Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01711/2019 (P)

THE IMMIGRATION ACTS

Decided Under Rule 34	**Determination Promulgated**
On Monday 18 May 2020	**On Thursday 21 May 2020**

Before

UT JUDGE MACLEMAN

Between

N A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant is accepted to be a Kurdish citizen of Iraq, from Kirkuk. He sought asylum in the UK on or around 28 July 2016. The respondent rejected his claim by a decision dated 7 February 2019. It was accepted at [39-40] that his village was destroyed by Daesh but not that he was otherwise credible or that he had any problems due to his father having been a Ba'athist. The threat from Daesh was at an end. It was noted at [50] that he said that his only identification was an Iraqi nationality certificate which an agent had taken from him, but it was held that he could obtain documentation either in the UK or in Iraq.

2. FtT Judge Bircher dismissed the appellant's appeal by a decision promulgated on 29 April 2019. She did not find him generally credible. On documentation, she said at [13] that he could "either secure a passport / travel documents via the Iraqi Embassy in the UK or have a family

member secure travel documents with the benefit of the family book" and at [14] that he could obtain documentation, because she rejected his account of losing contact with his uncle and extended family, and was satisfied that he had maintained contact with his relatives in Iraq.

3. UTJ Dawson heard the appellant's appeal to the UT on 16 August 2019. In his decision dated 22 and promulgated on 27 August 2019 he recorded at [8] that the appellant did not challenge the FtT's findings on Ba'ath risk or on ability to obtain a CSID and that the sole ground was failure to consider internal relocation in light of guidance on risk in Kirkuk. The FtT's decision was set aside at [10] on a "limited basis". Directions were made for further resolution of the case in the UT after further guidance was available on ability to return to Kirkuk and, if not, on availability of relocation within Iraq, including the IKR.

4. On 17 January 2019 directions were issued to enable the determination of the appeal to be completed by a differently constituted tribunal.

5. The UT framed directions, dated 19 March 2020, with a view to determination without a further hearing, by submissions only, in light of *SMO and others* [2019] UKUT 00400. The directions appear to have been issued by email to both parties on 25 March 2020.

6. The SSHD was to file a statement of her position by 2 April 2020. To date, no statement is on the file.

7. The appellant has provided written submissions (headed "skeleton argument"), attached to an email dated 23 April 2020, sent to the UT and to the SSHD. He puts his case solely on lack of documentation.

8. The appellant says at [1] that "it is accepted that he left Iraq with his ID documents and his case [was] determined on the basis that he could apply for replacement documentation".

9. I do not find that to be quite accurate. The appellant claimed to have parted with his nationality certificate, but he was found generally not credible. He does not specify a positive acceptance by the SSHD or a positive finding by the FtT that he has no documentation, and I cannot identify any. The FtT's consideration of obtaining replacement documentation is in the alternative, and is not the crux of its decision.

10. The appellant at [3] repeats his "evidence", but that is beside the point. The resolution of his case depends on findings made, not on evidence tendered. At [4] he says there is "no evidence" that he has a nationality certificate, or access to colour copies of it; but absence of evidence does not tend in his favour. It is for him to establish his case, not for the SSHD to achieve the near impossibility of proving the contrary.

11. At [5] the appellant says that it is not suggested within the [FtT's] determination that he knows any details from his CSID; that he has not previously given evidence on this; and that "if relevant, the ability to give

further evidence on this point is sought". I do not find it appropriate to pursue that possibility, for several reasons:

(i) no coherent application for admission of further evidence, by reference to rules, directions, or the law, is formulated;

(ii) the appellant fails to say what his evidence would be, if given the chance;

(iii) if evidence were to be admitted, it is difficult to see that it would consist of anything but a denial of recollection of these details, a rather pointless exercise; and

(iv) the general findings on lack of credibility and on ongoing contact with relatives in Iraq are adequate to cover the issue.

12. From [7] – [27] the appellant formulates his case by reference to *SMO* on the basis of having no ID, no family member to assist him, and no means of obtaining documentation either in the UK or in Iraq. However, for the reasons given above, that case is based partly on assertions which he failed to establish in the FtT, in whose relevant conclusions no error has been shown, and partly on assertions which are expressly contrary to the retained findings of the FtT. Further, this line of argument is contrary to the case he put at the error of law hearing, when he accepted that there was no error in the FtT's finding on ability to obtain a CSID.

13. At [28] the appellant "advises that he has made an approach to the Iraqi Embassy and they have been unable to assist". This, again, is defective:

(i) the legal and procedural requirements for admission of new evidence are ignored;

(ii) the assertion is vacuous, with no details of any information advanced to the Embassy; and

(iii) there is, in any event, no reason to accept that any effort was made in good faith.

14. The appellant concludes at [29] that "he could not obtain a replacement CSID in these circumstances". However, he has failed to establish circumstances by which such a finding should be made, or by which he qualifies for protection.

15. The decision of the FtT has been set aside. The decision which is substituted is that the appeal, as originally brought to the FtT, is dismissed.

16. An anonymity direction is in place. There may be no remaining justification for one, but the matter has not been addressed by parties, and anonymity is maintained at this stage.

Hugh Macleman
UT Judge Macleman

18 May 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.