Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10299/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 1st December 2020	**On 8th March 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

PA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Kumar, Agent for Optimus Law
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal ("FtT"). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, PA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The hearing before me on 1st December 2020 took the form of a remote hearing using skype for business. Neither party objected. The appellant did not join, but I was assured by Mr Kumar that the appellant is aware of the hearing and is content for the hearing to proceed in his absence. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in the same way as I would have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Background

2. The appellant claims that he was born in Iran on 14th April 1994. He claims that he left Iran in 2000, aged 6, and travelled to Iraq where he stayed for 17 years. He claims he left Iraq in April 2017 and having travelled through a number of countries, arrived in the UK on 24th of August 2017. On that day he was encountered in the back of a lorry, and he claimed asylum. The claim was refused by the respondent for reasons set out in a decision dated 11 October 2019.

3. The respondent noted the claim made by the appellant that he was born in Iran, and that he claims to be a national of Iran. The respondent noted

the appellant had initially claimed that his father was an Iranian national and his mother was an Iraqi national, but later claimed that both his parents were born in Iran. The appellant claimed that in 2000 following the death of his father, the appellant, his mother and his maternal uncle went to live in Sulaymaniyah, in the IKR. The appellant left Iraq in June 2017 and arrived in the United Kingdom on 24 August 2017. On arrival, he made a claim for asylum. The respondent concluded that there was insufficient evidence to support the appellant's claim to be a national of Iran and concluded that the appellant is a national of Iraq. The respondent accepted that the appellant is of Kurdish ethnicity and that he was born and raised in the Islamic faith. The respondent did not accept the appellant has a genuine subjective fear on return to Iraq and in any event, concluded that the fear is not objectively well-founded, and the appellant would not be at risk upon return to Iraq. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Broe ("Judge Broe") for reasons set out in a decision dated 20th January 2020.

4. The background to the appellant's claim for international protection is set out in paragraphs [9] to [14] of the decision of First-tier Tribunal Judge Broe. The appellant gave evidence at the hearing of his appeal and his evidence is set out at paragraphs [19] to [22] of the decision. Judge Broe's findings and conclusions are set out at paragraphs [25] to [40] of the decision. There were plainly very significant concerns as to the credibility of the appellant, and the way in which his claim for international protection had evolved. Judge Roe referred in particular to a witness statement dated 3rd July 2018, that appeared to have been signed by the appellant and sent to the respondent by the appellant's former representatives in support of the claim for international protection. He noted the statement bears the appellant's correct name and date of birth. He noted the statement is also endorsed with confirmation from an interpreter that the content of the statement has been truthfully and faithfully interpreted from English to Kurdish Sorani to the appellant, and the appellant understood the content.

5. Judge Broe noted the appellant had at the outset of an interview with the respondent on 25th July 2019 said that the statement provided to the respondent on 3rd July 2018 was not correct, and he did not wish to rely on the content of that statement. It was nevertheless relevant to an assessment of the appellant's credibility. Having carefully considered the account relied upon by the appellant when he arrived in the UK and the account advanced by the appellant at the hearing of his appeal, Judge Broe was satisfied that the account given by the appellant to his previous solicitors, is irreconcilable with the account he gave at interview, and upon which he now relies. He said:

> "33. … I note that at his screening interview he made no mention of his involvement with the secret group. I acknowledge that claimants are not expected to give a full account at that stage, but I note that he said he could not return to Iraq because he would be threatened by his stepfather. The answers he gave at the screening interview were more consistent with the account he gave to his first solicitors than the account on which he now relies.
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> 34. What is clear is that the two accounts cannot both be true. The appellant has lied in one or both of them. He is prepared to lie in an attempt to remain in this country and I find him to lack any credibility. I do not accept his account of the events which he says caused him to leave Iraq. I do not accept his claim to have abandoned Islam. He has not satisfied me even to the low standard of proof applicable that he has a genuine fear of persecution.
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> 35. I am bound to note that even if I had been considering his latest account in isolation I would not have found him credible. There are many inconsistencies but in particular I have noted the different accounts of how he suffered the injury to his hand. I do not find it credible that [D] would have invited the son of a mullah to the meetings in such a casual way or that the appellant would have invited [S]. There would have been enormous risk to both of them.
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> 36. He will be returned to Iraq as a failed asylum seeker. As a Kurd he will be returned to the IKR. It is against that background that I have considered what risk if any he may face on return."

