



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05130/2019
PA/05879/2019

THE IMMIGRATION ACTS

Heard at Manchester
On 10 May 2021

Decision & Reasons Promulgated
On 29 July 2021

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE B KEITH

Between

MGO
REO
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Johnrose, of Broudie Jackson Canter solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appeal against the decision of First Tier Tribunal (“FTT”) Judge A J Parker promulgated on 26 September 2019. Permission to appeal was granted by FTT Judge Shareaf on 18 December 2019.

2. On 30 September 2020 Upper Tribunal Judge Kekic found there was an error of law in the decision of the FTT Judge. She found that there were errors of law in relation to the protection claim made by the Appellants and set the judgement aside and adjourned the case for a rehearing.
3. The rehearing of the protection claim came before us on 10 May 2021.
4. We were provided with a bundle totalling 263 pages from the Appellants. Both Appellants gave live evidence at the hearing and we were referred to the relevant pages of the bundle.

Background

5. The Appellants are cousins. They are from Iraq and are of Kurdish ethnicity from Kirkuk. They arrived in the UK on 24 September 2018 and claimed asylum on the basis of the risk of violence from non-state agents if returned to Iraq.

The law

6. The law in relation to protection claims and Iraq is contained in the Country Guidance case of SMO, KSP and IM (Article 15(c); Identity Documents) Iraq CG [2019] UK 400 (IAC) and AAH (Iraqi Kurds - Internal relocation) CG Iraq [2018] UKUT 212 (IAC). In SMO at section H the UT revisits the Country Guidance at §425:

425. We were not asked to revisit Part B of the existing country guidance, which will remain in place. As a result of the durable changes in Iraq, however, the remainder of the guidance issued in AA (Iraq) requires significant revision and the guidance in BA (Iraq) can no longer stand. As we have explained, the more recent guidance issued in AAH (Iraq) requires only limited revision, reflecting the resumption of direct flights to the IKR and the introduction of the INID, amongst other matters. The amended guidance, in full, is as follows:

B. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

30. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.

31. The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.
32. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, “sliding scale” assessment to which the following matters are relevant.
33. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.
34. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:
 - Opposition to or criticism of the GOI, the KRG or local security actors;
 - Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
 - LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
 - Humanitarian or medical staff and those associated with Western organisations or security forces;
 - Women and children without genuine family support; and
 - Individuals with disabilities.
35. The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a

breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.

7. Therefore, the analysis of this case must be fact specific as the general situation is not such as to place any individual at risk of an Article 3 breach (para 35) or engaged Article 15(c) of the Qualification Directive (para 31). The Appellants do not submit that they have any of the characteristic outline in paragraph 34 above that might place them at additional risk.
8. The Appellants in this case submit that they are at risk of violence from non-state agents, the test for which is contained in R (Bagdanavicius) v Secretary of State for the Home Department [2005] UKHL 38, [2005] 2 AC 668

“The plain fact is that the argument throughout has been bedevilled by a failure to grasp the distinction in non-state agent cases between on the one hand the risk of serious harm and on the other hand the risk of treatment contrary to article 3. In cases where the risk ‘emanates from intentionally inflicted acts of the public authorities in the receiving country’ (the language of *D v United Kingdom* 24 EHRR 423, 447, para 49) one can use those terms interchangeably: the intentionally inflicted acts would without more constitute the proscribed treatment. Where, however, the risk emanates from non-state bodies, that is not so: any harm inflicted by non-state agents will not constitute article 3 ill-treatment unless in addition the state has failed to provide reasonable protection. If someone is beaten up and seriously injured by a criminal gang, the member state will not be in breach of article 3 unless it has failed in its positive duty to provide reasonable protection against such criminal acts. ... Non-state agents do not subject people to torture or the other proscribed forms of ill-treatment, however violently they treat them: what, however, would transform such violent treatment into article 3 ill-treatment would be the state's failure to provide reasonable protection against it.”

9. In relation to the issue of documentation the UT in SMO gave guidance in relation to the issue of documentation:

36. 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.

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

10. In relation to the CSID documents:

C. CIVIL STATUS IDENTITY DOCUMENTATION

40. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.
41. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a ‘certification letter’ at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.
42. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father’s or the mother’s side because the registration system is patrilineal.
43. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.
44. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.
45. The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

11. The issue of whether the Appellants have access to their passports or CSID cards is therefore a live one in this matter.

