



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03912/2019

Heard at Bradford

**Decision & Reasons
Promulgated**

On 22 January 2020

On 27 February 2020

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MOHAMMED TOFEEK AZIZ ALBARZINJI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer instructed by Parker Rhodes Hickmotts Solicitors.
For the Respondent: Mr M Diwnycz Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 25 September 2019 the Upper Tribunal found error of law in a decision of a judge of the First-Tier Tribunal which was set aside. The matter comes back before the Upper Tribunal to enable it to substitute a decision to either allow or dismiss the appeal.

Background

2. The appellant is a citizen of Iraq born on 29 November 1989. The appellant's nationality, ethnicity as an Iraqi Kurd, date of birth, home city of Kirkuk, concession made by the appellant's representative that there is no issue relating to the appellant's ability to obtain his original CSID or replacement CSID to enable him to travel safely to the IKR, and his religious sect as a Sunni Muslim, are all preserved findings.
3. The core the appellant's claim is a fear on return to Iraq of being persecuted or ill treated as a victim of an honour crime. He also expressed a fear of ISIS.
4. The appellant provided an initial bundle dated 17 May 2019 which he seeks to rely upon in the proceedings before the Upper Tribunal, together with a supplementary bundle containing additional country information including a copy of the recent country guidance case relating to Iraq of SMO [2019] UKUT 00400.

Discussion

5. During the course of preliminary discussions it was discovered that a supplementary bundle had not reached the Upper Tribunal file. The Senior Presenting Officer had received an e-mail from Mr Greer that morning shortly before the hearing attaching a copy. It was said the supplementary bundle contained photographs of the appellant standing outside the Iraqi embassy to support his claim he could not obtain a replacement CSID although Mr Greer was advised that it is a preserved finding from the First-Tier Tribunal as noted above.
6. Mr Greer then claimed his instructing solicitors had not seen the error of law finding following which a copy of that on the Upper Tribunal was provided to the parties. Both confirmed they were ready to proceed.
7. At [61] of the First-Tier Tribunal judgement it is written:
 61. I am grateful to Mr Greer who very properly informed me that there was no issue relating to the Appellant's ability to obtain his original CSIDs or a replacement CSID to enable him to travel safely to the IKR if he is found not to be credible in the core aspect of his claim, namely, that he is at risk of being the victim of an honour crime on return to Iraq.
8. The evidence provided by the appellant in his supplementary statement dated 15 January 2020 relating to this issue is in the following terms:
 4. I went to the Iraqi Consulate in Manchester on 14 January 2020 at about 2 PM following what the judge asked me. This was in order to see if they could provide me any replacement documents to prove who I am.
 5. Unfortunately, the staff said they could not help me with this as I could not prove who I am without any documents.
9. It is not made out the appellant took any documents with him to establish his identity or provided information following questioning.

This also appears to be an action taken as a result of a question the appellant was asked in the appeal before the First-Tier Tribunal. That has been overtaken by the preserved findings following the Judge taking all relevant aspects into account.

10. The issue, as before, is whether the appellant's claim to be at risk on return of an honour killing, or for any other reason, is credible.
11. The appellant confirmed in his original statement that he is content to rely on the basis of his asylum claim as set out at [11] of the respondent's reasons for refusal letter which is in the following terms:
 - A. You are Muhamad Tufrok Aziz, born on 28 November 1989 and are a national of Iraq.
 - B. You are Kurdish.
 - C. You fear your cousins and uncle in Iran because you had premarital sex with your cousin Iman, who you were engaged to.
 - D. During this time, you also secretly married to a Christian named Mira.
 - E. You informed your uncle after some time that you did not wish to marry Iman. At first he accepted this, however, after he found out you had premarital sex, your uncle and your cousin beat you and they threatened to kill you, unless you marry her.
 - F. You fled Kirkuk to Mosul where Mira lived. Whilst you were there you were captured by Daesh for being married to a Christian.
 - G. You were detained by Daesh for 15 - 16 days, before you bribed a guard for your release.
 - H. You returned to your village in Kirkuk, however you were targeted by Daesh by letters and you were shot at 3 times.
 - I. You decided to leave Iraq because you are at risk from both your uncle and Daesh.
 - J. On return you fear return to Kirkuk as ISIS still have underground cells and you fear return to Iraq in general as your uncle could locate you and kill you.
12. The situation in Iraq so far as ISIL (Daesh) is concerned is that even though there are still pockets of this group in parts of Iraq they do not have the civilian or military presence they had in the past in Kirkuk or such areas. It is a finding in SMO that following the military defeat of ISIL in 2017 and the resulting reduction in levels of direct and indirect violence, any ongoing conflict is not such that there are substantial grounds for believing that any civilian returning to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article (c) of the Qualification Directive.
13. It is not made out the appellant will be returned to the small mountainous area identified in SMO where ISIL continue to exercise control and where the risk of indiscriminate violence is such as to engage Article 15(c).
14. Whilst it is recognised in SMO that the situation in the formally contested areas, including Kirkuk is complex, whether the return of an individual to such an area would be contrary to article 15 (C) is fact sensitive.
15. There is no credible evidence that the appellant has demonstrated opposition to or criticism of the GOI, the KRG or local security actors,

