Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12554/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 4th April 2019	**On 29th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR A H J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Madubuike (Solicitor)
For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Shergill, promulgated on 6th July 2018, following a hearing at Manchester on 22nd June 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 5th August 1989. He appealed against the decision of the Respondent dated 9th March 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he fears Daesh, and cannot relocate to the IKR. He has no identification documentation. He left this back at home when he fled away from his village as the Daesh attacked. His village is, moreover, in a "contested" area. He left his family behind. He has not been able to find them. He has stayed in Erbil illegally for a year and was then arrested. He was released, but was told he must present with a Sponsor or be removed, and this he has been unable to do.

The Judge's Findings

4. The judge had two expert reports before him. He had a large bundle of documents. He noted that the Appellant claimed to be from a small village in a district (Karaj part of Makhmur) which comes under the Nineveh Province (Mosul), which is a contested area. The judge found the expert reports by Dr Fatah and by Mr Sarmemy to be entirely credible (see paragraphs 13 to 14). Both of the expert reports before the judge set out in detail the account given by the Appellant as coming from the Makhmur District. This district is subdivided into three subdistricts. The Appellant referenced various smaller villages and his own village as being located there. The judge recorded that, "I am therefore satisfied that the Appellant does come from the village he claims to, and that this in the Makhmur District" (paragraph 15). Indeed, the Makhmur District was "part of the disputed territories bordering the KRG and the rest of Iraq; and it has ethnically mixed populations" (paragraph 16). The judge also accepted that the Appellant's village was attacked by Daesh (paragraph 21). The issue now, was whether the Appellant could return to the IKR.

5. The judge observed that the Karaj subdistrict and Erbil city were places where there was "close proximity geographically and linguistically". The Appellant claimed only ever to have visited Erbil once previously. The judge held that this was not credible given that "he is capable of driving and the city is less than an hour away." (Paragraph 26). The judge accordingly concluded that the Appellant must have spent quite a bit of time in Erbil city.

6. Second, the judge also found that the Appellant gave a "curious account of how he fled his village and how he managed to enter the IKR." The judge felt that "the Appellant was not being truthful about how much time he has actually spent in Erbil city itself. My conclusion is that you only pick up an accent after spending considerable time somewhere…", and that the Appellant's situation "leaves me to conclude that the Appellant was fabricating that part of his account" and "that he was actually most recently from Erbil city" (paragraph 27). That said, the judge concluded

that "there are no other risk factors now that Daesh are a spent force and the IKR is virtually violence free" (paragraph 28).

7. That left the question of whether the Appellant could now return on the basis of his documentation. The Appellant claimed that he had left his CSID card back at home. The judge did not find this to be credible. The judge referred to the recent decision in **AAH**. This was a case where, although the appeal was heard by Judge Shergill on 22nd June 2018, a few days later on 26th June 2018, the Upper Tribunal had promulgated the new country guidance case of **AAH**, and Judge Shergill's decision was then promulgated after that on 6th July 2018. Judge Shergill, however, did not invite during this time submissions from both sides as to the import of the latest country guidance case on his deliberations.

8. Even so, the judge was not satisfied that the Appellant had lost his CSID card (paragraph 32). If he had lost it, the judge concluded,

> "I see no reason why the Appellant could not approach the United Kingdom base Iraqi or IKR authorities (including the Iraqi Consulate in Manchester) to try to trace his family and/or obtain the necessary details to obtain a replacement CSID" (paragraph 33).

9. The appeal was dismissed.

Grounds of Application

10. The grounds of application state that the judge had erred in law in a number of important respects. First, the judge had concluded (at paragraph 20) in a manner that was contrary to the country and expert reports, when stating that the Appellant was from Erbil. Second, he had misrepresented the expert and country guidance evidence. Third, he had contradicted himself (at paragraph 12) in finding that the Appellant is credible in claiming he is wrong a contested area but then concluding (at paragraph 20) that he is from Erbil. Fourth, the judge failed to give adequate reasons for finding against the Appellant (at paragraph 21) for not having a CSID card with him when his village was attacked. Fifth, the judge was wrong in finding that the Appellant had not returned back to his village to check on his family where it was accepted by the Secretary of State and the judge (at paragraph 20) that the attack took place. Sixth, that the judge's assessment as to the possibility of entry to the KRG by the Appellant was tainted by his erroneous conclusion that the Appellant was from Erbil and not Mosul. Finally, the judge failed to take account of the country guidance case of **AAH** which was promulgated prior to his decision and the reasons impacted on his conclusions in respect of the CSID, and this undermined the safety of his conclusions as to the return of the Appellant to the KRG, and the viability of internal relocation.

