



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001429

First-tier Tribunal No:
HU/01970/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 7 November 2023**

Before

**UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

FM (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Mohzam, Solicitor, Burton & Burton Solicitors

For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 11 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASON

Introduction

1. The Appellant appeals against the decision of Judge Aziz (hereafter “the Judge”), promulgated on 18 February 2022, dismissing his appeal against the Respondent’s decision of 16 March 2021 refusing his human rights claim.
2. The Respondent seeks to deport the Appellant to Iraq consequent to his conviction by a jury on 7 September 2017 for the rape of a female aged 16 years or over for which he received a sentence of eight years imprisonment and a requirement to sign on the sex offenders’ register indefinitely.

The decision of the First-tier Tribunal

3. Mr Mohzam confirmed that only one argument was advanced against the decision of the Judge, that being his assessment of issues relating to the Appellant’s ability to obtain a CSID card.
4. We consider it proper in this matter to summarise the extensive findings and recordings made by the Judge on the myriad issues which were materially in dispute between the parties in the hearing:
 - a. At the hearing the Appellant continued to maintain that his victim had consented to sex and that “*[h]e had only got convicted because she was drunk and he did not know if one had alcohol in their system and someone had sex with them that this could be classified as rape*”, (para. 28).
 - b. The Appellant’s offence is an extremely serious one with a number of additional aggravating factors, (para. 55).
 - c. The victim was a young and vulnerable woman whom the Appellant plied with alcohol and the Appellant had not pleaded guilty during the criminal proceedings, (para. 56).
 - d. The OASys report of 21 January 2021 concluded that the Appellant continues to pose a high risk to the public (para. 58). In the further report dated 12 August 2021 this risk is characterised as a high risk of *contact sexual reoffending risk* and reiterates the Appellant’s continuing denial of the offence and his continuing assertion that the victim initiated sexual touching, (para. 59).
 - e. The Judge concluded that the Appellant continues to deny any wrongdoing despite the evidence showing that he had locked the door to his car before engaging in a sustained assault on the victim culminating in the rape, (para. 60).

- f. The Judge identified that the Appellant was required to establish that there were very compelling circumstances over and above those described in the exceptions in the statutory scheme by reference to s. 117C(6) of the NIAA 2002, (para. 61).
- g. In respect of private life, the Appellant received Indefinite Leave to Remain on 5 November 2009 (para. 65) and had therefore not lived more than half his life with lawful residence in the United Kingdom (s. 117C(4)(a)), (para. 66).
- h. The Appellant's conviction for rape and his continued denial of that offence as well as the OASys assessment of his high risk of reoffending means that despite his length of residence in the UK since 2002, and his role as a father of five children, he is not socially and culturally integrated in the UK (as per s. 117C(4)(b)), (para. 68).
- i. The Appellant lied about having no contact with any family in Iraq having told the Home Office in 2017 that he had cousins in Iraq, (para. 72).
- j. The Appellant had not shown that his family members in Iraq could not assist him in resettling in that country and assist him to secure documentation despite his having been away from the country for around two decades. These hurdles and difficulties did not amount to very significant obstacles as per s. 117C(4)(c), (para. 73).
- k. The evidence provided by the Respondent established that the Appellant would be able to access mental health services and relevant mental health medication in Iraq. Further, a deterioration to his mental health on return would not constitute a very significant obstacle to his reintegration, (para. 75).
- l. The Appellant had failed to provide any corroboratory evidence that he was seeking to re-establish contact with his children through social services and that much of the correspondence provided dated from when the Appellant was in prison, (para. 83).
- m. Despite the independent social worker's report, the totality of the medical evidence provided did not support the Appellant's contention that he plays an "extremely important role" in the lives of his children including assisting with their health and behavioural issues, (para. 103).
- n. The evidence established that the Appellant had not played a continual role in the lives of children and that they were predominately being brought up by their mother; the documents before the Judge identified regular concerns expressed about domestic violence being perpetrated by the Appellant upon the children, (para. 105).

