



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11727/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre  
On 11 April 2019

Decision & Reasons Promulgated  
On 10 May 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

S R M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Brooks instructed by Albany Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

## **Introduction**

2. The appellant is a citizen of Iraq who comes from the Independent Kurdish Region ("IKR") who was born on 1 June 2002. He arrived in the United Kingdom on 17 January 2018. He was, as a consequence, then 15½ years old.
3. On 30 January 2018, the appellant claimed asylum. The basis of his claim was that his father had been killed in March 2017 in what, he believed to be, an 'honour killing'. His mother had died whilst giving birth to the appellant and in May 2007, his paternal grandmother also died and he went to live with his maternal uncle. Shortly thereafter, the house where he was living was attacked and in August 2017, his uncle told him that the people who had killed his father wanted to kill the appellant also. Shortly after that, on 24 August 2017 the appellant left Iraq by plane using his own passport. He travelled to Turkey where he remained for one month before travelling through Europe, eventually arriving in the UK on 17 January 2018 clandestinely.
4. On 19 September 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. However, because the appellant was an unaccompanied minor, he was granted leave until 1 December 2019.

## **The Appeal to the First-tier Tribunal**

5. The appellant appealed to the First-tier Tribunal. In a detailed and careful determination, Judge Fowell dismissed the appellant's appeal on all grounds.
6. First, he rejected the appellant's asylum claim. The judge made an adverse credibility finding and did not accept that the appellant would be at risk on return due to an 'honour killing' and concluded that his departure from Iraq was as a result of "economic motives" (see [27]). That adverse finding is not challenged in the grounds of appeal and I need say no more about it.
7. Secondly, Judge Fowell went on to consider whether the appellant could return to Iraq and live in the IKR. Before Judge Fowell, the Secretary of State did not pursue an argument that the appellant, given his age that he was an ethnic Kurd and could speak no Arabic, could be expected to live in Baghdad where he had no family. Before me, Mrs Aboni, who represented the Secretary of State, accepted that that was (and is) not an option for the appellant.
8. As a consequence, Judge Fowell considered whether the appellant would be able to travel to the IKR on arrival in Baghdad. Although direct international flights had resumed to Erbil in the IKR, it was accepted before Judge Fowell that an involuntary returnee to Iraq would have to be returned to Baghdad Airport and would need to travel on from there to the IKR.
9. At paras 28-31, Judge Fowell made a finding, contrary to the appellant's evidence which he had rejected, that the appellant still had family in the IKR (in Rania)

including a maternal uncle. At para 31, Judge Fowell found that the appellant would, in advance of his return, be able to contact his maternal uncle for support. The judge said this:

“He says that he is not in contact with his uncle and does not have his number. That does not seem to me at all likely, given the cost of such a journey, and even applying the lower standard I do not accept that there is a real risk of his uncle not being contactable in advance of his return. There will be a network of people in Rania even if he could not contact them directly, and ultimately even written communications could be sent, but I do not accept that he was sent so far and at such cost without any means of letting them know that he arrived safely.”

10. That finding has not been challenged and, therefore, stands. The appellant’s case must be approached on the basis that he is able to contact his family, in particular his uncle in the IKR.
11. At paras 33-42, Judge Fowell gave his reasons for finding that the appellant would, on return to Baghdad, be able to travel to the IKR where his family lived. Judge Fowell said this:

“33. I note the evidence of his attempts to obtain documentation at the Iraq Embassy. The fact that he got nowhere is unsurprising given the lack of documentation and accords with the October 2018 CPIN which documents the difficulties. He would at least need to have someone in the IKR to vouch for him, documents in the IKR to be produced and a power of attorney prepared. Although, taking these steps, it might be possible for [the appellant] to obtain a passport before returned, it is not to be expected that he would co-operate to that extent in his own removal. Return will only be carried out once a laissez passer has been obtained in the UK and so the risks on return have to be assessed on the basis that that at least is in place. Attached to that CPIN are now two letters from the Iraqi Ambassador stating that:

