



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001447
First-tier Tribunal No: PA/53162/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th August 2023

Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

EIC
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 14 July 2023

ANONYMITY ORDER

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 REASONS

Introduction

1. The appellant asserts that he is a citizen of Iran born on the 23 March 1999. He brings this appeal against the decision of First-tier Tribunal Judge Beg (“the Judge”) who dismissed his appeal by a decision dated 22 March 2023.

Anonymity Order

2. The Judge issued an anonymity order. Neither party sought before us for it to be set aside. Observing that the appellant seeks international protection, we consider that his rights protected by article 8 ECHR presently outweigh the general rights protected by article 10 ECHR. The order is confirmed above.

First-tier Tribunal Decision

3. The Judge found that the appellant was not a citizen of Iran. In doing so she applied the principles of Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702, [2003] Imm AR 1. She noted the findings of First-tier Tribunal Judge Hudson who in her decision of 7 November 2017 found:

‘16. [The appellant] states that he is Iranian and has given a description of his life in Iran. His offered date of birth is the 23rd March 1999 although he seems to have told the screening interview officer that he was born in 1998. In either case he is a very young man and was only 17 or 18 at the time he left Iran. I take account of that fact and make allowances for any gaps in his recollection or understanding that may be affected by his young age and immaturity. In [the] screening interview he indicated that he had not decided what religion to choose, although his parents were Muslim. This is an unusual comment and not consistent with a poorly educated individual from an Iranian village. Such a comment resonates with an understanding of religious freedom and the advantages that religious conversion could offer someone in his position. It is not his case that he has or has (sic) any intention of converting to Christianity, and I find that he has not done so. In terms of his

education he told me that he attended mosque for one or two months in Iran and it was there that he learned to read and write. I consider it unlikely that the government interfered in this tuition and told the "priest" to stop, having had no other involvement with [the appellant] and his family since his father's death and therefore his account of this time in education is not credible. It is further implausible that he could have learned to read and write in so brief a time. I consider it very likely that [the appellant] has had the benefit of significantly more education than he is telling me.

17. He tells me that he lived in Mirawa which is near Shno in West Azerbaijan province, but was unable to provide the specific address. He told me that it was five minutes by car and 20 minutes on foot to Shno. Shno is over 20km from Miraweh and there is no way that anyone could reach it by foot in twenty minutes. [The appellant] told me that his grandmother did her shopping in Shno. I do not accept that he could possibly have believed it to be 20 minutes away by foot if he lived nearby and watched his only companion go there. He was unable to name any other villages between Slmo and Miraweh but there are clearly many (Google maps). I do not accept that he would not know that if he had lived near Shno. I find it unlikely that he would never have heard the town referred to by its Farsi name, particularly if he lived with a group of Persian Peshmerga in the mountains.

18. He lived alone with his grandmother for 14 years, yet was unable to tell me whether she sold her crops. He appears to know nothing about how they survived over the years. Even on his account, [the appellant] visited the barber. In order to do so he must have used money. I do not accept that in 14 years, he never handled cash. I find it wholly implausible that he would not know the note denominations if he had lived in Iran. At interview his explanation of the demographics of his village was incoherent. He talked about the majority of people being Kurds but some Persian, but told me that he was virtually under house arrest throughout his life. He told me that the Persians did not behave the same as the Kurds, yet professes to have had no experience of any of them, and is then unable to explain in what way.

19. [The appellant] was asked a number of questions in his original interview in relation to his knowledge of Iran. He does not speak Farsi or know the Iranian calendar. Whilst he was able to give his precise date of birth on the Gregorian calendar he said that he couldn't even tell the interviewer the year he was born on the Iranian calendar. Allowing for the fact [the appellant] may not read or have any education, he would have been able to give some of these answers if he had spent almost eighteen years growing up in Iran.'

4. The Judge considered the oral evidence before her and the additional documentation which was provided with the appellant's fresh claim. Upon considering the guidance in Tanveer Ahmed (documents unreliable

and forged) [2002] UKIAT 439, [2002] Imm. A.R. 318 she found the documents, including a birth certificate, to be unreliable.

5. She concluded at paragraph 43 of her decision that the appellant is not a citizen of Iran.
6. Turning to the appellant's *sur place* claim, based upon activity conducted outside the Iranian Embassy in London, the Judge decided that as he was not an Iranian citizen it mattered not whether he had, or had not, demonstrated outside the building.
7. Finally, and it appears on the encouragement of the appellant's then representative, Mr Mohammad Hosseinzadeh, an immigration caseworker at United Immigration & Visa Services, Leeds, the Judge proceeded to consider whether the appellant would be at risk on return to Iraq were he to be an Iraqi national. Upon finding the appellant to be an Iraqi national and applying the guidance provided by the Upper Tribunal in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) she found that he would not be at risk in Iraq:

'45. I find that the appellant has failed to provide credible information about his family members. In evidence he said his father is deceased and his mother has remarried and is living in Iran. He claimed not to have any siblings. He said he is not in contact with his mother because she left after a bitter family conflict. I find that the appellant has a paternal uncle. I find that he lives in the Kurdistan region of Iraq.

46. I find that the appellant's uncle would be able to provide him with the documents to enable him to apply for a CSID from the Iraqi embassy in the United Kingdom. Once in Iraq, he can attend his local CSA office to obtain a replacement biometric Iraqi National Identity Card - the INID. If the appellant is returned to Iraq on a Laissez Passer or expired passport, he will not be at risk of serious harm at the point of return by reason of not having a current passport. I find that the appellant would have the assistance of his uncle to travel to and reside in IKR. In conclusion, I find that the appellant is a national of Iraq.

47. In taking the evidence as a whole, on the lower standard of proof, I find that the appellant does not have a well-founded fear of persecution for a Convention reason. For the same reasons, I find that the appellant will not be at risk of suffering serious harm on return. He does not therefore qualify for humanitarian protection. For the same reasons, I do not find that the appellant's rights under Articles 2 and 3 ECHR would be breached. I bear in mind that the country guidance case concludes that the mere fact of a

returnee being of Kurdish ethnicity with or without a valid passport does not create a risk of persecution or Article 3 treatment.'

Grounds of Appeal

8. The appellant's grounds of appeal were drafted by United Immigration and Visa Services.

9. At the outset, the grounds detail:

'[The] Judge has failed to provide details of how the appellant will be returned to his home country.'

The appellant provided his Iranian birth certificate, which was not questioned by the home office (sic) and more likely indicates that the appellant is an Iranian national.'

10. These paragraphs are not couched in terms of grounds of challenge and appear to us to amount to no more than statements. In any event, there was no requirement upon the Judge to 'provide details' as to how the appellant would be returned to his 'home country', and the Judge gave cogent reasons at paragraphs 26 to 34 as to why she attached little weight to the birth certificate.

11. The grounds further detail, *inter alia*, that the Judge failed to consider the more recent guidance provided by the Upper Tribunal in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC), instead erroneously relying upon [2019] UKUT 00400 (IAC).

12. First-tier Tribunal Judge Thapar granted the appellant permission to appeal to this Tribunal by a decision dated 26 April 2023 reasoning, *inter alia*:

'2. Contrary to the grounds of appeal, it is unarguable that the Judge in a well-reasoned decision provided cogent reasons for finding that the birth certificate produced by the Appellant was not a reliable document and that the Appellant is not an Iranian citizen.'

3. However, it is arguable that it is unclear whether the Judge considered headnote 13 of the Upper Tribunal's decision in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). Headnote 13 states CSIDs remain available through Iraqi Consular facilities but only for those who are registered at a CSA office which has not transferred to the digital INID system. Permission to appeal on this ground alone is granted.'

13. We consider it appropriate at this juncture to detail additional elements of the appellant's grounds of appeal. The document expressly advances a positive case that the appellant is a national of Iraq detailing, *inter alia*:

'I reminded the Judge that [the appellant], therefore, has no CSID or INID card and no relatives or links in Iraq to assist him in travelling and residing there safely. He would be unable to obtain this document by proxy. The return would breach Article 3 ECHR. He would be at enhanced risk of suffering persecution as a Sunni Kurd and not just an ordinary Iraqi citizen, as referred to by the respondent of the notice of refusal.

It is submitted that [the appellant] has provided a clear account of his political activity in the UK and his Facebook posts, which align with his background as a Kurdish man raised in Iraq.

[The appellant] has provided his Facebook posts which show that [the appellant] is posting anti-government material in his own name, on a public page, sharing and posting material. His Facebook profile and posts are included within [the respondent's] bundle. They show him criticizing the Kurdish government in Iraq. The appellant has also provided photos of his activities in Iraq at p.238 of the respondent (sic) bundle. This activity is consistent with the information he has given in interviews about his background, his experience, his political beliefs and his life.

... Still, it is clear that individuals critical of the Kurdish regional government may be at significant risk on returning to Iraq and that [the appellant] has a high profile due to his previous activities in Iraq.'

14. We are satisfied that the grounds of appeal plainly adopt a positive case that the appellant is an Iraqi national, was active in anti-government activity both inside and outside Iraq and does not possess a CSID. We consider the position adopted below.

The Hearing

15. The Upper Tribunal received an email from United Immigration and Visa Services four days before the listed error of law hearing requesting that the firm come off the Tribunal's record.
16. The appellant attended the hearing with his girlfriend, Ms. Paval, a Romanian national, who had previously attended alongside him before the Judge. In answer to questions from the panel, the appellant confirmed that he is an Iranian national and has never claimed to be

Iraqi. At the conclusion of the hearing, the panel informed the appellant that his appeal was dismissed. We provide our reasons below.

Discussion and reasons

17. We observe that there is no express challenge to the Judge's decision in respect of the appellant's asserted well-founded fear of persecution at the hands of the Iranian authorities. We confirm that she properly directed herself to the guidance provided in Devaseelan. She properly identified that the previous findings of Judge Hudson were a starting point and not determinative of the appeal before her. She then proceeded to make findings that were reasonably open to her on the oral and documentary evidence relied upon by the appellant.
18. The challenge advanced before us is, at its simplest, one that the appellant does not agree with. The grounds of appeal make a positive case as to the appellant being an Iraqi national who cannot return to Iraq. The appellant informed us, in the clearest of terms, that he is not an Iraqi national.
19. It is unfortunate that the Judge engaged with the request of the appellant's representative that she consider, in the alternative, that the appellant is an Iraqi national, without ensuring that the representative was acting on instruction when making such request. It was not the appellant's case in his evidence, or in the documents provided to the Tribunal, that he is an Iraqi national, that he previously resided in Iraq, that he does or does not have family in Iraq, and that he does or does not have access to relevant identity documents. We note that it was not the respondent's positive case before the Judge that the appellant is an Iraqi national. We observe that Kurds reside in several countries outside Iran, including Turkey, Iraq, Syria and Armenia.
20. Having engaged with an issue not advanced by the respondent and that the appellant personally does not support, namely that he is an Iraqi national, the Judge erred in failing to consider up-to-date country guidance, relying upon the SMO decision published in 2019 and not the decision published in April 2022, some fifteen months before she heard this appeal. However, we are satisfied that the error of law was not material. As the appellant confirmed before us, he advanced no positive case that he is an Iraqi national and therefore advanced no positive case that if he were an Iraqi citizen he could not secure a civil status document in Iraq.

21. In such circumstances, the only proper course is to dismiss the appeal.

Postscript

22. We consider that several issues should properly be addressed by postscript.

Content of grounds inconsistent with the appellant's stated case - absence of instructions?

23. In his submissions before the Judge the appellant's representative advanced a case, in the alternative, that if the Judge found the appellant to be an Iraqi national, which was not the respondent's case as identified by her decision letter of 1 August 2022, then the Judge should proceed to consider whether the appellant 'would be able to obtain a CSID to return to Iraq'. No evidence on this issue had been previously provided to the First-tier Tribunal by the appellant, either in oral evidence or in documentary form such as his undated further submissions and his witness statements dated 24 November 2016 and 29 November 2022. The undated skeleton argument prepared by United Immigration and Visa Services makes no reference to the appellant being an Iraqi national and unable to secure a CSID or related document. Indeed, paragraph 2 of the skeleton argument details:

'2.2 There are no official documents suggesting that the Appellant is of Iraqi or any other nationality.'

24. Being mindful that the burden rests upon the appellant in asylum claims, it appears to us that no consideration was given by the appellant's representative to the fact that the submission in relation to an Iraqi CSID was doomed to failure from the outset: the appellant did not assert Iraqi nationality, did not state that he was born or resided in Iraq, did not detail whether he had family in Iraq and bearing in mind that the submission was advanced on the basis that the appellant was Iraqi, no evidence was presented that the appellant did not possess a CSID or that his family did not possess his CSID.

25. We return to the grounds of appeal and the content identified at paragraph 13 above. We express our concern as to the positive case being advanced, namely that the appellant's return to Iraq would result in a breach of Article 3 because he is 'not just an ordinary Iraqi citizen' and would be at 'enhanced risk of suffering persecution as a Sunni Kurd'. Additionally, the grounds contend that the appellant has 'provided

a clear account of his political activity in the UK and his Facebook posts, which align with his background as a Kurdish man raised in Iraq'. We are particularly concerned at the assertion that the appellant has a high profile 'due to his previous activities in Iraq'. The appellant was clear before us that he is not an Iraqi citizen and has never asserted that he is. Additionally, we can find no reference by the appellant either in interview or in his witness statements that he undertook political activity in Iraq.

26. We observe the assertion in the grounds that the appellant's 'Facebook profile and posts are included' in the respondent's bundle and 'show him criticizing the Kurdish government in Iraq', with the appellant said to have provided photographs of his activities in Iraq located at page 238 of the respondent's bundle.
27. We considered page 238 of the respondent's bundle. It appears to be a page from the appellant's asylum screening interview. We proceeded to consider the respondent's bundle, which runs to 274 pages. There are various printouts from social media accounts, many of which are not in the English language and not translated. We can identify regular reference to 'Iran' detailed in the English language, for example at page 49 of the respondent's bundle, but reference to 'Iraq' is limited and identifiable in relation to the Iranian authorities 'sponsoring corruption and militias in Iraq', for example at page 54 of the respondent's bundle. However, we have been unable to locate photographs as to the appellant's activities 'in Iraq' as asserted in the grounds.
28. Observing the appellant's clearly stated position before this panel, we presently consider United Immigration and Visa Services to have advanced as fact matters contrary to their instructions, and to have misled Judge Thapar at the permission stage as to the evidence relied by the appellant at the hearing before the First-tier Tribunal.
29. We observe that United Immigration and Visa Services are regulated by the OISC and are permitted to advise and represent at Level 3. We note the OISC's 'The Code of Standards: The Commissioner's Rules' (2012), particularly paragraph 9, 'An adviser must always act in their client's best interests ...'
30. We further observe the duty placed upon representative by rule 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to help this Tribunal to further the overriding objective and to co-operate with the Upper

Tribunal generally. The Upper Tribunal can properly expect competent representation.

31. The Upper Tribunal observes its inherent jurisdiction to govern proceedings before it and to hold to account the behaviour of lawyers and representatives whose conduct of litigation falls below the minimum professional standards: R. (on the application of Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin).
32. The Hamid jurisdiction covers those firms regulated by the OISC: R (on the application of Hoxha and Others) v Secretary of State for the Home Department (representatives: professional duties) [2019] UKUT 124 (IAC).
33. In the circumstances addressed above, the panel considers it appropriate to issue a Hamid direction below, permitting United Immigration and Visa Services the opportunity to address the concerns identified.

Failure to particularise grounds of appeal

34. We are concerned as to the inadequate drafting of the grounds of appeal. They are not properly delineated into separate, particularised complaints identifying legal error, as required: Nixon (permission to appeal: grounds) [2014] UKUT 368 (IAC) and Harverye v. Secretary of State for the Home Department [2018] EWCA Civ 2848, *per Hickinbottom LJ* at [55]-[58] (obiter).
35. We expressly observe the headnote to Nixon:

'... the First-tier Tribunal and the Upper Tribunal can be expected to deal brusquely and robustly with any application for permission that does not specify clearly and coherently, with appropriate particulars, the error(s) of law said to contaminate the decision under challenge. Besides placing unnecessary demands upon the judiciary, poorly compiled applications risk undermining the important value of legal certainty and causing unfairness to the other party.'

