Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12593/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 23 November 2017	**On 18 December 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

O S
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Miss L Brakaj, Solicitor

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Holmes promulgated on 19 May 2017, allowing OS's appeal against a decision to deport him on the basis that to return him there would risk a breach of his Article 3 rights and would also be disproportionate in terms of Article 8.

2. As Judge Holmes noted at [2] to [6] of his decision, the respondent has a complicated immigration history having arrived in the United Kingdom in 2002 and having been granted exceptional leave to remain in 2003.

3. The respondent's case is that he is from Kirkuk in Iraq, a Sunni, of Kurdish ethnicity, that he has no identity documents in his possession and is unable to obtain them from the Iraqi authorities. As advanced before the judge, his case was that he faces a real risk of harm in Kirkuk as a result of the indiscriminate violence owing to the internal armed conflict said to be ongoing there and cannot return there; is not returnable directly to the KRG; and, if returned to Baghdad, would be unable to access the KRG or any other safe area in Iraq, being unable to relocate owing to a lack of a CSID rendering him destitute and he had stated also that given the length of his time out of Iraq a lack of family and friends to rely upon and his mental health problems he would be unable to relocate.

4. The Secretary of State's case was that Kirkuk is no longer an area affected by a state of internal armed conflict.

5. The respondent also claims to be in a genuine and subsisting relationship with a qualifying partner and with her daughter with whom he has a parental relationship.

6. The judge noted at [42] that the respondent had last been in contact with his mother in Kirkuk in 2004 but that he had been unable to contact family since taking on that his father had been killed and his wife had been murdered and at [43] his wife's family blamed him for her murder and are seeking revenge upon him. The judge noted also at [44] that the respondent had made efforts to contact family through friends and on Facebook. The judge accepted also at [45] that a letter written in January 2008 upon which the Secretary of State relied undermined the respondent's credibility it had been written whilst he was in detention and was not satisfied it demonstrates him to be a liar.

7. The judge concluded:-

   (i) that the respondent's home area is Kirkuk and that he did not currently hold a passport or a CSID card although he had been issued with both in the past; that he was not in a position to obtain the issue of a replacement for either or the issue of any emergency travel document in the UK without the assistance of members of family in Kirkuk, and thus his return is not presently feasible;

   (ii) that the respondent would not be admitted to the KRG as a returning resident and would be returned to Baghdad assuming a laissez passer had been issued to him [59]; that the respondent was not in contact with family in Iraq who could assist him in obtaining replacement documents; that he does not know the details of his family book; that he has not got relevant documents therefore could not demonstrate to the Iraqi authorities who he is and therefore on the light of the guidance in **BA (Iraq)** [2017] UKUT 18 (IAC) and **AA(article 15 (c) Iraq CG** [2016] UKUT 544 was not satisfied he could obtain the issue of a CSID card either from the UK or on return to Iraq;

(iii) that he is at real risk of destitution and of kidnap for ransom if returned either to Baghdad or Kirkuk, his difficulties in Baghdad being aggravated by his religion and ethnicity there being no obvious reason to disbelieve his account of why he left Iraq and what had happened once he had done so and, he accepted that in Kirkuk the respondent will also face the risk of harm from members of his wife's family against which the state would not be in a position to offer effective protection;

(iv) that he was not satisfied that the threshold with regard to Article 15(c) was met in respect of the city of Kirkuk;

(v) that the respondent has a genuine and subsisting parental relationship with his partner's child.

8. The Secretary of State sought permission to appeal on the grounds that the judge had erred:-

(i) in failing to make clear credibility findings in respect of the respondent's asylum claim in particular failing to address paragraph 29 of the decision letter, this being relevant to the question of the respondent's family's whereabouts and the possibility of obtaining documentation;

(ii) that, having had regard to both AA (Iraq) CG and BA (Iraq) the judge had failed to give clear reasons as to why the respondent would be at risk in Baghdad failing properly to consider also the headnote of AA (Iraq) CG at D;

(iii) that the respondent had not demonstrated that he had exhausted all the possibilities of obtaining a CSID, having made no attempt to contact the authorities although he had previously had an Iraqi passport;

(iv) that the judge had failed to identify what the respondent's circumstances are and the pressure of being at risk;

(v) that the judge had failed to make proper findings, it being for the respondent to show that he had exhausted all available options to the Tribunal before the Tribunal could come to conclude the respondent is undocumented or would be unable to obtain the required documentation for his return and, the fact the respondent's return is currently not feasible is not a reason to grant humanitarian protection.

