Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03748/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 November 2018,	**On 19 November 2019**
17 January, 3 October	
and 8 November 2019	

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A M A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel instructed by Barnes Harrild and Dryer Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is an Iraqi Kurd born on 25 May 1996 who claims to have entered the UK on 23 October 2007. His appeal against the respondent's refusal of his protection claim on 26 February 2018

was dismissed by First-tier Tribunal Judge Carroll by way of a determination promulgated on 11 June 2018 following a hearing at Taylor House on 23 April 2018. An earlier appeal against the refusal of his asylum application was dismissed in May 2008 by First-tier Tribunal Judge Heynes. The more recent claim was based on the deteriorating conditions in Iraq and the risk to him as an undocumented Kurd who would be unable to obtain a CSID and/or relocate. Judge Carroll's judgment was partially set aside by my decision issued on 10 September 2018.

2. For the reasons set out in that determination, two issues need to be re-considered. These are: (1) whether the available evidence merits a departure from country guidance and it would be safe for the appellant to return to Kirkuk, and (2) whether he would be able to obtain a CSID. The judge's article 8 findings are preserved.

The Hearing

3. The hearing on 23 November 2018 had to be adjourned because no interpreter had been booked and it was plain that the appellant was having problems expressing himself and even understanding questions put to him in English. It was then relisted for 17 January 2019 when I heard evidence in Sorani from the appellant.

4. He confirmed his name and address, agreed he was aware of the contents of his witness statement and that it was true and accurate as were all his previous witness statements. He adopted them as his evidence in chief and was tendered for cross examination.

5. In response to questions put by Mr Melvin, the appellant confirmed that he had been in contact with his family – his mother, sister and brother – until 2012. He said that after that date, he was unable to make contact because his mother's phone was switched off. Previously they would call each other. He still had the same number.

6. The appellant was asked what attempts he had made to trace his family. He replied that he had approached the Federation of Iraqi Refugees in 2014 to ask for help. He had no documents with him but had sent a document from the Red Cross to his solicitors when he made his asylum claim. Then in 2018 he approached the Iraqi Consulate in order to obtain an ID card. He was unable to provide them with documents as he had none. The appellant was asked why in the five years he had had contact with his family, he had not asked them to send his Iraqi ID documents to him. He replied it was because he had not had any need of them and had not been asked by anyone to provide them. He had not made contact with any friends or relatives in Kirkuk in order to try and obtain documents

because he had not been in contact with them and did not know where they were. He had not had any contact with extended family members since leaving Iraq. He had not been in touch with the authorities in Kirkuk and questioned how he could have contacted them.

7. The appellant was asked whether it was true that Kirkuk city had never been overrun by ISIS forces. The appellant replied that ISIS had come to the city and infiltrated it. He said it had now been taken over by a Shia militant group – Hash al Shaabi – which was pro-Iranian and even worse towards the Kurds than ISIS had been. Mr Melvin put it to the appellant that Kurdish authorities had taken over Kirkuk in 2014 and returned the city to Iraqi forces in November 2017. He was asked why he could not have approached the Kurdish authorities between 2014 and 2017 for documents. The appellant replied that he was living here and had not been in contact with anyone in Iraq. He said that in 2017 when Hash al Shaabi took over the city, about 100,000 Kurdish families fled the area. He had been unable to contact a lawyer for assistance as he had no money and lawyers did not work for free. When asked if it was only financial reasons that had prevented him form making contact, it replied it was also because he was here and so could not do so.

8. Mr Melvin asked the appellant if he was deliberately not making contact in order to frustrate his removal. He replied that he was not. He said he had been twice to the Iraqi Consulate in 2014 and in 2018 and nothing had been done.

9. The appellant was asked what he feared if returned to Iraq. He replied that Kirkuk was not safe for him. He had lost contact with his family. He had no ID card. He had left 11 years ago and would be like a stranger. The situation there was very bad. An extreme Arab militia group had taken over the area.

