



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

Appeal Number: PA/08315/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 26th April 2019**

**Decision and Reasons Promulgated
On 16th May 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**Mr Sangar Ahmed Muhildin
(ANONYMITY NOT DIRECTED)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms R Pickering (Counsel)

For the Respondent: Mr McVeety (Home Office Presenting Officer)

DECISION AND REASONS

1. On 19 June 2018 the Secretary of State decided to refuse the claimant's application for international protection. He appealed to the First-tier Tribunal (the tribunal) but following a hearing of 20 August 2018 it dismissed his appeal. It then explained why in its written reasons of 4 September 2018. The claimant obtained permission to appeal to the Upper Tribunal and on 14 March 2019 I decided to set aside the tribunal's decision because it contained an error of law. But I preserved its comprehensive adverse credibility findings with respect to much of what the claimant had said about the circumstances underpinning his claim. I decided that I would remake the decision after a further hearing. The hearing took place on 26 April 2019

and what follows is an explanation as to how I have remade the decision and why I have done so in the terms which I have.

2. By way of background the claimant is a national of Iraq. He is of Kurdish ethnicity and is a Sunni Muslim. He was born 19 July 1993. Whilst in Iraq he lived in Suleymaniah which is located within the part of Iraq under Kurdish administrative control (the IKR). He left Iraq in December 2015 and travelled to the United Kingdom (UK) via Turkey, Greece, Macedonia, Serbia, Croatia, Austria, Germany and France. He entered the UK illegally on 9 August 2016. Unsuccessful attempts were made to return him to Germany so that his asylum claim could be determined there. Eventually, in the face of resistance from him, it was decided not to do that. So, his claim was decided by the UK authorities.

3. In pursuing his claim, the claimant asserted that he would be at risk on return due to his claimed status as bisexual male. He also asserted he would be at risk at the hands of certain of his family members who had strongly disapproved of his tendency to consume alcohol. The Secretary of State did not believe him about any of that and neither did the tribunal. The tribunal provided very full reasons for its disbelief. It is not necessary for me to set out the same material in this decision. I rejected grounds of appeal directed towards the tribunal's adverse credibility conclusions and consequent findings. My reasons for doing so may be found in my decision of 14 March 2019. But in a nutshell, I concluded that all of the Tribunal's factual findings rejecting the claimant's contention that he is bisexual and rejecting his claims to be at risk from his family had been soundly made. That is why I chose to preserve those findings. But I did find one ground of appeal to be made out. As to that, I concluded that the tribunal had erred in proceeding on the basis that the claimant would be returned from the UK direct to the IKR. I did so because it had been said in the relevant the country guidance case of *AAH (Iraqi Kurds-internal relocation) Iraq CG UKUT 00212 (IAC)* that all returns of Iraqi nationals from the UK would be to Baghdad. The error had been an important one in the particular circumstances of this case because it had led to the tribunal failing to consider a number of important questions including whether the claimant might possess or be able to obtain a crucial identity document known as CSID card; whether if he was not able to obtain one he would be able to safely reside in Baghdad in circumstances where it would not be unduly harsh to expect him to do so; and whether either with or without a CSID card he would be able (if he so chose) to safely make his way from Baghdad to his home in the IKR. So, those were the sorts of matters upon which I was focussing at the hearing of 26 April 2019.

4. At the hearing representation was stated as above. I am grateful to each representative. At the commencement of the hearing I had before me the documentation which had been before the First-tier Tribunal (which included two bundles filed on the behalf of the claimant and one filed by the Secretary of State). I also had a further bundle filed on behalf of the claimant and which contained an updated witness statement of 16 April 2019 and a copy of Upper Tribunal's decision in *AAH*, cited above. Ms Pickering invited me to adjourn the hearing because her instructing solicitors were, she explained, in the process of obtaining an expert report regarding some scarring injuries he had sustained in the past. I asked her how the content of any such report might be relevant to the issues I was required to address for the purposes of the remaking of the decision. She suggested that such might be

relevant to the claimant's physical ability to travel to the IKR or his ability to obtain appropriate documentation in Iraq if he had to. The application was opposed by Mr McVeety. I refused the adjournment application because it was not clear to me that the content of any such report would be of significant or any value with respect to either of those two issues or any other issues which I was proposing to determine. In any event, the application was made at a very late stage and there was no explanation as to why such a report could not have been obtained prior to the hearing. Fairness did not require me to adjourn in circumstances where it was not clear how the report would potentially assist the claimant.

