



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01325/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 10th June 2019**

**Decision & Reasons Promulgated
On 25th June 2019**

Before

**DISTRICT JUDGE MCGINTY SITTING AS A
DEPUTY UPPER TRIBUNAL JUDGE**

Between

**MR ABDULRAHMAN SALIH ABDULRAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin (counsel)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge S J Clarke promulgated on 9th April 2019 in which she dismissed the Appellant's asylum and human rights appeals.
2. The Appellant is a national of Iraq who was born on 5th February 1991. The Appellant's case was that his father was a member of the Ba'ath Party and he had been targeted and killed because of that and that he and the family remained at risk of reprisal. The Appellant claimed it was either the Shia militia or the Kurdish militia who targeted his family and himself. The Appellant claimed that his whole family were killed and as a result he went

to live with a man who was not related to him, but whom he called 'uncle' and he lived in a village which had 15 to 45 houses. He had then been taken to Mala Abdulla to fight, but fled after one day fearing that he would be killed and had then been advised to flee the country and join his brother abroad.

3. The First-tier Tribunal Judge considered the oral evidence and witness statements made by the Appellant and also the oral evidence from Ms Farid, but did not find the Appellant to be a credible witness.
4. In looking first at the asylum appeal the judge noted that the Appellant had said in his screening interview that he came to the UK to apply for asylum 'to see his brother'. He was asked to briefly explain all the reasons why he could not return to his country and he said that he did not have anyone left in Iraq and came to join his brother as he is the only family he had. The rest of the family he said died from an explosion and if returned he did not know what would happen to him. The box to be filled in remained largely empty and the judge found that had his father been a member of the Ba'ath Party and had he and his family been targeted as a result, the Appellant would have mentioned this at first instance. The Appellant said at the hearing he was not asked, but the question is clear. The judge stated "*I find the late claim in the asylum interview is an establishment and had the father been part of the Ba'ath Party, the brother would have given evidence to confirm the same, but he was not called to give evidence.*" The judge found that the Appellant gave vague details about his father's involvement and his father being active as claimed. She found it was unlikely that the other villagers would have not known about the involvement. The judge stated that even if she was wrong the country guidance showed that since 2008 the issue of assassinations of former Ba'ath Party members has been minimal and it was not likely anyone would be targeted solely with reference to a former Ba'athist association, given everyone employed by the previous regime had to be a member of the Ba'ath Party.
5. The judge went on at paragraph 13 to say that at the asylum interview the Appellant said that his parents had died in 2003 or 2004 when he was 11 or 12 years old, because they were shelled, but he did not know if it was by ISIS or the Ba'ath Party as he was very young at the time. She found the account accorded with a well-known battle which took place in April 2013 and found that it is likely that his father has died simply as being a result of a casualty of war, rather than being targeted. She said she did not find all of the family members were killed as claimed because the brother was not called to give evidence to confirm what he knew about what happened.
6. The judge went on to consider the Appellant's case that he had been forced to join a battle when he was taken to a place called Mala Abdulla to fight ISIS and he was given a gun but no training and then fled after one day. The judge at paragraph 15 found the Appellant's case is that he left Iraq in the summer of 2014 and the background evidence showed the Peshmerga continued to advance and take the village of Mala Abdullah

from ISIS in March 2015, much later than when the Appellant claims he fled. She did not find the Appellant a credible or a reliable witness and did not accept he was engaged in any fighting as claimed.

7. The judge then went on to consider, having not accepted the core of the Appellant's asylum claim, the extent to which he could be returned, if at all, to Iraq and the judge starting at paragraph 16 went on to consider there whether or not the Appellant had a CSID card and/or Iraqi nationality certificate. The judge in paragraph 16 found that the Appellant was asked about his ID card and Iraqi nationality certificate and he said in his screening interview that his passport had been taken by an agent in Turkey, but that he could get his ID and certificate 'later'. The judge stated:

"In the asylum interview he said that he had his personal status ID card as well as his Iraqi nationality certificate in Iraq, and tried to distance himself from his earlier answer by saying he has not seen those documents, they were last shown to him when he was 10 or 11 years old, and he came to the UK without the documents and had difficulty with the consulate. I consider this in the round."

