Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00237/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 December 2017	**On 16 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

RAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Nizami, of Counsel instructed Davjunnel Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was born on 4 December 1999. He claimed asylum on 27 June 2016. His application was refused on 23 December 2016. His appeal against that decision was dismissed by Judge of the First-tier Tribunal Asjad who in a determination promulgated on 11 July dismissed the appellant's appeal on asylum grounds.

2. It is of note that although the Secretary of State refused the appellant's claim he was, because of his age, given leave, under paragraphs 352ZC to 352ZF of the Immigration Rules, until 20 May 2019.

3. The appellant's claim was that he was an Iraqi of Kurdish ethnicity who had lived in the Mosul area of Iraq before moving to live with his uncle in Suleymeniyah in Kurdistan. His father had been killed while the family had lived in Mosul by, he claimed, ISIS stating also that a paternal uncle was killed at the same time. The appellant's claim was that he too would be targeted. The judge pointed to various discrepancies in the appellant's claim between what he had said at interview and in his statement and at appeal and concluded that the appellant was not credible about how his father had died. She found that he would not be targeted as he had claimed by ISIS on return, and said that she did not find that the appellant's father had been a peshmerga or that he was specifically targeted.

4. She said that on the appellant's own evidence there was no risk to him in Suleymeniyah apart from some acrimony with his mother's new partner. She found that he had not fled Iraq in fear of his life and had been sent here for a better life. She said that he was clearly a smart intelligent young person whose family had invested a considerable amount of money in sending him to Britain.

5. She went on to say in paragraph 8:-

> "He accepted having an Iraq national ID card and said he had left it behind. Under cross-examination the appellant indicated that his ID card had disappeared but that was very different from what he said in interview which was that he had left his ID card behind because he needed a passport and not ID card. There is no reason why the appellant's identification cannot be verified with the Iraqi authorities."

6. In the following paragraph she noted that he had indicated that he had Facebook contact with some of his family in Iraq. She found that the appellant had been sent to Britain for economic reasons. She then dismissed the appeal.

7. The grounds of appeal stated that the judge had not had any regard to the country guidance in **AA (Article 15(c)) Iraq CG** [2015] UKUT 544 and had misdirected herself on the risk to return. It was argued that the country guidance case set out a stage by stage approach to risk on return for Iraqi Kurds and that that had not been followed nor had there been any engagement at all with relevant country guidance. Moreover, it was argued the judge had erred in not making a finding about the risk the appellant faced by virtue of not having a civil status ID card. Reference was made to the decision of the Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944** which had stated that a CSID card was not a document that could be automatically acquired after return to Iraq although it was feasible that an individual could acquire a passport or laissez passer without possessing or being able to obtain a CSID.

8. The guidance in the Court of Appeal had gone on to say "in such a case, an enquiry would be needed to establish whether the individual would have other means of support in Iraq, and the absence of which they might be at risk of breach of Article 3 rights".

9. The grounds went on to state that given that the appellant was a resident of Mosul it might well be that internal relocation was not open to him.

10. With regard to possible return to the IKR reference was made to country guidance which showed the difficulties the appellant might face if he returned to that area. Similarly there were issues as to whether or not the appellant would face persecution if returned to Baghdad.

11. It was argued that the judge had erred in failing to consider Articles 2, 3 and 8 of the ECHR and finally that the judge had applied the wrong standard of proof. Moreover it was argued that she had failed to consider his best interests.

12. Before the hearing of the appeal Ms Nizami sought to widen the grounds of application stating that the judge had failed to deal with the appeal in a manner as appropriate "to A's vulnerability as a minor" and had not complied with the guidance of the Court of Appeal in the case of **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123** where the Court of Appeal had recognised the principle that "a child is foremost a child before he or she is a refugee".

13. She stated the judge had failed to properly have regard to that principle and that therefore she had erred when considering the credibility of the appellant.

