Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04950/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons promulgated**
On 2 April 2019	**On 1 May 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AA
(anonymity direction made)

Respondent

Representation:
For the Appellant: Mrs R Pettersen Senior Home Office Presenting Officer.
For the Respondent: Miss S Sanders instructed by Nebula Law Solicitors.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission a decision of First-Tier Tribunal Judge Turnock who, in a decision promulgated on 18 July 2018, allowed AA's appeal pursuant to article 3 ECHR.

Background

2. The above respondent, AA, is a male citizen of Iraq born on 3 April 1980. The Judge sets out his immigration history between [2 – 14] of the decision under challenge. At [47] the Judge notes AA was sentenced to 18 months imprisonment on 1 July 2011 for seeking to obtain leave to remain in the United Kingdom by deception. The Judge sets out the sentencing remarks in this paragraph. As a result a deportation order was made against AA.
3. The Judge sets out findings of fact from [68] in which there is reference at [87] to the country guidance case of AAH. The core findings are set out between [102 – 106] and [108 – 110] in the following terms:

> 102. There is no doubt that the Appellant's credibility is damaged by the previous findings and by virtue of the criminal offence, particularly taking account of the nature of the offence. However, it does not follow that he cannot be believed about anything he says. Account can be taken of the fact that his criminal offence was committed in 2006 and that he has not committed any offences subsequently.
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> 103. The Appellant has now been away from Iraq for some 18 years during which time the country has been in a state of turmoil and upheaval. It is entirely plausible that he is no longer aware of the whereabouts and circumstances of his uncle in Dohuk. There has never been any evidence presented to suggest that he was in possession of a CSID card and I accept that he does not have one. I also accept that he does not have any wider family in Iraq.
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> 104. With regard to the suggestion that he might be able to obtain a replacement CSID card that is far from being a straightforward matter. As was explained in AAH (at paragraph 20) an individual is considered to be 'from' the Governate or district where his family registration is held. Where that is, subject to certain exceptions, will usually be where his or her father was registered.
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> 105. Therefore, even though the Appellant's most recent address in Iraq was in Dohuk his registration district would remain Mosul. A replacement card would have to be sought from there. As was further explained in AAH, at paragraph 28, the only way that a totally undocumented Iraqi could realistically hope to obtain a new CSID will be the attendance at the Civil Registry of a male family member prepared to vouch for him or her. The production of a CSID from, for instance, an uncle, would enable the Registrar to trace back through the record to find an individual's father, and in turn him.
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> 106. There would be a number of problems associated with that arrangement. Apart from the need to return to an area to which the Respondent concedes the Appellant cannot be returned. If he did return, he would be faced with the difficult of trying to establish the necessary details to enable a replacement card to be issued. Under ISIL control all recording of official events was banned, and some civil register offices, such as that in Mosul, were damaged or destroyed. In Mosul alone there are 1.5 million Iraqis who will need their records updated. [See paragraph 30 of AAH].

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108. Considering the Country Guidance issued in AAH and the Appellants evidence, I make the following findings:

The Appellant does not have any form of documentation or information about the location of his entry in the civil register.

The location of the relevant civil registry office is in Mosul which was under the control of ISIS who undertook destruction of the records.

The Appellant does not have any male members who would be able to attend the civil registry with him.

109. I find that the Appellant would fall with the category of those described in paragraph 9 of the Country Guidance and in particular those at 9 (iii) who would have to resort to a critical shelter arrangement for housing. He would be unable to work as he would be without a CSID. He has no family connections. He is from an area with a marked association with ISIL although he left the country so many years ago that he should not fall under any suspicion because of that association. He does have some skills acquired in the UK but the unemployment rate is so high and the absence of a CSID means that there is no realistic prospect of securing employment.

110. I conclude that the Appellant is, accordingly in need of humanitarian protection and internal relocation is not an option. If I were wrong in that assessment I would find that his removal would be in breach of his rights under article 3 of the ECHR.

4. The Secretary of State sought permission to appeal which included an application to lodge the appeal out of time. On 7 September 2018 First-tier Tribunal Judge Blundell refused the application in the following terms:

