



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

Appeal Number: PA/13082/2018

THE IMMIGRATION ACTS

Heard at Field House

On 3 May 2019

**Decision & Reasons
Promulgated
On 21 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR S M H
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Ms J Fisher of Counsel, Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. The Respondent, to whom I shall refer as the Claimant, is a national of Iraq born on 28 May 2001. He arrived in the UK unlawfully on 10 May 2017 and claimed asylum on arrival. His application was refused in a decision dated 5 November 2018, but he was granted a short period of discretionary leave as an unaccompanied minor until 28 November 2018.
2. The Claimant appealed and his appeal came before Judge of the First-tier Tribunal Boylan-Kemp for hearing in Birmingham on 21 January 2019. In a decision promulgated on 15 February 2019, the judge dismissed the

appeal on protection grounds but allowed the appeal on the basis of humanitarian protection.

3. The Secretary of State appealed in time against that decision on a number of grounds described as *Making a material misdirection of the law/Lack of adequate reasoning/mistake of fact*. It was asserted:

(i) The judge erred in failing to give adequate reasons particularly at 23 to 27 when assessing the Appellant's ability to obtain a CSID.

(ii) In allowing the appeal on HP grounds without specifying what the "significant difficulties" were that the Appellant would encounter in trying to obtain a CSID at 25.

(iii) There was nothing preventing the Claimant returning to Iraq/the IKR in the absence of risk. There was clearly family there who could help the Claimant.

(iv) There was no evidence to show the Claimant was abused by his uncle or aunt in assessing risk on return (19 to 21).

(v) At 20 the judge found:

"20. Upon consideration of the evidence I find that it is more likely that his family have willingly paid for him to join his brother in the UK so that he can secure his future here and not because of any specific risk to him in Iraq."

It was asserted that this is a crucial finding by the judge that completely undermines the entirety of the Appellant's claim and that the decision could simply be set aside on this singularly important point.

(vi) It was asserted at [6] that the Claimant's family reside in Makhmour within the Erbil governorate in Northern Iraq and the Claimant has a cousin who could assist him in obtaining a CSID. The Claimant's brother in the UK was clearly in contact with the cousin in Iraq and the judge's finding at 25:

"... although the appellant has male relatives in Iraq who may be able to help him locate his CSID there is no evidence that the appellant's cousin or uncle would be willing or able to help him with the process"

is entirely speculative and contrary to the finding that the cousin actively helped the Claimant with money to leave Iraq.

(vii) The judge's reasoning on the Claimant's inability to obtain a CSID is flawed;

(viii) Paragraphs [8] onwards through to [15] are concerned with removal to the IKR and are essentially a challenge to the judgment in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC), however, as will become apparent, these are not in fact material.

(ix) Lastly, it was asserted that any submissions as to vulnerability due to the Claimant's age are redundant because the Respondent would not remove the Claimant whilst a minor.

4. Permission to appeal was granted by Judge of the First-tier Tribunal Hodgkinson on general terms in a decision dated 19 March 2019.

Hearing

5. At the hearing before the Upper Tribunal, the parties agreed at the outset that some of the grounds were misconceived in that they were premised on the basis that Makhmour was in the IKR in the Erbil governorate, whereas as in fact, as was clear from the report of the expert Sheri Laizer, Makhmour is in Iraq not the IKR.
6. In his submissions, Mr Whitwell on behalf of the Secretary of State submitted that it is clear from [116] of the refusal that it is not accepted that the Claimant is no longer in possession of his Iraqi passport and CSID. However, at [23] of the decision and reasons the Judge states erroneously that it is accepted by the Secretary of State that the Claimant does not have a CSID. At [45] the Judge accepts a false CSID had been submitted (sent to the Claimant by his brother).
7. Mr Whitwell submitted that it is clear from [16] that the credibility of the Claimant is the crux of the claim and at [20] and [21] the Judge rejects the basis of claim.
8. At [25] the Judge finds the Claimant would face significant difficulties in obtaining a CSID and that *AAH* states that it is possible for an Iraqi national to obtain a CSID in a reasonable amount of time, rather than encounter significant difficulties and that there was no evidence the Claimant's cousin or uncle could assist him with the process. However, Mr Whitwell submitted that, on the contrary, the Claimant's cousin could assist him and it was equally likely he or the family could assist him in obtaining a CSID card.
9. Mr Whitwell submitted that at [26] the reference to flights may be academic as the Appellant is not required to travel to the IKR. Mr Whitwell sought to rely on 4.2.1. of the CPIN, which was in the bundle. He submitted that the Judge's finding at [25] regarding the CSID was speculative and was thus flawed and inadequate.
10. In her submissions, Ms Fisher for the Claimant sought to rely on the skeleton argument dated 1 May 2019. She submitted that no mention of the expert report was made at all in the grounds, however, the judge does refer to this report. The Judge has to give adequate reasons and show why the decision has been made.
11. In respect of the assertion in respect of return to IKR at [9] of the grounds of appeal, return would be to Baghdad, not the IKR. She pointed out that Makhmour has always been under government control and parts of it were

seized by ISIS. This was all dealt with by the expert. There is reference to troops and checkpoints at page 38 of the expert report of Sheri Laizer at [x]. The Claimant will be returned to Baghdad and not the IKR. Photographs of the road to Makhmoor are at page 42 (vi). The question is how the Claimant gets from Baghdad to Makhmour without documentation?

