



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06331/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 5 July 2018

Decision and Reasons Promulgated
On 6 July 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Shwan [M]
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant:

Mr T Hussain, instructed by Pickup Scott

For the respondent:

Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Kelly promulgated 11.8.17, dismissing his appeal against the decision of the Secretary of State, dated 20.6.17, to refuse his protection claim.
2. First-tier Tribunal Judge Davies refused permission on 30.10.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kekic granted permission to appeal.

Error of Law

3. For the reasons summarised below I found such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside and remade.
4. Whilst it was accepted that the appellant is an Iraqi Kurd from Kirkuk, the appellant's factual basis of his claim was rejected. As Kirkuk remains a contested area the appellant would face a risk indiscriminate violence if returned there, as accepted by the judge at [32] of the decision. The remaining issue in the appeal and the only ground on which permission to appeal to the Upper Tribunal was sought and granted relates to the judge's finding that the appellant could relocate to Baghdad even if he did not have a CSID.
5. The judge purported to apply the amended country guidance of AA (Iraq) v SSHD [2017] EWCA Civ 944 and at [31], noting that return was not currently feasible, accepted that it had to be decided whether the appellant had a CSID card or would be able to obtain one on return. The judge went on from [33] onwards to assess the viability of obtaining a CSID when the appellant does not have any current or expired Iraqi travel or identity document. It was also accepted that as Kirkuk remains a contested area, his ability to obtain a CSID from the Civil Status Office is likely to be 'severely hampered.'
6. However, the judge went on, relying on earlier findings that he failed to show he was without family connections to assist him, that it would not be as difficult to obtain a CSID card as it would otherwise be. The judge does not actually make a finding as to whether the appellant would or would not be able to obtain a CSID, but appears to have proceeded on the basis "even if the appellant were unable to secure a CSID."
7. The judge then went on at [34] to consider, the reasonableness of relocation to Baghdad City or the Baghdad Belts, concluding that he could do so, stating that an inability to obtain a CSID card was but one factor to be considered. The judge ultimately concluded that the appellant could relocate to Baghdad and dismissed the appeal.
8. The grounds assert that the judge erred in concluding that he could relocate to Baghdad without a CSID card. However, the Court of Appeal in AA accepted that whilst a CSID is required to access income/financial assistance, employment, education, housing, a pension, and medical committee documents, "*there will be persons who do not have a CSID but who nevertheless have access to an adequate support mechanism in Baghdad; for example those persons with family or friends in Baghdad who are willing and able to provide such assistance to them. Such matters will, of course, require careful consideration of the evidence, and a reasoned finding to be made in each case.*"
9. Inability to obtain a CSID card is not conclusive of the matter, but there has to be a careful consideration of the evidence and a reasoned finding. I am not satisfied that the judge made an adequately reasoned finding in this regard. At [34] the judge noted that the appellant is not a lone female and is no longer a minor but it had been accepted that he is from a minority Sunni Kurd community and does not speak Arabic. Absent any finding that the appellant would be able to obtain a CSID within a reasonable time

after arrival, it appears that the primary basis for the conclusion that relocation to Baghdad would be reasonable is the failure of the appellant to substantiate his claim that he is without friends or family connections in Baghdad. However, there was never any suggestion that the appellant had family elsewhere than in Kirkuk. There was certainly no evidence that he had friends or family in Baghdad willing or able to provide support. In the circumstances, the rationale for finding that he could relocate is inadequately reasoned or justified. This error is material to the outcome of the case, so that the decision has to be set aside as being in error of law and remade.

10. Since the making of the decision of the tribunal, the issue of internal relocation has been the subject of further country guidance in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), where the Upper Tribunal held that:

“Section C of Country Guidance annexed to the Court of Appeal’s decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

- i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in ‘tracing back’ to the family record and are confiscated upon arrival at Baghdad;
- ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
- iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father’s side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual’s mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

Section E of Country Guidance annexed to the Court of Appeal’s decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and

practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.

Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

For those without the assistance of family in the IKR the accommodation options are limited:

- (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;
- (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;
- (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;
- (iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant

under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

- (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;
- (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;
- (iii) P cannot work without a CSID;
- (iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;
- (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;
- (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.

11. In the light of this emphasis on the importance of a CSID card, and proceeding on the basis that the appellant has family but in the contested area of Kirkuk and not in Baghdad, and applying the relevant considerations in both AA and AAH, I am driven to the conclusion that it would not be reasonable and would be unduly harsh to expect the appellant to relocate to either Baghdad or the IKR.
12. In reaching this conclusion, I take account of the matters set out above. These include that the appellant would be returning to Iraq as a lone male from a Sunni Kurd minority background who does not speak Arabic and has no identity document or CSID. There is nothing in the evidence that would suggest he could obtain a CSID within a reasonable time without making the hazardous journey by land to Kirkuk, a contested area. Even if he has family in that area, he cannot be expected to join them and the information in the country guidance about checkpoints is likely to make it difficult for them to come to support the appellant in Baghdad. Without a CSID, the country guidance indicates that he will not be able to travel to the IKR. Without a CSID card or the ability to obtain one, he will be unable to access employment or government support and is likely to remain unemployed and become destitute once any support funds have been exhausted.
13. In the circumstances, even on the factual findings of the First-tier Tribunal, the appeal must be allowed.

Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing it.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated