



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

Appeal Number: PA/10103/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 7<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DBA  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Mills (Senior HOPO)

For the Respondent: Mr Mohzam (Solicitor)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Phull, promulgated on 17<sup>th</sup> October 2018, following a hearing at Birmingham on 17<sup>th</sup> September 2018. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Iraq, and was born on 1<sup>st</sup> September 1992. He appealed against the decision of the Respondent dated 27<sup>th</sup> July 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he was born in Kirkuk but lived in Sala Al-Din. His father was a First Lieutenant in the Iraqi Army. He was killed opposing Kurdish forces. The family then moved away. They moved to a distance of 100 kms away from Kirkuk. The Appellant worked for his uncle on a farm. ISIS attacked the village in June 2014 and took control of the area. ISIS then took his sister and several girls from the village in June 2015. Her dead body was dumped outside their home on 25<sup>th</sup> June 2015. His mother subsequently died. His brothers' whereabouts were unknown. He has tried to contact his uncle since arriving in the UK but without success. He now fears return to Iraq where he states that his life would be unsafe. He cannot return to his home area because he has not got a CSID document for relocating to another part of the country.

### **The Judge's Findings**

4. A feature of this appeal before Judge Phull was that the matter had previously been heard by Judge Colyer in February 2017. Judge Colyer had found the Appellant to be broadly credible but had taken the view that the Appellant ought to make greater efforts, through the Iraqi Embassy, to secure CSID documentation, so as to enable him to return back to that country. A year later, the Appellant had then applied again, only to be refused, and it was in those circumstances that the appeal came before Judge Phull.
5. Judge Phull began the consideration of the matter at the outset stating that, "My starting point is the decision of Judge Colyer, promulgated on 23<sup>rd</sup> February 2017" who had found the Appellant to be a credible witness and who had accepted the Appellant's fear of ISIS and that he and his family suffered persecution from them. There was also an independent country expert report from Alison Pargeter which was in the Appellant's favour (see paragraph 19). However, Judge Colyer had found that the Appellant could relocate internally within Iraq and that it would not be unduly harsh for him to do so, given that he "had failed to approach the Iraqi Embassy in the United Kingdom to assist him in obtaining the identity documents" (paragraph 20).
6. Judge Phull went on to state that given the findings of Judge Colyer that the Appellant "had suffered persecution in his home area, I turn to consider whether the Appellant continues to be at risk there" (paragraph 21). The judge held that he would be at risk upon return to Iraq, particularly in circumstances where he did not have any documentation to

enable him to acquire a CSID card, and had not been able to make contact with any relatives in his country.

7. Judge Phull allowed the appeal.

### **Grounds of Application**

8. The Grounds of Application state that the judge had erred in law for three essential reasons. First, she had failed to consider fully the Appellant's ability to obtain a civil status ID card (CSID) given that the Appellant did not attend the Iraqi Embassy to try to obtain the necessary documents. Second, that the judge failed to consider that obtaining a CSID is possible and that internal relocation is possible to other parts of Iraq. Third, that the judge failed to give adequate reasons for departing from the previous decision of the Tribunal, given the principles in **Devaseelan [2002] UKIAT 00702**. In any event, the judge had failed to explain why the Appellant's case met the threshold in respect of humanitarian protection given the improved security situation in Kirkuk.
9. On 12<sup>th</sup> November 2018 permission to appeal was granted by the Tribunal.

### **Submissions**

10. At the hearing before me on 7<sup>th</sup> June 2019, Mr Mills explained how following the rejection of the Appellant's previous protection claim, there had now been a fresh claim application by the Appellant which set out to gainsay the decision of Judge Colyer made on February 2017. He accepted that the Appellant had found to be broadly credible. However, Judge Colyer was clear that there was no reason why the Appellant could not go back to the IKR because he had relatives there. Judge Phull had failed to follow the principles in **Devaseelan** because by the time that the appeal arose before Judge Phull, there was still no evidence that the Appellant had gone to the Iraqi Embassy to try and secure further documentation to enable him to get the requisite CSID documentation so that he could return back to his country. The plain fact was that the Appellant had not been able to show that he was undocumented and could not proceed to document himself by taking the necessary steps that Judge Colyer had advocated. Finally, it was incorrect to suggest that, following the departure of ISIS from Kirkuk, that the level of violence there had not subsided, so as not to engage Article 15(1)(c) of the Qualification Directive.
11. For his part, Mr Mohzam submitted that he did rely upon his skeleton argument. He stated that the decisions by the courts following February 2017 had materially changed the situation, and the judge expressly drew attention to these before concluding that the Appellant, who had attempted to contact his uncle and had failed to do so, would be able to secure the necessary documentation.

