



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: LP/00001/2021
[PA/51481/2020](V)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre
On : 17 November 2021

Decision & Reasons Promulgated
On The 23 November 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KS
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Brakaj, instructed by Iris Law Firm

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

3. The appellant is a citizen of Iraq of Kurdish ethnicity from Kirkuk, whose date of birth is recorded as 1 January 1991. He claimed asylum on 16 September 2007, claiming to have arrived in the UK the previous day. His claim was refused on 13 December 2007, but he was given Discretionary Leave as an Unaccompanied Asylum-Seeking Child, until 30 June 2008.

He applied for further leave to remain on 29 May 2008, but his application was refused and his appeal against that decision was dismissed on 4 December 2009, with a finding that he had fabricated his claim to have been targeted by, and to remain at risk as a result of, his father's membership of the Ba'ath party. The appellant became appeal rights exhausted on 17 December 2009 and then made various further submissions in 2010 to 2012, all of which were rejected, as was an application made in January 2014.

4. On 30 March 2017 the appellant made further submissions which were refused on 22 February 2018 but were treated as a fresh claim with a right of appeal. That appeal was heard on 6 April 2018 by First-tier Tribunal Judge Smith who noted that the appeal was pursued only under Article 15(c) of the Qualification Directive and Article 8. Judge Smith accepted that the appellant was from Kirkuk and came from a wealthy family, but rejected as incredible his claim to be at risk on the basis of his late father's membership of the B'ath party and rejected his account of having lost contact with his family. Judge Smith accepted the appellant's claim never to have been issued with a passport, but he noted the appellant's admission that he had been issued with a CSID card in Iraq and accepted his claim to have left the card with his mother. He accepted that the appellant could not obtain a CSID card from the Iraqi embassy in the UK but concluded that he could obtain his CSID card or a duplicate through his family who remained in Kirkuk and that he could return to Kirkuk or relocate to the IKR via Baghdad. Judge Smith found that the appellant would be at no risk on return to Iraq and he dismissed the appeal on 18 April 2018. The appellant applied for, and was refused permission to appeal to the Upper Tribunal and became appeal rights exhausted again on 11 July 2018. He made further submissions on 10 January 2019 which were refused on 10 April 2019.

5. On 6 March 2020 the appellant made further submissions, relying upon new evidence, namely a Residency Verification document dated 10 June 2019 which confirmed that his family had relocated from Kirkuk in 2007 to an unknown place. The appellant claimed to have received that document from a friend, a Mr Mohammadi, who had travelled to Iraq and asserted that it confirmed his claim that he had no support network in Iraq to assist him and therefore no means by which he could obtain a replacement CSID document. It was asserted that he could not relocate to the IKR, that the current country situation was too hostile and that removing him would be a breach of Article 15(c) of the Qualification Directive, and further that his removal would breach his Article 8 human rights on the basis of the private life he had established in the UK. Those submissions were treated as a fresh claim and were refused by the respondent on 23 June 2020 with a right of appeal.

6. In refusing the claim, the respondent gave consideration to Judge Smith's findings in the appellant's appeal in April 2018. The respondent considered that, whilst the security situation in Iraq was volatile, there was no evidence to show that the appellant was

individually at risk over and above any other Iraqi civilian and therefore considered that he was not entitled to humanitarian protection. It was considered that the appellant could return to Iraq and re-establish himself there with the support of his family members and friends. The respondent considered that the appellant could relocate safely within Iraq and could travel to the IKR from Baghdad. It was considered that he would be at no risk on return to Iraq and that his removal to that country would not breach his human rights.

7. The appellant appealed against the respondent's decision and his appeal was heard in the First-tier Tribunal on 11 January 2021 by Judge Sills who took as his starting point the findings of Judge Smith. Judge Sills considered that the new evidence did not explicitly seek to go behind Judge Smith's findings but was relied upon to show that recent evidence produced with the assistance of the appellant's friend on a recent visit to Iraq confirmed that his family were in longer in Kirkuk and therefore supported his claim to have no contact with his family in Iraq. The judge, however, did not find the new evidence, namely the Residency Verification document, to be reliable, for various reasons, and he therefore found the appellant to be lacking in credibility and refused to depart from Judge Smith's findings in relation to his contact with his family. The judge did not consider that the appellant would be at risk on return to Kirkuk on the basis of coming from a wealthy family or otherwise. He found that the appellant had not established that he could not obtain either his original CSID from his family in Iraq or obtain a replacement CSID in Iraq with the assistance of his family, whilst he remained in the UK, so that he would have the document available to him on his return to Iraq. The judge found that the appellant could therefore travel safely from Baghdad to his home in Kirkuk and that he would not be at risk there. He concluded that the appellant was not entitled to humanitarian protection and that his removal to Iraq did not breach his human rights and he accordingly dismissed the appeal.

8. The appellant sought permission to appeal the decision to the Upper Tribunal on the grounds that, following the June 2020 CPIN report, the judge's assumption that the appellant could obtain a replacement CSID, and could thus travel from Baghdad to Kirkuk, was flawed.

9. Permission to appeal was granted by the First-tier Tribunal and the matter then came before me.

10. Both parties made submissions before me. Ms Brakaj submitted that the country evidence was that the appellant would need to have access to his original CSID card in order to travel from Baghdad to Kirkuk, but the judge had erred by failing to make a clear finding as to whether he would have access to the original document, as opposed to having to obtain a replacement one. She relied upon [437] of the country guidance in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 in submitting that a clear finding was required in that regard. Ms Aboni submitted that there was a clear finding that the appellant had contact with his family and that he could therefore obtain the original CSID document, and that the judge had not erred in his decision.

