



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

Appeal Number: PA/07590/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 16 March 2020**

Decision & Reasons Promulgated

On 22 April 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**B. A. S.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr. C Bates, Senior Presenting Officer

DECISION AND REASONS

Introduction

The appellant is a national of Iraq and an ethnic Kurd. He hails from Mosul and is presently aged 25. He appeals against a decision of the respondent, dated 5 June 2018, to refuse to grant him international protection.

Judge of the First-tier Tribunal Garratt dismissed the appellant's appeal by a decision dated 1 August 2018. The appellant was granted permission to appeal to this Tribunal and by a decision sent to the parties on 8 May 2019 Deputy

Upper Tribunal Judge Farrelly set aside Judge Garratt's decision in respect of two identified issues:

- i) the appellant's ability to return to his home area in Mosul, and
- ii) the reasonableness of his relocating to the Independent Kurdish Region ('IKR').

The resumed hearing was listed on 19 August 2019. DUTJ Farrelly heard submissions from the parties and agreed to adjourn the hearing pending the outcome of the then awaited country guidance concerning Iraq. The Upper Tribunal subsequently promulgated the country guidance decision in SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) on 20 December 2019.

Consequent to a transfer order of Principal Resident Judge O'Connor, dated 13 January 2020, the appeal hearing came before me on 16 March 2020. The appellant attended unrepresented. Although his previous representatives, ADL Solicitors, remained on the Tribunal record, the appellant informed me that they were no longer representing him. He was content to proceed with his hearing in the absence of legal representation.

Anonymity

DUTJ Farrelly issued an anonymity direction and there was no request from the parties that it be set aside. The direction is confirmed at the conclusion of this decision.

Preserved findings of fact

Permission to appeal to the Upper Tribunal was applied for, and granted, on a narrow basis, namely that the First-tier Tribunal Judge failed to acknowledge that the appellant was from a contested area and failed to follow the guidance provided in the country guidance decision of AA (Article 15(c)) Iraq CG [2015] UKUT 544, as amended by the Court of Appeal in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944. The Deputy Upper Tribunal Judge determined at [13] of the decision of 8 May 2019:

"In summary the judge erred in law in suggesting the appellant could return to Mosul without further explanation bearing in mind the country guidance decision of AA Iraq. The judge's assessment of the reasonableness of relocation to the IKR also erred in law as it failed to evaluate his prospects and the reasonableness of a move."

No error of law was identified as to the First-tier Tribunal's rejection of the underlying claim as to persecution in Iraq at the hands of ISIS.

The appellant states that he resided in Mosul prior to his leaving Iraq in 2015 and that he clandestinely arrived in this country on 21 August 2015, claiming asylum three days later. For the purpose of my consideration relevant preserved findings of fact include:

- (a) The appellant did not leave Mosul because he was targeted for recruitment by ISIS.
- (b) The appellant left Iraq as an economic migrant at a time when Mosul was coming under the control of ISIS.
- (c) The appellant is a fit, healthy male who works in the building industry and has skills as a plasterer.
- (d) The appellant had relatives in Iraq who could help him secure possession of a Civil Status Identity Card ('CSID').

The First-tier Tribunal further determined at [30]:

"The appellant has been in the United Kingdom for about two and a half years since leaving Iraq yet admits that he has taken no significant steps towards finding out what has happened to his family or the uncle who is claimed to have generously funded his departure from Iraq. I do not accept that language difficulties would have been a bar to the appellant seeking information about these relatives if he was genuinely concerned about them. It is clear that the appellant has had the benefit of legal advice which could have extended to the relevant issue of tracing his relatives. If he had approached the Red Cross for assistance, then it is reasonable to assume that language would not have been a barrier to him seeking that organisation's assistance. Additionally, the appellant has made no attempt to seek identity documents through the Iraqi Embassy or its consulates."

The hearing

The appellant gave evidence before me, with the aid of an interpreter. He was asked by Mr. Bates as to which side of the Tigris river he resided on when living in Mosul. He initially stated that he was unable to say whether it was the east or west side. When asked again by Mr. Bates, he stated that he had resided on the 'Kurdish' side.

He stated that he has tried to contact his family in Iraq whilst residing in this country but has been unsuccessful. In turn, he sought to ask members of the Kurdish community living in the United Kingdom and hailing from Mosul as to whether they have had any communication with or have knowledge of the present circumstances of his family members in Iraq but he has received no positive information. He informed me that the only member of his family who used a mobile phone was his father and as he could not remember his father's number, he was unable to phone him.

