



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08452/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 3 April 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

SHORSH [H]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, instructed by Halliday Reeves Law Firm

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Shorsh [H], born on [] 1991 is a male citizen of Iraq. By a decision which was dated 10 June 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside.
2. At the resumed hearing at Bradford on 3 April 2018, the appellant gave evidence in court. He adopted his two statements as his evidence-in-chief. He was asked by Mr Hussain what information he had supplied to the Red Cross in order to enable it to trace his family in Iraq. He explained that he had provided "all information" including

the address of their other family home. The appellant said that he had given details of his father, mother and sister to the Red Cross. The appellant claimed that he had not heard anything from his family since April 2016.

3. The appellant's home area is in Diyala. Mrs Pettersen, cross-examining the appellant, asked him how long it would take to travel by car from Diyala to Baghdad. The appellant replied 3-4 hours. The appellant said that he himself had never been to Baghdad by car or otherwise. Mrs Pettersen stated that the appellant had a CSID identity document and that it was in the possession of the Home Office. She asked the appellant whether he would be able to use the CSID to obtain a new passport. The appellant believed that this would not be the case. The appellant said that the identity document had "changed two years ago". When asked to provide the source of this information, the appellant replied, "People in my house. Kurdish people." The appellant said that he had not asked the Iraqi Embassy.
4. Having heard the oral submissions of the representatives for both parties, I reserved my decision.
5. The Secretary of State has not provided any clear evidence to show that Diyala is now a safe area. At the time of the most recent country guidance (*AA (Iraq) [2017] EWCA Civ 944*) paragraph 1 of the headnote provides:
 1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
6. Mrs Pettersen submitted that the appellant could travel from Baghdad to Diyala by road a distance of some 84 kilometres. However, I am not satisfied that Diyala is a safe area for the appellant to return. I am aware there is evidence to show that ISIL has been defeated in Diyala there is also evidence to show that the evidence remains contested between Kurdish and Iraqi forces. In the absence of clear evidence to the contrary, I find that I should continue to hold that Diyala is not safe for this appellant.
7. As regards internal flight, the relevant circumstances of this appellant are as follows. He is an Iraqi Kurd aged 27 years. The Home Office holds his CSID but could return it to him should he return to Iraq. He does not have a passport. He says that his passport is with his family that he cannot trace his family. I have no reason to disbelieve what the appellant says about his family and his passport. In addition, the appellant does not speak Arabic and has no family contacts in Baghdad. The relevance of the appellant's inability to speak Arabic is that he would find it difficult, if not impossible, in Baghdad to obtain employment notwithstanding his possession of a CSID. I am aware that the CSID will enable the appellant to access services but I am

aware also that Iraq has no fully functioning welfare state which would provide a regular income to the appellant should he be unable to find work.

8. The Court of Appeal provided country guidance relevant to this appellant's circumstances in *AA (Iraq)* follows:

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

- (a) whether P has a CSID or will be able to obtain one (see Part C above);
- (b) whether P can speak Arabic (those who cannot are less likely to find employment);
- (c) whether P has family members or friends in Baghdad able to accommodate him;
- (d) whether P is a lone female (women face greater difficulties than men in finding employment);
- (e) whether P can find a sponsor to access a hotel room or rent accommodation;
- (f) whether P is from a minority community;
- (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

9. The starting point, therefore, is that, in general terms, it would be safe for the appellant to relocate to Baghdad. From that starting point, the appellant has in his favour the fact that he possesses a CSID. However, he has no friends or family support and no sponsor who would be able to obtain accommodation for him. Crucially, he does not speak Arabic and may struggle to find employment. The combination of his latter two factors, the difficulty in him finding employment and the absence of any network of support in Baghdad, that leads me to conclude that it would be unduly harsh to expect this appellant to relocate to Baghdad. Further, the appellant himself needs to be aware, as Mr Hussain pointed out, that any protection given to him in this country is likely to be of short duration; as soon as it becomes clear that Diyala is a safe city to which the appellant may return, then there would seem to be no reason at all why, using his CSID and having a *laiser passer* to re-enter the Iraq, the appellant could not without suffering undue harsh consequences remain in Baghdad for the short period he would require to travel by motor car to Diyala. However, such considerations lie in the future. As at the date of the resumed hearing, I find (i) the appellant would be of Article 15(c) risk in Diyala and (ii) it would be unduly harsh to expect him to relocate to Baghdad. His appeal is, therefore, allowed on humanitarian protection grounds.

Notice of Decision

10. The appellant's appeal is allowed on humanitarian protection grounds.
11. No anonymity direction is made.

Signed

Date 2 MAY 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 2 MAY 2018

Upper Tribunal Judge Lane