



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09806/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 26th June 2018

Determination Promulgated
On 09th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HALKAWT ALI HAMEAMEEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Evans (Solicitor)
For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Smith, promulgated on 29th November 2017, following a hearing at Manchester on 2nd November 2017. In the determination, 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

2. The Appellant is a male, a citizen of Iraq, and was born on 21st May 1996. He appealed against the decision dated 31st July 2017 of the Respondent Secretary of State refusing his application for asylum and for humanitarian protection under

paragraph 339C of HC 395. The essence of the Appellant's claim is that he fears ill-treatment and persecution on account of his imputed political opinion at the hands of the Islamic State (ISIS) in Iraq if he is returned.

The Nature of the Appellant's Claim

3. The nature of the Appellant's claim is that he claims to originate from Salhisifia, which is in the Diyala province of Iraq. He is of Kurdish ethnicity, but Diyala is not a Kurdish State, and is not under the control of the IKR. He claims that in August 2014 Daesh (ISIS) took over his village. His parents were killed. He was not present at the village at the time of the attack but with a friend in Kalar. He remained in Kalar working and living with his friend, "Kak Ahmed", until January 2017, working in the family supermarket of the friend. The Appellant now fears return to Iraq because he would be killed by ISIS.

The Judge's Findings

4. The judge accepted that Diyala is a "contested area" of Iraq (paragraph 23). He also observed that there was no dispute that the Appellant was of Kurdish ethnicity (paragraph 22). As the judge explained, "the only real issue is the ability of this Appellant to internally relocate" (paragraph 24). The policy of the Respondent Secretary of State was that return to IKR will only take place if the person in question originates from the IKR. Otherwise, "it is conceded that the Appellant originates from Diyala, which is not within the KRI, it seems reasonable to conclude that the only potential return of this Appellant to Iraq would be via Baghdad" (paragraph 26).
5. In this respect, the judge noted that the Appellant accepted that he has had an Iraqi identity card. That being so, "it seems to me reasonably likely that if the Appellant approaches the Iraqi Authorities in the United Kingdom he will be assisted in obtaining the appropriate documentation to travel back to Iraq" (paragraph 36). Secondly, the judge observed that "it is reasonably likely that the Appellant would be issued with a civil status ID (CSID) before he is returned to Iraq" (paragraph 37). This was, because the Appellant was a person who "has voluntarily surrendered a safe lifestyle in the KRI and no doubt spent considerable money and time on his journey to the United Kingdom", such that the judge was "satisfied that it is reasonably likely that he will have sufficient family registration details to enable a CSID to be obtained for him whilst he is in the United Kingdom (policy guidance 3.34, 3.35)", and that in any event, the Appellant's connections in Iraq, in the form of his friend, "Kak Ahmed", "can make efforts to obtain a CSID for him there" (paragraph 37).
6. Accordingly, the appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in concluding that internal relocation within Iraq was available to the Appellant because in so concluding, the judge had applied the incorrect standard of proof. The Appellant lacked a CSID. He

would not be able to obtain a CSID. Yet, a CSID was essential if the Appellant was to be returned to Iraq via Baghdad, so as to enable him to go to the IKR. The reason why the judge erred in this respect was that he stated that it was “reasonably likely” that the Appellant could obtain a CSID, whereas the correct standard of proof is that what needs to be established is whether it is reasonably likely that the Appellant would not be able to obtain a CSID. That is what the latest country guidance case in 2017 in relation to returns to Iraq established.

8. On 31st January 2018, permission to appeal was granted.
9. On 7th March 2018 a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge was entitled to conclude that the Appellant was not a person who would fall into destitution for want of an ID document or familial support. This is because given the circumstances of his departure, the judge found that there was a reasonable likelihood that the Appellant would be able to secure employment, and the Appellant could himself initiate the documentation process in the UK by approaching the embassy, a matter upon which the judge was also clear.

