IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber)Appeal Number: PA/11648/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
By Microsoft Teams
On the 10th June 20201

Decision & Reasons Promulgated
On the 28th June 2021

Before

UPPER TRIBUNAL JUDGE OWENS

Between

BHM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Parkin, Counsel instructed by Barnes, Harrild and Dyer Solicitors
For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Iraq born on 1 January 1988. He is of Kurdish ethnic origin. He appeals against the decision of First-tier Tribunal Judge Ghandi sent on 19 February 2020 dismissing his appeal against a decision dated 5 November 2019 to refuse a protection and human rights claim. Permission to appeal to the Upper Tribunal was granted on 1 July 2021 by Upper Tribunal Judge Perkins.

The hearing was held remotely and neither party objected to the hearing being held in this manner. Both parties participated by Microsoft Teams. I am satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues could be determined in a remote hearing. Neither party complained of any unfairness during the hearing.

Appellant's Background

The appellant arrived in the UK and claimed asylum on 21 February 2016. His claim for asylum was refused on 11 May 2018 and he had no further rights of appeal after 9 July 2018. He submitted a fresh claim for asylum on 11 September 2019. The respondent admitted the submissions as a fresh claim but refused the protection claim.

The appellant claims that there is a real risk of serious harm to him if he is returned to Iraq. He is a Sunni Muslim of Kurdish ethnic origin from Kirkuk. He would be at risk of Article 15(c) treatment in Kirkuk and would be at risk of serious harm in Baghdad because of his ethnicity and destitution elsewhere in Iraq including in Baghdad and the IKR where he would not be able to access housing or employment because he has no documentation and could not obtain documentation within a reasonable time.

The Respondent's decision

The appellant's return to Kirkuk would not breach Article 15(c) of the Qualification Directive. He is not at risk of serious harm for a Convention reason, he can obtain a passport or laissez passer from the Iraqi Embassy in London in order to travel to Iraq. He can also obtain a CSID card from the UK in order to travel to his home area.

In respect of Article 8 ECHR, there are no very significant obstacles to the appellant reintegrating into Iraq and his private life in the UK does not outweigh the public interest in maintaining immigration control.

The Decision of the First-tier Tribunal

The hearing took place on 5 February 2020 and the decision was sent on 19 February 2020.

The judge's starting point in respect of the asylum claim in accordance with the principles in Devaseelan v SSHD [2002] UKAIT 702 was the previous determination of the First-tier Tribunal on 9 July 2018. The appellant was found to be wholly lacking in credibility in respect of claimed events in Iraq. The judge did not accept that there had been a breakdown between the appellant and his family. The judge found that the appellant could obtain a CSID card albeit from Iraq.

First-tier Tribunal Judge Ghandi found that the appellant gave an inconsistent account about what happened at the Iraqi Embassy when he tried to redocument himself; that the appellant had previously been found to be lacking in credibility by an immigration judge and that his attempt to trace his family

was made late in the day. She did not accept the appellant's evidence that he does not remember his family book details. She found that the appellant could obtain a CSID card from the Iraqi Embassy in the UK. She also found that the appellant was still in contact with his family, could obtain documents from Iraq including a passport which would enable him to obtain a laissez passer to travel to Iraq. Since she found that the appellant could obtain a CSID card from the UK, she did not address whether he would be able to obtain the document from inside Iraq. There were no very significant obstacles to reintegration in Iraq and no exceptional circumstances which would result in unjustifiably harsh consequences for the purposes of an Article 8 ECHR assessment.

The judge dismissed the appeal.

The Grounds of Appeal

Ground 1: **Misapplying/Failure to take into account Country Guidance of SMO, KSP & IM (Article 15(c), identity documents) Iraq CG [2019] UKUT 00400 (IAC)**

It is asserted that the judge erred by finding that the appellant could travel in Iraq using a laissez passer and could redocument himself with a laissez passer. It is said that in accordance with the Country Guidance of SMO, in order for the appellant to travel within Iraq the appellant would need a CSID or INID and that he would only be able to obtain this by attending his local CSA office in person. The judge erred in law by failing to take into account the lack of assistance a laissez passer would provide. This is a material error.

