



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13686/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 21st March 2018

**Decision & Reasons
Promulgated
On 01st May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR AH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A A Khan, Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 1st January 1997. The Appellant claims to have arrived in the UK on 26th May 2016 and he claimed asylum the following day. The Appellant's asylum interview took place on 21st October 2016. The Appellant's application was refused by Notice of Refusal dated 24th November 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Lingam sitting at Taylor House on 11th January 2017. In a Decision and Reasons promulgated on 3rd February 2017 the Appellant's appeal was allowed on asylum grounds and under Articles 3 and 8 of the European Convention of Human Rights.

3. On 11th February 2017 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Permission was initially refused by First-tier Tribunal Judge Osborne on 22nd May 2017. Renewed Grounds of Appeal were lodged and on 1st August 2017 Upper Tribunal Judge McWilliam granted permission to appeal. Judge McWilliam noted that the Respondent's position was that return of the Appellant was not feasible and that the judge was arguably correct in properly identifying the material issue, namely whether the Appellant could obtain a CSID. However, Judge McWilliam considered it was arguable that when considering this the First-tier Tribunal Judge conflated a CSID with a laissez passer and that the judge did not engage with the relevant issues when deciding whether the Appellant could obtain a CSID as set out in *AA [2017] EWCA Civ 944*. It was on that basis that the appeal comes before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. For the purpose of convenience throughout these proceedings, whilst noting that this is an appeal by the Secretary of State the Secretary of State is referred to herein as "the Respondent" and AH as "the Appellant". It is further recorded that AH was granted anonymity by the First-tier Tribunal Judge. The Appellant appeared by his instructed Counsel, Mr Khan, the Secretary of State appeared by her Home Office Presenting Officer, Mr Nath.
4. The issue that was outstanding before me was a discrete one and turned on whether or not the Appellant by stating that he was unable to obtain the documentation relating to a CSID justified the judge reaching the finding that she did. I was persuaded that the reasoning put forward by Mr Nath was valid and that the failure by the Appellant to produce such documentation did not mean that such documentation could not be made available in the future and on that basis I was prepared to find that there was a material error of law. However, I did point out that it was going to be necessary for the Secretary of State to show me that the Appellant would be in a position to obtain such documentation and therefore be in a position to return.
5. In such circumstances I gave directions stating that there was a material error of law limited to the question namely that if the Appellant did not have a CSID at the time when the return of the Appellant to Iraq was not feasible was this a factor to be taken into account when assessing whether he would be at risk on return and as to whether the fact that the Appellant may or may not be able to obtain a document in the future was one that needed to be considered.
6. The matter next came back before me on 19th January. It was accepted therein that Mr Nath should be the attending Home Office representative, albeit that he was not present at that hearing, and that it was incumbent upon the Secretary of State to comply with the directions I had given. By consent the matter was therefore further adjourned and comes back before me today for rehearing solely limited to the point that is outstanding. The legal representatives are well versed in this matter. Mr Nath appears for the Secretary of State and Mr Khan for the Appellant. The Appellant himself is also in attendance.

Submissions/Discussion

7. It was conceded by both legal representatives that the issues had to a certain extent moved on due to the ever-changing circumstances within Iraq. Mr Nath submits that the objective evidence is not in the Appellant's favour and that it is possible for the Appellant to be returned without a CSID to Iraq but he accepts that each case has to be looked at on a case by case basis. He submits he is not in a position to address me further with regard to the return of the Appellant to the Kurdish Region. He refers me to the available and most recent up-to-date objective evidence to be found in the Country Policy and Information Note on Iraq relating to return/internal relocation published in September 2017. He submits that the current position in summary is reflected as follows:
- A person can be returned without a CSID in that the CSID is not a travel document.
 - Whether a person is at risk because of no CSID needs to be considered whether or not return is feasible. AA [2015] was revised in 2017 to reflect this position.
 - That the fact that a person cannot obtain a document now does not mean that they cannot do so in the future. This is because the ability to obtain a CSID depends on what other documents a person has. Once a person obtains a travel document then they are more likely to be able to get a CSID.
8. He therefore submits that the points raised in the directions I gave were correct and that the Appellant is able to get a CSID in the future and can travel without one. However, he acknowledges that the matter must be considered in the round dependent upon what other documents the Appellant may have. He does however concede that the Appellant is from Kirkuk and that that is a contested area.
9. Mr Khan submits that the Appellant must succeed based on the guidance given by the Secretary of State in her current Policy Note. He reminds me that the First-tier Tribunal Judge had previously concluded that the Appellant had no family or support to return to and that it is accepted that the Appellant is from Kirkuk which is a contested area and that even on the Secretary of State's current position it would not be possible for the Appellant to relocate. He further reminds me that the Appellant only speaks Sorani.

Findings

10. The starting point are the preserved findings of the First-tier Tribunal Judge, namely that the Appellant is from Kirkuk, that Kirkuk is accepted as being a contested area and that the Appellant has no family or support to return to.

11. I turn thereafter to the policy summary on internal relocation. Paragraph 3.1.1 states:

“A person cannot be returned or relocated to the areas of Iraq which meet the threshold of Article 15(c)”.

Paragraph 3.1.2 sets out those areas to where a person can relocate but it is pointed out that a decision maker needs to assess each case on its merits.

12. Thereafter, the feasibility of return is considered and a person can only be returned to Baghdad if they have an Iraqi passport or a laissez-passer. A lack of travel documents is a technical obstacle to return and it is accepted is not of itself a reason for granting protection.
13. It is appropriate to consider the section relating to documentation and to assess whether a person can obtain a CSID although a lack of a CSID does not however automatically entitle a person to protection. Further, I accept that if a person is unable to obtain a CSID in the UK and their return is feasible, they may be able to obtain it from the Civil Status Affairs Office in their home governorate using a current or expired Iraqi passport but that it will be more difficult for a person to obtain a CSID if they are from one of the areas to which a person cannot relocate because Article 15(c) harm is occurring.
14. In this matter bearing in mind the preserved findings and the acceptance that the Appellant is from a contested area, I am satisfied that this appeal should, subject to the proviso set out hereinafter, be allowed in that the Appellant meets the relevant criteria. That proviso is to be found at paragraph 3.3.8 of the 2017 Note. It states:

“If a person’s return is not feasible, and they have not established a need for protection based on a risk arising from a lack of documents, then decision makers should consider granting a person discretionary leave, pending further reviews of their ability to feasibly return to Iraq”.

15. That would appear to fit the circumstances entirely of this case. Consequently, whilst I allow this appeal it is made with regard to the proviso set out above. It will be a matter for the Home Office to consider in due course. This, of course, is a scenario that affects not just this Appellant but many Appellants.

Notice of Decision

The Appellant's appeal is allowed and the decision of the First-tier Tribunal Judge is re-made allowing the appeal.

The Appellant has previously been granted anonymity. No application is made to vary that order and the current anonymity order will remain in place.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 23rd April 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date: 23rd April 2018

Deputy Upper Tribunal Judge D N Harris