Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02980/2019

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 7 August 2019	**On 21st August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

M. S.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: No attendance

DECISION AND REASONS

1. The Appellant, a national of Iraq, entered the United Kingdom illegally in 2016 and claimed asylum. His protection claim was refused on 15 March 2019. The Appellant's appeal against that decision was heard on 9 May 2019, and was allowed by First Tier Tribunal Judge

Moran on asylum and Article 3 grounds in a decision promulgated on 15 May 2019.

2. The Respondent was granted permission to appeal by decision of 19 June 2019 of First-tier Tribunal Judge Robertson on the basis it was arguable the Judge had erred in failing to give adequate reasons for accepting the Appellant had lost contact with his family. Whether or not he were in contact with his family, the Judge had arguably failed to give adequate reasons to explain why he would be unable to use the nationality certificate that had been used when he had been returned to Iraq from Finland in 2009, in order to acquire a CSID either from the Iraqi Embassy in the UK, or upon return to Iraq.
3. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The hearing

4. The hearing of the appeal was originally listed for 2 August 2019, but on that occasion the entire list had to be adjourned because the presenting officer was indisposed on the morning of the hearing. At that point the Appellant was represented by Counsel. Having consulted all of the Appellants and their representatives to ascertain their availability, and secured a court room, the entire list was adjourned to 7 August 2019 in an effort to minimise the expense and delay that the parties would otherwise face (two of the appeals being privately funded). Time for the service of the Notice of Hearings was thereby abridged.
5. On 6 August 2019 the Respondent applied by email of 1255 hours for an adjournment of the entire list on the basis it was anticipated that it would not be possible to provide a presenting officer as a result of seasonal staff shortages. That application was refused by email of 1414 hours on the basis there remained ample time for the Respondent to secure adequate representation, if necessary by resort to the services of the Bar. The application has not been renewed. The Respondent did not attend the hearing.
6. In the circumstances I was satisfied that the Respondent was aware of the hearing. I was not satisfied there was any good reason demonstrated as to why the appeal should be adjourned once again of the Tribunal's own motion. The issues were simple, and it was in the interests of justice to proceed with the hearing without delay and with minimal further expense, and the appeal therefore proceeded in the Respondent's absence, having considered paragraphs

2, 36, and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

7. On 6 August 2019 by email of 1413 hours the Appellant's solicitor applied for an adjournment of the hearing of the appeal on the basis there was inadequate time to arrange representation at the hearing, or prepare for it, since the principal of the firm was on holiday. This application was refused by return email on the basis the Appellant had been represented by Counsel on Friday 2 August 2019, who had confirmed that he was available to represent the Appellant on 7 August 2019. The Appellant had also confirmed he was available to attend. No suggestion had been made that there had been any supervening event preventing the attendance of either.
8. The application was not renewed, but when the appeal was called on for hearing on 7 August 2019 there was no attendance by the Appellant, or on his behalf.
9. In the circumstances I was satisfied that the Appellant was aware of the hearing. I was not satisfied there was any good reason demonstrated as to why the appeal should be adjourned once again. The issues were simple, and it was in the interests of justice to proceed with the hearing without delay and with minimal further expense, and the appeal therefore proceeded in the Appellant's absence, having considered paragraphs 2, 36, and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The challenge raised in the grounds

10. The grounds lack brevity and focus, but the first ground offers both a complaint that the Judge failed to provide adequate reasons for his conclusion that the Appellant had lost contact with the members of his family in Iraq, and, a complaint that the Judge had overlooked material evidence, namely the Appellant's ability to travel in 2009 from Finland to Iraq using a nationality certificate, and his acceptance that he had supplied the Swedish authorities in 2007 with his CSID which they had not returned to him.
11. The second ground is a complaint that the Judge failed to apply accurately the current country guidance for Iraq to the facts as he had found them to be.

Conclusions

12. The Judge's credibility findings are not themselves the subject of individual challenge, and nor is his conclusion that the Appellant faced a real risk of persecution for a convention reason. The grounds can therefore only go to the ability to internally relocate within Iraq to avoid that risk of harm.

