Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11828/2018**

THE IMMIGRATION ACTS

Heard at: Bradford	**Decision & Reasons Promulgated**
On 11th April 2019	**On 8th May 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HAG
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Warren, Counsel instructed by Barnes Harrild and Dyer Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1989. He appeals with permission against the decision of the First-tier Tribunal (Judge Rosemary Bradshaw) to dismiss his protection appeal.

2. Permission was granted by First-tier Tribunal Judges Landes on the 11th January 2019.

3. The basis of the Appellant's case before the Tribunal was that he could not return to his home area of Mosul/Kirkuk because these

areas have been held to be 'contested' ie in state of internal armed conflict such that civilians may, by virtue of their presence alone, face a real risk of serious harm: AA (Article 15(c) Iraq CG [2015] UKUT 00544. As a Kurd, the Appellant had particular concerns about the activity of Shi'a militias in the area. He further submitted that he would be targeted by members of Ansar al-Islam, a militant Sunni Islamist group, because they had in the past tried to recruit him and he had informed on them. Relying on these facts the Appellant claimed entitled to international protection under the Refugee Convention, and in the alternative under Article 15(c) of the Qualification Directive.

4. The Respondent refused to grant protection on the 25th September 2018. The Respondent did not accept that the country guidance given in AA (Iraq) held good. In particular it was not accepted that Mosul was any longer 'contested', since the group Daesh/ISIL had been defeated there. The Respondent therefore concluded that it was open to the Appellant to return to his hometown. If he did not wish to do this, it remained open to him, in the alternative, to relocate within the 'Iraqi Kurdish Region'. The Appellant is fit and able to work, can speak Kurdish and it would not therefore be 'unduly harsh' to expect him to do so.

5. When the matter came before the First-tier Tribunal, the matters in issue therefore were:

    i) Whether the Appellant is at a real risk of harm in Mosul/Kirkuk today;

    ii) If so, whether he could reasonably be expected to internally relocate within the IKR.

6. Of the first issue, the First-tier Tribunal directed itself towards the findings of an earlier Tribunal, contained in the determination of First-tier Tribunal Judge Ennals dated 19th August 2008. Judge Ennals had on that occasion rejected the Appellant's claim to be at risk from Ansar al-Islam. The Appellant had argued before Judge Ennals that he could not be expected to internally relocate within Kurdistan because his father had been complicit in the war crimes of Saddam Hussain. This too was rejected. Judge Bradshaw adopted these findings and saw no reason to depart from them.

7. On the second matter, Judge Bradshaw directed herself to the country guidance on internal flight in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212. She found that the Appellant (or more accurately, the Respondent) was in possession of a genuine CSID, the same having been produced when the Appellant first claimed asylum in the United Kingdom in 2008. She further found that the Appellant had failed to demonstrate that he did not have family members to whom he could turn for support. On that basis she concluded that it

would not be unduly harsh if the Appellant were to establish himself in the IKR, and the appeal was dismissed.

8. The central ground for complaint in the application before the Upper Tribunal concerns the approach taken to the Appellant's CSID, a matter to which I return below. Before me however the parties agreed that the determination contains a more fundamental flaw, that is a failure to make complete findings in respect of issue (i) above, whether the Appellant faces a real risk of harm in his home area.

9. As I note above, the Appellant's claim rested on three claimed risks. There was the 'historical risk' relating to Ansar al-Islam, a claim that was rejected by Judge Ennals in 2008 and again by Judge Bradshaw in 2019. That finding is not challenged before me. Then there was the 'general risk' arising from the armed conflict in northern Iraq, and the 'specific risk' arising from the threat posed to Kurdish civilians by Shi'a militias now filling the vacuum left by ISIL. For the reasons set out below I have some difficulty with the approach taken by the First-tier Tribunal in respect of these matters.

10. The Respondent's position is that since the military defeat of ISIL the 'general risk' has abated to the extent that AA (Iraq) should no longer be followed. The Tribunal appeared to have accepted that submissions, and that finding is unchallenged in the grounds. Before me the parties nevertheless agreed that the negation of one threat does not mean that the area is necessarily *safe*: decision-makers are obliged to conduct their own risk assessment, based on the evidence before them. That is where the 'specific risk' becomes potentially relevant. It may have been open to the Tribunal to accept the Respondent's submission that there has been a material change in circumstances on the ground, but it was still necessary to consider what the new circumstances were. I am unable to find any such risk assessment in the determination.

11. That omission would of course be of no consequence if the appeal would in any event have fallen for dismissal on internal flight grounds. The Tribunal concluded, at paragraphs 60-63, that the Appellant is in possession of a CSID and that with this he will be able to access services, accommodation and employment in Iraq. It would not, in those circumstances, be unreasonable to expect him to internally relocate, for instance to the IKR.

12. Ms Warren challenges that finding on the grounds that there was no evidential basis for it, and that it conflicts, without *Devaseelan* distinction, with findings made by Judge Ennals. The argument goes like this. A number of years ago the Appellant claimed asylum. He asserted that he was a minor. His age was disputed, and some time before Judge Ennals heard his initial asylum appeal in 2008, the Appellant produced a CSID which demonstrated that he was a child. In his decision dated the 19th August 2008 Judge Ennals conducted a

Tanveer Ahmed assessment of that document, in the round with the remaining evidence. He accepted the assessment of Kensington and Chelsea social services department that the Appellant was in fact an adult, and concluded that the CSID was not in fact genuine. Ms Warren submits that notwithstanding her lay client's protestations, that is a finding that must stand.

13. In approaching her task Judge Bradshaw properly directed herself to the undisturbed findings of Judge Ennals and to the guidance in Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702. At paragraph 34 of her decision she finds that there is no evidence before her which could cast doubt upon Judge Ennals decision. She goes on to mark the Appellant's evidence that his CSID was in fact genuine, and then as I have explained, proceeds on that basis to conclude that he could use this card in Iraq to access the basic services required. I am satisfied that this was an error. The clear finding of the First-tier Tribunal in 2008 was that this card was a fake, produced to substantiate a fraudulent claim to be an unaccompanied minor. There was no new evidence before the First-tier Tribunal which could displace that finding. The Appellant claimed it was genuine, but he had always done so, and this evidence had been expressly rejected by Judge Ennals. It is difficult to see how a fake CSID (bearing the photograph of a child) could be of any assistance to the Appellant at all in reintegrating in Iraq. Conversely there was no evidential basis for the conclusion that it was genuine, the only such evidence being the Appellant's own, excluded from consideration by the Devaseelan guidelines.

14. I therefore set the decision of the First-tier Tribunal aside in its entirety. Mr Diwnycz did not demur and both parties agreed that in light of the extent of fact finding required, this is a matter that should be remitted to the First-tier Tribunal.

Anonymity Order

15. This case concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

16. The determination of the First-tier Tribunal contains errors of law and it is set aside.

17. There is an order for anonymity.

Upper Tribunal Judge Bruce
11th April
2019