Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04993/2017**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 6 August 2018	**On 1 October 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR SHAKHAWAN HAIDER
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr A Barnfield	(Counsel)
For the Respondent:	Mr D Mills	(Senior Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal ("the tribunal") which was issued to the parties on 18 July 2017. In making its decision the tribunal dismissed the claimant's appeal from the Secretary of State's decision of 11 May 2017 refusing to grant him international protection. However, the claimant secured permission to appeal to the Upper Tribunal and, after a hearing of 16 February 2018, I decided to set aside the tribunal's decision, preserving none of the findings, and I also decided that the decision would be re-made by the Upper Tribunal. I directed a further hearing to deal with matters relevant to remaking and that hearing took place on 6 August 2018. Representation at that hearing was as stated above and I would wish to place on record my gratitude to each representative.

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The appellant, his immigration and his adjudication history

2. The appellant is a national of Iraq and he was born on 27 March 1990. It does not appear to have ever been disputed that he is of Kurdish ethnicity. Indeed, he speaks Kurdish Sorani and gave evidence in that language before me. He says that he is a Sunni Muslim. He entered the UK, in a clandestine manner, on 15 June 2010. It is recorded that he claimed asylum on 18 June 2010. The basis of his claim, at that time, was that he had been a serving Iraqi police officer, that he had received threatening letters from terrorists who disapproved of his work and that those terrorists had subsequently blown up his home causing him injury and killing members of his family. He also asserted that he is from Kirkuk in Iraq and that it was there that he had experienced those claimed problems.

3. The Secretary of State did not believe the claimant's account. So, on 6 July 2010, his asylum claim was refused. The claimant then appealed and his appeal was heard by Judge Baker on 10 September 2010. He was not represented at that hearing. The Secretary of State was represented by a Presenting Officer. Judge Baker dismissed the claimant's appeal having found him not to be credible. He did not believe that he was from Kirkuk, nor that he had been a serving police officer in Iraq, nor that he had come to the adverse attention of any terrorists. Judge Baker's credibility assessment runs from paragraph 24 to paragraph 37 of the written reasons which he produced on 15 September 2010. I do not propose to set out what he had to say about all of that in full. But the question of whether or not the claimant is from Kirkuk has loomed large in the proceedings before me and so it may be helpful for me to set out the Judge's findings as to that. The Judge said this:

> " 25. He accepted that he had given the answers recorded in interview. I find that they demonstrate such ignorance of Kirkuk that I do not accept his claims he has lived there since at least 16 years old.
>
> 26. He was unable to name either the Zab or Sarwan Rivers in Kirkuk or any of the biggest Mosques. As a policeman and as a person who had lived there since between 14 to 16 years old it is not credible that he could not name these famous geographical and religious sites.
>
> 27. When asked to name the famous buildings or landmarks in Kirkuk he could name a telephone tower and a roundabout called Ikhwan and an old school called Azadi. That was challenged in the refusal letter on the basis that extensive research has been unable to find either of those.
>
> 28. He was unable I find to name the football stadium, Kirkuk Football Club player the Kirkuk Olympic Stadium which is a building built in 1989 and a capacity to hold 30,000. I find that had he been resident in Kirkuk and operated as a policeman since 2008, he having moved there between 14 and 16 years old whether or not he played football he would have been able to identify the stadium by name.
>
> 29. I find he has not established that he comes from Kirkuk despite his claims."

4. Judge Baker's decision was not challenged or, at least, not successfully so. Nevertheless, the claimant did not leave the UK. Indeed, a series of further representations were made to the Secretary of State on his behalf. Essentially, it was argued that as an Iraqi national from Kirkuk, a "contested area", he could not safely return because, following relevant Country Guidance decisions, he would be at risk in his claimed home area of Kirkuk in consequence of the test set out in Article 15(c) of the Qualification Directive being met. He would not be able to internally relocate, it was contended, because he was not properly documented and, in particular, would be returning without what is known as a CSID document and without an ability to obtain one. The practical consequence of his not having a CSID document would be destitution. Those arguments, however, were rejected by the Secretary of State in a decision of 11 May 2017. It was that decision which led to the decision of the tribunal which was sent to the parties on 18 July 2007 and then my decision to set aside the tribunal's decision.

The issues for me in remaking the decision

5. The claimant has not, in these proceedings, sought to resurrect his claim to have been at risk due to his incurring the wrath of terrorists in consequence of his work as a police officer. That had been comprehensively rejected by Judge Baker. But he has sought to pursue the arguments summarised above which he had relied upon in his further representations to the Secretary of State prior to the decision of 11 May 2017 having been made. He also asserts, for similar reasons, that he should succeed under Article 8 of the European Convention on Human Rights (ECHR) because he would face "very significant obstacles" to his reintegration in Iraq. Paragraph 276 ADE of the Immigration Rules is relied upon here. Further, he says that he should have been granted discretionary leave in the UK on the basis of what are considered to be his "exceptional circumstances" and he refers to a document described in Mr Barnfield's skeleton argument of 6 August 2018 as "Chapter 53 of EIG". In a nutshell, the claimant says that he is from Kirkuk; Kirkuk is and remains a contested area so he can't go back there; he has no family in Iraq or, if he has, he no longer has contact with them; and he is undocumented.

