



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

Appeal Number: PA/04448/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> September 2018**

**Decision & Reasons  
Promulgated  
On 25<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

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

Appellant

**and**

**A A**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mrs A Holmes, (Senior HOPO)

For the Respondent: Ms H Short (Counsel)

**DECISION AND REASONS**

1. This was an appeal against the determination of First-tier Tribunal Judge Coutts, promulgated on 1<sup>st</sup> June 2018, following a hearing at Hatton Cross on 8<sup>th</sup> May 2018. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent, Secretary of State, 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 1<sup>st</sup> January 1993. He appealed against the decision of the Respondent Secretary of State dated 20<sup>th</sup> March 2018, refusing his application for asylum and humanitarian protection pursuant to paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is from Mosul in Iraq, is a Sunni Muslim, of Kurdish ethnicity, who speaks Bahdini. He claims that he fled Iraq in fear of Daesh because they had taken control of Mosul in June 2014. His father arranged for him to escape as young men like him were either being killed or being forced to join Daesh. He escaped to a small town of Akreh. This was controlled by the Kurdish Regional Government (KRG). He remained in hiding because his father had previously worked as a mercenary for the Zebari clan, who had in the past collaborated with Saddam Hussain in persecuting the Kurds. As a result the Zebaris had a blood feud with the Barzani clan, who govern the KRG and the Appellant was at risk.

## **The Judge's Findings**

4. The judge did not find the Appellant to be credible with respect to his claim that he was part of the Zebari tribe. He had claimed that there was a feud between the Zebari and the Barzani tribes. This started in the 1940s. He had also claimed that he had links with the Zebari clan. He further stated that the leader of the Zebari tribe was a Sheikh Ahmed. He further stated that Mustafa Barzani married the sister of Sheikh Ahmed. The judge disbelieved the Appellant with respect to all these matters (see paragraphs 30 to 34). The judge did not accept that the Appellant was even from the Zebari tribe, because the Appellant was unable to name their first leader, and when that tribe was established (paragraph 36). As a result, the judge concluded that "there would be no issue for the Appellant to return to his home area of Mosul, which is now liberated from Daesh, or to internally relocate within Iraq say to Erbil in the KRG, provided that that is not unduly harsh" (paragraph 38).
5. However, that said, the judge immediately then went on to consider that the issue that was now raised for the determination of the Tribunal was the Appellant's CSID (paragraph 39). The judge concluded that the Appellant, on the lower standard, had been able to establish that he left Mosul when Daesh arrived. He subsequently fled Iraq without a CSID. The judge went on to say that, "in the mayhem and fear that Daesh's arrival would have caused to the inhabitants of that city, the urgency of his

departure is entirely plausible. It is also supported by the background information” (paragraph 40).

6. The judge went on to then say that the background information does demonstrate that the CSID

“is an essential document for life in Iraq and those who lack private resources to access food and basic services will have difficulty. Moreover, being returned on a laissez-passer does not guarantee that an individual will be able to obtain a CSID” (paragraph 41).

7. Thereafter, the judge went on to make two specific findings. These are that the Appellant had no family to return to in Iraq, because that was his evidence, and against the background evidence that the judge had just described, it was entirely plausible for the Appellant to have stated that. He had stated that he had no contact with them since he left there “and the background evidence information shows the almost complete devastation that has befallen Mosul. It is therefore plausible that he does not know their whereabouts or whether they are still alive” (paragraph 42).

8. The second finding that the judge made was that the Appellant would have no-one to contact to provide him with details of his CSID,

“such as the family page and book number, to assist with obtaining a replacement. Moreover, without family support or private resources, it is reasonable to conclude that the Appellant would be unable to avoid falling into destitution upon his return” (paragraph 43).

With this, the judge concluded that “his return would therefore be unduly harsh” (paragraph 44).

9. The appeal was allowed.

### **Grounds of Application**

10. The grounds of application state that the judge’s determination was at every level flawed. In grounds that are extensive and detailed, it is stated that, given the judge’s own adverse credibility findings (paragraph 37) the judge was wrong to have allowed the appeal “solely on the Appellant’s ability to obtain a Civil Status ID card” (paragraph 1.1).

11. It is stated that the judge was wrong to have allowed the appeal because Mosul was now liberated from Daesh. It was also stated that the Appellant’s dishonest testimony was such that, when the totality of the evidence was considered, especially against the background of the CPIN or case law, it was wrong to have allowed the appeal.

