



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11436/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2 April 2019

Decision & Reasons Promulgated
On 10 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

AHS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Claire, Counsel instructed by A2 Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 23 June 1980 who appealed to the First-tier Tribunal against the decision of the respondent, dated 24 October 2017, to refuse his protection claim.
2. The history of this case is that the appellant claims to have entered the UK initially on 16 May 2005 when he claimed asylum which was refused. His appeal against that refusal was dismissed by Immigration Judge Martin, in a decision promulgated on 22 August 2005, following a hearing on 17 August 2005. The appellant made further

submissions, which were all refused, on 11 June 2009, 15 April 2010 and 14 April 2013. Further submissions were then made on the appellant's behalf on 14 November 2014 and it is the decision on those submissions, made in October 2017, which was considered by the First-tier Tribunal. The appellant's appeal to the First-tier Tribunal was originally heard on 5 December 2017 and dismissed. That decision was set aside by the Upper Tribunal in a decision promulgated on 19 April 2018, whilst preserving the recording of the appellant's evidence. The appeal was remitted to the First-tier Tribunal and came before Judge Pooler on 22 January 2019. In a decision promulgated on 31 January 2019, Judge Pooler dismissed the appellant's appeal on all grounds.

3. Although the appellant appealed on four grounds for permission, the appeal before me was with limited permission. The first three grounds related to credibility and the judge's approach to **Devaseelan [2002] UKIAT 00702**. Designated First-tier Tribunal Judge McCarthy rejected those grounds for reasons given in the permission decision dated 27 February 2019. A notice of decision of permission to appeal to the Upper Tribunal on limited grounds was issued on 6 March 2019. Although it was noted that the appellant had the right to apply to the Upper Tribunal for permission to appeal on issues on grounds not granted by the First-tier Tribunal, no such application was made; Mr Claire confirmed that this was the case and that the only ground pursued was the fourth ground of permission.

4. The fourth ground in the grant of permission to appeal reads as follows:

"Ground (4) – Failure to make findings on a material issue

14. *It is submitted that it is arguable that FTJ Pooler has repeated the same error as FTJ Auja which led to the previous grant of permission.*

15. *When permission was previously granted by FTJ Doyle, the grant of permission read:*

*'3. The appellant comes from Samarr, the capital of Salah Aldin. On 22 June 2017, the Court of Appeal issued updated country guidance on Iraq. In the annexed to the decision of **AA (Iraq) CG [2017] EWCA Civ 944** the Court of Appeal said*

The intensity of this armed conflict in the so-called "contested areas", comprising of the governates of Anbar, Diyala, Kirkuk (aka Ta-min), 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 amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.

4. It is arguable that the Judge has not adequately considered the appellant's Humanitarian Protection appeal and that his Article 3 ECHR assessment is flawed. [...].'

16. *The appellant submits that the same has occurred in the present determination of the First-tier Tribunal."*

5. It was agreed by Mr Claire, following a preliminary point raised by Mr Bramble, that an error appears to have crept into the previous proceedings in relation to where the appellant is from. First-tier Tribunal Judge Doyle, in the permission granted in relation to the previous decision of Judge Aujla stated erroneously that the appellant comes from "Samarra, the capital of Salah Aldin". It was not disputed that Samarra is one of the contested areas. However, as correctly found by Judge Pooler and conceded quite properly by Mr Claire as recorded in the refusal letter dated 24 October 2017 and not disputed by the appellant, the appellant comes from Samawa in southern Iraq and not "Samarr(a) in Salah Aldin". There is no error therefore in Judge Pooler's finding, at [39], that "the appellant is from the south of Iraq and the difficulties identified in the country guidance at [11] would not apply to him".
6. The judge was referring to paragraph 11 of the summary of the Court of Appeal's country guidance in **AA (Iraq)** which provides including as follows:
 - "C. The CSID
 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.
 10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.
 11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the 'Central Archive', which exists in Baghdad, is in practice about to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear."
7. It was Mr Bramble's primary submission that there was therefore no arguable ground of appeal before the Upper Tribunal. There is some force in that argument

given that the ground (4) on which permission was granted was entirely based on a false premise as to where the appellant was from.