The judge also failed to take into account a material factor relevant to re-documenting himself namely the destruction of records in Kirkuk, an area which was the subject of significant fighting.

Rule 24 response

There was no rule 24 response.

Submissions

Mr Parkin repeated the grounds of appeal in his oral submissions. He agreed that there was no challenge to the negative credibility finding of the judge. In respect of materiality he contended that the judge had failed to have to regard to the guidance in SMO when considering whether the appellant could obtain a CSID card from the UK. The appellant does not simply require his family book number, he also requires documentation which he would have difficulty obtaining from Iraq. The judge did not take into consideration the references in SMO about the destruction of records in the appellant's home area.

Mr Walker after initially appearing to concede that the judge's approach the laissez passer was flawed, then defended the decision as a whole submitting that the judge's findings on the appellant's ability to obtain a CSID card in the UK were sustainable. In these circumstances, the appellant could travel to Iraq using a laissez passer and could travel within Iraq without encountering

treatment or conditions contrary to Article 3 ECHR and to his home area of Kirkuk where he faces no real risk of serious harm.

Discussion and conclusions

Ground 1

In my view the grounds misconstrue the decision and the reasoning of the judge.

It is manifest that the judge's starting point was the findings of the previous First-tier Tribunal in 2019. This was the proper approach and it is not asserted by the appellant that there was any error by the judge in this respect. She summarises these findings at [18] where she states;

> "In summary the previous Immigration Judge did not find the appellant to be an impressive or even credible witness (paragraph 26 of their determination). The Immigration Judge accepted the Home Office's claims about the inconsistences in the appellant's claim and also found that the parts of the claim that he could have supported with evidence, he did not do so. The Immigration Judge did not accept that there was a breakdown in relationships between the appellant and his family (paragraph 27 of the determination). The Judge did not accept that the appellant worked at a casino (paragraph 28 of the determination) or that he abandoned Islam and was drinking alcohol (paragraph 29 of the determination) The Judge did not accept that the appellant had come to the attention of Daesh (paragraph 30). In summary the Judge found that the appellant had given a wholly false account of the problems that beset him in Iraq and found that the appellant had chosen, of his own accord to leave Iraq (paragraph 32 of the determination). The Judge also found that the appellant would be able to obtain a CSID (paragraph 37 of the determination)".

The judge then at [19] summarised the appellant's case which was firstly that the appellant was not removeable from the UK because he does not have a passport or laissez passer and cannot obtain one and secondly in the alternative that the appellant does not have and is unable to obtain a CSID or an INID within a reasonable length of time. It is unduly harsh for him to live in Iraq as he will not be able to travel to Kirkuk. He cannot live in Baghdad because he has no-one to sponsor him, and without a CSID or INID card he will be unable to find work or accommodation and will be destitute.

The judge considered the second issue first. At [20] the judge explicitly states that she will address the ability of the appellant to obtain a CSID card in the UK. At [21] she records that the appellant's evidence is that he cannot remember the volume and page reference of the entry in the Family Book in Iraq and that the Iraqi Embassy cannot redocument him.

The judge finds at [22] that whether the appellant is able to remember his family book details is an important consideration.

The judge then goes on to consider the appellant's account of what happened when he attempted to redocument himself at the Iraqi embassy on 6

September 2019 accompanied by an interpreter who acted as his witness. The judge points to inconsistencies between the appellant's and the interpreter's account of what happened at the Embassy as well as internal inconsistencies between the appellant's oral evidence and his written statement. The judge states that both representatives asked her to accept the witness account, which was that the appellant was asked for his family reference book number but did not know it. The judge pointed to the appellant's most recent statement in which he states that he cannot obtain any information about his family book from Iraq to assist his application to redocument himself in the UK because he does not have contact with friends or family in Iraq.

