Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14157/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 20 May 2019	**On 26th June 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

[K S]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The Appellant did not appear and was not represented
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. He appealed to a Judge of the First-tier Tribunal against the respondent's decision of 5 December 2018 refusing his protection and human rights claim, subsequent to a deportation order being made on 6 March 2018.

2. At the hearing it was common ground that the appellant could not return to Kirkuk and while he would probably have to return to Baghdad initially, if he could not relocate there he could relocate to the IKR. There was an expert report from Dr Fatah.

3. The judge took into account that report and also country guidance in AA [2015] UKUT 544 (IAC) and AAH [2018] UKUT 00212 (IAC).

4. The judge did not find the appellant to be a credible witness on the central issue about his family in Iraq and his current knowledge of them. The judge accepted the evidence in the screenshots and biodata form that the appellant had family in Iraq in the form of his mother, father, sister and brother and at the time the note was made he was in contact with them. The judge did not accept that through social media, friends who had assisted him in the past or telephone calls he could not provide current information about his family, near and extended, in Iraq and abroad. On the appellant's account he left Kirkuk and was living albeit for a short time in Sulaymaniyah and had relatives there. He had not provided an explanation of where they were or that attempts had been made to contact them.

5. The judge rejected the appellant's case that he could not go to the IKR, had no family support, had no CSID, had no access to a CSID or the information that would allow him to obtain one. The judge found that he has a CSID or would be able to get one issued to him from his family.

6. The judge noted that it now seemed to be possible to fly directly to the IKR. He considered however that there was no evidence that if the appellant returned through Baghdad he would suffer undue hardship while there as he could fly to either of the IKR airports and would have the assistance of his family to do so. Once at the IKR border he would normally be granted entry to the territory and subject to security screening and registering presence with a local mukhtar he would be permitted to enter and reside there with no further legal impediments or requirements. There was no sponsorship requirement for Kurds and his family connections would not cause a risk to him. Cultural norms would require his family, extended or otherwise, to accommodate him so he would have a relatively normal life which would not be unduly harsh. Though he was not from the IKR he had resided there for a time and had relatives there, and that region was virtually violence free. In any event, the judge concluded that on the country guidance alone the appellant could obtain entry for ten days and then renew his permission for a further ten days and noted that there was no evidence that the IKR authorities proactively removed Kurds from the IKR whose permits had come to an end. The appeal was accordingly dismissed.

7. In the grounds of appeal it was argued that the judge had failed to consider the relevant country guidance relating the ability of the appellant to obtain a CSID, and failed to consider the country evidence regarding the dislocation in Kirkuk, and failed to give reasons for not accepting the appellant's evidence regarding losing touch with his family and had failed to consider country guidance regarding direct return to the KRG.

8. It was argued that the judge had failed to consider that the appellant was interviewed and gave evidence regarding contact with his family before Kirkuk was attacked by Islamic State and then retaken by Shia militias and Iraqi Government troops. These events gave rise to the area being considered as being in a state of internal armed conflict. It was also contended that the judge had also erred in limiting his consideration of the evidence of Dr Fatah as he had not considered evidence that approximately 18,000 families had fled Kirkuk in October 2017 and hundreds of properties were reported to have been looted, set alight, and destroyed in an apparently targeted attack on predominantly Kurdish areas. The judge failed to consider whether the appellant would still have available to him the CSID card following the events described by Dr Fatah. It was consistent with the evidence concerning displacement of people in Kirkuk and the appellant had recently found out that his sister and brother had fled the area and Iraq are now living in Europe.

9. It was also argued that even if the appellant were able to contact family members in Iraq it was inconsistent with the country guidance that with their assistance he could obtain a CSID card. As had been said in AA, the process at present of obtaining a CSID from Iraq was likely to be severely hampered if the person wishing to obtain the CSID was from an area where Article 15(c) serious harm was occurring.

10. It was also argued that the judge erred in not referring to the fact that the family was from a contested area and there was the expert evidence regarding massive displacement of people from the area when not accepting his account of losing touch with his family. It was also an error to conclude that it might be impossible for the appellant to return directly to the KRG as it was accepted by the respondent in AAH that all returns to Iraq were via Baghdad.

11. Permission to appeal was granted on all grounds.

12. The matter was listed for 20 May 2019. In the afternoon of 17 May, i.e. the previous Friday, the appellant's representatives emailed to seek an adjournment of the hearing as due to an administrative error they had not realised the appeal was due to take place on the Monday and Counsel had not been instructed. Nor had a bundle been prepared. The adjournment application was put before the President, who refused it on the basis that it was an error of law hearing and the Upper Tribunal and the Home Office almost certainly had all the material already upon which the appellant was likely to need to reply, and the representatives could prepare a bundle to bring to the hearing if they saw fit.

13. There was no renewal of the adjournment application, it simply being indicated by the appellant's representative that they would not be attending following the refusal of the adjournment request.

14. In his submissions Mr Lindsay relied on the Rule 24 response that had been put in and argued that it was clear from paragraph 47 of the judge's decision that he had taken into account the expert report. The determination was properly reasoned. He

made it clear at paragraph 52 why he considered that the appellant was in contact with his family. It could not be disputed that there were direct flights now between the UK and Kirkuk. There was also evidence that Kirkuk was not a disputed territory. As could be seen from the Rule 24 response, in the case of Amin [2017] EWHC 2417 the Secretary of State was entitled to take the realities on the ground into account and Kirkuk was no longer a contested area. Kirkuk had been under the control/protection of the Iraqi Government forces since September 2017 when Kurdish forces withdrew following a failed referendum and they sought to bring Kirkuk into the KRG. In light of this position Sir Ross Cranston concluded that he could not regard the passages in the Secretary of State's letter as regards the claimant's ability to obtain a CSID in that case as being flawed. Country guidance cases must give weight to the realities, as had been recognised in SG (Iraq) [2012] EWCA Civ 940 at paragraph 47. The situation in the area of Kirkuk had not for some time come anywhere near reaching the Article 15(c) threshold, it was argued. The appellant could make use of a family member to get a CSID and the judge had found that he had family members in the area even if he could not fly directly to Kirkuk.

15. With regard to the expert, his credentials were not in dispute, but his evidence had been considered and referred to, and clear reasons had been given for the findings. As regards the specific evidence mentioned at paragraph 9 of the grounds, the judge did not have to refer to every individual item of evidence but had to give full consideration to the main points so the parties would know why they had won and lost. The key point was that the appellant would be returning to an area where there was no real risk of indiscriminate violence. Also the evidence from Dr Fatah had to be considered in the real world. The population of Kirkuk in 1997 was over ¾ million people and that had to be contrasted to his evidence about the hundreds of properties looted and about 18,000 families fleeing and it did not also say how many had returned to their homes as, if hundreds of properties were looted and destroyed, a lot would have been left standing. There was a proper factual basis for the appeal taken by the judge. The judge was entitled to conclude as he did. The points raised in the grounds relied to an extent on Kirkuk being a contested area, but that had not been so for some time and hence the judge was entitled to conclude as he did.

16. I reserved my determination.

17. The judge set out clear reasons for disbelieving the appellant's evidence. These are summarised at paragraph 50 of the decision. It was open to the judge to find that it had not been shown that the appellant did not have family members whom he could contact in the local area in order to obtain a CSID. In light of what was said by Sir Ross Cranston in Amin it was properly open to the judge to conclude that in light of his views on the credibility of the appellant's evidence it was not a matter of trying to obtain a CSID for an area where Article 15(c) serious harm was occurring as set out at paragraph 171 of AA, quoted at paragraph 14 of the grounds, the point also made at paragraph 8 of the grounds. The judge stated that he had considered Dr Fatah's evidence, and his conclusions can properly be seen in the light of Mr Lindsay's argument concerning the relative numbers, in the size of Kirkuk, the quotation that

on Dr Fatah's evidence that hundreds of properties had been looted, set alight and destroyed and approximately 18,000 families had fled. The report, as Mr Lindsay noted, says nothing about the numbers of families that had returned or might return in light of the fact that Kirkuk was no longer a contested area. The judge's evidence is properly rooted in the background evidence and it was open to him to find that the appellant would be able to get a CSID issued to him via his family. Whether return could be as seems to be the case now by direct flight to the IKR or via Baghdad, the judge's findings were in the alternative at paragraph 56, and the further points made at paragraph 57 and 58 are also in my view sound. It was open to him to find that in the particular circumstances of the case this was an appellant who would be able to obtain a CSID on return to an area where there was no longer a real risk of indiscriminate violence resulting from internal armed conflict, and accordingly I consider that his decision dismissing this appeal has not been showing to be legally flawed in any respect.

Notice of Decision

The 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 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 7 June 2019