Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07313/2016

THE IMMIGRATION ACTS

Heard remotely by Teams	**Decision & Reasons Promulgated**
On 2 June 2021	**On 29 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ZA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Bedford
For the Respondent: Mr Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 13 October 2017, I found that the First-tier Tribunal had erred in law and set aside its decision. My reasons were as follows:

> 1. The appellant, ZA, was born in 1985 and is a citizen of Iraq. By a decision dated 28 June 2016, the respondent refused the appellant's application for asylum and made directions for his removal from the United Kingdom. The appellant appealed to the First-tier Tribunal (Judge Graham) which, in a decision promulgated on 23 February 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. In this appeal, Judge Graham was not assisted by the confusion which appears to have arisen in the written evidence and also at the oral hearing as to whether or not the appellant lived in Kirkuk or in Kurdistan (otherwise the Independent Kurdish Region – IKR). The appellant claimed to come from Rahemwa but had stated variously in the course of his claim and appeal that he was from Kirkuk which, as the judge correctly records [29] is not in the IKR. In his written statement of 9 January 2017, the appellant claimed that he was from Kurdistan. Ultimately, the judge resolved the confusion by finding that (i) the appellant is a Kurd (ii) that he is from Kirkuk and (iii) that Kirkuk is not part of the IKR.

3. Whilst that part of the analysis was correct, the judge appears then to have fallen into error. The judge set out the country guidance contained in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). Sometime after the promulgation of the appeal in June 2017, that country guidance was modified by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944. The guidance at present is, therefore, as follows:

> "A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE
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> 1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
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> 2. The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.
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> 3. The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).
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> 4. In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.
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> B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.

6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

8. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

C. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

(a) whether P has a CSID or will be able to obtain one (see Part C above);

(b) whether P can speak Arabic (those who cannot are less likely to find employment);

(c) whether P has family members or friends in Baghdad able to accommodate him;

(d) whether P is a lone female (women face greater difficulties than men in finding employment);

(e) whether P can find a sponsor to access a hotel room or rent accommodation;

(f) whether P is from a minority community;

(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

E. IRAQI KURDISH REGION

17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.

18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.

19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.

20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.

> 21. As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.
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> F. EXISTING COUNTRY GUIDANCE DECISIONS
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> 22. This decision replaces all existing country guidance on Iraq"

4. It is clear from the country guidance that where a Kurd is returned to Baghdad (because he or she is not originally from the IKR) the question arises as to whether or not such an individual avoid possible ill-treatment in Baghdad by travelling on to the IKR. As the country guidance observes, that analysis will be fact-sensitive and is likely to involve the assessment of the practicality of travel from Baghdad to the IKR and the likelihood of securing employment in the IKR, perhaps with the assistance of any family or friends who may live there. Having resolved the confusion as to the appellant's provenance, the judge at [29] concluded briefly that:

> "I am satisfied the appellant is from Kirkuk. I am further satisfied Kirkuk is not part of the IKR. In which case the appellant can relocate to the IKR as above [i.e. by reference to country guidance at AA] and this appeal must be dismissed."

5. Rather strangely, the judge reaches this conclusion and then sets about analysing the credibility of the appellant's account, a credibility which he rejects. Given that it is accepted by the respondent that the appellant is a Kurd and does not originate from the IKR, the relevance of the credibility of the appellant's account on the risk on return analysis is not clear. What is certainly missing is any fact-sensitive investigation of travel from Baghdad to the IKR and the likelihood of the appellant, should he reach the IKR, being able to support himself in the longer term there. To that extent, the judge's analysis remains incomplete. In consequence, I set aside the judge's decision but preserve his findings as regards the credibility of the appellant's account [31–34] although I do not preserve any part of his analysis relating to internal flight to the IKR. The Tribunal will remake the decision following the resumed hearing before Upper Tribunal Judge Clive Lane at Birmingham on a date to be fixed. I am aware that there is a forthcoming country guidance hearing which will address these very issues and which is likely to be heard in October 2017. The resumed hearing in this case, therefore, will not be listed before 1 December 2017. Mr Mills told me that he had evidence regarding the availability of flights from Baghdad to Erbil. I direct that both parties should file at the Tribunal and serve on each other any evidence upon which they may seek to rely at the resumed hearing at least 10 days before the date fixed for that hearing.

Notice of Decision

6. The decision of the First-tier Tribunal promulgated on 23 February 2017 is set aside. The findings of fact at [30–34] are preserved. Otherwise, the judge's findings and conclusions are not preserved. The Upper Tribunal will remake the decision following a resumed hearing on a date to be fixed on the first available date after 1 December 2017 before Upper Tribunal Judge Clive Lane sitting at Birmingham.

2. I gave directions on 19 November 2019. It is unclear why it has taken until June 2021 for the resumed hearing to listed.

3. At the resumed hearing, the appellant gave evidence with the assistance of an interpreter in Kurdish Sorani. He was cross examined by Mr Whitwell, who appeared for the Secretary of State. I heard the submissions of both representatives (Mr Bedford appeared for the appellant) and then reserved my decision.

4. The burden of proof remains on the appellant. The standard of proof is whether there exist substantial grounds for believing there to be a real risk of the appellant suffering persecution or ill-treatment on return to Iraq, a requirement further particularised in the Qualification Directive.

5. The appellant had been found by the previous Tribunal to be an unreliable witness as regards the core facts of his claim for international protection (see [30-34] of the First-tier Tribunal decision, which contains findings which I preserved in the error of law decision). It is against the background of those adverse findings that I have considered the evidence which I heard at the resumed hearing. I find that the appellant does not have a genuine conviction to support separatist/Kurdish political causes. I find that he has no sincere interest in propagating his own political opinions or those of others on his Facebook account. I find that, if faced with removal to Iraq, the appellant would delete the account before departure.

6. The appellant's evidence throughout was singularly unimpressive. He could not explain why, having deleted a previous Facebook account (which carried only non-political posts) two years ago because he feared for family when he claims not to have had any idea since 2014 where his family are located. I find that he opened the new account in November 2020 solely in order to bolster his asylum appeal. In any event, the posts on the account are little more than re-posts of existing media articles which are widely available online; the appellant did not specify any post which revealed his own opinions whilst his Facebook 'friends' are not publicly visible on the account. Mr Bedford submitted that the appellant should succeed on asylum grounds on the basis of his *sur place* activities which comprise the Facebook account and attendance at a single meeting/demonstration in December 2020; there is nothing in the evidence or background material to indicate that such an attendance would have attracted the attention of state authorities in Iraq or that, even if it had, that the appellant would have been regarded by such authorities as worthy of attention. The appeal on asylum grounds is without merit and I dismiss it.

7. As regards family in Iraq, I find that the appellant has been untruthful. His evidence regarding the first Facebook account (see above) is, in my opinion, inconsistent with his claim to have lost touch with his family; that the appellant should have maintained an account with posts and photographs of his family as recently as two years ago sits uneasily with his claim to have lost touch entirely with his relatives in 2014. I find that the appellant has failed to prove that claim and I find it is reasonably likely that he has remained in touch with his family in Iraq.

8. The appellant's evidence about his CSID identity card was particularly problematic. Frankly, it makes no sense at all that the appellant, having asked a friend in Iraq to try to contact his family, would then, without any prompting, receive from the friend a document which the appellant says he believed to be his own genuine CSID. I do not consider it likely that the friend would have found the document lying about in the appellant's former premises in Iraq. Matters are further complicated by the fact that the appellant's own expert witness, Dr Fateh, has concluded that the CSID is not a genuine document. The appellant's surprise at that news which he expressed in his oral testimony was not persuasive. I find that the document is, as the expert concludes, a forgery; Mr Whitwell suggested that it may yet be genuine but he did not seek to question the authoritative opinion of the expert witness. The document contains the appellant's correct height, date of birth and details of his grandparents. I find that the appellant himself is likely to have supplied those particulars to the forger. In the context of all the evidence, I find that the appellant either commissioned the forged document or colluded in its production.

9. The appellant, therefore, is a male Kurdish Iraqi whose home area is Kirkuk. He has no interest in Iraqi politics beyond pretending to have such an interest in order to obtain international protection in the United Kingdom. No state authority in Iraq will have any interest in the appellant on his return to Iraq on account of the appellant's political profile; he has no profile so far as those authorities are concerned and he will delete any potentially damaging Facebook account prior to his return. I find that the appellant is in touch with family members in Iraq.

10. The appellant's CSID is not a genuine document and the appellant cannot use it in Iraq. The appellant claims that he does not know the page number and details of his family on the registers maintained by the Iraqi government. I found this part of his evidence to be the only thing he told me which had any ring of truth. He said that he rarely used his card in Iraq because he had been self-employed and did not need it to access state services. Notwithstanding the appellant's lack of candour, I am not prepared to predicate my assessment of whether he can be returned on a finding that he does know the register particulars.

11. The Upper Tribunal is *SMO, KSP and IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 at [431] found:

> "In any event, as we have noted, matters have moved on as the CSID is being phased out and replaced by the INID. If, as appears to be the case, the judge in the FtT concluded that the appellant would be able to use a proxy to obtain a replacement CSID from the CSA office in Kirkuk, we cannot be sure that this represents the position in 2019. It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy. In the circumstances, we consider that there must be further findings made regarding this appellant's access to or ability to obtain a CSID card. In the event that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK,

> we think it likely that his return to Iraq would be in breach of Article 3 ECHR. As we have explained, we do not consider that he would be able to obtain either a CSID or an INID in Baghdad because he is not from that city."

12. I find that the appellant will be unable to obtain a CSID whilst still in the United Kingdom. He will be returned to Baghdad where he will also be unable to obtain a card. He cannot, therefore, remain safely in Baghdad because he will not possess a CSID and cannot travel onwards from the capital to Kirkuk for the same reason. It follows that his appeal should be allowed on Article 3 ECHR grounds. It is dismissed on all other grounds.

Notice of Decision

I have remade the decision. The appeal is allowed on Article 3 ECHR grounds. It is dismissed on asylum grounds.

Signed Date 2 June 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.