6. Judge Broe went on to consider the country guidance set out in SMO & Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). He noted that, in headnote [10], the Upper Tribunal confirmed that once at the IKR border, an individual would normally be granted entry to the territory. Subject to security screening, and registering presence with the local Mukhtar, an individual would be permitted to enter and reside in

the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds. At paragraph [38] of his decision, Judge Boe concluded that he was satisfied that the appellant can safely be returned to the IKR.

The appeal before me

7. The appellant advanced eight grounds of appeal set out in the 'permission to appeal grounds' dated 27th April 2020. Permission to appeal was granted by Upper Tribunal Judge Finch on 23rd May 2020. She noted:

> "First-tier Tribunal Judge Broe failed to address and decide on a core issue in dispute between the parties, which was whether the appellant was an Iraqi or Iranian national. This was a fundamental question which should have underpinned any decision on risk on return to the IKR.
>
> The judge also gave insufficient consideration to the explanation given by the appellant about the contents of his first statement in circumstances in which he had instructed new solicitors even before he attended his substantive asylum interview.
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> The other grounds may be arguable in the context of the two grounds referred to above."

8. Before me, Mr Kumar confirmed that he does not pursue grounds 4 and 8 of the grounds of appeal. He confirmed grounds 1, 2 and 3 of the grounds of appeal can be taken together and all concern the judge's consideration of the statement made by the appellant dated 3rd July 2018 and the extent to which the Judge had regard to the matters set out in that witness statement when considering the credibility of the appellant and the core of his account. He confirmed grounds 5 and 7 can be taken together. He submits Judge Broe should have made a finding as to the appellant's nationality and where he would be returned to, and that finding should have informed the Tribunal's consideration as to whether the appellant would be at risk upon return to the IKR. Finally, the

appellant continues to rely upon ground 6, and claims Judge Broe failed to apply the country guidance to the appellant's particular circumstances having regard to the appellant's characteristics, such as his Kurdish ethnicity, when considering whether internal relocation would be unduly harsh.

9. Mr Kumar adopted the further submissions settled by Optimus Law dated 24th July 2020. The further submissions have been filed and served in accordance with directions previously made by Upper Tribunal Judge Kopieczek dated 6th July 2020. The appellant claims he will not be able to return to Iraq. He maintains that he was born in Iran and moved to Iraq after his mother remarried when the appellant was six years old. He claims he has never had any formal papers or an Iraqi ID or CSID, that would allow him to be returned to Iraq, or to live in the IKR. The appellant claims that he has no living relatives in Iraq who could assist him in redocumenting himself and to obtain a replacement CSID from within the UK or in Iraq. The appellant claims that in any event, even if he is an Iraqi national, Judge Broe failed to consider whether it would be unduly harsh for the appellant to relocate.

10. Mr Kumar submits that in essence, the appellant claims Judge Broe failed to have adequate regard to the appellant's nationality, and that has infected the Judge's consideration of the appeal and analysis of the risk upon return. Mr Kumar submits the appellant has always claimed to be a national of Iran and his nationality will inevitably have an impact upon his ability to live in Iran or Iraq, and the assessment of the risk upon return.

