



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05700/2012

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2019

Decision & Reasons Promulgated
On 11 July 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

DKA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling of Counsel, instructed by Barnes, Harrild & Dyer
Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a determination issued following an initial hearing on 25 March 2019, I found an error of law in the decision of First-tier Tribunal Judge Grimmett promulgated on 6 July 2018 and set aside that decision with preserved findings of fact. The error of law decision is annexed to this decision and sets out the background and history of this appeal, which will not be repeated herein save as is necessary.

2. At the outset of the resumed oral hearing before me on 10 May 2009, the Appellant's Council made a renewed application for an adjournment of the hearing on the basis of the forthcoming country guidance case in relation to Iraq, focusing on whether Article 15(c) of the Qualification Directive is still applicable to certain areas in Iraq which it was suggested would undoubtedly touch on issues in relation to the CSID and available documentation. The Respondent supported the application on the basis that there was a lack of information about the current situation in Kirkuk.
3. I refused the application for an adjournment on the basis that the sole remaining issue in the present appeal is whether or not the Appellant has or can obtain within a reasonable time, a CSID, which is an issue which could fairly be determined without awaiting further country guidance from the Upper Tribunal.
4. The outstanding issue in this appeal is whether the Appellant had a CSID card, or the means of obtaining one on return to Iraq; the Appellant having accepted some time ago in 2013, that he was not otherwise at risk on return to Iraq.

Applicable law

5. The current country guidance on the situation in Iraq is contained in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944 and further amended and supplemented by AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC). In so far as relevant to the current appeal, the country guidance in AA, as amended, is as follows:

A. *INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE*

1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of ... Kirkuk ... is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

...

C. *POSITION ON DOCUMENTATION WHERE RETURN IS FEASIBLE*

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.*
12. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether he is able to do so, or do so within any reasonable timeframe, will depend on the individual circumstances. Factors to be considered include:*
 - i) *whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or expired CSID would all be of substantial assistance. Someone in possession of one or more of these documents process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and confiscated upon arrival at Baghdad;*
 - ii) *the location of the relevant civil registry office. If it is in an area held, or formally held, by ISIL, is it operational?*
 - iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with the case at all.*

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IRAQI KURDISH REGION)

14. *As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*
15. *In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
 - (a) *whether P has a CSID or will be able to obtain one (see Part C above);*
 - (b) *whether P can speak Arabic (those who cannot are less likely to find employment);*
 - (c) *whether P has family members or friends in Baghdad able to accommodate him;*
 - (d) *whether P is a lone female (women face greater difficulties than men in finding employment);*
 - (e) *whether P can find a sponsor to access a hotel room or rent accommodation;*
 - (f) *whether P is from a minority community;*
 - (g) *whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*
16. *There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

E. IRAQI KURDISH REGION

2. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
3. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor that any difficulties on the journey make relocation unduly harsh.*
4. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
5. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If he has neither a CSID nor valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity as a checkpoint. This normally requires the attendance of a male*

- family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*
 7. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single man fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
 8. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case-by-case basis.*
 9. *For those without the assistance of family in the IKR the accommodation options are limited:*
 - a. *absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and close newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
 - b. *if P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
 - c. *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic amenities such as food, clean water and clothing;*
 - d. *in considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which would give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
 10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*

- (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
- (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
- (iii) *P cannot work without a CSID;*
- (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers.*

6. In relation to returns to Baghdad specifically, the country guidance is supplemented by that in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) as follows:

- (i) *The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC).*
- (ii) *The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq.*
- (iii) *The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator.*
- (iv) *Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.*
- (v) *Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated*

government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

- (vi) *Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.*
- (vii) *In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.*

The Appellant's claim

7. The Appellant's claim, in short, is that there is insufficient evidence to depart from the country guidance case of AA to the effect that Kirkuk is a contested area posing a continuing Article 15(c) threat and that even if not, there is no evidence to suggest there is a functioning civil registry office there. The Appellant claims that he would need identity documentation to enter Kirkuk and at other points on route between Baghdad and Kirkuk.
8. The Appellant has been unable to obtain a replacement CSID at the Iraqi Embassy in London because he does not have the extensive documentation required for this and he continues to claim he is not in contact with family members to assist him either in obtaining a CSID or generally.
9. Finally, the Appellant claims that there is no reasonable internal relocation option for him to either the IKR or Baghdad. In relation to the IKR, the Appellant has no family or support there and in accordance with the findings in AAH, it would be unduly harsh to relocate there. In relation to Baghdad, the Appellant has no CSID or realistic prospect of obtaining one; he does not speak Arabic; he has no family members or friends in Baghdad to assist him; he is a Sunni Kurd and therefore from a minority community; it is unlikely that there will be any support available for him in Baghdad and finally there is no sufficiency of protection for Sunnis in Baghdad.
10. At the resumed hearing, the parties continued to rely on the evidence that was before the First-tier Tribunal and in addition, there was a document from the Appellant showing attendance at the Iraqi embassy on 8 May 2019; and the Respondent's "Country Policy and Information Note, Iraq: Security and humanitarian protection situation" dated November 2018 (the "CPIN November 2018"); and the Respondent's "Country Policy and Information Note, Iraq: Internal relocation, civil documentation and returns" dated February 2019 (the "CPIN February 2019").

Submissions on behalf of the Respondent

11. On behalf of the Respondent, Mr Kotas submitted first, that the Appellant doesn't need a CSID, and secondly, that if he does, he could get one in either London or Kirkuk. On the preserved findings of fact and adverse credibility findings made

against the Appellant, it was submitted that there was no risk on return to Iraq such that no issues of internal relocation arose and the only issues were in relation to Article 3 of the European Convention on Human Rights, Humanitarian Protection or Article 15(c) of the Qualification Directive.

12. On the first point, paragraph 11 of the Court of Appeal's decision in AA confirms that if a person has a family to support them on return to Iraq, the lack of a CSID is not material to the risk of destitution. In the present appeal, this Appellant was totally disbelieved on no longer being in contact with his family and that they were not able to support him on return to Iraq. The Appellant would be able to travel on a laissez-passez and would not need a CSID to do so.
13. It was submitted that in accordance with paragraph 173 of the current country guidance in AAH; the Appellant would be able to obtain a CSID in the Iraqi Embassy in London. Further, the Respondent submitted that on the basis of the Appellant's poor credibility, it was not accepted that he did not have an Iraqi passport. If the Appellant had lost his CSID, then paragraph 174 of the country guidance states that even if he did not know the details of his book records, a person can obtain this for him using a power of attorney in Iraq or through the Iraqi embassy. If the Appellant does not know the book records and page number of the family registration details, this is information which he can discover from his family.
14. In his screening interview, the Appellant states that he has an Iraqi national ID card in Kirkuk, which the Respondent takes to mean that he has a CSID. Even if this is not a CSID, it is a relevant document to establish the Appellant's identity, which can be used with the authorities to obtain a CSID.
15. The Respondent relies on paragraph 2.6.16 of the CPIN February 2019 to the effect that an individual does not need a CSID to leave the airport in Baghdad and travel throughout Iraq. This view is supported by cogent evidence from a named person at the Iraqi embassy, copies of which are annexed to the CPIN February 2019.
16. In relation to the current position in Kirkuk, Mr Kotas invited me to take judicial notice that the war with ISIL in Kirkuk has come to an end and that that group has no meaningful presence left anywhere in Iraq. The CPIN November 2018 contains details of the humanitarian situation, with local populations returning to areas including Kirkuk and humanitarian support being available in those areas again which are newly accessible and where there is a decline in security incidents. Overall it was submitted that there is no longer an Article 15(c) risk in Kirkuk.
17. In these circumstances, the Appellant ought to go to Kirkuk and reunite with his family there. He would be able to obtain a CSID from the local government there if needed. In accordance with the guidance in AAH, it is relevant that the Appellant has family in his home area, including his father, and has a form of documentation there. As the Appellant can obtain a CSID from either the Iraqi embassy in London or from Baghdad, he could board an internal direct flight from Baghdad to Kirkuk

and in any event, there is now credible evidence which was not before the Upper Tribunal in AAH to show that a person can travel using a certification letter.

18. Overall it was submitted that the Appellant had a range of options open to him to obtain a CSID and that it was for him to show that he would not be able to do so by any of these means, to which the significant adverse credibility findings made against him would need to be considered.
19. Finally, in the alternative, it was submitted that the Appellant could relocate to the IKR, which despite the possible difficulties without family there, would not reach the high threshold of an Article 3 breach and in any event the Appellant's family could potentially provide financial support for him.

Submissions on behalf of the Appellant

20. On behalf of the Appellant, Counsel accepted that if the Appellant can get to Kirkuk and that there is a functioning registry and members of the Appellant's family there, then he would be able to obtain a CSID. However, the real question is whether the Appellant can realistically do that.
21. In paragraphs 24 to 26 of AAH, there is provided a list of documents which would be needed in Kirkuk for a person to obtain a CSID and the different requirements which apply abroad. These include a written statement, countersigned by a family member, the person's passport, details of their status in the United Kingdom, a proxy in Iraq, four copies of the INC, photos and location of the family register details in Iraq.
22. The fact that in his screening interview, the Appellant said that his CSID was in Kirkuk in 2007, is insufficient to conclude that it still exists and that his family is still there and able to send it to him. There is undisputed evidence that control of Kirkuk changed from government hands in 2014 and back to government control at the end of 2017. During this time approximately 180,000 people fled the area and there was a clear degree of chaos around this time. In these circumstances, it cannot be safely concluded that the Appellant's family remain in Kirkuk and would be able to assist the Appellant.
23. The Respondent's submission that the Appellant does not need a CSID assumes that the Appellant can get to his family members and that they can assist him. The current country guidance in AA is to the effect that Kirkuk is a contested area where there exists an Article 15(c) risk such that the Appellant cannot return there and therefore makes the need for him to obtain a CSID more important. There is at present insufficient evidence before the Tribunal to depart from this country guidance and, in particular, a lack of evidence about how good the government control is and the safety of the area. The fact that members of the local population are returning is also insufficient evidence of the safety of the area.
24. In relation to the CPIN documents relied upon by the Respondent, it was submitted that these include a significant lack of detail about the certification letter relied upon and its use, particularly at checkpoints which may be manned by the authorities or

by militia and there is no evidence of recognition at such points of a certification letter. It was suggested that this evidence is aspirational only and not sufficient to depart from the existing country guidance.

Findings and reasons

25. There is no dispute in the current appeal that the Appellant does not fall within the terms of the Refugee Convention and is not entitled to asylum in the United Kingdom as he is not at risk of persecution on return to Iraq for a Convention reason.
26. Although the remaking of this appeal was intended to be on the sole issue of whether the Appellant had or could obtain within a reasonable time a CSID card, part of that consideration has to include the situation in the Appellant's home area of Kirkuk, which necessarily continues to raise the issue of humanitarian protection as well.
27. The current country guidance in AA is to the effect that there is an Article 15(c) risk to an individual in Kirkuk. Although I take judicial notice of the fact that ISIL no longer has control in Kirkuk and in fact has no meaningful presence left anywhere in Iraq, this does not, even taken together with the information in the Respondent's latest CPIN, provide sufficient evidence to enable me to depart from the existing country guidance. It does not necessarily follow that the removal of ISIL means that there is no ongoing internal armed conflict posing a risk to civilians and the fact that residents and other organisations are returning to the area is not determinative either. I am therefore bound to conclude in accordance with the current country guidance that the Appellant is unable to return to his home area of Kirkuk, either to obtain a CSID card from there or to resettle there on a longer term basis because he faces an Article 15(c) risk there. I am however mindful that new country guidance on this issue is pending and that there may be a change to this position in the relatively near future which the parties may need to take into account in the future.
28. In light of the above, the issue is therefore whether the Appellant can return to Iraq, namely Baghdad, or in the alternative to the IKR, where in neither place is there any real risk of persecution and no Article 15(c) risk on the basis of the Appellant's claim and current country guidance. The country guidance on return to Baghdad is contained in AA and BA, as above and on return to the IKR in AA, as amended by AAH, also set out above.
29. The preserved findings of fact from the First-tier Tribunal's decision are as follows:
 - 16. There were a number of inconsistencies in the appellant's account.*
 - 17. In his screening interview the appellant said that he last saw his parents and siblings in June 2007 at his home address. In the asylum interview before me the appellant said he and his siblings had left the family home together in September or October 2006 when his brother eloped. In the interview he said he left Iraq in February 2007.*
 - 18. In his witness statement the appellant said that he attended school until he was 18 years old but in his screening interview said that he had never been to school. When he was asked about this in oral evidence he said that he did go to*

school but only to a nursery school and that he did not study until he was 18. He did not explain why he had given a different account in his witness statement dated 27 August 2018 and which he adopted before me.

19. In the screening interview he said he was a transporter of fruit and vegetables but in his witness statement that he used to wash cars. He also said that he came to the United Kingdom for a better life for himself and his family but in the interview he said that he came because he was at risk in Greece. He denied ever having had his fingerprints taken in Greece until evidence was produced to him and then he admitted it. In interview he said he did not know how much had been paid to the agent to bring him to the United Kingdom although in his witness statement he said it was \$13,000. In his interview said that he had four brothers but in his witness statement he has two and one sister.

20. In his witness statement he said that he had no contact with his family since leaving Iraq but in his evidence before me the appellant said that when he left Iraq his siblings were still there but his uncle had subsequently told him that they had left Iraq. His evidence in the screening interview was that he last saw all his family members in June 2007 at his home address. In the asylum interview, however, he said that his older brother ran away with the girl in October 2006 and that they went to the KRG and the appellant saw his brother there. When the house was raided by the authorities the appellant, his brothers and sister left the family home together. That is plainly inconsistent with leaving his siblings behind.

21. The appellant was also inconsistent about the event after his departure. He said that the police investigated the colonel who had come to his house after the appellant's departure. In his oral evidence, he was asked if his family had reported the colonel to the police and said that they did not because they were scared.

22. The appellant says that his father was not at risk from the colonel because both his mother and father were old. However, his father was the head of the family and it is not credible that the colonel would seek only the appellant and his siblings, including his sister, and not seek redress against the head of the family.

23. I take into account as damaging to the appellant's credibility that the appellants lied on arrival in the United Kingdom about his journey from Iraq denying that he had travelled through Greece and being inconsistent about when he left. Very shortly after arrival he absconded for a period of five years and did not pursue his asylum claim until some five years after his arrival.

24. I am not satisfied that the appellant has told the truth about his reasons for leaving Iraq because of the inconsistencies in the account. I do not believe you showing that his siblings left with him or that his sister would have been in any danger is not explained why she would suffer. I do not believe he is at risk from his sister-in-law's father. I do not believe the appellant no longer has contact with his family members in view of his inconsistent evidence about when he last saw them.

25. I am not satisfied that he will be at any risk from any of the authorities Iraq if returned now. He says that he cannot be returned because he does not have the CSID document. I do not believe that he is not in touch with his family. His

evidence was that his identity document was left Iraq with his family. I'm satisfied that he has not told the truth about his contact with his family and it is reasonably likely that he will be able to obtain either his original identity document from them or sufficient information from them to allow him to obtain a new one with the help of his family.

26. The appellant says that he has twice been to the Iraqi embassy to try and obtain a travel document but has been unable to do so. It does not appear that he produced any identity documentation to show them who he was."

30. In summary, the preserved findings of fact are that the Appellant has not been truthful about contact with his family members and that he remains in touch with them in Iraq. The Appellant has chosen not to give any further evidence in relation to his family members, where they are, who specifically he is in touch with and what support (if any) they could provide him on return.
31. In these circumstances, it is more difficult to make findings of fact as to whether the Appellant has family in Kirkuk or the IKR (given that part of his claim previously was that he last saw at least one of his family members in the IKR where he claimed they fled to previously), Baghdad or elsewhere; what practical or other support they could give him, in terms of identity documents and obtaining a CSID or for daily living. However, the Appellant is not a credible witness, he has made a false asylum claim in the past and has continued in the course of the current appeal to give evidence which has been found not to be truthful or credible. The burden is on the Appellant to establish his claim and in light of the preserved findings of fact from the First-tier Tribunal, which included that it is reasonably likely that the Appellant's family would be able to obtain the Appellant's original identity document or will be able to provide sufficient information to obtain a replacement, as well as the adverse credibility findings, I do not find that he has established that he would not have any relevant family support on return to Iraq.
32. The same difficulties arise in relation to findings as to the Appellant's ability to obtain a CSID, it is extremely difficult to make findings of fact, in accordance with the factors identified as relevant in the country guidance set out above, on the basis of the evidence before me. On the basis of the current country guidance the Appellant would not be able to return to Kirkuk to attend the civil registry office there as there remains an Article 15(c) risk and the alternatives are therefore to seek to obtain one from the Iraqi Embassy in London or in Baghdad following return.
33. The Appellant's claim is that he has attended the Iraqi Embassy in London, but has not been able to obtain any relevant identity documents or a CSID from them. However, the Appellant's claim is lacking in any real detail as to what genuine attempts he has made to provide the necessary documentation and produce it to the Iraqi Embassy nor given any credible reasons as to why the required documents can not be obtained, through family or otherwise. Again, the burden is on him to establish his claim and in light of the preserved findings of fact, including adverse credibility findings and that it is reasonably likely that the Appellant's family would be able to obtain the Appellant's original identity document or provide sufficient

information to obtain a replacement, and the Appellant's claim that he has previously had at least some form of identity document, I do not find that the Appellant has established that he is unable to obtain a CSID from the Iraqi Embassy in London, even though it is recognised that the procedural requirements for this are onerous, as set out in paragraph 26 of AAH.

34. I make essentially the same findings in relation to the Appellant's ability to obtain a CSID on return in Baghdad, save for the fact that this appears to be a less onerous process, with less documentation required and that this would likely be relatively straightforward if an old CSID could be produced to the authorities. There is at least some uncertainty in the evidence as well as to alternative provision in Baghdad for those unable to attend the registry in Kirkuk. However, for the same reasons as identified above, the burden is on the Appellant and I do not find that he has established that he would be unable to obtain a CSID on return to Iraq in Baghdad within a reasonable period of time. The Appellant is in touch with his family and although he cannot travel to Kirkuk due to the Article 15(c) risk, there is no suggestion in the evidence nor the country guidance that the Appellant's family could not travel to Baghdad or elsewhere to assist the Appellant on return.
35. On the basis of the above, I find that the Appellant would be reasonably likely to be able to obtain a CSID either prior to leaving the United Kingdom, or within a reasonable period of time on return to Iraq. He has family members there whom he is in touch with, and although he has not disclosed their whereabouts or current situation, there is nothing to suggest that they are unable to provide the Appellant with any practical or financial support.
36. When considering relocation to Baghdad, to where the Appellant would be returned in the first instance, in addition to the above findings, the following is also relevant to the factors to be taken into account in accordance with the country guidance set out above. There has been no substantive challenge to the Appellant's claim that he does not speak Arabic and that he is a Sunni Kurd, both of which are, despite the other adverse credibility findings, accepted as in accordance with his history and background evidence. There is nothing to suggest that the Appellant has any relevant work history in Iraq which could potentially put him at risk and his Sunni identity alone is not sufficient to give rise to real risk of serious harm.
37. Despite the Appellant's lack of disclosure about his family circumstances in Iraq, there is nothing to suggest any family or other connections with Baghdad and I do not find it reasonably likely that he has connections or support immediately available there, albeit as above, no reason why family could not travel to assist him.
38. Taking all of these factors into account, although it is likely that relocation to Baghdad would be difficult for the Appellant, I do not find that it would be unreasonable or unduly harsh for him to remain there on return. There is nothing to suggest he would not be able to use the funds available to him on return (from the Voluntary Returns Scheme), or his general skills and experience in finding

accommodation and employment there, particularly with his likely ability to obtain a CSID and family support.

39. In the alternative, the Respondent submitted that the Appellant could internally relocate to the IKR. Again, the same difficulties in making specific findings of fact in relation to this arise because of the Appellant's lack of disclosure, in particular about his family circumstances in Iraq. There was some previous suggestion that a family member was in the IKR and that the Appellant had last seen them there, but I would put it no higher than it being possible that he currently has family members living in the IKR such that he would have sufficient assistance to lead a relatively normal life there. In the absence of being able to find that this is reasonably likely, in accordance with country guidance set out above, I find it is unreasonable and/or unduly harsh to expect the Appellant to relocate to the IKR for the following main reasons. Although the Appellant would be entitled to funds as part of the Voluntary Returns Scheme, his circumstances are such that he is unlikely to gain access to an IDP camp and would have difficulty obtaining employment, particularly given the high unemployment rate and lack of anything to suggest any specific connections within the IKR to assist him with finding accommodation or employment.
40. In summary, I find that the Appellant is not at risk on return to any part of Iraq for a Convention reason and his appeal on asylum grounds is therefore dismissed. In accordance with the current country guidance, I am bound to find that the Appellant cannot currently return to his home area due to an Article 15(c) risk, although it would be reasonable and not unduly harsh for him to relocate to Baghdad such that his appeal fails on humanitarian protection grounds. The Appellant has not separately pursued any human rights claim and any claim under Articles 2 and/or three of the European Convention on Human Rights would fail for the same reasons as his asylum and humanitarian protection claims have been dismissed.

Notice of Decision

For the reasons set out in the error of law decision annexed, the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was necessary to set aside the decision.

The decision is remade as follows:

The appeal is dismissed on protection grounds.

The appeal is dismissed on human rights grounds.

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 their 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 4th July 2019

Upper Tribunal Judge Jackson



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05700/2012

THE IMMIGRATION ACTS

Heard at Field House
On 25th March 2019

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

DKA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M McHardy of Counsel instructed by Barnes, Harrild & Dyer
Solicitors

For the Respondent: Ms S Chuna, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Grimmett promulgated on 6 July 2018, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 16 May 2012 was dismissed.
2. The Appellant is a national of Iraq, born on 1 July 1985, who first entered the United Kingdom clandestinely in 2007, claimed asylum but then absconded and was not

interviewed in relation to his claim until 2012. The Respondent refused the claim, made on the basis that the Appellant was at risk from a named member of the military because his elder brother had eloped with that person's daughter, on the basis that it lacked credibility, was not for a Convention reason and in any event there was a sufficiency of protection and option of internal relocation open to the Appellant. The Respondent further decided that there was no breach of Article 15(c), nor of Articles 3 or 8 of the European Convention on Human Rights.

