which is the point considered by the First-tier Tribunal Judge. The appellant has consistently stated that he lost contact with his mother in Turkey and that his father is deceased. There is no clear evidence that the appellant has other family in Iraq.
10. The Secretary of State's submission that the judge's findings in paragraphs 55 to 59 that the appellant would face "*problems*" are speculative, unsubstantiated and contrary to the facts, disregards the findings of the current country guidance. She relied on her response under Rule 24. Miss Mason referred me to paragraph 54 of the judge's determination, namely:-

"The appellant would have to be able to produce evidence from a family member, at the very least, to obtain his CSID but it seems highly unlikely that such a document would be obtainable within a reasonable period of time as the appellant comes from a contested area. He has no family in Baghdad as he has never been there and were he to be returned to Baghdad, in line with government policy, he would be unable to leave Baghdad or be able to obtain any employment without a CSID".
11. He, therefore makes an alternative finding, she said. She submitted that even if it were shown that he had family in Kirkuk they would have to travel to Baghdad in order to obtain the documentation and it is highly likely that that would simply increase the time it would take to obtain state documentation.
12. At paragraph 57, the judge demonstrates that he was well-aware of the high levels of unemployment in the IKR and that this would cause severe difficulties for the appellant. She submitted that the judge was a very experienced one and clearly aware of the correct test of unreasonable harshness. She suggested that the determination should stand.
13. On behalf of the respondent, Mr McVeety submitted that the whole of the appellant's case is predicated on the need of him to obtain a CSID card. However, at paragraph 31 of his determination, the judge records that the Presenting Officer accepted that the key issue in assessing the Article 15(c) claim was the feasibility of return. The judge said:-

"There were a number of options open to him to obtain a CSID card. He could contact his mother and arrange for her to send him his

documentation or he could attend the Iraqi Consulate in London to obtain a replacement CSID. However, he conceded the appellant would need either a CSID card number, passport or the page number from the original entry to obtain a new CSID card from the Consulate”.

14. Mr McVeety said that the appellant does not need a new CSID card, but rather a replacement and this appears not to have been considered by the judge. On the one hand the judge did not believe the appellant’s account of what happened to him, and on the other appears to have accepted that the appellant’s mother is not in contact with the appellant. The judge identified the difficulty at paragraph 41 of the determination, but simply failed to make any finding on whether or not he accepted that the appellant had no family members.
15. So far as paragraph 57 is concerned the judge was obviously aware of the difficulties that would be faced by the appellant in IKR and described the others as being problems, but he did not apply the correct test and identify whether relocation would be unreasonable. Miss Mason had nothing further to add.
16. I reserved my determination.
17. I adopt Mr McVeety’s submissions. I believe that the First-tier Tribunal Judge has erred in law by failing to make clear findings on whether or not the appellant has relatives in Iraq and on whether or not it would be unduly harsh to expect the appellant to relocate. He does not need a CSID card, because he already had one when he came to the United Kingdom. He needs a replacement CSID card. As to whether or not it would be unduly harsh for the appellant to relocate to the IKR the “problems” identified by the First-tier Tribunal Judge need to be properly assessed.

### **Notice of Decision**

16. I concluded that the determination of Judge Alis cannot stand and I set it aside.

### **Directions**

- (1) I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Alis.
- (2) A Kurdish Sorani interpreter will be required.
- (3) Three hours should be allowed for the hearing of the appeal.
- (4) No anonymity direction is made.

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**

14<sup>th</sup> August 2019