Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09194/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 16th November 2018	**On 27th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

BARZE [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Bexson (Counsel)
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge O'Hagan promulgated on 24th October 2017, following a hearing at Birmingham, Sheldon Court on 18th October 2017. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

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2. The Appellant is a male, a citizen of Iraq, and was born on 4th June 1996. He appealed against the decision of the Respondent dated 4th August 2017, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a Sunni Muslim of Kurdish ethnicity, who worked as a guard at a carpark in Iraq from the age of 10 until 2014, and this carpark was in the town centre of Makhmur, which was the Appellant's home town. The business was owned by a man called Mr [I]. He had a son called [S]. The Appellant and [S] had a history of arguments and disputes. An argument arose on 8th August 2014. Later on that day ISIS seized the town of Makhmur. They wanted to remove money from the carpark office and [S] tried to stop them. They took him away with the others. The Appellant subsequently learned that [S] had been shot. Mr [I] now believes that the Appellant was responsible for his son's death. The Appellant fears that he would seek vengeance against the Appellant were he to return to Iraq (see paragraph 4).

4. The Appellant also states that he was taken by ISIS to Mosul. He was held in captivity for four months. He was released on 14th December 2014 after a "Sheikh", who knew the Appellant's family, had learned of his detention, and interceded with ISIS. The Appellant went to stay then at the Sheikh's home. He remained there until 15th September 2015. It was while he was there that he learned that [S]'s family believed him to be responsible for [S]'s death. The Appellant had left Iraq concealed in a water tanker, travelling through Turkey and via Syria, before eventually coming to the UK where he entered clandestinely on 21st March 2017, and claimed asylum.

The Judge's Findings

5. The judge accepted the Appellant's account, and noted that the Sheikh had been willing to intercede on his behalf because the Sheikh had seen this as a matter of family duty, because he was married into the Appellant's family. The Sheikh was a powerful man himself, with a following of some 3,000 followers (paragraph 38). The judge was clear that "that aspect of the Appellant's account is clear, consistent, and reasonably credible" (paragraph 39).

6. However, in relation to the Appellant's ability to return back safely to Iraq, the judge was less impressed by the Appellant's evidence. Having taken into account the Court of Appeal case of **AA (Iraq) [2017]**, the judge noted the importance of a CSID card (see paragraph 43) and observed that a difficulty in not having a CSID card was:-

> "a difficulty only for those returned to Baghdad. Since he comes from the IKR, that is not usually how return would be undertaken. If, because of the current difficulties, return were to be to Baghdad to

> make his way to the IKR, then he would need a CSID, or the means to obtain one reasonably soon after arrival in Iraq" (paragraph 43).

7. However, the judge went on to say that:-

> "I do not know whether the Appellant has a CSID. He says that he has no documents at all. He is not a wholly reliable witness, and he obviously has an incentive to put obstacles in the way of his return. Likewise, he says he has no contact with his family. I do not know whether that was right or not" (paragraph 44).

The judge went on to then say that the Appellant had not established that he could not obtain a CSID card from the Civil Status Affairs Office were he to return there because he had the support of the Sheikh and his extended family there (paragraph 44).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge failed to make sufficient findings on which to provide a reasonable decision as to whether the Appellant did have a Civil Status ID card (CSID). The judge also failed to have proper regard to the objective evidence as to individuals returning without a CSID. The judge moreover failed to have proper regard to the risk to the Appellant on return in the light of his detention by ISIS. Finally, the judge failed to have regard to the Respondent's policy on the feasibility of return.

10. On 1st February 2018, permission to appeal was granted. This was on the basis that the judge (at paragraph 39) had accepted the Appellant's claim that he had been detained by ISIS for four months before eventually escaping. Moreover, the judge had accepted (at paragraph 40) that the Appellant had not been targeted personally by ISIS and could return. He had then also found (at paragraph 41) that the Appellant was from IKR. Although the judge had considered **AA (Iraq) [2017] EWCA Civ 944**, and had found that the inability to return the Appellant to the IKR (at paragraph 42) was not open to him as Erbil Airport was temporarily closed, he had also confusingly stated that "although the factors giving rise to the closure of the airport may be a basis for such a conclusion". Indeed, the judge had then also stated that the Appellant would face difficulties (at paragraph 46) without actually specifying whether the judge was referring to the IKR or to Baghdad.

Submissions

11. At the hearing before me on 16th November 2018, Ms Bexson, appearing as Counsel on the Appellant's behalf, relied upon the grounds of application. She submitted that the judge's findings about the ability of the Appellant to obtain a CSID card (at paragraph 44) were insufficient and indeterminate, and lacked adequate reasoning, such as to amount to an error of law. For example, the judge stated at the outset that, "I do not

know whether the Appellant has a CSID", before proceeding to say three sentences later that, "I do not know whether that was right or not", when addressing the Appellant's own account that he had no contact with his family. The fact was that the judge had to make a finding whether the Appellant was in contact with family members such as to enable him to obtain a CSID card. In the same way, although the Appellant had received support from the powerful Sheikh, this person was now said to be in the IKR, and Erbil Airport was closed. In this context, it was confusing for the judge to observe that "he has not established that he could obtain one [i.e. a CSID card] from the Civil Status Affairs Office".