10. When asked whether he had any personal fears, the appellant said that he would be unable to survive in Baghdad without an ID card. He needed one to go through checkpoints and to move around. There was no one to help him and he had nowhere to live. He was asked whether he feared the Iraqi authorities. He replied: *"What do you mean?"* He was asked whether he feared the authorities would arrest and persecute him. He replied he did; they would treat him badly. The appellant was asked whether he would return if he had a CSID card. He replied he had no family and asked where he would go. The question was repeated. He said that he had nowhere to live and would be a stranger there. He was asked whether it was the lack of an ID card or the absence of a place to live that prevented his return. He replied it was both factors. Even if he had an ID card, he

could not live in another city because it would be dangerous to live somewhere without any family. he would have no one to support him. He said that he had been working prior to his departure. He had a shop. He could not return to that work because he would be on is own and had no ID card. That completed cross examination.

11. In re-examination, the appellant was asked where his extended family members lived. He replied they only lived in Kirkuk.

12. In reply to questions I then put to the appellant for clarification, the appellant said that he first went to the Iraqi Federation in 2014 but could not recall the month. He thought it was after April and after he had been to the Embassy. I asked how he had found out about them. He said his solicitors had advised him. I asked whether he had any Kurdish friends in the UK. He said he did but their families were not from Kirkuk. He did not know where they came from as he did not ask detailed questions. He then said they were from Tuz Khurmati, a mixed area, and from Khanauin. He had also met Kurds from Iran. He agreed he knew where they were from and said that he had forgotten before when asked. One of them had lost touch with his family. He did not know if they had been to the Federation. They had leave to remain. He said the Federation office had been in Kings Cross in 2014 but he did not know whether it was still there now. They asked him for his name, UK address, names of family members, their place of residence and their neighbourhood. He said that they had sent an email to his solicitors. He had lost the copy he had, if he had had one.

13. The appellant said that he had left behind a mother, sister, brother, one maternal uncle, grandparents who died in 2009-2010, cousins and friends. He was not in touch with is father's sister and her family because of a dispute. When he came here, he had just one phone number. His friends had phones, but he did not have their numbers.

14. He knew the news about Hash al Shaabi from television, internet and media channels.

15. The appellant was unable to remember whether the issue of an ID card was raised at the time of his appeal in 2008. He said he was first asked about his ID card in 2014.

16. Those were my questions.

17. Mr Melvin had questions arising. He asked the appellant why he had not asked his mother for the numbers of his friends. The appellant said there was no reason to contact them. He said they were casual friends from the streets.

18. Mr Spurling asked the appellant whether he had his friends' numbers when he was in Iraq. He said he did for one or two. They were stored in his mobile phone. He did not know what happened to it as he left it at home in Iraq.

19. That completed the oral evidence.

20. I then raised a query over the determination of First-tier Tribunal Judge Heynes. There was no copy in any of the evidence adduced by either side and I considered it would be relevant to the issue of documents and whether the matter had been raised at that hearing, given Mr Melvin's line of questioning. Both parties agreed that it was a relevant document. It was also agreed that the opportunity would be taken to obtain a copy of the Federation of Refugees letter which was referred to in the appellant's witness statement as being part of a previous judicial review claim. The appeal was then adjourned until 28 March 2019.

21. On that date, due to my indisposition, the appeal came before Deputy Upper Tribunal Judge Farrelly. All the parties agreed that it would have been preferable to have the appeal determined by myself and so although a transfer order had been signed by Principal Resident Judge O'Connor on 18 March 2019, the appeal was adjourned, and it then came before me on 3 October 2019. I had, in the meantime, received the determination of Judge Heynes (the file itself had been destroyed) and the Federation of Refugees letter. The appellant's judicial review file had also been located.

22. On 3 October 2019, Mr Melvin asked for a stay on the determination of this appeal pending the delivery of a pending country guidance case on Iraq. He submitted that it was expected shortly and he asked that submissions be made after its promulgation. He submitted that the issues of Article 15(c) and identity documents would be covered by the new country guidance.

