



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07786/2018

THE IMMIGRATION ACTS

Heard at Field House
On 26 February 2019

Decision & Reasons Promulgated
On 13 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

RS

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. Aitken, Counsel, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr. C. Avery, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 23 January 2019 I set aside the decision of the First-tier Tribunal in respect of the Appellant's return to the IKR. I did not set aside the decision that the Appellant did not have a well-founded fear of persecution for a Convention reason. The appeal before me was on human rights grounds, Article 3 ECHR.

The hearing

2. The Appellant gave oral evidence. He was assisted by the interpreter, Mr. Azad Karim, who confirmed before proceeding that they both fully understood each other. The language spoken was Kurdish (Sorani). Both representatives made oral submissions. I reserved my decision.

3. I have taken into account the documents contained in the Appellant's bundle (835 pages), the Appellant's supplementary bundle (8 pages), the Respondent's bundle and the skeleton argument.

Decision and reasons

4. The case of AAH (Iraqi Kurds – internal relocation) CG [2018] UKUT 212 (IAC) held as follows in relation to the lack of a CSID:

“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 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: 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 P? 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.”

5. I find that the Appellant does not have a CSID or Iraqi passport. The Judge in the First-tier Tribunal found that the Appellant had “not proved that he has tried and failed to obtain documentation to enable him to return to Iraq, and the onus is on him in this regard”.
6. The Appellant provided a witness statement detailing his visit to the Iraqi Embassy in London on Thursday, 21 February 2019. The Appellant states that he visited the embassy with a witness, Mr S. He entered the building and spoke to an embassy official.

"I informed the official that I had come to apply for an Iraqi passport. The official asked whether I had my original Iraqi identity card documents, which I did not. He told me that without such documents I would not be able to redocument myself and we were told to leave the building."

7. Mr S has also provided a statement. He states that he met the Appellant outside the Iraqi Embassy.

"As we arrived inside the building at 10.20, I can confirm that RS asked the receptionist for his Iraqi documents such as birth certificate, Iraqi national ID and Iraqi national passport. One of the staff members said he was sorry but RS was not eligible to apply for Iraqi documents because he did not have any Iraqi documents."

8. The Appellant has provided photographs of him attending the Embassy as well as a receipt for his appointment (page 7 of the supplementary bundle).
9. At the hearing the Appellant was asked by Mr. Avery in cross-examination whether he had explained to the Iraqi authorities that he had a sister in the United Kingdom who was documented. He said that he had not. When he was asked why, he said that he had only been asked for his documents. He was asked whether he had asked the Embassy if any other documentation would be suitable, and he said that he had just asked for his passport and Iraqi ID. They had refused to give it to him.
10. In re-examination the Appellant was asked whether the officials had asked whether he had the identity documents of other family members. He said that they had not but had just asked him for his own ID. He had given them his ID from the United Kingdom, his ARC card, but they said that he needed to bring Iraqi ID.
11. The Appellant was asked whether he had spoken to his family about obtaining replacement documentation from the IKR. He said that he did not have any contact with his family, and neither did his sister. This was because he did not want anyone to know where he was, whether it was in the United Kingdom or anywhere else, and he did not want to risk his life. He gave evidence that the last contact he had with his family was in 2015 when he had had contact with his mother. The last time his sister had had contact with Iraq was at the same time.
12. I have carefully considered this evidence. I find that the Appellant has been to the Iraqi Embassy in London. He has tried to obtain documentation, but he has failed. I find that he was told by the Embassy that, without ID from Iraq, he would not be able to re-document himself. Given what he was told, I find that his sister's being documented is not relevant. The Appellant's account of the attitude of the staff in London is consistent with the evidence given in AAH by Dr. Fatah. "He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful." [27]
13. The Appellant's evidence is that he has no contact with his family in the IKR. This does not run counter to any findings in the First-tier Tribunal as no findings were made regarding contact. The Judge states "given my Findings, he can return to his

family”, but it is not clear to what findings he is referring. Although the core of his claim was found not to be credible, this does not mean that he is in touch with family in Iraq.

