



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13044/2017

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 2nd March 2020**

**Decision & Reasons Promulgated
On: 12th March 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**RMF
(anonymity order made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Abdulla, Hazelhurst Solicitors

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

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

Background and Matters in Issue

2. The Appellant has been in the United Kingdom since 2008. His original asylum claim was based on his fear of terrorism. He had been a member of the Iraqi army but claimed to have fled because he was being targeted by Islamists who perceived him as a 'collaborator'. The Appellant's claim was rejected for want of credibility. Although it was

accepted that he may have been in the army, his account of being targeted for that reason was not believed.

3. The Appellant did not leave the United Kingdom after his appeal failed. He made three further sets of submissions, the latter of which took the Respondent over five years to consider. During much of that time the Appellant was homeless.
4. The Appellant's case before the First-tier Tribunal in September 2019 turned on an application of AA (Article 15(c)) Iraq CG [2015] UKUT 544. The Appellant contended that he was from a 'contested area' (Kirkuk) and that it would be unduly harsh to expect him to relocate somewhere else, for instance somewhere in the IKR.
5. Although no express finding is made on the point, the First-tier Tribunal appeared to proceed on the basis that the Appellant was from a contested area and that as such Article 15(c) applied. I say this because the decision is taken up with the determination of issues relevant to internal flight, such as where the Appellant's family lives and whether he can access documentation. On those matters the Tribunal accepted the Appellant's evidence that his family were last known to be living in Kirkuk, but rejected his claim to have lost contact with them. As to whether the Appellant could obtain a CSID the Tribunal found that he could do so via the embassy in London, or upon return to Iraq with the assistance of a proxy, presumably in Kirkuk. The appeal was thereby dismissed, the Tribunal having reached the conclusion that it would not be unreasonable to expect the Appellant to relocate internally.
6. The Appellant sought, and was granted, permission to appeal on the grounds that in its assessment of internal flight the Tribunal had failed to apply the guidance in a second country guidance case, AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212. That case had held *inter alia* that an undocumented Iraqi was unlikely to be able to secure a new CSID from the embassy in London. Whether he was able to do so upon return to Iraq depended on a number of factors, none of which had been considered by the Tribunal. The Appellant further submitted that the findings on the Appellant's contact with his family were of limited significance in the absence of evidentially-based findings that those family members would themselves be in a position to assist him.
7. Before me Mr Tan for the Secretary of State accepted that the Tribunal had not conducted a global assessment of all of the factors relevant to internal flight. It had not for instance assessed how the Appellant could get from Baghdad to Kirkuk, whether the civil status office there was operational and if it was whether the Appellant had the information necessary to obtain a new card. The Secretary of State also pointed out that the First-tier Tribunal had failed to deal with her central submission before the First-tier Tribunal, that Kirkuk was no longer 'contested' to the extent that Article 15(c) applied. The

Secretary of State therefore invited me to set the whole decision aside. In view of the consensus between the parties I do so.

8. At the date that the decision in this appeal falls to be remade, there is a third operative country guidance to be applied: SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). Importantly that decision covers two material aspects of this case: the safety of the Appellant's return to Kirkuk, and the likelihood of him being able to acquire, in good time, documents which would enable him to work, rent accommodation etc.
9. On the first matter the findings in SMO are that Kirkuk is no longer contested and that Article 15(c) no longer, in general, applies. The Tribunal set out a number of factors that might enhance the risk to an individual per the *Elgafaji* 'sliding scale'. It is not contended that any of those apply here. Accordingly I find that there is no risk of indiscriminate harm to the Appellant arising from an internal armed conflict in Iraq.
10. On the second matter the position is less clear. The relevance of documents in Iraqi cases is, for the Secretary of State, that without them an individual may face conditions of such socio-economic deprivation so as to engage the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) of the Qualification Directive. To that end the concession made in AA, AAH and repeated in SMO remains Home Office policy:

"it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR".