- (a) Returnees can continue their onward journey by air or road using their laissez passer or letter, i.e. they are no longer confiscated.
  - (b) They can re-document themselves and apply in their local Civil Status Departments for a national ID card using their old documents or family records, with reference to the page number of the register.
  - (c) Each governate has a Directorate of Civil Status Affairs where all records are preserved.
  - (d) A letter is also issued by Baghdad International Airport Police, where requested or documents are unavailable, giving their name, date of birth and confirmation that they landed with a laissez-passer. *That letter is sufficient to pass through checkpoints.*
  - (e) All Civil Status Records have been preserved nationally going back to 1957 and are available on microfilm at the central register in Baghdad.
34. Armed with that laissez passer, [the appellant] could be returned to Baghdad. Given his young age it is in my view unrealistic to expect him to

leave the airport and attempt to locate his records in the Central Registry there. I accept that he has no relative or friend there to help him and has no Arabic. His only realistic option would be to go through immigration control at the airport and obtain a letter from the airport police giving his basic details which, according to the ambassador's letters, would enable him to pass through checkpoints on arrival at Erbil. That is a daunting exercise for a 16-year-old but there is no obvious risk of harm here, and he has already overcome much greater difficulties in getting to the UK.

35. To be clear, I accept the content of the ambassador's letters, to the effect that the laissez passer would not now be confiscated on arrival at Baghdad. The more recent country guidance in AAH stated in the headnote that this would be confiscated at Baghdad. Further:

- “4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
5. ... It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon 'connections' higher up in the chain of command.
6. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.”

36. The view that the laissez passer is removed was based on evidence from Dr Fatah (paragraph 35) drawn in turn from a DFAT report (Australian Government, Department of Foreign Affairs and Trade) from September 2017. This report is no longer available online. The latest version, from October 2018<sup>1</sup> [footnote 1 = <https://dfat.gov.au/about-us/publications/Documents/country-info-report-iraq.pdf>] makes no such mention. It states at paragraph 5.20:

‘5.20 On arrival at Baghdad International Airport, all passengers irrespective of nationality have their identity information recorded. This process occurs at all international airports in Iraq, including the Kurdistan Region. Authorities will arrest an Iraqi on return if they had committed a criminal offence and a warrant had been issued for their arrest. Others, even those who had left illegally, would not be subject to arrest on arrival.’

37. The practice of confiscation also appears to have taken place at a time of particular hostility towards the IKR around the time of the referendum, when international flights there were banned. In any event, the ambassador to the UK is in a position to know the current position and so that in my view amounts to the cogent evidence necessary to depart from what was expressed to be a temporary situation.

38. Mr Brooks submitted that I should follow AAH on this point, and that these letters were not in evidence, but I cannot approach the question in quite such an artificial way. The latest Country Policy and Information Note is well known, and indeed Mr Brooks referred me to paragraph 2.7.7 himself on the question of the place of return.
39. That is therefore a considerable change in the position since it means that [the appellant] could actually get to the IKR. There is nothing in the rest of the headnote to indicate any further difficulty in admission, such as the need for a sponsor. He would arrive in Erbil in possession of his laissez passer and another letter from the Baghdad airport police, which is sufficient to pass through checkpoints and dispel any suggestion that he has come from ISIS territory.
40. As I have already found, he would have family support available to him once there, to take him in and someone to vouch for him in obtaining a CSID in due course. But this too is not straightforward. According to AAH at paragraph 1:

“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.

