



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

Appeal Number: PA/00816/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 5 October 2018**

**Decision & Reasons  
Promulgated**

**On 6 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**MR S B M  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Tabassum

For the Respondent: Mr Tan

**DECISION AND REASONS**

1. The Appellant appeals against the decision of Judge of the First-tier Tribunal Tobin dated 19 March 2018 dismissing the Appellant's appeal against the decision of the Respondent dated 3 January 2018 refusing the Appellant leave to remain and refusing his protection claim.
2. The Appellant is a national of Iraq of Kurdish ethnic origin. He originates from Kirkuk. The Respondent accepted at [43] that the Appellant was from Iraq, and at [53] that the Appellant was from Kirkuk. It is to be noted that Kirkuk is of course a part of central and southern Iraq, not part of the

Iraqi Kurdish Region (IKR). The Appellant had given an account that he was a soldier, and had formed part of the unit acting as bodyguard to former President Jalal Talabani, the first non-Arabic President of Iraq, who served as President of Iraq from 2006 to 2014. The Appellant's account was that he lived principally in Kirkuk but that he served three weeks on duty in Baghdad, and then returned for three weeks leave at home in Kirkuk, in cycles. Although it was accepted at [60] that the Appellant had been a soldier in the Iraqi Army, the Respondent did not accept that the Appellant had been part of the bodyguard unit for President Talabani. The Appellant's account was that in 2014 and 2015 he had been the subject of threats made by ISIS because of his association as bodyguard for President Talabani. That element to the Appellant's account was not accepted either.

3. The Appellant had provided a number of documents to the Respondent in support of his claim for protection. These are set out at paragraph 35 of the decision letter: An Iraqi MOD card, ID card for the security of the Presidency, further ID cards (showing address information), CSID, nationality card and food ration card. Paragraph 35 of the decision letter continues to assert: "these documents have been assessed by a Home Office immigration official and have not been found to be genuine therefore this detracts weight from your claim".
4. The refusal letter also states as follows at paragraph 69:

"It is noted that you have provided documentation in regard to your claim to have been a bodyguard to the Iraqi President including: Iraqi MOD card, ID card for the security of the Presidency and further ID cards. These have not been found to be genuine and this further detracts weight from your claim."
5. Further, at paragraph 76 of the refusal letter the Respondent asserts:

"It is noted that you have submitted several copies of documents including the letter claimed to be from ISIS and reports which you claim were provided by the Kirkuk police and Sulaymaniah Asayesh. These have been considered in line with the case law of Tanveer Ahmed IAT [2002] UKIAT 00439\*. This means it is for you to show that any documents you rely on to support your case can be relied on. Your documents have not been viewed in isolation. This means that they have been considered as part of all the available evidence that they relate to. These documents are found to be non-genuine, therefore no weight can be added to these documents."
6. The Respondent provided two document examination reports in support of its reasoning, to be found at page E1 and E2 of the Respondent's bundle. Both are dated 23 November 2017. One states on its face that it refers to document 00893737 and states that the document was examined at the National Documentation Fraud Unit in Liverpool on 23 November 2017 and that the document was found to be a counterfeit, and should not be relied upon as evidence of nationality or identity. The reasons are given as follows:

“The above detailed purported Iraqi ID card has been printed using a digital, four colour inkjet print process ...”

7. The other document examination report also refers to document 00893737 and again states that the document was found to be counterfeit and should not be relied upon as evidence of nationality or identity, and in the reasons for the above conclusion, the document is described to be a “purported Iraqi Jansiyya”.
8. The Appellant appealed and the appeal came before the judge on 16 February 2018. The Appellant gave evidence. In dismissing the appeal, the judge made findings which included the following:
  - (i) At [25] the judge referred to the two documentation examination reports and held:

