



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03047/2020 (V)

THE IMMIGRATION ACTS

Heard at Bradford IAC by a remote hearing
On 13 August 2021

Decision & Reasons Promulgated
On 17 September 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BJM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Presenting Officer

For the Respondent: Mr Hussain, Counsel instructed on behalf of the respondent.

DECISION AND REASONS

Introduction:

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge D. Kelly) (hereinafter referred to as the "FtTJ") who allowed his appeal in a decision promulgated on the 23 February 2021.
2. Permission to appeal that decision was sought and on 14 April 2021 permission was refused by FtTJ Froom. On renewal permission was granted by UTJ Allen who stated, "The respondent's grounds of appeal make out an arguable challenge to the judge's decision."
3. The hearing took place on 13 August 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I was present at Bradford IAC and conducted the hearing from the tribunal centre. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.
4. Whilst the appellant in these proceedings is the Secretary of State, for the sake of convenience I intend to refer to the parties as they were before the First-tier Tribunal.

The background:

5. The background to the appeal is set out in the decision letter and the decision of the FtTJ at paragraphs 2-15. The appellant is a national of Iraq of Kurdish ethnicity from Makmkmoor District, Mosul. On 19 January 2016, ISIS surrounded the village and force its inhabitants, including the appellant, his brother and his parents, to move to Mosul. Smoking cigarettes was forbidden by ISIS, but it was possible to purchase them in secret from a shop located close to the house where the appellant and his family were being forced to live. On 30 January 2016 the appellant left the house to buy cigarettes. Whilst he was out his mother rang to say that his brother and father been taken away by ISIS and that he should not return to the house but should remain where he was until her brother was able to collect him. He was taken back to his house and later taken out of Iraq by an agent.
6. The appellant was taken by the agent to Turkey, and he was allowed to have a very brief conversation with his uncle using the agents mobile phone. The appellant had not spoken to any member of his family since then. The appellant arrived in the United Kingdom on 15th February 2016. He claimed asylum on the following day that claim was treated as withdrawn on 13 January 2017 when he failed to maintain contact the Home Office. His current representatives made a further claim on 5 December 2017 which was refused on 6 March 2020. On the advice of his legal representative he sent an email dated 20 April 2020 to the Iraqi embassy in the UK seeking their assistance in obtaining a replacement CSID card and sent an email to

the Red Cross dated 30 April 2020 seeking their assistance in tracing his family in Iraq. He had not received a reply to either email.

7. In a decision letter dated 6 March 2020 the respondent refused his claim. It was accepted that he was an Iraqi national of Kurdish ethnicity, but his factual claim was refused. The respondent rejected the appellant's account of events in Iraq concerning Daesh and having to leave Iraq. It was further not accepted that he was not in contact with his family and that apart from his "bare assertion" he had provided no further evidence of efforts to contact his family (at paragraph 27)).
8. The respondent gave consideration to SMO. Based on the CG decision the respondent considered that the appellant's home area was in a formerly contested area but that taking into account his personal characteristics there would not be an Article 15 (c) risk to the appellant on return (at paragraphs [33]-[36] of the decision letter).
9. In light of the decision in SMO the respondent stated that the appellant would be able to approach the appropriate agencies and have the assistance needed to have the documentation renewed by embassy staff.
10. In the alternative the issue of internal relocation was set out at paragraphs [50-59] and that noted that his fear was returning to Mosul but that he had not expressed a fear of other regions in Iraq.
11. Thus it was considered if unable to return to his home area he could relocate to the IKR. This was on the basis that he spoke Kurdish Sorani and had skills that he could utilise and gain lawful employment. Furthermore to mitigate any hardship he would be eligible on return to a voluntary payment if he decided to return to Iraq voluntarily. It was not unreasonable or unduly harsh to expect him to return to the IKR.
12. His claim was therefore refused.
13. The appeal came before the FtT on 11 February 2021.

Decision of the FtT]:

14. The factual findings made by the FtT] are set out at paragraphs [24-30]. The judge considered the appellant's factual account in the light of the background country information concerning the occupation of Northern Iraq by Daesh forces between 2014 and 2017. The judge found that there was "reliable external evidence" that towards the end of the period ISIS fighters were taking "tens of thousands" of people hostage and herding them towards the city of Mosul for use as human shields as the battle for the militants group last major Iraqi stronghold intensified. Against that background the judge found that it was plausible that the appellant would have left his possessions, including his CSID at home. The judge therefore attached "substantial positive weight" to the supporting external evidence when undertaking his assessment of the appellant's overall credibility.

