



IAC-AH-SAR-V1

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

Appeal Number: AA/12167/2009

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 6 October 2015**

**Decision & Reasons Promulgated  
On 13 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**HK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Jones, instructed by Sutovic & Hartigan, Solicitors

For the Respondent: Mr Harrison, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, HK, is an Iraqi national of Arab descent who is from Kirkuk. The litigation history of the appellant is lengthy. He entered the United Kingdom as long ago as April 2008 when he claimed asylum. His asylum claim was refused on 18 September 2009. He appealed against that refusal, his appeals were dismissed by the First-tier Tribunal and Upper Tribunal. On 18 May 2012, the Court of Appeal sealed a consent order setting aside the Upper Tribunal's decision. A rehearing of the appellant's appeal in the Upper Tribunal was stayed awaiting the outcome of an

appeal against HM2, *HM and Others (Article 15(c)) Iraq CG* [2012] UKUT 409 (IAC). Eventually, the appellant appeared on 28 January 2014 before Upper Tribunal Judge Hanson. The Upper Tribunal dismissed his appeal. The appellant appealed to the Court of Appeal which approved a consent order on 23 July 2015 allowing the appeal against the decision of Upper Tribunal Judge Hanson and remitting the matter to a differently constituted Upper Tribunal for re-determination on the merits. The appeal was then heard in the Upper Tribunal on 6 October 2015 when Mr D Jones of Counsel appeared for the appellant and Mr Harrison, a Senior Home Office Presenting Officer, appeared for the respondent.

2. The statement of reasons annexed to the consent order before the Court of Appeal reads as follows:

- “1. The parties agree that UTJ Hanson’s decision is flawed by an error of law namely the failure to have proper regard to the December 2013 Operational Guidance Note for Iraq including its relevance to his claims for international protection.
2. That was a material error since the December 2013 OGN confirmed that those who had worked for or were associated with foreign companies were potentially at risk of persecution a development from the position in the earlier Home Office material.
3. Although UTJ Hanson made some reference to earlier country guidance case law which acknowledged a risk to those in such a position, and appeared to contemplate the appellant’s claim in that context, he failed to deal properly with the geographical extent of the risk to the appellant.
4. This is a significant flaw because, irrespective of whether he would be at risk as a ‘mere’ civilian on return to Iraq, the appellant has an individual risk profile which might place him at a higher level of risk sufficient to engage the protection of the Refugee Convention or possibly Article 15(c) of Directive 2004/83/EU.
5. In these circumstances the parties agree the most appropriate course is for the appeal to be allowed to the extent of remitting it to a differently constituted Upper Tribunal for a full determination of the merits. For the avoidance of doubt, the positive findings of fact and credibility are to be maintained but the merits of the appellant’s claim for international protection are otherwise to be re-determined de novo on the basis of the facts and evidence existing at the time of the Tribunal’s re-determination.”

3. The “positive findings of fact and credibility” appear in Judge Hanson’s decision and may be summarised as follows:

- (i) There is a Company 77 which has an office in the Kurdish region of Iraq. It is not clear whether there it is an American company but it has an association with Turkey. In 2007 the appellant was employed under contract to bring materials into Iraq which were thought to be used by the coalition forces or the government of the time. It was not implausible that extremists considered any association with the forces of the coalition in Iraq at that time to render those involved as legitimate targets.
- (ii) In 2007, individuals perceived as assisting government or international forces were targeted and remained at risk in their home area.