“By submitting forged documents the Appellant has totally undermined his evidence, such that I do not accept any of his evidence. His account was so weak that I may have come to that conclusion anyway bearing in mind the inconsistencies and implausible evidence noted in his determination; however, by submitting forged documents I am in no doubt that the Appellant’s whole story cannot be relied upon to any degree”;
  - (ii) at [26] the judge accepted that the Appellant was an Iraqi soldier and to some extent he could be viewed as a target by ISIS (and there, I might add seemingly contradicting his observation in [25] that the Appellant’s whole story cannot be relied upon to any degree), the judge did not accept that the Appellant had been part of the Presidential Guard;
  - (iii) at [27] the judge noted that the Appellant had claimed to have started work in the Presidential Guard in 2008 and it had been six years before his first threat from ISIS; the judge held that the absence of any credible catalyst for such an approach by ISIS at that time makes a fundamentally weak story even less believable;
  - (iv) at [31] the judge did not accept the Appellant was no longer in contact with his family;
  - (v) at [32] the judge did not find credible that the Appellant had claimed to have lost his Iraqi passport en route to the United Kingdom on a boat near Greece, whilst at the same time keeping other documents including his forged documents and his mobile phone and photographs safe; this was not plausible; he may still have his passport;
  - (vi) at [34] the judge held that the Appellant would be able to get a CSID for his return to Iraq, either through his family or through the Iraqi Embassy; the judge was not satisfied with the Appellant’s explanation that his family are not contactable; that evidence was not credible and was entirely self-serving.
9. The Appellant’s appeal was dismissed.

10. The Appellant applied for permission to appeal in grounds of appeal dated 3 April 2018, but permission to appeal was refused on 18 April 2018. The Appellant renewed his application for permission on 16 May 2018, and permission was granted on 21 June 2018. The Appellant's grounds of appeal are, in summary, that the judge erred in law as follows:

Ground 1: failure to follow country guidance given in AA (article 15 (c)) Iraq CG [2015] UKUT 00544 IAC, AA (Iraq) v SSHD [2017] EWCA Civ 944, and BA (Returns to Baghdad) Iraq [2017] UKUT 00018 IAC, resulting in errors relating to the judge's assessment of the following issues:

Ground 1.1 Feasibility of return

Ground 1.2 Appellant's stability to obtain a CSID card

Ground 1.3 Return to Baghdad

Ground 1.4 Relocation to IKR

11. I intend no disrespect to the Appellant's grounds of appeal in not setting 1.1 to 1.4 out in any further detail, but a fundamental part of the argument that is advanced by the Appellant throughout Ground 1 is that the Appellant does not have a CSID card, and his ability to enter and survive in Iraq without such document and to internally relocate from Baghdad to the IKR would all be dependent on his possession of such a document, and the judge erred in law in purporting to find that the Appellant could obtain a new CSID card through his family, who the judge had found he was still in contact with.
12. Ground 2 argues that the judge misapplied Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
13. Ground 3 alleges that the judge erred in law in a number of ways in his assessment of the Appellant's credibility including:
- (i) finding it implausible that the Appellant was not targeted by ISIS for six years from 2008 to 2014, on the basis that the judge had failed to take into account that ISIS did not gain any prominence until 2014 when country information establishes that this was the time of their rise to influence in Iraq;
  - (ii) the judge erred in law in his assessment of the credibility of the Appellant's account to have lost contact with his family in or around October 2017, as the judge had failed to take into account country information brought to his attention regarding evidence of armed conflict in the Kirkuk area at that time, when 'Popular Mobilisation Forces' overtook Kirkuk, and Kurdish Peshmerga forces were forced to retreat, with 61,000 people fleeing the city and over 100,000 people from the overall area being displaced (that evidence being referred to in the Appellant's skeleton argument at paragraph 35, and in the Appellant's bundle page 48); the judge erred by failing to state why he did not take that material evidence into account when assessing the Appellant's credibility of having lost contact with his family;

(iii) failing, when assessing the credibility of the Appellant's account to have lost his passport, to have regard to the Appellant's explanation in his witness statement (paragraphs 17 and 35) that whereas he lost his passport from his top pocket when in an inflatable boat whilst travelling from Turkey to Greece which started to sink, other documents submitted to the Home Office were delivered to him from Iraq only after he was already in the United Kingdom; therefore, the judge had failed to take into account relevant evidence when assessing the credibility of the Appellant's possession of certain documentation.

