



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

Appeal Number: PA/09525/2019

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre
(remote)
On: 5th March 2021**

**Decision & Reasons
Promulgated
On: 11th March 2021**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SKH
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Hussain, Lexadeen Solicitors
For the Respondent: Ms Pettersen, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1991. He appeals with permission the decision of the First-tier Tribunal (Judge Handler) to dismiss his protection appeal.
2. Judge Handler's decision was promulgated on the 18th December 2019. Permission was granted on the 28th January 2020. The Covid-19 pandemic intervened, and this has led to a regrettable delay in listing.

The hearing before me was convened, with the consent of the parties, by remote means.

Background and Matters in Issue

3. For the purpose of this appeal the facts asserted by the Appellant may be shortly stated. He claims to be a Kurd from Kirkuk who is in possession of neither a CSID card nor, he says, contact details for his family
4. Before the First-tier Tribunal the Appellant successfully argued that applying the guidance in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944 (IAC) Kirkuk was classified as “contested” territory such that return there would expose the Appellant to a real risk of indiscriminate violence contrary to the United Kingdom’s obligations under Article 15(c) of the Qualification Directive. The question remained whether the Appellant could reasonably be expected to internally relocate to avoid the conflict in Kirkuk. The Secretary of State accepted that as a Kurd he could not be expected to go to Baghdad, but submitted that the Appellant would be able to enter and live in the Iraqi Kurdish Region (the IKR). The First-tier Tribunal agreed, and the appeal was dismissed on Article 15(c) grounds. In particular it found:
 - i) That no risk arises from the Appellant’s stated political activity (Facebook posts);
 - ii) As a Kurd he could enter the IKR without difficulty;
 - iii) He is a young, healthy male who has previously “worked as a *peshmerga*”;
 - iv) He has family “near” the IKR who could financially support him;
 - v) In possession of a CSID – supplied by his family or obtained prior to departure - he could fly direct to Erbil from Baghdad;
 - vi) He is literate and could use his former status as a *peshmerga* to find work and support himself.
5. In the alternative the Appellant submitted that returning him to Iraq today would expose him to a real risk of destitution/living in inhuman and degrading conditions so as to amount to a violation of Article 15(b). The Appellant relied in this regard on the Secretary of State’s concession on that issue, endorsed by the Tribunal in AA (Iraq), and reaffirmed in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC). The effect of this concession was that if the Appellant was, and was to remain, undocumented, and had no family to whom he could turn for support on arrival, his appeal should be allowed on those limited grounds. The First-tier Tribunal rejected the Appellant’s claims as to his family, in particular his mother and

younger siblings. It found that he had been untruthful about his attempts to contact them, and found as fact that they were in fact in touch. They could send him his CSID, or supply him with the information necessary to obtain a new one from the Iraqi embassy in London. The appeal was thereby also dismissed on this alternative ground.

6. The Appellant's grounds of appeal allege that the First-tier Tribunal erred in several respects, but as Mr Hussain realistically accepted before me, matters have now moved on, in that a matter of weeks after the decision of Judge Handler the Upper Tribunal handed down the decision in SMO and Others (Article 15(c) identity documents) Iraq CG [2019] UKUT 400. Applying common law principles that country guidance decision is binding upon me in my analysis of the First-tier Tribunal decision. Mr Hussain further accepted that for that reason he would have to concede that the Secretary of State's 'cross appeal', articulated by way of a Rule 24 response on the 5th February 2020, was made out: in that letter Senior Presenting Officer Mr S. Whitwell indicated that the Secretary of State sought to rely on the decision in SMO to challenge the Tribunal's finding that Kirkuk remains contested territory such that Article 15(c) of the Qualification Directive was engaged.
7. That being the case I accept that the decision of the First-tier Tribunal must be set aside. In my explanation as to why, I will make a distinction between the grounds as originally pleaded and the reasoning only shown to be incorrect *ex post facto* by SMO.

'Original' Errors

8. I am satisfied that at the date of its decision in November 2019 the First-tier Tribunal erred in the following material respects:
 - i) Failing to have regard to the material country guidance in AAH (Iraq) about which family members can assist the undocumented returnee in these circumstances. The evidence given in that case was that the family records operate on a patrilineal system, so that contact with one's mother/maternal family would in any event be of limited assistance.
 - ii) No consideration is given to the fact that the relevant civil registry would be in Kirkuk and on the Tribunal's own findings it could be difficult, or dangerous, for the Appellant or his family to attend there in order to obtain a new CSID - the finding that Article 15(c) conditions persisted there was also relevant to whether the civil registry was even still operational.

- iii) Failing to have regard to the extensive evidence set out - and accepted - in both AA and AAH in respect of the likelihood of obtaining a new document in London. The Upper Tribunal held that whilst it is *possible* to obtain a document from the embassy there are a number of obstacles to this being accomplished. Those obstacles - set out in the detailed and persuasive evidence of country expert Dr Fatah - include the rigorous documentary requirements, the fact that the staff in the embassy, and indeed re-documentation centres in Iraq, are not particularly interested in helping returnees, and that the civil registry offices in many 'contested' areas had been destroyed by ISIL. The Tribunal does not appear to have taken any of that into account.
- iv) The internal flight analysis undertaken by the Tribunal does not comply with the guidance in AAH in that the Tribunal has failed to examine the Appellant's circumstances on return to Baghdad (as a citizen of Iraq 'proper' he could not be returned direct to Erbil), and has not given the careful consideration required as to whether the Appellant would be able to support himself upon return having regard to the fact that 70% IDPs are unemployed, and that he has no obvious connections in that territory.