there is insufficient evidence to establish the appellant is a member of a national ethnic or religious group which is either in the minority in the area in question (Kirkuk) or not in de facto control of that area. The appellant is not an LGBTI individual. The appellant has not established he does not conform to Islamic mores and is not a wealthy or westernised individual sufficient to place him at risk on return. The appellant is not a member of humanitarian or medical staff or associated with Western organisations or security forces, is an adult male with no evidence of disabilities. I find he has failed to make out a profile that will place him at risk in light of the current country guidance caselaw.

16. The appellant also fails to establish that he is likely on return to face destitution or living conditions sufficient to give rise to a breach of article 3 ECHR.
17. SMO provides guidance on documentation and feasibility of return and in relation to the Civil Status Identity Document, noting that an appellant can be returned to Iraq using an expired passport or Laissez passer. It has not been shown the appellant will not be able to secure the means to return on this basis.
18. SMO repeats that it remains the case that an individual is expected to attend the local CSID office in order to obtain a replacement document and that all such offices have now reopened. At 383 of SMO it is found: *"...An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity."*
19. At Para 381 of SMO: *....."In the event that an individual CSA office has no terminal, the position is obviously different and it is individuals who are registered at those offices who might be able to secure a CSID by the use of a proxy. We have no list of the CSA offices which do and do not have an INID terminal, however, and any such list would be quickly outdated as the INID programme continues to expand. It will consequently be for an individual appellant who does not have an CSID or an INID to establish on the lower standard that they cannot obtain a CSID by the use of a proxy, whether from the UK or on arrival in Baghdad."*
20. The appellant was cross-examined extensively in relation to his claim to have no contact with family members in Iraq. He claimed his last contact was some 5 to 6 years ago when he spoke to his mother when he was in Turkey. The appellant confirmed that when he last spoke to

her his family were in the family home in Kirkuk although claimed not to know where they are now. When asked why there had been no contact and why he had not tried to find them the appellant claimed he did not want them to know where he was and that he did not want anyone to know.

21. The appellant claimed not to know the number of the family book registration of the family in Iraq but confirmed that he knew where his father was born, his father's date of birth and place of birth and his grandfather's name; although claimed not to know where his grandfather was born. When the appellant was asked what prevented him contacting his father and family he replied, "my life". The appellant also confirmed he had no problems with his immediate family, but the problem was with his cousin and that if he contacted his father his uncle would know.
22. The appellant claims to face a real risk on return from ISIL which I do not find is a claim that he has substantiated, during his time in Iraq or since, especially in light of the fact this group has no remaining position of strength as it did previously in Iraq.
23. The appellant's alleged he had a secret wedding with a Christian girl. The appellant claimed that he had married in secret when the requirement under Iraqi law is that there must be at least two witnesses present for a valid marriage. When asked who attended the wedding he claimed that two friends came indicating that it could not have been secret. The appellant claimed that he said it was secret as his family did not know.
24. The appellant was asked where he got married which he stated was in court. When asked which court he was married in he stated it was the marriage court whereas the requirement for a valid marriage in Iraq requires the bride and groom in order to obtain a marriage certificate to appear personally in front of a judge of the Social Status Court in order to submit an application for marriage. The appellant did not refer to this court or the process despite having been given the opportunity to do so.
25. The appellant was asked whether he had provided anything else that the court requested to which he confirmed that he had been asked to take a blood test which he went to the hospital the day after to have taken and provided the results. Requirements of valid marriage are that after submitting an application for marriage the parties must obtain a medical examination per instructions from the court clerk and that after obtaining a medical examination the parties returned to the Social Status Court with their two witnesses. A fundamental requirement for there to be a valid marriage in Iraq is that the parties possess the capacity to marry and so require confirmation that they have the requisite mental capacity to which the appellant made no reference.
26. When asked his age and that of his alleged wife the appellant was unable to confirm how old his wife was, stating only that she was just over 18. The appellant, if he had credibly married, would have been

