Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10294/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 October 2018	**On 22 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MR NAHIM ALI SAEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Mohzan, Twinwood Law Practice
For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was interviewed in Kurdish Sorani. The material issue with which the judge had to deal was whether or not a person could

obtain a CSID, being the appropriate form of identity document necessary for him to return. The judge recorded that the appellant's village was a town some 47 kilometres south of Kirkuk and it was at this checkpoint that identity documents were required to enter Kirkuk. The issue that the judge had to deal with was whether members of the Popular Mobilisation Unit (otherwise known as the PMU, although sometimes referred to by the judge in his decision as the MPU) were in control. The evidence was that the appellant comes from an area which was *not* taken over by the Popular Mobilisation Unit. That area of control was limited to that part of Kirkuk which had been the subject of a referendum.

2. In dealing with the appeal the judge had before him the decision of *Amin R (on the application of) v Secretary of State for the Home Department* [2017] EWHC 2417 (Admin), a decision of Sir Ross Cranston, sitting as a judge of the High Court. This was a judicial review application seeking permission to pursue judicial review. It considered the issue of whether the guidance provided in the Country Guidance set out in *AA* still held good in relation to those parts of the decision which dealt with the provision of a CSID. Sir Ross Cranston considered the Country Guidance in *AA* and quoted in paragraph 39 the material parts of the headnote. He then went on to deal in paragraph 56 with the challenge that was made to the approach adopted by the Secretary of State in the refusal letter. In particular, it was said that it was unlawful for the Secretary of State to depart from the guidance provided in *AA* and specifically whether the submissions made in relation to the identity documents required had been properly considered by the Secretary of State in the light of additional background material. The issue is then recapitulated in paragraph 58 of the judgment in *Amin* where the judge says:-

> "Mr Jones continued that the CSID, contrary to the position advanced by the Secretary of State, would not be readily obtainable on the basis of the laissez-passer. The Secretary of State's assertion in the letter of 2 May that there was nothing to suggest that the claimant could not obtain a CSID from Kirkuk's Civil Affairs Office was contrary to what was stated in *AA*: that for persons from contested territories such as Kirkuk access to a CSID would be severely hampered. It was unlawful for the Secretary of State to ignore what had been stated in *AA* given that a First-tier Tribunal judge would be bound to apply it."

3. That submission was expressly rejected by Sir Ross Cranston in paragraph 63 of the judgment in *Amin*. He said:-

> "As far as the position in Kirkuk is concerned, and the requirement for the claimant to return there to obtain a CSID, the Secretary of State was entitled to take the realities on the ground there into account. Kirkuk is no longer a contested area. In my view, country guidance cases must give way to the realities, a point recognised by the Court of Appeal in *SG (Iraq) v Secretary of State for the Home Department* [201] EWCA Civ 940 at para 47. There are apparently still dangers there, but nothing like the position as when *AA* was decided. That being the case, I cannot regard the passages in the Secretary of State's letter as regards the claimant's ability to obtain a CSID as being flawed."

4. That particular passage was made the subject of an application for permission to seek an appeal to the Court of Appeal. That appears from the last paragraph on page 13 of the decision (page 13 of 15). It was said by Mr Jones on behalf of the applicant seeking judicial review that the conclusion reached by His Lordship was contrary to the evidence contained in the documentation before the Administrative Court and to which he had been referred. Consequently, it was repeated that the Country Guidance should be followed and that none of the further reports, including the Country of Origin Information Report of March 2017 should be relied upon. The response by the judge in the Administrative Court was to refuse the application to appeal. He was quite satisfied therefore that the points advanced in relation to that additional background material had not been made out by the applicant's representative and therefore without further ado he was entitled to refuse permission.

5. That was a case placed before the First-tier Tribunal Judge in the appeal which is now before me. It is perhaps regrettable that in the course of this hearing neither side had a copy of *Amin* which they were able to offer me, and neither party made any submission as to the contents of that decision. It was for me to obtain copies of that decision circulated to the parties and reach my decision on what the judge in the Administrative Court had said there.