14. Before me I heard from the parties in the appeal. Ms Tabassum adopted the grounds of appeal, adding little to them, and Mr Tan defending the judge's decision by addressing each ground in turn.
15. During the course of the hearing before me I raised with the parties a concern that although there were only two document verification reports before the judge, which appeared to refer to the Appellant's CSID card and his Jansiyya Iraqi nationality certificate, it was not clear what documents the judge was treating as being forged in his finding at [25]. The Respondent appears at paragraphs [35], [69] and [76] of the decision letter to assert that all of the Appellant's documentation had been found to be forged or non-genuine. I find that the Respondent was not entitled to arrive at that conclusion merely on the basis of the two document verification reports, which referred only to two of the Appellant's documents.
16. Having heard submissions from the parties on this point, I find that if and insofar as the judge finds at [25] that all of the Appellant's documentation including his Iraqi MOD card, his ID card for the security of the Presidency, his food ration card, a letter from ISIS, and the documents provided by the Kirkuk police and Sulaymaniah Asayesh, had all been found to be forged or non-genuine, I find that he was not entitled to make such a finding on the basis of the two documentation verification reports before him. Further, as I find above, it is not clear what documents the judge refers to at [25] as being non-genuine.
17. There is thus no sustainable finding on the reliability of the Appellant's documentation relating to the Iraqi MOD card and the ID card for the security of the Presidency. I find that just because two particular documents have been found to be forged or non-genuine, that does not, without more, justify either the Respondent or the judge finding that any and all of the Appellant's documents are similarly forged.
18. I turn to the Appellant's challenge regarding certain of the judge's findings on credibility. I find that the following grounds are made out:
  - (i) the judge was not entitled to treat the Appellant's credibility as diminished merely because he was threatened by ISIS for the first time only in 2014, notwithstanding the fact that he had been

allegedly part of the Presidential Bodyguard Unit from 2008; this is because it is clear that ISIS did not have any significant presence or influence in Iraq until 2014;

- (ii) further, the judge has failed to take into account relevant country information about the circumstances prevailing in Kirkuk in or around October 2017, when dismissing the Appellant's account to have lost contact with his family around that time;
- (iii) further, insofar as the judge treats the Appellant's evidence as incredible on the basis that he lost his passport en route to the United Kingdom but not other documents, the judge materially errs in law in failing to take into account the explanation quoted above from his witness statement that it was his passport that was lost from his top pocket when the inflatable boat was sinking, whereas other documents were delivered to him later from Iraq.

19. I accept that the first of the points I raised above regarding the fact that the two document verification reports could not sustain a finding that all of the Appellant's documents are forged, was not a ground raised by the Appellant himself in his grounds of appeal. However, I find that the point is a **Robinson** obvious point of Refugee Convention law, and I find the point made out. Although I accept that the judge offered other reasons in his decision for finding the Appellant not credible, I find that the cumulative effect of the errors I have outlined above to be such that the judge's overall finding on credibility is not sustainable in this appeal.
20. Thus, the judge's assessment that the Appellant was still in contact with his family and could obtain their assistance to obtain a replacement CSID card is a finding which has no proper basis.

### **Notice of Decision**

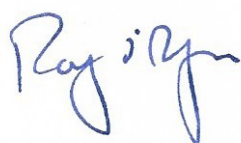
I find that the making of the decision included the making of material errors of law.

I set aside the judge's decision.

I remit the appeal for rehearing by the First-tier Tribunal, due to the extent of the findings of fact that need to be made to decide this appeal.

Signed

Date 25.10.18



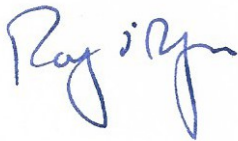
Deputy Upper Tribunal Judge O'Ryan

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

This is a protection claim. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 25.10.18

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', is written over the signature line.

Deputy Upper Tribunal Judge O’Ryan