



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01898/2018

THE IMMIGRATION ACTS

Heard At: Bradford
On: 20th August 2019

Decision and Reasons Promulgated
On: 23rd September 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

A I
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms G. Patel, Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr M. Diwnycz, Senior Home Office Presenting Officer

DECISION

1. The Appellant is a national of Iraq born in 1997. His appeal comes before this Tribunal following a grant of permission by the Upper Tribunal against the decision of First-tier Tribunal Judge Hillis to dismiss his appeal on protection (humanitarian protection) grounds.
2. The case for the Appellant before the First-tier Tribunal was as follows. He is from Hawija, a town in Kirkuk governate. He arrived in the United Kingdom in

2015 and claimed asylum on the grounds that his home town had been taken over by ISIL and that he was wanted by them, having stabbed one of their fighters during an attack in his family home. He asserted that he was without documentation, had lost contact with his family members in the region and was unable to relocate within Iraq, for instance to the IKR, because he had no connections there and no means of supporting himself.

3. The First-tier Tribunal heard oral evidence from the Appellant. It accepted, with reasons, that the Appellant is from Hawija as he claims. It rejected, with reasons, his account of having left his home because he had stabbed an ISIL fighter there. The Tribunal noted that the Appellant had produced a CSID and an INC but agreed with the Respondent that these documents were forgeries, produced to support a false claim to be a minor. The Tribunal accepted that Hawija was, and remains, in 'contested' territory such that Article 15(c) would be engaged. It was not satisfied, having regard to the Appellant's Kurdish ethnicity, that it would be reasonable to expect him to relocate to Baghdad. The Tribunal was however satisfied that the Appellant would be able to avail himself of internal flight in the IKR. It is that latter finding that is the subject of this onward appeal.
4. The crux of the First-tier Tribunal's reasoning is found at paragraphs 55-58 of the determination. The Tribunal notes the evidence that when the Appellant left Iraq in 2015 he was assisted by an uncle, and finds that it would be human nature for this uncle and the Appellant to have stayed in touch. It further finds that this uncle would still be in Kirkuk, and be in possession of the Appellant's genuine identity documents. This uncle would therefore be able to assist the Appellant in two ways: he would be able to support him, and supply him with his CSID and INC. In the alternative the Tribunal concludes that the Appellant would be able to use the "relevant details on the forged document" to obtain genuine cards from the Iraqi embassy in London prior to his removal.
5. The grounds of appeal are that the First-tier Tribunal erred in its assessment of internal flight to the IKR for the following reasons:
 - i) There was no evidential basis for the finding that the Appellant has retained contact with his uncle in Kirkuk and that finding is therefore irrational;
 - ii) In reaching that finding the Tribunal has failed to take into account relevant background material about the state of the conflict in Kirkuk and Hawija in particular and its findings on contact with family members are therefore unsafe;
 - iii) Failed to properly apply the country guidance in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC);