15. The FtTJ also accepted his account that he was able to walk to the shop undetected and was absent from the house when Daesh fighters attempted to abduct its male residents which included the appellant's brother and father. The judge also found that it was plausible and "entirely understandable" that the appellant's mother would contact him to warn him not to return and arrange for her brother to assist him in leaving Iraq (at [25]).
16. The judge did not attach adverse weight to the appellant's failure to contact the Red Cross or Iraqi embassy in London prior to the time when he was represented for the reasons that he set out at [27]. The judge considered the appellant's claim that no one memorised the information in the "family book" to be contrary to the background country information and that that undermined his overall credibility and also that he found it difficult to understand why the appellant's uncle would have retained his mobile phone (at [28]).
17. At [30] the FtTJ drew together his conclusions on the appellant's account and credibility and having done so concluded that "there is at least a reasonable degree of likelihood that his account of the events leading to his leaving Iraq and of his subsequent loss of contact with his family is a truthful true one."
18. At [31 - 32] the FtTJ undertook the risk assessment and whilst the judge gave reasons for finding that the appellant would not be at risk in his home area under Article 15 (c) of the Qualification Directive at [32], in the light of his factual findings and in the light of the respondents concession that if the appellant was credible that there would be a real risk of the appellant finding himself destitute on return to Iraq by reason of his inability to acquire a CSID either advance within a reasonable time of his return to Iraq and therefore he would be eligible for a grant of humanitarian protection under Article 15 (b) of the Qualification Directive, the FtTJ allowed his appeal.
19. The appellant sought permission to appeal that decision and permission was granted by UTJ Allen on 18 May 2021.

The Hearing before the Upper Tribunal:

20. In the light of the COVID-19 pandemic the Upper Tribunal issued directions that the error of law issue could be determined without a face-to-face hearing and the hearing was to be listed as a remote hearing.
21. Both parties indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
22. Mr Diwnycz submitted that FtTJ Kelly did not make any reference to the country guidance decision in SMO and others (article 15 (c) identity documents) Iraq CG [2019] UKUT 00400 (hereinafter referred to as "SMO") and therefore did not deal with the issue of risk on return or the issue of redocumentation sufficiently. He

submitted that there was hardly a mention of SMO therefore the judge misdirected himself in law.

23. Mr Hussain on behalf of the appellant submitted that paragraph 31 was the starting point and that the risk relating to documentation was set out clearly in SMO at paragraphs 347 and 378.
24. He submitted that whilst it may have been better for the FtTJ to have referred to the relevant paragraphs of SMO, there was no lack of reasoning in his decision and in light of the concession set out at paragraph [31]. He submitted that paragraphs [30] and [31] when read together provided a sufficient assessment.
25. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

26. Mr Diwnycz on behalf of the respondent confirmed that he did not seek to rely on the grounds for permission to appeal originally filed before the FtTJ and upon which permission was refused but relied upon the second grounds that were filed. The grounds referred to one ground of challenge which is referred to as ground 3 of the original grounds.
27. I will therefore consider that ground. It is submitted on behalf of the respondent that the FtTJ failed to address the country guidance decision of SMO and the feasibility of return. It is submitted that the decision is almost completely silent on this decision and that any relevant findings made against the appellant are those found at paragraph [28] and are all made against the appellant. It is further submitted that the sole reason for allowing the appeal was the appellant's lack of ability to obtain documentation but that findings were required to be made in this respect. In this context the grounds cite the well-known decision of Budhathoki [2014] and that the respondent is unable to understand why the appeal was allowed.
28. Having considered the decision of the FtTJ in the light of the grounds, I am satisfied that the FtTJ did not fall into error in the way the grounds assert.
29. The FtTJ set out his factual findings at [24 - 30] of his decision. As to the appellant's account of events in Iraq, the FtTJ considered that account against and in the light of the background evidence concerning events at that time. At [24] the FtTJ stated that he "attached substantial positive weight to the supporting external evidence" in the overall assessment of the credibility of the appellant's account. In the light of the evidence which demonstrated that Daesh were present in the village taking people hostage and moving them towards Mosul as human shields, the FtTJ accepted the appellant's account of leaving his possessions, including his CSID, at home, to be plausible.
30. The FtTJ went on to give reasons as to why he found the appellant's account to be plausible at paragraphs [25 - 26] and expressly took into account the respondent's contrary submissions. The FtTJ therefore found that it was plausible that the

appellant was absent from the house when Daesh attended to abduct the male residents and found it entirely plausible that the appellant's mother contacted him to warn him not to return. Thus the judge accepted the appellant's account that his father and brother had been abducted by Daesh.