11. On 12th November 2018, permission to appeal was granted by the Upper Tribunal with the following observations. First, it was stated that it was contradictory for the judge to have stated both that there was a geographical and linguistic proximity between Erbil city and Mosul, and to

have also stated that the Appellant must have come from Erbil city given the dialect that he spoke. If there was proximity between the two, then this did not require the Appellant to have lived in Erbil city to have had the same linguistic dialect as in Erbil city. Second, that the judge referred to the country guidance case of **AAH** in a manner that was unfair to the Appellant because he did so absent relisting the appeal in order to hear submissions from both parties as to the impact of **AAH** on the extant appeal, and in particular with regard to the Appellant's ability to obtain a CSID, and his ability to travel to the IKR, given that he would be returned to Baghdad.

Submissions

12. At the hearing before me, Mr Madubuike relied upon his grounds of application. He submitted that the judge had misapplied the expert reports, having found that the Appellant was from Mosul. Mr Madubuike also stated that the judge should have invited submissions on the case of **AAH** before promulgating his determination. Moreover, it was wrong for the judge to simply assume that the Appellant must have kept the CSID card on his person, when his village was attacked, rather than leave it behind in his village, so that it was lost thereafter, which would make it now impossible for him to procure a new one, given what has been said in **AAH**.

13. For his part, Mr Bates submitted that the nub of the decision by the judge lies at paragraph 32. Here the judge states that the Appellant claimed that his CSID was left at home but the judge did not find this credible. The matters referenced at paragraph 105 of **AAH**

> "Are either within his knowledge, required the input from the Iraqi authorities here or in Iraq, or input from the Red Cross or others. It is the Appellant's obligation to engage with those three strands and it is inconceivable he has sat idly by for nearly three years" (paragraph 32).

14. Secondly, in any event, the judge then also considers the scenario whereby the Appellant may have lost his CSID card and has lost family ties. In that situation (see paragraph 33) the judge concluded that there was no reason why the Appellant could not approach the relevant authorities in the UK, including the Iraqi Consulate in Manchester, to try and trace his family, or to obtain the necessary details for a replacement CSID.

15. Third, submitted Mr Bates, given that the Appellant will be returned to Baghdad, and given that the judge's finding was that he had resided in the IKR, there was no reason why he could not then find internal relocation from Baghdad on to the IKR again. He would be treated as a person from the local population.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, I accept that unnecessary confusion was caused by the Tribunal decision below, in both stating that there was between Karaj subdistrict and Erbil city "close proximity geographically and linguistically" (paragraph 26), and also asserting that the Appellant must have spent a significant period of time in Erbil city, to acquire an Erbil accent because "you only pick up an accent after spending considerable time somewhere" (paragraph 27). The fact remains, that the Appellant is from the KRG. Second, it is accepted that the Appellant's village was attacked by Daesh. Third, it is also accepted that the Daesh are now a spent force and the IKR is virtually violence free (see paragraph 28 of the determination). The remaining issue, therefore, is that to do with the Appellant's possession of the requisite documents to enable him to return to the IKR via Baghdad. The Appellant claims that, as he was not travelling, he had left his CSID in his home in the village, when Daesh attacked it, and the practise of Daesh is to destroy all documentation in any attack. The consequences that he is now without a CSID. This means that he cannot return.

17. If one looks at the latest country guidance case now of **AAH (Iraq Kurds – internal relocation) Iraq CG [2018] UKUT 00212**, the headnote of this makes it clear at paragraph 1(i) that what will be significant will be,

> "Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of those documents the process should be straightforward….".

18. It has also made clear in headnote 1(iii) that it is relevant to ask, "are there male family members who will able and willing to attend the civil registry with P?" and in this case, because the Appellant has a brother who is in the Peshmerga forces, then, as the judge below concludes, "the office of the Peshmerga will have his details including his CSID information. That could be cross-referenced for the relevant book entry details for the Appellant to obtain his replacement" (paragraph 33).

19. It is not the case, as has been submitted before me, that the judge misapplied the case of **AAH**. The judge had found that the Appellant had not been credible in his evidence in relation to his CSID and contact with his family. He concluded that the Appellant could relocate to the IKR. On the evidence before him, that conclusion was open to the judge to come to.

Decision

20. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

21. An anonymity order is made.

22. The appeal is dismissed.

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

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 Dated

Deputy Upper Tribunal Judge Juss 25th April 2019