1. The respondent seeks permission to appeal against a decision which was made by Judge Turnock on 18 July 2018, allowing the appellant's appeal against the refusal of his protection and human rights claims.
2. The application is brought significantly out of time. The decision was sent on 18 July and an appeal was to be brought on or before 1 August 2018. The grounds of appeal lodged on 28 August. There is not a reasonable explanation for the delay. Part B of the IAFT-4 reproduces an email exchange between the civil servants in the Home Office and HMCTS that contains no explanation of how it bears on this case. It appears that some decisions, including this one, were re-promulgated. I am not even told, however, when the respondent first received this decision. In the circumstances, I do not consider there to be an adequate or reasonable explanation for the delay. I have nevertheless considered all relevant circumstances, including the public interest in reinforcing compliance with the Rules. Having done so, I decline to extend time.
3. I would nevertheless have refused permission to appeal. The Judge was clearly cognisant of the guidance in AAH (Iraq) and the fact that his assessment of the appellant's ability to obtain a CSID took place against the backdrop of previous credibility findings and the appellant's criminality. He nevertheless accepted that an appellant – who originates from Mosul - would not be able to obtain a CSID. The reasoning process by which he reached that conclusion was demonstrably thorough, and the

respondent fails in the grounds of appeal to engage with the fundamental reasons that the Judge so concluded. In light of the extant country guidance, that conclusion was determinative of the appeal in the appellant's favour.

4. In the circumstances, I refuse to extend time and would have refused permission to appeal.

5. The Secretary of State renewed the application to the Upper Tribunal in which it is now confirmed the determination was received by the Specialist Appeals Team on 18 August 2018 and responded to within 10 working days.

6. Permission to appeal was granted by Dr H H Storey on 21 November 2018 in the following terms:

> "It is arguable that the Judge erred in failing to consider in light of his adverse findings on the appellant's credibility that the appellant would in fact be able to obtain a CSID with help from his wider family and that he had not taken reasonable steps to demonstrate he could not. No reasons are given at paras 102-103 save for the abstract proposition that just because someone's credibility is damaged does not mean they cannot be believed about anything. The grounds disclose an arguable error of law."

Error of law

7. In relation to the time issue, the Secretary of State has provided evidence supporting the contention he did not receive the decision when originally promulgated from which time was originally calculated, but in fact only received a proper copy when the same was re-promulgated on 18 August 2018. The application for permission to appeal was lodged within the permitted time from the re-promulgated document being sent and the application for permission to appeal shall therefore be treated as an in-time application.

8. The Secretary of State refers to the fact that AA has not been believed for a number of years and argues the Judge's conclusion that AA is not in contact with anyone in Iraq who could assist him was not made out and that the Judge failed to engage with the credibility issues as part of the overall assessment. The Secretary of State's case is that although return to the IKR or Baghdad may be problematic it was not impossible. It is accepted the key consideration will be whether AA could obtain a CSID, as without one he would face significant difficulties, but it is argued that in light of AA's poor credibility and given his poor immigration and criminal history the Judge fails to give clear reasons as to why he would be unable to locate family and friends in Iraq who could then assist in obtaining a replacement CSID instead finding AAs account entirely plausible regarding the loss of contact. The grounds assert AA has made no attempt through the Red Cross or Red Crescent to try to locate his uncle or family who arranged his journey to the UK and failed to demonstrate he had taken all reasonable steps to obtain documentation before it could be concluded removal was not feasible. The grounds assert AA failed to provide any details of attempts to contact the Iraqi Embassy as a

result of which the Secretary of State argues he should not succeed on article 3 or Humanitarian Protection grounds.

9. In behalf of AA it was argued decision and findings are based upon the evidence received by the Judge. The Judge considered the issues and country guidance case law and makes findings in relation to the same in accordance with the evidence. It was argued the decision is adequately reasoned. The Judge recognised AA has been in the United Kingdom for 18 years with a finding at [103] that it is plausible he no longer has any knowledge of the whereabouts or circumstances of an uncle with no evidence of wider family in Iraq.

10. It is noted there is reference in the Secretary of States grounds to AA finding or producing a death certificate for his mother but the Judge's finding is that the appellant has no contact with family members and as noted by AA's advocate the country guidance clearly refers to the presence of a male family member being required and not a female family member. As it was accepted AA could not go to Mosul by the Secretary of State is not clear how it is expected he could obtain this or other documentation.

11. The Judge was aware of previous negative credibility findings [102] and it is not made out the Judge ignored or failed to factor the same into the decision-making process.

12. Having considered the competing arguments, evidence available to the Judge, and the decision under challenge in some detail, I find that no arguable legal error has been made out material to the decision to allow the appeal sufficient to warrant the Upper Tribunal interfering further in this matter. The reason for such finding is that the Judge was clearly aware of relevant country information and the country guidance case law and undertook the assessment of the merits of the appeal in light of the same and facts as found. This included previous credibility findings and the appellant's criminality. The core finding that the appellant could not obtain a CSID is adequately reasoned and has not been shown to be a finding outside the range of those reasonably available to the Judge on the evidence. Whilst the Secretary of State may disagree with the Judge's reasoning it is not made out the same was in any way perverse, irrational, or contrary to the evidence. The lack of a CSID, in light of current country guidance case law, was determinative of the merits of the appeal in the appellant's favour.

Decision

13. There is no material error of law in the Judge's decision. The determination shall stand.

Anonymity.

14. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 26 April 2019