



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

Appeal Number: PA/12619/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 June 2019**

**Decision & Reasons Promulgated  
On 20 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**BRA (IRAQ)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Dr Chelvan, Counsel instructed via Direct Access

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Phull sitting at Birmingham on 14 January 2019) dismissing his appeal against the decision of the Secretary of State for the Home Department ("the Department") to refuse to grant his protection claim in which he maintained that he had a well-founded fear of persecution or serious harm at the hands of Turkmen and the Popular Mobilisation Force ("PMF") in his former home area of Tuz Khurmatu, and that internal relocation to the KRG (aka "the IKR") was not a viable option as he had left his CSID behind, and he could not make contact with his family to help him obtain a CSID.

## **Relevant Background**

2. The appellant is an Iraqi national of Kurdish ethnicity, whose date of birth is 21 November 1991. As summarised in the RFRL, his claim was that he had lived in Tuz Khurmatu with his parents. They had supported themselves as a family through farming. On 5 October 2017 three Turkmen trespassed on their land and began cultivating it for their own needs. His father filed a complaint with the Asayish Security Service and on 7 October 2017 the three Turkmen were arrested.
3. On 16 October 2017 fighting broke out between Kurdish Peshmerga forces and the PMF. Following the attack, the Kurdish authorities lost all power and the PMF gained total control of Tuz Khurmatu. On 23 October 2017, when the appellant was at the house of his uncle, his mother telephoned to inform him that a combined force of PMF and Turkmen had come to the family home and had kidnapped his father as the result of the land dispute. She also said that they were asking questions as to his whereabouts and she warned him not to return home. His uncle advised him that the best thing for him to do was to go abroad, and his uncle had arranged for an agent to take him out of Iraq.
4. In the RFRL, the Department accepted that on 16 October 2017 there was a clash in Tuz Khurmatu between Iraqi Government forces, supported by the PMF, and Kurdish Peshmurga forces (aka “the PUK”). A number of civilians were killed in an indiscriminate attack, while hundreds of properties were looted, set on fire and destroyed. However, he had failed to demonstrate that he was personally involved in a land dispute and his claim that there was an adverse interest in him on that basis was considered to be inconsistent and not credible. Accordingly, it was not accepted that he had been targeted by Turkmen and the PMF over a land dispute.
5. On the issue of risk on return, it was accepted that he had lived in Tuz Khurmatu which was part of Saladin (aka “Salah Al-Din”) Governate. As this was a contested area, it was accepted that it was not feasible that he could return to Tuz Khurmatu. But there was no Article 15(c) risk for an ordinary civilian in Baghdad city, and so relocation was available to him.
6. In his grounds of appeal to the First-tier Tribunal, the appellant said that he could not relocate to either Baghdad or the KRG.

## **The Hearing Before, and the Decision of, the First-tier Tribunal**

7. Both parties were legally represented before Judge Phull. The Judge received oral evidence from the appellant, who said that the agent had taken his passport and he had left his CSID in Iraq. He had not had any contact with his family since he left, despite making efforts to call them. He could not return to Baghdad without a passport, and as he had no documents, relocation to the KRG was not an option.

8. In his closing submissions on behalf of the Department, the Presenting Officer submitted that it was implausible that the appellant had not had contact with his family since he left. He had family in Iraq and he could turn to them for help in obtaining a CSID. He could then fly directly from the UK to Erbil. Internal relocation was available to him.
9. In reply, the appellant's representative submitted that the appellant had tried to call his family without success and had looked to the Red Cross for help in tracing them. He had no means to obtain a CSID or passport. The Iraq Embassy in the UK could not help him. The appellant had no documents and so he could not return to either Baghdad or the KRG. So his appeal should be allowed.
10. In her subsequent decision, the Judge found that the appellant had not made out his case that his father had been kidnapped, or that there was an adverse interest in him because of a land dispute. He had also not made out that he would attract the adverse attention of the Turkmen and the PMF on return to Iraq.
11. At paragraph [24], the Judge held that the appellant originated from Tuz Khurmatu in the Sulaymaniyah region of the IKR:

