



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04784/2016

THE IMMIGRATION ACTS

Heard at the Civil and Family Court, Liverpool
On 2 May 2018

Determination Promulgated
On 4 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

SORAN ALI MOHAMMED
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1 This is the resumed hearing of the appeal. This decision is to be read together with my decision dated 25 April 2018, following a hearing on 8 February 2018 (annexed to this decision). When the matter first came before me on that day, I ruled that there was an error of law in the way that the First tier Judge, Judge EMM Smith, determined the appeal, that being that notwithstanding the fact that the appellant's return to Iraq was not feasible, due to his lack of relevant documentation, the judge should have proceeded to determine whether or not the appellant would be

destitute on a hypothetical returned to Iraq. That such an approach should be taken was confirmed by the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944.

- 2 However, upon making that ruling, I adjourned the hearing to allow the Respondent to clarify in writing her position as to certain documents relied upon by the appellant in his appeal. That adjournment would also allow (although this was not an operative reason for the adjournment) the appellant more time to obtain representation. I also decided not to determine the appellant's remaining grounds as set out in his grounds of appeal to the Upper Tribunal dated 28 June 2017. A direction was issued orally at the hearing on 8 February 2018 that the respondent shall, within 14 days, provide a statement in writing as to what documentation they believe the appellant holds, whether he is likely to be able to obtain the laissez passer to return to Iraq, and whether he was likely to be able to gain possession of a CSID card in Iraq.
- 3 In compliance with those directions, Mr Bates prepared a letter dated 9 February 2018, which stated that the respondent continued to rely upon the refusal letter of 25 April 2016, paragraph 35 of which accepted in the light of the appellant's non-genuine documents, as set out at appendix C1 - ID card, and C4 - Jansiyya - Iraqi citizenship certificate, that the appellant was not presently feasibly removable. The letter set out that the disputed documents had been provided to the appellant's previous representatives for authentication by an expert, but no expert report had ultimately been provided. The letter argues that in the light of the cogent adverse credibility findings made by the judge, the appellant had not been a reliable witness of truth, and this would by extension include suggestions that the appellant could not reasonably access a CSID card upon return. The respondent argued that the appellant has not given a reliable account of what documents are, or are not, genuinely available to him.
- 4 On 2 February 2018, it had appeared to me that the document being referred to by the judge at [22], where the judge refers to page C4 of the respondent's bundle, was the respondent's documentation examination report dated 20 April 2016 relating to the appellant's Jansiyya nationality certificate. I observed at that time that I had been unable, even with the assistance of the Respondent, to find the respondent's document examination report in relation to the appellant's ID card. However, as Mr Bates points out in his letter of 9.2.18, this is to be found at page C1. It is unfortunate that this was not brought properly to my attention at the hearing of 8 February 2018.
- 5 It would therefore appear that two document examination reports were provided by the respondent, both dated 20 April 2016: in relation to the appellant's ID card, and his Jansiyya nationality certificate respectively. At [22], whilst considering the appellant's ID card, the judge refers to a document examination report at C4. This is in fact the document examination report for the Jansiyya nationality certificate, not the ID card. I shall consider this issue below.

