Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10202/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th March 2020	**On 20th April 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Barhey of Counsel instructed by Fadiga Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Minhas (the judge) of the First-tier Tribunal (the FtT) promulgated on 11 December 2019, who dismissed the Appellant's asylum and human rights appeal.

2. The Appellant is a male Iraqi citizen of Kurdish ethnicity born in January 1990.

3. He arrived in the UK on 25th September 2015 and claimed asylum. Following refusal of his asylum claim his appeal was dismissed by Judge O'Brien of the FtT in a decision promulgated on 6th September 2016. The Upper Tribunal considered Judge O'Brien's decision and found in a decision promulgated on 21st March 2017 that it contained no error of law.

4. The Appellant submitted further submissions on 6th August 2019 which were accepted by the Respondent as a fresh claim and refused on 1st October 2019.

5. The judge heard the appeal on 21st November 2019. The Appellant claimed to be at risk as he originates from Mosul, and he could not return there because it had been occupied by ISIS. There was no reasonable internal relocation option anywhere else in Iraq. He did not have a CSID and therefore would not be able to find employment if he returned to Iraq, and he would be destitute. He claimed that he had lost contact with his family in Mosul.

6. The judge took as a starting point the findings made by Judge O'Brien. The judge did not find that evidence had been submitted to undermine those findings, and confirmed the finding made by Judge O'Brien, that the Appellant chose to leave Iraq without any identity documents with the intention of making it more difficult for him to be returned, and he claimed not to be in touch with his family to place further barriers in the way of his return. The judge noted that the Appellant had not pursued the appeal in relation to his father's claimed involvement with the Ba'ath Party, which had been pursued before Judge O'Brien.

7. The judge found that the Appellant would not be at risk from the Ba'ath Party. The judge found that the Appellant would not be at risk if returned to Iraq. It was found that the Appellant could obtain a CSID in Baghdad and the Appellant's family would be able to provide him either with the CSID that he left behind in Iraq, or the page reference of the Family Book that he requires to obtain a new CSID.

8. It was found that the Appellant could relocate to the Iraqi Kurdish Region, or Baghdad. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

9. Reliance was placed upon five grounds.

10. Firstly, it was contended that the judge had erred in law by finding that the Appellant could contact his family in Iraq and obtain his old CSID or ascertain sufficient family details to obtain a new CSID if he were returned to Iraq.

11. It was submitted that the judge erred by placing significant weight upon the fact that the Appellant did not contact the British Red Cross to assist in searching for his family, and not accepting the Appellant's explanation that his friends, including his witness, AK, had been told by the Red Cross

that Mosul, from where the Appellant originates, was still too dangerous and the Red Cross were not operating there or searching for people there. It was submitted that the expert report prepared by Sheri Laizer confirmed that this was a reasonable and plausible explanation for not contacting the Red Cross.

12. The judge, it was submitted, had erred by failing to give reasons why AK's evidence was not credible. His evidence confirmed that he attended the Iraqi Embassy in the UK together with the Appellant, and the Appellant had been unsuccessful in obtaining a CSID from that embassy, and the Appellant had lost contact with his family. It was submitted that the judge had not taken adequate account of this evidence.

13. The judge had erred by finding that because Ms Laizer was able to travel to Mosul in May 2009, meant that the British Red Cross would also be able to travel to Mosul.

14. The second ground was that the judge had not given full and proper reasons for rejecting the independent expert evidence provided by Ms Laizer. The expert report was the most recent document about the current situation in Iraq but the judge had preferred the evidence contained in the Home Office CPIN dated February 2019 without explaining the reasons for this.

15. Thirdly, the judge had erred in finding that the Appellant would be able to obtain a CSID in Baghdad within a reasonable period. It was submitted that the judge had departed from the applicable country guidance case of AAH CG [2018] UKUT 212 (IAC) and the finding by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944 at paragraph 13. The judge had relied upon two letters referred to in the February 2019 CPIN (at paragraphs 20-22) but the expert evidence states the position was much worse in practice than those letters suggested. Given the expert report, this was an insufficient basis to depart from two binding country guidance cases.