12. Having dismissed his asylum claim the Judge then consider article 15C and how the Claimant would get to the IKR. This was addressed at [116] of the refusal decision. In theory Ms Fisher submitted that it is straightforward, but in practice one would need documents such as a birth certificate etc. in respect of which she sought to rely on the expert report. She submitted that a *laissez passer* would be confiscated on arrival in Baghdad. In respect of whether the Claimant could get a male relative to travel to Baghdad from Makhmoor in order to vouch for his nationality for him to get a CSID, Ms Fisher submitted that another added difficulty is that often getting the documents one has to travel to one's former place of residence: [29](iii) of expert report refers. The issue also is whether the local registry office in Makhmoor is operational or whether it is held by ISIS. At [106] of the refusal the Secretary of State accepts that there are no flights to Erbil, albeit the Home Office have subsequently changed their minds about this.
13. Ms Fisher submitted that the Judge's finding that if the Claimant could have obtained a genuine CSID why would he obtain a false one: [18]-[21] and the submissions recorded at [22] onwards. Ms Fisher submitted that the grounds of appeal are misconceived in how they are presented; that the drafter of the grounds did not see the expert report which addressed the issues raised in half the grounds. She submitted that there was no material error of law and that the Judge's findings should stand.
14. In reply, Mr Whitwell submitted that [25] of the decision emphasises the point he was seeking to make and this contained three strands of reasons: (i) no documentation to obtain a CSID; (ii) no certainty the registry office is operational, although he submitted that this is a matter for the Claimant to prove and with regard to (iii) and the finding that there was no evidence the uncle and cousin would be willing to help, however, on the contrary the Claimant's cousin has helped in the past.

Findings and reasons

15. At [26] the Judge found that the Claimant was entitled to humanitarian protection because it was not reasonable to require him to travel between Baghdad and IKR. The Claimant has consistently maintained that he was from Makhmoor albeit he moved to Erbil (in the IKR) in 2013 when ISIS occupied the neighbouring villages [10]. In her submissions, the Presenting Officer argued that the Claimant could live anywhere within the IKR and had experience of living in Erbil, which would assist him on return. Consequently, the Judge was under a misapprehension that the proposed place of relocation was the IKR, rather than focus on Makhmoor and consider whether the Claimant could internally relocate elsewhere within

Iraq, bearing in mind that he would be returned to Baghdad. The question is whether this is a material error.

16. I have concluded that, whilst the grounds of appeal are in large part misconceived in that they are predicated on the erroneous understanding that Makhmour is in Erbil province and thus in the IKR, the Judge also made the same error. However, it is clear from [26] of the decision and reasons that the Judge's findings were predicated on the basis that the Claimant would not be able to make the journey between Baghdad and the IKR due to a lack of documentation. The same argument would apply to Makhmour in light of the expert evidence at 3(xv) and (xviii) and 4 (iii)-(xvi). Thus I find that the error is not material, particularly given that Makhmour is in a disputed area and thus the Claimant could not reasonably be expected to return there.
17. Mr Whitwell sought to challenge the Judge's findings at [25] that the Claimant would face "*significant difficulties in obtaining a CSID because he has no documentation.*" He submitted that the Judge had at [23] misunderstood the refusal decision at [116] which provides: "*it is also not accepted that you are no longer in possession of your Iraqi passport and CSID*" and then goes on to consider the position in the alternative i.e. that the Claimant does not possess those documents.
18. However, the Claimant has always consistently maintained that he did not have any identity documents on his journey and it is not disputed that he entered the UK unlawfully. I find the Judge was entitled at [25] to take into consideration the fact that the CSID sent to the Claimant by his cousin was a false document and that this was indicative of the difficulties he would face in obtaining a genuine CSID, otherwise one would have been obtained and I find that the Judge provided adequate reasons for his decision in this respect in the context of both the expert report and the CG decision in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC), the headnote to which he sets out at [24].
19. I find that the remainder of the grounds of appeal are either erroneous, as they are based on the erroneous assumption that the Claimant is from the IKR or amount to no more than a disagreement with the Judge's findings of fact, which were open to him on the evidence before him. Whilst the Judge did not accept that basis of the Claimant's asylum claim, it was clearly open to him to allow the appeal on the basis of humanitarian protection and I find no error of law in his decision so to do, particularly bearing in mind that the Claimant remains a minor and is from a disputed area of Iraq.

Decision

20. I find no material error of law in the decision of First tier Tribunal Judge Boylan-Kemp, whose decision to allow the appeal on the basis of humanitarian protection grounds is upheld.

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 Rebecca Chapman

Date 18 May 2019

Deputy Upper Tribunal Judge Chapman