"The refusal says the appellant would be returned to Erbil in IKR because he originates from Sulaymaniyah, a non-contested area and where the PUK are in control (CPIN August 2017)."
12. At paragraph [25], the Judge did not accept that he was not in contact with his family, because she found it inconceivable that he would not have contacted them to tell them that he had arrived safely in the UK. She found that the appellant's CSID document was at the home of his parents. She continued:

"I find he could contact his mother or maternal uncle, to request a copy of his CSID document/passport to be sent to him. I find, even if he cannot return to IKR directly, as held in "AAH" he could return to the IKR via Baghdad once he is in possession of a copy CSID document/passport."
13. At paragraph [26], the Judge held that the appellant could return to Erbil or Sulaymaniyah, where as an ordinary civilian he would receive the same level of protection as the rest of the population. He had family that could support him. He could rely on his CSID card, which he had left with his family at home, to access basic needs. He had skills, which he could rely upon to find work.

### **The Application for Permission to Appeal to the Upper Tribunal**

14. In the application for permission to appeal, the writer said that the Judge had made a major factual error at paragraph [24]. Tuz Khurmatu was outside the IKR, and it was a contested area. The writer went on to refer to the case law of **AAH**, which at paragraph [19] stated that if a Kurd found employment in the IKR, he could remain for longer. But **AAH** had

also held, at paragraph [10], that, “*P cannot work without a CSID*”. The appellant had always maintained that he could not get his CSID. So how could he be expected to work? The Judge had thus erred in law in finding that the appellant could relocate to the IKR.

### **The Reasons for Granting Permission to Appeal**

15. On 16 April 2019 First-tier Tribunal Judge Blundell granted permission to appeal for the following reasons:

“2. Whilst much of the application for permission seemingly represents a disagreement with the findings made by the judge, it is certainly arguable that she erred as contended at [5] onwards of the grounds of appeal. The appellant was accepted by the respondent to be from Tuz Khurmatu in the Salah-Ad-Din province, which was accepted at [54] of the refusal letter to be part of the contested areas. The Judge arguably erred at [24] onwards, therefore, when she treated the appellant as originating from Sulaymaniyah in the IKR. If there was an error in that regard, it is certainly arguable that it had infected the Judge’s conclusion about the viability of the appellant returning to the IKR, at [26].

3. Whether any such error is ultimately material is a matter for the Upper Tribunal, particularly in light of the findings at [25] and [26] that the appellant’s CSID card is at the family home and could be sent by his mother.”

### **The Hearing in the Upper Tribunal**

16. At the hearing before me to determine whether a material error of law was made out, Dr Chelvan, who did not appear below, submitted that the Judge had materially erred in law, because her findings at [25] and [26] with respect to the CSID were unsustainable and/or procedurally unfair, having regard to the case that was put forward by the Department in the RFRL.
17. Ms Holmes accepted that the Judge had made “*a big mistake*” in locating Tuz Khurmatu within the IKR. However, she submitted that her error was immaterial, as her findings at [25] and [26] were both sustainable and procedurally fair.

### **Discussion**

18. It is not in dispute that the Judge made a mistake of fact in paragraph [24] of her decision. Tuz Khurmatu is not in the province or governate of Sulaymaniyah. More importantly, it also not inside the IKR.
19. It is also common ground that the Judge’s error is not material if her findings at paragraphs [25] and [26] hold good. If he is equipped with a CSID, the appellant can travel via Baghdad to the IKR, in the event that he cannot fly directly from the UK to Erbil. Similarly, if he is equipped with a CSID in the IKR, the appellant can live and work in the IKR, whether or not

he has family to support him in the IKR. There is no Article 15(c) risk in the IKR.