31. Whilst the grounds (paragraph 9 of the original grounds) assert that the FtTJ failed to give adequate scrutiny to the appellant's account, this is a criticism without foundation. At [27] the FtTJ set out why he did not attach adverse weight to the appellant's failure to contact the Red Cross or the Iraqi embassy in London before he was represented. It was open to the FtTJ to find on the evidence that it was not reasonable to expect the appellant to have been aware of family tracing/ possibilities of redocumentation or even pursue such enquiries in a country where he was unfamiliar with the spoken language. The judge was entitled to accept the appellant's explanation in his evidence which the judge had recorded at paragraph 7 of his decision.
32. At [28] the FtTJ set out the adverse credibility findings made. Firstly that the appellant's account that he had not memorised the relevant parts of the "family book" appeared to be contrary to the background material referred to in SMO and that he found it difficult to understand why the appellant's uncle would have retained his mobile phone. I observe that since the FtTJ's decision, that part of SMO relating to the information known about the family book was set aside by the Court of Appeal and the Upper Tribunal is re-hearing that aspect amongst others. However at [30] the FtTJ made his omnibus conclusions as to the overall credibility of the appellant's account, having balanced the positive findings made against those negative findings made at [28] to reach his overall assessment. The FtTJ stated as follows:

"30. Having considered the various aspects of the evidence in detail, I have stood back and considered them in the round, weighing those factors that help both for and against the credibility of the appellant as a witness of truth. Having done so, I have concluded that there is at least a reasonable degree of likelihood that his account of the events leading to his leaving Iraq and of his subsequent loss of contact with his family is a truthful true one."
33. Contrary to the grounds, the FtTJ undertook an analysis of the evidence before him and did so with the anxious scrutiny required.
34. The overarching findings made relevant to the risk on return were as follows; the appellant's home area was occupied by Daesh when he left Iraq; his brother and father were forcibly abducted by them; he did not know how to contact the Red Cross/or the Iraqi embassy prior to his representation and that the overall events leading to the appellant leaving Iraq were reasonably likely to have occurred and that the FtTJ accepted that he had given a truthful account that he had subsequently lost contact with his family.

35. The lack of contact had been set out in the appellant's witness statement at paragraph (22 - 25) where he set out that he had not had contact with his family members. The appellant had last been in contact with his mother when he left Iraq (see question 14AIR) and that he had last spoken to his uncle in Turkey which had been undertaken via his agent (Q 83 and Q 110). The key finding made by the FtTJ was at the appellant did not have his CSID and accepted his account has a truthful one that he had subsequently lost contact with his family. In the light of this and the other factual findings made, the FtTJ undertook the risk assessment at paragraphs [31- 32].
36. The grounds are entirely silent as to the position of the respondent at the hearing before the FtTJ. At [31] the FtTJ records the concession made by the presenting officer who "realistically accepted that if I found the appellant was credible, then (a) they would be a real risk of the appellant finding himself destitute on return to Iraq by reason of his inability to acquire a CSID (or its modern equivalent) either in advance or within a reasonable time of his return to Iraq, and (b) he would thus be eligible for a grant of humanitarian protection under Article 15 (b) of the Qualification Directive. I therefore brief return to consider the other basis of the appellant's claim for international protection."
37. Whilst I would accept that the risk assessment undertaken is in brief terms, that does not mean that the assessment of risk was in error or was contrary to the decision in SMO and the information set out in the June 2020 CPIN both of which were before the FtTJ.
38. In light of the concession made by the presenting officer that if the appellant's account was credible not only as to events in Iraq but that he was not in possession of a CSID and that he had lost contact with his family (as set out at [30]) that there was a real risk of the appellant find himself destitute on return by reason of his inability to acquire a CSID or INID either in advance or within a reasonable time of his return to Iraq, (see paragraph [31]), it was not necessary for the FtTJ to set out any other reasoning in support of his conclusion that the appellant was eligible for a grant of humanitarian protection under Article 15 (b). His assessment and the respondent's stated concession was consistent with the decision in SMO.
39. At paragraph [317] of SMO it states as follows:
- "317. The starting point for our consideration must be the respondent's repetition, at [150] of her closing submissions, of her concession in previous cases that 'it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR'. This section of our decision is therefore principally relevant to those who have or are able to obtain a CSID (or INID) within a reasonable time or have family members from whom they can secure assistance or support."