- 6 The appellant has attended today again unrepresented. He tells me that he returned to the solicitors which are referred to in the error of law decision, but that approximately 8 to 10 days ago they informed the appellant that they were unable to represent him at any further hearing. The appellant was unable to tell me any reason that was given by the solicitors for that decision. The appellant tells me that he has not approached any other firms of solicitors to seek representation in the last 8 - 10 days. Although the appellant states that he would prefer to have representation for the remainder of this hearing, he is unable to provide me with any satisfactory evidence that he is likely to obtain representation. Insofar as the appellant applies for an adjournment of this appeal, I refuse such an adjournment. The appellant has been unrepresented throughout. Although he has twice requested a delay in his appeal before the Upper Tribunal for the purposes of obtaining representation, he has not obtained any.
- 7 I find the appellant has had ample opportunity to obtain representation, and rule that the appeal should proceed, in exercise of my general case management powers under Rule 5, Tribunal Procedure (Upper Tribunal) Rules 2008, with regard to the overriding objective of the Rules, that such rules are to enable the Upper Tribunal to deal with cases fairly and justly, which includes avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2)(e)).
- 8 I therefore summarised to the appellant through the court interpreter the grounds of appeal were as set out that my paragraph 8(1)-(6) of the previous decision. The appellant was invited to add anything further to those grounds of appeal to persuade me that the judge erred in law in rejecting the credibility of his account.
- 9 Having heard from the appellant, I ruled that there were no material errors of law disclosed by those grounds of appeal, other than the one identified in my error of law decision of 25 April 2018. The remainder of the appellant's grounds were with respect nothing more than a disagreement with the outcome of the appeal, or merely provided further explanations or interpretations of his earlier evidence, which had already been rejected by the judge.
- 10 I therefore explained to the appellant that I would consider the consequences of return to Iraq on the basis of the findings made thus far by the judge. However, given that the judge had not determined whether the appellant might be able to obtain a replacement CSID upon return, it was necessary to hear whatever further evidence the appellant wished to give on that issue.
- 11 I therefore asked the appellant some further questions to obtain his view about whether he would be able to obtain relevant documentation to avoid destitution in Iraq.
- 12 The appellant stated that he had last lived in Hawija in Kirkuk province with his mother and brother, his father having passed away in 2013 before he left Iraq. He had no other siblings. He did not know where his mother and brother were, having

been separated from them in Turkey. I informed the appellant that the respondent intended to argue that because the appellant's account had not been believed by the judge, it may be said that the appellant still has family in Iraq and could obtain documentation from them. The appellant said he had told the truth about the whereabouts of his family. He said that he did have a CSID card (Jansiyya) which he gave to the Home Office. He said that a person who did not have CSID card would have to report its loss to the authorities in Iraq, to the identity office in Kirkuk, and he did not know how to do that. He did not know if he could get a replacement CSID card in the UK.

- 13 In relation to any argument that he could get help from his relatives in Iraq to get a CSID card, he would reply that the only relatives he had were his mother and brother, and they were not in Iraq. He had not attempted to trace them for example through the Red Cross. The appellant said he that he did not know how to do that. He said that he had made some enquiries through other Kurds in United Kingdom but had not received any information about the whereabouts of his brother and mother. Neither the appellant nor his relatives used social media.
- 14 The appellant stated that he spoke very little Arabic. He learned it from Arabs living in Hawija. He could have small conversation about weather, for example, and a little about obtaining directions, but spoke little Arabic. He did not know anyone in Baghdad.
- 15 Cross-examined by Mr Bates the appellant said he had no friends in Iraq. He said he did have a CSID card whilst in Iraq which was the document he gave to the Home Office. He said that was a genuine document, which he had obtained himself in an office in Kirkuk. Asked what documentation he needed to show to get to a CSID card, he said it was the documentation given when you were born in Iraq. If he could get to Kirkuk he did not know if he could get a replacement CSID card. He knew that he would have to report it as missing, but did not know the proper procedure for that.
- 16 When asked what he feared in Iraq now he said that when he fled Iraq he feared ISIS, and problems in Kurdistan from the family of a girl. It was put to him by Mr Bates that ISIS had now been defeated - why would he fear them now. The appellant said that people from Daesh were still present, and were not finished within Iraq; they were still looking for people and killing people.
- 17 The appellant said that other than the problems that he told the First-tier Judge about the girl in the Kurdish region he had no other problems in the IKR. If he could go there he would, he said, but could not because of the social problem relating to the family of the girl.
- 18 I asked whether he thought it was safe for him in Kirkuk now or not. He said no because the ISIS beliefs remained in Kirkuk and will never end. Now there were Shia militia taking control of the city, and he was Sunni. Asked what

documentation he might need to enter the IKR, he said at the checkpoint they will look at people and check their documents

