



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/04261/2019
(P)

THE IMMIGRATION ACTS

Decided under rule 34

**Without a hearing
On 26 June 2020**

**Decision & Reasons
Promulgated
On 14th July 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**FFA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Begum of Fountain Solicitors

For the Respondent: Mrs Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is appealing against a decision of the First-tier Tribunal promulgated on 1 November 2019. I granted permission to appeal on 8 January 2020. The hearing was listed for 8 April 2020. However, because of the Covid-19 pandemic, the hearing was postponed.
2. Directions were issued giving the provisional view that it would be appropriate to determine the error of law issue in this appeal

without a hearing. The parties were directed to make further submissions in writing and given an opportunity to express their view on whether a hearing would be necessary. Submissions have been received from both parties.

3. The respondent did not raise any objection to the appeal being determined without a hearing. The appellant's submissions state that if the respondent does not concede there should be an oral hearing. However, they do not give any reasons to support this submission. Having considered the further submissions of both parties, as well as the documents that were before the First-tier Tribunal, I am satisfied that I am in a position to determine this appeal fairly and justly without a hearing.

Background

4. The appellant is a Kurdish citizen of Iraq born on 3 February 1995 from Jalawla (in the Diyala region of Iraq) who came to the UK and claimed asylum in 2015.
5. The appellant claims that he left his village, with his family, in 2014 because of the threat from ISIS, and that, after staying with his uncle for approximately a month, he travelled via several countries to the UK. The appellant has been living with his father since arriving in the UK.
6. The appellant claims, inter alia, that he does not have a Civil Status Identification Card (CSID) and there is no one in the Iraqi Kurdish Region (IKR) or elsewhere in Iraq who would be able to assist him.
7. The respondent holds a copy of the appellant's passport.
8. Following the refusal of his asylum claim, the appellant appealed to the First-tier Tribunal where his appeal was heard by a panel comprising of Judge of the First-tier Tribunal Chohan and Judge of the First-tier Tribunal Currie ("the Panel"). The Panel dismissed the appeal. The appellant is now appealing against that decision.

Decision of the Panel

9. Having identified inconsistencies in the appellant's account and found aspects of it to be implausible and lacking in detail, the Panel concluded that even though the appellant's account relating to the time he left his village was consistent with objective information on the conflict in Iraq, it was not credible. On that basis, the Panel found that the appellant did not have a subjective fear of a risk of persecution and therefore could not succeed in his asylum appeal.
10. The Panel then considered whether the appellant would be at risk in his home area from indiscriminate violence within the meaning of Article 15(c) of the Qualification Directive. The Panel

quoted at length from the respondent's Country Policy and Information Note on Iraq dated November 2018 ("the CPIN"). The CPIN notes that in *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* it was found, based on evidence up to May 2015, that the armed conflict in several parts of Iraq including Diyala engaged article 15(c) but that since the collapse of ISIS the situation had fundamentally changed such that there were strong grounds supported by cogent evidence to depart from AA. The Panel agreed with the CPIN and, after considering the individual circumstances of the appellant, concluded that he would not be at risk of indiscriminate harm engaging article 15(c).

11. One of the individual circumstances considered by the Panel was whether the appellant would have a CSID. It was noted that the respondent has a copy of the appellant's passport, which had been used for a visa application in 2007. Relying on the CPIN, the Panel found that because he has a copy of his passport, the appellant should be able to obtain a replacement passport and a CSID from the Iraqi embassy in the UK. The Panel found that the appellant would be able to return to his home area without a real risk of suffering persecution.
12. The Panel also considered whether removal of the appellant would breach article 8 ECHR. It found that there would not be very significant obstacles to integration into Iraq and that removal would not be disproportionate.

The Grounds of Appeal and Submissions

13. The appellant advances three grounds of appeal.
14. The first ground of appeal submits that the Panel erred by not identifying the background material and/or country guidance relied upon to support the conclusion that the appellant would be able to obtain a CSID from the Iraqi embassy in the UK using a photocopy of his expired Iraqi passport.
15. The second ground of appeal contains two distinct submissions. The first is that the Panel failed to give strong grounds supported by cogent evidence to justify departing from extant country guidance on the article 15(c) risk in the Diyala region (the appellant's home area). The second is that the judge failed to apply the extant country guidance on the difficulties the appellant would face obtaining a CSID upon return to Iraq and the challenges he would face travelling from Baghdad to Diyala without a CSID.
16. The third ground of appeal submits that in the article 8 ECHR assessment the judge failed to provide adequate reasons as to why there would not be very significant obstacles to his integration into Iraq.