9. The Secretary of State set out a number of inconsistencies based on the respondent's claim at paragraph [18] of the refusal letter dated 31 October 2016. She did not accept:-

(i) that the respondent's father was a policeman and member of the Ba'ath Party responsible for the death of innocent people;

(ii) that the family had been visited by security forces and Ba'ath Party members on 20 May and 27 May 2002 and asked to change their ethnicity;

(iii) that his mother, brother, sister and wife were held by Saddam's regime and that his wife was killed;

(iv) that he had received threats from his late wife's family.

10. In respect of matters (i), (ii) and (iv), the principle reason for giving this lack of detail (i), inconsistencies (ii) that there is no evidence that the respondent had been married or that his wife was claimed as killed.

11. With respect to claim (iii) it was noted that there was no evidence such as arrest warrant, a death certificate and that inconsistent information had been provided in the past, reference also being made to a letter of 10 January 2008 and the respondent having stated in an application of 5 January 2007 that his wife was allegedly present in the United Kingdom at the time. Inferences were also drawn through inconsistency as to whether he had applied for asylum in Italy or not which cast doubt on the chronology of his claim.

12. As Mr Mills submitted, the judge does not expressely address these issues set out at 9 (iii) above in the terms identified in the letter. Miss Brakaj submits, that in reality the judge had in fact resolved the credibility issues and had given adequate and sustainable reasons for doing so.

13. It is evident from the decision of this experienced judge at [27] that he considered carefully credibility. It is notable also that he found as he was entitled to do that the respondent's evidence had been consistent that he and his parents were born in Kirkuk which is where his family continued to live when he left Iraq [35] and that "the cross-examination of the respondent and Miss S significantly failed to identify any basis which I could sensibly find that he has not told the truth about this".

14. The judge also considered identity documents and the risk too in Iraq on return setting out in detail some of the respondent's evidence about his contact with family and what had happened at [42] to [45]. It is clear that there was substantive cross-examination in this case which the judge, as it was open to him to do, concluded did not disturb the respondent's evidence. The judge noted that much had been made of a letter written whilst the respondent was in detention and considered that he did not bear the weight that the respondent sought to rely on it.

15. Similarly, I have considered that letter attached to the application form in which it was stated that the respondent's wife was alive. It is evident when considering the letter the judge also considered the statement made that the wife was dead that was submitted with the application form and as Miss Brakaj submitted to me it has never been stated nor is there any evidence that the respondent's wife had been present in the United

Kingdom. It is therefore difficult to see how any weight could properly have been attached to that apparent discrepancy albeit that it is one that would have been serious.

16. This is a case in which an experienced judge heard evidence from the respondent which was subject to detailed cross-examination. The judge has given adequate and sustainable reasons for finding that the respondent was credible and it is of note that he did clearly address the different issues arising as to what had happened in Iraq and gave adequate and sustainable reasons for concluding that the respondent was telling the truth. At [61] he summarised his conclusions that there was no obvious reason to disbelieve the respondent's account of why he left Iraq and what happened once he had done so. It is not a requirement for a judge to address each and every point taken in the refusal letter when, as here, it does not appear that the specific points, which had been raised in cross-examination, did not form a great part of the submissions made. The thrust of the Secretary of State's case is in reality that in light of **AA (Iraq)** and **BA (Iraq)** that the respondent simply cannot succeed.

17. Accordingly, for the reasons set out above I am satisfied that the judge did properly take account of the Secretary of State's concerns as to credibility and for adequate and sustainable reasons accepted the respondent's account. It is of note also that much of the respondent's other evidence was not disputed and that was properly taken into account in respect of the other evidence.