- (iii) The appellant's claim to have been kidnapped and released after payment of a ransom was in accordance with events that were occurring in Iraq at the relevant time (2007).
  - (iv) It was plausible that collateral damage was suffered by individuals in Kirkuk as a result of activities by insurgent groups in 2007. It was plausible that the appellant's family member suffered collateral (as opposed to targeted) harm.
  - (v) The appellant himself did not work for the police although family members did do so.
  - (vi) It seems likely that the appellant was specifically targeted and kidnapped as a result of his involvement with Company 77 and that he was threatened thereafter as he continued working with that company.
  - (vii) The appellant is a single male with the ability to speak both Arabic and Kurdish.
4. Since the hearing before Judge Hanson, fresh country guidance has been issued by the Upper Tribunal in the form of *AA (Article 15(c)) Iraq* CG [2015] UKUT 00544 (IAC). Mr Jones, for the appellant, told me that the only issues remaining in the appeal were (1) the extent of the risk which the appellant would be exposed to now as a result of past targeting and harm suffered at the hands of insurgents and extremists; (2) the internal flight alternative; (3) Article 15(c).
5. Mr Harrison, for the Secretary of State, made a number of helpful submissions. He agreed that Baghdad represented the only place of refuge for the appellant assuming that he was safe anywhere within Iraq. He agreed that it was not plausible for the appellant to find refuge in the Kurdish region of Iraq. Both Mr Harrison and Mr Jones observed that the appellant faced a real risk of indiscriminate violence amounting to serious harm within Kirkuk and drew my attention to the country guidance of AA at head notes B, C and D:

**"B. DOCUMENTATION AND FEASIBILITY OF RETURN (excluding IKR)**

5. 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*.

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

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

**C. POSITION ON DOCUMENTATION WHERE RETURN IS FEASIBLE**

8. It will only be where the Tribunal is satisfied that the return of P to Iraq is feasible that the issue of alleged risk of harm arising from an absence of Iraqi identification documentation will require judicial determination.

9. Having a Civil Status Identity Document (CSID) is one of the ways in which it is possible for an Iraqi national in the United Kingdom to obtain a passport or a laissez passer. Where the Secretary of State proposes to remove P by means of a passport or laissez passer, she will be expected to demonstrate to the Tribunal what, if any, identification documentation led the Iraqi authorities to issue P with the passport or laissez passer (or to signal their intention to do so).

10. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport or other current form of Iraqi identification document.

11. Where P's return to Iraq is found by the Tribunal to be feasible, it will generally be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

12. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

13. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

#### **D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IRAQI KURDISH REGION)**

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.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c)."

6. The parties are also agreed that the appellant has destroyed his passport and that he has not obtained a replacement whilst in the United Kingdom. Further, the appellant has not obtained whilst in the United Kingdom a Civil Status Identity Document (CSID). The Upper Tribunal in AA discussed the relevance of a CSID as regards relocation to Baghdad at [128 - 129]:

"128. There are significant differences as between the circumstances in the contested areas and those prevailing in Baghdad. The April 2015 CIG reports that despite the levels of violence in Baghdad, displacement there has remained low (around 60,000) with the majority of those displaced (40,000) moving within the governorate. This is in contrast to the high levels of population displacement away from the contested areas.

129. Although displacement levels are clearly a relevant factor when taking the inclusive approach to a consideration of Article 15(c), we are cautious about giving them undue prominence in our holistic assessment. A person who is facing egregious violence in one place may decide to move to another place that, whilst safer, is still far from peaceful. We do, however, accept that the large movement of people from the contested areas to Baghdad city is indicative of there being sufficiently less violence in Baghdad to make the arduous and upsetting process of fleeing one's home worthwhile. The geography also indicates that those moving to Baghdad from the contested areas do not face a "Hobson's Choice", in that some, at least, would appear to have the option of seeking refuge in the Southern Governorates or across the border in Jordan."

7. Both representatives agreed that this appeal turns upon the ability of the appellant to obtain or replace his CSID. In the light of the Upper Tribunal's observations in AA at [129] and to the exception identified by the respondent and quoted at [128], the parties agree that, if the appellant is unable to replace or obtain a new CSID, he will face significant difficulties and destitution likely to breach the Article 3 ECHR.
8. In the light of these submissions, I indicated to the representatives that I wished to hear evidence from the appellant as regards the CSIDs or other identity documents which may have been possessed or are possessed by his family members and also the whereabouts of the appellant's family and friends who live in or formerly lived in Iraq. After a brief break, I heard evidence from the appellant who spoke in English. His mother and father had identity cards (his father possessed a military identity

