



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

Appeal Number: PA/04815/2016

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke**

**On 24<sup>th</sup> November 2017**

**Decision & Reasons  
Promulgated**

**On 11<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**DIDAR HASSAN KHDHR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Fraczyk of Counsel instructed by Braitch Solicitors  
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Colyer of the First-tier Tribunal (the FTT) promulgated on 9<sup>th</sup> May 2017.

2. The Appellant is an Iraqi citizen of Kurdish ethnicity. He entered the UK illegally on 24<sup>th</sup> November 2015 and claimed asylum.
3. His claim was based upon a fear of ISIS. The Appellant had owned a gym in Bartella near the city of Mosul. In July 2014 he was threatened by ISIS because he allowed both men and women to use his gym. He claimed that he was threatened by telephone and his cousin abducted. In August 2014 ISIS occupied Bartella and the Appellant fled. He became separated from his family.
4. His claim for international protection was refused on 28<sup>th</sup> April 2016. On 20<sup>th</sup> December 2016 the Respondent issued a supplementary reasons for refusal letter.
5. The appeal was heard on 26<sup>th</sup> April 2017 and dismissed in a decision promulgated on 9<sup>th</sup> May 2017.
6. The FTT found that the Appellant could not safely return to his home area and it would be unduly harsh for him to relocate to Baghdad. However it was found that the Appellant had a reasonable internal relocation option to the Iraqi Kurdish region (IKR). The FTT found that the Appellant previously held an Iraqi passport and identity card and (at paragraph 69) considered that “the Appellant has not fully pursued the options for obtaining a replacement passport for reasons outlined later in this decision.” The FTT found (at paragraph 96) that the Appellant would, as an ethnic Kurd, be permitted to reside in the IKR and once there he could go to the Civil Status Affairs Office so that his Civil Status Identity Document (CSID) could be reissued.
7. Following dismissal of his appeal, the Appellant applied for permission to appeal to the Upper Tribunal. His application was initially refused by First-tier Tribunal Judge Adio who found no arguable error of law in the FTT decision.
8. The application was renewed. Three grounds were advanced on behalf of the Appellant. Firstly it was contended that the FTT had materially erred in assessing credibility, having accepted that the Appellant’s account was credible, yet concluding that he was not credible on the issue of documentation and relocation to the IKR. The FTT had relied upon section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, finding his credibility was damaged by his failure to claim asylum before reaching the UK, and only making a claim for asylum in the UK after he had been arrested by the police. It was submitted that it was unclear how this was relevant to the Appellant’s claim. It was contended that the FTT had erred by finding that the Appellant could have done more to secure identity documents from the Iraqi Embassy in the UK as this was inconsistent with the Respondent’s refusal decision, as the Respondent accepted that in the absence of identification documents the embassy would not issue the required travel documentation. It was unclear what more the Appellant should have done or should have been expected to do.

9. The second ground contended that the FTT had materially erred in concluding that the Appellant could obtain a CSID. It was submitted that the Appellant could not obtain a CSID in Baghdad as there was no alternative CSA office for the governorate of Ninewah in Baghdad. In any event the FTT had found that it would be unduly harsh for the Appellant to relocate to Baghdad.
10. It was contended that the FTT had erred at paragraph 96 in concluding that the Appellant could obtain a replacement CSID in the IKR. The Appellant could not obtain a CSID in his home area, as the FTT had found that he could not safely return there.
11. The third ground of appeal submitted that the FTT materially erred regarding internal relocation to the IKR by ignoring how the Appellant was meant to reach the IKR. In the absence of identity documents the Appellant would not be able to fly from Baghdad to the IKR. The FTT had assumed that access to the IKR would be granted, but failed to consider evidence that there were specific problems arising for people from the governorate of Ninewah in accessing the IKR. The FTT had failed to make adequate findings on how the Appellant was meant to survive in the IKR.
12. Permission to appeal was granted by Upper Tribunal Judge O'Connor and I set out below, in part, the grant of permission;

“The FTT concluded, however, that the Appellant could internally relocate to the KRG [92], a finding founded in part on the conclusion that the Appellant could obtain a CSID [91]. It is arguable that these findings are vitiated by legal error for the reasons identified in the grounds. Inter alia, the FTT arguably failed to rationally identify (a) where, or how, the Appellant could obtain a CSID and (b) how the Appellant would be able to travel from Baghdad (which appears to be the point of return) to the KRG. In the alternative, the conclusions in relation to each are arguably irrational.