16. Fourthly, the judge failed at paragraph 27 to deal with the finding in BA Iraq CG [2017] UKUT 18 (IAC) that Sunni Muslims such as the Appellant were at risk in Baghdad and the Shia dominated government is unwilling to protect them, a point which was emphasised still to be in issue by Ms Laizer.

17. Fifthly, the judge erred at paragraph 26 by finding the Appellant could internally relocate within Iraq, relying upon the case of Amin v SSHD [2017] EWHC 2417. This case was successfully appealed to the Court of Appeal, and therefore the judge erred in law by relying upon an overturned decision.

The Grant of Permission to Appeal

18. Permission to appeal was granted by Judge Appleyard of the FtT in the following terms;

> "2. The grounds assert, amongst other things, that the judge erred in failing to give due weight to expert evidence and give proper reasons for rejecting independent expert evidence. That evidence is briefly referred to by the judge at paragraph 17 of the decision. Having considered the decision as a whole, I find it arguable that the judge has erred for the reasons given. There are three further grounds which likewise, for the avoidance of doubt are arguable.
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> 3. There is here an arguable error of law".

19. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

20. At the oral hearing Ms Barhey made submissions at length, relying and expanding upon the grounds upon which permission to appeal had been granted. I have recorded those submissions in my Record of Proceedings and it is not necessary to reiterate them here.

21. Mr Tufan made the point that the decision made by the judge was made prior to the publication of the most up-to-date country guidance, that being SMO (Iraq) CG [2019] UKUT 00400 (IAC). The Respondent accepted that there were some errors of law in the FtT decision, for example, the judge had relied upon the Appellant being granted a laissez passer, and it was found in SMO that such a document would be of no assistance in the absence of a CSID or Iraqi national identity card (INID) and a laissez passer would be confiscated upon arrival, contrary to the finding made by the judge.

22. In addition, contrary to the judge's finding, paragraph 15 of the headnote in SMO confirms that an individual returnee not from Baghdad, is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time.

23. It was however submitted that the judge had not erred in finding that the Appellant could contact his family if he wished, and it followed from that finding that the Appellant could in fact obtain a CSID from the Iraq Embassy in the United Kingdom.

24. Dealing with the first ground I find no material error of law disclosed. The judge was correct to adopt as a starting point the findings made by Judge O'Brien in the previous appeal. Those findings were not successfully challenged. The judge adopted a correct legal approach at paragraph 14, by recording the earlier findings of fact were a starting point but were not determinative. At paragraph 15 the judge recorded the findings made by Judge O'Brien, that the Appellant chose to leave Iraq without any ID documents with the intention of making it more difficult for him to be returned, and that he was claiming not to be in touch with his family to place further barriers in the way of return.

25. With reference to the British Red Cross, the judge took into account at paragraph 17 the claim by the Appellant that his friends claimed to have been told by the British Red Cross, that Mosul is still too dangerous to progress the search for their families. The judge makes the point that it was unclear when the Appellant's friends made their enquiries. The judge points out that the situation in Mosul has changed following the defeat of ISIS, and there is no error of law in that finding.

26. The judge was entitled to find it relevant that Ms Laizer travelled to Iraq and travelled by road to Mosul. In my view the judge did not err in law, in finding that agencies such as the British Red Cross are likely to be able to travel to Mosul if Ms Laizer was able to do so.

27. The judge was entitled to conclude that no credible explanation had been given as to why the Appellant had failed to initiate his own enquiries with the British Red Cross, if he had genuinely lost contact with his family, rather than simply rely upon assertions from friends.

28. With reference to the evidence of AK, this related to visits to the Iraqi Embassy in the UK with the Appellant. I do not find that the judge rejected this evidence. The judge at paragraph 18 placed no weight on the visits to the embassy, having accepted the concession by the Respondent, that the Appellant was unlikely to be able to obtain ID documents in the UK. It appears from SMO, that the judge was wrong to accept this concession.

29. In my view the judge was wrong at paragraph 18 to accept that concession as the judge had found (see paragraph 24) that the Appellant's family would be able to provide him either with the CSID card he had left behind in Iraq, or the page reference he requires to obtain a replacement card.