36. Further, we note paragraph 6 of the Presidential decision:

'6. Given recent experience, it may be timely to formulate some general rules of practice. It is axiomatic that every application for permission to

appeal to the Upper Tribunal should identify, clearly and with all necessary particulars, the error/s of law for which the moving party contends. This must be effected in terms which are recognisable and comprehensive. A properly compiled application for permission to appeal will convey at once to the judge concerned the error/s of law said to have been committed. It should not be necessary for the permission judge to hunt and mine in order to understand the basis and thrust of the application. While in some cases it will be possible for the permission Judge to engage in a degree of interpretation and/or making inferences for this purpose, this should never be assumed by the applicant and cannot operate as a substitute for a properly and thoroughly compiled application. These are elementary requirements and standards.'

37. The grounds prepared by United Immigration and Visa Services run to five pages. No paragraphs numbers are provided. There is no effort to distinguish between various issues raised, such as by use of sub-heading indicating separate grounds. Italicised paragraphs appear to suggest, but no more, that reference is made to precedent authority, though no citation is provided. It is difficult on occasion to identify whether the grounds refer to the facts of a precedent authority, or to the appellant's personal circumstances. It may be that the grounds refer to an unidentified CPIN, but no clarity is provided. Rather, on occasion it appears that a cut and paste approach is adopted without any thought as to how a judge is to understand relevant sources. When reference is made to the title of a CPIN, no paragraph number is provided permitting a judge to consider the context of the reference. In part, the grounds appear to be no more than evidence being personally provided by the author. Elsewhere, the grounds seek to do no more than make bald assertions with no effort to identify the challenged passage of the Judge's decision, nor provide clarity as to the necessary particularisation of the challenge.
38. In addition to the concerns addressed above as to the content of the grounds of appeal, their drafting is inadequate for purpose.

Grant of permission to appeal

39. We are satisfied that when considering permission to appeal, this was a matter where the guidance provided in OK (PTA; alternative findings) Ukraine [2020] UKUT 44 (IAC) was applicable. Permission to appeal should not have been granted on the grounds as pleaded as there was, quite apart from the grounds, a reason why the appeal would fail.

Hamid Direction

40. For the reasons detailed above we consider it appropriate that United Immigration and Visa Services be given the opportunity to provide an explanation in writing as to professional conduct and consequently a Hamid direction is issued.

41. The following directions are issued:

1) Either the designated manager, or alternatively Mohammed Hosseinzadeh, at United Immigration and Visa Services, 85A Harehills Lane, Leeds, LS8 5HS, is to write to the Upper Tribunal by 4pm on 8 September 2023 and address:

i) Whether United Immigration and Visa Services were expressly instructed by the appellant to advance as fact:

a) The appellant had provided a clear account of his political activity in the United Kingdom and by his Facebook posts, 'which align with his background as a Kurdish man raised in Iraq'.

b) The appellant placed before the First-tier Tribunal Facebook posts that show him 'criticizing the Kurdish government in Iraq'

c) The appellant placed before the First-tier Tribunal a photograph of his 'activities in Iraq'.

d) The appellant has 'a high profile due to his previous activities in Iraq'.

ii) If express instructions were not provided, why such matters were advanced as fact when seeking permission to appeal to the Upper Tribunal.

iii) If error is accepted, what steps will be undertaken to ensure that caseworkers have (1) a clear understanding as to the nature and substance of instructions from clients, (2) a clear understanding as to the duties owed to the First-tier Tribunal and the Upper Tribunal, and (3)

a clear understanding that they are not to mislead the First-tier Tribunal or Upper Tribunal.

42. The letter is to be sent by email and post marked for the attention of Upper Tribunal Judge O'Callaghan.
43. The letter will be placed before Mr Justice Dove, President of the Upper Tribunal (Immigration and Asylum Chamber).

Notice of Decision

44. The decision of the First-tier Tribunal sent to the parties on 22 March 2023 is not subject to material error of law. The decision stands.
45. The appellant's appeal is dismissed.
46. The anonymity order is confirmed.

Judge Wilding
Deputy Upper Tribunal Judge Wilding
Immigration and Asylum Chamber

10th August 2023