40. The grounds of permission make no reference to that paragraph. It is in the light of that paragraph that the FtTJ's assessment at [31] that the presenting officer accepted that if the FtTJ found the appellant was credible, not only in respect of events in Iraq but that he did not have a CSID and that he was not in contact with his family. The FtTJ plainly had this paragraph in mind, and this formed the basis of his decision to allow the appeal on humanitarian protection grounds (Article 15 (b)) which is consistent with the concession made by the respondent.
41. The Judge did not allow the appeal on humanitarian protection grounds based on the infeasibility of return. As [9] of the SMO guidance makes clear, the feasibility of return is connected to lack of passport or laissez passer. There is no dispute that the possession of those documents has a bearing on the ability to obtain a CSID. However as the Tribunal in SMO also makes plain, the relevance of possession of a CSID has far wider implications in terms of ability to live day to day in Iraq as the possession of such a document enables an individual to access services, to obtain support or employment and therefore to find accommodation (see also [337] of SMO).
42. Dr. Fatah's evidence in SMO, records at (para 366): Dr Fatah did not believe that a CSID could be obtained from abroad any more, since it had been replaced by the INID. At [968]-[980], however, he described how a CSID could have been obtained in the past from an embassy. At paragraph 2.6.16 of the June 2020 CPIN it was stated that "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."
43. It was the respondent's evidence that the appellant would not be able to apply for or obtain a CSID in the UK. The alternative route suggested in the CPIN is an application for a "1957 document" which in turn relied upon certain documentation being provided by family members. However on the factual findings made by the FtTJ the appellant had lost contact with his family members and therefore it follows he would not have access to that documentation. The position of the respondent is that for this appellant the only destination for an enforced return would be to Baghdad. As to obtaining a CSID from Baghdad, an individual returnee who is not from Baghdad, which is the position of this appellant, is not likely to be able to obtain a replacement document or to do so in a reasonable time. The central archive and the facilities for IDP's are not likely to provide assistance for an undocumented returnee. The appellant would not be able to board a domestic flight beyond Baghdad or to the IKR without either a CSID or INID or invalid passport.
44. Given that the enforced route of return is to Baghdad, and that in light of the assessment he would not be able to leave the airport without such document, it follows that the appellant will be in Baghdad with no form of support and thus the risk of destitution applies. This is the factual assessment made by the Secretary of State in the country guidance decisions when addressing Article 15 (b) and as recognised in the concession made before FtTJ Kelly.

45. The conclusion of the Judge that the inability to obtain a CSID alongside the lack of family support, (having lost contact with his family members), that this was determinative of this aspect of the appeal is one which was undoubtedly open to him and one which the presenting officer accepted at the hearing as set out at paragraph [31].
46. Consequently, paragraph [31] of the FtTJ's decision and when read with his factual findings on credibility and the concluding paragraph at [30], brief though it is, makes the necessary findings in order to reach the conclusion that the appeal should be allowed on the humanitarian protection ground, namely that the appellant will not be able to obtain a CSID within a reasonable time and has no family members from whom he can otherwise secure assistance or support as he had lost contact with them.
47. The obligation on a tribunal judge is to give reasons in sufficient detail to show the principles upon which the tribunal has acted and the reasons that have led to the decision. Appellate courts should not rush to find a misdirection simply because they might have reached a different conclusion on the facts or express themselves differently, and in my judgement and on a careful reading, the FtTJ did give adequate reasons for his decision.
48. Consequently it has not been demonstrated that the decision involved the making of an error on a point of law and the appeal of the Secretary of State is dismissed. The decision of the FtTJ shall stand.

Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision of the FtT shall stand.

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. 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: 17/ 8/ 2021

Upper Tribunal Judge Reeds