



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04541/2018

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 10th February 2020

Decision & Reasons Promulgated
On: 29th April 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

KM
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mrs Johnrose, Broudie Jackson & Canter
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1994. He appeals with permission the decision of the First-tier Tribunal (Judge AJ Parker) to dismiss his protection appeal.
2. In her refusal letter dated the 27th March 2018 the Respondent accepted that the Appellant is a citizen of Iraq, and that he is of Kurdish ethnicity. The matters in issue before the First-tier Tribunal were (a) whether the Appellant was from a 'contested area' such that he could not be expected to return there and if so (b)

could he nevertheless be reasonably expected to avail himself of an internal flight alternative?

3. The hearing before the First-tier Tribunal took place in November 2018 when the operative country guidance on my question (a) above was AA (Article 15(c)) Iraq CG [2015] UKUT 00544. By that decision the Tribunal had found that the city of Tuz Khurmato in Salah al-Din Governate fell within the area contested by, amongst others, the Islamic State and the government of Iraq. The Appellant claimed that this was his home town. The Tribunal rejected that claim. It so found because the Appellant did not know the size of the population there, and because he claims not to be able to speak Arabic (Tuz Khurmato has a high population of Arabic speakers). The Appellant's case thereby fell at the first hurdle. The Tribunal nevertheless proceeded to determine my issue (b) above. It concluded that the Appellant would have family in the Kurdish region who would be able to help him get a CSID and on that basis found internal relocation would not be unduly harsh.
4. The appeal was thereby dismissed with the First-tier Tribunal resolving both matters in issue in the Respondent's favour.
5. The Appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Macleman by his decision of the 22nd February 2019. On the 21st October 2019 the matter came before me for a preliminary hearing, at which the Respondent accepted that the decision of the First-tier Tribunal was flawed for error of law and must be set aside. In light of that concession I state my findings on 'error of law', set out below, are stated briefly. The matter was then adjourned pending promulgation of the new country guidance case on Iraq. That decision, SMO and Others (Article 15(c) identity documents) Iraq CG [2019] UKUT 400, did not become available until the 20th December 2019. The matter came back before me on the 10th February 2020. I heard live evidence from the Appellant, and submissions from the parties. I reserved my decision, which I give below under the heading 'the re-made decision'.

Error of Law

6. As to issue (a) the findings are unclear, and arguably flawed for a misapplication of the standard of proof. At paragraph 22 of its decision the Tribunal uses the formulation "we cannot be sure if he comes from this area". It would be somewhat surprising if a Presenting Officer had invited the Tribunal to apply that standard, since it is trite that in this protection appeal the appropriate question was whether "it is reasonably likely" that the Appellant is from Tuz Khurmato. At the beginning of paragraph 26 the Tribunal rejects the claim that the Appellant is from the city because he cannot speak Arabic, yet finishes the paragraph with a finding that in fact he does. Taking that contradictory reasoning out of the equation one is left with paragraph 23, where the Tribunal finds that the Appellant's failure to give an accurate figure for the population of Tuz Khurmato fatally undermines his

claim to be from there. I agree with Ms Johnrose that this is a tenuous basis upon which to reject a protection claim. I am doubtful whether most people living in Greater Manchester would be able to say what the population of the region is: that does not mean that they are not resident here. Finally in its reasoning on this matter the Tribunal failed to weigh in the balance the fact that the Appellant had been able to describe incidents which we know to have occurred in Tuz Khurmato in October 2017 (i.e. attacks on the Kurdish population by *Hashd al-Shaabi* and related Shi'a militias).

7. The First-tier Tribunal did go on, in the alternative, to deal with issue (b). In doing so it entirely failed to have regard to the relevant country guidance case of AAH (Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC). Although it directed itself to a plethora of other authorities, in omitting to consider AAH the Tribunal failed to have regard to the one case that actually addressed the question of internal flight for Kurds, and specifically the likelihood that he would be able to obtain a CSID.