- 19 I then heard submissions from Mr Bates in closing. He argued that the First-tier Judge had found the appellant's reasons for leaving Iraq were not genuine and he had left for purely economic reasons. His claim to have fled from ISIS was rejected and this damaged his overall credibility. Although Mr Bates accepted that there was no specific finding by the judge about the whereabouts of the appellant's family members, Mr Bates argued that there was no documentary evidence supporting the appellant's claims to have searched for his family members for example by making enquiries to the Red Cross or from those people he said he had approached in the UK to try to locate his family. He argued that the appellant knows where his family is. Based on the judge's findings of fact, the appellant has failed to establish that his family does not remain in Iraq and, and he has failed to establish that he is not in contact with them.
- 20 Mr Bates argued that it was the appellant's own case that his documents were genuine. On his own case, therefore, he had the relevant documents needed to survive in Iraq. However, the Respondent's case was that those documents were not genuine, but that the appellant could obtain replacements by contacting his family. Even if the appellant felt that he no longer wished to live permanently in his claimed previous residence of Kirkuk, he could travel there given the military defeat of ISIS to obtain replacement documentation, and then travel to another part of Iraq if he wished.
- 21 Mr Bates argued that the appellant could be returned to Baghdad and, using funds provided from a returns package, fly from Baghdad to the IKR where he would be granted entry, and where he would be permitted to remain. The risk of harm that the appellant relied upon in IKR relating to the family of a girl had been rejected by the First-tier and there was no reason why he could not remain in the IKR where he had previously worked, according to his own account.
- 22 In the appellant's closing remarks he stated that he had not come to the UK for economic reasons; he had fled because of his fear from ISIS and because of the risk from the girlfriend's family. ISIS had not been completely removed and their beliefs still existed in Kirkuk and there is now Shia Hashd al-Shaab military forces controlling Kirkuk, who are dangerous. The appellant said that he did not agree with the Home Office submissions but made no further submission himself.

Discussion

- 23 I have ruled above that the appellant's remaining grounds in his grounds of appeal of 28 of June 2017 do not disclose any material error of law. The judge rejected the appellant's account of having come to the adverse attention of ISIS and that the appellant had any risk of harm in IKR from the family of a girl with whom the appellant had had a relationship. The judge made few other positive findings of fact

other than to find that the appellant was from Iraq (see [23]). Otherwise, the judge held at the end of paragraph 24:

“I am not satisfied even to the low standard of proof that the appellant has provided a true account of his experiences and reasons for claiming asylum that justifies his claim of fear. I have found that the appellant’s account is simply not credible and that he has invented or exaggerated the threats made to him and that if such threats were made there were by no means sufficient for him to flee and are therefore not a Convention reason”

- 24 Further, at paragraph 25 the judge stated that he had found the appellant’s account not credible.
- 25 I have now had sight of both document verification reports. I find that although the judge may have referred to the documentation examination report for the Jansiyya nationality certificate when discussing the ID card at [22], this would not have made any difference to his consideration of the ID card, as the reports, by a named Immigration Officer/Specialist Document Examiner, make the same criticisms of both documents. The judge held that the ID card, which purported to state that the appellant was from Hawija, was not reliable evidence. Although the judge did not make a specific finding on the appellant’s Jansiyya nationality certificate, given the judge’s approach to the ID card, he would inevitably have come to the same conclusion on that document.
- 26 I therefore do not find it necessary to consider whether or not there has been a relevant change of circumstances in Kirkuk, as is argued by Mr Bates, to determine whether it would be safe for the appellant to reside there. This because the appellant has not, on the basis of the findings of fact made by the judge, established that he is even from the Kirkuk area. Although the judge found that the appellant was from Iraq [23], the judge found that the appellant had otherwise not provided a truthful account of his experiences and of his reasons for claiming asylum. It is to be recalled that the appellant’s documentation suggesting that he was from Hawija has been found unreliable.
- 27 The appellant’s oral evidence given on 2 May 2018 is not materially different to the evidence which he provided to the First-tier regarding, for example, the whereabouts of his family. He said then he had lost contact with them in Turkey and he maintains that position now. Given the judge’s credibility findings there is no materially different evidence before me to justify a finding that the appellant is now telling the truth about the circumstances in which he, and by extension, his family members, left Iraq. The appellant has not, because of the adverse credibility findings made in relation to his account, established that he has lost contact with his family, or that they are no longer in Iraq. The appellant has not made any attempt to trace his family through official routes, and is unable to advance any new, positive evidence which I can take into account which establishes the whereabouts of those persons.