6. I am satisfied that the Administrative Court judge, Sir Ross Cranston, was entitled to make a finding of fact on the material before him that *AA* could no longer be relied upon insofar as it dealt with Kirkuk as being a contested area. He said in terms, as a finding of fact, that Kirkuk is no longer a contested area and he reiterated that Country Guidance must give way to the realities which, in the circumstances of this case, must mean that Country Guidance is never set in stone and when there is evidence to establish that there has been a change in circumstances the Tribunal is bound to follow that change in circumstances. I am therefore satisfied that it was not *Wednesbury* unreasonable for the judge to refer to that case and to use that as a reason for departing from what had earlier been said in the decision of *AA*.

7. The grounds of appeal suggest that the judge was bound to follow *AA*. I do not agree with that. Country guidance stands unless there is material which can properly replace it and the decision in the case of *Amin* was a decision in the Administrative Court dealing with the issue of whether Kirkuk was a contested area and the judge was entitled to rely upon it as a change in circumstances. The judge therefore is entitled to conclude that one could not regard the passages in the Secretary of State's letter regarding the claimant's ability to obtain a CSID as being flawed. It follows from this that the determination, insofar as it relies upon the decision in *Amin,* is not itself flawed. There are other complaints that are made.

8. The first is the judge's conclusion in paragraph 76 of the decision. In this case he was referring to the influence that a gentleman called Bour was able to have upon his ability to trace the appellant wherever he might be. The background to a consideration of the role played by Bour was that the appellant was one of those in charge of looking after a cache of arms which was held by the lawful forces. Bour, it

was said, had broken into the storage and had stolen the arms and had said that he would kill the appellant and his colleagues if they informed upon him. The issue therefore arose as to whether this gentleman called Bour had the capacity to pursue the appellant wherever he may be. The judge recorded that there was no background material with regard to Bour. Although he accepted the threat that had been made by that gentleman to the appellant, there was no reason to believe that Bour has the capacity to pursue the appellant wherever he may be. In the course of argument, I invited Mr Mohzan on behalf of the appellant to tell me the mechanics by which, if the appellant were to be returned to Iraq, Bour would be able to ascertain his presence on a flight to Iraq, would be able to ascertain his whereabouts upon arrival and would be able therefore to pursue him wherever he may be. In my judgement that was an almost impossible task for the appellant to establish without any evidence to support it. We do not know who Bour was. We are not in a position to say that he had the influence in every part of Iraq. Accordingly it was perfectly open to the judge to make the point that, since there is no evidence to support his claimed position of influence, it could not be for the appellant merely to say that this gentleman had the influence that he claimed to exert. There was no supporting material for him to suggest this, nor to suggest the mechanism by which Bour would now be able to trace him.

9. Accordingly, the challenge which is made to paragraph 76 of the determination is not made out. It is said in the grounds of appeal, that this was mere speculation on the part of the First-tier Tribunal Judge, but I am satisfied it was not speculation, it was a simple matter of fact that the appellant had not adduced the material to show that the gentleman called Bour had the reach or the capacity to pursue the appellant as he had claimed.

10. The next element which requires consideration is paragraph 78. Paragraph 78 goes in tandem with paragraph 77. The thinking of the judge in relation to this element is that the appellant had asserted that he had not been in touch with his family. He did not know where they were and that they had fled because of the activities of the PMU who, he says, had burned his village. But the difficulty the appellant faced was that he was not in a position to mention this in interview because, by that stage, the PMU had not undertaken the activities he claimed at the time the interview took place. The appellant's evidence was not credible because it did not take proper account of the chronology which the appellant could have known of. This was a finding that was open to the judge and paragraph 77 is a sustainable one. In essence, he found that there was nothing to suggest that the PMU had influence in that area of the Kirkuk region from which the appellant came. That area was part of an area which was the subject of a referendum. It was quite clear that the appellant's village was not part of that area or the area occupied by the PMU and, as a result of that, the appellant's claim in relation to this element fell apart.

11. Paragraph 79 is also challenged in the grounds of appeal. It reasserts that the findings in relation to *Amin* were based on speculation. For the reasons that I have already said, that is not the case.

12. Finally, challenge is made to paragraph 81 and the judge's finding that he was not satisfied, even to the lower standard, that Bour has the influence or ability to carry out the threats the appellant claims had been made. It is said, once again, this was speculation. For reasons I have said already, it was not a matter of speculation. It was a matter of considering the evidence and whether or not the appellant had established that Bour had the influence that he claimed.

NOTICE OF DECISION

13. For these reasons I am satisfied that the judge reached a sustainable determination and his decision shall stand.

No anonymity direction is made.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL

Date: 15 November 2018