- iv) Failed to provide adequate reasons.
6. Permission was granted by Upper Tribunal Judge McGeachy on the 31st January 2019. At a hearing before me on the 11th April 2019 the Appellant expanded on his grounds as follows.
 7. It was plain from the background material and indeed the country guidance that Hawija and Kirkuk had been, and continue to be, badly affected by the conflict in Iraq. It was not in issue that these had been areas held by ISIL. The background material consistently reported that ISIL had captured Hawija in 2014 (coinciding with the Appellant's departure) and it remained one of their central strongholds until the Iraqi Army, supported by Iranian militias, had recaptured the town in heavy fighting in September 2017. Notwithstanding the defeat of ISIL, Kirkuk continues to be the scene of conflict between Kurdish forces and Shi'ite militias acting at the behest of the Government of Iraq (see for instance the recent political history set out at paras 10-14 of AAH). There had been a significant displacement of the civilian population and widespread disruption to the civil registration system. None of that appears to have been taken into account by the First-tier Tribunal when it concluded that the Appellant was likely to have retained contact with family members in the region who would be able to assist the Appellant with documentation. As for the suggestion that the uncle would have retained the Appellant's real documentation, it was submitted that there was simply no evidential foundation for that conclusion.
 8. The Appellant further submitted that the reasoning in respect of the forged documents was irrational. The Appellant had, on the Respondent's own case, produced a CSID and INC which were poor fakes: a detailed 'document verification report' to that effect had been considered and accepted by the Tribunal. It appeared that these documents had been produced in an effort to persuade a local authority that the Appellant was a minor and so to give him financial support. Whilst it was accepted on behalf of the Appellant that the Tribunal was certainly entitled to take a dim view of that matter, it was in his submission plainly irrational for the Tribunal to conclude that these documents could somehow assist him in obtaining new documentation from the Iraqi authorities. Dr Fatah's expert evidence on the issue of documents was accepted in AAH: applicants would need to produce, amongst other things, the page reference number for their 'family book'. Even if the relevant office has survived the war and remains operational (there is no finding on that point), there was no reason to suppose that these poor fakes would have contained the genuine details that the Appellant would require.
 9. For the Respondent Mr Diwnycz did not oppose the Appellant's grounds. In respect of the Tribunal's central conclusion – that the uncle would still be in Kirkuk, still be in touch and still have the Appellant's CSID – he accepted that important information was missing from the analysis in the determination. The

Tribunal did not appear to have weighed in the balance the uncontested fact that the population, and in particular the Kurdish population, had suffered five years of intense warfare and that there had been large scale displacement of civilians, often in chaotic circumstances. In this regard it was relevant to note that the fake documents had been sent to the Appellant from Sulaymaniyah, a town some distance away: Mr Diwnycz knew this because the Secretary of State is in possession of the envelope they arrived in. At the very least this was capable of supporting the suggestion that at least some of the Appellant's relatives had been displaced and were no longer in their home area. As for the fake documents, Mr Diwnycz accepted that it was irrational to conclude that these would be of any assistance at all, since there was no reason to suppose that they would contain any factually accurate data.

10. In view of the agreement between the parties that the 'internal flight' findings, insofar as they relate to the IKR, were flawed, I set that part of the decision aside.
11. Although no oral submissions were made on the point I noted that the grounds do challenge the Tribunal's findings on the alleged stabbing of an ISIL fighter. I am not persuaded that these grounds are made out. The Tribunal gave, at paragraphs 51-53 of its determination, perfectly good reasons for rejecting that element of the account, including the implausibility of the Appellant fleeing and leaving his family members to deal with the consequences of a dead jihadi in the house, and the fact that it is unlikely that he would have managed to evade patrols on the streets of Hawija in order to make his escape. That finding was therefore preserved. I further preserved, with consent from the Secretary of State, the finding that Hawija remains a contested area, and that there is no reasonable internal flight alternative to Baghdad.

The Re-Made Decision

12. The matter now comes before me for remaking¹. The parties confirm that the sole issue is whether or not it would be reasonable to expect the Appellant to relocate to the IKR. Mr Diwnycz concedes, in light of the Appellant's inability to speak Arabic and his lack of any known connections there, that it would not be reasonable to expect him to relocate to Baghdad.
13. The availability of an internal flight alternative to the IKR was considered in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC). The guidance given was as follows:

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame,*

¹ It was not possible to proceed to remaking the decision on the 11th April because no interpreter was available. The reason for the delay in relisting is unclear.

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 an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the 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 are confiscated upon arrival at Baghdad;*
- (ii) The location of the relevant civil registry office. If it is in an area held, or formerly 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 the 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 her case at all.*

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

- 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 and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would 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 P has neither a CSID nor a 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 at 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 male of 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:*
 - (i) *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 are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*

- (ii) *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;*
- (iii) *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 necessities such as food, clean water and clothing;*
- (iv) *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 could 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.