30. On this point guidance is given in AAH at paragraph 101, which referred to expert evidence given in AA (Iraq) CG [2015] UKUT 544 (IAC) at paragraph 177. The expert evidence, which was accepted, was 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.

31. The Upper Tribunal in SMO (paragraph 13 of the headnote, and paragraphs 391–392 of the decision) found that it is possible to obtain a replacement CSID in the UK if the volume and page reference of the entry in the Family Book in Iraq is known. Given the importance of that information most Iraqi citizens will recall it. That information may also be obtained from family members. The opinion of the Upper Tribunal was that the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, this information is of significance to the individual and their family from the moment of their birth. It was considered that it would be very much the exception that an individual would be unaware of a matter so fundamental to their own

identity and that of their family. It was accepted that most Iraqis would be able to obtain this information easily.

32. The judge did not err in finding that the Appellant would be returned to Baghdad. The error was in finding that he would be returned without a CSID, taking into account the judge's finding that he previously had a CSID, and could contact his family and obtain the relevant information from them.

33. Therefore the error made by the judge in relying upon a laissez passer, and the finding that the Appellant could obtain a CSID in Baghdad is not a material error of law.

34. The judge did not err in law in finding at paragraph 24 that having arrived in Baghdad, the Appellant could thereafter travel without significant difficulty, to the IKR. This is confirmed in AAH (Iraq), and SMO (Iraq).

35. SMO confirms the situation in Mosul has now changed in that Mosul is no longer a contested area. The situation in the formerly contested areas is that as a general matter there are not substantial grounds for believing any civilian returned there, solely on account of his 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.

36. Referring to the second ground of appeal, the judge does give reasons at paragraph 25 for not accepting the expert opinion that a Sponsor or political contact would be needed for the Appellant to enter the IKR. The judge was perfectly entitled to rely upon the guidance in AAH which indicated that was not the case.

37. With reference to the third ground, the judge was wrong in law to find that the Appellant would be able to obtain a CSID in Baghdad, but that is not a material error, given the findings by the judge that the Appellant maintained contact with his family. Therefore, the country guidance in both AAH and SMO indicates that the Appellant would be able to obtain the relevant information from his family so that he could obtain a CSID from the Iraqi Embassy in London. The Appellant chose to attend the Iraqi Embassy without that information.

38. With reference to the fourth ground, BA (Iraq) CG [2017] UKUT 00018 (IAC) provides at paragraph 98 that it was agreed that evidence did not show that a person would be at real risk of serious harm in Baghdad solely on account of his or her religious identity. At paragraph 100 it was found that a statistical analysis did not give rise to a real risk solely on account of Sunni identity. The majority of Sunnis are likely to be able to lead a relatively normal life in Baghdad but it is not without risk. At paragraph 101 it was found that the Respondent's most recent policy statement recognises that Sunnis may face a real risk of persecution or serious harm from Shia militias in Baghdad, and the increasing levels of sectarian

violence in Baghdad, albeit not sufficient if taken alone, are likely to be an important consideration in assessing whether a person can demonstrate individual characteristics that would place him or her at real risk of serious harm. It is not therefore the case that the Appellant would be at risk simply because he is a Sunni Muslim. I do not find that the judge materially erred in law on this point, and in any event the error would not be material, in view of the judge's finding that the Appellant could travel to the IKR. The situation has now changed, as demonstrated in SMO, and the Appellant's home area in Mosul is no longer a contested area.

39. With reference to the fifth ground of appeal, I would accept that the judge erred in law in relying upon Amin v SSHD [2017] EWHC 2417, but in view of the other findings made by the judge, this is not a material error.

40. In conclusion, there are some errors of law contained within the FtT decision, as conceded by the Respondent, and referred to above. However, those errors are not material bearing in mind the finding that the Appellant has not lost contact with his family, and could obtain from his family the necessary information to obtain a replacement CSID. There was no error of law in that finding, and although the judge was wrong to find that the CSID replacement could be obtained in Baghdad, that error is not material, because country guidance case law indicates that the CSID could actually be obtained in the UK.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

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. This direction is made because the Appellant has made a claim for international protection.

Signed Date 24th March 2020
Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date 24th March 2020
Deputy Upper Tribunal Judge M A Hall