All grounds may be argued.”

13. Following the grant of permission the Respondent lodged a response dated 9<sup>th</sup> November 2017 pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FTT directed itself appropriately and did not materially err in law. It was noted that Bartella had in fact been liberated by the Iraqi Army on 20<sup>th</sup> October 2016. There was therefore no longer an ISIS presence in the Appellant's home area. The FTT had made tenable findings at paragraphs 84 and 86 noting that the Appellant had previously been issued with an Iraqi passport and there would be a record of this, and the FTT had made a finding open to it, that the Appellant as a Kurd who had previously resided in the IKR could reasonably relocate there.
14. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

## Submissions

15. Mr Fraczyk relied upon the grounds contained within the application for permission to appeal and his skeleton argument dated 24<sup>th</sup> November 2017, which had been prepared to answer the rule 24 response. Mr Fraczyk pointed in particular to paragraph 177 of the Upper Tribunal decision in AA (Iraq) CG which indicates that an Iraqi national living in the UK could obtain a CSID through the Iraqi Embassy in London but only if he was able to produce a current or expired passport and/or the book and page number for his family registration details. As the Appellant could not provide those documents or information he would be unable to obtain a CSID in the UK.
16. Mrs Aboni relied upon the rule 24 response and submitted that the FTT had not erred in law in finding that the Appellant would be able to obtain replacement identity documents, including a passport and CSID. The Appellant would then be returned to Baghdad, and from there could travel to the IKR. I was asked to find no error of law in the FTT decision.
17. At the conclusion of oral submissions I reserved my decision.

## My Conclusions and Reasons

18. The FTT did not have the benefit of the guidance given by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944 which was decided after the FTT decision had been promulgated, and which amended the guidance given by the Upper Tribunal in AA (Iraq) CG.[2015] UKUT 544 (IAC).
19. Considering first the issue of documentation, the Appellant confirmed when interviewed (questions 9 - 11) that he previously held an Iraqi passport, birth certificate, and identity card when he started at college. These documents had been left in Iraq when he fled. The FTT recorded (at paragraph 8) the Appellant's evidence at the hearing confirming what he had said in interview in relation to identity documents.
20. The amended country guidance contained in AA (Iraq) at Annex B7 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 or a laissez passer, if the Tribunal finds that return is not currently feasible on account of a lack of any of those documents.
21. The Respondent found in the refusal letter, that the Appellant's return was not currently feasible because of a lack of identity documentation, but the Court of Appeal found in AA (Iraq) that regardless of the feasibility of return, it was necessary to decide whether an Appellant has a CSID or would be able to obtain one, reasonably soon after arrival in Iraq. If the Appellant was unable to obtain a CSID, he would in general be likely to

face a real risk of destitution amounting to serious harm. The FTT was therefore correct to consider whether the Appellant would be able to obtain a CSID, and the issue that now must be decided is whether the FTT materially erred in law in concluding that the Appellant would be able to obtain a CSID. The FTT makes a finding in paragraph 84 that the Appellant's "failure to obtain replacement documentation does not advance his claim." The FTT finds the Appellant was initially issued with identity documentation in Iraq, and that was accepted by the Appellant, and it is not an error of law to make such a finding.

22. The FTT finds that the Appellant could obtain a CSID, and at paragraph 96 makes a finding that this could be obtained in the IKR. There is therefore a question as to how the Appellant would travel to the IKR. The country guidance indicates that because he does not originate from the IKR, he would be returned to Baghdad, and would have to travel from Baghdad to the IKR.
23. There does not appear to be any objective evidence to confirm that the Appellant could obtain a CSID in the IKR, as he does not originate from that region. Therefore I find that the FTT erred in reaching this conclusion. I then have to consider whether this error is material.
24. My conclusion is that the error in concluding that a CSID could be obtained in the IKR is not material for the following reasons.
25. At paragraph 177 of the Upper Tribunal decision in AA (Iraq) it is found that if an individual is not able to produce a passport and is unable to produce the relevant family registration details, a power of attorney can be provided to an individual in Iraq who can thereafter undertake the process of obtaining the CSID from the Civil Status Affairs Office in the person's home governorate. 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. The FTT found that it would not be safe for the Appellant to return to his home in Bartella which is near Mosul.
26. Further guidance on appointing a power of attorney is given at paragraph 174 of AA (Iraq), where reference is made by an expert Dr Fatah explaining that power of attorney could be given to a relative, friend or lawyer in Iraq to obtain a CSID. The process of giving power of attorney to a lawyer in Iraq to act as a proxy is commonplace and Dr Fatah had done this himself. The power of attorney could be obtained through the Iraq Embassy.
27. The point has been made on the Appellant's behalf that there is no reference in the country guidance to an alternative CSA Office for the governorate of Ninewah in Baghdad, the inference being that as the Appellant comes from that governorate, and cannot return there, it would be impossible to obtain a CSID from an alternative office. However the country guidance issued by the Court of Appeal in AA (Iraq) at Annex C11

