



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12298/2017

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport  
On: 13 August 2018

Decision & Reasons Promulgated  
On 31 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASK

(ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr D Mills, Home Office Presenting Officer

For the Respondent: Mr A Swain, Counsel instructed by Freedom solicitors

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Respondent who claims asylum. This direction prohibits the disclosure directly or indirectly (including by the parties) of the identity of the Respondent. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.
2. This is an appeal against the decision of First-tier Tribunal Judge O'Rourke in which he dismissed the appeal of the Respondent, a citizen of Iraq, against the Secretary of State's decision to refuse asylum but allowed the appeal on humanitarian protection grounds.

3. The application under appeal was refused on 10 November 2017. The Respondent exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge O'Rourke on 22 December 2017 and was allowed on humanitarian protection grounds. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Farrelly on 8 March 2018 in the following terms

The appellant is an Iraqi Kurd who had been living in Mosul. The judge did not find his underlying claim credible. His claim of a conversion to Christianity was rejected. The judge did not see any risk on return because of his familial links with the Ba'athist party.

The judge concluded the appellant could not be returned to Mosul on the basis there was a 15(c) risk. He could not relocate within Iraq, for instance to Baghdad, because he did not speak Arabic and had no family links. The judge also concluded that he could not relocate to the IKR as he was not from the area. The judge concluded that he could not be returned because he did not have a passport or CSID.

The respondent in seeking permission to appeal submits the judge failed to consider the possibility of him obtaining documentation through his mother. It was argued that the judge failed to consider the appellant travelling via Baghdad to Erbil where she lived. Reference was made to the country guidance in relation to Kurds gaining entry to the IKR notwithstanding they did not originate there. It was pointed out the appellant would have been eligible for financial support on return.

Based upon the grounds advanced and the decision of AA v SSHD [2017] EWCA Civ 944 there is an arguable error of law in the decision.

4. By a rule 24 response dated 19 March 2018 the Respondent opposed the appeal of the Secretary of State submitting that the Judge had given clear reasons for his decision taking into account all of the oral and written evidence and the most up-to-date country guidance.

### **Background**

5. The history of this appeal is detailed above. The Respondent is a citizen of Iraq born on 28 February 1992. He arrived in the United Kingdom on or around 12 May 2015 having travelled through various European countries and he claimed asylum on 26 May 2015. The basis of his claim was that he feared persecution upon a return to Iraq because of his conversion to Christianity and because of his father's links to the Ba'ath party.
6. The Secretary of State did not accept that the Respondent had given a credible account and refused his application. At the appeal the

Respondent was represented by counsel and gave oral evidence and submitted a supporting bundle containing 227 pages including a detailed witness statement and a witness statement from his brother who is a British citizen living in the UK.

7. The Judge dismissed the asylum appeal finding that the core elements of the Respondent's account were not true and that he would not face persecution upon his return. However, the Judge also found that the Appellant could not return to his home area of Mosul because of an Article 15(c) risk and that it would be unreasonable or unduly harsh to require him to relocate elsewhere. The appeal was therefore allowed on humanitarian protection grounds.

### **Submissions**

8. At the hearing before me Mr Mills appeared for the Appellant and Mr Swain for the Respondent.
9. For the Appellant Mr Mills said that the ability to obtain a CSID has become the determinative factor. In this case the substance of the Respondent's account of his conversion to Christianity was rejected. It came down to the safety of the Respondent's home area of Mosul. Mr Mills clarified that it does not form part of the Secretary of State's challenge that the situation in Mosul is better. Internal relocation is the issue and, in this respect, a CSID is important. The Respondent said he had no contact with his family and had no CSID. The authority of AA (Iraq) v SSHD shows the relevance of family contact. In this respect the Respondent's brother gave evidence at the appeal and he said that he was in contact with the family who were now living in Erbil and Kirkuk. The Judge does not mention this in considering the CSID even though there were competing arguments between the Respondent and the Secretary of State over family contact. It was raised in submissions. The Judge does not mention the potential assistance from family members. I was referred to paragraph 11 of the Annex to AA (Iraq). The Judge confuses the central archive in Baghdad with the Civil Status Affairs office, also in Baghdad, dealing with former residents of Mosul.
10. For the Respondent Mr Swain referred to paragraph 27 of the refusal letter referring to paragraph 11 of the Annex to AA (Iraq) and said this accurately reflects the difficulty the Respondent would have in accessing his CSID. Paragraph 11 of the Annex is central to the issue. The reality is that the evidence does not demonstrate that the provincial office can provide a CSID. The Respondent's brother lives in Portsmouth and has been in this country for more than 10 years. The Secretary of State suggests that the brother can act as a facilitator and also suggests that the Respondent's mother living in Erbil could assist in obtaining the CSID but

this is predicated on the basis that she could pass his ID to the Respondent but there is nothing to suggest she has his ID card. There is nothing in AA (Iraq) to suggest that the Respondent's mother will be able to obtain the CSID for him. Looking at the later decision in AAH (Iraqi Kurds - Internal relocation) (CG) [2018] UKUT 212 does not assist the Secretary of State. It shows that it is necessary to have a valid CSID to travel from Baghdad to the IKR and to obtain the CSID in Baghdad a male family member needs to attend.