23. Mr Spurling resisted the application. He submitted that the appellant wanted to proceed. He pointed out that events changed all the time and there had t be a need for realism. A pending decision was not a good reason to stay a determination and he cited AB Sudan [2013] EWCA Civ 921 (at 28-32). He submitted that the appeal had been ongoing for a long time and that the appellant was very stressed by the delays.

24. As a compromise, I suggested that I heard submissions and then postponed my determination for two weeks to await country

guidance at which time further submissions could be made, if required. The submissions then proceeded.

25. As no further evidence was called, Mr Spurling went first. He submitted that the two issues for consideration were whether Kirkuk would be safe and secondly whether the appellant would be able to obtain identity documents. He pointed out that oral evidence had focused on contacts the appellant had in Iraq. His evidence was that he had none. It had been accepted that he was from Kirkuk. He had left there in 2007 when he was 21 years old. That was a long time ago. He had remained in contact with his family until 2012. He had the telephone numbers for friends in his mobile phone but had not brought it here. Mr Spurling submitted that given the chaotic situation in Iraq, it was unsurprising that he had lost contact with his family. He submitted that there were high levels of sectarian violence and the war with Isis which had caused population displacement. In that context his account was wholly plausible.

26. The appellant had been asked about his lack of documents and he had said that he had tried to obtain some. In 2014 he had contacted the Federation of Iraqi Refugees and they had unsuccessfully tried to find his family. That letter was now on file. The determination of Judge Heynes also confirmed the appellant's account that he had not been asked about documents at that time. His account had been shown to be true. He had also been twice to the Iraqi Embassy but had not received any help. That was consistent with the evidence in country guidance as to the documents required before assistance was given. Mr Spurling submitted that if the appellant could not document himself then any location in Iraq would be unjustifiably harsh. He relied on Dr Fateh's expert report and on his skeleton argument which set out all the steps that had to be followed. He pointed out that there were stringent requirements for identity documents and that was to be expected as most countries would require a lot of evidence before issuing identity documents.

27. Mr Spurling submitted that the appellant was not returnable if he could not get an identity card, A laissez passer would at best get him to Baghdad but would then be confiscated on arrival (as per country guidance, Dr Fateh's report and the February 2019 CPIN). The document was for single use travel only. In any event, international documents could not be used at internal checkpoints. The letter from the Iraqi Ambassador gave no source for the contention that they could. Without a CSID the appellant would be unlikely to get through check points within Iraq.

28. Mr Spurling submitted that Kirkuk was still a contested area. Dr Fateh confirmed this in his report. The Foreign and Commonwealth

Office still advised against all travel to Kirkuk. The pending country guidance case was heard in June 2019, so this evidence was still current. Control over Kirkuk had not been established and there was still a battle between government troops, the peshmerger and ISIS. The UNHCR in May 2019, just weeks before the country guidance case was heard, reported that internal flight was not reasonable in the IKR unless an individual had shelter and livelihood options. There had been an increase in ISIS attacks and the CPIN report confirmed that problems were on going. There had been no durable change. The appellant could not return safely.

29. Mr Melvin relied on his skeleton argument and the refusal letter. He maintained that the appellant was not credible and had been deliberately withholding documents. He argued that there had been a marked improvement in Iraq particularly in Kirkuk and he relied on the letter from the Iraqi Ambassador as good evidence that he would be able to obtain identity documents. He submitted that displaced persons had returned to Kirkuk. The Danish report relied on was from 2015. No part of Iraq had article 15(c) problems. The majority of Iraqis would have access to documents; they just refused to obtain them. There would be a central register in Baghdad. Dr Fateh's report was not accepted. There were no longer as many checkpoints as there had been. The appellant would be able to return home and access documents. The evidence relied on was very out of date. The situation had changed.