8. I have taken into consideration that Designated Judge McCarthy's permission grant appears to be on a different basis to the ground argued at ground (4) in that Designated Judge McCarthy asserted that it was arguable that Judge Pooler had failed to apply the country guidance case to the issue of whether the appellant is likely to be able to obtain a CSID in a reasonable time if he is returned to Iraq. Judge McCarthy was of the view that this ground was arguable as it was arguable that the consideration of this issue at [40] to [42] was insufficient and based on speculation rather than assessment of the facts. However, ground (4) as argued in the grounds for permission to appeal did not specifically cite any arguable errors with the CSID in itself but instead argued that the judge had failed to consider the appellant's humanitarian protection appeal under Article 3 appeal on the basis that he was from a contested area (which he is not).
9. In considering the new ground of appeal introduced by Designated Judge McCarthy it is unclear whether Judge McCarthy took into consideration what was said in AZ (Error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 which confirmed including as follows:

"Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

 - (a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:
 - (i) for the original appellant; or
 - (ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or
 - (b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address."
10. I am not satisfied that such criteria is made out (and Mr Claire did not identify how this might be the case). Even if it were I am not satisfied that Designated Judge McCarthy's new ground establishes any error of law.
11. In reaching this conclusion I have considered the submissions of both parties and the relevant country guidance including AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 which provides including as follows:

"Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

 - (1) Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

- (i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
- (ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
- (iii) 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 the redocumentation, would face very significant obstacles in that officials may refuse to deal with her case at all."

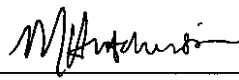
12. It was Judge Pooler's findings that the appellant in this case failed to prove his case to the lower standard and that there was no basis for a finding that the appellant would be at real risk of serious harm, either in his home area or on return to Baghdad (paragraph [31]). The judge took into consideration the country guidance including in AA (Iraq) and BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 and considered at [40] the appellant's ability to obtain a CSID.
13. The judge reminded himself that the onus was on the appellant and concluded at [42] that the appellant had failed to prove there was a reasonable likelihood that he would be unable to obtain a CSID by the time funds provided to him have been exhausted. In the circumstances, where the appellant was found to be not credible by successive Tribunals, and where no further evidence has been produced that might adequately address this issue (and Mr Claire confirmed that there had been no Rule 15 application made for the admission of any further evidence) it is difficult to see how there can be any error, material or otherwise, in Judge Pooler's reasoned conclusions that the appellant had failed to demonstrate that there was a reasonable likelihood that he would be unable to obtain a CSID.
14. I take into consideration, which Judge Pooler will have had in mind, that the Reasons for Refusal Letter indicated that the appellant in the screening interview stated that he had a national identity card which he left in Iraq with the respondent noting that there was no record of him ever attempting to secure the necessary documentation

despite the fact that the appellant was then in contact with his family who had forwarded evidence.

15. Although, as noted by Mr Claire, the judge had accepted that the appellant's evidence was unchallenged that his mother had died in 2017 and that his uncles and cousins had left for the United States and that he had no continuing contact with his sister and in fact that she had left Iraq and he did not know her whereabouts, it is not disputed that the appellant's home area is not a contested area and therefore the difficulties that might arise for individuals from contested areas did not apply for the appellant. In circumstances where the appellant has been found to be lacking in credibility, and where his failure to previously produce documentation was noted, there is no material error in the judge's conclusion that he failed to prove to the lower standard that he would be unable at this time to obtain a CSID by the time funds provided to him have been exhausted (and indeed there was no suggestion that he could not be provided funds, for example from his relatives in the United States).
16. For the avoidance of doubt, I rely on my primary conclusion that there is no permission ground before the Upper Tribunal and in the alternative that such ground is not established. The decision of the First-tier Tribunal does not contain an error of law and shall stand. The appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

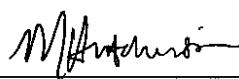
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed 
Deputy Upper Tribunal Judge Hutchinson

Date: 8 April 2019

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed 
Deputy Upper Tribunal Judge Hutchinson

Date: 8 April 2019