Discussion

11. Ms Brakaj submitted that the sole and limited issue in this case was whether the appellant would have access to his original CSID in Kirkuk. She submitted that the judge's findings at [33] referring to the alternative of obtaining a duplicate CSID with the information from the family book did not amount to a clear finding that there would be access to the original document, as was considered by the Upper Tribunal at [437] of SMO to be a relevant requirement. Ms Aboni submitted that the judge's findings were that he would have access to the document through his family and that he had made clear findings in that regard.

12. At [437] of SMO, as with [430], the issue of concern to the Upper Tribunal for two of the appellants was that the First-tier Tribunal's finding, that their respective CSID documents were "possibly" at the family home was considered not to be a clear finding on such a crucial issue, particularly where the Tribunal had failed to consider whether the appellants had or could obtain the necessary information and evidence to obtain a replacement CSID whilst in the United Kingdom. What the Upper Tribunal said in those relevant paragraphs is:

"430. The starting point, in considering this issue, must always be to consider and to make a finding about the actual availability of a CSID or INID. In the event that the appellant's CSID is at home in Kirkuk, it can be sent to him in the UK or taken to him upon arrival in Iraq and there will be no breach of Article 3 ECHR as he travels to Kirkuk. The judge's conclusion that the CSID is "possibly" at the appellant's home represents no finding on this crucial issue. Nor, with respect, was the judge's alternative analysis of whether the appellant can obtain a replacement document adequate. He failed to consider whether the appellant has or could obtain the necessary information and evidence to obtain a replacement CSID whilst he is in the United Kingdom and he failed thereafter to consider whether the appellant has or could obtain the necessary information to obtain a replacement CSID on return to Iraq.

431. In any event, as we have noted, matters have moved on as the CSID is being phased out and replaced by the INID. If, as appears to be the case, the judge in the FtT concluded that the appellant would be able to use a proxy to obtain a replacement CSID from the CSA office in Kirkuk, we cannot be sure that this represents the position in 2019. It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy. In the circumstances, we consider that there must be further findings made regarding this appellant's access to or ability to obtain a CSID card. In the event that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK, we think it likely that his return to Iraq would be in breach of Article 3 ECHR. As we have explained, we do not consider that he would be able to obtain either a CSID or an INID in Baghdad because he is not from that city.

"437. Nor do we consider that we have the findings necessary in order to resolve the appellant's Article 3 ECHR claim satisfactorily. As in the case of the first appellant, the judge of the FtT stated that the appellant's CSID was 'possibly' at the family home in Tuz Khurmato. That does not represent a satisfactory resolution of such an important issue. Nor, with respect to the judge, did he proceed to consider whether the appellant either has or has access to the documents or the information he would require in order to obtain a

replacement document from within the United Kingdom or on return to Iraq. As will be clear from our conclusions, these matters are absolutely central to the appellant's ability to survive upon return to Iraq, since any replacement identity document would have to be obtained from his local CSA office and he would not be able to reach that office without an identity document: [369] above refers."

13. The appellant's grounds relied upon the June 2020 CPIN which added, further to SMO:

"22.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.

f. Obtaining a CSID or INID in Iraq

2.6.17 The Tribunal in SMO also considered how a person who had returned to Iraq or proxy, such as a family member or friend, may be able to obtain a CSID in Iraq. The Tribunal found: 'Once in Iraq, it remains the case that an individual is expected to attend their local CSA [Civil Status Affairs] office in order to obtain a replacement document. All CSA offices have now reopened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question. 'An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee. 'The likelihood of obtaining a replacement identity document by the use of proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information' (paragraph 425 (43-45))."

14. It was on that basis that Ms Brakaj submitted that the only relevant question was therefore whether the appellant would have access to his original CSID in Kirkuk. It seems to me - and I agree with Ms Aboni - that Judge Sills' findings at [33] were sufficiently clear as a conclusion that he would. Other than a direct admission by the appellant that his family remained in possession of the original document and that he retained contact with his family, I do not see what additional evidence the judge should have required in order to be able to conclude that there was access to the original document. Clearly the appellant was not going to make such an admission, given that his evidence throughout had been that he had lost contact with his family, a claim which had been repeatedly rejected by the respondent and the First-tier Tribunal for reasons cogently given, based upon the evidence before them.

15. The evidence before First-tier Tribunal Smith was that the appellant had admitted to having been issued with a CSID and that the document was with his mother. Judge Smith's finding was that the appellant was in contact with his family. Judge Sills

unequivocally rejected the new evidence relied upon by the appellant to suggest that he had lost contact with his family and he declined to depart from Judge Smith's findings in that regard. It seems to me that that was sufficient for the judge to find that the appellant would have access to the original CSID document in order to obtain a replacement if it had expired. There is nothing inconsistent in Judge Sills' conclusion with the country guidance in SMO and the most recent country information and he was, in my view, perfectly entitled to conclude that the appellant would have the relevant documentation to enable him safely to return to Kirkuk through Baghdad in the manner stated.

16. Accordingly I do not find any errors of law in the judge's decision requiring it to be set aside and I uphold his decision.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 17 November 2021