



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

Appeal Number: PA/10029/2017

THE IMMIGRATION ACTS

**Heard at Birmingham
On 8 February 2019**

**Decision & Reasons Promulgated
On 25 March 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SKAK
(ANONYMITY GRANTED)**

Respondent

Representation:

For the Appellant: Mrs H Aboni (Senior Home Office Presenting Officer)

For the Respondent: Mr K Gayle (Solicitor)

DECISION AND REASONS

1. On 27 September 2017 the Secretary of State refused to grant the claimant international protection. The claimant appealed to the First-tier Tribunal (the tribunal). Although the tribunal did not believe much of what the claimant had said, it nevertheless allowed his appeal in a decision which was sent to the parties on 10 February 2018. The Secretary of State obtained permission to appeal the tribunal's decision and, in a decision of 8 October 2018, I set aside the tribunal's decision (whilst preserving certain findings) and directed that the decision should be remade by the Upper Tribunal after a further hearing. That hearing took place on 8 February 2019. What I say below constitutes an explanation as to how I have remade the decision and why I have done so in the terms that I have.

2. By way of background, the claimant was born on 15 August 1980. He is a national of Iraq of Kurdish ethnicity. He says that he is from Kirkuk in Iraq and that contention has not been the subject of any serious challenge. He is married and has two infant children. His wife and the children are all Iraqi nationals. He says that he, his wife and his eldest child (the youngest not having been born at that time) left Iraq in August 2013 and stayed in Iran for a period of three years. The youngest child was born in Iran. He says that they left that country in June 2016 and embarked on a journey through Turkey, Bulgaria, Serbia, Hungary and France before entering the UK in March of 2017. The claimant made his claim for international protection on 29 March 2017. His wife and children were dependents upon that application.
3. In seeking international protection, the claimant asserted that he had made enemies in consequence of his refusal to work as a tile fitter for any of the local Mosques in Kirkuk. As a consequence, he had been abducted and physically assaulted. The Iraqi police had not been able to assist him. So, fearing for his own safety and that of his family members, he secured the services of a people smuggler and that is why and how he and his family left Iraq. He says that they then lived in Iran without incident until a time when he noticed a person attempting to take a photograph of him in suspicious circumstances. He says that he thought that this incident might be linked to his problems in Iraq and that the photographer might be linked to his enemies in Iraq. So, he and his family left Iran and embarked upon the above difficult and extensive journey.
4. The claimant's case, when put to the tribunal, had a number of strands to it. He asserted he would be harmed, once again, by the persons who had previously harmed him, or by their associates, if he were to have to return to his home area of Kirkuk. But anyway, he contended that the instability in Kirkuk meant it was a "contested area" such that the test contained within Article 15(c) of the Qualification Directive was met. So, he said, if returned he would for one or other of these reasons have to relocate away from his own area. He argued that requiring him to go to Baghdad or the region of Iraq under Kurdish administration and control (the IKR) would be unreasonable. That was particularly so, he asserted, because he no longer possessed a CSID card (a crucial identity document in Iraq) and would not be able to get one.
5. The tribunal disbelieved the claimant's account concerning the refusal to work for local Mosques and the consequent abduction and assault. It allowed his appeal, though, primarily because it accepted he did not have a CSID card and would not be able to obtain one. That rendered internal flight unreasonable or unduly harsh. When I set aside the tribunal's decision I did so because I thought against the background of its disbelief of the account of persecution in Kirkuk, it was required to say more than it did about why it was believing him when he asserted he did not possess a CSID card and did not have the ability to obtain one upon return to Iraq. So, at the hearing of 8 February 2019, that was the issue with which I was primarily concerned.
6. The claimant, as was permitted by the directions I had issued, provided a witness statement on 29 January 2019. In that statement he said that he and his family's identity documentation had been taken by a people smuggler who they had met in Istanbul. He said he had previously had close family members living in Iraq being his parents, a brother and two sisters. But he had had no contact with any of those family members since he had left Iraq in 2013. As to his wife's family, her parents were deceased and she has four siblings but none of those remain in Iraq. Two are in Turkey and two are in Germany. He had had a telephone number for an uncle in Iraq but attempts to contact him by telephone had been unsuccessful.