14. The parties were in agreement that this guidance remains valid save in respect of two factual matters. It is the Respondent's contention that since AAH was promulgated direct international flights to Irbil have resumed, so that paragraph 2 of the headnote is now out of date; Ms Patel accepted that this may be the case but submitted that it would not be relevant in this case since there is no evidence that the IKR authorities would accept the Appellant, since he has never been registered as living in that territory. The second factual issue concerns the ability of returnees to use a laissez-passer in order to travel from Baghdad to the IKR border. At the hearing before the Upper Tribunal the unequivocal evidence (accepted by both parties) was that those temporary travel documents are destroyed upon the returnee's arrival. The Respondent has since produced evidence, in her Country Policy and Information Note of February 2019, that this may have changed:

2.7.5 In a letter dated 5 September 2018, the Iraqi Ambassador to the United Kingdom confirmed that a laissez passer or a 'certification letter' can be used to board a domestic flight at Baghdad International Airport (BGW) (see Annex A). The Home Office believes that as this is official confirmation relating to airport procedures this evidence amounts to very strong grounds supported by cogent evidence to depart from AAH's finding explained at paragraph 135(4) ...

15. That letter, from the Iraqi embassy in London, reads:

"In reference to your letter dated 4 September 2018 I would like to assure you that all the returnees papers are checked on arrival and they are received with courtesy at Baghdad International Airport where they may be provided with a certification letter.

The arriving returnees can continue their onward journey to their final destination by domestic flight or road using their Laissez Passer or letter (if provided) which help them to pass through other designated check points. Please note that most of them may be in possession of their National IDs which may not have been disclosed previously".

16. Whilst very little turns on it in this appeal, I am not satisfied that this letter constitutes cogent evidence for departing from the findings made in AAH, which were based on evidence, including that of Dr Fatah, accepted by both

parties. The real difficulty with the letter is the equivocal terms in which it is expressed. Returnees 'may' be issued with a 'certificate letter'. What such a letter is, or the circumstances in which it 'may' be issued, are unexplained. Nor does the Ambassador explain why a returnee would need such a letter if he could in fact use his Laissez Passer. Nor does the letter confirm that either document would in fact enable the holder to pass through checkpoints, only that they would 'help' to do so. The assertion that 'most' returnees 'may' be in possession of identity documents which 'may not' have been disclosed is similarly unhelpful, unsourced and unsupported by any evidence.

17. Against that country background information, I turn to assess the position of the Appellant.
18. The Appellant is, as far as anyone is aware, not in possession of any genuine identity document. His home area in Hawija in the governate of Kirkuk. Neither party was able to point me to any specific up to date information on whether the civil registration centre there is likely to be operational, but I note that this was an area held by ISIL between 2014 and 2017, and that thereafter fierce fighting took place between Kurdish peshmerga and GOI troops: paragraph 12 of AAH refers. Dr Fatah's evidence, accepted in AAH, was that in areas formerly held by ISIL there is a huge backlog of civil status events waiting to be recorded [at 30]:

"Dr Fatah explained that this complex bureaucracy has existed in Iraq for many years. The family registration books, and their contents reflected on the CSID, are the foundation of the state's control. Iraq is presently facing significant challenges in maintaining the system in the north of the country, however. Under ISIL control all recording of official events was banned, and some civil register offices, such as that in Mosul, were damaged or destroyed. The effect is that there is now a huge backlog for the bureaucrats to catch up on. Between 2014 and 2017 no marriages, births or deaths were recorded. Catching up will be a mammoth task. In Mosul alone there are 1.5 million Iraqis who will need their records updated. In addition to recording the names of those who have died in the conflict there will be tens of thousands of children whose births have not been registered, or who were not entered into the record before ISIL took power. Their families are now desperate to have their existence recorded, because without that, they cannot obtain CSID cards; without CSID cards the children are not entitled to PDS cards; without PDS cards they cannot receive food rations. In addition many people lost their documents during the conflict when homes were destroyed or when fighting broke out, causing people to flee at short notice without them. In light of this, the problems of one individual returnee are likely to be given short

shriff. No procedures have been implemented to assist the re-documentation of returnees and in the view of Dr Fatah this is because their issues are considered to be trivial compared to the position of IDPs already on the ground. These returnees are a “totally insignificant problem” for the authorities, whose efforts are further hampered by the fact that many of the more experienced civil servants, whose skills could be helpful at this point, were sacked in the “de-Ba’athification” programme. The likelihood of persuading an official to spend precious time trying to find an individual’s records are even further diminished”.