- 28 I therefore find that the appellant has failed to make out, to a reasonable degree of likelihood, his claim that he is not in contact with family members, or that they are not in Iraq. He has not established that those family members are not in a position to help him obtain a replacement CSID card and any other relevant documentation which he requires to avoid destitution in Iraq. He has not established, in accordance with paragraphs 9 -11 of the headnote as set out in the annex to the Court of Appeal's judgment in AA (Iraq) v SSHD [2017] EWCA Civ 944 that he would be at risk of destitution in Baghdad or any other part of Central and Southern Iraq.
- 29 This decision was dictated on 2 May 2018, but has only now been perfected from that draft. I have considered whether the recent promulgation of the case of AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC) (26 June 2018) requires me to reconvene the present appeal.
- 30 I find that it is not necessary for me to do so in order to fairly determine this appeal. Paragraph 1 of the headnote in AAH supplements Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v SSHD [2017] EWCA Civ 944 by providing further guidance as to how a person may obtain a replacement CSID card in Iraq. Given that the all that the appellant has been able to establish is that he is from Iraq, and is Kurdish, and I have additionally found that he is to be treated as still in contact with family members in Iraq, which includes a male family member (his brother), there is nothing within the additional guidance given in AAH which would be of any assistance to the appellant's case.
- 31 Further, paragraphs 2-10 of the headnote in AAH replace the guidance given at Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq), and deal with the circumstances in which a Kurd may be permitted to enter the IKR and reside there, without becoming destitute. However, on the facts of the present case, the appellant has not established that he needs to enter IKR for any purpose, for example, eg to avoid serious harm in Central and Southern Iraq.

Decision

On 2 February 2018 I set aside the judge's decision, for reasons contained in my decision of 25 April 2018.

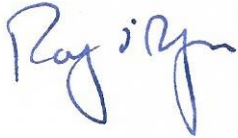
I remake the decision by dismissing the appellant's appeal on asylum and humanitarian grounds.

Dictated 2.5.18

Finalised 2.7.18

Signed:

Date: 2.7.18



Deputy Upper Tribunal Judge O’Ryan

Annex: Decision issued on 25 April 2018 following hearing of 8 February 2018

- 1 The Appellant appeals against the decision of Judge of the First tier Tribunal EMM Smith dated 28.6.17, dismissing the Appellant’s appeal against the Respondent’s decision of 25.4.16 refusing the Appellant’s protection claim.
- 2 The Appellant is a national of Iraq, of Kurdish ethnicity, and entered the United Kingdom in or around November 2015, claiming asylum 1.12.15. The Appellant states that he originates from the town Hawija (not Hadija, as set out at [6] in the decision), a town in Kirkuk province, in Central and Southern Iraq. He stated in his claim that he had some experience of working in Sulemaniya (in the IKR) as a labourer, but more recently owned a shop in her Hawija selling women's clothes and cosmetics. His claim was that in or around 2014 members of ISIS entered his shop and told him he should not sell cosmetics, threatening to kill and behead him (SEF Question 123).
- 3 Another claim, to fear harm from relatives of a young woman living in the IKR with whom the Appellant had once had a relationship was not pursued by the Appellant, or, insofar as it was, was rejected by the Judge at the end of [18] as presenting no current risk to the Appellant.
- 4 In her refusal letter dated 24.4.16, the Respondent disputed the Appellant’s nationality; did not accept his account; held that documents relied upon by the Appellant to establish his nationality were not reliable; held that in the absence of documentation the Appellant’s return to Iraq was not feasible; and held in the alternative that any Art 15(c) risk in Kirkuk province could be avoided by internally relocating to the IKR.
- 5 On appeal to the Judge, the Appellant was not represented. The Appellant's principal complaint, that he was in danger of ISIS, was rejected by the Judge at [19]-[24] of the decision. Although the Respondent had disputed that the Appellant was from Iraq at all, the Judge held at the end of [23] that the Appellant was indeed from Iraq.
- 6 However upon the Judge having rejected the credibility of the account which the Appellant gave in relation to events in Iraq, the Judge turned at [31] to the case of AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC). The Judge recited certain parts of the headnote to that case, and also the reference within the case to the Court of