41. He does not have his passport or CSID with him but he does a male member of the family with him, his uncle. They go to the registry in Erbil and trace his mother's details. (The civil registration system is described in more detail in the CPIN at section 5.1). Armed with those details he would then, it seems, need to go to his own registry to get the necessary details of his own registration.
  42. That is likely to prove the most difficult part of the operation since he would have to cross back through checkpoints, manned by PMU or Hash'd Al Shaabi militia, into Ninewah province. If he did not have family support available I would not accept that he could do so. But travelling with his uncle, who has ID, and with his laissez passer and airport letter – which would show he was recently arrived from the UK and not a former ISIS fighter – there is no reason why he could do so, and so in due course obtain or re-obtain his documents.”
12. As will be apparent, Judge Fowell accepted that, at present, it was not feasible to return the appellant because he did not have a passport or a laissez passer, having sought one unsuccessfully from the Iraqi Embassy in the UK. However, Judge Fowell concluded that although the appellant's return was not currently feasible, his claim had to be approached on the basis that he would only return to Baghdad once he was in possession of a laissez passer.
  13. Then, Judge Fowell, taking into account the relevant country guidance decision in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT [2018] 00212 (IAC), concluded that on the basis of what he described as “two letters from the Iraqi Ambassador” the present position was that his laissez passer would not be confiscated at Baghdad and he would be issued with a letter at the Baghdad International Airport by the police (“the certification letter”) which would be sufficient for him to pass through checkpoints in order to travel from Baghdad to the IKR.
  14. Finally, the judge found that, applying AAH, the appellant has a male member of his family, namely his uncle who could assist him in obtaining a CSID by going with him to the registry in Erbil and trace his mother's details and then go with him to his own registry in order to obtain new documentation, in particular a CSID.
  15. At para 42, set out above, Judge Fowell found that:

“travelling with his uncle, who has ID, and with his laissez passer and airport letter – which would show he was recently arrived from the UK and not a former ISIS fighter – there is no reason why he could [not return to the IKR], and so in due course obtain or re-obtain his documents”.
  16. On the basis of that, the judge found that the appellant had failed to establish that he would be at risk of persecution or treatment contrary to Art 3 of the ECHR.

## **The Appeal to the Upper Tribunal**

17. The appellant sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal (Judge O'Callaghan) on 4 January 2019.
18. I heard oral submissions from Mr Brooks on behalf of the appellant and from Mrs Aboni on behalf of the Secretary of State. At the conclusion of the hearing I reserved my decision.

## **The Submissions**

19. Mr Brooks raised a number of points derived from the grounds of appeal.
20. First, he submitted that the judge had been wrong to assume that the appellant would, in Iraq, have a laissez passer. He pointed out that the appellant had not been able to obtain any documents from the Iraqi Embassy in the UK and the judge had failed to explain how he would be able to obtain one. Without a passport, Mr Brooks submitted the appellant would need a laissez passer.
21. Secondly, Mr Brooks submitted that the judge had been wrong to depart from the decision in AAH on the basis of the two letters from the Iraqi Embassy in the UK. He provided me with copies of the two letters dated 5 September 2018 ("letter A") signed by the Ambassador and a second letter dated 2 October 2018 ("letter B") signed by a Counsellor at the Iraqi Embassy. He pointed out that these letters had been appended to the *CPIN Iraq: Internal relocation, civil documentation and returns* (October 2018) and were also appended to the more recent version of the *CPIN* of February 2019.
22. Mr Brooks informed me that he had been unable to access the October 2018 *CPIN* and the copies of the letters he had provided me had come from the Annexes to the February 2019 version. However, he believed them to be the same letters. During the course of the hearing, although I was not provided with a copy of the October 2018 *CPIN*, Mrs Aboni was able to access on the internet an electronic version of the October 2018 *CPIN* and confirmed that the letters I had were indeed appended to that report which was the relevant one at the time of the judge's decision.
23. Mr Brooks submitted that these letters did not amount to "cogent evidence" necessary to permit the judge to depart from the country guidance decision in AAH. He had departed from AAH in two respects: first, in finding that if the appellant were returned with a laissez passer that would not be confiscated at Baghdad Airport; and secondly, that a letter would be issued at the Baghdad International Airport by the police – the certification letter – which would permit the appellant safely to pass through checkpoints in order to travel to the IKR.
24. Mr Brooks submitted that the judge's statement of these two letters set out at para 33(a)-(e) of his decision, was an interpretation of what the letters stated.