11. The parties before me agreed that in light of this concession the task for this Tribunal was to make findings on the following matters. Is it reasonably likely that:
 - i) The Appellant is currently not in possession of a CSID;
 - ii) The Appellant would not be able to obtain a CSID before departure from the United Kingdom;
 - iii) That the Appellant would therefore find himself at Baghdad airport without the means to move on to other places in the country, ie by being unable to board a domestic flight/ pass through checkpoints
 - iv) The Appellant would not be able to receive material assistance from family members in Kirkuk

12. I find as fact that the Appellant is not currently in possession of a CSID. He is in possession of photocopies of his old INC card, and his Iraqi national army identification.

13. Mr Tan submitted that the Appellant would be able to acquire a CSID before he leaves the United Kingdom, by approaching the embassy in London. He referred me to paragraph 383 of the decision in SMO (Iraq):

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.

14. Mr Tan relied on this passage to submit that the Upper Tribunal in SMO clearly envisaged that it remained *possible* to obtain a new CSID in London. The passages in AA to which the Tribunal 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".

15. And the supplementary evidence given by Dr Fatah in AAH was as follows:

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 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.

....

16. Applying that guidance, and in particular the evidence of Dr Fatah, I find as follows. There is no obstacle to the Appellant signing a statement explaining why he does not currently have a CSID. Whether he could get that countersigned by the head of his family remains debatable. The First-tier Tribunal found that he will still have some contact with his family in Kirkuk but it is far from clear that this includes his father. The Appellant's father was certainly alive in 2008 when he assisted the Appellant in leaving Iraq, but I have no information about what might have happened to him in the 12 intervening years. Assuming that the Appellant's father is alive and well and living in Kirkuk, and that there is no reason why he could not countersign the application form, there remains the matter of the colour photocopy of the INC. As far as I am aware the only copy available is in monochrome, and it is less than clear whether the embassy would accept this in lieu of the colour facsimiles required by the rules. I note Dr Fatah's overall conclusion that embassy staff in London are "generally very unhelpful". Having considered all of those matters in the round I am satisfied that there must be a reasonable likelihood that the Appellant would not be able to acquire a new CSID in London. The strict evidential requirements for the application must be viewed in the context of the very great number of Iraqi nationals who are undocumented, and Dr Fatah's evidence that the problems of an individual returnee are regarded as "trivial".
17. This means that there is at least a reasonable likelihood that the Appellant will find himself at Baghdad airport with no means of onward travel. He cannot board a domestic flight to Kirkuk, and cannot pass through the many checkpoints on the road north. In order to do so he would need a CSID, or one of the new generation of

identity cards - the INIC - being progressively rolled out across the country.

18. The next question is whether the Appellant would be able to secure such identity documents within a reasonable time frame. Assuming that his family in Kirkuk would be able to assist him by approaching the civil status office in that city on his behalf, and that one male family member would be able and willing to make the journey to Baghdad airport to greet the Appellant and bring to him a replacement card, I must nevertheless consider the likelihood of such a card being issued to a proxy. It was the clear evidence of Dr Fatah that the new generation of cards are not being issued to proxies. Although the Tribunal was not told whether the Kirkuk civil status office is issuing INICs or CSIDs, it appears safe to assume that it is the former, given the evidence in SMO that it is 'rural areas' that have been left behind: see paragraph 389 SMO. That being so it does not appear to be at all likely that the Appellant will be able to obtain a INIC from his home city Kirkuk, given that he cannot get there and any family member who might be willing to help will not be assisted by the authorities. Applying the guidance in AAH and SMO it follows that the Appellant would, on arrival, be exposed to conditions amounting to a violation of Article 15(b) and his appeal must be allowed on that basis.

Anonymity Order

19. This appeal concerns a claim for 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

20. The decision of the First-tier Tribunal is set aside.
21. There is an order for anonymity.
22. I re-make the decision in the appeal as follows: the appeal is allowed on human rights grounds.

Handwritten signature in black ink, appearing to read 'CBE'.

Upper Tribunal Judge Bruce
March 2020

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