



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

Appeal Number: PA/10212/2018

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 22 July 2019

**Promulgated
On 30 July 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SARKAWT [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holme, instructed by Parker, Rhodes Hickmotts
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 15 April 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. I reasons were as follows:

1. The appellant was born on 1 July 1985 and is a male citizen of Iraq. He entered the United Kingdom in February 2016 and claimed asylum. By a decision dated 7 August 2018, the Secretary of State refused his claim. He appealed to the First-tier Tribunal which, in a decision promulgated on 12 October 2018,

dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge has carried out a thorough and careful analysis. However, I find that she has fallen into error. The judge found that the appellant has a subjective fear of his uncle but she concluded that the appellant could relocate within the IKR (Independent Kurdish Region). At [25-26], she found that the appellant's uncle did not have such influence over the police and local authorities in the IKR that he would be able to locate and to harm the appellant throughout the IKR. That latter finding I consider to be entirely sound. The problem lies in the judge's analysis of the circumstances which the appellant would find himself in should be relocated to the IKR and, as importantly, whether he would be able to make his way safely from Baghdad (the city to which he would be returned from the United Kingdom) to the IKR. The appellant has a CSID in Germany although he has photocopies with him here in the United Kingdom. The judge has not considered how exactly the appellant will go about obtaining either his original CSID or a replacement. As regards a replacement, the appellant may face the difficulty of having to travel to his home area from Baghdad and there has been no complete analysis of those problems and the risks to which the appellant may be exposed following arrival in Baghdad.

3. The grounds of appeal also argue that, given that the appellant has fallen out with his father's family, he would have to rely upon his sister to assist him in obtaining replacement identity documents. The headnote of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 (IAC) asks:

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.

4. Mr Greer, who appeared for the appellant at the Upper Tribunal initial hearing, submitted that there was nothing the appellant's sister could do before the appellant arrived in Iraq to obtain replacement documentation for the appellant. He dismissed the respondent's argument that, given that the sister had been able to obtain death certificates for family members, she would also be able to obtain replacement identity documentation for the appellant. In his submission, such an argument contradicted the findings of the tribunal in AAH. The passage of AAH which I have quoted above deals in the last sentence with a female returnee seeking documentation for herself; it is not as clear as Mr Greer submits that any efforts made by the sister on the appellant's behalf to obtain documents for him would necessarily be futile.

5. I see no reason to set aside the main findings of fact of the First-tier Tribunal. The judge's findings that the appellant has a subjective fear of his uncle, but that the uncle would not be able to locate or harm the appellant should he return to live in a part of the IKR where the uncle would be unaware of the

appellant's presence are preserved. However, I am not satisfied that the judge has dealt conclusively with the following questions posed by this appeal; whether the appellant would be able to obtain his original documentation from Germany; if you could not do so, how exactly he might obtain replacement documentation before travelling to Baghdad; the extent to which the appellant's sister would be able to assist in obtaining documentation; whether the appellant would be exposed to a real risk of ill-treatment between arriving in Baghdad and relocating to the IKR; whether, having reached the IKR, it would be unduly harsh to expect the appellant to reside there even though he would not be at risk from his uncle. These are the issues which the Upper Tribunal will address at the resumed hearing at or following which the Upper Tribunal will remake the decision. The parties should attend the resumed hearing prepared to deal with these questions. The appellant's representatives, in particular, should file and serve a skeleton argument no later than 5 days before the resumed hearing. Both parties may file and serve additional evidence provided they do so no later than 10 days prior to the resumed hearing.

Notice of Decision

6. The decision of the First-tier Tribunal is set aside. The findings of fact, save for those concerning the risk to the appellant in Baghdad, travelling from Baghdad to the IKR and living thereafter in that region, are preserved. The decision will be remade by the Upper Tribunal (Upper Tribunal Judge Lane) at or following a resumed hearing at Bradford on a date to be fixed.

2. At the resumed hearing, Mr McVeety, who appeared for the Secretary of State, submitted that there existed sufficient circumstances particular to this appellant which would give rise to the reasonable conclusion that it would be safe for him and his family to return to live in the IKR. In particular, the appellant himself is from the IKR; he has a photocopy of his CSID although he does not possess the original; there is the possibility that male family members (by marriage) in the IKR (Iraqi Kurdish Region) would be able to vouch for him and assist him in obtaining a new CSID. The appellant has a sister living in the IKR but it is unclear whether she is or is not married; appellant would be to fly from Baghdad to the IKR; the appellant would be able to obtain a new CSID are still in the United Kingdom from the Iraqi embassy.
3. Mr Holmes, who appeared for the appellant, submitted that there was no reliable evidence that a male family member would be able to assist the appellant. The relevant country guidance (*AAH (Iraqi Kurds - internal relocation) Iraq* CG UKUT 00212 (IAC)) indicated that, without a passport, the appellant would be unable to obtain a replacement card while still in the United Kingdom and would, in effect, be trapped in Baghdad airport as he would be unable to travel by air to the IKR whilst he would be probably unable and certainly unsafe to travel with his family over land without a CSID.
4. I should say at the outset that the possibility that the appellant would be up to obtain his original CSID from the authorities in Germany appears to have evaporated. Both parties have written to the German authorities in vain to seek information about the card.

5. Following a discussion, both parties agreed with me that the lower standard of proof of reasonable likelihood was the appropriate standard to apply in the case of the discrete issue before the Upper Tribunal, namely the ability of the appellant to obtain replacement identity documentation.
6. It is an established fact that the appellant has a sister living in the IKR. No evidence has been produced to show that she is married or that, even if she is married, that her husband or any other male family member would be willing to assist the appellant and his family in obtaining the necessary documentation. It is on the basis of the Tribunal must proceed to make its findings. Moreover, I am prepared to accept the submission of Mr Holmes that, in practical terms, it will simply not be possible for the appellant to obtain replacement CSID whilst he is still in the United Kingdom; there is no evidence to suggest that the possession of a photocopy of a CSID will be sufficient for the appellant to obtain a replacement card. The appellant will, therefore, return with his family to Baghdad with a *laissez passer* issued by the United Kingdom government and, presumably, his photocopy CSID. Without the necessary documentation, the appellant would be unable to board a plane in Baghdad and fly to Erbil notwithstanding the fact that such scheduled flights are now available. It is also not been established, in my opinion, that the appellant could obtain a replacement card from Iraq through the agency of his sister; given the complete lack of evidence, I have discounted the possibility that some male member of the family by marriage either exists or would be able to offer practical assistance. I find that the appellant and his family would be unable to advance from Baghdad to the IKR because they would face the dual problem of having no passports (making travel by air impossible) and no CSIDs (rendering travel overland dangerous). I find that, on the particular facts of this case and notwithstanding the fact that the family is from the IKR, the family would face an inevitable delay in Baghdad where they would be living without CSIDs. The country guidance is clear in such circumstances; the family, as Kurds in Baghdad, would be at real risk.
7. As matters stand out is that the date of today's hearing, I find that the appellant is entitled to humanitarian protection. That situation may, of course, change. Travel overland from Baghdad to the IKR may in the future become a possibility. Moreover, if the Secretary of State's policy of returning all Iraqi citizens to Baghdad is changed and those from the IKR and of Kurdish origin fly directly from London to Erbil, then the particular problems faced by this appellant at the present time may be circumvented.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 7 August 2018 is allowed on humanitarian protection grounds.

Signed

Date 22 July 2019

Upper Tribunal Judge Lane