19. In light of this information it is, in the case of an individual from Hawija, unlikely in my view to be relevant whether or not he is in touch with members of his family, for the simple reason that an uncle’s CSID is not going to be of any assistance if you are at the end of a queue of hundreds of thousands, perhaps millions, of other applicants. The reality is that it is reasonably likely that this individual will not be able to obtain fresh identity documents within a reasonable time frame.
20. He will arrive at Baghdad with no document other than a *Laissez Passer*. For the reasons set out above I apply the country guidance and find that this document is of no assistance to him in his onward travel. Without his CSID he cannot board a domestic flight. He will need to pass through innumerable checkpoints to make that journey by land. In AAH we accepted the evidence of Dr Fatah that an individual attempting to pass through a checkpoint without identity documents would be detained, until such time as a documented male relative arrived to verify the individual’s identity. The question then is whether or not the Appellant can demonstrate that it is reasonably likely that his uncle will not greet him at the airport and make that journey between Baghdad and the IKR border with him.
21. The evidence about the Appellant’s uncle is that he has not seen him since he left the country in 2014. He last spoke to him in 2016 when he asked him to send him some identity documents (these were the fakes rejected by the Respondent’s document verification team). There was, it is confirmed by the country background material, very heavy fighting in Kirkuk governate at that time. The peshmerga were inflicting heavy defeats on ISIL but at the expense of the civilian population, many thousands of whom fled their homes. We know that the documents themselves were posted from Sulaymaniyah, since this is the postmark on the envelope that they arrived in. Although I have weighed in the balance the fact that the First-tier Tribunal found the Appellant to be lacking in credibility as a witness I am satisfied, having regard to the foregoing, that it is reasonably likely that the Appellant’s uncle, a Kurdish civilian living in Hawija, has himself been displaced by the internal conflict in Iraq, and that he and the Appellant have lost contact. I am satisfied that it is reasonably likely that the Appellant would be unable to re-establish contact so as to be met at

Baghdad. Applying the guidance in AAH, I am satisfied that it is reasonably likely that the Appellant, as an undocumented traveller, would experience multiple and possibly prolonged detentions as he tried to make the journey to the IKR border. This would not be a reasonable means for him to avail himself of an internal flight alternative.

22. If I am wrong I must nevertheless consider the situation that he would find himself in upon arrival. As a native of Kirkuk governate he will encounter no legal obstacles in entering the IKR: see paragraph 13 of AAH (that is assuming that he manages to persuade the border guard, using his fluent Sorani, that he is a Kurd). From there he would need to find himself somewhere to live. Without a CSID he would be unable to book a hotel room, or rent accommodation. He has no known connection to the IKR so in those circumstances the overwhelming likelihood is that he will find himself looking for a 'critical shelter arrangement', ie a tent, abandoned building or the like. Whether conditions in such an arrangement would fall below the requisite humanitarian standards should be evaluated in light of the likelihood of the Appellant being able to secure a regular income. By the Secretary of State's reckoning the Appellant was seventeen when he left Hawija. He was a student at the time. He therefore has no known skills or work experience that might assist him in getting a job. He has no known means of receiving support from abroad, for instance from other relatives. He may have, if available to him, money from an IOM grant, but it unlikely that this will last him very long, particularly if he has had to use that money to bribe his way out of checkpoint detention *en route*. Taking all of that into account I find that it is reasonably likely that the Appellant will not be able to secure regular income, and that it is therefore reasonably likely that his living standards will fall below the threshold of reasonableness as discussed in Horvath. It would be unduly harsh to expect the Appellant to live in, or on the cusp of, destitution.

23. His appeal must therefore be allowed.

Anonymity Order

24. The Appellant is entitled to international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I consider it appropriate to make an order in the following terms:

"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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

25. The decision of the First-tier Tribunal contains an error of law and it is set aside to the limited extent identified above.
26. The appeal is allowed on protection grounds.
27. There is an order for anonymity.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, flowing style.

Upper Tribunal Judge Bruce
8th September 2019