11. In reply, Mrs Aboni relied upon the respondent's written reply dated 14th July 2020. The respondent submits Judge Broe was entitled to have regard to the witness statement that his previous representatives submitted in support of the appellant's claim for international protection, and to make an adverse credibility finding based upon the fundamental differences in the accounts by the appellant. The judge was entitled to have regard to

the internal inconsistencies and to include the appellant is not a credible witness. The respondent draws attention to paragraphs [1] and [18] of the decision in which Judge Broe records that it was agreed that the appellant is a citizen of Iraq. The respondent submits it was conceded at the hearing that the appellant is in fact an Iraqi citizen and, as Judge Broe noted at paragraph [18], the appellant will be returned to the IKR. Mrs Aboni submits that although Judge Broe did not consider whether the appellant could obtain the necessary ID documents, that is immaterial. It was conceded that the appellant was an Iraqi national and she submits, it was open to the Judge to conclude that the appellant can return to the IKR. The appellant is of Kurdish ethnicity and he had said in his interview that he had lived in Sulaymaniyah between 2006 and 2017. Judge Broe had rejected the core of the appellant's account. No particular risk factors were identified, and it was open to Judge Broe to dismiss the appeal for the reasons set out in the decision.

Discussion

12. It is convenient to begin my consideration of this appeal by reference to the seventh ground of appeal which is that Judge Broe failed to address whether the appellant is an Iraqi or an Iranian national, since the appellant's nationality underpins any decision as to the risk upon return.

13. The respondent considered the appellant's nationality at paragraphs [31] to [36] of her decision. She noted the appellant's claim that he was born in Fajr hospital in Marivan, Iran, and his claim to have left Iran at the age of six. She noted the appellant had previously claimed in his witness statement of 3rd July 2018 that his father was born in Iran and his mother was born in Iraq, but later, when interviewed on 25th July 2019, claimed both his parents were born in Iran. At paragraph [36] of her decision the respondent said that there is insufficient evidence to support the appellant's claim to be a national of Iran. At paragraph [92] of her decision, the respondent confirmed that it is not accepted that the

appellant is a national of Iran. The respondent considered the appellant's claim that he had lived in Iraq for 17 years without registration. The respondent said:

> "93. … When asked about your status [*in Iraq*] you stated that you were never registered in Iraq (AIR Q28-29). You stated that you worked as a window manufacturer in Iraq (SCR Q1.14). You were asked how you were able to live and work in Iraq if you did not have status there. You stated that because you were with your stepfather, you did not attend formal places and because you spoke Kurdish no one asked you for any ID (AIR Q32). It is not plausible that you were able to attend an Islamic school and work in Iraq without any form of Iraqi ID. This is supported by background information that states that ID documents are required in Iraq to move around the country and access services including registering at a school, opening a bank account, obtaining medical treatment or obtaining employment.…"

14. At paragraph [97] of her decision the respondent concluded that the appellant is a national of Iraq. The respondent went on to address the appellant's fear that he will be killed by his stepfather on return to Iraq. At paragraph [100 *at page 23 of 38*], the respondent stated:

> "As it has been established above, you are from Sulemaniyah. Taking the above into consideration, you will be returned to Erbil …"

15. I accept, as the respondent submits, that at paragraphs [1] and [18] of his decision, Judge Broe records that at the hearing of the appeal it was agreed that the appellant is an Iraqi national and that he will be returned to the IKR. At paragraph [1] of his decision, Judge Broe said:

> "… It is agreed that he is a citizen of Iraq …"

At paragraph [18] he said:

> "at the hearing it was agreed that the appellant was an Iraqi national of Kurdish ethnic origin who had been born and raised as a Sunni Muslim. He would be returned to the IKR."