Submissions

10. At the hearing before me on 26th June 2018, Ms Evans, appearing on behalf of the Appellant submitted that the judge erred in law at paragraph 37 when he stated that the Appellant’s connections in Iraq would enable him to obtain a CSID from there, because all the evidence indicates that any replacement CSID would have to be obtained from the Appellant’s home governorate, but the undisputed evidence of the Appellant was that his family connections were not in the relevant governorate. Second, the Appellant came from a contested area of Diyala. He could not return to Diyala. He would have to return to Baghdad. This much was clear. He would need a civil status identity card (CSID). The judge wrongly concluded that this would not be an issue for the Appellant by stating that it was “reasonably likely” that the Appellant would be issued with a CSID before returning to Iraq, because there would be sufficient family registration details to enable him to do so from the UK. In so stating, the judge had inverted the burden of proof because the Appellant only had to establish that it was reasonably likely that he could in fact not obtain the necessary documents so as to engage Article 3 of the Refugee Convention, as a matter of applicable law. Accordingly, Ms Evans submitted that I should make a finding of an error of law and remit the matter back to the First-tier Tribunal.
11. For his part, Mr Bates submitted that the judge had rejected the Appellant’s credibility entirely. He had rejected the reasons for the Appellant leaving Iraq. This was made clear at paragraphs 31 and 33 of the determination. Even if the judge had expressed himself in terms that “it is reasonably likely that the Appellant would be issued with this CSID”, the fact was that there was nothing in the determination, in terms of the findings of fact there, that would have allowed the Appellant to succeed in this appeal. This was an Appellant who had contacts, who had worked there, who had previously an ID card in Iraq. He left the country when he had no reason to do so. The judge was clear that this was an Appellant who has “voluntarily surrendered a safe lifestyle in the KRI” (paragraph 37). There was no material error of law

because the judge was plainly applying the lower standard of proof that is applicable in cases such as this. Therefore, there could be no error of law.

12. In reply, Ms Evans submitted that even with a negative credibility finding in this case, the Respondent Secretary of State still had to be able to return the Appellant to Iraq via Baghdad, and there was a process that had to be followed in this regard, which could not be followed if it could be said that it is reasonably likely that the Appellant would not be able to obtain a CSI document. From the Appellant's point of view, this was a very real scenario, because although reference was made to his friend, "Kak Ahmed", this person lived in the IKR, and was not in Baghdad itself. Indeed, Ms Evans submitted that if the judge had worded paragraph 37 differently there was every chance that this appeal would not presently be before this Tribunal on a question of law.

Assessment

13. Although it is the case that the judge below has expressed himself in a manner that is likely to misrepresent what the Court of Appeal has decided in **AA (Iraq) [2017] EWCA Civ 944**, when it decided on 11th July 2017, to rewrite the country guidance in relation to Iraq, I am not satisfied that the error is a material one, such that the decision below should be set aside. I accept, as Ms Evans in her valiant efforts has sought to demonstrate before me, that the way in which the position in Iraq has to be approached is whether it is reasonably likely that the Appellant would not be able to obtain a CSI document. To that extent, the use of the phrase that "it is reasonably likely that the Appellant would be issued with a civil status ID" (at paragraph 37), which the judge engaged in twice in his assessment at that point, is unfortunate, and has the potential to misconstrue what was actually decided by the Court of Appeal in July 2017. However, the error is not a material one for two reasons. First, in his detailed assessment of the case before him, the judge explained how the Appellant's friend, Kak Ahmed, offered the Appellant employment at his supermarket, such that the relationship between the two of them "was a close one", and the Appellant worked and was accommodated by Kak Ahmed "for a lengthy period of time". Indeed, the judge went on to say that, "at one stage the Appellant stated that Kak Ahmed had arranged funding his travel to the United Kingdom" (paragraph 31). If this is so, then the judge's conclusion that Kak Ahmed would be in the position to assist the Appellant, shortly after his arrival in Baghdad, was one that was open to him. Second, the judge does focus on the essential issue that the Appellant would be confronted with once he arrives in Baghdad, namely, that he was not a person who was without support "from family or friends" (policy guidance 3.3.7), as the judge explained (at paragraph 37).
14. However, there is a third aspect to this claim that the judge emphasised, which did not get a mention in the oral submissions before this Tribunal. This is that it is entirely open to the Appellant, given that he has had an Iraqi identity card previously, to approach the Authorities in the UK in order to get a CSID. The judge was clear that, "it seems to me reasonably likely that if the Appellant approaches the Iraqi Authorities in the United Kingdom he will be assisted in obtaining the appropriate documentation to travel back to Iraq" (paragraph 36). The judge was

clear that on the evidence this was an Appellant who “will have sufficient family registration details to enable a CSID to be obtained for him whilst he is in the United Kingdom” (paragraph 37).

15. The Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944** rewrote the country guidance so that it is now necessary to inquire into whether an Appellant is likely to obtain a CSID either before he travelled to Iraq or soon after arrival. The judge below was clear that the Appellant was not prejudice in relation to either one of these two possibilities. A laissez passer or a passport is required to enable an individual to enter Iraq. However, a CSID is a document required to access essential services without which a Kurd in Baghdad may be exposed to a real risk of ill-treatment or destitution. However, for the reasons given by the judge, even in circumstances where he had used inelegant language, it is plain that the Appellant would not be at risk of destitution, or support, and certainly not if he is able to acquire a CSID in this country.

Notice of Decision

16. There is no material error of law in the original judge’s decision. The determination shall stand.
17. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

3rd August 2018