3. The Appellant's appeal against that refusal was first heard by the First-tier Tribunal in late 2013, by which point the Appellant did not pursue his asylum claim, having accepted it was false and in the alternative the focus was on whether or not he had a CSID card or the means of obtaining one on return to Iraq. That has remained the issue throughout appeal proceedings which have followed through both the First-tier Tribunal and the Upper Tribunal a number of times, most recently with First-tier Tribunal Judge Grimmett dismissing the appeal on 6 July 2018 on the basis that the Appellant has a means of obtaining a CSID and following adverse credibility findings in relation to the Appellant.
4. The Appellant sought and was granted permission to appeal that decision to the Upper Tribunal on the basis that the First-tier Tribunal had not applied the country guidance in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC), which had been promulgated between the hearing of the appeal and the decision of the First-tier Tribunal and that in any event, the First-tier Tribunal erred in law in relying solely on adverse credibility findings to conclude that the Appellant was in contact with family members and would have their assistance in obtaining a CSID.
5. At the oral hearing, Mr McHardy on behalf of the Appellant relied on the grounds of appeal and by reference to the guidance given in AAH, highlighted the factors which had not been expressly considered by the First-tier Tribunal in this case and the lack of material findings in that regard, leading to an error of law in the conclusions reached. These factors included, whether the Appellant had any other form of documentation or information about the location of his entry in the civil register; the location of the relevant civil registry office and whether it is an area held, or formally held by ISIL and whether it is operational; and whether there are male family members who would be willing and able to attend the civil registry with the Appellant.
6. Further, the First-tier Tribunal failed to specifically take into account witness evidence and evidence from the Red Cross and the Iraqi Embassy as to the Appellant's attempts to locate his family in Iraq, with an irrational conclusion in paragraph 26 of the decision about not being able to obtain an identity document without presenting another form of identity.
7. On behalf of the Respondent, Ms Chuna accepted that the First-tier Tribunal had expressly failed to take into account the country guidance in AAH and also that the conclusion in paragraph 26 lacks adequate reasons and was contrary to other parts of the decision. However, it was submitted that these errors were not material given

the very significant adverse credibility findings made against the Appellant and the finding that he was still in contact with his family in Iraq, such that he would have their assistance to obtain a CSID. This was said to be a very significant consideration which would outweigh any other factors or issues in the decision of the First-tier Tribunal. This is particularly so in circumstances where Kirkuk is not a contested area and a place which has retained most of its government administration, so the Appellant would be able to seek documents from there, particularly because he had a birth certificate. Overall, it was submitted that sufficient reasons had been given in the decision of the First-tier Tribunal and the adverse credibility findings remained sufficient for the appeal to be dismissed in any event.

Findings and reasons

8. The First-tier Tribunal's findings are in paragraph 16 onwards of the decision and begin in paragraphs 17 to 22 by identifying inconsistencies in the Appellant's account. The First-tier Tribunal found as damaging to the Appellant's credibility the fact that he had lied on arrival in the United Kingdom about his journey from Iraq, absconded for a period of five years shortly after his arrival, failing to pursue his asylum claim for a significant period and later not relying on it at all. The Judge was not satisfied that the Appellant had told the truth about his reasons for leaving Iraq because of the inconsistencies in his account and did not believe he was no longer in contact with his family members in view of the inconsistent evidence about when he last saw them. Further, the Judge did not believe the Appellant was not in touch with his family in Iraq, nor that he told the truth about contact with them and found that it was reasonably likely that the Appellant would be able to obtain either his original identity document from his family or sufficient information from them to allow him to obtain a new one with their help.
9. Although there is considerable force in the submissions made on behalf of the Respondent about the significance of the adverse credibility findings made against the Appellant in relation to continuing contact with his family, in light of the guidance given in AAH, that is not the only relevant factor to consider when determining whether a person can obtain a CSID. There are also more objective factors that a Tribunal must consider, including the location of the relevant civil registry office, whether it is operational and whether it has been affected by recent conflicts. In these circumstances, it is not possible to say that the error in failing to consider the new country guidance, promulgated after the hearing but before the decision of the First-tier Tribunal, was not material. There are factors contained therein which simply haven't been addressed at all by the First-tier Tribunal, which is a material error of law requiring the decision to be set aside.
10. The remaking of this appeal is retained in the Upper Tribunal as only limited further findings of fact are required to determine the appeal in accordance with the guidance given in AAH. The adverse credibility findings made against the Appellant on the basis of inconsistencies in his account and evidence, together with his immigration history are preserved for the purposes of the remaking of this appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

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 their 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.

Directions

The appeal is re-listed for further hearing before UTJ Jackson on 10 May 2019 with a time estimate of 2 hours. A Kurdish Sorani interpreter is required.

Any further evidence to be relied upon by either party is to be filed and served, with the appropriate application to rely on new evidence, no later than 4pm on Friday 26 April 2019.

Signed



Date

28th March 2019

Upper Tribunal Judge Jackson