Findings inconsistent with the Country Guidance in SMO (Iraq)

9. Applying, as the parties agree I must, the reasoning in SMO, the decision below is further flawed for the following material error:
 - v) Mistake of fact. The Secretary of State argued before the First-tier Tribunal that there had been a material change in circumstances since the decision in AA (Iraq) viz the military defeat of ISIS. The Tribunal rejected that contention but as the decision in SMO illustrates, it was wrong to do so. There was cogent evidence to demonstrate that the guidance in AA should no longer be followed.

The Re-Made Decision

10. Before me Mr Hussain indicated that the Appellant no longer wished to pursue any ground relating to Article 15(c) or the Refugee Convention. It was his submission that applying SMO the appeal must be allowed on the grounds that there is a real risk that the Appellant

will face, upon return to Iraq, conditions amounting to inhuman and degrading treatment contrary to the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) of the Qualification Directive. For the following reasons, I agree.

11. There is no realistic possibility that the Appellant will be able to obtain a document from the embassy in London before being returned to Iraq. The difficulties in doing so, articulated by Dr Fatah in previous country guidance cases, have now been accepted by the Secretary of State as making it "highly unlikely" that the embassy will assist: see section 2.6.16 of the June 2020 CPIN *Iraq: Internal relocation, civil documentation and returns*. The alternative route to *sur place* redocumentation suggested in that CPIN, an application for a 1957 registration document, is not, I find, one open to this Appellant. The relevant part of the CPIN reads as follows:

2.6.15 Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document [see paragraph 2.6.24 for list of national identity documents] and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

..

2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.

12. The Appellant has been in the United Kingdom for over five years. In those circumstances it seems to me to be reasonably likely that he will have forgotten any relevant details of his family book etc which might assist family members in Iraq in obtaining any kind of documentation: I note that on the 16th February 2021 the Court of Appeal set aside by consent the reasoning to the contrary in SMO. The Appellant is from a Kurdish family from Kirkuk, and even on the findings of the First-tier Tribunal, it is a family now headed by his mother. As set out in AAH, women have particular difficulties in dealing with, or obtaining assistance from, the authorities in Iraq about 'official' matters such as documentation. Taking all of that into account I am satisfied that it is reasonably likely that the Appellant will not be able to acquire documentation of any assistance in the United Kingdom. Even if I am wrong, and an 1957 registration document could be obtained, I find the logic at 2.6.16 hard to follow, since nowhere is it suggested that it could be used once in Iraq in order to travel internally: its sole function appears to be limited to enabling the issuance of a *laissez-passer* for international travel.
13. The Appellant will be returned to Baghdad. That is because, it is now accepted, that is the only destination for enforced returns. The Appellant is in any event not from the IKR and so could not fly straight to Erbil, even if he was to do so voluntarily.
14. He would arrive without documentation. It is true that if the First-tier Tribunal is correct, and the Appellant is in contact with his mother, she could perhaps travel to the airport to meet him, but this is of no assistance to the Appellant whatsoever, since on the findings in AAH and SMO, he is, without documents, effectively stuck at the airport. He cannot even get to Baghdad, requiring as that does passage through several checkpoints. The only solution would be if his mother were able to obtain for him a new identity document and bring it to the airport. Whether she is able to do that turns on whether the Appellant is from an area where CSIDs are still being issued, or whether his home civil registry is now operating the 'INID' system which would require his attendance in person.
15. The Appellant is, it is accepted, from Kirkuk. At paragraph 431 of SMO the Tribunal found as follows:

431. In any event, as we have noted, matters have moved on as the CSID is being phased out and replaced by the INID. If, as appears to be the case, the judge in the FtT concluded that the appellant would be able to use a proxy to obtain a replacement CSID from the CSA office in Kirkuk, we cannot be sure that this represents the position in 2019. **It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy.** In the circumstances, we consider that there must be further findings made regarding this appellant's access to or ability to obtain a CSID card. **In the event that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK, we think it likely that his return to Iraq would be in breach of Article 3 ECHR. As we have explained, we do not consider that he would be able to obtain either a CSID or an INID in Baghdad because he is not from that city.**

16. In light of that conclusion, and in the absence of any evidence to the contrary, I am satisfied that the civil registry in Kirkuk is operating an INID terminal. This means that in order to get one of these new biometric documents the Appellant will have to attend that office in person. Stuck at Baghdad airport, this he cannot do. This *Catch-22* means that the Appellant will find himself stranded with no means of supporting himself, nor indeed in the environs of the airport, leading any kind of normal life. It is reasonably likely that he will thereby fall into destitution: this is the factual underpinning of the Article 15(b) concession made by the Secretary of State in three successive country guidance decisions on Iraq. The appeal is allowed on that limited basis.

Anonymity

17. The Appellant continues to seek 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

18. The determination of the First-tier Tribunal is set aside
19. The appeal is allowed on protection (Article 15(b)) and human rights (Article 3) grounds.
20. There is an order for anonymity.

Upper Tribunal Judge Bruce
5th March

2021