14. I find that the Appellant has three brothers and three sisters. One of his sisters is in the United Kingdom. His mother remains in Iraq. The Appellant’s evidence has been consistent that he does not have any contact with his family, and I find it is reasonably likely that this is the case. I find it is reasonably likely that he is not in touch with his family, and that there are no family members who could assist with the re-documentation process in accordance with headnote 1(iii) of AAH.
15. I therefore find, in reliance on the evidence of the Appellant and Mr S, that the Appellant has tried and failed to obtain a CSID in London. I find that he would not be able to re-document himself with the assistance of family members. I therefore find that the Appellant would be returning to Iraq without a CSID.
16. I have considered the other issues set out in AAH. At the outset of the hearing it was accepted by Mr. Aitken, with reference to the Respondent’s most recent CPIN, that there were direct flights to Erbil and Sulaymaniyah. Therefore paragraphs [2] to [6] are not relevant. Paragraphs [7] to [10] state as follows:

“7. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

8. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a ‘relatively normal life’, which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P’s family on a case by case basis.

9. For those without the assistance of family in the IKR the accommodation options are limited:

- (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
- (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
- (iii) P could resort to a ‘critical shelter arrangement’, living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in*

a critical housing shelter without access to basic necessities such as food, clean water and clothing;

- (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*

10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*

- (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
- (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
- (iii) *P cannot work without a CSID;*
- (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers."*

17. Considering these paragraphs in turn, I find that the Appellant would be returning as a single male of fighting age (7(iii)). However he would have arrived from the United Kingdom. I find that this would dispel any suggestion of having arrived from ISIL territory, and while it was submitted that he would still be at risk of torture, given that he would be coming from the United Kingdom, I find that he has not shown that he would be at risk of torture.
18. With reference to paragraph [8] of the headnote, I have found that the Appellant is not in contact with family members. Paragraph [9] sets out the difficulties for those who do not have the assistance of family in the IKR.
19. I find that the Appellant would be unlikely to find accommodation in a refugee camp in the IKR (9(i)). In relation to paragraph 9(ii) there is no evidence before me that the Appellant would be able to afford between US\$300 and US\$400 per month from his own resources in order to rent accommodation. Paragraph 9(iii), which sets out the third option of accommodation, would be to squat in e.g. an abandoned building or tent. Paragraph 9(iii) makes it clear that it would be unduly harsh to expect an

individual to relocate to the IKR if he would live in a “critical housing shelter” without access to basic necessities.

20. Paragraph 9(iv) refers to the Voluntary Returns Scheme. I find that the grant would only last for a limited period of time. The Appellant would need to find employment to secure an income once that ran out. No evidence was provided, and it was not submitted by Mr. Avery, that the Appellant’s sister would be able to financially support him from the United Kingdom. Ad hoc charity is not a long-term solution.
21. The issues regarding the ability of an individual to secure employment are set out at paragraph [10] of the headnote. There is 70% unemployment (10(ii)). The Appellant does not have a CSID and so would not be able to work (10(iii)). Patronage and nepotism are still important and there is an advantage for those with family connections (10(iv)). Skills, education and experience are important (10(v)). I find that the Appellant has never worked in Iraq having left there when still a child.
22. Therefore, while a Voluntary Returns Scheme grant may cover a few months of the basic cost of living, the Appellant would then need to find employment to cover these costs. Taking all of the above into account, given that the Appellant has no CSID, has no family support and is not a professional or skilled worker, I find that he would be unlikely to find employment in the IKR. Therefore, once any funds from the Voluntary Returns Scheme grant ran out, I find that the Appellant would not be able to afford accommodation or other basic necessities. I therefore find that the Appellant has shown that it would be unduly harsh to expect him to return to the IKR.

Notice of Decision

23. The appeal is allowed on human rights grounds, Article 3.

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 March 2019

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 11 March 2019

Deputy Upper Tribunal Judge Chamberlain