The Re-Made Decision

8. The decision in SMO has changed the landscape considerably. For this appellant, it has done so in two key respects. First, it has redefined the scope of the contested areas where, it is accepted, conditions on the ground are such that Article 15(c) pertains. Although it remains a scene of significant security problems [see paragraphs 262-265 SMO] Tuz Khurmato is no longer regarded as 'contested' and as such provides no foundation for the Appellant to claim humanitarian protection. The Tribunal nevertheless went on to give guidance on an entirely new factual matrix in Iraq – the introduction of new biometric identity cards known as 'Iraqi National Identity Cards' (INIDs). Whether or not an appellant can obtain one of these cards within a reasonable time of arrival in Iraq is today relevant to the question of whether he qualifies for humanitarian protection under Article 15(b) of the Qualification Directive.
9. Before me the parties were in agreement that pursuant to SMO the first matter to be determined was what the Appellant's circumstances will be upon arrival in Iraq.
10. Tuz Khurmato is outside of the Kurdish region, and as such Mr Tan accepted that there appeared to be no prospect of removal to Irbil. As far as the Respondent is concerned the Appellant will be removed to Baghdad.
11. I accept that the Appellant is not currently in possession of a CSID. That was also the finding of the First-tier Tribunal and it is not a matter seriously contested by the Respondent. The Appellant has been in the United Kingdom since December 2017 having travelled through the various countries of Europe with the assistance of people traffickers, whose *modus operandi* is known to be the divestment of their customers' identity documents. I further accept, for the same reason, that at

present the Appellant has no Iraqi passport. If he did ever have one, it is reasonably likely that he does not have it now.

12. The only way that the Respondent can therefore get the Appellant to Baghdad is if the Iraqi embassy in London issues the Appellant with a laissez-passer. Neither party gave me any cause to doubt that such documentation would be issued upon request.
13. So the Appellant will arrive in Baghdad with a laissez-passer. In SMO the Respondent had argued that a laissez-passer, or alternatively a letter of authority/certificate issued by the Iraqi authorities upon arrival would enable the Appellant to make any necessary onward journey. The Tribunal rejected those submissions, its findings on that evidence set out in the headnote:

“12. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a ‘certification letter’ at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.”

14. The immediate difficulty for the Appellant will therefore be onward travel from Baghdad. In an unchallenged finding the First-tier Tribunal had accepted that the Appellant could not realistically remain in Baghdad, where he has no connections and a questionable ability to speak Arabic. In order to get out of Baghdad airport and make his journey north to the Kurdish region, the Appellant needs a recognised form of identification: see SMO and AAH.
15. Before me Mr Tan submitted that the Appellant could obtain the necessary documentation before he left the United Kingdom. He pointed out that the Tribunal in SMO appear to conclude that it is still possible to get a CSID from the embassy in London [at §383]:

“We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent’s CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual’s identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept

that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity."

16. Whilst the Tribunal in this passage clearly envisage that it remains *possible* to obtain a new CSID in London, the likelihood of an individual successfully doing so must be read in light of Dr Fatah's earlier evidence on the point, as set out in the earlier country guidance cases. The passages in AA to which the Tribunal in SMO refer are these:

"173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application".

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act "as a proxy" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad. "In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

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. 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.”

17. That was the evidence in 2015. In 2018 Dr Fatah updated it for the Tribunal in AAH:

“26. If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must be countersigned by the head of the applicant’s family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant’s family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family’s details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.

27. If you are in Iraq, and have all of the required documents, in normal circumstances the process is straightforward and quick and should take no more than three days. Dr Fatah’s own daughter was born in the United Kingdom and he managed to obtain her a CSID in one day from the office in Sulaymaniyah, upon payment of a small fee. Dr Fatah was less optimistic about the efficiency of the process if in the United Kingdom. He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful.

....”

18. Having taken all of that evidence into account I find the Appellant could provide a signed statement explaining why he does not have a CSID. I assume for these purposes that he is in contact with family members in Iraq who would be willing, and have the standing, to countersign his application. There would be no difficulty in him providing the 10 colour photographs required. After that his application becomes more problematic. In his research prior to AAH Dr Fatah made contact with the consulate in London and having done so he included in his list of necessary documents the individual’s Iraqi passport and four colour photocopies of his INC. As I have already found, this Appellant has neither of these items. These evidential requirements must be viewed in the context of the very great number of Iraqi nationals who are undocumented, and Dr Fatah’s evidence (see AAH) that the embassy in London is “generally very unhelpful” and that the problems of an individual returnee are regarded as “trivial”. I accept that

it is reasonably likely that the embassy would be unwilling or unable to process an application that required any particular effort, for instance if the applicant's identity could only be verified with reference to records in Iraq.