12. In reply, Mr Mills submitted that the judge also misread the CIPU Report from the Home Office, only the first two pages of which are a summary, but the remaining 50 odd pages are a collation of various objective materials ranging from the US State Department Report to the BBC, which confirm that the situation in the IKR had in fact substantially improved, so that the Appellant could now return back to his country.

### **No Error of Law**

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. I come to this conclusion, notwithstanding Mr Mills' valiant efforts to persuade me otherwise. My reasons are as follows.
14. First, the judge does begin correctly at the outset by stating that "My starting point is the decision of Judge Colyer" (paragraph 19). That decision, however, was decided on 23<sup>rd</sup> February 2017. Against that background, the judge observed that the finding of Judge Colyer was clear that the "Appellant had suffered persecution in his home area" (paragraph 21).
15. However, there was now the decision in **AA (Iraq) [2017]**, to which the judge had regard. She observed that this effectively replaced paragraphs 204 of **AA (Iraq) [2015]**. She observed how that when the Court of Appeal decided **AA (Iraq) [2017]**, it gave guidance that:-

"There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called 'contested areas', comprising the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence ..." (see paragraph 22 of Judge Phull's determination).
16. It remains the case that there has been no subsequent country guidance case that alters this position. Given that the judge was bound to refer to the country guidance case, there is no evidence that she did not do so, but on the contrary, she supplemented this, with a consideration of the latest case law.
17. Second, there was a question of the Appellant being able to get a CSID document. It is true that the view on 23<sup>rd</sup> February 2017 was that the Appellant, being a credible witness, ought to try and attempt to get documentation from the Iraqi Embassy. However, as Mr Mohzam has pointed out in his skeleton argument, the decision in **AAH (Iraq) [2018]** makes it clear that:-

“it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book at page number for their family registration details”.

18. However, this was a case where the Appellant had not been able to contact any family relatives, and in particular his uncle “despite making several attempts to do so” (paragraph 28), so as to be able to get a modicum of information in order to be able to provide the Iraqi Embassy with a book and page number for his family registration details.
19. In **AAH (Iraq) [2018]**, the Court of Appeal had gone on to say that, “a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring” (see paragraph 177 of **AAH (Iraq) [2018]**). Furthermore, the Tribunal had gone on to say that “a laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available” (see the head note).
20. It has to be remembered that this is a case where, as Judge Phull makes clear:-

“he does not have a CSID document or a nationality certificate and no way of obtaining copies because the originals were destroyed when his home was destroyed in 2003; at the time he was still a child” (paragraph 29).
21. This is important given what the head note states in **AAH**, namely, that “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”. This is important because ultimately, as the head note in **AAH** makes clear, the question is, “are there male family members who will be able and willing to attend the civil registry with P?”. The judge’s conclusion was that, given the lower standard of proof that applies to protection cases, that there was no such evidence.
22. In short, the judge’s conclusion, particularly at paragraphs 28 to 29, was one which was open to her. She makes it clear that, “I find without practical support the Appellant cannot obtain any relevant documentation from Iraq” (paragraph 28). That was a finding open to the judge on the evidence that was put to the judge at the time of the hearing. Similarly, the judge was entitled to conclude on the evidence before her that, “This evidence confirms that he has no family support available to him in Iraq. I find he was candid that he had not attended the Iraqi Embassy in London and did not have knowledge of the Red Cross” (paragraph 29). The question here is what, given what had transpired since the decision of Judge Colyer on 23<sup>rd</sup> February 2017, would be the purpose of the Appellant attending the Iraqi Embassy, if he has not been able to make contact with male relatives in his family, so as to obtain even the slightest form of documentary evidence, which would be of assistance to him were he to go

to the Iraqi Embassy. The judge took a realistic view and concluded that according to the Iraqi Embassy by himself would not alter the position given what the latest country guidance cases that established from Iraq.

**Notice of Decision**

23. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

**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 his 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

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> July 2019