Appeal's judgment in *HF (Iraq) and Others v SSHD* [2013] EWCA Civ 1276 that an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification document, if the Tribunal finds that P's return is not currently feasible, given what is known about the state of P's documentation.

7 The Judge then states at [32]: "In light of my findings above the Appellant is excluded from humanitarian protection", and the appeal was dismissed.

8 In typed grounds of appeal, which the Appellant tells me today were prepared by a translator free of charge, the Appellant argues, in summary, as follows:

- (i) The Judge should not at [17] have found against the Appellant's credibility because of his failure to apply for asylum in France because the Appellant was under the control of an agent.
- (ii) Providing an explanation as to why the Appellant had closed his shop for 15 days after being threatened by ISIS.
- (iii) Arguing that it was not reasonable for the Judge to have suggested that the Appellant take internal relocation to other parts of Iraq.
- (iv) Denying that the Appellant was an economic migrant, but asserting that he had been required to close his shop through threats from ISIS.
- (v) Insisting that the Appellant's Iraqi ID card that he produced was genuine.
- (vi) Requesting the Tribunal to review his case in accordance with the latest country guidance (*BA (Returns to Baghdad Iraq CG)* [2017] UKUT 18 (IAC))

9 In a decision of a Judge of the First tier Tribunal Macdonald dated 27.9.17, the Judge, perhaps giving greater latitude towards the Appellant, being unrepresented, took that last ground to be an invitation for the Tribunal to review the Appellant's case in the light of the Court of Appeal judgment in *AA (Iraq) v SSHD* [2017] EWCA Civ 944. The grant of permission set out that the Court of Appeal corrected the agreed error contained within the Country Guidance case of *AA Iraq*; the amended guidance made it clear that regardless of the feasibility of a persons's return to Iraq, and it was necessary to decide whether that person had a CSID card or would be able to obtain one reasonably soon after arrival.

10 Permission was granted generally. It is therefore to be noted that the grant of permission to appeal appears to deal specifically with the last point of the grounds of appeal, but not the remaining grounds.

11 In a Rule 24 reply dated 17.10.17, the Respondent states as follows:

“The Respondent does not oppose the Appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider the matter of the Appellant’s risk on return to Iraq in light of AA(Iraq) v SSHD [2017] EWCA Civ 944. The consideration will be on the basis that the other findings of the First Tier Tribunal are retained.”

- 12 That appears to me to amount to an acceptance that there is a material error of law in the Judge's decision with regard to the application of AA (Iraq).
- 13 The Appellant was provided with a copy of the grant of permission to appeal, and the notice of hearing for today's hearing was issued on 12.1.18. On 2.2.18, an email application for an adjournment of the hearing today was received at Field House requesting an adjournment on the basis that the Appellant had been unable to get a solicitor in time for the hearing, and the Appellant would appreciate it if the hearing could be rearranged so that he is able to obtain appropriate legal representation.
- 14 In a written decision dated 5.2.18, Upper Tribunal Judge O'Connor refused that application on the basis that:

