Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12788/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 7th August 2019	**On 12th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HUNAR [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss E. Rutherford (Counsel)
For the Respondent: Miss H. Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 20th March 2019, following a hearing at Birmingham on 26th February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant 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 7th November 1996. He appeals against a decision of the Respondent dated 22nd October 2018. This was with respect to the Appellant's claim for refugee asylum status and humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he comes from the village of Albu Najm, and that his father had been a member of the Peshmerga and was injured. The Appellant himself was injured as a young child. In 2014 ISIS raided his village and the Appellant was at his father's fish farm, whereupon he escaped to an uncle's house leaving nine months later under arrangements made by the uncle. He had travelled through a number of countries before arriving in the UK. He could not return back to his place of origin because he was at risk of ill-treatment and did not have a CSID card.

The Judge's Findings

4. The judge held that,

> "I would accept that the Appellant may have worked in a fish farm but I find that the Appellant has not shown that he came from the village of Albu Najm although it may well be that is where his family had lived years ago and that they knew the witness called in support. Even if the Appellant did come from the village he says that he did and left in the circumstances of an ISIS attack, taking that part of his case at its highest, that does not affect the final conclusion …" (paragraph 28).

5. The judge did not accept the Appellant's evidence that he did not have a CSID card "or that he is unable to obtain one" (paragraph 30). He also observed that,

> "Although ISIS has clearly been defeated in Iraq and cannot present a threat to the Appellant the area he comes from remains contested and so as matters stand apparently cannot return there. However, the Appellant is of Kurdish origin, speaks the Kurdish language and, I find, can go to the IKR" (paragraph 30).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge's decision amounted to an error of law, because he had failed to make clear findings on where the Appellant was from, and failed to properly take into account the material evidence. Moreover, the judge had failed to have regard to the country guidance in assessing the prospect of internal flight to the IKR and how the Appellant could actually obtain a CSID card, which he maintained he had left back in Iraq. There had also been a failure to give adequate reasons to properly explain why the Appellant's evidence of attending the Iraqi Embassy in order to obtain replacement documentation had been rejected.

8. On 18th April 2019 permission to appeal was granted.

9. On 21st May 2019 a detailed Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge had made clear findings that the Appellant was not from Albu Najm village in Kirkuk province (see paragraph 28). It was not accepted that the Appellant did live in Albu Najm by the judge. The judge had made no such finding. Indeed, the judge had gone on to say that even if the Appellant did come from that village, the Appellant's case, when taken at its highest, would still be refused and the judge had given reasons for that.

Submissions

10. At the hearing before me on 7th August 2019, the Appellant was represented by Miss Rutherford of Counsel again. She began by saying that the Rule 24 response, although extremely detailed in what it states, does not engage with the essence of the argument raised on behalf of the Appellant. It was incumbent upon the judge to make a finding as to exactly where the Appellant was from. To assert that he "may well be" from the village of Albu Najm (paragraph 28) amounted in fact to an acceptance that he was from that village in Kirkuk, and if that was the case, the judge had to follow through the logical consequences of such a finding. Secondly, for the judge to simply state that the Appellant was from a "contested" area, but could return there because he was not of Kurdish origin and spoke the Kurdish language, did not help if the suggestion was that he could return to the IKR (paragraph 30), because no explanation was given as to how he may do so, when his case was that he did not have a CSID card. The plain fact was that the judge had not engaged with the evidence in this case. The determination could not stand.

11. For her part, Miss Aboni relied upon the Rule 24 response. She stated that the judge had made clear findings of fact. He did not accept that the Appellant was from Kirkuk. He did not accept that the Appellant was from the village of Albu Najm. Therefore, in considering whether the Appellant would be at risk, the judge had concluded that he would not be at risk. The fact that the Appellant did not have a CSID card with him in the UK, did not mean that he could not get it in Iraq where he had left it. He could contact his family. In any event, the judge had made it clear that internal relocation was available to the Appellant in the IKR, via Baghdad, and that conclusion was not unreasonable.

12. In reply, Miss Rutherford submitted that the judge had not engaged with the evidence, and insofar as the Secretary of State had refused to accept the account given by the Appellant, the judge had not engaged with the Appellant's rebuttal by way of an answer against that rejection.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that I should set it aside (see Section 12(1) of TCEA 2007). My reasons are as follows. First and foremost, the Appellant's claim that he was from the village of Albu Najm, in Kirkuk, has not been definitively decided. The

statement that "the Appellant has not shown that he came from the village of Albu Najm although it may well be that this is where his family had lived years ago and that they knew the witness called in support" (paragraph 28) could just as well be read as amounting to an inference that the Appellant did come from that village, because that would be the logical conclusion from the acceptance that his family had lived in that village.

14. The failure to provide a definitive conclusion is compounded with the subsequent statement that "the area he comes from remains contested and so as the matters stand he apparently cannot return there" (paragraph 30). In the same way, the evidence of the witness "AM", who was currently a British citizen, of Iraqi Kurdish ethnicity, was that he was born and lived in a village near Albu Najm, and that he knew both of the Appellant's parents and his paternal uncle in Iraq and that the Appellant's family were from the village of Albu Najm in Kirkuk. In the circumstances, it is difficult to see why that evidence did not go to the making of a definitive decision as to where the Appellant came from. At the very least, it is not clear why his evidence was rejected.

15. Second, the judge's conclusion that the Appellant can "go to the IKR" and that he can do so "through Baghdad or otherwise" (paragraph 31) is not properly reasoned in the light of the country guidance cases. If the Appellant was not originally from the IKR (but from Kirkuk), then the Home Office's current CPIN, was relevant to the effect that admission to the IKR is at the discretion of the border officials there (see paragraph 7.1.1); that if a person did not originate from the IKR, then they must upon arrival at the airport travel to the area from where they originally came (paragraph 7.1.5); and that if a person sought to enter the IKR from a place such as Kirkuk for example, then they would be removed to Kirkuk. In the circumstances, the potential risk of ill-treatment to the Appellant, needed to be properly evaluated in the light of **AAH [2018] UKUT 212** (given what was stated at headnote paragraph 7 in that case).

16. Finally, the judge did not accept that the Appellant "does not have a CSID or that he is unable to obtain one". The Appellant's evidence was that he did have a CSID when in Iraq and that it was kept by his father in the family home. If the judge's conclusion was that the Appellant was in possession of a CSID in the UK, then no reasoning is provided for such a finding. The Appellant's own evidence was that his CSID card was left in Iraq when he fled. If that is the case, then there needs to be an inquiry as to whether he can get a replacement CSID. That needs a consideration of the evidence in that regard. The Appellant's evidence was that he had attended the Iraqi Embassy in London without success. For all these reasons, the decision below amounted to an error of law.

Decision

17. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. I remake the decision. This appeal is remitted back to the First-tier Tribunal pursuant to practice statement 7.2(b) of the Practice Directions, to be heard by a judge other than Judge Parkes for the reasons I have given above.

Decision

18. No anonymity direction is made.

19. The appeal is allowed.

Signed	Dated
Deputy Upper Tribunal Judge Juss	10th September 2019