IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001774
First-tier Tribunal No:
PA/52757/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SHS
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, of Kings Law Solicitors Ltd
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 8 March 2024

DECISION AND REASONS

1. The appellant is a citizen of Iraq of Kurdish ethnicity born on 2 December 1965. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claims.

2. The appellant entered the UK on 27 November 2018 clandestinely, having been refused a spouse visa on two occasions due to submitting false documents in support of her application and having unsuccessfully appealed against the second of those refusal decisions. She claimed asylum on the day of her arrival in the UK. Her claim was refused on 24 May 2019 and her appeal against that decision was dismissed on 29 August 2019. She was refused permission to appeal to the Upper Tribunal and

became appeal rights exhausted on 24 October 2019. She then made further submissions on 13 May 2020 which were treated as a fresh claim and refused on 21 May 2021, giving rise to the current appeal.

3. The appellant's asylum claim, as initially considered by First-tier Tribunal Austin in the appeal heard on 18 July 2019, was based on her fear of persecution by the PUK as a result of her having informed on them for interfering with ballot boxes in an election. The appellant claimed that she worked a teacher at a school in Dukan and was appointed as the polling station manager at the school in the parliamentary elections in September 2018. She claimed that armed men from the PUK came to her house and forced her to go with them to the polling station at the school where they removed the electronic voting devices which had been installed and replaced them with ones they had brought with them. She was taken back to her house and was threatened with rape and death if she informed on them. She claimed that she returned to the school on the polling day and that the voting process went smoothly initially, but she then decided that she could not support a fake election process and she told the other parties what had happened. After leaving the polling station she learned that armed men had come to see her and so she went to a relative's house and then left the country with the assistance of an agent that night, arriving in Turkey the following day. She flew from Turkey to Europe and came to the UK.

4. The respondent did not accept the appellant's claim and concluded that she was at no risk on return to Iraq. Judge Austin, in his decision promulgated on 29 August 2019, accepted that the appellant and her husband were in a genuine marriage and had been so since 2010, although that had not previously been accepted when she had applied for a spouse visa, but he did not otherwise accept her claim. He did not accept the appellant's account of managing a polling station, he did not accept her account of informing on the PUK and of being threatened by them and he did not accept that she was at risk on return to Iraq. The judge found that the appellant had a valid form of identity document which would be available to her on her return to Iraq and which would enable her to obtain an Iraqi passport. The judge found that there would be no insurmountable obstacles to the appellant returning to Iraq with her husband, noting that he had returned to Iraq and remained with her for five and a half years after she was refused a visit visa.

5. In the further submissions made on the appellant's behalf on 13 May 2020 it was submitted that the appellant and her husband had had no idea that the documents submitted with the spouse visa, namely death certificates for his ex-wife and children, were forgeries. The appellant's asylum claim was re-stated and it was claimed that she did not have her original CSID and would not be able to obtain a replacement card. The submissions relied upon fresh evidence which included photographs of the appellant working at the polling station, supporting letters and teachers union cards from members of staff at the school and the headteacher at the school, a letter from the Independent High Elections and Referendum Commission and a letter from the Gorran Movement Council UK confirming her position as a polling station manager.

6. The respondent considered the submissions and treated them as a fresh claim, but refused the claim on 21 May 2021, referring to the findings made by Judge Austin and concluding that the fresh evidence did not lead to a different conclusion. The respondent maintained that the appellant was at no risk on return to Iraq and noted that she had a valid form of identity card which she could use on her return to Iraq. The respondent considered that the evidence did not demonstrate that the appellant's removal from the UK would breach her human rights under Article 3 or Article 8. Whilst accepting that the appellant and her husband were in a genuine relationship, the

respondent considered that there were no insurmountable obstacles to family life continuing in Iraq.

7. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Chowdhury on 6 December 2021. The appellant and her husband gave oral evidence before the judge. The judge did not attach weight to the further documentary evidence produced by the appellant, noting a lack of relevant detail and information in the supporting letters from the Independent High Elections and Referendum Commission, the Gorran Movement Council UK and the staff at the school. The judge was prepared to accept, on the lower standard of proof, that the appellant was a polling station manager but she rejected her account of having witnessed tampering or violation of the election process and did not accept that she was threatened by the PUK or their agents. The judge did not find that the appellant was in genuine fear of the PUK. With regard to the question of documentation the judge found that the appellant had a valid form of ID which was available to her to enable her to return to Iraq, that she had the means to procure a passport via the Iraqi embassy in the UK to enable her to travel to and within Iraq and travel onwards to the IKR, and that she had family in Iraq who could assist her. The judge found further that there were no insurmountable obstacles to the appellant and her husband returning to the IKR together and no very significant obstacles to integration in Iraq for the purposes of the immigration rules, and that the appellant's removal would not be in breach of Article 8. The judge accordingly dismissed the appeal, in a decision promulgated on 2 March 2022.

8. The appellant sought permission to appeal against the judge's decision. The grounds are rather long-winded and not clearly particularised but can be distilled into the following: that the judge's approach to the reliability of the appellant's evidence was unfair, unreasonable and inadequate and that the judge failed to consider the evidence holistically and failed to give weight to the evidence; that the judge arrived at a wrong conclusion in relation to the appellant's travel in Iraq without her CSID card and wrongly found that she had the required documentation to enable her to live and work freely in Iraq; that the judge failed to take country guidance into account; and that the judge failed to consider Article 8 implications.

9. Permission was granted in the First-tier Tribunal on 13 April 2022, on the following basis:

> "2. The grounds assert that the Judge erred in the assessment of credibility in a number of respects (paragraphs 2, 3, 4, 5, 6, 8, 17, 18 and 20).
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> 3. The judge has given cogent reasons for rejecting the Appellant's evidence including giving detailed findings as to why items of evidence she has been accused of ignoring were not reliable. The challenge to the credibility findings does not engage with the details of these findings which undermine the arguments to a significant extent and the grounds do not consider the impact of Devaseelan which the judge correctly applied.
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> 4.The grounds also assert that the judge took the wrong approach to the feasibility of return and relocation for Kurdish Iraqis, moving around within Iraq and the challenges of obtaining identity documents (7, 9-11, 13-16 and 19).
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> 5.The judge has not engaged with either SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) or SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 00037 (IAC) in the consideration of these issues. Both decisions contain crucial guidance on the approach to take to these issues accordingly these grounds are arguable.

6.The grounds allege that the judge failed to consider article 8 implications(paragraph 12).

7.These were specifically albeit briefly considered in the decision [77-79].
8.In light of the failure to engage with country guidance as to the challenges of obtaining identity documents, and relocating within Iraq, permission is granted. All grounds may be argued."

10.The respondent filed a rule 24 response on 26 April 2022 responding to the grounds of appeal, together with the Home Office bundle dated 24 June 2019 which was filed for the appellant's appeal in July 2019, and opposed the appellant's appeal. The following extract from the rule 24 response is of particular relevance:

"10. As to the issue of documentation, the FTTJ cannot be considered to be in error for failing to apply SA Iraq. Whilst the promulgation date is prior to the hearing before the FTT, it was not published until 10/02/22. The FTTJ referred to the previous findings of the Tribunal (paras 25 and 46 Annexe A SSHD Bundle- which referred to the SSHD retaining said document) and found that the appellant had [29, 74] an ID document to enable her to return to Iraq. Whilst it is not clear whether the FTTJ had sight of the original identity document considered by the Tribunal, a copy of the document is contained within the previous appeal bundle (PA/05504/2019) at Annexe F. On examination it is clear with reference to the information at Annexe H of the SSHD CPIN on Iraqi documentation, that this is in fact an INID. Given that this disposes of the issue in relation to documentation, it is abundantly clear that there is no material error that would alter the outcome of the appeal.

11. In the alternative that it is not evident that a copy of the identity document was available to the FTTJ, an application under Rule 15 (2A) is now made to admit the previous appeal bundle in order to assist the Tribunal in disposing of this appeal."