25. Finally, in the light of the judge's finding that the appellant had family, in particular a maternal uncle in the IKR, Mr Brooks did not pursue the ground that the judge had erred in law in finding that the appellant could obtain a CSID once in the IKR with the assistance of his uncle.
26. Mrs Aboni submitted that the appellant would be in a position to obtain a laissez passer in the UK if he could obtain a CSID whilst in the UK. She submitted, that as Judge Fowell had found at para 41, the appellant could obtain such a document with the assistance of his uncle.
27. Mrs Aboni submitted that on the basis of the two letters from the Iraqi Embassy, the judge was entitled to find that the appellant would have a laissez passer and a certification document which would be sufficient, when accompanied by his uncle, to allow him safely to travel from Baghdad Airport to the IKR.
28. In reply, Mr Brooks submitted that the judge's finding in para 41 was only that the appellant could obtain a CSID with the assistance of his uncle when he had returned to Iraq. He submitted that there was no evidence, and it was speculation whether the necessary document or assistance from his uncle existed. There was no evidence that the appellant's uncle would be able to obtain the document without the appellant's presence.

## Discussion

29. It is clear from the country guidance decision in AA (Iraq) v SSHD [2017] EWCA Civ 944, where the amended country guidance set out in an Annex, that:

“an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.”
30. The basis for that guidance, amended by the Court of Appeal on a consensual basis, is set out at [36]-[41] of the judgment. It is based upon that court's earlier decision in HF (Iraq) v SSHD [2013] EWCA Civ 1276 (see [38]-[39] of AA). The context means that a claim cannot succeed where an individual asserts that they are at risk in Iraq because they lack the very documentation needed to return to Iraq, *the absence of which* would put them at risk (see [38] of AA). However, if the absence of a document, once in Iraq, creates a risk in the country, then it is a live issue as to whether or not an appellant will be able to obtain such a document. That, of course, is the basis of the country guidance in both AA and AAH, that possession of a CSID is an important document when considering an international protection claim based upon an individual's circumstances once in Iraq.
31. Here, therefore, Judge Fowell was correct not to conclude that the appellant's appeal succeeded simply because he currently does not have a travel document (such as a laissez passer) and that, therefore, his return to Iraq is not currently feasible. As Judge Fowell pointed out at [33], the appellant will only be returned to Iraq if he has a travel document, which in this particular appeal, is taken to mean a laissez passer.



Since he can only be returned with such a document, Judge Fowell was correct to approach the risk to the appellant once he is in Iraq on the basis that he would be in possession of such a document. The position is different in respect of a CSID since, as the Court of Appeal pointed out in AA at [39], a CSID is not a *necessary* document in order to obtain a travel document. As the Court of Appeal stated:

“it is feasible that an individual could acquire a passport or a *laissez-passer*, without possessing or being able to obtain a CSID”. (my emphasis)

32. In those circumstances, the possession of a CSID, to the extent it is relevant to the risk to the individual once in Iraq, cannot be assumed to be in that individual’s possession simply because they have been returned to Iraq.
33. I do not, therefore, accept Mr Brooks’ initial submission that the judge was wrong to proceed on the basis that the appellant would be in possession of a *laissez passer* if returned to Iraq.
34. In those circumstances, I conclude that Judge Fowell was correct to assess the appellant’s claim on that basis and then to consider whether the appellant would be able to travel safely from Baghdad Airport to the IKR.
35. That, in my judgement, turns upon the issue of whether the judge was entitled to rely upon letter A and letter B and to reach his findings in regard to those letters, in particular at paras 33, 35, 37 and 39. In my judgement, he was entitled to do so.
36. First, the judge appreciated that he was departing from the country guidance case of AAH on the basis of evidence that had not been considered by the Upper Tribunal in that decision. At para 37, he correctly addressed the issue of whether that evidence was “cogent evidence” necessary to depart from AAH. Even though he said so specifically in the context of whether the appellant’s *laissez passer* would be confiscated, he clearly had in mind the correct test (as set out in SG (Iraq) v SSHD [2012] EWCA Civ 940 at [47] – “very strong grounds supported by cogent evidence”) which would entitle him to reach a different finding to that in AAH.
37. It was common ground before me that the two letters from the Iraqi Embassy were not in evidence before the Tribunal in AAH. Indeed, it is clear from the report of that decision that both the parties and the Tribunal in reaching its findings relied heavily and extensively upon an expert report rather than background material.
38. Mr Brooks drew to my attention that letter B was not, in fact, signed by the Iraqi Ambassador. Letter A was signed by him. However, letter B is signed by a Counsellor at the Iraqi Embassy. That person makes specific reference to the earlier Ambassador’s letter, and Judge Fowell was, in my judgement, entitled to regard this letter as being written by an Iraqi official well-aware of the relevant matters and was specifically writing a follow-up letter to that of the Ambassador a month earlier.
39. In my judgement, Judge Fowell’s summary at para 33(a)-(e) is a proper statement of what is said in these letters. Although neither letter specifically states that an individual’s *laissez passer* will not be confiscated at the airport, as AAH found on the