The appellant accepted that he had been aided in leaving Iraq by an uncle and his evidence to me was clear as to his having lost contact with his uncle immediately upon leaving Iraq. His uncle lived in the same neighbourhood as his family, some 30 minutes away by walking, but they had lost contact because his uncle had been explicit when handing him over to the smuggler that he was to trust the smuggler. He understood this to mean that he was not required to remain in contact with his uncle. When asked by Mr Bates as to why his uncle had provided the appellant with no means of contacting either him or

other members of the family the appellant simply responded that his uncle had said, 'do not worry go with this man'.

Asked about his recollection of his CSID card the appellant confirmed that he could not remember any of its details. He informed me, 'it [CSID] is not important there (Iraq). We don't need it much there, not that much.' In answer to a question from me he said that he only used his CSID when going to hospital or to secure a monthly food ration. These were the only times he used his CSID.

The appellant confirmed to Mr Bates that he did possess an Iraqi passport, but he did not take it with him when he left Iraq because it was located at his home, and he had been away from his home when warned not to return because ISIS were looking for him. It was for this reason that he was unable to collect his passport. I reminded the appellant that he had been found to be wholly incredible on this aspect of his personal history. I permitted the appellant time to consider and reply to Mr. Bates' question. The appellant again confirmed that he was unable to take his passport with him because he had received news when returning from work that ISIS were looking for him and it was not safe to return home.

Decision

The issues remaining to be decided upon by this Tribunal are limited and identified at [2] above. I observe that there are preserved findings of fact, relevant findings to my decision being detailed at [8]-[9] above.

I found the appellant to be an unimpressive witness. He was extremely vague as to where he resided in Mosul before he left to travel to this country. For someone who has been accepted to have been born and brought up in that city, he proved wholly unwilling to confirm where he had lived, resorting to asserting that he lived on the 'Kurdish' side. I observe that the population of Mosul commonly refers to the east side of the river as the 'Left Bank' and the west side as the 'Right Bank'. The appellant is also no doubt aware, having resided in Mosul all his life, that Mosul is not divided into Kurdish and Arab sectors, though there were majority Arab areas in certain parts of the downtown area. I find that the appellant was deliberately vague in an effort to hide from the Tribunal where he and his family resided. To the lower standard, I am satisfied that he did not reside with his family in the Old Town, or the West Bank, which has been significantly affected by the civil war. I find that the appellant has sought to hide the fact that he resided in an urban area on the East Bank, which the Tribunal concluded in SMO was nowhere near as badly devastated, at [258]. The Tribunal held at [261] that upon considering the evidence as a whole, there is not such a high level of indiscriminate violence in the East Bank that substantial grounds exist for believing that an ordinary civilian would, solely by being present there, face a real risk which threatens their life or person.

The appellant's evidence as to why he has not been in contact with his family, including his uncle, is implausible. He has been found to be an

economic migrant, and he accepts that he received support from family members such as his uncle so as to travel to Europe. I note the observation of Ouseley J, sitting as the President, in *MM (DRC - plausibility) Democratic Republic of Congo* [2005] UKIAT 00019; [2005] Imm. A.R. 198 that while it is correct that the assessment of credibility may involve an assessment of plausibility of what has been said, the assessment of plausibility is not a separate stage in the assessment of credibility. A story can be implausible and yet taken as credible. I further observe that Ouseley J held that a decision as to whether an appellant is credible should be founded on the totality of the evidence, including consistency on essentials or major inconsistencies, omissions and details, improbabilities or reasonableness. I therefore consider the evidence in the round. I note that the appellant has previously been found to be untruthful in much of his account and has sought, unsuccessfully, to hide that he is an economic migrant. Appropriate weight can be given to the fact that he used an agent to travel to this country and he was aided by his family in paying to secure the services of the agent. I am therefore satisfied to the requisite standard that the appellant is not being truthful in asserting that he has no contact with his family, and in particular he does not know his father's telephone number or as to his assertion that his uncle does not possess a phone, in circumstances where the family would at least hope, and at its highest expect, that he will send financial remittances back to them in Iraq. The appellant has consistently sought to hide the true state of affairs by providing vague and untrue evidence and in this matter he has sought to deceive the Tribunal as to his continuing contact with his family who remain living in their home area.

The First-tier Tribunal's finding of fact as to the appellant having relatives in Iraq who can help him secure possession of his CSID is a preserved finding of fact, at [34] of the First-Tier Tribunal's decision:

"I acknowledge that, if the appellant is returned to Iraq because he is not a refugee, he will be returned to Baghdad. He cannot be returned there unless he is in the possession of a CSID or will be able to obtain one, reasonably soon after his arrival with assistance from family or other members likely to be able to provide a means of support: *AA (Iraq)*. The appellant's evidence does not satisfy me, to the lower standard, that he will have no relatives in Iraq who can help him. I have already indicated my reasons for that conclusion, above. *AAH* identifies factors to be considered in relation to the obtaining of a new CSID. These include any other form of documentation or information about the location of his entry in the civil register. Further is the existence of male family members who would be able and willing to attend a civil registry with the appellant. On the basis that the appellant can return to Baghdad with the benefit of a resettlement grant and that he has not shown that he had no relatives upon whom he can call for assistance, I am satisfied that he will be able to obtain the necessary CSID bearing in mind that he has conceded that he held one before leaving Iraq and it was left at his home ..."

I observe the appellant's evidence as to the reason for his not being able to recall the personal details on his CSID, namely that he was rarely required to

use it. This is at odds with the importance placed upon the document by expert evidence in several country guidance cases, including SMO, at [336]-[337]

“Iraq is a bureaucratic country which has suffered from a range of security concerns in the 21st century. For both of those reasons, issues surrounding the documents needed to return to Iraq and to survive in that country have played a prominent part in the country guidance cases decided to date. The first such case was MK (Iraq) CG [2012] UKUT 126 (IAC), in which the Upper Tribunal listed the three critical documents at [6]:

“The first is the Civil Status Identity Card (CSID). The second is the Iraqi Nationality Certificate (Shahdat al-Jinsiya al-Iraqiya) (INC), the third is the Public Distribution System (PDS) card (food ration card).”

It was common ground in MK (Iraq) that the most important of these documents is the CSID because ‘without the CSID card it is impossible to access any of the other documents listed above, and this has a clear impact on ability to move around Iraq, to relocate within Iraq and to enjoy socio-economic rights, housing and food rations and to access aid and humanitarian support’: [22]. At [24], it cited Dr Fatah’s statement that the CSID is the physical manifestation of an individual’s official registration record, which is a record of the individual’s birth, held in manuscript ledgers in the local Civil Registry.”

I find to the requisite standard that the appellant sought to distance himself from his CSID because he was aware that an admission that it was present at the family home, or that he could recall the page and volume of the book holding the family records, would adversely impact upon his appeal. I am satisfied that he was not truthful to the Tribunal because his CSID remains with his family and, further, that he has the necessary knowledge of the family records to secure a new CSID upon request to the Iraqi authorities in this country, via the Iraqi Consulate, with the aid of his family both on his father’s and his mother’s side. I am further satisfied, to the requisite standard, that the appellant’s passport remains with his family in Iraq and that he can therefore return to Baghdad, or in the alternative secure a Laissez Passer: SMO, at headnote B. I find that the appellant can secure a CSID before his return to Baghdad or be provided with his CSID by family members upon his arrival: SMO, headnote C.

He can therefore travel onto Mosul and re-join his family who are residing in an urban area on the East Bank of the city, away from the devastated areas.

In the alternative, being in possession of a CSID, or able to provide the required documentary evidence and relevant information to secure an Iraqi National Identity Card (‘INID’), I find to the requisite standard that the appellant, being of Kurdish ethnicity, is able to travel from Baghdad to the IKR by land, such journey being affordable and capable of being undertaken without a real risk of the appellant suffering persecution, serious harm or ill-treatment breaching protected article 3 rights. He can if he wishes board a domestic flight from Baghdad to the IKR, being in possession of a CSID and being entitled to apply for a grant under the Voluntary Returns Scheme (‘VRS’). I further find that the

appellant will not be subject to a particular risk of ill-treatment upon arrival at the IKR, having no family with a known association with ISIL. He can evidence the fact of his recent arrival from the United Kingdom to dispel any suggestion of having arrived directly from ISIL territory. In establishing himself in the IKR, the appellant will be able to rely upon his grant from the VRS and, as found by the First-tier Tribunal and a preserved fact, he would have little difficulty in obtaining employment consequent to his building skills as a plasterer: SMO, headnote E.

In all of the circumstances, the appellant is unable to establish to the requisite standard that he is a refugee, or that his protected article 3 or article 8 rights will be breached upon his return to Iraq. I find that he is able to return to Baghdad and safely relocate to join his family in Mosul or relocate to the IKR.

Notice of Decision

By means of a decision dated 8 May 2019 this Tribunal set aside a decision of the First-tier Tribunal promulgated on 1 August 2018 pursuant to section 12(2) (a) of the Tribunal, Courts and Enforcement Act 2007 ('TCE').

The decision is re-made, and the appellant's appeal is dismissed.

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

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 31 March 2020

TO THE RESPONDENT **FEE AWARD**

As no fee award was payable in this appeal and as the appeal has been dismissed no fee award can be made.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 31 March 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email