At [27] the judge records;

> "Mr Parkin accepts that this was not the finding of the previous Immigration Judge and that I am bound by those findings of fact."

The judge points to the fact that the visit to the Embassy was recent. She draws an adverse credibility inference from his failure to have a reasonable recollection of the visit. She also takes into account that the appellant's attempts to contact his family in the UK via the Red Cross are also recent, particularly since the first Immigration Judge found he had family in the UK in July 2018.

The judge does not accept the appellant's account of what happened at the Embassy. She states at [31];

> "Given what happened at the Embassy is central is to his claim and I do not believe him, I also do not accept that he does not remember the page and volume number of the family book. In light of this, I find that the appellant could obtain his CSID card from the Iraqi Embassy in the UK. I therefore do not need to go on to consider whether he could obtain it upon return to Iraq".

It is not the appellant's case that these findings are flawed or deficient in any way. I am satisfied that the negative credibility findings are manifestly sustainable in light of the previous judge's negative credibility findings, the inconsistencies in the appellant's account of what happened at the Iraqi Embassy and the timing of the Red Cross tracing application. The judge's ultimate finding that the appellant can remember his family book and page number and that he is still in contact with his family is adequately reasoned and grounded in the evidence.

When considering the second issue of the laissez passer the judge made further findings on the appellant's ability to obtain documents from Iraq. At [32] she refers to the previous immigration judge's reference to the screening interview in which the appellant had stated that his documents were in Iraq. The previous judge rejected the appellant's account that he could no longer obtain those documents. Again, the judge takes this finding as her starting point and Mr Parkin takes no issue with this.

She states at [33],

> "The appellant has not provided any new evidence which would cause me to reach a different conclusion to the previous judge."

At [34] she states;

> "Even if I am wrong about this, I have not found the appellant credible for the reasons set out above. I have no evidence before me why, when he initially said he could obtain his documents from Iraq, he then says he cannot. I do not accept this due to the lack of any satisfactory explanation. I find he could obtain his documents, including his passport from his family in Kirkuk (screening interview of 21 February 2016 paragraphs 1.7 and 6.3.)"

In the screening interview referred to by the judge the appellant states at 1.7 "No – all my papers are in Iraq". At 1.8 he is asked where is your passport? He replies, "In Iraq". At 6.3 he states regarding additional documents. "I will try to have some sent to me – my Iraqi passport and ID card and Iraqi nationality certificate. I don't know how long it will take". The judge's finding on the basis of this evidence is also adequately reasoned and open to her and Mr Parkin does not assert otherwise.

In summary the judge's unchallenged findings are;

a) The appellant left his documents in Iraq when he travelled to the UK.

b) The appellant stated in 2016 that he would be able to obtain his documents. The appellant is still in contact with his family and friends and could arrange for his family to send his documents, including his passport, to him in the UK.

c) The appellant knows the page number and reference of his family book.

It is trite law that appeal courts should be hesitant to interfere with findings of fact by the First-tier Tribunal unless there is a material misdirection of law and Mr Parkin agreed that he could point to no error of the judge in the assessment of these facts.

Mr Parkin's main submission is that even on these factual findings, the judge's ultimate conclusion that that the appellant can obtain a CSID from the Iraqi Embassy in the UK is not in line with the Country Guidance in SMO. He pointed the judge's bare statement at [35] in this respect which states;

> "Further the appellant is able to obtain a CSID in the UK from the Iraqi Embassy."

His submission is that this finding is not fully reasoned given the Country Guidance. Firstly, I am satisfied that this sentence has been taken out of context by Mr Parkin. Reading the determination as a whole, the judge is referring back to the totality of her findings for which she has given adequate reasons as set out above. Secondly, the judge has directed herself directly in respect of SMO at [9](i) where she states;

> "Mr Parkin also relied on what was said in SMO, KSP & IUM (Article 15(c) identity documents) Iraq CG [2019] UKUT 00400 (IAC) regarding

> documentation and internal relocation. In his oral submissions he carefully took me through the relevant paragraphs of this case".