- o. The children's medical records reflect extremely poorly on the Appellant, painting a picture of someone who, in the years prior to his incarceration, was someone who would perpetuate violence on his children and, additionally, materially disengage with parental responsibilities which resulted in untold additional stress and difficulty for the children's mother.
 - p. The Judge noted the positive evidence given by the mother of the Appellant's children in the social worker's report but considered that evidence to be questionable given the tenor of the medical evidence, as well as the fact that she did not attend the hearing to be cross-examined and did not provide a statement - the Judge therefore decided that the evidence given by the children's mother to the independent social worker should be treated with circumspection, (para. 107).
 - q. The Judge found the Appellant to have lied in his evidence in respect of the significance of the role he plays as a father, (para. 108).
 - r. The Judge further rejected the explanation that the mother of the children could not attend because she was looking after the children, (para. 109); the Judge also concluded that the Appellant had conveniently overlooked the fact that contact had stopped after his two supervised face-to-face meetings with the children in the previous year, (para. 110).
 - s. The Appellant lied about the reason why the contact stopped when accusing the children's mother of making false allegations against him, (para. 113).
 - t. Ultimately the Judge was prepared to accept that there was some contact and some bond between the Appellant and the children but that it is in the children's best interests that the contact with the Appellant remains as it presently is (para. 115); the Appellant had not established that separating him from his children in the UK would lead to unduly harsh consequences as provided for in s. 117C(5), (para. 116).
 - u. There were no very compelling circumstances over and above the statutory exceptions at paras. 117 - 122.
 - v. The Appellant is excluded from the benefit of Leave to Remain by reference to the humanitarian protection rules due to his criminality, (paras. 132 & 133).
 - w. In respect of Article 3 ECHR (medical), the Appellant's mental health concerns were not such to reach the high threshold, (para. 142).
5. In respect of the protection claim and the alleged lack of access to a CSID card, the Judge made the following findings:

- a. The Appellant's family are based in Mosul; the Appellant does not have in his personal possession a CSID card, having come to this country when he was a minor approximately 20 years ago, (para. 124).
 - b. The Appellant's expert, Dr Ghobadi concludes in his report that the Appellant's CSID records would be held in Mosul and records of his identity can easily be accessed at the Mosul Civil Status Affairs Office (para. 15 of the report) (para. 127).
6. Relevant to the issues before us, the Judge recorded the Respondent's position on these matters in the refusal letter at paras. 65 to 66. For completeness we also cite them in this decision:

"65. As it is not accepted that you have any problems with your family in Iraq, it is contended that you could utilise the assistance of your family, to obtain a CSID card. You have failed to provide any documentary information to evidence your family would be unwilling or unable to support you to obtain a CSID card or to support you on return. It is contended that male family members in Iraq could provide you with the necessary information with which to obtain a CSID card, which you could do whilst in the UK. It would then be possible for you to return to Baghdad and travel to the IKR with your CSID card, either overland or via internal light.

66. Failing this, potentially you could, with the assistance of male family members, obtain documents in Iraq, which could either be sent to you in the UK, or brought to you on return to Baghdad, where a family member could meet you at the airport and help facilitate your onward travel to the IKR, either by land or air. In either of these scenarios, it is considered that you would then have the support of family to help you re-settle in the IKR on return to you home area."

7. At para. 129, the Judge made the following findings:

"I have already made findings against the Appellant that I am not persuaded that he has lost contact with his family in Iraq. Despite the length of time that he has been in the United Kingdom, he indicated in 2017 that he had cousins in Iraq. I am not persuaded by his evidence that he has lost contact with male family members (on either his paternal or maternal side). I therefore concur with the observations made by the Respondent, that there is nothing preventing him from obtaining the required support and assistance of his family to obtain the necessary identification documents to allow him to resettle in Iraq. He has the requisite family support system in Iraq to enable him to obtain a replacement CSID card. His Article 3 ECHR fails on this ground."