6. It is for the claimant to make out his claim to be entitled to international protection be that under the 1951 Refugee Convention, or on Humanitarian Protection grounds or on Human Rights grounds with respect to Article 3 of the ECHR. The standard of proof is what is sometimes referred to as "the lower standard" or the "real risk" standard. I have to consider whether he has succeeded in making out his claim to international protection. I must then, additionally, consider what the position might be with respect to Article 8 of the ECHR and with respect to Home Office policy and discretionary leave.

The hearing for the purposes of the remaking of the decision

7. As indicated, the hearing took place on 6 August 2018. Representation was as stated above. The claimant had the benefit of a Kurdish Sorani speaking interpreter and he gave his evidence in that language. His evidence in chief was brief but he was cross-examined, at some length, by Mr Mills. I then heard oral submissions from each representative.

8. In addition to the documentation which was already before me (see below) Mr Mills introduced a copy of the written record of the claimant's screening interview which had taken place on 18 June 2010. I note that, in fact, a copy of that screening interview had been before Judge Baker and the claimant had, at that stage, invited him to take its content into consideration. Mr Barnfield did not resist the admission of the screening interview record but he was granted a short adjournment to enable him to read it and to take instructions after which he indicated he was content to proceed.

9. I shall refer to certain of what was said at the hearing, where necessary or appropriate, below, when I seek to explain how I have re-made the decision.

The documentary evidence

10. Given the somewhat lengthy previous adjudication history there was much documentation before me. But the key documents consisted of the respondent's bundle; a consolidated bundle filed on behalf of the claimant which included, amongst other things, his witness statements of 16 June 2017 and 1 August 2018 and a witness statement of one Omar Ali Omar; Mr Barnfield's skeleton argument and the aforementioned screening interview record.

11. I confirm that I have given careful consideration to the documentation before me prior to remaking the decision in this case.

Credibility

12. This is a case where, in remaking the decision, I have had to undertake my own assessment as to the credibility of the claimant. In so doing I have taken account of his oral evidence before me and the documentation. I have borne in mind that I should be cautious in rejecting, as incredible, an account or part of an account offered by an inexperienced and anxious asylum seeker. I have considered all of the evidence as a composite whole prior to reaching a view as to credibility. I have reminded myself of the lower standard of proof applicable in cases where international protection is sought.

13. There are, of course, previous unchallenged or unsuccessfully challenged findings made by Judge Baker. As to those, Mr Barnfield does not dispute that, following the very well-known case of *Devaseelan (Second Appeals - ECHR - Extra - Territorial Effect) Sri Lanka* [2002] UKIAT 00702, Judge Baker's findings must represent my starting point. But as explained in that decision, those findings will not necessarily be the end point. Where there has been an earlier judicial decision and then a later appeal made by the same claimant, there might, for example, be new evidence available which had not been available when the previous decision had been made and matters might have been altered by the passage of time. But Mr Barnfield did not seek to argue either in his skeleton argument or otherwise that Judge Baker had been wrong to reject the claimant's account of having been persecuted by terrorists in consequence of his claimed employment (it was found he never had any such employment) as a police officer. So, there is no basis upon which I could sensibly or rationally depart from those findings. So, I proceed on the basis that the claimant had sought to mislead with respect to that pivotal aspect of his asylum claim and that he is a person, or at least was a person in 2010, who would be prepared to deliberately mislead if he saw advantage in so doing.

14. As indicated, Judge Baker also found, for the reasons set out above, that the claimant was not from Kirkuk. Mr Barnfield does, however, notwithstanding *Devaseelan*, urge me to make a different finding and to conclude that he is, indeed, from Kirkuk. Whilst no new evidence is offered as to that Mr Barnfield points out that the claimant has remained consistent as to that aspect of his case over a number of years and on every occasion that he has presented his claim. He says that the consistency over a long period is, in essence, a new and substantial consideration for me and sufficient to cause me to make a different finding. It might also be said, I suppose, that whilst the claimant might be thought to have a specific reason to mislead and to claim to be from a "contested area" now, there was not the obvious similar motivation to mislead about his home area in 2010 when he gave his evidence to Judge Baker.

