Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13026/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th June 2019	**On 08th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

M R I A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Allam of Counsel
For the Respondent: Mr I Jarvis, Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant, born on 13th April 1996, is a citizen of Iraq. The Appellant was represented by Mr Allam of Counsel. The Respondent was represented by Mr Jarvis a Presenting Officer.

Substantive Issues under Appeal

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2. The Appellant had made application for asylum. The Respondent had refused that application on 25th November 2017. The Appellant had appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Sangha sitting at Birmingham on 20th March 2019. The judge had dismissed the Appellant's appeal on all grounds.

3. Application for permission to appeal was made and granted by the First-tier Tribunal on 14th May 2018. It was said that it was arguable the judge had erred in law by not addressing the procedure for obtaining a replacement Civil Status Identity Document and was not assisted by the failure of either party to refer to the country guidance decision of **AAH** or the Respondent's own Policy and Information Notes. Directions were issued for the Upper Tribunal firstly to decide whether an error of law had been made in this case and the matter comes before me in accordance with those directions.

Submissions on behalf of the Appellant

4. It was noted the judge had made no reference to the appropriate country guidance case of **AAH [2018]** in this case in which the head notes were relevant to the Appellant's case. It was submitted that credibility findings were not sustainable. It was noted that there were inconsistencies referred to in paragraph 36 but that they did not in terms amount to inconsistency. It was further said that findings in paragraphs 37 and 39 were not sustainable. It was noted that the CPIN February 2009 was before the First-tier Tribunal and had been put in by the Appellant's representatives.

Submissions on behalf of the Respondent

5. Mr Jarvis referred me to the case of **MA (Somalia)**. It was submitted that the judge had given adequate reasons on matters and had demonstrated inconsistencies within the Appellant's account. It was said that the judge had made two core findings in respect of the Appellant's circumstances in Iraq that were entirely relevant and central to the issue of obtaining a CSID card and that there was no error made by the judge in this case.

6. At the conclusion I reserved my decision to consider the submissions and the evidence in this case.

Decision and Reasons

7. Permission to appeal was granted on all grounds. However, the judge had essentially found no arguable error of law in respect of what may be described as the "KDP element" and the "ISIS element" of the Appellant's case. He had found an arguable error in stating that the judge had not on the face of it taken account of either **AAH [2017]** or the Respondent's latest CPIN of February 2019.

8. Mr Allam submitted that the judge's credibility findings in respect of the Appellant's claimed fear of the KDP and ISIS were unsustainable. That is not the case as found by the judge granting permission.

9. The judge's decision was detailed and he had set out and had in mind the account provided by the Appellant and the supporting evidence. In respect of the Appellant's claimed fear of the KDP the judge's findings were in large part at paragraphs 36 to 38. He had provided an adequacy of reasoning as to why he did not accept that claim to be credible. Leaving aside the findings of inconsistency noted by the judge he had noted at paragraph 37 a salient feature. The Appellant's claimed fear of the KDP arose out of his father's alleged involvement with the PUK in the 1990s and the supply of names of five people belonging to the KDP to the rival PUK by his father; resulting it was said in the deaths of those five people. The judge noted that the Appellant had lived in the same village from his birth in 1996 until leaving Iraq in 2015. The Appellant had suffered no adversity or problems throughout the entirety of that time from the families of the alleged five victims. Further, there was no evidence that even the Appellant's father or any other family member had been targeted or suffered adversity. It is clear that the judge had provided an adequacy of reasoning to reach his conclusion upon the "KDP element" of the claimed risk.

10. The second limb of the Appellant' claimed fear of return was from ISIS. At paragraph 39 the judge had provided an adequacy of reasons why he did not accept as credible the Appellant's account of how that specified difficulty arose. In any event, as noted by the judge granting permission, ISIS is now a militarily spent force in the Kirkuk region and the KAR. There was no arguable error of law in respect of this second limb of the Appellant's claim.