20. Dr Chelvan challenges the findings made in paragraphs [25] and [26] on the ground that they diverge from the case put forward in the RFRL.
21. Paragraphs 66 to 90 of the RFRL are devoted to the topic of the CSID. The section concludes with the following assertion at paragraph 90: *"Therefore, if it were feasible for you to return to Baghdad, it is considered that you are able to apply for a CSID in Baghdad without returning to Salah-ad-din and that you have the support of your family in order to do that."*
22. Dr Chelvan submits that the Department thereby conceded that the appellant needed to return to Baghdad in order to apply for a CSID in Baghdad; and hence they also conceded that the appellant could not obtain a CSID by the alternative route of getting his mother to send him the CSID he had left behind.
23. However, I do not consider that the RFRL can reasonably be construed as containing the concession of fact contended for by Dr Chelvan. Firstly, the summary of the appellant's claim in the RFRL was very brief and it did not include the appellant's evidence in his substantive asylum interview that he had left his CSID at home. As the RFRL neither accepted nor rejected this piece of evidence, I do not consider that the discussion at paragraphs 66 to 90 of the RFRL can reasonably be treated as being predicated upon an acceptance that the appellant was unable to obtain the CSID he had left behind in Iraq.
24. Moreover, as I demonstrate below, I consider that the RFRL clearly put in issue the appellant's case (a) that he was not in contact with his family and (b) that he was not able to obtain a CSID via his family. Accordingly, at the hearing in the First-tier Tribunal the burden remained on the appellant to prove these matters.
25. At paragraph 83, it was asserted that the appellant had provided no evidence that he had made a genuine attempt to obtain evidence of his identity or status documentation, *"such as by contacting the Iraqi Embassy in London via friends or relatives in Iraq (my emphasis)."*
26. At paragraph 88, the following was stated: *"It is therefore concluded that you would not be required to return to Tuz Khurmatu in order to obtain a CSID."* The appellant was indeed not required to return to Tuz Khurmatu in order to obtain a CSID, as one of the ways in which he could obtain a CSID was for his mother to send it to him.
27. At paragraph 89, the following was stated:
 

"It is also noted that a material fact of your claim has been rejected, therefore your credibility has not been established to assume that the claims that you have made about your level of contact with your family

members in Iraq, or lack thereof, are accurate. By your own accretion (sic) you have your parents and an uncle in Iraq who you claim supported [you] in facilitating your exit from the country. You have provided no reason why your family would be unwilling to assist you again."

28. The discussion begins at paragraph 66 of the RFRL with a recognition that the overarching requirement imposed on the decision-maker is to decide whether 'P' has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq.
29. The scenario which is being addressed in paragraph 90 is the alternative one in which return to Iraq is feasible, but P does not have a CSID, and cannot obtain it from the Civil Status Affairs Office of P's home governate "*or from his family direct.*" So the question in such circumstances is whether P can obtain a CSID reasonably soon after his arrival in Iraq ("Scenario B"). In expressing the view that the appellant could obtain a replacement CSID in Baghdad, reasonably soon after his arrival in Baghdad, the Department was not conceding that the appellant did not have a CSID at home which he could obtain from his family direct ("Scenario A").
30. On a fair reading of the RFRL, both Scenarios A and B were in play. Put another way, Scenario A was not expressly excluded. Moreover, insofar as it is material, there is nothing to indicate that the appellant's legal representatives were taken by surprise by the case put forward by the Presenting Officer, as summarised in [8] above.
31. Having found the appellant not credible in his core claim and in his explanation as to the trigger for his departure from Tuz Khurmatu, it was clearly open to the Judge to find that the appellant was not credible in his account of not being able to make contact with the family whom he had left behind in Tuz Khurmatu, and who had paid for his journey to the UK. The findings made by the Judge at paragraphs [25] and [26] are sustainable ones, and they are not vitiated by procedural unfairness.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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

Date 9 June 2019

Deputy Upper Tribunal Judge Monson