- aware of this fact as it is a requirement for the parties to confirm that there are over the age of 18 to be able to marry.
27. Despite claiming to have married the appellant appeared to know very little about the proper procedure that he would have been required to have gone through to have secured a marriage certificate.
 28. It is also noted from the evidence given to the First-Tier Tribunal that this is an interfaith marriage with no evidence being given by the appellant that his alleged Christian bride had converted to Islam to enable the marriage to be valid.
 29. The appellant also has failed to produce a marriage certificate despite claiming one was issued by the court in Kirkuk and gave evidence leading the First-Tier Tribunal Judge to infer that the marriage was attended by a close friend, Umid. The appellant now claims two friends attended and on the basis of the account given earlier the marriage would not been valid as two witnesses are required.
 30. The appellant's account of being arrested by ISIL having married a Christian yet not being killed or suffering horrendous injury appears contrary to the country guidance material and evidence in the public domain regarding interfaith marriages and the treatment of those involved with same, especially with those who do not follow the beliefs of ISIL.
 31. In relation to the appellant's claim to have been able to have sexual relationships with his cousin as a teenager, the person he claims he did not like or want to marry, the appellant fails to establish how this would have been possible in light of the strict Islamic rules regarding dating and whether he would have undertaken such un-Islamic behaviour in light of the risks that would have been presented.
 32. I find there is merit in Mr Dimuycz submission that the appellant's alleged claim to face a real risk from family members as a result of premarital intercourse and subsequent marrying a Christian, from his uncles and cousins, is a fabrication. Despite the appellant being fully aware that the only accepted fact was Iraqi nationality and Kurdish ethnicity and that the respondent rejected his claim to have been forced to marry a cousin or to have received threats from his uncle and cousins, to have been married to Mira or to have been targeted by ISIL in the refusal letter [59 – 60], since 9 April 2019, he has failed to substantiate his claim to establish that he is a credible witness.
 33. There is no credible evidence the appellant faces a real risk from any member of his family. It is not made out that his claim is credible. It is not made out the appellant will not be able to obtain a replacement CSID if he is unable to obtain the original from home with the assistance of his family.
 34. The appellant claims to have made no attempt to contact his family who remained in the family home. It is not established he does not have a male relative in Iraq or that the offices he or they would approach to obtain a CSIDs would not be able to provide one for him. The appellant failed to establish that he is a reliable witness. As Mr Greer accepted in such circumstances, with the claim not being accepted as being credible including his claim not to be able obtain

the CSID which he stated was at home with his parents in the original appeal, then he must fail.

- 35. The submission the appellant has no evidence that he can contact his family in Iraq is noted but he has not established he cannot contact his family and his claim to do so has to be treated with caution in light of the other adverse credibility findings made.
- 36. I find the appellant has failed to substantiate his claim. I do not find the appellant a credible witness. I find that bar the appellant's nationality and ethnicity very little else he claims to be true actually is. I find the appellant can obtain a replacement CSIDs and Mr Greer was right to inform the First-Tier Tribunal there was no issue concerning this matter if the appellant was not credible in relation to the core aspect of the case. That is a specific reference to the appellant's claim to face a real risk from family members as a result of premarital relationships and his marriage to a Christian woman both of which are found to be false. The family members in Iraq will be able to provide support and assistance to enable him to reinstate himself in Iraq.
- 37. I find the appellant is no more than a failed asylum seeker who sought to rely upon a made-up claim to secure a grant of international protection, which has not been found to be credible. The appeal is dismissed on both protection and human rights grounds as a result.

Decision

- 38. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 39. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 24 February 2020