12. Indeed, the statement by the judge that, "Even if he lacks documents, he may be able to obtain a CSID if he has family members or other individuals who are prepared to vouch for him" (paragraph 44). This was speculative. The judge had to make the finding as to whether the Appellant did indeed have family members or others who were willing to help him to obtain a CSID card. Without a clear finding being made on this issue, it could not simply be assumed that the Appellant would have the ability to procure a CSID card, as required by the Court of Appeal in **AA (Iraq) [2017]**.

13. This was an important error because as is made clear (at paragraph 10 of the grounds) the Appellant had made it quite clear that he had no contact with his family members since he had been captured by ISIS. In the same way, it is not credible for the judge to state that the Appellant would not be targeted by ISIS, given that the judge had accepted that the Appellant had indeed been detained by ISIS for some four months (see paragraphs 12 to 13 of the grounds of application).

14. For her part, Ms Aboni submitted that there was no error of law in the judge's decision. The judge had accepted that the Appellant was from the IKR. He would go to the IKR although the airport was at the time temporarily closed, but is now open. The judge had made it clear (at paragraph 43) that "the difficulty [is] only for those returned to Baghdad" with respect to the requirement of having a CSID card, and that "Since he comes from the IKR, that is not usually how return would be undertaken" and he would not need a CSID card, such as to avoid the risk of real destitution. Ms Aboni submitted that all that the Appellant would need was to be able to fly to Erbil Airport and, following clearance from there, he would be able to enter the IKR without any restriction, and without there being any requirement upon him that he should have a CSID card.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. My reasons are as follows. First, this is a case where the judge has given insufficient and inadequate reasons with respect to the Appellant's ability to procure a CSID card were he to return to Kabul. The findings made at paragraph 44 conflict with what is stated at paragraphs 9 and 10 of Annex

A to **<u>AA</u> (Iraq) [2017]**, which contains guidance that "regardless of the feasibility of his return, it would be necessary to decide whether he has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq" (paragraph 9 of the Annex). It is also in conflict with what is said in that case that:-

> "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 …" (see paragraph 10 of the Annex).

16. The fact is that the difficulty that the judge found himself in, which was a difficulty not of the judge's making, given that the judge had found the Appellant to be lacking in plausibility in relation to the Appellant's ability to go back to Iraq, was such that the judge only concluded that, "I do not know whether the Appellant has a CSID", and only concluded, in relation to the Appellant's claim that he had no contact with his family that, "I do not know whether that was right or not" (paragraph 44).

17. In these circumstances, it could not safely be assumed that the Appellant would indeed be able to obtain a CSID card from the Civil Status Affairs Office. It is true that the judge states that "Even if he lacks documents, he may be able to obtain a CSID if he has family members or other individuals who are prepared to vouch for him" (at paragraph 44), but the Appellant's own case had been that he had lost contact with his family members after he had been captured by ISIS (see paragraph 10 of the grounds).

18. Second, the conclusion by the judge, that the Appellant was not at risk of ISIS, did not sit well, with the recognition that the Appellant had indeed been detained by ISIS for a period of time, and then released only after the intervention of the Sheikh. Dr Fatah, the expert, gave evidence (see paragraph 40 of the decision) that "Makhmur was captured by ISIS on 8th August 2014, but was recaptured by the Peshmerga two days later on 10th August 2014.", Thereafter ISIS attempted to retake the town in July 2016 but "was repelled by the Iraqi Army." The conclusion from this by the judge is that "on the Appellant's own case, he was not targeted by ISIS. His case is that he was seized by them because he was in Makhmur when they attacked" (paragraph 40). This, however, is a distinction without a difference. The Appellant is from IKR (see paragraph 41 of the decision), and the judge observed that there had been some changes on the ground but:-

> "those changes are that some areas previously held by the IKR forces are now again in dispute. Most significantly, that includes Kirkuk and the surrounding areas. It is not the case that these problems extend throughout the IKR. I see no basis for my departing from the guidance given save to that degree" (paragraph 45).

19. However, the judge on the other hand recognised immediately thereafter that:-

> "I accept that the Appellant would face difficulties, but I am not persuaded by the evidence that they would be so extreme as to give rise to an article 3 risk, or to make removal unduly harsh" (paragraph 46).

20. These conclusions do not make clear whether the judge is referring to the Appellant's difficulties with respect to his return to the IKR or to Baghdad.

21. In short, the means by which the Appellant would be returnable, whether to Baghdad, and thus requiring a CSID card to enable him to go to the IKR, the place of his origin; or whether he would be returnable directly to the IKR, are matters that are not properly explained, in the light of the fact that the Appellant had been the victim of attack and detention by ISIS, such that he was released only after the intervention of the Sheikh.

Notice of Decision

22. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge O'Hagan, pursuant to Practice Statement 7.2A.

23. An anonymity direction is not made.

24. The appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 18th December 2018