



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13604/2018

THE IMMIGRATION ACTS

Heard at Field House
On 29 April 2019

Decision & Reasons Promulgated
On 10 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MR T M I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Counsel instructed by Sultan Lloyd Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Lodge promulgated on 13 February 2019. As an anonymity direction was been made in the First-tier Tribunal, I too make one.
2. The appellant is a citizen of Iraq born on 3 March 2001. He appeals a decision of 20 November 2018 whereby the Secretary of State refused to grant him asylum and humanitarian protection.

3. The Secretary of State's reasons for refusal were set out in a refusal letter dated 20 November 2016, in particular paragraph 124 which reads as follows.

“As outlined above under ‘Feasibility of Return’ it is considered that you would be returned to Kirkuk, a city that you have previously lived in. As the country policy states, although Kirkuk previously fell under 15c, the conditions within Kirkuk do no longer fall under the scope of the Article 15c of the Qualification Directive.”

4. The Appellant's appeal to the First-tier Tribunal was dismissed on asylum grounds, on humanitarian protection grounds and on human rights grounds.
5. On 20 March 2019 permission to appeal the decision was granted by First-tier Tribunal Judge Grant-Hutchinson on two particular grounds. Mr Mohzam, for the appellant, did not seek to argue the appeal more expansively, notwithstanding the other matters raised in the grounds on which permission was not expressly refused
6. The first ground is that the judge's finding as to whether Kirkuk is a contested area for the purposes of paragraph 15c was not supported by adequate reasons; the second is that the judge was wrong to find that a CSID card could be obtained from the Iraqi Embassy in London.
7. I can deal with the factual substance of the decision relatively shortly. Notwithstanding the appellant's relative youth (rising 18 at the date of the hearing), for which the judge made appropriate allowance [21], he was not found to be a credible witness [20]. As the judge records [23-29], the appellant has given a number of mutually contradictory versions as to how he came by a CSID card. The judge concludes that the CSID card produced to the UK authorities by the appellant is counterfeit [29], and (in consequence) the appellant's original CSID is at home in Kirkuk with his family [46]. Further, the judge rejected the appellant's contention that his mother and sister are dead [36]. The judge did not accept the appellant's claim that he had been targeted by ISIS when living with his uncle in Hajiawa [38-45]. On the judge's factual findings, the appellant had advanced a concocted story regarding the basis to his asylum claim [45]. There is no challenge in the grounds of appeal to any of these findings.

Ground 1: Kirkuk as a contested area

8. In the decision, the judge states: “There is no 15(c) risk at the present time in Kirkuk” [50].
9. Mr Mohzam took me to AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). Paragraph 1 of section A of the Country Guidance reads:

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. (emphasis added)*
10. This passage was approved and adopted without revision when the case reached the Court of Appeal, reported as *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944. Mr Mohzam's submission, as I understood it, was to the effect that judge failed to give any reasons for departing from this Country Guidance.
11. I remind myself of the *Immigration and Asylum Practice Direction*, paragraph 12.2 of which states that unless it has been expressly superseded or is inconsistent with other authority binding on the tribunal, Country Guidance (duly marked as such by the designation CG) should be followed unless that tribunal is persuaded that it does not apply to the case in question. To borrow from Stanley Burnton LJ in *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940, at 47: "tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds, supported by cogent evidence, are adduced justifying their not doing so".
12. The judge's reference to there being no 15(c) risk at the present time in Kirkuk is admittedly somewhat brief [50]. But it does not appear from the decision to have been in contention as between the parties. The refusal letter (paragraph 124 of which I have set out in full above) recites at paragraph 122 the relevant part of *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944. Immediately afterwards, at paragraph 123 of the refusal letter continues:

"123.Iraq country policy and information note: security and humanitarian situation – March 2017 states:

