Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00063/2019

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 9 March 2020	**On 18 May 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE BLUNDELL

Between

RSO (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Nadeem, legal representative of MJ Immigration
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq. His date of birth is given as 1 January 1980. He is a Sunni Muslim of Kurdish ethnicity from Kirkuk City in northern Iraq. He appeals against a decision which was issued by the respondent on 24 June 2019. On that date, the respondent revoked the appellant's status as a refugee, refused his claim that to remove him from the United Kingdom

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would be in breach of the country's international obligations and signed a deportation order against him.

The Appeal to the First-tier Tribunal

2. The appellant's appeal came before First-tier Tribunal Judge Hemborough on 12 August 2019. In a decision which was sent to the parties on 5 September 2019, Judge Hemborough dismissed his appeal. The judge noted that the appellant had entered the United Kingdom in 2000 and that he had been granted Indefinite Leave to Remain as a refugee later that year. He had accrued 9 convictions for 13 offences between 2002 and 2016. On 9 September 2016, he was sentenced to seven years' imprisonment at Peterborough Crown Court for a conspiracy to supply a drug of Class A (Cocaine). As a result of this offence, the respondent initiated deportation proceedings against the appellant and there was an exchange of correspondence between the appellant's representatives and the respondent. In the decision under challenge, the respondent considered the representations made by the appellant's solicitors and the letter she had received from the UNHCR, each of which urged the respondent not to revoke the appellant's protection status, amongst other submissions.

3. The judge heard evidence from the appellant and his British partner. Amongst other matters, their evidence concerned the partner's ability to cope with their six British children without the appellant and the risk to the appellant on return to Iraq after such a long absence. The appellant was asked questions about his ability to return to Iraq in 2015, when he had returned in order to see his ailing mother.

4. At [38]-[50], the judge found that the appellant had been convicted of a particularly serious crime and that he had failed to rebut the presumption that he represented a danger to the community of the United Kingdom for the purposes of Article 33(2) of the Refugee Convention. Applying section 72 of the Nationality, Immigration and Asylum Act 2002, therefore, he found that the appellant fell to be excluded from international and humanitarian protection.

5. At [51]-[56], the judge considered the respondent's decision to revoke the appellant's protection status. He noted that the basis upon which the appellant had secured asylum (fear of Saddam Hussein and the Ba'ath Party) had fallen away and that the appellant had returned to Iraq in 2015. He considered that the appellant – who had travelled with his partner and his six children to Iraq – had no subjective fear when he returned to his country of nationality for a significant period of time. He took note of what was said by the UNHCR but found that the appellant could

no longer continue to refuse to avail himself of the protection of the country of his nationality. In any event, the judge found, the appellant had so availed himself when he obtained a national passport in 2015 and travelled on that passport to Iraq.

6. At [57]-[75], the judge considered the appellant's claim that his deportation would be contrary to Article 8 ECHR. He considered that claim with reference to the statutory framework in Part 5A of the 2002 Act. He concluded that it would not be unduly harsh upon the appellant's partner or children for him to be deported. The judge did not accept that the appellant had been living in the UK for most of his life, or that there would be very significant obstacles to his reintegration in Iraq. He did not accept that there were very compelling circumstances over and above those set out in the statutory exceptions to deportation.

7. The appellant sought and was granted permission to appeal to the Upper Tribunal. The appeal came before a panel comprising Lord Matthews and Upper Tribunal Judge Perkins. On 15 January 2020, the Upper Tribunal issued a decision in which it found that the judge of the First tier Tribunal had erred in law in failing to consider, in light of the background material and the available country guidance, whether the appellant, as a Sunni Kurd from Kirkuk, could be returned safely to Iraq without breaching the respondent's international obligations. The Upper Tribunal emphasised at the conclusion of that decision that the remaining findings were preserved. So it was that the appeal came before Judge Perkins and me on 9 March 2020, for the decision on the appeal to be remade with many of the F-tT's findings preserved.

8. We heard oral evidence from the appellant, who adopted a short statement which had been prepared specifically for the hearing. He was cross-examined briefly by Mr Clarke and we asked some questions for the purposes of clarification. We will return in due course to the evidence given orally and in writing, setting out as much of it as is necessary to explain our findings of fact.

Submissions

9. Mr Clarke relied on the respondent's decision insofar as it remained relevant. The appellant's evidence before the F-tT had been recorded at [20] of its decision. Paragraphs [4] and [5] of the original grounds of appeal were also relevant to the Tribunal's assessment. The respondent confirmed that the appellant would be returned to Baghdad. It was accepted on all sides, in light of the guidance given in SMO & Ors (Iraq) CG [2019] UKUT 400 (IAC), that the appellant would require either a CSID or an INID in order to survive in Iraq or to travel to his home area. The appellant had not been truthful in his evidence about

his CSID or his ability to acquire such a document. In the event that he did not have one, he could obtain a CSID from the consular facilities in the UK, as considered in SMO and AA (Iraq) [2015] UKUT 544 (IAC) , at [173]-[177] in particular. The appellant had suggested that he had no contact with his family in Iraq but this was plainly untrue. He had never before suggested that his family had disappeared and it was little short of baffling that such matters would have been overlooked if they were true. They could assist him in getting a CSID if he required one. The family would also be in Kirkuk and could provide him with a support network.

