Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01739/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 May 2019	**On 6 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

FH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Burrett, Counsel instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. By my decision promulgated on 10 December 2018 I set aside the decision of the First-tier Tribunal. I now remake that decision.

2. The appellant is a citizen of Iraq of Kurdish ethnicity born on 1 July 2000. His claim, in summary, is that:-

   (a) he cannot be returned to his home area of Kirkuk because of the high level of indiscriminate violence in that area which meets the threshold of article 15(c) of the Qualification Directive; and

(b) it would be unreasonable and unduly harsh for him to relocate within Iraq, either to Baghdad or to the Kurdish region of Iraq (IKR), because he does not have his civil status identity document (CS ID) or the ability to obtain a new CSID without returning to Kirkuk.

3. I did not hear oral evidence at the rehearing of the appeal as an interpreter was not available and both parties assured me that they were content to proceed in the absence of oral evidence. Mr Avery, however, made clear that this did not mean the evidence of the appellant was accepted.

4. My starting point in considering this appeal is the factual findings at paragraphs 31 - 39 of the First-tier Tribunal decision which were preserved in my error of law decision. In sum, the preserved findings are that:

(a) the appellant did not give a truthful account of the reasons for, and the circumstances leading up to, his departure from Iraq.

(b) The appellant's identification card was not seized by ISIS, as he claimed.

(c) The appellant has not lost contact with his family in Iraq.

(d) The appellant undertook a well-planned journey organised by someone who wanted him to reach the UK and not merely find a safe place.

5. The judge did not make a finding as to whether or not the appellant is currently in possession of a CSID, passport, or any other identity documents. At paragraph 22 of the decision, under the subheading "cross examination" the judge stated that the appellant said that he left his old ID card in Iraq and has now obtained a new one. However it is not clear what type of identification card is being referred to and, in any event, this is not a finding of fact; it is a record of a response to a question in cross-examination.

6. As I made clear in the error of law decision, the question of whether the appellant has a CSID or any other documentation was not determined by the First-tier Tribunal and therefore remains to be determined by me in this decision.

7. The position of the appellant is that he does not have a CSID, passport or any other identification document. Mr Burrett argued that the appellant has been consistent, since coming to the UK, in saying he does not have identification documents and that given he was only 15 when he entered the UK he should be given the benefit of the doubt.

8. Mr Avery argued that, in determining whether or not the appellant is being truthful about his identification documents, I should have regard both to the record of cross examination at paragraph 22 of the First-tier Tribunal (as discussed above at paragraph 5) and to the fact that the First-tier Tribunal found the appellant to not be credible.

9. It is difficult to resolve the question of whether or not the appellant has a CSID and/or passport. I have not had the benefit of hearing him respond to cross examination, which may have provided some assistance. Having carefully considered all of the evidence that was before the First-tier Tribunal, I am of the view that the appellant has been consistent about his identification documents and that his claim to no longer have them is plausible. Applying the lower standard of proof applicable in protection claims, I am satisfied that it is reasonably likely that the appellant does not have possession of a CSID or passport. I therefore find as a fact that the appellant does not have these identification documents.

10. I now turn to the issue of whether the appellant can be expected to return to his home area of Kirkuk. The appellant claims that the level of indiscriminate violence in that region is so high that he would, solely by being present there, face a real risk which threatens his life such that removal from the UK would be contrary to Article 15(c) of the Qualification Directive. There is both case law and evidence that supports the appellant's claim about Kirkuk. This includes:

    (a) The country guidance case *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 where it was found, based on evidence up to May 2015, that the degree of armed conflict in Kirkuk engaged Article 15(c).

    (b) The respondent's refusal letter of 26 January 2018 where it was accepted at paragraph 99 that "the most up-to-date information available from the CPIN:SHS published in March 2017 confirms that your home area of Kirkuk currently meets the threshold of Article 15(c)."