7. The claimant gave oral evidence at the hearing before me. In so doing he reiterated that he was no longer in contact with any family member in Iraq. He could not return to Kirkuk. He could not live in the IKR because he has no family there. He thought he might be able to obtain a CSID card but then said, in effect, he might not be able to do so because he does not know “if everything has been destroyed or not” in Kirkuk.
8. In remaking my decision, I have taken full account of the oral evidence I have heard and all of the documentation before me including the documents which were before the tribunal when it heard the appeal. I have reminded myself of and applied the lower standard of proof applicable in international protection cases and which is sometimes referred to as the real risk test.
9. In this case I have preserved findings, as noted above, to the effect that the claimant has sought to deliberately mislead with respect to the claimed events in Kirkuk. That means I must treat what he says about other matters with a good deal of caution. But it does not, of itself, mean that I should automatically disbelieve everything else which he claims. But I must scrutinise what he says carefully.
10. The claimant asserts that he does not have a CSID card. Clearly, given the accepted importance of such documentation, the claimant and his wife will each have had such documentation when living in Iraq. Indeed, the claimant accepts that. But he says that those CSID cards and other identification documents were all taken from him by a people smuggler in Turkey. His contention as to that particular detail was not directly challenged in cross-examination. But I do not regard that as being indicative of any implied acceptance of what he says by the Secretary of State. Nevertheless, I think it plausible that a people smuggler might wish to take identity documentation away from those who are being smuggled perhaps in order to secure or maintain control over them. Accordingly, notwithstanding the claimant’s having misled about other matters, I have concluded that, to the lower standard, I am able to accept what he says about that.
11. I need to make findings as to whether the claimant or his wife do have family members in Iraq who might be able to assist with respect to the obtaining of a CSID card. Again, I must take into account with respect to this, the claimant’s previous dishonesty. But he has been consistent with respect to the lack of contact with family members in Iraq. The claim that his wife’s siblings have left Iraq and are in Turkey and Germany is not at all implausible given the instability seen in Iraq in recent years and the consequent movement of people out of that country. Given that same instability, particularly in Kirkuk, the claim that he is no longer in touch with his own family members is not at all implausible either. The consistency of what he has had to say about this and the plausibility of it has led me to conclude that, to the lower standard of proof applicable in such cases, I should believe him.
12. Having reached the above findings, I must now consider whether the claimant will be able to obtain a CSID card within a reasonable time of his return to Iraq. As to that I have borne in mind what was said by the Upper Tribunal in *AAH (Iraqi Kurds – internal relocation)* Iraq CG UKUT 00212 (IAC). As to the relevant considerations identified in *AAH* relevant to obtaining CSID cards, I accept that the claimant and his wife do not possess any documentation of any sort. I accept that they are from Kirkuk which has, whether it does or does not remain a “contested area” seen much upheaval in the past. There is nothing in the material before me to suggest that the civil registry office in Kirkuk is open and functioning. I would conclude that it is not. I have accepted that the claimant does not have family members

in Iraq and that his wife does not have family members there either. That means there will be no male family members to assist either of them in order to seek to obtain a CSID card.

13. In the circumstances I would conclude that neither the claimant nor his wife will be able to obtain a CSID card within a reasonable time frame, if at all, upon return to Iraq. The point of return, following *AHH*, will inevitably be Baghdad. I do not consider it reasonable to require or expect the claimant and his wife, with two young children, to take advantage of an internal flight alternative in Baghdad. That is because without a CSID card they will not be able to access services or legitimate employment, they will be absent family support in Baghdad, they will be seeking to settle in a city with which they are not familiar, they will have nobody to assist them in finding employment and will have no means of supporting themselves or their children. Further, without a CSID card they will not be able to board a domestic flight from Baghdad to the IKR. Such was stated in *AAH*. I do not have any reason to think, even if return to Kirkuk were to be otherwise feasible, they would be able to take a domestic flight to Kirkuk without a CSID card and it has not been argued before me that they could do that. Any attempt to travel by road to the IKR or to Kirkuk would be fraught with difficulty and such was also stated in *AAH*.
14. In the above circumstances I would conclude that the claimant is not able to relocate either to the IKR or Baghdad. It has not in fact been argued before me that he will be able to return to Kirkuk or that he will no longer face an Article 15(c) risk if he does manage to return there. The claimant is not a refugee within the meaning of the 1951 Refugee Convention because any ill treatment he would receive in Iraq would not be for a 1951 Convention reason. But in light of the above his appeal, nevertheless, succeeds on humanitarian protection grounds and under Article 3 of the ECHR.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and has been set aside. In remaking the decision, I allow the claimant's appeal from the Secretary of State's decision of 27 September 2017 refusing to grant him international protection. I do so on humanitarian protection and on human rights grounds.

Signed:

Dated: 19 March 2019

M R Hemingway
Judge of the Upper Tribunal

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of his family. Any breach may result in contempt of court proceedings.

Signed:

Dated: 19 March 2019

M R Hemingway
Judge of the Upper Tribunal

To the Respondent

Fee award

Since no fee is payable and since, in any event, the claimant has succeeded in his appeal, there can be no fee award.

Signed:

Dated: 19 March 2019

M R Hemingway
Judge of the Upper Tribunal