card). Both his parents also possessed a nationality card. The appellant told me that he himself had never lived in Baghdad and he had no family property in that city. He has no family living in Baghdad at the present time, nor does he have any friends living there. Many of his family members have left Iraq although his sister has remained in the country with her children. The appellant understands that she is living some fifteen miles from Kirkuk but remains in hiding. The sister's husband is in Turkey. A number of the appellant's cousins are living in refugee camps in Lebanon. Cross-examined by Mr Harrison, the appellant said that he had a friend who lived in Kirkuk but he was no longer in touch with him.

9. I indicated to the representatives that I found the appellant's oral evidence to be truthful.
10. In submissions to the Tribunal, Mr Harrison told me that he accepted that the appellant would have difficulties obtaining a CSID but he certainly could not obtain one from Kirkuk as it is now too dangerous for him to visit.
11. Mr Jones submitted that the only option which remained remotely viable was for the appellant to relocate to Baghdad, a city where he had never lived. The appellant is a Sunni who has a genuine and subjective fear that he will be targeted and harmed by those who have previously threatened and injured him. I agree with Mr Jones that that subjective fear is a factor to be considered when assessing the reasonableness of relocation within Iraq. I also agree with Mr Jones's submission that the appellant has no documents himself nor does he have family members in Iraq who can vouch for him and which might enable him to obtain a CSID. As the Tribunal observed in AA, as a result of violence in areas such as Kirkuk, Civil Status Affairs offices have been established in Baghdad but there was no evidence that there is any "central archive" which would enable those offices to issue CSIDs to those who need them but who are unable to provide the necessary documentation. The appellant himself has no valid passport nor does he have any documents within the United Kingdom which would assist him whilst any identity documents which have existed are possessed by family members who are no longer resident in Iraq. I accept the appellant's contention that it would simply be too dangerous for him to attempt to visit his sister near Kirkuk and that, even if he were to rendezvous with his sister, it is difficult to see how she, under such difficult circumstances, could offer the appellant the assistance which he requires. In short, it would be unduly harsh to expect the appellant to undertake such a journey to Kirkuk or to spend any time in hiding with his sister.
12. I accept also Mr Jones' submission that there was no reason to suppose that there is any time limit on the perception in the minds of extremists and insurgents of an individual's collaboration with the former coalition forces. I accept also the force of Mr Jones' submission that past persecution and, in the case of this particular appellant, established prospective risk (*Demirkaya* [1999] Imm AR 498). The appellant is, therefore, an individual with a genuine subjective fear of persecution and ill-treatment who cannot return to his home area of Kirkuk for whom relocation to Baghdad without a CSID or other valid identity document would expose him to a real risk of destitution and infringement of Article 3 ECHR.

13. For the sake of completeness, I find also that the appellant would not be able to obtain a CSID whilst remaining in the United Kingdom. At [154] the Tribunal in AA concluded:

“As can be seen from the evidence we have set out earlier in the determination, this conclusion does not accord with the UNHCR's or Amnesty International's views - both organisations being of the opinion that it is not appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight alternative.

The appellant does not have a passport or any of the other documents which are required to obtain a CSID whilst outside Iraq. I find that he is likely to be “severely hampered” to the extent of being unable to obtain a CSID whilst in this country. Ultimately, the appellant cannot assist himself before he returns to Iraq and that difficulties he would encounter in obtaining a CSID in Iraq are such that he would be exposed to a significant risk whilst seeking to obtain the document which he may ultimately never obtain. I agree with Mr Jones that the appellant’s appeal should succeed on asylum/Article 3 ECHR grounds irrespective of whether he should also succeed under Article 15(c). Accordingly, I allow his appeal against the respondent’s decision on asylum and human rights grounds.”

#### **Notice of Decision**

14. I allow this appeal on asylum grounds.
15. I allow this appeal on human rights grounds (Article 3 ECHR).

#### **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

Date 11 January 2016

Upper Tribunal Judge Clive Lane