evidence before it, that was clearly the Ambassador's view as in letter A he states that:

"The arriving returnees can continue their onward journey to their final destination in Iraq by domestic flights or road using their laissez passer or letter (if provided) which helped them to pass through other designated checkpoints."

40. The wording - "using their laissez-passer or letter (if provided)" - only makes sense if the individual's laissez passer is not confiscated at the airport.
41. In any event, the equally important point made in both letters A and B is that, albeit on a "case-by-case" basis, an individual may be issued at the Baghdad International Airport by the police with a letter (the certification letter) which will then enable them to travel safely through checkpoints.
42. In letter A, the Iraqi Ambassador states that:
 

"I would like to assure you that all the returnees' papers are checked on arrival and they are received with courtesy at Baghdad International Airport and may be provided with a certification letter."
43. In letter B, the Counsellor states:
 

"In addition to our clarifications outlined in our letter of 5<sup>th</sup> September, please note that the same procedures are applied to all the returnees onward travel from Baghdad to KRG or any city in Iraq. The certification letter is issued on a case-by-case and depending on the availability/and availability documentations (sometimes requested by the returnee), the letter is issued by Baghdad International Airport police and contains information about the returnee including name, date of birth and clarification that the returnee landed with a Laissez Passer and his repatriation procedure is completed at the Airport. This letter is sufficient to pass through checkpoints in case of enquiry. Please note that in rare occasions they may be questioned at checkpoints. This letter usually not always issued for all the cases, but individually case-by-case."
44. In my judgement, this new evidence, not available to the Upper Tribunal in AAH, entitled Judge Fowell to consider that there was "cogent evidence" such that he could conclude that, not only would the appellant's laissez passer not be confiscated, but that it was likely that he would be issued with a "certification letter" which in itself would allow the appellant to travel safely through any necessary checkpoints between Baghdad Airport and the IKR.
45. Dealing finally with the issue of the CSID, as I have already noted, Mr Brooks did not challenge the judge's finding in para 41 that the appellant would, with the help of his uncle, be able to obtain a CSID in Iraq. His argument related to whether his uncle would be able to obtain such a document whilst the appellant was in the UK in order to obtain a laissez passer. As I have found above, Judge Fowell was entitled to proceed on the basis that any risk to the appellant in Iraq had to be assessed on the basis that he was in possession of a laissez passer as that was the only basis on which he could, in his particular circumstances, practically be returned. Mr Brooks' argument does not, therefore, arise.

46. It follows, in my judgement, that Judge Fowell was entitled to find that, having returned on a laissez passer, the appellant could safely travel to the IKR because he would retain his laissez passer and was likely to be issued with a certification certificate. His need for a CSID would not arise until he was in Iraq and upon the judge's uncontested finding in para 41, he would be able to obtain the necessary documentation including a CSID with the assistance of his uncle.

**Decision**

47. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.
48. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb  
Judge of the Upper Tribunal  
9 May 2019