8. At paragraph 18 the judge went on to consider the risk on return and found:

"I find the Appellant has in his possession his ID and certificate and he brought these with him. I find the Appellant is fully aware of where and how to claim asylum and has shown his expertise travelling around Europe. The aim of coming to the UK was to join his brother. I place weight upon the answer in the screening interview which is that he can get his documents later. I find that these documents are in the UK and he brought them with him."

9. The judge then went on to find that even if she was wrong (this is a finding in the alternative to the primary finding that the Appellant did have his CSID and Iraqi nationality certificate with him in the UK), then he had a brother who could obtain documents for him by proxy as a male member of the family. The judge said she placed little weight upon the trip to the embassy with Ms Farid given that she came from the law firm but also said that the Appellant presented a self-serving claim to the embassy that he had not got any documents.
10. The judge found that the Appellant had travelled with his ID and his CSID and retained them, but said that even if she is wrong she would look at whether or not he could obtain the necessary documents to return to his country and found that the Appellant she found could obtain the documents through his brother at the CSA office in Baghdad.
11. Permission to appeal in this case has been granted by First-tier Tribunal Judge Andrew on 1st May 2019 who found it was arguable that the judge did not follow the guidance given in the Court of Appeal case of **AA (Iraq) [2017] EWCA Civ 944** in relation to the obtaining by the Appellant of a CSID.

12. In this case I have been assisted greatly by having detailed Grounds of Appeal submitted on behalf of the Appellant prepared by Mr Parkin of Counsel together with his helpful oral submissions today, and the Rule 24 reply from the Secretary of State and the helpful submissions made by Mr Bramble the Senior Home Office Presenting Officer on behalf of the Secretary of State.
13. Firstly it is argued by the Appellant that the judge's finding that the Appellant had in his possession a CSID card or an Iraqi citizen identity card was bizarre and irrational. It was said not to be the Appellant's case or indeed the Respondent's case. It is argued that the Appellant had believed during the screening interview he could obtain documentation, which is said to be inconsistent with him already having been in possession of the documents. It is argued that what was relevant was not the Appellant's subjective belief that he would be able to obtain documentation, but the country guidance which could confirm whether or not someone who does not have documentation can actually obtain the same. The Tribunal, it is argued, erred in essentially taking the Appellant's word (or one version thereof) for it without consideration of the country evidence and that the reasoning was inadequate.
14. The first ground is that the judge was wrong to find that the Appellant did have access to a CSID card or nationality card and that if the Appellant did not have those documents then the second ground of appeal is that the judge has materially erred in finding the Appellant could simply obtain that documentation in Baghdad with the assistance of his brother and that the Tribunal did not apply the reasoning set out within paragraph 10 of the headnote of the case of **AA (Iraq)** that:

"Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired) if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P."

15. I note in the headnote at paragraph 11 it goes on to state:

"P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the 'central archive', which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad,

to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.”

16. As quite properly conceded by Mr Parkin, his second Ground of Appeal relating to the misapplication of **AA** is dependent upon the Tribunal accepting that the judge erred in respect of the first Ground of Appeal. Mr Parkin accepts that if the Appellant did have his CSID and Iraqi nationality certificate that he would be able to go to the Iraqi Embassy and obtain a passport, but argues that the fact that the Appellant has been to the embassy with Ms Farid but not been able to obtain one was an indication that he did not actually have those documents. I however note in that regard the finding made by the First-tier Tribunal Judge in that regard at paragraph 19 the judge found:

“I place little weight upon the trip to the Embassy with Ms Farid given that she is merely a witness albeit independent because she comes from his law firm, but the Appellant presented a self-serving claim to the Embassy that he had not got any documents.”

The point being made by the judge was that the Appellant had said he had not got any documents and on that basis the embassy said they could not give him a passport. However, what the judge had previously found in her findings was that she did not accept that the Appellant did not have his CSID or Iraqi nationality certificate.

