



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

Appeal Number: PA/05036/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 27 May 2020**

**Decision & Reasons Promulgated
On 29 May 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

and

SRH

(anonymity order made)

Respondent

DECISION AND REASONS (P)

1. The Respondent (SRH) is a national of Iraq. On the 25th July 2019 First-tier Tribunal Judge C Mather allowed his appeal on protection grounds. The Secretary of State was granted permission to appeal against that decision on the 14th November 2019.
2. The hearing of the Secretary of State's appeal was listed before me at Manchester Civil Justice Centre on the 31st March 2020 but that hearing was vacated at the request of the Respondent, who was having difficulty securing representation. It was relisted for the 18th May 2020 but that hearing was adjourned as a result of the measures taken to combat the spread of Covid-19.
3. On the 13th April 2020 I gave directions relating to the disposal of this matter, which I understand were sent to the parties by email on the 15th

April. By these directions I invited the views of the parties on whether this matter was suitable for determination on the papers; I further gave leave for further submissions to be made in writing. To date I have received written submissions from the Secretary of State, dated 28th April 2020 and authored by Senior Presenting Officer Mr Tufan. I have received no communication from the Appellant or his representatives. The deadline for responding to my directions was the 6th May 2020. That deadline having passed, I now proceed to determine the issues in the appeal, having satisfied myself that it would be in the interests of justice to do so without the need for an oral hearing.

Background and Chronology

4. SRH claimed asylum in the United Kingdom on the 21st January 2019. He was refused protection on the 15th May 2019.
5. SRH pursued an appeal to the First-tier Tribunal on the grounds that he could not be returned to Iraq because his home-town of Kirkuk was a 'contested' area and as such Article 15 (c) of the Qualification Directive applied: AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). He further averred that he could not reasonably be expected to internally relocate within Iraq because he had no CSID or family support: he was therefore reasonably likely to encounter living conditions that were 'unduly harsh': AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC).
6. The First-tier Tribunal accepted both propositions and allowed the appeal. Permission was granted to the Secretary of State on the 14th November 2019 by Designated Judge of the First-tier Tribunal Peart.

Ground 1: Article 15 (c) Risk

7. The Secretary of State's grounds read as follows:

"The Judge found that the security situation in Kirkuk meets Article 15(c) threshold. According to case law **AA (Iraq - 2015)** and the **latest HO CPIN Feb 2019 paras 2.5.5 and 7** it does not and it is thus neither reasonable or unduly harsh to relocate to the IKR especially for a Kurd"
8. That ground makes no sense for a number of reasons.
9. First, the country guidance cited, presumably AA (Article 15(c)) Iraq CG [2015] UKUT 544, did find that that the security situation in Kirkuk was such that Article 15(c) was engaged. That being the operative country guidance at the time that Judge Mather made her decision, she was perfectly entitled, indeed obliged, to follow it.
10. Second, if the author of the grounds meant to suggest that Judge Mather had failed to make findings on whether the country guidance in AA

remained good law, then this is a suggestion that is misplaced. The Home Office 'reasons for refusal' letter dated 15th May 2019 expressly accepts that AA should be followed. Having perused the Judge's note of the hearing I can see that the Presenting Officer on the day made submissions on credibility, and on issues pertaining to internal flight: there is no invitation to the Tribunal to depart from the country guidance.

11. Third, the author of the grounds conflates the question of risk arising under Article 15(c) with the matter of internal flight. The formulation "it is thus neither unreasonable or unduly harsh" betrays a fundamental misunderstanding of the applicable law.
12. For those reason I find that ground (i) fails to articulate any intelligible error of law on the part of Judge Mather.
13. By her submissions of the 28th April 2020 the Secretary of State now relies on the decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), wherein the Upper Tribunal found that the situation in Kirkuk following the defeat of ISIL has improved to the extent that Article 15(c) is no longer engaged. I note that the decision in SMO post-dated the decision of Judge Mather, and at the time that she determined the appeal, she applied the correct country guidance of AA. Whilst the Secretary of State's submission is understandable it is therefore of course the case that I can only take SMO into account if some error of law in the First-tier Tribunal decision is established. Insofar as ground 1 is concerned, that burden has not been discharged.

Grounds 2 & 3: Documents

14. The issue of identity documents was relevant to the question of internal flight. Following AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212 the First-tier Tribunal was required to consider whether SRH had a CSID, and if not, whether it was reasonably likely that he would be unable to obtain one. If he could not get a card, then this raised the spectre of him having to live in conditions falling below acceptable humanitarian standards, such that the Secretary of State would accept that SRH could not be removed. Judge Mather found that SRH did not currently have a CSID card, and that he would not be able to obtain a replacement within a reasonable time frame. The appeal was allowed on that basis.
15. The Secretary of State's first submission on this point is that the First-tier Tribunal, in reaching those conclusions, made contradictory findings:

"At para 19 the appellant clearly states that "his CSID card was in Iraq. He would be able to obtain it if needed". This undermines the Judge's reasoning completely at paras 19-21,23."
16. Whilst the selective excerpt in the grounds may be suggestive of contradiction, in fact a complete reading of the paragraph in question, and

indeed the determination as a whole, reveals no such error. The First-tier Tribunal's conclusion - in full - is as follows:

"At his substantive interview the Appellant stated that he had lost his passport in Turkey and his CSID card was in Iraq. He would be able to obtain it if needed. In his written statement the Appellant subsequently said that when Hashd al-Sha'abi looted the area they went into people's houses and took everything. He had lost his CSID card since then. On the lower standard of proof, I accept that the Appellant does not currently have a CSID or indeed an Iraqi passport".

17. In respect of the Tribunal's acceptance that SRH would not be able, within a reasonable time frame, to obtain a new CSID, the Secretary of State further submits - at both grounds (ii) and (iii) - that SRH has family in Iraq who could help him get a card, or alternatively that he could have got one from the embassy in London. She submits that "it would have been helpful if the Judge had scrutinised this aspect more".
18. There is no merit in this submission. The Judge clearly considered whether it was reasonably likely that SRH would be able to get a CSID in London at the end of her paragraph 19:

"I note what is said in AAH (Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) particularly the headnote 1(i)-(iii) about the difficulty of obtaining a replacement or identification cards in either the Iraqi embassy in the UK or in Baghdad itself..."

As to the likelihood of a card being issued in Iraq, to a proxy or otherwise, the Judge said this:

"I assess his ability on the basis that he has no family in Baghdad. His main language is Kurdish Sorani. The procedures are from the case law challenging and the willingness of the Iraqi authorities to assist would no doubt be adversely influenced when the applicant is a Kurd from an area previously under the control of ISIS, a community that is viewed with a degree of hostility in Iraq, and they are already having to deal with so many other IDPs. I accept the Appellant's ability to negotiate these bureaucratic challenges would be exacerbated by the fact that he would be required to survive in Baghdad, without the language skills and work experience that might secure him employment and he has no family members or friends who might provide him with accommodation. The test is whether the Appellant could obtain a CSID card within a reasonable time frame and taking all these factors into account, I accept that he could not do so".

19. The arguments made by the Secretary of State under this heading amount to no more than a disagreement with the outcome of the appeal and fail to establish any material error of law. It was open to the Judge to find, on the evidence before her, that it was reasonably likely that a replacement CSID could not be obtained in time to prevent SRH from falling into destitution in Baghdad.

Ground 4 - Poor Credibility

20. Finally the Secretary of State submits that in its assessment of the 'CSID' issues, the Tribunal should have given more weight to its own negative credibility findings on the asylum claim, and/or section 8 issues arising from SRH's failure to claim asylum *en route* to the United Kingdom. This ground is manifestly unfounded. The Judge plainly had in mind these matters that weighed against SRH, not least because she had just made those negative findings. That she decided, nevertheless, to accept on the basis of uncontested country background material that Hashd al-Shaabi had looted SRH's home area, and that in those circumstances it was reasonably likely that his card would be gone, was a matter for her on the evidence.

Conclusion

21. The grounds of appeal before me are unimpressive in the extreme. They contain misstatements as to the law, and misrepresent the findings of the Judge. Had this been a hearing, and had SRH's representatives bothered to engage with this process, I would have considered making a wasted costs order. For the sake of completeness I would add that even if I had been minded to accept Mr Tufan's suggestion that I apply the guidance in SMO it would have made no material difference to the outcome of this appeal, since SRH is from Kirkuk. At paragraph 431 of SMO the Tribunal accept that the civil registry in Kirkuk is now issuing only INIDs, which cannot be released to proxies, whether lawyers, family members or others. If his appeal were being remade today, I would have allowed the appeal on the grounds that he would be stuck at Baghdad, with no means of onward travel, no means of supporting himself and a real risk of falling into destitution such that the minimum standard contained at Article 15(b) of the Qualification Directive would apply.

Anonymity

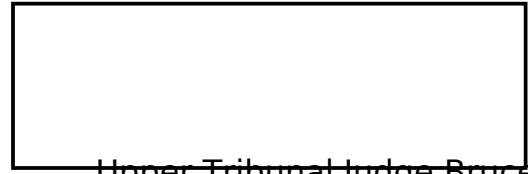
22. Having regard to the fact that this is a protection claim I make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

"Unless and until a tribunal or court directs otherwise, the Appellant (as he was before the First-tier Tribunal) 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".

Decision

23. The decision of the First-tier Tribunal contains no material error of law and the Secretary of State's appeal is dismissed.

24. There is an order for anonymity.



Upper Tribunal Judge Bruce
27th May 2020