15. Judge Baker though, conducted what was a quite detailed and careful analysis as to what the claimant was saying regarding his home area. Judge Baker gave detailed and specific reasons why he did not believe the claimant was from Kirkuk. On the face of it, those reasons are persuasive. The claimant has not dealt with them. He has not, for example, either in his oral evidence to me or in the witness statements referred to above, explained why he could not name the rivers running through Kirkuk or why he did not know the name of the football stadium in Kirkuk. If there was an explanation as to that he could have offered it at the hearing before me. I do not find Mr Barnfield's "passage of time" argument to be persuasive. It is right to say that if the claimant was telling the truth about being from Kirkuk he would very probably, as he has been, be consistent about it. But, on the other hand, it is also the case that if he had chosen to deliberately mislead about being from Kirkuk when giving his account to Judge Baker, he might be reluctant to

subsequently concede the point, thereby exposing himself as a dishonest witness. In any event, even if I were to attach weight to his consistency over time, it would be outweighed by his inability to address before me the concerns identified by Judge Baker. In the circumstances I have concluded that there is nothing of a persuasive nature to cause me to depart from Judge Baker's careful and reasoned findings on the point. The consequence of that is that I must conclude the claimant was prepared to maintain a misleading account regarding his home area before me and has, therefore, persisted in dishonesty with respect to that aspect of his case.

16. The claimant has consistently said that he is not in contact with any family members in Iraq and that he does not have any documentation. It is argued that, if such is true, notwithstanding any dishonesty on his part, he is entitled to international protection because without documentation and without family assistance either to obtain documentation or to provide support to him which he will need in the absence of documentation, he will be at risk. That is why his evidence, and in particular cross-examination, focused upon such issues.

17. The claimant was not an impressive witness before me. He had indicated at paragraphs 10 of his witness statement of 16 June 2017 that he had "never had Iraqi passport". Mr Mills asked him if that was correct and he said that it was. It was then put to him that in his screening interview he had indicated that he had previously held an Iraqi passport. Pausing there, at question 6.1 of the interview record it is recorded that he was asked if he had ever had his own national passport. His recorded reply reads "used to have one, lost. Can't remember the number but it was 'S' type". The claimant asserted before me, in effect, that he had not said that. He did not know how such had come to be recorded. So, the claimant's oral evidence and the evidence contained in a witness statement was not consistent with what it is recorded he had had to say in his screening interview.

18. The claimant says he is no longer in contact with any family members in Iraq. At paragraph 4 of his witness statement of 16 June 2017, he referred to his parents and his sister and his brother (with the implication that he had one male and one female sibling only) but said that his father, his sister and his brother had been killed in an explosion. He said that he had had no contact with his mother since coming to the UK. He was asked about what family members he had in Iraq in his screening interview and in cross-examination by Mr Mills. At questions 4.3 and 4.4 of the screening interview he was asked about his family and, according to the record, he indicated that, in terms of siblings, he had a brother and three sisters. In cross-examination he said that he had only ever had one sister. He mentioned having two brothers, though he said that one had passed away, but only one brother is referred to in the screening interview. So, again, there is inconsistency.

19. I appreciate that, as Mr Barnfield points out, it is appropriate to exercise caution in taking credibility points which stem from the content of a screening interview record. That is so, not least, because a screening interview is not the forum for a claimant to do anything other than provide basic details. But here, the inconsistencies Mr Mills identifies do relate to very basic matters. In particular, with respect to the passport, the claimant gave some specific detail as to the passport he was saying, at screening, that he had previously had. That detail (the point about an "S" type passport), to my mind, makes it more likely that he did say what he was recorded as having said about the passport. So, that is an inconsistency which I take into account and give weight to notwithstanding my acceptance that, generally speaking, caution concerning the content of screening interview records is appropriate.

20. As to any contact with his mother, the claimant addressed that at paragraph 5 of his witness statement of 16 June 2017. He said that he had not been in contact with his mother since coming to the UK. He added "she did not have a telephone so that I could not contact her". He said that he had contacted the British Red Cross on 7 June 2017 and asked for their assistance in tracing her but

they had not been able to provide any. In cross-examination before me, the claimant said that he had lost contact with his mother and his brother in Iraq because he had lost his mobile telephone in the UK and "the number was stored in my phone". He said he had not written the number down even though telephoning them on the number he had was the only means he had of contacting them. I do not believe the claimant. First of all, what he said in oral evidence about how he had come to lose touch with his mother was slightly different to what he had said in his witness statement. But even leaving that aside, it is not credible that if dialling a specific number which he now says he had for his mother and brother was the only means of contacting them, he would not have kept a separate record of the number and would not have simply relied upon its being saved in his mobile phone which he claims he subsequently lost. The importance of keeping such a number, as the only means of contacting his family, is obvious and would, in my judgment, have caused him to have kept a separate record despite his contention that he did not do so. So, this aspect of his account causes further damage to his credibility.