3.2.2 However the situation has changed since then. Parts of Anbar that Daesh no longer controls or contests (including the Fallujah, Heet and Ramadi districts), Diyala, Kirkuk (except Hawija and the surrounding areas) and Salah al-Din no longer meet the threshold of Article 15c. Ninewah and most of Anbar, however, still meets the threshold of Article 15c."
13. Although not cited to me by either representative, I have regard to *The Queen (on the Application of QA) v Secretary of State for the Home Department* [2017] EWHC 2417, a decision of Sir Ross Cranston, sitting as a Judge of the High Court, especially the following:

“[63] As far as the position in Kirkuk is concerned, and the requirement for the claimant to return there to obtain a CSID, the Secretary of State was entitled to take the realities on the ground there into account. Kirkuk is no longer a contested area. In my view, country guidance cases must give way to the realities, a point recognised by the Court of Appeal in *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940 at para 47.”

14. At times I did not find Mr Mohzam’s submissions entirely easy to follow and, whilst I cannot be entirely certain, the context of the First-tier Tribunal’s decision seems to be premised on the undisputed altered reality on the ground, recognised in QA. Mr Mohzam, (who appeared also in the First-tier Tribunal) did not submit to me that there was material before the judge to suggest that the altered reality had not endured. Nothing to this effect appears in the grounds of appeal, nor did Mr Mohzam refer me in the course of his submissions to material which had been before the judge pointing the other way which might have been overlooked.
15. Even if I have misunderstood and there had been a genuine joinder of issue as between the appellant and the respondent as to the conditions in Kirkuk, and the engagement of 15(c), the worst that can be said of the judge’s disposal of the matter is that it was brief and not supported by reasons. It might have been more helpful to have cited the *Iraq Country Policy and Information Note* of March 2017, and perhaps also the judgment of Sir Ross Cranston in QA. But if the judge did fall into error by his brevity, it would not be appropriate to set aside the decision because it would inevitably be remade in exactly the same manner. Any shortcoming on the art of the judge was immaterial to the outcome and this ground of appeal therefore fails.

Obtaining a CSID from the Iraqi Embassy in London

16. The second ground of appeal advanced Mr Mohzam concerns judge’s finding that the appellant could obtain a CSID from the Iraqi Embassy in London.
17. Ms Isherwood, for the respondent, referred me to the Upper Tribunal decision of AA (Article 15(c) Iraq) CG [2015] UKUT 544 (IAC). This substantial and exhaustive decision has a section expressly devoted to ‘Obtaining a CSID whilst in the UK’. It recites the expert evidence upon which the judges relied, and ties the various strands together with a concluding paragraph (177) which reads:

“177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details.” (Emphasis added).

18. In his careful decision, the judge found that the appellant would need to provide the page number and volume details, and further found that he could obtain this information from his uncle or parents. The relevant section reads:

“49. With regard to the feasibility of his return I have dealt with it to some extent above. He has, on my findings access to a CSID card. He previously had one in Iraq. He could apply to the Iraqi embassy in London, he will need to provide the page number and volume details, he could obtain these from his uncle or parents [...]

“50. In any event, if the respondent has conceded the father is dead, the appellant has a mother sister and uncle at the very least in Iraq who can meet him at the airport and assist him to obtain the required documents to facilitate his journey to Kirkuk. There is no 15(c) risk at the present time in Kirkuk.”

19. These factual findings are not challenged. The Grounds of Appeal made reference to AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) and AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944. Mr Mohzam did not direct me to any particular passage within either. I can find nothing in these authorities which contradicts or countermands the expert evidence, accepted by the Court of Appeal in AA (Article 15(c) Iraq) (above) concerning the circumstances in which a CSID might be obtained from the Iraqi embassy in London.
20. There is no error of law in the judge’s approach and conclusions regarding obtaining a CSID and this second ground of appeal therefore also fails.

Notice of Decision

This appeal is dismissed and the decision of First-tier Tribunal is affirmed.

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 *Mark Hill*

Date 5 May 2019

Deputy Upper Tribunal Judge Hill QC