Findings and reasons

8. Mr Mohzam confirmed at the outset that the sole challenge concerned the Judge's failure to properly consider the Appellant's expert evidence that CSID cards are no longer issued in Mosul.

9. We should firstly state that we have found the discursive nature of the grounds of appeal to be unhelpful in that they lack focus and do not comply with the clear guidance from higher courts and this Tribunal. In R (Kaitey) v Secretary of State for the Home Department [2021] EWCA Civ 1875, [2022] Q.B. 695, at para. 161, Singh LJ observed that grounds of appeal are not submissions. They are to be clearly and concisely formulated so that everyone concerned knows exactly what is within the scope of the appeal.
10. In answer to a question from the panel, Mr Mohzam acknowledged that the core of the Appellant's case concerned an ability to secure a CSID rather than how he could secure an INID in person upon return to Iraq.
11. Mr Mohzam was referred to the single paragraph of the grounds of appeal which encapsulates this argument, at para. 5:

“The FTTIJ's finding at paragraph 129 states that there is nothing preventing the Appellant from obtaining the required support and assistance of his family to obtain his CSID card. It is submitted that it is clear from the country expert report that the CSID cards are no longer issued in Mosul. If the Appellant has a family, they would be unable to assist him with this. In absent of this finding the FTTIJ failed to consider whether he would be able to travel from Baghdad to Mosul.”
12. We consider the nature of the Judge's findings at para. 129, cited above, are far broader than the manner in which they are characterised in para. 5 of the grounds.
13. We are satisfied that the Judge was not solely looking at the circumstances in Mosul but was in fact dealing with the broader proposition of the Appellant obtaining a CSID card from the UK with the help of his family in Iraq. We make this finding because it is clear that in the preceding paragraph, the Judge quoted in full the Respondent's view, expressed in her decision letter, of the ability of the Appellant to engage in re-documentation prior to returning to Iraq.
14. As accepted before us by Mr Mohzam, the fact that the Judge's decision was made in February 2022 means that these error of law proceedings can only look to the country guidance of SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) (“SMO 2019”) and the relevant background/expert evidence provided by the Appellant for that hearing. We observe headnote 13 of the Country Guidance decision:

“Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether

such relatives are on the father's or the mother's side because the registration system is patrilineal."

15. During submissions, Mr. Mohzam responded to our observations as to the very limited scope of the grounds of appeal which did not challenge the broader position taken by the Judge in respect of an application for a CSID card being made from UK. He sought to rely upon paras. 385 - 388 of SMO 2019 but did not make any actual substantive submissions about those paragraphs other than to leave the issue to the Upper Tribunal.
16. Stepping back and looking at the ground of appeal in writing, upon which permission to appeal to this Tribunal was granted by the First-tier Tribunal, we can identify no challenge to the Judge's finding that the Appellant could seek assistance from his family in Iraq in the process of making an application for a CSID card through consular services whilst present in this country.
17. We therefore reject the unparticularised oral submission made by Mr Mohzam on two bases: firstly, it was not part of the Grounds of Appeal as given permission by the First-tier Tribunal. We note the guidance of Singh LJ as to procedural rigour in Talpada v Secretary of State for the Home Department [2018] EWCA Civ 841:

"69. ...Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation."
18. We conclude that no good reason was given by Mr Mohzam for requiring the Upper Tribunal to allow him to extend the ground of appeal to which permission was granted by the First-tier Tribunal and we decline to do so.
19. Secondly, we note that Mr Mohzam did not assert that his broader challenge was '*Robinson obvious*' applying R v Secretary of State for the Home Department ex parte Robinson [1998] QB 929. For completeness, if he had done so, we would have concluded that such purported error was not obvious.

Notice of Decision

20. The Appellant's appeal is dismissed, and the decision of the Judge sent to the parties on 24 February 2022 stands.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 October 2023