“The Appellant was informed of the grant of permission as long ago as the end of September 2017 and has therefore had ample time to arrange for legal representation. The application fails to identify what steps the applicant has taken to obtain such representation. In any event, the Upper Tribunal is accustomed to hearing litigants in person and, on the facts of the instant case, there is no disadvantage or prejudice to the Appellant in not having a legal representative.”
- 15 At the hearing before me, the Appellant appeared in person, and a court interpreter, Mr Ali, was available speaking Kurdish Sourani.
- 16 The Appellant renewed his application for an adjournment. He explained that he had attempted to seek representation, but that some solicitors had asked him for very high sums, up to £3000, to represent him in the ongoing appeal. He had, about 10 days ago, spoken to a solicitor in Liverpool who said that they would be able to represent the Appellant in the Upper Tribunal hearing, but not at the short notice of 10 days, and that they advised the Appellant to obtain an adjournment for that purpose. The Appellant was unable to inform me what the name of the solicitors was and had no other information about them, other than the fact that they had offered to represent the Appellant without charge, and therefore appears to be a legal aid firm.
- 17 The Appellant’s adjournment application would not have fallen to be granted by me, if it were not for one other matter. That is that given that the key issue in the appeal before the Upper Tribunal is the application of AA Iraq, and whether the Appellant will be able to receive obtain a CSID identification card, to avoid destitution upon return to Iraq, it seemed to me that some further clarity was needed from the Respondent about their view as to the reliability of the Appellant’s documentation.

- 18 On arrival in the UK the Appellant provided at his screening interview two documents, being an Iraqi citizenship card, and a National Identification card (Initial Contact and Asylum Registration Form, q 1.7). Within the Respondent's bundle is a document examination report referring to document number 0172410 (Jansiyya). (Mr Ali informed me that this referred to a nationality certificate.) The document examination report asserted that the document was counterfeit and should not be relied upon as evidence of nationality or identity, on the grounds that the document had been printed using an ink jet print process which is the incorrect print process for a document of this type; the hologram over the holder's photograph was counterfeit and did not appear as expected; there were spelling errors within the document which were not expected.
- 19 The position of the Respondent in relation to the Appellant's documentation is set out at paragraph 13 of the refusal decision dated 25.4.16. In that paragraph, the Respondent appears to assert that both documents have been carefully examined and it was noticed that there were serious concerns regarding the authenticity of the documents. The paragraph concludes that a document examination report has been received and it states that the documents are counterfeit and cannot be relied upon as evidence of nationality or identity.
- 20 However, although the refusal letter suggests that the document examination report found that documents plural were counterfeit, the actual report that I have seen only appears to refer to one document, being the nationality certificate. At the hearing, Mr Bates, for the Respondent, did not draw to my attention any other document verification report.
- 21 It seems to me that it will be important for the Respondent to clarify her position to the Tribunal as to what documentation, if any, the Appellant has, to establish his identity, and also to secure the Respondent's view about whether the Appellant would be able to obtain a laissez-passer to return to Iraq, and a CSID card to facilitate his continued residence in Iraq.

Decision

- 22 I therefore find rule that the making of the decision involves the making of a material error of law, that being that the Judge failed to proceed to continue to determine whether the Appellant may face risk of harm through destitution as a result of lack of a CSID documentation in Iraq. In fairness to the Judge, this error only became apparent upon the handing down of the judgement in AA(Iraq) v SSHD v SSHD [2017] EWCA Civ 944 in the Court of appeal, after the Judge's decision was made.
- 23 I have not ruled as to whether any of the Appellant's other grounds of appeal represents a material error of law, but rather, I reserve my position on that until I have heard submissions on those points by a representative, (if possible).

24 I adjourn the remaking of the decision for a period of not less than six weeks, to enable the Appellant to obtain legal representation and for the Respondent to reply to the direction below.


Direction (given orally on 8.2.18)

25 The Respondent shall, within 14 days of this hearing, provide a statement in writing as to what documentation they believe the Appellant to hold, whether he is likely to be able to obtain a laissez-passer to return to Iraq, and whether he is likely to be able to gain possession of a CSID card in Iraq.

26 The matter is therefore adjourned.

Signed:

Date: 25.4.18

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', is written over a light blue circular stamp.

Deputy Upper Tribunal Judge O’Ryan