Evidence

12. Both Appellants gave live evidence and were cross-examined. REO's evidence was that he and his cousin worked in a Shisha Bar in Kirkuk. On 20 July 2018 the manager of the Shisha bar was shot and killed outside the bar where both men were working. They did not witness the actual shooting as they were inside the bar but saw the aftermath of the murder of the manager of the bar.
13. It was said that the owner was killed by 'mafia' who were linked to the Kurdish PUK party. The First Appellant's evidence was that as a result of the incident and subsequent threats to their families both Appellants decided to leave Kirkuk and live with relatives in the village of Hanjira about 10 days after the killing.
14. They then obtained passports and left Iraq on 18 August 2018 for Turkey using an agent to help them obtain safe passage. From Turkey, where they stayed for about 7 days, they travelled to the UK finally arriving by plane on 24 September 2018 where they claimed asylum.
15. In relation to their identity documents the REO said that his passport was given to the agent once they were in Turkey and was meant to be returned to his family in Iraq. In relation to his CSID Card he said it was in Iraq with his family.
16. REO said that he had lost all contact with his family, including his uncle who had assisted him by providing evidence to be used in this case. He had not had contact with any member of his family for a year and had tried to find them on social media without success. He stated that the reason he did not have contact with his family is in case their phones were taken and contact details were found.
17. MGO explained the same scenario but that he had given his passport to the agent and left his CSID in Iraq with his family.
18. One of the issues explored in the hearing was the issue of the death certificate of the Manager at page 30-31 on the bundle. It was accompanied by a copy of the envelope that sent it to the UK. There is also a report to the Ministry of Interior by the Counter Terrorism Police in Kirkuk detailing some of the features of the car that had the killers in. There was inconsistency in the evidence as to when the Manager was buried and it was put to the Appellants that the death certificate was issued after the date on which the Appellants said they attended the funeral of the Manager. MGO explained that the documents had been provided by the family of the deceased and said they were genuine.

Discussion

19. We are prepared to accept that the death certificate and report are genuine. However, they do not assist the Appellants. All they show is that the Manager died of severe bleeding from shooting. They also undermine the credibility and chronology of the evidence given by the Appellants. In their screening interviews on 24 September 2018 both Appellants gave significant detail about what they said had happened in Iraq. REO in answer to question 80 in the screening interview stated that they were taken to the village by relatives for safety “So from 24th July 2018 to 15th August 2018 we stayed there”. MGO stated the same in answer to question 53.
20. However, both Appellants now maintain in witness statements and oral evidence that they only left for the village 10 days after the incident. In their witness statements they explain that their family received threats 10 days after the incident and that is why they left Kirkuk. It is unclear which version if either is true. The witness statements written in October 2020 give detail about threats received by the families in the 10-day period which caused them to leave Kirkuk.
21. The crucial evidence that is lacking is any credible evidence of threats to the Appellants themselves from the ‘mafia’ or any other individuals. Their case at its highest is that being in the back of the Shisha bar unable to see what was happening at the front, the manager whom they worked for was gunned down. As a result, they have been targeted by the same people who killed him. However, there is no credible evidence of this or any plausible explanation for the threats. The highest it was put in closing was that the threats were from the ‘mafia’ who it was speculated could have been looking for an item or an individual or information.
22. In HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 Neuberger LJ, said, at paragraphs 28 and 29:

“28. Further, in many asylum cases, some, even most, of the appellant’s story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of a story, and the story as a whole, have to be considered against available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience.
23. We have considered the evidence along with the Country Guidance background which shows that Iraq remains a state in transition, where violence and lawlessness are prevalent. In SMO the UT explains that:

3. *The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*

24. The Appellants explained that their families had allegedly been threatened when they were looked for by the Mafia. No details of the threats or any plausible explanation is given as to why they were targets or might remain so. The purported threats came with no information as to what the mafia were looking for or whether they would return. However, their evidence of the risk posed to them is simply not credible even applying the lower standard of proof as per Tanveer Ahmed.
25. There is no evidence given about the alleged PUK connection of the perpetrators and no explanation as to why the Appellants thought they were associated with the PUK. In any event that fact is not relevant as it is not made out that threats were in fact made or that the Appellants face violence on return.
26. Setting the evidence of the Appellants against that background there is not made out on the evidence that they are at risk of violence on return to Iraq.

Documentation

27. In relation to documents available for travel, in the Iraq CPIN June 2020, Annex I: Information obtained from the Home Office's Returns Logistics Department - April 2020, states:

CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document (see above list Q1, FAS) and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.

Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.

28. In SMO, KSP & IM (Article 15(c); identity documents) (CG) [2019] UKUT 400 at [375] the Tribunal in its analysis of the evidence states:

The Laissez Passer has been a feature of the Iraq CG landscape for years. In AA (Iraq), the Tribunal considered the feasibility of return in some detail, which in turn necessitated consideration of the ways in which an individual might obtain a passport or a Laissez Passer. At that stage, Dr Fatah explained that an individual who wished to obtain a Laissez Passer was required to produce "either a CSID or INC or a photocopy of a previous Iraqi passport and a police report noting that it had been lost or stolen is required in order to obtain a Laissez-passer". Further enquires made by Dr Fatah with the Iraqi Consulate in London suggest that this is no longer the case, and that an individual must simply be able to establish their nationality in order to obtain a Laissez Passer. In the absence of documentation, an Iraqi national can request family members in Iraq to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or, failing that, "legal procedures will then be started to prove the Iraqi nationality of the failed asylum seeker through a list of questions in relation to their life in Iraq". These details are checked against Iraqi records, and once verified the individual will be issued with a document enabling the individual to return to Iraq. Dr Fatah goes on to state in his report that the website of the Iraqi Ministry of Foreign Affairs states that the resulting document is valid for six months and that it 'permits a single entry into Iraq'.

29. The issue in this case is whether the Appellants could have access to either their CSID cards or passports. If they do not then it was submitted that AAH (Iraqi Kurds) Iraq CG [2018] UKUT 212 (IAC) explains that it is not possible for them to internally relocate, AAH at 13:

"13. The position today is that the KRG and the GoI remained locked in territorial dispute over areas in Ninewa, Salahadin, Diyala and particularly in Kirkuk. To summarise the situation in these disputed territories Dr Fatah adopts the language used by the United States' Institute of Peace, stating that they are characterised by a "tangled web of administrative and security arrangements between the Iraqi government and the Kurdish regional authorities that sit atop poorly defined internal boundaries and amid a toxic legacy of mistrust". The international community have, for the most part, condemned the independence referendum as destabilising and unnecessary. Turkey and Iran, neighbouring countries with significant Kurdish populations, have expressed alarm. Both the GoI and the KRG are attempting to shore up their respective positions by claiming territory, and populations, as either inherently 'Arab' or 'Kurdish'. For example, the Yezidi community, largely abandoned in the face of the ISIL onslaught, are now embraced by Erbil as "Kurdish brothers", the implication being that lands formerly occupied by this minority around Mount Sinjar should fall within the IKR. Similar disputes are played out in Kirkuk, long the scene of demographic manipulations such as the "Arabisation" programme under

Saddam Hussain. These factors continue to have significant implications for civilians on the ground: Kurds from Kirkuk are for instance free to come and go within the IKR as they are considered by Erbil to be residents, but they are not permitted to switch their place of formal registration from Kirkuk to anywhere else in the territory, since to do so would be to diminish the official Kurdish population in that disputed city. There is also substantial disagreement between the two governments over the export of, and revenue from, oil. All observers agree that the future is uncertain and that the security situation remains precarious. Dr Fatah considers that the greatest risk is found in those governates with mixed populations: the general rule of thumb is that the bigger the majority of one group over another, the more stable the security situation."

30. We were also referred to the CPIN 2020 at 7.2 and 7.2.5. as evidence that internal relocation is not possible for undocumented migrants if returned to Baghdad.
31. On their own evidence the CSID cards are with their families and it may be the case that their passports have also been returned. It is therefore a question of whether they have in fact lost contact with their families such that they cannot obtain the documents.
32. The Appellants' evidence was that they were in contact with their uncle who assisted them in this case but have now lost contact. They remained in contact for significant time whilst in the UK but no evidence of further threats to the families in that time has been provided. They say they have been unable to find any family members on social media. There is no evidence of efforts made to contact their families or to obtain travel documents through them. That could have been by post, email, phone, social media or any other method. However, there is no evidence of any attempts to locate their families. It is therefore not made out that they have lost contact with their families.
33. In our judgement the evidence of loss of contact is not credible. It coincides too conveniently with their need to be unable to get travel documents to allow them to stay in the UK. We do not accept that they are unable to contact their families nor has any evidence of their attempts to make contact been provided. It is therefore not made out that they cannot access either the CSID Cards or passports or any other details/information required to enable them to obtain the required documentation such as a registration document (1957). It is not made out the Appellants will not have the support of family members in Iraq to enable them to return to their home area and continue their lives there.
34. As a result, their protection claim fails.

Decision

35. **We dismiss the appeal.**

Anonymity.

36. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Deputy Upper Tribunal Judge B. Keith

Dated 28 July 2021