11.The appeal came before Upper Tribunal Judge Lane on 11 October 2023 but the matter was adjourned because the appellant's representative had not had sight of the rule 24 response and needed to consider their position in light of the evidence of the ID documentation. UTJ Lane made specific directions which it is appropriate to set out in full, as follows:

"**DIRECTIONS**

Introduction

1. The initial hearing listed for today was adjourned because Counsel for the appellant (Mr Timson) had not seen the R24 letter of the Secretary of State dated 26 April 2022. This letter states [10] that the document which appears at G15 of the Home Office bundle before the First-tier Tribunal is an Iraqi identity document commonly referred to as an INID card. The First-tier Tribunal refers to the document but the claim that it is an INID was not advanced by the parties or the Tribunal in the First-tier Tribunal proceedings. The respondent agreed that an adjournment was necessary for the appellant's representatives to consider the nature of the document. If both parties accept that the document is the appellant's valid INID card, then they agree that the grounds of appeal as regards the application of SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 cannot be pursued.

Directions

2. The appellant shall notify the Upper Tribunal and the Secretary of State in writing no later than 4pm on 24 November 2023 if she contends that the document at G15 of the Home Office bundle is not her valid INID card.

3. In the event that the nature of the document is disputed, both parties may adduce evidence as to the nature of the document provided that any such evidence is sent to the other party and to the Upper Tribunal no less than 10 days before the adjourn initial hearing.

4. The initial hearing is adjourned to the first available date after 16 November 2023 at Manchester Civil Justice Centre (Any judge; 2 hours). If the appellant requires an interpreter at the adjourned initial , her representative should apply to the Upper Tribunal forthwith on receipt of these directions."

12.The appeal was then re-listed for hearing and came before me on 8 March 2024. Although listed for a face-to-face hearing there was a request made by the appellant's solicitors, made extremely late after the day's list had actually commenced, for a remote hearing, since they were based in Birmingham. The timing of this request was clearly inappropriate, although Mr Khan apologised and accepted that he had misunderstood that the hearing was to be face-to-face. Arrangements were put in place to accommodate Mr Khan and the appeal then proceeded as a remote hearing, with the appellants physically present in the hearing room but Mr Khan attending remotely.

13.I raised the fact that there appeared to have been no compliance with the directions issued by UTJ Lane. Mr McVeety confirmed that the respondent had heard no further from the appellant's solicitors. Mr Khan accepted that the directions had not been complied with.

14.I asked Mr Khan if the appellant therefore accepted that the document referred to in the respondent's rule 24 response was her valid INID card. Mr Khan replied that it was not accepted, but that he had not seen the card and could do no more than rely on the grounds. He submitted that Judge Chowdhury had failed to engage with SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 ("SMO 1") which was the relevant country guidance at the time, that she had failed to engage with the process of re-documentation, that she had made no findings on the appellant's ability to re-document herself and that there had therefore been no assessment in line with the country guidance in SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 ("SMO 2"). He requested that Judge Chowdhury's decision be set aside and the decision re-made by a different judge.

15.At the commencement of Mr McVeety's submissions, there was some discussion about the document referred to by UTJ Lane in his directions. The document he referred to was at G15 of the Home Office bundle for the current appeal, which was not the appellant's document. The relevant document was in fact that described in the rule 24 response, at Annex F of the June 2019 Home Office bundle, which was the document made available to the appellant's representatives at the hearing on 11 October 2023. Mr McVeety submitted that the document referred to in the rule 24 response was the appellant's own valid INID document which she had handed in to the Home Office and which would be held in storage. He submitted that it was a biometric document and that even if the original was lost the information was electronically stored and could therefore be used to obtain a replacement. Since the appellant had her INID card in the UK and was therefore already fully documented, the guidance in SMO did not apply to her and there was therefore no error made by the judge in that regard. Mr McVeety submitted that there was no merit in the other grounds, but in any event permission had essentially only been granted on that ground.

Discussion

16. As Mr McVeety pointed out, permission was granted on the ground of appeal relating to re-documentation. The other grounds were not found to be made out, albeit that the decision granting permission did not restrict the grounds from being argued.