13. The Appellant's home area is Kirkuk (which lies outside the KRG). He is an adult Kurd whose language is Sorani, who has no siblings, and whose parents have both been killed. The only area identified by the Respondent as suitable for him to relocate to upon physical removal from the UK to Baghdad was the KRG. It was not argued that he should relocate to Baghdad. It was not argued, and could not sensibly be argued, that the Appellant could be expected to travel in safety to Kirkuk to seek to access any records held in relation to him, or to obtain the issue to him of any replacement identity document, since the current country guidance is to the effect that Kirkuk lies within the "contested areas" of Iraq within which a civilian faces an Article 15(c) risk of harm.
14. The Judge accepted that the Appellant had no identity document in his possession, and this finding is not challenged in the grounds.
15. The Appellant had never admitted to the Respondent that he had previously been issued with an Iraqi passport, and there was no evidence to suggest otherwise.
16. Although the Appellant had accepted that he had held a genuine original nationality certificate when he was in Sweden and Finland in 2007-9, and that he had been able to use it as a temporary travel document when removed from Finland to Iraq in 2009, his evidence was that this was now lost. There was no evidence to suggest otherwise. Accordingly the Judge had to consider whether he would be able to obtain the issue of a replacement.
17. Although the Appellant had accepted that he had held his genuine original CSID card when he claimed asylum in Sweden in 2007 he had said that he had submitted this document to the Swedish authorities, and that he had never received its return. There was no evidence to suggest otherwise and the Respondent had made no enquiry of the Swedish authorities to ascertain whether this account was true, or, whether the CSID could even now be located, or supplied to him, or a copy produced. There was no proper evidential basis upon which the Judge could have inferred that these were realistic possibilities. Accordingly the Judge was bound to look not to the issue of whether the original could be located and then used by the Appellant, but rather to the issue of whether he could obtain a replacement CSID either whilst in the UK, or within a reasonable period of time of his arrival in Iraq.
18. Neither the existence of the original nationality certificate, nor the original CSID were overlooked by the Judge, and the complaint that they were overlooked by him has no proper foundation within his decision.

19. Critical to the question of whether the Appellant would be able to obtain the issue of either a replacement nationality certificate, or a CSID, was whether he was in contact with any members of his extended family in Iraq, and thus able to provide their details to the Iraqi authorities so that they could vouch for him. The only extended family members in Iraq that the Appellant admitted having retained contact with after his most recent departure in April 2016 was a maternal uncle, his wife and children who were then living in Kirkuk [16]. He claimed to have lost contact with them, so that the last contact he had with them was in October 2016.
20. The first ground asserts that the Judge failed to give adequate reasons for his decision to accept this loss of contact, but in my judgement this challenge is misconceived. The Respondent does not assert that the decision is perverse in the sense that it is one that was not open to the Judge on the evidence before him. A large number of people have been displaced from the Kirkuk area as a result of events since the Appellant left that city in April 2016. The decision that the Judge reached upon the weight that he could give to the different elements of the evidence relied upon by the Appellant is adequately reasoned by the standards of the appropriate test; MD (Turkey) [2017] EWCA Civ 1958. The correct burden and standard of proof were employed. It may be that another Judge might have reached a different conclusion, but that is beside the point. The Judge had the benefit of hearing the Appellant's evidence tested under cross-examination and it is not suggested that any material answer was given by him that was overlooked. Thus his findings must stand.
21. Absent any sustainable challenge to the Judge's relevant findings of primary fact, the conclusions that he reached in relation to the ability of the Appellant to internally relocate to the KRG to avoid the risks of harm he would face if he were to seek to return to Kirkuk were well open to him. It was open to the Judge to conclude in the light of the guidance to be found in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 that in reality the Appellant would be unable to gain the issue of either a replacement nationality certificate or CSID in the UK, Baghdad or the KRG.
22. On the basis of the guidance to be found in AAH, absent a CSID the Appellant would be unable to board an internal flight from Baghdad to the KRG. He would face considerable difficulty in making that same journey overland without either a CSID or valid passport, and would face a real risk of detention at the variety of checkpoints en route until his identity could be ascertained and

verified. Absent the presence of a male family member with his own suitable identity documents, and/or family connections sufficient to make that journey a safe one, and to avoid detention, it would be unreasonable to expect the Appellant to make such a journey. Thus, upon removal from the UK, he would be stuck in Baghdad, a city that the Respondent did not suggest it was open to him to relocate to (no doubt in the light of the guidance to be found in BA (Returns to Baghdad) Iraq CG [2017] UKUT 18).

23. Even if the Appellant could physically travel to the KRG, then in the absence of family members living in the KRG with whom he was in contact, his accommodation options within the KRG would be limited to a "critical shelter arrangement", since it was not reasonably likely that he could gain access to a refugee camp in the KRG, since they are all overcrowded and closed to newcomers. He would also be unable to take employment without a CSID to support himself, or to allow him to find private rented accommodation.
24. Accordingly it was well open to the Judge, and entirely in line with the current country guidance in AAH, to conclude that the Appellant could not in reality be expected to seek to relocate to the KRG, even if his removal from the UK to Iraq was assumed to be feasible. Not all of this chain of reasoning is set out expressly in the Judge's decision but it cannot properly be said that his approach ignored or failed to apply the current country guidance. On the contrary it was entirely consistent with it.
25. In the circumstances, and notwithstanding the grant of permission to appeal, I am not satisfied that the Judge fell into any material error of law when he allowed the appeal on asylum and Article 3 grounds, notwithstanding the terms in which permission to appeal was granted. In my judgement the grounds fail to disclose any material error of law in the approach taken by the Judge to the evidence before him that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 15 May 2019 contained no material error of law in the decision to allow the Appellant's appeal on asylum and Article 3 grounds which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these

proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 14 August 2019