30. Mr Spurling replied. He submitted that there was nothing to suggest that the appellant was withholding information or documents; indeed, the evidence was that he had made attempts to obtain them. This was a point of general cynicism. The same could be said of the Ambassador's letter and there was no evidence for such a claim in any event. He submitted that UNHCR disagreed that the situation had improved in their May 2019 report. The evidence did not suggest that ISIS had been eliminated but rather that they moved about freely in Kirkuk. He relied on his skeleton arguments and written submissions.

31. That completed submissions. The matter was then set down "for mention" on 8 November 2019 at which time further submissions could be made on country guidance if the decision had been promulgated or, if not, arguments could be made as to how the matter should proceed.

32. On 8 November 2018 the matter came before me as a "for mention". There was no sign of the expected country guidance at that stage and therefore having had regard to the views expressed by both sides, I now proceed to give my determination.

33. In so doing I have had regard to Mr Melvin's wish to stay the matter until the promulgation of the expected country guidance on Iraq. I also have regard to the strong resistance to that course of action expressed by Mr Spurling on the appellant's behalf, given the history of this case. I take note of what the Court of Appeal said in AB (Sudan) [2013] EWCA Civ 921 at paragraph 30: *"In the world of immigration it is a fact of life that the law which the judge applies is liable to change in the future, quite possibly in the near future. This cannot usually be a reason for staying proceedings. I started dealing with immigration cases some fourteen years ago. I cannot remember any occasion during that period when important decisions on one or more aspects of immigration law were not eagerly awaited from the appellate courts"*. Given the lengthy delays in this case, the appellant's strong wish to have this matter resolved, and the fact that the matter has already been delayed awaiting country guidance which may not be promulgated for several more weeks, I consider it in the interests of justice to proceed to a determination on the basis of all the evidence before me.

34. **Discussion and Conclusions**

35. I have considered the submissions, the grounds, the determination and all the other evidence with care.

36. It is the respondent's case that the security situation in Iraq and Kirkuk has significantly changed since the decision of AA (article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) which held that Kirkuk was a contested area which reached the article 15(c) threshold. Before I come to the question of the safety of Kirkuk, however, I propose to deal with what I consider to be the primary issue in this appeal and that is whether the appellant would be able to obtain identity documents to return to and live in Iraq.

37. The most recent country guidance case on the return of Iraqi Kurds is AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC) which concerned an ethnic Kurd from Kirkuk. The redocumentation question was not an issue for that particular appellant, however, as he was in possession of his Civil Status Identity Document (CSID). Nevertheless, the issue was considered with the Tribunal recognising that the Iraqi civil registration system was in disarray and that the possibility of an applicant to obtain a new CSID had to be assessed against that background and on various factors which required specific consideration (at 104-107).

38. According to the February 2019 CPIN, two of the most important documents used in Iraq are the Iraqi Nationality Certificate (INC) and the Iraqi Civil Status ID (CSID). These documents are required for any kind of interaction with the authorities and are needed when relocating, getting married, buying a car and so on (5.2.2, 5.2.3 and 5.4.6). The challenges faced by IDPs without their documents are set out at 5.3.2 and 5.3.3. They face the risk of not being admitted to the IKR, to risks in travelling by land, the risk of arrest and detention without access to legal representation and many more difficulties. The long and stringent process of applying for documents in Iraq is set out at 5.4 - 6.4.6. the entry requirements for the KRI are set out at s. 7. S. 7.1.5 specifically deals with ethnic Kurds from Kirkuk and the uncertainty they face in obtaining residency. The contents of the CPIN accord with the report of Dr Fateh.

39. In AAH, when considering the issue of redocumentation for Kurds from the IKR, the Tribunal found that factors to be considered included: *"i) Whether he 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 an 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: 39 these can be issued without any other form of ID being available, are 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 in an area held, or formerly held, by ISIL, is it operational?
iii) Are there male family members who would be able and willing to attend the civil registry with the returnee? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his 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 borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all" (at 106 and headnote). It was considered that *"these questions are significant not just to the assessment of whether the returnee might be able to live a 'relatively normal life' once he or she gets to the IKR; they are also relevant to whether he can get there at all"* (at 107).