14. At the hearing of the appeal before me I dealt first with the request by Ms Nizami to enlarge the grounds of appeal. I took the view that it would be appropriate to look at the appeal at its highest: the facts being that the appellant although originally from Mosul had lived for some time in Suleymeniyah and furthermore that ISIS was no longer in control of those areas and had in fact retreated from those areas. The appellant's fear, no matter how it had arisen related solely to a fear of ISIS and they were no longer a threat to him. I would add that I consider that there is nothing in the determination that would leave me to consider that the judge was incorrect in her approach to the appeal on the issue of credibility. In paragraph 3 of the determination she stated:-

> "I take his age into account when assessing his credibility and giving the benefit of doubt. The core of his claim relates to the death of his father who the appellant claims was killed by ISIS. It is the appellant's case that this was a deliberate targeting of his father by ISIS and not a random indiscriminate attack. However his explanation for this killing was inconsistent."

15. The judge then gives details of the inconsistencies which she had found.

16. The fact that the appellant was 17 at the date of hearing does not mean that the judge should have found that he was credible in everything he said. Indeed the reality is that the appellant's evidence was not consistent. The judge was entitled to point that out. It is not the case simply because a young man is 17 rather than 18, what he says should be believed and found to be credible. Be that as it may, I do not consider that that is the nub of this case.

17. I consider that the central issue is that of whether or not or the the appellant would be able to return to his family in Suleymeniyah and how he could do that. In that regard Ms Nizami referred to the country guidance in the Court of Appeal decision in **AA (Iraq) [2017] EWCA Civ 944** in which it is written in the annex thereto at the B that:-

> "B Documentation feasibility of return (including IKR).
>
> 5. Return of former residence for 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.
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> 7. In the light of the Court of Appeal's judgment in **HF (Iraq) and Others v SSHD [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 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.
>
> 8. Where P has returned to Iraq and laissez passer expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.
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> C. The CSID
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> 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 arriving in Iraq. The CSID is generally acquired 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, he 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 would 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 by using an Iraqi passport (whether current or expired), if P has one. If P does 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 official 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 an area where Article 15(c) serious harm was occurring. As a result of 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."

18. In Section E of that guidance the issue of return to the IRK is considered. It reads as follows:-

"E. Iraqi Kurdish Region

17. The respondent will only return P to the IKR if P originates from the IKR and his identity has been pre-cleared with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport or laissez passer.

18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.

19. A Kurd (K) which does not originate from the IKR contain entry for ten days as a visitor and will then renew this entry permission for a further ten days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that IKR authorities proactively remove Kurds from the IKR as permits have come to an end.

20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling

> to the IKR, will be fact-sensitive; it is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as Erbil or by air); (b) the likelihood of K securing employment in the IKR; (c) the availability of assistance from family and friends in the IKR."

19. Mr Avery in reply stated that the judge not only had made the appropriate self-direction on the issue of the fact that the appellant was a minor but stated that the judgment in **AM (Afghanistan) [2017] EWCA Civ 1123**, on which Ms Nizami had relied did not really apply to someone such as this appellant who was able-bodied and articulate – his circumstances were very different from that of **AM**. In any event he argued that the judge had made sufficient findings that not only was the appellant not credible but that he would be able to return to the KRG. It is important to look at an individual's circumstances and there was nothing in this appellant's circumstances which would mean that he could not return, particularly that he had family there.

Discussion

20. I do not consider that there is anything in the argument that the judge erred in the way she dealt with the evidence of this appellant and that somehow she had not properly given consideration to the fact that this appellant was a minor. I consider that a self-direction in paragraph 3 of the determination was a self-direction which she followed and, as I have said above I consider that there was absolutely no reason why she should then be placed in a situation where she had to find something which she did not consider was credible to be credible. The reality is that she considered the evidence and the discrepancies therein and was perfectly entitled to find that the appellant's story was not credible.

21. However, there is the further issue of the ability of the appellant to return to the KRG. This is an issue which requires considerable and detailed analysis regarding the way in which the appellant would be returned to that area and the documentary evidence which could or could not be obtained which would facilitate his return. I consider that it is an error of law for the judge not to have engaged with that issue and that her comment that "there is no reason why the appellant's identification cannot be verified with the Iraqi authorities" is not sufficient to determine that issue.

22. I consider that is a material error of law in the determination and I therefore set aside the determination.

23. As this is an exercise which requires considerable fact-finding I consider it is appropriate, applying the Senior President of the Tribunal's directions, to order that this appeal proceeds to a hearing afresh in the First-tier.

Decision

I set aside the judgment of the First-tier Judge.

Directions

This appeal is remitted to be heard again in the First-tier.

Signed  Date 10 January 2018

Deputy Upper Tribunal Judge McGeachy