11. Dealing with the matter upon which it was said there was an arguable error of law, there is a slight inaccuracy in the statement that the judge was not referred by either party to the Respondent's CPIN February 2019. It is clear from paragraph 6 of the judge's decision that in the Appellant's bundle he noted that CPIN. He had stated that he had taken into account all the documents placed before him which included that document. There is nothing to suggest that not to be the case.

12. The judge had found for adequate reasons provided that there was no credibility attaching to the two core features of the Appellant's case (fear of the KDP and fear of ISIS). He had as an ancillary finding on credibility found the Appellant had not told the truth about an earlier claim for asylum he made in Hungary in 2015 (paragraph 44).

13. He had also made clear findings regarding the Appellant's documentation and family; wholly or partly based on the Appellant's own evidence. He noted the Appellant's evidence that he had had an ID card which had been left with his uncle with whom he had lived for a short period (paragraph 41). He also noted at paragraphs 41 to 42 reasons why he did not accept

that the ID card had been destroyed as suggested or at all. He had further found for reasons given in paragraphs 40 and 45 that the Appellant's uncle and his own family continued to live in Kirkuk and the Appellant's CSID card was there and available to the Appellant. He had also noted the ability of the uncle to send documents from Kirkuk to the Appellant in the UK.

14. In **MA (Somalia) [2010] UKSC 49** the Supreme Court had endorsed that which had been said by Laws LJ in the Court of Appeal:

> "The lie may have a heavy bearing on the issue in question, or the Tribunal may consider that it is of little moment. Everything depends upon the facts".

The Supreme Court had further explained matters at paragraph 30 where they said:

> "We think that what Laws LJ had in mind was a case where (i) the claimant's account is rejected as wholly incredible (it is riddled with contradictions and the Tribunal is left in a state of being unable to believe anything that the claimant has said) but (ii) there is undisputed objective evidence about conditions in the relevant country which goes a long way to making good the shortcomings in the claimant's own evidence. In **GM (Eritrea)**, for example, the AIT did not believe the account given to them by MY as to how she had left the country. They could not, therefore, rely on her account as a basis for concluding that she had left the country illegally. But if there had been objective evidence that no 17 year old girl was allowed to leave its country, her appeal would surely have succeeded despite her dishonest evidence. In fact, the objective evidence did not go nearly that far".

15. In this case the judge had rejected entirely the two central reasons why the Appellant claimed to have left Iraq and feared a return. There was no credible subjective fear preventing the Appellant returning. In terms of the situation in Iraq when considering risk or otherwise on return the judge had for adequate reasons provided made two important findings:

(1) The Appellant had had a CSID card and it was likely that card still existed and was held by his uncle who had demonstrated an ability to forward documents to the Appellant.

(2) The Appellant's uncle and his own family now more than likely still remain living in Kirkuk.

16. He had concluded therefore that in terms of return the Appellant had a CSID or alternatively had the mechanism in place to obtain a replacement with relative ease. Additionally, he had also concluded that there was nothing stopping him approaching the embassy in the UK to obtain a passport.

17. As indicated above, the judge had before him the CPIN February 2019. He did not refer to **AAH [2017]** which is a country guidance case (although it may be overdue for revision). However, that failure to refer to **AAH** was not material. When one looks at the relevant head notes in **AAH** the judge's findings indicate that there were no risks or difficulties attendant upon the Appellant that would have entitled him to any form of international protection. Accordingly, although there was a failure to refer to a country guidance case, it was not material.

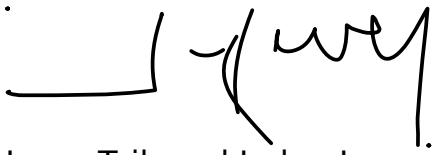
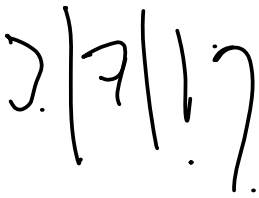
Notice of Decision

18. No material error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.

    An anonymity direction is made.

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 Lever