The judge was manifestly aware of the Country Guidance and applied it to the facts of the case.

Mr Parkin's submission before me was that even if the appellant knew his family book reference, he would require other documentation in order to obtain his CSID card from the UK. This is apparent from headnote 13 of SMO which states;

> *"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".*

I have considered the headnote at 13, as well as [383] of SMO which states that the previous guidance at [26] of AAH (Iraqi Kurds- internal relocation) CG [2018] UKUT 212 and [173] to [177] of AA (Article 15(c) Iraq) CG [2015] UKUT 544 (IAC) remain in place. From this, I am satisfied that, on the evidence before the judge at the hearing the guidance in SMO was that it was still possible to obtain a CSID card from the Iraqi Embassy in the UK by contacting family members in Iraq to send documents such as birth certificates and passports or copies of such documents as well as providing the family book and page reference number. Since the judge has made unchallenged findings that the appellant is still in touch with his family members, that he left his documents in Iraq and has access to them and that he knows his family book and page reference number, her findings that he can obtain a CSID care in the UK is both in line with SMO and adequately reasoned.

I am not satisfied that there is any error in the approach of the judge. Mr Parkin alluded to the fact that many of the records offices have been destroyed and that this would affect the possibility of obtaining a CSID and the judge had failed to take this into account. However, this was not the way he argued the case before the First-tier Tribunal. Additionally, since the judge found that the appellant already had access to documents and was aware of the family book and page reference number, his own family would have no need to access the local records office. It is for the appellant to demonstrate that his local records office was destroyed and that this would impact on his ability to redocument himself in accordance with [394] and [395] of SMO. Mr Parkin did not point me to any specific evidence put before the judge in this respect or any passage of SMO which would indicate that the Iraqi Embassy would not be able to redocument the appellant because of this problem. The judge does not refer to a skeleton argument.

I am not satisfied that the appellant has demonstrated that there has been a material error of law in respect of her finding that the appellant can obtain a CSID card from the UK.

As far as the laissez passer is concerned the guidance in SMO in respect of these documents is to be found at [375] where it is said;

> "Further enquiries made by Dr Fatah in London suggest that this is no longer the case and that an individual must simply be able to establish their nationality in order to obtain a laissez passer. In the absence of documentation, an Iraqi national can request family members in Iraq to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or failing that "legal procedures will then be started to prove the individual's nationality if the failed asylum seeker through a list of questions in relation to their life in Iraq".

Given the judge's unchallenged findings that the appellant can obtain his documents including his passport from Iraq, he would clearly fall into the category of people who have documentation and can establish their nationality and therefore simply obtain a laissez passer. The assertion that the judge has erred in this respect is not made out.

Indeed, Mr Parkin's grounds asserts that the judge finds that the appellant can redocument himself in Iraq by using a laissez passer. However, this is to misstate the findings of the judge. The judge's finding is that the appellant can obtain a laissez passer by obtaining a document from family members in Iraq to establish his nationality and then use the same documents as well as his family book details to obtain a CSID card from the Iraqi Embassy.

I am satisfied have read the decision as a whole that if the sentence at [35] quoted above is placed in context, the judge clearly meant there is no reason why the appellant cannot 'obtain' a laissez passer. The judge at no point, as is asserted in the grounds, finds that the appellant can travel to Kirkuk on a laissez passer and use that document to obtain mandatory re-registration under the INID scheme at his home CSA office. The grounds misconstrue the judge's findings and reasoning in this respect. At no point does the judge suggest that the appellant can return to Iraq without a CSID card, redocument himself in Baghdad in a reasonable timescale or travel safely within Iraq without a CSID or INID card.

I am satisfied that there is no error of law in the approach of the judge and I uphold the decision of the First-tier Tribunal.

The appeal is dismissed.

The anonymity order is maintained.

Signed R J Owens Date 15 June 2021

Upper Tribunal Judge Owens