21. The appellant said that he had lost contact with his family either immediately upon his arrival in the UK or shortly afterwards. But, whilst he says he did contact the British Red Cross to ask for their assistance in tracing and getting into touch with his mother, he did not, on his own account, do so until 2017. I do not find that to be credible. If he had lost touch as soon as he claims I believe he would have contacted the British Red Cross significantly earlier. Further, at the hearing, he did not offer any explanation for that delay.

22. I have concluded, in light of the above and in light of what I have found to have been a history of seeking to mislead the immigration authorities in order to secure advantage, that the claimant is not a credible witness. I conclude that he has misled about his reasons for leaving Iraq, about the identity documentation which he has had in the past, about his having lost touch with his family in Iraq and about his being from Kirkuk. It is in light of my adverse credibility conclusion that I go on to make my relevant findings of fact.

Findings of Fact

23. I find the following:

A. The claimant is from Iraq and is Kurdish. Such has not been placed in issue.

B. The claimant is a Sunni Muslim. I have some doubts about that but since that particular aspect of his claim has not been placed in issue before me or at an earlier stage, I have decided to give him the benefit of the doubt.

C. I find that the claimant is not from Kirkuk. I am unable to make a clear finding as to what is his genuine home area in Iraq because there is insufficient material before me to enable me to properly do that. That is a consequence of his dishonesty. But I find, wherever his home area is, it is not an area which has been characterised or specified as being a "contested area" in previous Country Guidance decisions. I say that because I think if he really was from any other contested area he would have said so and because of the general unreliability of his evidence.

D. I find that the claimant has family in Iraq with whom he is in contact. I so find because he has provided an inconsistent account as to what close family he had in Iraq when he came to the UK, because of his general and persistent dishonesty, because he has provided an implausible and unpersuasive explanation as to how he came to lose contact with his family and because if he had genuinely lost touch with

his family in Iraq in 2010 which is what he claims, he would have approached the British Red Cross to secure their assistance at a much earlier stage than he did.

E. I find that the claimant has not demonstrated that he is not in possession of identity documentation including a CSID, an Iraqi passport and any other form of identity card which the Iraqi authorities may issue. I make that finding because of the claimant's general persistent dishonesty and because he has sought to mislead concerning the position regarding his passport. So, what he has to say about documentation can simply not be relied upon. It is possible that certain of the documentation has expired but that does not prevent such documentation being persuasive as to his identity upon return or, of itself, prevent him from renewing his documentation.

Decision and Reasons

24. In deciding this appeal I was invited to consider, and have considered, what was said in *AA (Iraq) v SSHD* [2017] EWCA Civ 944, AA (Article 15(c) Iraq CG [2015] UKUT 544 (IAC)) and *BA (returns to Bagdad: Iraq: CG)* [2017] UKUT 18 (IAC).

25. The claimant is not at real risk of persecution, serious harm or Article 3 ill-treatment upon return to the Iraq on the basis that he is of adverse interest to terrorists based upon his claimed employment as a police officer. Such had been pursued in the past, as noted, and had been rejected, but no attempt to revive those arguments was made before me.

26. It is a major plank of the claimant's case that he is from a contested area such that paragraph 15c of the Qualification Directive applies to him. However, I have found, as had been found previously by Judge Baker, that he is not from Kirkuk. So, he has failed to demonstrate that he is from a contested area in Iraq at all. To my mind that is utterly destructive of his case and, quite simply, he has failed to demonstrate that he will have any problems within his home area (whatever that area might be) in Iraq upon return.

27. Additionally and in any event, whilst the claimant says he does not possess and would not be able to obtain appropriate documentation, specifically a CSID card, I have rejected his contentions in that regard. He has not shown he does not possess such documentation and, in any event, has not shown that he could not successfully obtain such documentation quickly upon return to Iraq.

28. As to the arguments under Article 8 and the Article 8 related Immigration Rules, it was contended that the claimant would face "very significant obstacles" to his reintegration in Iraq. However, that argument depended upon the contentions he had made regarding his being undocumented and his being without family connections or support. I have rejected those contentions so the Article 8 argument falls away. As to the discretionary leave argument, Mr Barnfield realistically acknowledged before me that if I were to make a comprehensive adverse credibility finding the argument could not succeed. I have done that.

29. In the circumstances the claimant's appeal to the Upper Tribunal is dismissed.

Decision

The decision of the First-tier Tribunal which was sent to the parties on 18 July 2017 has already been set aside.

In remaking the decision, I dismissed the claimant's appeal from the Secretary of State's decision of 11 May 2017.

I have not directed anonymity. I was not invited to do so and it does not seem to me that there is any obvious basis for my doing so.

Signed: Date: 27 September 2018

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

Since no fee is paid or payable there can be no fee award.

Signed: Date: 27 September 2018

Upper Tribunal Judge Hemingway