indicates that alternative CSA offices for Mosul, Anbar and Salahuddin have been established in Baghdad and Karbala. The Appellant lived very close to Mosul and there was no evidence before the FTT to indicate that his CSID was not issued from Mosul. Therefore it would be possible for the Appellant, using a proxy, such as a lawyer, to make an application to the alternative CSA office in Baghdad. In addition, it is confirmed at paragraph 187 of the Upper Tribunal decision in AA (Iraq), that there is a national status court in Baghdad to which a person could apply for formal recognition of identity, although the precise operation of the court is unclear.

28. At paragraph 186 it is stated that a person's ability to persuade officials that they are the person named on the relevant page of the book holding their information, is likely to depend on whether they have family members or other individuals who are prepared to vouch for them. The FTT found that the Appellant had obtained documentation from Iraq contained at pages 6 - 28 of the Appellant's bundle. This confirmed that the Appellant had travelled to the World Amateur Bodybuilding Championships in Padua, Italy in June 2012. The Appellant is named in the documentation and there are photographs of him. He used his Iraqi passport to travel to Italy. The Appellant had obtained this documentation from Ahmed Rambo, who he described as the leader of the Iraqi Olympic Committee. One of the documents sent to the Appellant is the licence to open a training gym, issued by the Iraqi Federation of Bodybuilding, part of the National Olympic Committee of Iraq. This is evidence that could be used by the Appellant to prove that he previously held an Iraqi passport. No adequate reason was given by the Appellant as to why he could not approach Mr Rambo, who had previously been his coach, to vouch for his identity.
29. I therefore conclude that the FTT did not err in law in finding that the Appellant would be able to obtain a CSID. The error was in finding that this would be issued in the IKR, but the error is not material as the evidence indicates that the Appellant could obtain a CSID in Baghdad. He could make arrangements for a proxy to obtain this on his behalf, or, if he was returned to Baghdad (which is not currently feasible) the Appellant could obtain the CSID himself. Therefore there is no material error disclosed in the FTT decision in relation to the issue of obtaining a CSID.
30. I do not find that the FTT materially erred in concluding that the Appellant had a reasonable relocation option to the IKR. The challenge to the FTT decision on this point was that the FTT had not made a finding as to how, in the absence of identity documents the Appellant would be able to fly from Baghdad to the IKR. As the Appellant would be able to obtain a CSID in Baghdad, it follows that he would not have difficulty in taking a flight from Baghdad to Erbil. The Appellant's evidence was that he had previously been granted access to the IKR, and had studied in Erbil. He had not encountered any difficulty, as at that time he had the required identity documents. As the Appellant would be able to obtain a CSID,

before travelling to the IKR, the FTT did not err in finding that he had a reasonable relocation option within the IKR.

31. There was reference in the grounds of appeal to the FTT erring in relation to section 8 of the 2004 Act. I do not find that has any relevance. The important points in the FTT decision were the finding that the Appellant could not safely return to his home area, it would be unduly harsh for him to settle in Baghdad, that he would be able to obtain a CSID, and had an internal relocation option within the IKR.
32. Though the FTT erred in considering the CSID issue, the error was not material, and my conclusion is that the decision of the FTT stands and the appeal is dismissed.

### **Notice of Decision**

The decision of the FTT does not disclose a material error of law. I do not set aside the decision and the appeal is dismissed.

### **Anonymity**

No anonymity direction was made by the FTT. There has been no request for anonymity made to the Upper Tribunal and no anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4<sup>th</sup> December 2017

### **TO THE RESPONDENT FEE AWARD**

As the decision of the FTT stands, so does the decision not to make a fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4<sup>th</sup> December 2017