10. In the event that the appellant required a CSID, the burden was upon him to show that the CSA office in Kirkuk was not operational: SMO (Iraq) refers. The extent of the damage to that city was considered at [254]-[257] of the country guidance decision. It was plain that the majority of those at risk were from the security services or the administration. The only relevant risk category into which the appellant falls is that he is Kurdish but Kirkuk was said in SMO to be an ethnically diverse area. Whilst there were Shia emblems and other such problems in the area, it remained the case in this appeal that there was no evidence of Kurds being targeted. There was no reason to think that the appellant would be rendered destitute. His adherence to Sunni Islam was a factor to consider in light of the up-to-date evidence but the appellant had failed to adduce any such evidence. He had failed, in the circumstances, to establish a claim to protection under Article 15 of the Qualification Directive or Article 3 ECHR.

11. Mr Nadeem submitted that the appellant had his Iraqi passport and would be returned to Baghdad. The likelihood of obtaining a replacement CSID by proxy had been reduced as a result of the introduction of the INID system: [431] of SMO refers. It was plausible that the appellant, who has been in the United Kingdom for a good many years, would not have the details necessary in order to obtain a replacement. In the absence of a CSID, the appellant would be at risk throughout Iraq, and would not even be able to travel to Kirkuk from Baghdad.

12. We reserved our decision.

Analysis

13. The appellant’s entitlement to protection under the Refugee Convention was determined by the First-tier Tribunal and the appeal was rightly dismissed on that basis. So too was his principal contention, which was that deportation would be contrary to Article 8 ECHR. What remains is the appellant’s contention that his removal would be in breach of Article 3 ECHR

and that he is entitled to Humanitarian Protection and Article 15(b) or 15(c) of the Qualification Directive. Article 15(b) and Article 3 ECHR are essentially coterminous in a case such as this. In each respect, the appellant bears the burden of proof, albeit that the standard is the lower one applicable to protection claims.

14. It is agreed on both sides that the appellant will be returned to Baghdad but that his home area is Kirkuk, 150 miles north of the point of return. Amongst other questions, we must consider the risk to the appellant in his home area and his ability to return there. Certain matters are not challenged by the respondent. In addition to the appellant originating from Kirkuk, it is accepted that he is of Kurdish ethnicity and that he is a Sunni Muslim. Certain other matters are most certainly in issue, including the location of the appellant's family and the extent of the Civil Status documentation he possesses or is able to obtain.

15. In respect of both of those issues, we find that the appellant attempted to deceive us in his most recent witness statement and his oral evidence. At [5] of that statement, the appellant claimed that he had lost contact with his family since he had returned from his trip to Iraq in 2015. As Mr Clarke noted in his able submissions, however, there had been no mention of this loss of contact at any previous stage. The appellant was cross-examined at some length before the FtT. There is a good record of his oral evidence in the decision reached by the FtT. He was asked about the circumstances which awaited him in Kirkuk. The judge's record of his evidence, at [21] of that decision, makes no reference to the appellant having lost touch with his family. Nor is there any such suggestion in the detailed witness statement which was before the FtT.

16. Before us, Mr Clarke asked the appellant when he had lost touch with his family. He said that it had been during the time that he was prison in the UK. Mr Clarke suggested to him that he would have mentioned this earlier if it was true. The appellant merely averred that he was telling the truth. We do not accept his account. As Mr Clarke submitted, he would have mentioned the fact that he was no longer in contact with his family if that were true. We consider that the appellant lied in this respect in an attempt to bolster the only claim he has remaining; that he would be at risk on return to Iraq because he has no documentation and no family support structure.

17. As for the second question of fact which arises before us, we find that the appellant also lied in his witness statement and in his oral evidence before us. He claimed in his most recent witness statement that he does not have a CSID. In his oral evidence, he stated that he had returned to Iraq using his British

1951 Convention Travel Document and that he had obtained an Iraqi passport when he arrived in the country. He said that he had presented his British documents and that he had been granted an Iraqi passport by the Civil Status Affairs office in Kirkuk, which had at that time been under Kurdish control.

18. This account is to be considered in the context of the situation which obtained in Iraq when the appellant returned there in 2015. The importance of the CSID document has been emphasised in all Iraqi country guidance decisions from MK (Iraq) [2012] UKUT 126 (IAC) to SMO (Iraq) [2019] UKUT 400 (IAC). We traced the development of that country guidance at [336]-[349] of our decision in SMO (Iraq). It is, and has been for many years, necessary to have either a CSID or an alternative form of Iraqi identity document in order to move around in that country. In 2015, Iraq was in the grip of ISIL. The need for individuals to present a CSID in order to travel within Iraq was writ large at that stage, just as it is now. The appellant would not, in our judgment, have been able to travel from his point of arrival in Iraq to Kirkuk without a CSID. There is no conceivable way that an individual would have been able to travel to Kirkuk, whether from Baghdad or from the IKR, using a document issued by the British authorities.

