



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05496/2016
PA/13338/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 MAY 2019**

**Decision & Reasons
Promulgated
On 13 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SIRWAN [A]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer
For the Respondent: Ms Khan, instructed by Legal Justice, solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 1 January 1995 and is a male citizen of Iraq and is of Kurdish ethnicity. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 9 April 2018 refusing the appellant's asylum/human rights claim following the making of a deportation order. On 15 March 2018, the appellant had been convicted of one offence of possession of cocaine with intent to supply and sentenced

to 12 months imprisonment. The First-tier Tribunal, in a decision promulgated on 31 January 2019, allowed the appeal on human rights grounds (Article 3 ECHR). The appeal on asylum and humanitarian protection grounds and in respect of Article 8 was dismissed. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appeal turned on the question of whether the appellant would be able to obtain the necessary identity papers in Iraq (commonly known as a CSID). The Secretary of State contends that the judge wrongly expected the respondent to show how the appellant might be 'redocumented' with a CSID whereas the onus of proof rested on the appellant. The respondent also submits that the appellant's credibility has been damaged by his claim that he had lost or destroyed a passport in Greece; the judge found that it was more likely that the appellant had destroyed his own passport. The judge also found that the appellant evidence regarding his relatives in Iraq was inconsistent. The appellant has four brothers 11 uncles and knows a deputy mayor of a town in Iraq who would be up to assist him in obtaining new identity documentation. Further, the appellant not taken any steps whilst in the United Kingdom to obtain the necessary documents from the Iraqi embassy in London.
3. I find that the appeal should be dismissed. At [35], the judge recorded that the 'Home Office Presenting Officer accepted that [if the appellant had no CSID] the appellant must win on Article 3 ECHR.' The Court of Appeal in AA (Iraq) [2017] EWCA Civ 944 at headnote [9] held that:

"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."
4. The question of whether the appellant had attempted or would be able to obtain a CSID still in the United Kingdom does not appear to have been ventilated at all before the judge. As regards the comments of the judge at [53] (*'the Home Office has not been able to make any suggestion as to how the appellant may be re-documented...'*), I take this to be a reference to the submissions of the Home Office Presenting Officer or rather the absence of any submission that any family members in Iraq would be able to assist the appellant in obtaining a CSID. I consider the Secretary of State's grounds in this instance to amount to an attempt to raise arguments which could have been raised at the First-tier Tribunal hearing but which were not raised. There appears to have been no suggestion from either party nor is there any indication in the documentary evidence on file that it had been suggested at any time that the appellant's relatives in Iraq would be able to assist him. Moreover, the concession

recorded more than once by the judge was made by the Presenting Officer is recorded in unequivocal terms: it is said that the respondent accepted that the appellant would succeed under Article 3 ECHR 'if he did not have a CSID' which both parties accepted that he did not possess. The judge was required to determine the appeal on the facts as he found them. I accept that *prima facie* the appellant had relatives in Iraq and that it would have been open to the judge to consider whether those individuals would assist the appellant. However, I do not consider that the judge was obliged to investigate that possibility in the absence of any submission to that effect being raised by the Secretary of State, still less when the respondent had told the judge unambiguously that he accepted that the appellant should succeed in his appeal because he did not possess a CSID. It is not now open to the Secretary of State to resile now from the position which he clearly adopted before the First-tier Tribunal. The judge was entitled to rely upon what was said to him by the Presenting Officer at the hearing. In the circumstances, I find that the appeal should be dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 5 June 2019