    (c) The expert report of Alison Pargeter that was adduced by the appellant. Ms Pargeter is an analyst and consultant specialising in political and security issues in North Africa and the Middle East. In her report dated 21 February 2019 she discussed the current security situation in Kirkuk. Her conclusion is that

> *"the security situation in Kirkuk has deteriorated considerably and the governorate remains vulnerable to ongoing attacks and violence which the security forces are unable to contain. Indeed, the situation has deteriorated since the country guidance case of AA which was issued while the Kurds were still in control of the governorate"*

11. Mr Avery argued that the security situation in Iraq has changed dramatically since *AA* was promulgated and therefore notwithstanding the position taken in the refusal letter, I should find that the security situation in Kirkuk no longer meets the Article 15(c) threshold. He relied on the Home Office CPIN Iraq: security and humanitarian situation November 2018 where it is said that there are strong grounds supported by cogent evidence to depart from *AA*'s assessment that any areas of Iraq engage Article 15(c).

12. The evidence before me about Kirkuk indicates that the security situation is complex and frequently changing. The most recent evidence is that of Ms Pargeter, who expresses the view that the situation is at present worse than that which prevailed when *AA* was decided. In the light of her evidence, I am not satisfied that there are sufficiently cogent reasons to justify a departure from *AA.* Accordingly, I find that the appellant cannot be expected to return to his home area because of the risk of serious harm which meets the threshold of Article 15(c).

13. As the appellant cannot be expected to return to Kirkuk I must consider whether he can be expected to relocate within Iraq.

14. It is clear from *AAH (Iraqi Kurds – internal relocation)* Iraq CG [2018] UKUT 212 which was promulgated in 2018 that whether the appellant has a CSID or will be able to obtain one reasonably soon after arrival in Iraq is an important factor in assessing whether internal relocation would be unduly harsh. As explained by the Court of Appeal in *AA (Iraq) v SSHD* [2017] EWCA Civ 944 [2018]

> "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 fail and 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 agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID."

15. I therefore need to consider whether the appellant will be able to obtain a CSID within a reasonable timeframe. It was raised by Mr Avery that the appellant may be able to obtain a CSID from the Iraqi Embassy in London. In *AA (Article 15(c)) Iraq CG* it was said that a person who is able to produce a current or expired passport and/or the book in page number for their family registration details may be able to obtain a CSID in the UK through the consular section of the Iraqi Embassy in London. However, I have found that the appellant does not have possession of his passport. It follows from this that it is reasonably likely that the appellant will not be able to obtain a CSID in the UK and that he would be returned to Iraq without a CSID.

16. It is clear from the decision of the Upper Tribunal in *AA* that there is a reasonable degree of likelihood that in order for the appellant to obtain a CSID he would need to travel to Kirkuk. However, because he would be at risk in Kirkuk he cannot be expected to travel to that region, even for the limited purpose of obtaining his CSID. I find, therefore, that the appellant will not be able to obtain a CSID within a reasonable timeframe of his return to Iraq.

17. Accordingly, the assessment of whether it is reasonable or unduly harsh for the appellant to relocate within Iraq must be undertaken on the basis that he would be doing so without a CSID. Relocation to Baghdad was

considered in *AA*. Applying the criteria in that case to the appellant's circumstances it is clear that internal relocation would be unduly harsh because:

(a) he would not have a CSID or the means to obtain one without travelling to an unsafe area;

(b) he does not speak Arabic;

(c) he is from a minority community; and

(d) he does not have family to support him in Baghdad.

18. The alternative option is for the appellant to relocate to the IKR. The difficulty with this option is that he would be returned to Baghdad and without a CSID he would not be in a position to reach the IKR as he would not be able to take a flight and he could not safely travel by land. See paragraph 5 of the headnote to *AAH*.

19. The appellant's protection claim is therefore allowed.

Notice of Decision

The appeal is allowed.

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

Deputy Upper Tribunal Judge Sheridan Dated: 5 June 2019