17.As mentioned above, the grounds are poorly drafted and are not properly particularised. In so far as the grounds seek to challenge [14] to [18] of the judge's decision, those paragraphs were not in fact findings made by the judge but were a recitation of the findings of the previous Tribunal. Likewise, in regard to the challenge to the decision from [19] to [29], those paragraphs were also not findings made by the judge but were a summary of the respondent's decision. The grounds challenging the judge's credibility findings at [69] to [74] fail to identify any error made by the judge and simply disagree with her findings on the evidence and the weight she accorded to the documents and seek to re-argue the matters. The judge, however, gave detailed consideration to the appellant's case, taking the previous adverse findings made in the decision of 29 August 2019 as her starting point, as she was perfectly entitled to do in accordance with the principles in Devaseelan, and then going on to consider the fresh evidence. From [62] to [68] the judge undertook a detailed assessment of the new documents and provided cogent reasons for concluding that they could not be accorded any material weight. From [69] to [73] the judge gave additional reasons for finding the appellant's account to be lacking in credibility and for concluding that her account giving rise to her claimed fear of return to Iraq was not a credible one. There is, accordingly, nothing of any merit in the challenge to the judge's decision in those grounds. The judge's adverse credibility findings were cogently reasoned and were fully and properly open to her on the evidence before her.

18.In so far as the grounds challenge the judge's findings on Article 8 and assert that she failed to consider "the Article 8 of ECHR implications", it is clearly not the case that Article 8 was ignored by the judge. On the contrary the judge, at [75] to [79], gave detailed consideration to Article 8, both within and outside the immigration rules and made properly and cogently reasoned findings in that that regard. The grounds in that respect do not raise any properly particularised challenge and are not made out.

19.Turning to the main focus of the grant of permission, which was the judge's failure to consider the relevant country guidance in relation to re-documentation, Mr McVeety properly submitted that SMO was not relevant in circumstances where an applicant was fully documented and therefore there was no reason for the judge to address the guidance. The question, therefore, is whether the appellant was fully documented and whether the judge was entitled to find that that was the case.

20.At [11] of the respondent's rule 24 response, it is stated that it is not evident that a copy of the identity document was available to Judge Chowdhury. However, whether or not the judge had seen the document referred to in the respondent's rule 24 response, it is nevertheless clear that there was evidence before her that the document existed. The respondent's submissions, as recorded by the judge at [29] of her decision, directed the judge to the interview record for the appellant's original asylum claim where the appellant was noted as having given her ID card to the interviewing officer. The judge was also directed to [46] of Judge Austin's decision where it was accepted that the appellant had a valid form of identity card. Judge Chowdhury addressed the matter herself at [74] and found that the evidence was that the ID document was available to the appellant.

21.The judge's findings are now supported by evidence referred to in the respondent's rule 24 response, at [10], which appears at Annex F of the Home Office bundle for the previous appeal, and from which it can be concluded that the document is a valid INID card as consistent with the cards referred to in the CPIN report. It can be seen from that document that it remains valid until 15 April 2027. Mr McVeety confirmed that the document had been handed over to the Home Office by the appellant and would be retained in their storage facilities in accordance with normal practice. Although UTJ Lane mistakenly referred, in his directions, to the document at G15 of the Home Office bundle for the current appeal, which was not in fact the appellant's document, it is clear that the appellant's representatives were made aware of the correct document, which appears at Annex F of the previous Home Office bundle, at the hearing itself. The appellant was given a full opportunity to address the nature and validity of the document and the implications of the document being available. There has been no response to the directions and thus no assertion by the appellant that that is not her document and that it is not a valid INID card. Mr Khan's only submission was that he had not seen the document himself – but the appellant, accompanied by her legal representative, clearly had seen the document at the adjourned hearing on 11 October 2023. In all of the circumstances it is clear that the judge's finding, that the appellant's own valid INID was available to her to enable her to travel to Iraq and to travel to her home area, was one that was open to her on the evidence and was properly made. As the rule 24 response properly identifies, that disposes of the issue in relation to documentation. Judge Chowdhury was therefore entitled to reach the conclusion that she did at [74] and the lack of reference to the country guidance in SMO was clearly immaterial.

22.For all these reasons the challenges made in the grounds are not made out. The judge reached a decision which was fully and properly open to her on the evidence before her. Her decision is accordingly upheld.

Notice of Decision

23.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 March 2024