19. The reality is that the appellant would either have had a CSID before he travelled to Iraq or that his family obtained one for him before he arrived in that country. Of those two possibilities, we consider the latter considerably more likely. The appellant had been in the UK for many years and may not have had a CSID. On deciding to return to see his family, however, the need for a CSID would have been made clear to him and he would, we find have secured one with the assistance of his relatives, via the process described in both AA (Iraq) and SMO (Iraq). That card would either have been sent to him in the UK or presented to him by his family when he arrived in Iraq, thereby enabling him to travel to Kirkuk.

20. We do not accept, therefore, that the appellant had no CSID when he returned to Iraq in 2015. Even if he remained in his mother's house for much of the time that he was there (due to the threat of ISIL around Kirkuk at that time), he would not have been able to reach the family home without a civil status document. Nor do we accept that the appellant no longer has that document. As would have been explained to him, and as is clear from the country guidance to which we have alluded above, it is an important document and would have been retained by the appellant on return. We do not consider the appellant to have discharged the burden upon him of establishing that he has no CSID and no family support in his home area of Kirkuk for these reasons. We find that the appellant would return to Baghdad

International Airport holding a valid Iraqi passport (a copy of which is at Annex B of the respondent's bundle) and a CSID. He would be able to use the latter document (but not the former, SMO refers at [380]) to make his way through the numerous checkpoints on the way from Baghdad to Kirkuk.

21. As set out in SMO, Kirkuk is no longer an area in which there is a general risk of treatment contrary to Article 15(c) of the QD. As also noted in SMO, however, that is by no means the end of the enquiry required by that Article. It also falls to us to consider, against the recent backdrop provided by that country guidance decision, whether the appellant would be at enhanced risk owing to the presence of other factors which are relevant to the 'sliding scale' analysis required by the jurisprudence of the CJEU and the domestic courts.

22. Mr Clarke made reference to the two most relevant factors: the appellant's Kurdish ethnicity and his Sunni Muslim faith. It was not suggested by Mr Nadeem that other factors were applicable in the appellant's case, and the parts of SMO which he set out verbatim and at length in his skeleton argument seemed to focus our attention on these points. It was not suggested, in particular, that the appellant has any actual or perceived link to ISIL. Nor was it suggested, for example, that he is a Westernised individual or that he has any links with the security or administrative apparatus, whether in Kirkuk or more widely.

23. The appellant does engage the second bullet point at [5] of the country guidance, since his religious and ethnic identity means that he is (in Kirkuk, at least) a member of an ethnic or religious group which is not in de facto control of the place of return. As is apparent from [25]-[50] of SMO, Kirkuk is an ethnically diverse area in which the Popular Mobilisation Units inflame ethnic tension by the erection of Shia emblems and the renaming of Kurdish sites. We also note the references in that decision to ISIL's ability to target the city itself; it is present and active in the governorate: SMO refers, at [252].

24. Whilst the appellant's ethno-religious identity is relevant to the sliding scale analysis, we do not consider that his status as a Kurdish Sunni suffices to tip the balance for us to conclude that he would be at risk of treatment contrary to Article 15(c). As a Kurd, he is less likely to fall under suspicion of being a member of ISIL because of his Sunni faith; the Kurds generally fought against ISIL, not for it. He has a support structure in Kirkuk, where his family remains. There is no suggestion that he or his family has ever suffered as a result of their Kurdish ethnicity or their Sunni religious adherence and there is no evidence before us to show that the downward trend of violence noted at [251]-[257] of SMO has changed. Considering the matter as a whole, we do not

consider that the appellant would be at risk of treatment contrary to Article 15(c) in his home area.

25. Nor, having reached the primary findings of fact we have reached above, do we consider that the appellant would be at risk of destitution so as to breach Article 15(b) or Article 3 ECHR. He has a support structure in Kirkuk, which was not in any event a city which was worst hit by the battles against ISIL in the period 2014 to 2017. He has a CSID, and he will be able to access the support packages which are in place, as documented in SMO. As a Sunni Kurd, the appellant will be in a less advantageous position than others but he is fit and well and can expect support from family, the Iraqi government and NGOs. These are not circumstances which begin to cross the high threshold considered at [213]-[219] of SMO.

26. Drawing all of these threads together, we summarise the findings reached by the FtT and the Upper Tribunal as a whole. The circumstances which led to the appellant's recognition as a refugee have ceased to exist and he is no longer a refugee. He committed a particularly serious crime in the United Kingdom and he represents a danger to this country. He cannot, on any view, benefit or continue to benefit from the protection of the 1951 Convention. His removal would not be contrary to Article 8 ECHR since the public interest in deportation outweighs his family life with his wife and children. His removal would not be contrary to Article 15 of the QD or Article 3 ECHR. He may, in summary, be deported from the United Kingdom without this country being in breach of its international obligations.

Notice of Decision

The appeal is dismissed on all grounds. No anonymity direction is made.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)
Date 04 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.