18. The Secretary of State's challenges with respect to Article 3 are flawed, as there is no indication that in this case, any difficulties the respondent would face on return do not flow solely from the lack of documentation; there is the sustainable finding by the judge at [61] that the respondent is at risk of harm from members of his wife's family from whom there would be no effective protection in the home area, Kirkuk. This, as is noted in R (on the application of H) v The Secretary of State for the Home Department (application of AA (Iraq CG) IJR [2017] UKUT 119 (IAC) at [41] to [42]:

> 41. Two points emerge. First, a person who is found to be returnable (because he or she has or will be able to obtain a passport or laissez-passer) may, nevertheless, face difficulties if he or she cannot obtain a CSID, following return. *Secondly (and crucially), a person whose return is not currently feasible may, nevertheless, still succeed in a claim to international protection, if and insofar as the claim is based on a real risk of harm, which arises otherwise than by not having the requisite documentation*. [emphasis added]
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> 42. The significance of this second point emerges clearly from the Upper Tribunal's application to the appellant AA of its country guidance:-
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> " 206. However, the Respondent has confirmed that the Appellant would be returned to Baghdad city. There is no evidence that the Appellant has access to a current or expired Iraqi passport, or a laissez-passer, and we conclude that he does not. In all the circumstances we find that he will not be returnable until he is

able to supply sufficient documentation to the Iraqi Embassy in London to enable it to provide him with a passport or a laissez passer. This will only occur if he can provide a copy of a CSID or Nationality Certificate. His return is, therefore, not currently feasible.

207. Given that the appellant's return is not currently feasible it could be said that it is unnecessary to hypothesise any risk to him upon his return to Iraq. However, as identified in paragraphs 169 and 170 above, there may be cases where it will be evident that the person concerned would be at real risk of persecution or serious harm irrespective of the lack of documentation and that an applicant should not be precluded for pursuing a claim to international protection in circumstances where the asserted risk of harm is not (or not solely) based on factors (such as lack of documentation) that currently render a person's actual return unfeasible. "

19. Further, it is to be noted that the guidance in AA(Iraq) CG was amended in respect of sections B and C by the Court of Appeal in AA(Iraq) v SSHD [2017] EWCA Civ 944. It now reads:

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.

6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P 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 P's return is not currently feasible on account of a lack of any of those documents.

8. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

C. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. 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, if, by the time any funds provided to P by the Secretary

of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

20. It should be recalled in the context of this case that the issue under consideration is whether, it having been found that the respondent is at risk of serious harm in his home area, where there is no sufficiency of protection, whether it would be unduly harsh to expect him to relocate. There is no basis for the assertion that the judge did not have proper regard to the relevant guidance. On the contrary, his decision shows reference to both the cases cited by the Secretary of State in her grounds.

21. Contrary to what is averred in the grounds, the judge gave adequate and sustainable reasons for concluding [58] that the applicant could not obtain a passport or CSID without the help of member of the family in Kirkuk, an area in which he was at risk and where the judge found, again for sustainable reasons, that the respondent was not in contact with family. In the light of the guidance at C above, the assertion that the respondent had to exhaust all possibilities is mistaken, as are the assertions about obtaining a passport. Further, the claimed error of not addressing feasibility of return does not, on the facts of this case, and in the light of the revised guidance, identify any error of law which could give rise to a material error, given that absence of documentation is not the sole reason the respondent fears return to Iraq.

22. The submission that the judge had not properly engaged with BA in not reaching a fact-sensitive is simply wrong. It is precisely what the judge did so. Just because he did not agree with the Secretary of State is not an error of law, whatever she may wish to think. On the contrary, the judge properly set out detailed findings which he carefully summarised giving adequate and sustainable reasons why this individual who was at risk in

his home area of Kirkuk would not be able to relocate to Baghdad, given the real risk of destitution which meets the revised guidance in AA(Iraq).

23. In summary, the grounds challenging the judge's approach to article 3 are nothing more than an attempt to re-argue the appeal, and fail to identify any error in the judge's reasoning, or approach either to the relevant law.

24. In the circumstances, having found that the respondent's deportation would be in breach of article 3 of the Human Rights Convention, any error with respect to the analysis of article 8 rights which includes the assertion of an incorrect approach to section117C (5) of the 2002 Act is not capable of creating a material error.

SUMMARY OF CONCLUSIONS.

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it. I maintain the anonymity order made by the First-tier Tribunal, given the need to protect the identity of the respondent's partner and her child.

Signed Date 15 December 2017

Upper Tribunal Judge Rintoul