19. Accordingly I am satisfied that there is a reasonable likelihood that the Appellant will find himself at Baghdad airport with no immediate means of onward travel. Without the relevant identity document he cannot board a domestic flight north, or pass through the many checkpoints on the road.
20. His next option would be to get a member of his family to obtain an identity document for him, and bring it to the airport. It is here that the new evidence about INIDs set out in SMO becomes relevant. The pertinent part of the headnote sets out the Tribunal's findings:

"11. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.

12. ...

13. ...

14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*

16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information."*

21. The import of those findings for the Appellant is this. If the civil registry in his home area is now issuing INIDs, his appeal must be allowed, since he is caught in an administrative Catch-22 which will leave him destitute and in conditions engaging Article 15(b): unlike their predecessor CSIDs, INIDs cannot be issued to

proxies, and so it would not be possible for anyone to get one, and bring it to the Appellant.

22. The next matter to be determined is therefore where the Appellant is actually from. As I have set out above, the First-tier Tribunal was not satisfied that the Appellant was from Tuz Khurmato as claimed. Having looked at all the evidence, I am satisfied, to the lower standard, that it is reasonably likely that he is from that town as he claims. I so find for the following reasons. He has consistently said that this was where he is from. At the date that he arrived most of the Kurdish areas outside of the IKR were in 'contested areas' so there was no particular reason for him to lie about that. He gave details about the town consistent with the background evidence, for instance correctly identifying the rough size of the Kurdish population, and being able to accurately estimate the driving time from there to other nearby places. His evidence about what happened in Tuz Khurmato in the last few months before he left in 2017 is consistent with the background evidence
23. The final issue for consideration is therefore whether the civil registry in Tuz Khurmato is still under the old CSID system, or whether it is one of the many urban centres that have now installed the new INID terminals. In SMO the Tribunal was not given specific evidence on the locations of these terminals. As the decision makes clear, such a list would have been quickly outdated as the programme is rolled out across the country. What the Tribunal is able to say is that it has been the towns and cities that have been provided with terminals first: the Respondent's position before them was that CSIDs were still being issued in "rural areas" [at §389]. Even in the absence of specific confirmation that Tuz is one such a city, I find it to be reasonably likely that it is so, for the following reasons.
24. Tuz Khurmato falls at the southernmost tip of the areas of northern Iraq populated by Kurds – its mixed population includes Sunni Turkmen and Shia Arabs. At one time it was part of the Kurdish governate of Kirkuk, until Saddam Hussain hived it off to become part of largely Arab Salah al-Din. As such it has been heavily contested for years. It fell under ISIL control in 2014, was retaken by the Kurds in 2015, and in 2017 was the scene of widespread killing and human rights abuses as militias under the control of the Government of Iraq drove out the Peshmerga, and much of the Kurdish population. During this period the area suffered "significant infrastructure damage" [see SMO §262]; we know that ISIL routinely destroyed civil registration offices [see AAH §104]. As such it appears likely that the existing registration infrastructure would have been destroyed, or at the very least seriously compromised. This being a city where the priority of the Government of Iraq is to consolidate central control from Baghdad it is inconceivable to me that they would simply have replaced the old civil registry. It is far more likely that the new system would have been installed.
25. The consequence of that, for this Appellant, is that he has no means of travelling from Baghdad to his home city where he could be issued with new identity documents enabling him to work, live and receive basic services. It is the

Respondent's stated position that without such a card an Iraqi returnee faces a real risk of falling into destitution such that his living conditions would violate the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) QD. The appeal falls to be allowed on that basis.

Anonymity

26. The Appellant requires international protection. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* 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

27. The determination of the First-tier Tribunal contains material error of law and it is set aside.
28. The decision in the appeal is remade as follows: the appeal is allowed on protection and human rights grounds.
29. There is an order for anonymity.



Upper Tribunal Judge Bruce
24th April 2020