**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/02955/2016

**THE IMMIGRATION ACTS**

| **Heard at Birmingham** | **Decision & Reasons Promulgated** |
|---|---|
| **On 27th July 2017** | **On 20th September 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR SALMAN KHORSHID GAYDIAN**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms O Duru (Solicitor)
For the Respondent: Mr D Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Lagunju promulgated on 24th January 2017, following a hearing at Birmingham Sheldon Court on 30th September 2016. In the determination, the judge allowed the appeal, whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. For ease of reference, I refer in this determination to the Appellant as he was originally referred to and the Respondent as he was originally referred to in the appeal hearing before so that the Secretary of State, who hereby appeals, is still referred to as the Respondent.

## The Appellant's Claim

3. The Appellant's claim is that he owned a shop in a village in Kirkuk. Fighting broke out between IS and the peshmerga. He fled from the shop to his friend's house for safety. He was forced to leave his mother and sister behind. The Appellant claims that he received a telephone call from an IS fighter accusing him of working with the peshmerga because he is Kurdish. The IS caller informed the Appellant that he had his sister in custody and requested the Appellant to meet him. The Appellant was warned that it was likely to be a trap so he did not go. The Appellant was sure that his mother and sister had been killed (paragraph 16). Therefore, the Appellant fled Iraq for his own safety.

## The Judge's Findings

4. The judge applied the country guidance case of **AA (Article 15(c)) Iraq CG [2015] UKUT 544**, which confirms that there is at present a state of internal armed conflict in certain parts of Iraq. A feature of the Appellant's case was that he was without identity documents and a CSID. The judge preserved how, "a returnee arriving in Baghdad from the UK will only be granted entry if the person is in possession of a current or expired Iraqi passport or laissez-passer" (paragraph 20).

5. The judge also observed that Kurds who did not originate from the IKR can only be returned there via Baghdad. On entry, the returnee would be granted a visit entry permit for ten days which can be extended for a further ten days. The judge found that the Appellant was a Kurd and that he would be granted entry and given the initial and further ten days stay (paragraph 23).

6. However, the Appellant did not have any documentation with respect to his Iraqi passport or a laissez-passer and "the Respondent does not challenge the Appellant's claim that he is not in possession of any of the relevant documentation" (paragraph 25).

7. The judge went on to conclude that,

> "I note the Appellant does not have a CSID and without a passport he cannot obtain one in the UK. As he does not have any family in Baghdad, I find it is likely it will be challenging for him to secure employment, accommodation and receive support" (paragraph 26).

8. Nevertheless, the judge did not find that the Appellant's difficulties would amount to a breach of Article 3 (paragraph 26). The judge also found that it would "not be unduly harsh for the Appellant to relocate to Baghdad" (paragraph 27). However she then went on to conclude that given that

the Appellant neither had a current or expired Iraqi passport or a laissez passer, "I find the Appellant cannot in fact be returned to Baghdad as return is not feasible. Accordingly internal flight is not viable" (paragraph 27).

9. The appeal is allowed.

10. The Respondent Secretary of State was granted permission to appeal on 3rd May 2017. A Rule 24 response was entered by the Appellant dated 25th May 2017.

**Submissions**

11. The essence of the appeal before me today is, as Mr Mills appearing for the Respondent argued, the application of **AA (Iraq) [2017] EWCA Civ 944**. In this case, the Court of Appeal stated that, "no Iraqi will be returnable to Baghdad if not in possession of" the relevant documentation. (See annex at paragraph 6). Mr Mills submitted that the question of "returnability" was a practical question, and one entirely for the determination of the Respondent Secretary of State, in working out exactly how a person was to be made returnable to the country of their origin. It was not a question that went to the "risk" that such a person may face, which was an entirely separate matter.

12. This being so, the Court of Appeal in **AA (Iraq) [2017]** had made it quite clear that, "an internal protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of the current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents" (see and accept paragraph 7).

13. This passage, submitted Mr Mills, drew a very neat distinction between the "alleged risk of harm" and the practicality of return, and the two were quite separate considerations. This being so, once the judge had concluded that "it would not be unduly harsh for the Appellant to relocate to Baghdad" (paragraph 27), she could not then also upheld that the absence of a current or expired Iraqi passport or laissez passer meant that the Appellant could not in fact be returned, because that was a practical question entirely for the determination by the Secretary of State. (See paragraph 27). Therefore the Respondent Secretary of State's appeal should be allowed.

14. For her part, Ms Duru submitted that the issue here is whether the Appellant, provided he could get to Baghdad, would then be able to access the necessary support, in order to get to his home area, given that his mother is dead.

15. If one considers the case of **AA (Iraq) [2017] EWCA Civ 944**, it is apparent from paragraph 9 of the annex there that, it would be necessary to decided whether the Appellant has a CSID, or whether he is able to

obtain one reasonably soon after arrival in Iraq. What paragraph 9 makes clear is that,

> "A CSID is generally required in order for an Iraqi to access financial assistance from the authorities, employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm..." (paragraph 9).

16. Ms Duru submitted that this was a situation that appertained here. If one then turns to the way in which the judge determined the issue, it is clear from paragraph 26 of the determination that the judge did apply the legal position correctly, observing,

> "I note the Appellant does not have a CSID and without a passport he cannot obtain one in the UK. As he does not have any family in Baghdad, I find it is likely it will be challenging for him to secure employment, accommodation and receive support" (paragraph 26).

17. The judge, accordingly, had not erred in law, but had applied the correct legal position to the facts before him. Finally, Ms Duru referred to her Rule 24 response which pointed out that at paragraph 19 the judge in her findings on the evidence and submissions had agreed that the Respondent had established a real risk of return to his home town in Kirkuk, which is a contested area.

18. In reply, Mr Mills submitted that if there had been a Rule 24 response, as there plainly was in this case dated 25th May 2017, it ought to have been brought to the Home Office's attention earlier. In any event, this Rule 24 response does not make a cross-appeal, to assert the points that Ms Duru had now asserted. Accordingly, there can be only one solution, and that was to dismiss this appeal.

## No Error of Law

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. Whilst I accept that the general position set out in the annex of **AA (Iraq)** is that an international protection claim cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport, paragraphs 9 to 11 of that annex make it quite clear that "it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq" because possession of such a document is essential if one is to access financial assistance from the authorities or to gain employment or education or housing.

20. In this case, the judge has properly applied the guidance set out in **AA (Iraq)**. The findings made by the judge at paragraph 26 are entirely sustainable. Moreover, the judge's decision is sophisticated enough to recognise that although it would not be unduly harsh for the Appellant to relocate to Baghdad, nevertheless, this is a case where the Appellant has neither a current or expired Iraqi passport and therefore cannot be returned to Baghdad "as return is not feasible" (paragraph 27).

21. Those findings are open to the judge in a case which requires the application of "anxious scrutiny" on well-established legal principles.

**Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 19th September 2017