



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

Appeal number: AA/02296/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On November 23, 2015**

**Determination Promulgated
On November 26, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**I K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Brown, Counsel, instructed by GMAU

Respondent

Mr Harrison (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a national of Iraq. The appellant claimed to have entered the United Kingdom clandestinely on October 1, 2008. He applied for asylum on October 2, 2008 but the respondent refused his application on December 10, 2008. Following an appeal before Immigration Judge Sykes on January 28, 2009 his appeal was refused.
2. The appellant made further representations and was interviewed on February 27, 2014 but the respondent refused this application on March

25, 2014 and took a decision on March 28, 2014 to remove him as an illegal entrant.

3. On April 11, 2014 the appellant appealed under section 82(i) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Birrell on May 9, 2014 and in a decision promulgated on May 15, 2014 she dismissed the appellant's appeal on all grounds.
5. The appellant lodged grounds of appeal on June 9, 2014 and permission to appeal was initially refused by Designated Judge of the First-Tier Tribunal McCarthy on June 23, 2014. Permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge McGeachy granted permission to appeal primarily on the Article 15c ground.
6. The matter came before me on September 2, 2015 and on that occasion I gave permission to appeal on the basis the Tribunal's approach to Article 15c did not have regard to the evidence submitted by the appellant's representatives.
7. I adjourned the matter because appeals under Article 15c are by their very nature "fluid" in that the circumstances can change and there was a pending country guidance case on Iraq.
8. The matter came back before me on the above date.
9. I have granted anonymity in this case under Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

SUBMISSIONS

10. Mr Brown referred me to the refusal letter and the recent decision of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). He referred me to paragraphs [150] and [170]. The respondent accepted the appellant was an Iraqi from Kirkuk but did not accept his ID document as genuine. In light of the Tribunal's findings in AA it would not be possible to return the appellant. Whilst it was possibly feasible for him to be returned to Baghdad he had no documents as the respondent rejected the ones he had produced. He could not be returned to Kirkuk because the Tribunal accepted no-one could be returned there and it was agreed he could not be returned to what was the KRG. The only place was Baghdad and the Tribunal made clear at paragraph [170]-

"In the absence of an expired or current Iraqi passport, a person can only be returned to Baghdad using a laissez-passer. According to Dr Fatah, either a CSID or INC or a photocopy of a previous Iraqi passport and a police report noting that it had been lost or stolen is required in order to obtain a laissez-passer. If a person does not have one of these documents then they cannot obtain a laissez-passer and therefore cannot be returned. This has a significant bearing on what we have just said. If the position is that the Secretary of State can feasibly remove

an Iraqi national, then she will be expected to tell the tribunal whether and if so what documentation has led the Iraqi authorities to issue the national with the passport or laissez passer (or signal their intention to do so). The Tribunal will need to know, in particular, whether the person concerned has a CSID. It is only where return is feasible but the individual concerned does not have a CSID that the consequences of not having one come into play.”

11. Mr Brown invited me to allow the appellant’s appeal on asylum grounds on the basis he had real fear of persecution from ISIS in Kirkuk and he was now unable to relocate.
12. Mr Harrison submitted that returning the appellant was feasible but the real issue was the absence of any documents. Mr Harrison acknowledged he could not go behind the recent country guidance and in light of the respondent’s finding that his documents were not accepted then he could not argue that he would be able to obtain any replacement documents to enable him to be returned. He reluctantly agreed with Mr Brown’s submissions.

DISCUSSION AND FINDING

13. I had adjourned this matter on the basis there was evidence of a changed position before the First-tier Tribunal and I accepted the argument that the documents had not been considered. I had adjourned the appeal for further evidence and the decision of AA had not been promulgated.
14. Based on the facts as found and the respondent’s position on the documents I agree with Mr Brown’s submission that this appellant would be returned without documents-something the Tribunal in AA made clear the consequences of this would affect the feasibility of return.
15. In light of the earlier findings and the current position I allow the appellant’s appeal on both refugee and Article 3 grounds.

DECISION

16. There was a material error and I set aside the earlier decision.
17. I allow the appellant’s appeal on refugee grounds and under Article 3 ECHR.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as no fee was paid.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis