



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06199/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 6 June 2018

Decision & Reasons Promulgated
On 19 June 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

TO
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Forrest instructed by Latta & Co Solicitors

For the Respondent: Mr A Govan, Senior Presenting Officer

DECISION AND REASONS

INTRODUCTION

1. An anonymity order was made by the First-tier Tribunal. I order its continuation in the Upper Tribunal in the light the involvement of children in this case.
2. The appellant who is a national of Iraq where he was born in 1985 has been granted permission to appeal the decision of First-tier Tribunal Judge I Ross. For reasons given in his decision dated 17 August 2017 the Judge dismissed the appeal against the

Secretary of State's decision dated 15 June 2017 refusing the appellant's protection claim which he had made on 30 March 2017, three days after his illegal entry into the UK. His claim is that he left Iraq in March 2017 by air for Turkey whence he travelled overland to the UK.

3. The appellant's claim is set out in the judge's decision as follows:

- "4. The basis of the asylum claim is that the appellant and his family come from Mosul and lived there when it was under the control of Daesh (ISIL). The appellant and his family had to flee from Mosul after ISIS came to his house on 25 February demanding that he enlisted to fight for them. The appellant also fled Iraq due to his father being a member of the Ba'ath party.
5. It was accepted that the appellant is an Iraqi national, however it was not accepted that the appellant's father was a member of the Ba'ath party as he claimed, given that the appellant was unable to provide any evidence to substantiate that claim. Further, it was considered that the appellant's account of his family receiving threats because of his father were vague and also unsubstantiated. It was not accepted that threats had been made against the appellant's family for that reason.
6. In relation to the appellant's fear of returning to Mosul because of ISIS, it was considered that it would be reasonable for him to relocate internally in Iraq.
7. For the same reasons for dismissing his asylum application, the respondent also considered that the appellant was not eligible for a grant of humanitarian protection or that his return to Iraq would contravene his human rights under Articles 2 and 3 ECHR."

4. The judge set out his findings at [21] to [26] of his decision:

- "21. Given that the appellant was encountered at a petrol station with his family and taken to a police station, I accept that he claimed asylum when he arrived in the United Kingdom. However, on the appellant's own account, the appellant was able to leave Mosul and relocate to Baghdad where he stayed for two weeks, although there is no independent evidence as to how long he remained in Baghdad.
22. Thereafter, the appellant was able to raise \$30,000 to be taken out of Iraq. There is no evidence that the appellant and his family encountered any problems in Turkey before leaving there after a period of five days. I am satisfied that the appellant and his family could have remained safely in Turkey as Kurds, however chose not to. I find the appellant's account that his birth certificate was taken by the agent is not credible. Nor is it credible that the appellant would leave his CSID in Mosul when he left.
23. I find the appellant's account of his father's activities as a supporter of the Ba'ath party and a member of Sadaam's security apparatus is vague and lacks any detail; it relies solely on what the appellant's mother may have told him. Unfortunately, there is no evidence from the appellant's mother. The appellant's father died in 2016 and I find the evidence of the family receiving a threatening letter is also vague and unsupported.

24. I find that the appellant would not be at risk in Iraq because of his father. I further find that the appellant has no objective reason to fear ISIS since their recent defeat. In making these findings, I have taken into account what was said in HK v SSHD [2006] EWCA Civ 1037 that “even if an appellant’s case seems inherently unlikely, it does not mean it is untrue. The ingredients of the story and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other similar factors, such as consistency with what the appellant has said before, and with other factual evidence ...”
 25. Taking into account all of the evidence, I find that the appellant’s father did not have any connection with the Ba’ath party which would adversely affect the appellant in Iraq, given the time which has passed and that he has not hitherto suffered any adverse consequences, I reject the appellant’s unsupported assertion that he would be unable to travel to the IKR because of his father’s activities some years ago.
 26. For all of the above reasons, I conclude that the appellant is not a refugee in need of international protection. Accordingly, his asylum claim must be dismissed. “
5. The judge thereafter referred to the decisions by the Tribunal and Court of Appeal in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) and AA (Iraq) v SSHD [2107] EWCA Civ 944, and concluded at [33]:
- “33. Taking all matters into consideration and applying the above country guidance, I am satisfied that the appellant could be returned to Iraq. I am satisfied that the appellant does have a CSID which is in Mosul and could be retrieved by his mother or brother. I am also satisfied that the appellant could obtain an Iraqi passport or a laissez passer from the United Kingdom, given that he was previously fully documented in Iraq. I find that his return to Iraq is feasible. If the appellant’s CSID is not retrievable in Mosul, he has the option of remaining in Baghdad and obtaining a new CSID from the Mosul office in Baghdad, or of relocating to the IKR, which I find is reasonable, given that the appellant is a Kurd. It was not disputed that there are daily inexpensive flights from Baghdad to Irbil.”
6. The grounds of challenge grounds accept the lawfulness of the finding that the appellant’s fear was not well founded but argue:
 - (i) That the judge erred in finding return feasible as no or inadequate reasons had been given why the appellant has or would have no difficulty in obtaining a CSID.
 - (ii) The judge failed to place emphasis at all on paragraph 11 of the revised country guidance guidelines and the severity of consequences if he is not able to obtain a CSID.
 - (iii) The finding that the appellant’s mother/brother could retrieve his CSID in the rubble that would be Mosul was irrational/perverse.
 7. In granting permission Upper Tribunal Judge Lindsley expressed concerns regarding the absence of reasoning for certain of the Judge’s credibility conclusions and observed

that the country guidance indicated that the appellant would not be able to get a replacement document from Baghdad. Furthermore, it was arguable that the finding that he could relocate to IKR was unreasoned.

ERROR OF LAW DECISION

8. The hearing took place in two stages. At the first stage I heard argument on error of law in the course of which Mr Forrest abandoned the rationality challenge in the light of the absence of any evidence before the Judge as the situation on Mosul. He accepted that this third ground had been framed in an “over dramatic way” when I reminded him of the requirement for a rationality challenge to succeed. After hearing submissions on the remaining grounds being an absence of reasons for the finding that the appellant has a CSID available (or obtainable) and a failure to follow the guidelines in AA, I gave my decision in the following terms with appropriate modification to give it effect. The First-tier Tribunal judge erred in that he appeared to have reached inconsistent findings on a crucial aspect of the case which is the availability of the appellant’s CSID. There is an inescapable tension between what the judge said at [22] (it was not credible he had left it behind in Mosul) and [33] (it was in Mosul and could be retrieved) and there is an absence of reasoning to bridge the gap. If the latter was intended to be an alternative to the finding at [22], it was open to the judge to say so, but his decision is silent on that. Given the crucial nature of possession or the availability of a CSID as noted by the Court of Appeal in AA, clear findings were required. This is the sole issue under challenge in the case. The decision of the First tier Tribunal is set aside in respect of the issue whether the appellant has a CSID or has one readily obtainable which is the sole basis of challenge. The decision would be remade on this issue in the Upper Tribunal. The findings on other aspects of the claim by the First tier Tribunal were to be preserved.

REMAKING THE DECISION

9. The matter was stood down for an interpreter to be obtained and I gave approval for Mr Forrest for his use to explain the process to the appellant. I heard evidence from the appellant which included answers to my questions for clarification after which the representatives were given the opportunity to question further. The wait for an interpreter also gave an opportunity for the Home Office CPIN report to be considered and copies were arranged by the Tribunal so that this could be referred to. In cross-examination, Mr Govan referred the appellant to his witness statement, a course to which Mr Forrest objected as the appellant had not adopted that statement for the hearing before me. Mr Forest had explained earlier that he did not consider the statement addressed sufficiently the remaining issue in the case. I considered there was no unfairness in Mr Govan making this reference in the light of the appellant having adopted the statement before the First-tier Tribunal and there can be no objection to a witness being tested on evidence it is said he gave earlier provided he has full details of what was said in the past. On this basis Mr Govan read out the whole of paragraph 22 from the statement being the passage he wished to refer to.

10. Mr Forrest conceded in his submissions that the Article 15(c) risk no longer applied in Mosul and accepted that this case turned on the appellant's credibility. He acknowledged the seeming inconsistencies in the appellant's evidence but considered that they could be explained. With Mr Govan maintaining the respondent's position in the refusal letter it is necessary to make findings of fact.
11. In examination-in-chief the appellant explained that he did not have a phone number when he had left Mosul where there had been no phone or internet connection. He knew of no one in Iraq who could be any help as everything in the city "is destroyed". He had set up Facebook account to see if his mother and brother could find him through someone else. His priority in leaving Mosul was to "save their lives" and he could not think of any need for the "stuff" (documents) and there was no time to go and look for the documents.
12. Under cross-examination the appellant confirmed the continuing possibility of ISIS recruitment whilst he was in Mosul and that he had planned to leave from the first day they had taken over. He acknowledged the importance in peacetime of the CSID for food, services and checkpoints but such documents were not "more important" than one's life or safety in times of brutal war. He has not been to Baghdad before, his journey had taken two nights. Checkpoints had been avoided with an "illegal" and the "safest" route having been taken. When pressed on this he said that he had not noticed any checkpoint if one had been passed.
13. Mr Govan referred the appellant to [22] of the witness statement which had described how the agent who worked for the Iraqi government had shown his ID at "many" checkpoints which would "grant us permission to pass without issues". After the full text of [22] was read, the appellant responded saying that the statement was correct but he needed to clarify that he did not "see" any checkpoints, the agent had been in uniform told him not to worry about anything. The appellant had not been "personally stopped" by anyone or asked who he was or where he was going. He acknowledged that he had taken time to plan his journey but compared the value of money to worthlessness of documents. He denied when challenged that he had taken the CSID to Baghdad. He had contacted the Red Cross twice but they could not operate in Mosul. When pressed when he had done this, he said he could not remember and had no written proof.
14. As with thousands of others, the appellant said that he had not memorised the page number of his entry in the register for the CSID. His marriage had been registered. It was not possible to provide just a name and place of birth (to obtain a CSID) - others had tried and failed. His wife's family had been in Mosul too but no contact had been made with them. Living in IKR would not be possible where he would be seen as an outsider.
15. Under re-examination the appellant explained that he was accompanied by his family on the journey together with a neighbour and the "smuggler" who wore a uniform. At no point between Mosul and Baghdad had the appellant been asked to show a CSID. The route was "sensitive" and unless someone was "influential" it was not

possible to travel without difficulties. The agent was either in the government, had a connection to the government or had paid a bribe.

16. My questions for clarification obtained responses that the Facebook account had been set up and that of the four types of documents that the appellant has said he had at interview (q.58 - birth certificate, ID card, nationality card, information card and Taed Sakan) it is the information card that was the CSID. He confirmed that his two children aged nearly 4 and 19 months had been registered in Mosul. As to the length of the journey to Baghdad, which the appellant had described in his statement as five to six hours, he explained that they had left at night and the journey had been five or six hours, thus two nights. The agent had worn an Iraqi army uniform.
17. When questioned further by Mr Govan, the appellant explained that the on leaving Mosul the agent had not been wearing uniform although he could not say whether (when worn) it was military or "part of the government" but he accepted the agent may have had a military ID card. The agent was not his friend and the appellant was unable to comment on the plausibility of an army member living in Mosul; he had undertaken to help for money.
18. In response to questions from Mr Forrest, the appellant explained that departure from Mosul had been after midnight and they had not driven straightaway but had walked for a "long time" although the appellant was not aware where the agent was taking them. After reaching a point they were asked to wait whilst a car was obtained.
19. My conclusions and findings are as follows. I have applied the low standard of proof by considering all the evidence in the round and asked whether there is a reasonable degree of likelihood the appellant has provided a credible account in support of his claim.
20. Mr Govan reminded me that the appellant had been found not credible in relation to his Convention fear. This is correct; the grounds specifically say that the adverse findings were accepted. These were that the appellant's father did not have any connection with the Ba'ath party which would adversely affect the appellant who not suffered any adverse consequences. His inability to travel to IKR for these reasons was rejected. Whilst an appellant may not have told the truth as to one part of his claim it does not necessarily follow that he has not given a credible account as to another part. In this case however the appellant's account of his journey is flawed by serious inconsistencies on matters that he would be reasonably expected to recall which are highlighted in the above note of the evidence as to the length of the journey and what was encountered.
21. As I reminded Mr Forrest in his submissions, there was a further inconsistency over whether the agent led the appellant out of the city at all and how the journey began. Paragraph [21] explains:
 - "21. My wife agreed that we had to get the children out of Mosul. Assim owned a van which he had installed seats in the back of. The four of us joined his family and we all left Mosul together. There were lots of people fleeing at the time and the

situation was chaotic, the roads were very busy. ISIS chased people on motorbikes who tried to escape but we managed to escape. We drove to Baghdad. Outside Mosul, after about half an hour of driving, a man in an army uniform was waiting for us and joined us in the van. There was a group there, but we met him. He was called Mahmud. We changed vehicles at this point and went with Mahmud, whose van was bigger than ours. He was friends with Assim.”

This account materially differs to the version at hearing which included an initial length journey on foot.

22. There is no evidence on the situation in Mosul at the time the appellant left and I should be careful when questioning the plausibility of an account as a consequence. The ruthlessness of ISIS has been well publicised, but it is at least questionable whether an Iraqi soldier or government member would be in Mosul under occupation and have the facility and be prepared to take the risk of leading the appellant, his wife and children together with a neighbour and his family of two teenage girls initially on foot or by vehicle depending on which version is considered out of the city. I also question the plausibility of the journey avoiding checkpoints or the appellant not seeing them as he has variously indicated in the light of these being important features of daily life in Iraq. The appellant’s final position that he was not called on to show any ID is questionable although there is no country evidence that deals with the possibility of a family being escorted by a soldier would or would not be spared enquiry. It is the inconsistent account on the issue of checkpoints that gives rise to my doubts rather this possibility. Above all I do not find it credible that the appellant elected to leave his CSID behind in a journey that had been planned in the light of the importance of that document should flight from Iraq not be successful. The CIPN report and AA emphasise the critical importance of a CSID and I have not been provided with a plausible explanation why it was left behind. Furthermore, having been advised to bring his birth card it is all the more inexplicable why the appellant did not take his other documents. The answers at interview do not provide a reasonable explanation:

“58. What ID did you have in Iraq?

I had a birth certificate ID card, and then the nationality card and information card, because if anybody gets married you need to have another card. Its call Taed Sakan.

59. Why didn’t you bring these documents to the UK?

You wouldn’t think about bringing all of this stuff, the only thing you would think is run and hide yourself, and I had only the birth certificate. We were inside Mosal they are thinking about how to escape from this war and how to get out.

60. Why did you not have a nationality card?

The situation it was when the Kurdish forces they are coming to clear some of the area and the civilian between the two sides and the only thing they will think about it just run and leave everything behind to find a safe area or place.

61. When you were in Iraq did you have a nationality card?

Yes I had them all, the nationality card.”

Nothing said at the hearing provided a better explanation why the papers were left behind.

23. The appellant did not produce any letter or note from the Red Cross confirming that they had been requested but had declined to make enquiries. It is significant the appellant was unable to remember when he had made his two approaches to them. There was no evidence given of who had access to his Facebook account or what had been provided. It has been reasonably open to the appellant to produce evidence on these aspects. The matter of the Facebook account only arose at the hearing before me but no adjournment was sought for this material to be provided.
24. I find that the appellant has not given a credible account of leaving Mosul in March 2017 and leaving his CSID behind. He clearly left Mosul at some point but I am unable to say when or how that was accomplished. He has been shown to be an unreliable witness and there is no rational basis on the lower standard for believing any aspect of his account of events in March 2017. I am satisfied it is reasonably likely the appellant has ready access to his CSID the possibilities being that he has it with him or entrusted it to others here or in Iraq and that it is retrievable should he be returned.
25. Return of the appellant would be to Baghdad. The revised country guidance in AA makes it clear that the journey from there to Mosul poses a risk and I quote [2] from that guidance:
 - “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.”
26. The contested areas stated in paragraph 1 comprise inter alia Nineveh of which Mosul is the capital. Mr Govan argued that there was no evidence to show that in the light of the changes that have taken place the appellant would be unable to make the journey from Baghdad to Mosul. In my view more than such an assertion is required in order to depart from country guidance. In the absence of any cogent evidence on the point, I am unable to conclude that it is readily open for the appellant and his family to make their way safely from Baghdad to Mosul. It has been open to the Secretary of State to produce evidence if it is her view that such a journey can be made but she has not done so. Accordingly, in the light of that risk, I must consider this case on the basis that the appellant and his wife will need to remain in Baghdad for the time being.
27. The revised guidance in AA sets out internal relocation guidance at [14] to [16] as follows:
 - “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”.

28. The focus in the remaking of the decision has been on the issue of the availability of the appellant’s CSID. The case put to the First-tier Tribunal was that the appellant would be at risk for reasons that were found not to be credible and that internal relocation was unreasonable in the light of the absence of that document which I have found to be available. As to the factors which are relevant to internal relocation besides the availability of the CSID, the appellant states in his witness statement that he does not speak Arabic and that he is illiterate it is his case that he was a baker and would have this skill to rely on. I am satisfied that he has immediate family as has his wife in Iraq and it will no doubt be possible for them to work together towards reunification in time. The appellant accepted at interview that he could speak a little Arabic. Section 55 was raised along with the Human Rights Convention in the grounds of appeal. There is no challenge to the judge’s conclusion that article 8 was subsumed into the humanitarian protection considerations which therefore stand. Section 55 was not considered by the judge; here too there was no challenge to this aspect. There is no evidence to show that these are not best served by the family remaining together as a unit and there is no evidence that return of the children with their parents would negatively impact on those interests. Accordingly, on the evidence before me, the option of internal relocation to Bagdad is reasonably open to the appellant and his family pending the opportunity for a safe return to Mosul where it is acknowledged he would not be at risk. I do not consider that relocation to the IKR is a realistic alternative in the light of the indication in the country guidance that other than former residents of IKR all other Iraqis will be returned to Baghdad.

29. By way of summary therefore I set aside the decision of the First-tier Tribunal insofar as it relates to the issue whether the appellant has his CSID available. I re-make the decision and dismiss the appeal on protection and human rights grounds.

30. NOTICE OF DECISION

This appeal is dismissed.

Signed

Date 15 June 2018

UTJ DAWSON

Upper Tribunal Judge Dawson