40. I would state at the outset that I found the appellant to be a credible witness. I accept his evidence in is entirety. He answered the questions asked of him without hesitation and indeed several relies

he gave have since been confirmed by subsequently obtained documents, such as the letter from the Refugee Federation and the determination of First-tier Tribunal Judge Heynes. His account in both respects has been shown to be true and this reinforces my impression of the appellant as an honest witness. It has already been accepted that the appellant is a Kurd from Kirkuk who left Iraq in 2007, aged 21.

41. The appellant has tried to trace his family. There is evidence of that. He has tried to find them through the Red Cross and the Federation of Iraqi Refugees but to no avail. That is not surprising given the turmoil in that part of the world over the last few years and the population displacement. In that context it is wholly plausible that the appellant lost contact with his family in 2012.

42. The appellant has also tried to obtain ID documents from the Iraqi Embassy on two occasions but given that he had no evidence of his own identity it is not surprising that they were unable to assist him. I take note of the stringent requirements and the procedures followed by the Embassy before identity documents can be issued (CPIN February 2019; and the expert report pp. 19-23). I accept his evidence on both these matters. The appellant was asked by Mr Melvin why he had not asked his family to send his identity documents to him several years ago when they were still in contact. He stated that he had not known he had needed them at that stage and that he had never been asked for them and never been given to understand that these were necessary. That has been confirmed by the determination in his previous hearing before the Tribunal. It is plain from that determination that no questions were put to him about a CSID card and indeed it was the respondent's policy at that time to return failed asylum seekers on European Travel Documents (as confirmed in Mr Melvin's submissions and in MK (documents -relocation) Iraq CG [2012] UKUT 00126 (IAC). At best, at the current time, a laissez passer issued by the Iraqi Embassy would get him to Baghdad but would then be confiscated (CPIN February 2019; expert report pp. 23-24).

43. I also consider whether the appellant would be able to instruct a lawyer in Kirkuk to obtain documents on his behalf. This could be possible following AA. However, this is subject to the caveat that a current or expired passport and/or the book number for an applicant's family registration details could be provided. This is confirmed by Dr Fateh who points out that in order for a lawyer to be instructed, the appellant would need to know his ID card number. Even if he could instruct a lawyer without those details, the lawyer would not be physically able to search through all the ledgers to find the appellant's details without knowledge of his ID number. Moreover, power of attorney could not be given without evidence of

identity (at pp. 22-23). There was no challenge to this by the respondent at the hearing. As I have accepted the appellant's claim that he is not in touch with anyone in Iraq and has not been for some seven years, does not have a current or expired passport, and does not know the page and book number for his family registration details, I can only conclude that he would be unable to obtain a CSID using a lawyer or indeed by any other means.

44. I take note of the letter from the Iraqi Ambassador to the UK of 5 September 2018 (CPIN October 2018) but his observations are based on a belief that most asylum seekers have identity documents and so would be able to re-document themselves after arrival. The source of that belief is not stated. It is unclear what the situation would be for those without such documents.

45. It follows that in circumstances where the appellant is unable to make contact and has no contact with family of friends in Iraq who might have been able to assist him, he is not in a position to instruct a local lawyer to assist him to obtain identity documents. Nor is he in a position to obtain these documents by any other means. Without the required documents, the appellant would be unable to have any semblance of a normal life in Iraq as even if he were to be able to reach Baghdad on a one-way laissez passer, he would have no means to continue his journey to his home area or indeed to relocate to another part of Iraq. I conclude, therefore, that the appellant cannot safely return to Iraq. The adverse findings made in respect to the appellant's asylum claim by the previous Tribunal in 2008 have no bearing on this issue.

46. Given my findings on the issue of identity documents and the non-returnability of the appellant as a person without any such documents and without the means of obtaining them, I do not consider it necessary to consider the safety of return to Kirkuk.

47. **Decision**

48. The appeal is allowed on asylum grounds.

49. **Anonymity**

50. I make an order for anonymity.

Signed

Upper Tribunal Judge

Date: 14 November 2019