Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **PA/05919/2018**

THE IMMIGRATION ACTS

At **Field House**	Decision signed: **11.05.2019**
on **08.05.2019**	sent out: **21.05.2019**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Dara Majid HAMA

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: Mrs Ogelhi Dury, solicitor, Jemek, Birmingham
For the respondent: Mr Toby Lindsay

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Katherine Watson), sitting at Birmingham on 6 June 2018, to dismiss an asylum and human rights appeal by a Kurdish citizen of Iraq, born 1991.

2. There were effectively three elements to the appellant's claim: risk

(a) from the family of a girl called [S]: he had formed a relationship with her in 2015, not been allowed to marry her, but had last seen her in August, and in October received calls, saying he had made her pregnant, and threatening him with death, as a result of which he had left Iraq.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

(b) from Daesh (otherwise known as ISIS): as the respondent accepted, the appellant had worked as a driver for the *Pesh Merga* (Kurdish national militant organization) from 2011. In July 2015, neighbours who were Daesh sympathizers started to cause trouble for him, and he began to receive, first threatening calls, and then a letter.

(c) by way of being returned to Kirkuk: the judge had thought this was within the IKR [Iraqi Kurdish Region]; but, as agreed before me, it is not.

3. On (a), the appellant had passed through France on his way here, and been met with by the French authorities. On 23 January 2016 he arrived at Dover in the back of a lorry, and when found by the authorities here produced documents dealing with his contact with those in France, where his name is given as Majed Dara. One of these, including a translation from Google, reads as follows, so far as relevant [*orthography as original*]:

> *… considerant que monsieur majed dara est marié a une compatriote qui reside en Irak avec ses enfants … qu'il n'établit pas etre isolé dans son pays d'origine ou resident sa femme, ses deux enfants, sa mere et ses deux soeurs …*

4. This is translated, plainly accurately, so far as the basic sense goes:

> Considering that Mr Majed Dara is married to a fellow countryman residing in Iraq with his children … that he does not establish isolation in his country of origin where his wife, two children, mother and two sisters live.

5. While permission to appeal was given on the basis that the Google translation should not have been admitted in evidence, it is clear from the appellant's evidence before the judge (see paragraph 19) that his real complaint had been about the Kurdish interpreter used by the French authorities, and not about the translation from French to English. He did not accept that the interpreter spoke his own Sorani Kurdish, claimed he had been "made to say things", and denied having a wife and children in Iraq.

6. While the judge's treatment of this evidence at paragraph 23 is superficially contradictory, she was clearly entitled to regard it as wholly inconsistent with his present claim (a). That point was taken in the refusal letter (see the judge's 5), and, though the appellant complains that he was not asked about the translation at either of his interviews, or shown it till shortly before the hearing, as the judge points out, it had been produced by him in the first place.

7. The rest of the original French document, also produced by the appellant, from which the excerpt is taken (see B21 – 22, the decree on behalf of the prefect of the département of the Nord, expelling him from France) is concerned with French immigration legislation (CESEDA) and his situation there, and this excerpt is the appellant's entire account, as given, of his circumstances in Iraq.

8. The French interpreter is simply recorded as speaking Kurdish, without any dialect given; but putting a wife and two children into the appellant's mouth was clearly not a question of problems in interpretation. It amounted to a wholesale allegation of invention by the interpreter, for no apparent reason, and the judge was fully entitled to disbelieve claim (a) in its entirety. No independent evidence of [S]'s existence was put forward.

9. Turning to claim (b), the judge dealt with this on the basis that the Home Office CIPN report showed that the profile for forcible recruitment by ISIS gave those under 18, who were vulnerable, or who used social media, as the targets; but this appellant was already 24, and an active member of the *Pesh Merga*. The appellant was not in fact saying he was at risk as a general recruitment target: see his comments on paragraphs 40 – 43 of the refusal letter, at paragraph 10 of his appeal statement. His case was that he had been a member of the *Pesh Merga*, and his neighbours, Daesh/ISIS members, had tried to make him join them. Then he had reported his neighbours to the *Asayish* [*Pesh Merga* security organization], following which ISIS had threatened him, on pain of death, to join them.

10. The appellant goes on to say that Kirkuk, as is common knowledge, had now been taken over by government forces, who had displaced *Asayish*; but they would not protect him from Daesh/ISIS. There is however no reference in his statement, or counsel's grounds of appeal, or the solicitors' 'skeletal argument', both of which were mainly concerned with claim (a), nor in Mrs Dury's submissions before me, to any evidence to support any continuing risk from Daesh/ISIS in the Kirkuk area, now that they have been reduced to an itinerant rump, following the capture of their last remaining territory in Syria.

11. It follows that, though the judge's way of dealing with (b) on the general background evidence left something to be desired, it involved no *material* error of law, since this was not a claim which could succeed on the evidence presented at the present time. That leaves the appellant with his final claim (c).

12. As already made clear, the judge was certainly wrong to regard Kirkuk as being within the IKR. Mrs Dury argued that he would need a Civil Status Identity Document [CSID] to return there, as government territory, which is supported by *AAH* (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC), read with *AA (Iraq)* [2017] EWCA Civ 944.

13. On the other hand, looking at *AAH*, the guidance began like this:

> *1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
> *i) 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 these documents the process should be straightforward.*

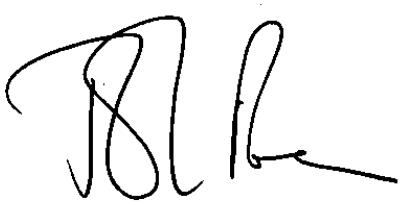
14. This appellant's own evidence before the judge was as follows (see paragraph 29):

> … it was possible to obtain a replacement CSID card, though not a passport, He has family members in the IKR, although on his account he has not been able to contact them this year. He has friends and the authorities are likely to have information about him as he has obtained a visa to leave the country so that he will be able to obtain a CSID card on return.

15. On that basis, I see no reason why the appellant's return to Baghdad, and thence to Kirkuk, should be other than straightforward: he had to have a passport of course to get a visa in 2016. As already discussed, he would not be at any real risk of Convention harm there, and the judge's finding (at 33) that there is no longer any article 15 (c) risk in the city is not challenged in his grounds of appeal.

16. Since no other point was taken on the consequences of the appellant's return to Kirkuk in the grounds of appeal, or before us, it follows that claim (c) also fails. However it is worth pointing out that the judge also found at 30 that he had worked (for the *Pesh Merga*) in the IKR, and showed a good knowledge of the area in his interview. Although this point was not canvassed before me, it is most likely that he would be accepted back in the IKR.

Appeal dismissed



(a judge of the Upper Tribunal)
0Date: 21/05/19