12. The security situation in Iraq was now much improved and indiscriminate violence against citizens did not meet the threshold requirements of Article 15(c) of the Qualification Directive. The judge had failed to explain why the Appellant could not get a CSID card against the objective evidence alone given that the Appellant's own account was entirely unreliable and untruthful, it was wrong to have given it priority. Finally, the judge failed to consider that the Appellant could reasonably attend the Iraqi Embassy in the UK and attempt to obtain a CSID.
13. On 2<sup>nd</sup> July 2018 permission to appeal was granted on the basis that the court needed to clarify the extent of the claims of no ability to obtain a CSID card.

### **Submissions**

14. On 25<sup>th</sup> September 2018, Ms Holmes, appearing on behalf of the Secretary of State, began by stating that she had difficulty in supporting the entirety of the grounds because it was possible for the judge to have found the Appellant to have been credible on some matters, but not on others. This meant that the judge could have held, as indeed he did hold, that the Appellant's claim that he was connected to the Zebari clan, was unfounded. However, the judge could then also conclude that given that the Appellant came from Mosul, the utter devastation that followed the liberation of that city, would have meant that the Appellant would not know what had happened to his family, such that he would not be able to contact them, with a view to getting a CSID card.
15. Ms Holmes submitted that if one looked at the CPIN of September 2017 (version 5.0) this makes it quite clear that even for the Appellant to go to an Iraqi Embassy in the UK would not be a straightforward matter. What is said in the CPIN is that,

"A CSID can be obtained in the UK through the Iraqi Embassy if a person has a current or expired passport and/or the book and page number for their family registration details. Otherwise, a power of attorney can be provided to someone in Iraq to obtain a CSID for them" (paragraph 3.3.4).
16. In the instant case, Ms Holmes, helpfully has stated that the Appellant could not identify the book and page number for family registration details. This is exactly what had been found by the judge in the determination (at paragraph 43). Moreover, for a power of attorney to be granted to someone in Iraq to obtain a CSID, there had to be identified a family member, or some other trustworthy individual, again. The judge had found in favour of the Appellant in these respects.
17. For her part, Ms Short submitted that she would rely, given her well prepared representation in this matter, upon a copy of **AA (Iraq) [2017]**

**EWCA Civ 944** which she had helpfully marked up both for the Respondent's representative and for this Tribunal. She drew my attention to what was said at paragraph 39 of this important decision. It is said here that,

"The position with a CSID is different. It is not merely to be considered as a document which can be used to achieve entry to Iraq. Rather, it may be an essential document for life in Iraq. It is for practical purposes necessary for those without private resources to access food and basic services. Moreover, it is not a document that can be automatically acquired after return to Iraq. In addition, it is feasible that an individual could acquire a passport or a laissez-passer, without possessing or being able to obtain a CSID. In such a case, an enquiry would need to establish whether an individual would have other means of supporting Iraq, in the absence of which they might be at risk of breach of Article 3 rights" (see paragraph 39).

Ms Short submitted that the Appellant did not have a passport. He had no other identity document. He would not be in a position to make the first steps to acquire a CSID. She also referred to the Annex of that decision where it is made clear (see Annex at paragraph 9). That,

"Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. If he 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 are provided to P by the Secretary of State or agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID" (paragraph 9).

18. Second, Ms Short submitted that, given what had been said by the Court of Appeal in **AA (Iraq)** at paragraph 39, whilst the judge had found that the Appellant would not have a CSID, or a means of acquiring one, because he had no family page, or book number, to assist him in obtaining a replacement, the judge should not have concluded that "his return would therefore be unduly harsh" (paragraph 44).
19. What followed from **AA (Iraq)** was that the judge should have concluded that the Appellant would, because of the destitution that would befall him, have qualified for the right to remain on the basis of an infringement on his Article 3 ECHR rights. However, the failure of the judge (at paragraph 44) to state that, and to instead say that his return would be "unduly harsh", did not lead to a material error of law.

## **No Error of Law**

20. I am satisfied that the making of the decision by Judge Coutts, did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2017) such that I should set aside the decision. There are two reasons for this.
21. First, there is consensus between both parties before me that the judge did not err in law.
22. Second, and in any event, it is well-established by the case of **AA (Iraq) [2017] EWCA Civ 944**, that it is possible for the Tribunal in fact to find the Appellant to be lacking credibility, and yet to find that he qualifies under Article 3 ECHR, simply by virtue of the fact that it would not be possible for him to acquire a CSID card in the circumstances that are set out in that decision. These are the very circumstances that the judge very carefully addressed and pointedly specified at paragraphs 41 to 43 of the determination. This is a careful and well-compiled determination. There is no error of law.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

The appeal of the Secretary of State is dismissed.

An anonymity direction is made.

### **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

Deputy Upper Tribunal Judge Juss

20<sup>th</sup> September 2018