11. Mr Mills responded to say that it is not clear whether the Respondent's mother lives alone or with male family members. The Respondent's brother refers to "my family". The Judge should have made findings on whether the Respondent could access his ID card as it was referred to at screening interview.
12. I reserved my decision.

### Decision

13. The grounds of appeal to the Upper Tribunal assert that the Judge erred in law by failing to give adequate reasons, failing to consider relevant facts and failing to properly apply relevant caselaw. The three errors are combined into one issue being the failure to properly consider in accordance with the evidence the availability of a CSID when dealing with the reasonableness of relocation to the IKR.
14. Mr Mills suggests that the evidence showed that the Respondent has an ID document that his mother could send to him and that as his brother is in contact with their mother the Respondent can be in contact as well. If it was necessary to obtain a replacement ID or a CSID his mother could facilitate this. Mr Swain responds to say that the guidance given in AA (Iraq) v SSHD shows the difficulty that there is likely to be in obtaining a CSID and that in any event the evidence did not show either that the Appellant's ID card could be sent to him or that the contact with his mother was such as to enable him to call on her to help.
15. In dealing with the question of error of law it is first necessary to ascertain whether the Judge failed to consider relevant facts before turning to his reasoning based upon those facts and the application of the law.
16. The relevant factual issues are straightforward as they relate to the existence and availability of the Respondent's ID card and the possibility of him being able to obtain a CSID to enable him to travel from Baghdad to the IKR. At screening interview (paragraphs 1.17 and 1.18) the Respondent is asked whether he has evidence of identity and if not if he will be able to produce it at a future date. He responds to say that he has

no evidence and “I can ask for documents in the future. My ID card can be sent”. At substantive interview he was asked about his ID document and in response to the question “Where is your card now” he replies “I don’t know ... I never carried my ID it was always at home” (questions 23-27). The refusal letter (paragraph 96) referring to these passages in the interview records concludes “It is considered you are able to be re-documented by the Iraqi embassy, therefore your return to Iraq is feasible.” Mr Mill adds that the Respondent’s brother is in contact with their mother and so, if the Respondent is not in contact himself, he could be and therefore the ID could be obtained.

17. In his decision the Judge records (at paragraph 16) the evidence given by the Respondent and his brother about contact with their mother and records (at paragraph 19 (vii)) the submission that his mother could send him the ID card. It also records the submission that “he stated she (his mother) had (the ID card) at home. The decision records the counter-submission “there is no reason to assume that his ID card can be located in, or recovered from his home in Mosul” (paragraph 20 (ix)).
18. The Judge does not go on to make specific findings concerning this evidence other than at paragraph 27 of the decision “The Appellant does not, at least currently, have a passport/CSID and it is not apparent that, apart from accessing the ‘central archive’ in Baghdad that he will be able to obtain one”.
19. In my judgement this brief finding is sufficient, just, to show that the evidence has been considered. Taken at its highest the Respondent’s evidence was that he used to have an Iraqi ID card which he left at home in Mosul and he does not know where it is at present. It would in my judgment be unfair to imply from the one sentence at screening interview “My ID card can be sent” to imply that the Appellant’s mother has taken the ID card with her from Mosul when she left, that it remained in her possession and that she could send it enabling the Respondent to use this on a return to Baghdad to obtain a CSID from the Civil Status Affairs office for Mosul to enable him to travel to the IKR. To make a finding other than “...it is not apparent that apart from accessing the ‘central archive’ in Baghdad that he will be able to obtain one” would have been speculative. There was in my judgment nothing in the evidence that could properly have led the Judge to conclude that the Respondent’s mother was currently in possession of his ID card and that she could send it to him.
20. Given the clear finding that the Appellant did not have a passport/CSID the application of the law to the facts cannot in my judgment be faulted. AA (Iraq) v SSHD gives the following guidance at section C of the Annex

*9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.*

*10. 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 (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.*

*11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.*

21. The Secretary of State does not challenge the finding (at paragraph 25) that it would be unduly harsh to expect the Respondent to relocate to Baghdad. The Secretary of State does not, at least for the purposes of this appeal, challenge the decision on the basis that the situation in Mosul has improved. The basis of the challenge is that the Respondent could relocate via Baghdad to the IKR. In my judgement without the availability of an ID card the Judge was correct to find that the applicable guidance made the return of the Appellant to Baghdad for onward travel to relocate in the IKR unreasonable (or indeed unfeasible). Mr Mills suggestion that the Judge had confused or conflated the Central Archive with the Civil Status Affairs office for his home region is, in my judgement, a 'red herring'. Without an ID card or passport there is nothing in the guidance in the Annex (at paragraph 10 and 11) to suggest that a CSID can be obtained from either the Civil Status Affairs Office or the Central Archive without evidence of identity.

22. There is in my judgement no error of law material to the judge's decision to allow the appeal on humanitarian protection grounds.

**Summary**

23. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the appeal of the Secretary of State. The decision of the First-tier Tribunal stands.

**Signed:**

**Date: 22 August 2018**

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**