16. The appellant was represented at the hearing of his appeal before Judge Broe. He does not claim in his grounds of appeal that Judge Broe

erroneously proceeds on the premise that it is agreed that the appellant is a citizen of Iraq, or that no such concession was made on behalf of the appellant at the hearing of his appeal. At paragraph [11] of the appellant's grounds of appeal it is said that Judge Broe "*.. Has not made a finding on whether the appellant is a national of Iran or not given that the RFRL and the SSHD's argument is that the appellant is not an Iranian, but the appellant's position is that he is.*". It having been conceded that the appellant is a national of Iraq and that he will be returned to the IKR, Judge Broe was not required to make a finding as to whether the appellant is a national of Iran. It had been conceded and was not an issue, that the appellant is a national of Iraq. I referred Mr Kumar to the concession that had been made on behalf of the appellant that the appellant is an Iraqi national, and invited him to draw my attention to anything before the Tribunal capable of establishing that no such concession had been made. He was unable to say anything about that concession and he accepted that there is nothing before me to undermine what is said by Judge Broe at paragraphs [1] and [18] of the decision.

17. Mr Kumar submits that in any event, the appellant has always maintained that he had no ID documents in Iraq and the First-tier Tribunal should therefore have carried out a careful analysis as to whether the appellant would be able to acquire the necessary documents within a reasonable time. Mr Kumar submits the appellant would simply be unable to obtain the relevant documents because individuals are required to establish an entitlement to ID documents that proceeds upon a patriarchal assessment based on male lineage.

18. In SMO & Others (Article 15(c); identity documents) Iraq CG, the Upper Tribunal confirmed that in the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that the

person's return is not currently feasible on account of a lack of any of those documents. The simple fact that the appellant does not have an Iraqi passport is therefore insufficient to establish that he is entitled to international protection.

19. In SMO & Others (Article 15(c); identity documents) Iraq CG, the Upper Tribunal confirmed (*headnote 20)* that there are now regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah. Here, as set out in the respondent's decision and in the decision of First-tier Tribunal Judge Broe, the respondent proposes to return the appellant to Erbil in the IKR.

20. I do however accept that Judge Broe failed to consider and make any findings as to whether the appellant has a CSID (*or INID) or* would be able to obtain one within a reasonable time frame. As the country guidance establishes, a CSID (or INID) is necessary for an individual in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR.

21. Furthermore, the First-tier Tribunal was required to consider the circumstances that the appellant will find himself in, upon return to the IKR. Although it is clear that Judge Broe rejected the appellant's account of the events which he says caused him to leave Iraq, and rejected his claim that he has abandoned Islam, there are no clear findings in the decision as to whether it is accepted that the appellant's father was killed, his mother died in 2005, or as to the family connections that the appellant has in the IKR, including with his maternal grandparents and uncle. Although the appellant here is returning to his home area in the Sulaymaniyah Governorate and so the question of internal relocation does not arise, the connections that he has to the IKR are all matters that are relevant to the support that will be available to the appellant upon return to the IKR. In headnote [27] of the country guidance set out in SMO &

Others (Article 15(c); identity documents) Iraq CG, the Upper Tribunal noted that for Kurds without the assistance of family in the IKR, the accommodation options are limited and in headnote [28] noted that an individual cannot work without a CSID or INID.

22. In my judgement the judge's failure to address the issue of whether the appellant will be able to obtain a CSID (or INID) within a reasonable time and his failure to consider whether the appellant has family in the IKR or elsewhere in Iraq from whom he may receive some support is material to the assessment of the risk on return. It follows that in my judgement, the decision of First-tier Tribunal Judge Broe is vitiated by a material error of law and must be set aside. In the circumstances I do not need to consider the remaining grounds of appeal. It is sufficient to say that although the appellant seeks to distance himself from his earlier statement dated 3rd July 2018 sent to the respondent by his previous representatives, it was undoubtedly open to the judge to have regard to the content of that statement, and the circumstances in which it had been made and sent to the respondent, when considering the overall credibility of the account of events relied upon by the appellant.

23. As to disposal, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. Given the issues that arise in this appeal and in particular the ambiguity as to whether the appellant concedes that he is a national of Iraq, the most appropriate course is for the decision to be set aside with no findings preserved.

24. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

25. The appeal is allowed and the decision of FtT Judge Broe is set aside.

26. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

27. I make an anonymity direction.

V. Mandalia Date 22nd February 2021

Upper Tribunal Judge Mandalia