17. It is argued by the Appellant that the judge’s finding on the CSID/Iraqi nationality certificate is both irrational and inadequately reasoned. What the judge stated at paragraph 16 was:

“The Appellant was asked about his ID card and Iraqi nationality certificate and he said in his screening interview that his passport was taken by an agent in Turkey but he could obtain his ID and certificate later. In the asylum interview he said he had his personal status ID card as well as his Iraqi nationality certificate in Iraq and tried to distance himself from his earlier answer by saying he has not seen these documents, they were last shown to him when he was 10 or 11 years old, and he came to the UK without the documents and had difficulty with the consulate. I consider this in the round.”

18. As stated the judge went on to find that the Appellant had in his possession the ID and certificate and he brought them with him. At paragraph 18 she said she placed weight upon the answer in the screening interview which was that he can get his documents later. She said that she found that these documents are in the UK and he brought them with him.
19. When actually one looks at what was both said in the original screening interview and also the substantive interview, when asked at question 1.7 and 1.8 whether there was any evidence to confirm his identity, at that screening interview he said no and then went on to state in answer to question 1.8 *“my passport the agent took from in Iraq. I can get my ID and certificate later”*.

20. In his substantive interview when asked at question 39 when he was last in possession of his documents the Appellant stated *"I haven't seen them. All I know I had them, they were showed to me when I was young and my father and mother were alive I was 10 or 11 years old"*.
21. When one looks at the answers given by the Appellant in the interview obviously in order for a finding to be irrational it has to be one that no reasonable judge properly directing themselves could have made. But in this case the answer that was given by the Appellant in the screening interview as to the CSID card and certificate was *"my passport the agent took from in Turkey. I can get my ID and certificate later"*. The judge compared that with the answer that he gave in the substantive interview when he said that he had not seen those documents and they were last shown to him when he was 10 or 11 years old and he came to the UK without them. However, the Appellant had said *"I can get my ID and certificate later"*. The Appellant did not reply that he could get a replacement ID certificate in Iraq or through the embassy in the UK, he makes specific reference to the passport being taken from him in Turkey but him being able to get the ID and certificate later. It was a finding open to him on the evidence.
22. Further it is quite clear as to why the judge has reached that decision. It is adequately reasoned, the reasons are set out in paragraph 16 through to 20 as to why the judge, having considered those answers by the Appellant, found the Appellant did have those documents in the UK. The judge's reasons are adequate and sufficient. In effect the arguments raised by the Appellant are simply seeking to reargue that point and it is not a matter for the Upper Tribunal to consider re-arguments on the point, it is whether or not the judge made a material error of law. The judge has not made a material error of law in that regard.
23. There was no concession in the Secretary of State's original decision that he did not have documentation. The judge is not simply reviewing the decision of the Secretary of State, the judge is entitled to reach her own findings upon the evidence and that is exactly what this judge has done when making the findings that she made.
24. Moving on to the second Ground of Appeal. In that regard the judge in the findings in the alternative appears not to have actually fully considered the question as to whether or not the Appellant knew the page and volume number of the book reporting the Appellant's information, such that he could obtain the replacement documentation through the Civil Status Affairs Office in Baghdad, which had been set up as an alternative office for Mosul. However, given the judge found that the Appellant did have documentation, as Mr Parkin quite properly conceded that ground cannot succeed in isolation.
25. The decision of First-tier Tribunal Judge Clarke therefore does not contain a material error of law and the judgment is upheld.

Notice of Decision

The judgment of First-tier Tribunal Clarke does not contain a material error of law and the appeal is dismissed. The decision of First-tier Tribunal Clarke is upheld.

No anonymity was ordered by the First-tier Tribunal nor has one been sought before me today and therefore I do not make an anonymity direction today.

Signed
District Judge McGinty

Date 23rd June 2019

District Judge McGinty sitting as a
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed
District Judge McGinty

Date 23rd June 2019

District Judge McGinty sitting as a
Deputy Upper Tribunal Judge