17. The appellant's written submissions reiterate the points made in the grounds of appeal. In addition, they argue that the Panel made findings about the appellant's asylum claim without giving adequate reasons as to why he should not be entitled to protection in the light of his fear being linked to ISIS invading his village. The submissions also assert that anxious scrutiny was not given to the appellant's claim about what has happened to his family since he left Iraq. The submissions also refer to *AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT* in relation to the difficulties that will be faced at checkpoints by a person without a valid CSID.
18. The respondent's submissions argue that there was no error in the approach taken to the ability of the appellant to obtain a replacement CSID. In respect of the credibility arguments raised in the submissions, the respondent argues that it is clear that the Panel found much of the appellant's evidence implausible and inconsistent (including the claim of the appellant's father in the UK that he had lost contact with his wife and other children just 5 months before the hearing despite regular contact over at least 4 years) and therefore it was open to the Panel to conclude that the appellant would have family support.

Analysis

19. On 23 December 2019 a new country guidance case on Iraq, replacing all existing country guidance, was published: *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)*. However, as the Panel's decision was promulgated in November 2019, it was required to follow, unless there were very strong grounds supported by cogent evidence to not do so, the country guidance case law applicable prior to *SMO*. This comprises of the following 3 cases: *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* (as amended by the Court of appeal in *AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944*); *BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC)*; and *AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC)*.
20. The Panel's finding that the appellant (given the availability of a copy of his expired passport) would be able to obtain a CSID from the Iraqi embassy in the UK was consistent with *AA*, where at para. 177 it was found:

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. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in

Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring. [emphasis added]

Accordingly, there is no merit to the first ground of appeal which challenges the Panel's finding that the appellant would be able to obtain a CSID in the UK using a copy of his expired Iraqi passport.

21. At the time AA was decided Diyala (the appellant's home area) was controlled by ISIS. The panel in AA noted that life in the areas controlled by ISIS was characterised by systematic and widespread acts of violence and gross violations of international humanitarian law and abuses of human rights. At para. 106 of AA it was stated:

Given the volatility of the situation in the contested areas, the number of displaced persons therefrom, the tactics of warfare used there by ISIL and the circumstances in the areas controlled by ISIL, we have no hesitation in endorsing the Respondent's concession and conclude that a civilian with no distinguishing characteristics will, simply by virtue of his/her presence in a contested area, be at real risk of suffering harm of the type identified in Article 15(c) of the Qualification Directive.--+

22. By the time this appeal was determined, the situation in Diyala had changed dramatically. ISIS had long since lost control of the region and the number of security incidents and fatalities had declined substantially. The very significant change in Diyala in the four years since AA was decided amounts to, in my view, very strong grounds, supported by cogent evidence, to depart from AA in respect of the risk of indiscriminate violence in that part of Iraq. The Panel therefore did not fall into error by failing to follow AA in respect of the article 15(c) risk in the appellant's home area.
23. The appellant's argument that the Panel erred by failing to assess in the light of the Country Guidance cases AA and AAH whether he would be able to obtain a CSID upon return to Iraq (or would be able to travel from Baghdad to Diyala without a CSID) cannot succeed because it is premised on the assumption that the appellant would not be able to obtain a CSID in the UK prior to returning to Iraq. However, as explained above in paragraph 20, the Panel was entitled to find that the appellant would be able to obtain a CSID in the UK. The appellant therefore cannot succeed under his second ground of appeal.

24. The third ground of appeal, which concerns the appellant's article 8 claim, has no merit. The Panel gave several reasons to support the conclusion that the appellant would not face very significant obstacles integrating in Iraq, including his cultural and linguistic connection to his home area which he had only left 4 years earlier, that he had spent his formative years in Iraq and that he would have family to support him. There is no basis to the contention that this aspect of the decision is flawed because of inadequacy of reasons.
25. As noted above in para. 19, had this appeal been decided a few months later, the extant country guidance on article 15(c) risk in Diyala and obtaining a CSID would have been *SMO*, not *AA*. Although this forms no part of my error of law decision, I note that had *SMO* been applied by the Panel the same outcome would have been reached.
26. The further submissions raise two issues that are not in the grounds of appeal: whether the Panel adequately addressed whether the appellant should be entitled to protection given his fear was linked to ISIS invading his village; and whether the Panel properly considered the appellant's evidence about ceasing contact with his family. These submissions have no connection to the grounds of appeal and no application has been made to amend the grounds. There is therefore no basis for me to consider them. However, for completeness, I will address them briefly. There is no merit to the argument that the appellant should be entitled to protection given his fear is linked to ISIS invading his village because ISIS has not had control of his village for several years. With regard to the appellant's family, the Panel gave clear reasons to support the findings reached including, inter alia, the implausibility of his father's claim that he had been in regular contact with their family in Iraq for several years but had lost contact with his wife just five months before the hearing. The Panel was entitled to find, for the reasons it gave, that the appellant has not lost touch with his mother and siblings, or with the uncle he stayed with after leaving his village in 2014.
27. The grounds of appeal do not identify an error of law. The appeal is therefore dismissed.

Decision

28. The appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of an error of law and the decision stands.

Direction Regarding Anonymity

29. 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:

D. Sheridan

Upper Tribunal Judge Sheridan

26 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email