



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

Appeal Number: PA/08766/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 July 2018**

**Decision & Reasons Promulgated  
On 19 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**JMS (IRAQ)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ian Palmer, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Burnett sitting at Taylor House on 21 March 2019) dismissing his appeal against the decision of the Secretary of State for the Home Department ("the Department") to refuse his protection claim in which he maintained that he had a well-founded fear of persecution or serious harm at the hands of a group linked to Al-Qaeda as a result of having sexual relations out of wedlock with one of their family members, and that internal relocation was not a viable option as he was undocumented.

## **Relevant Background**

2. The appellant is a national of Iraq, who claims to have been born on 1 March 1984. He is recorded as having entered the United Kingdom illegally on 11 July 2004 and as having applied for asylum on the same day. He said that in July 2003 he had started a relationship with a girl who was a member of an Islamic Fundamentalist group called Jund Al-Islam. The relationship developed to such an extent that on two occasions prior to April 2004 members of the appellant's family had visited family members of the girlfriend to ask permission for the appellant to marry her. But on both occasions the proposal was refused. On 22 April 2004 the appellant claimed that he received a message from his girlfriend to come and see her at her home, as she was alone. They had sexual intercourse, and when he left her house he was seen by a relative of the girl. He heard shortly thereafter that she had been killed by her father and brothers because she had lost her virginity to him. He decided to leave Iraq on 25 April 2004 because he feared that his life was in danger.
3. The Department refused the asylum claim on credibility grounds, and the appellant's appeal against the refusal came before Adjudicator Moore sitting at Birmingham on 12 November 2004. In a decision promulgated on 25 November 2004, Adjudicator Moore gave his reasons for dismissing the appeal. He found that the appellant's claim regarding the relationship, the alleged sexual intercourse and the reasons for, and the nature of, his departure from Iraq lacked credibility and were unsupported by any credible evidence.
4. The appellant became appeal-rights exhausted on 4 March 2005. The appellant presented further submissions in January 2012, relying on a newspaper article offering a US \$50,000 reward for information about his whereabouts that had been purportedly carried in a local Iraqi newspaper on 20 January 2011. He said that his brother in Iraq had sent it to him. The further submissions based on this newspaper article were refused.
5. In 2016, the appellant's legal representatives commissioned an expert report from Sheri Laizer in support of a fresh asylum claim, and she produced her report on 10 November 2016. She opined that the appellant's appearance in the newspaper article of 20 January 2011 was genuine. She said that the Jund Al-Islam group was a very well-known Sunni Islamic militant group in the Kurdish region that was linked to Al-Qaeda, and that it was plausible that they would kill a girl for bringing shame on her family through sexual relations outside of marriage; and thus that the appellant would remain at risk of violent retribution for violating the honour of her family.
6. On 26 June 2018 the Department gave their reasons for refusing the appellant's fresh claim for asylum. On the topic of re-documentation, the Department said that he could attempt to obtain his CSID card at the Iraqi Embassy in London, or alternatively he could obtain it from the KRG's

Bureau for Migration Displacement, or at an UNHCR Assistance Centre, once he had returned to the KRG.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

7. Both parties were legally represented before Judge Burnett. The appellant's solicitors filed a bundle of documents containing, among other things, a signed witness statement from the appellant and an expert report from Alison Pargeter dated 29 July 2018.
8. On the topic of his lack of documentation, the appellant said in his witness statement that, as he had said in 2004 during his asylum interview, he had left his only form of identification in Iraq. Since then he had attempted to obtain Iraqi identification. On 29 November 2018 he had gone to the Iraqi Embassy to ask for an Iraqi passport. He was asked whether he had any proof of his nationality. All he had was his Home Office ID, which he gave to them. He was told that he needed his original documents and without them he could not prove his Iraqi nationality.
9. In section 9 of her report, Mr Pargeter said that a CSID card was required if one was applying for a passport. The Iraqi Embassy in London was clear that in order to acquire a new passport it was necessary to provide one's original CSID. However, the Iraqi Embassy could provide the appellant with a *laissez passer*, provided that he could confirm his nationality and personal details. These details would need to be checked with the relevant Civil Status Directorate in Iraq, which in his case was the Directorate in Suleimania where he would have been registered. The relevant Directorate should be able to ascertain his details from his name and place of birth. Once the Iraqi authorities had retrieved his details, he should be able to obtain a *laissez passer* to enable him to travel to Iraq. Once there, he could apply for a replacement CSID. Acquiring a replacement CSID should not be problematic and could be done from his local Civil Status Directorate.
10. In his subsequent decision, the Judge found at [72] that the appellant was not in a relationship with a girl who was later killed, and he found that her family was not now seeking the appellant to revenge their honour. The Judge turned to consider the issue of re-documentation. He said at [73]:

“The appellant states that he was asked for his original documents and that the Home Office ID he gave was not sufficient and that without original documents he could not prove his nationality. I note that this evidence does not sit with what Ms Pargeter stated in her expert report and which I have set out above. Ms Pargeter suggests that the appellant should be able to get ID documents by stating where he is from and giving his date of birth. The appellant also has his brother in Iraq who could assist with his re-documentation, although I note the appellant states they cannot help him. I accept the appellant attended the Embassy, but the visit adds little to his claim as to the suggestion that he could not be re-documented.”

11. At [74], the Judge cited the Country Guidance case of **AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] 00212 (IAC)** and set out the head note. The Judge continued at [75]:

“I note that the Guidance states that a laissez passer will be taken away at Baghdad despite what Ms Pargeter asserts in her expert opinion. However, she states that the appellant should be able to get documentation from the directorate from his area. The appellant has his brother in Iraq (in the IKR (KRI)) who can assist him with his re-documentation. The appellant stated that he was in contact with his brother a week ago. There is no good reason that the appellant should not be able to obtain the help he needs in Iraq with the process. I conclude that the appellant can re-document himself. I conclude that the appellant is not at risk of ill-treatment or persecution in Iraq.”

### **The Reasons for the Grant of Permission to Appeal**

12. Permission to appeal was refused by the First-tier Tribunal, but was allowed by Upper Tribunal Judge Stephen Smith on 5 June 2019, for the following reasons:

“The unusual feature of this case is that the appellant seeks to challenge the decision of the First-tier Tribunal on the basis that the Judge preferred the evidence of the appellant’s own expert, Ms Pargeter, to the relevant country guidance. Ms Pargeter concluded the appellant would be able to obtain a CSID with relative ease (see [73]). Although the Judge quoted extensively from the head notes in **AA (Article 15C) Iraq CG [2015] UKUT 544 (IAC)** and **AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC)**, he arguably failed to engage with the specifics of the likely process the appellant would have to follow in order to re-document himself ...

The other grounds have less merit and amount to no more than disagreements with the legitimate findings of fact. However, permission is granted on all grounds.”

### **The Hearing in the Upper Tribunal**

13. At the hearing before me to determine whether an error of law was made out, Mr Palmer, who did not appear below, focused on Ground 2 (Misdirection on Country Guidance and failure to follow Country Guidance, regarding the appellant’s ability to document himself in the UK), and Ground 3 (Misdirection on country evidence or failure to follow Country Guidance regarding the appellant’s ability to document himself in Iraq). Mr Whitwell submitted that the findings made by the Judge on the appellant’s ability to re-document himself did not run counter to the guidance given in **AAH**. While his reasoning was brief, it was adequate.

### **Discussion**

14. Ground 1 relates to the Judge’s conclusion on the core claim at paragraph [72]. It is pleaded that, having accepted a key piece of evidence in the appeal and having found that the country evidence was supportive of the appellant’s account, the Judge had nonetheless impermissibly relied on

speculation in rejecting the appellant's account of past persecution and future risk.

15. I consider that Ground 1 is no more than an expression of disagreement with findings that were open to the Judge for the reasons which he gave. His conclusion was reached after careful consideration of the two expert reports. On the topic of the newspaper article of 2011, Ms Pargeter's report was helpful to the appellant's case in some respects, but unhelpful in other respects. The Judge's findings reasonably reflect this dichotomy. On the one hand, he was persuaded that the newspaper in question was a genuine, low circulation publication; and that an article had been placed in the newspaper in 2011 offering a large reward for information about the appellant's whereabouts. However, in his view, there was a further issue which was whether this advertisement was a genuine attempt by the appellant's alleged oppressors to locate him with a view to carrying out an honour killing, or whether the advertisement had been planted to buttress a fabricated claim.
16. The Judge noted at [62] that Ms Pargeter observed that it seemed rather surprising that they would choose to place a missing person advertisement in a local newspaper "*so many years after the event*", especially if the event would have been considered taboo and shameful. Ms Pargeter also commented that the group had been driven out of Iraq in 2003, and most of its members had been captured, killed or had fled across the border to Iran. She said that they had tried to rebuild within the Kurdish region between 2003 and 2007. After 2011, when the US pulled out of Iraq, the group had started being active again, but she said that the group did not have any real presence in the Kurdish region any more.
17. The Judge observed at [68] that the timing of the appellant's claimed reconnection with his family in Iraq and the production of the newspaper article was significant. It was odd that, if the girl's family genuinely wanted to find the appellant, that they would have placed an advert in a local newspaper which had a low circulation, and not one which was widely published. Secondly, the appellant did not claim that there had been a further attempt to find him or his brother. It was odd that the first newspaper article should be placed in such a paper after a period of 7 years. The Judge also commented on the contents of the article. It was suggested that there had been an extensive search for the appellant and that all media channels had been contacted. But no evidence of this had been provided. The article asked for information regarding the appellant, offering a reward of US \$50,000, and yet there had been no suggestion of any attempt to contact the appellant's brother who remained in Iraq: "*It is very surprising that with such a high reward offered that people had not inquired of the appellant's brother.*" The Judge also found that the appellant had not given a credible explanation for not producing the Facebook messages which he had exchanged with his brother.
18. For the above reasons, Ground 1 is not made out. The Judge gave adequate reasons for finding that the newspaper article and the expert

evidence pertaining to it did not salvage the credibility of the core claim, which Adjudicator Moore had found to be incredible in 2004.

19. Grounds 2 and 3 relate to the issue of re-documentation. I accept that the Judge did not map out what would happen in the event that the appellant obtained a *laissez passer* to travel to Baghdad, and then sought to obtain a CSID with the assistance of his brother so as to enable him to travel from Baghdad to the KRG.
20. However, as is recognised in the permission application, the burden rested with the appellant to show BOTH that he could not obtain a CSID from the Iraqi Embassy in the UK AND that he could not – in the alternative – obtain a CSID within a reasonable time after returning to Iraq.
21. Under Ground 2, reliance is placed on the following passage in **AA [2015] UKUT 554 (IAC)** at [171]: *“In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the Consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details.”*
22. The appellant had, on his own account, left his CSID in Iraq. Since his claim of past persecution had been rejected, there was no reason to suppose that his CSID did not remain in the family home and was thereby retrievable. In any event, the appellant was in contact with his brother, who had sent him a copy of the newspaper article. So there was no reason to suppose that his brother would be unable to provide the appellant with the book and page number for their family registration details which he could pass on to the Consular section of the Iraqi Embassy.
23. The head note guidance cited by the Judge at [74] includes the following:
  1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual’s circumstances. The factors to be considered include:*
    - i. *Whether P has any form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificate or an expired CSID would all be of substantial assistance. For someone in possession of one of more of these documents the process should be straightforward ...*
    - ii. *The location of the relevant civil registry office. If it is in an area held, or formally held, by ISIL, is it operational?”*
24. It was common ground that the relevant civil registry office was in Suleimania, which has never been a contested area. So there was no reason to suppose that it was not operational, and it was not the appellant’s case that it was not operational. Against this background, and

the fact that he could call upon his brother to send him documents and information from Iraq to assist him in proving his identity, the appellant had not discharged the burden of showing that he could not obtain a CSID from the Iraqi Embassy in the UK. Thus, any deficiency in the Judge's reasoning on re-documentation was not material.

### **Notice of Decision**

25. The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

### **Direction Regarding Anonymity**

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

Date 13 July 2019

Deputy Upper Tribunal Judge Monson