5. I heard oral evidence from the claimant though that evidence was brief. He told me, aided by a Kurdish Sorani speaking interpreter whom he appeared to understand throughout the proceedings, that his updated witness statement of 16 April 2019 was truthful and accurate. He had he said made no efforts to obtain his Iraqi passport which had been taken from him by the German authorities. He does not know where his CSID document is. He is not in contact with any family members in Iraq. He had not tried to obtain his passport from the German authorities because he does not want to return to the IKR. After the evidence I heard submissions from the two representatives. Mr McVeety, for the Secretary of State, reminded me that the claimant had been found not to be credible. He invited me to find that he does possess identity documents and that, even if he does not, his family in Iraq would be able to assist him in obtaining new documents. Return to Iraq would be via Baghdad but he would then be able to travel to Suleymaniah by air. I was urged to dismiss his appeal. Ms Pickering urged me to find that he does not possess any identity documentation. It would have been difficult for him to have obtained his passport from the German authorities. He would have significant problems in seeking to re-document himself in the UK or upon return to Iraq. I should accept that he does not have any contact with his family so that they would not be able to aid in that process. Absent a CSID document and without an ability to get one, he would not be able to relocate or survive in Iraq.

6. In remaking the decision, I have taken full account all of the documentary evidence which has been placed before me and all of the oral evidence which I have heard. I have reminded myself of the lower standard of proof applicable in cases such as this where international protection is sought. That lower standard of proof is sometimes described as the "real risk test". I have reminded myself of the findings of the tribunal which I have preserved.

7. The claimant, to state the obvious, is currently in the UK. To recap, he has sought international protection on account of claimed bisexuality and on the basis of the claimed antipathy towards him by his family members in consequence of his drinking. He has been found, in undisturbed findings, to have been dishonest about those matters. He has been dishonest when pursuing his claim for international protection and then when appearing before the tribunal at his initial appeal. So, I have concluded that he is prepared to mislead in circumstances where he is able to detect a potential advantage, with respect to his immigration status, in doing so. That does not mean, of itself, I should disbelieve everything else he says. But it does mean that what he says has to be treated with a degree of caution whilst bearing mind the relatively low standard of proof which he is required to meet.

8. It is the claimant's position that he does not now possess any identity documentation. He says, in his most recent witness statement, that those documents did exist whilst he was in Iraq but that they were kept by the uncles he lived with and he was not permitted to access those documents without their permission. However, he accepts he did once have an Iraqi passport. He would have required access to his CSID document and his Iraqi nationality certificate in order to obtain a passport. That would seem to run counter to his claim that he was not permitted access to his documents.

9. The claimant says, again in his most recent witness statement, that he lied to his uncles in order to secure access to his identity documents, that they were given to him briefly, and that during the brief period he had them, he secretly applied for and obtained a passport. I do not believe him. I think if his uncles were as controlling as he claims then they would not have allowed him free and unsupervised access to those documents even for a brief period. Additionally, I see no reason why, since they were his documents, his uncles would not permit him to have full access to them. Of course, part of his asylum claim was that certain of his family members had significant antipathy towards him but he was disbelieved about all of that. I conclude, therefore, that he obtained a passport in Iraq and was able to do so because he had unfettered access to his identity documentation.

10. The claimant asserts that his original CSID card and original Iraqi nationality certificate were left in Iraq when he fled in order to come to the UK. But he says he possessed copies of them at the time he left and that those copies were seized by the authorities in Germany along with his passport. I do not believe him. His having been disbelieved about his uncles having antipathy towards him, there is no reason why he would not have had free access to his documents and would not have brought the originals with him.

11. The claimant says that the German authorities took his passport from him and also took the copies of his identity documents from him. I do not believe him. It has not been persuasively explained why those documents would be taken from him by the German authorities. He has been dishonest in the past and he has a motive for asserting he does not possess a passport or other identity documentation even if he does. In any event I believe that if those documents had been taken from him he would have made some effort to have them returned to him. Ms Pickering suggests that it would have been difficult for him to have done that but he has had legal representation and still has today.

12. I find, in the above circumstances, that the claimant is in possession of his Iraqi passport, his Iraqi nationality certificate and his CSID card.

13. The claimant will, it is accepted by all parties, be returned to Baghdad. If he is to go to the IKR which is, of course, his original home area, he must find a way to travel there. I did not understand Ms Pickering to be arguing that if he does have a CSID card and his passport he will be unable to travel by air from Baghdad to the IKR. In the relatively recent country guidance case of *AAH (Iraqi Kurds -internal relocation)* CG UKUT 00212 (IAC) it was said that an Iraqi national without a CSID card or valid passport would be unable to board a domestic flight from Baghdad to the IKR. But I have found the claimant to be in possession of such documentation. It

was found in *AAH* that an Iraqi national returnee of Kurdish origin in possession of a valid CSID card or Iraqi passport would be able to travel by air or land to the IKR and that such travel would be practical and affordable and could be undertaken without any real risk of persecution, serious harm or article 3 ECHR ill treatment arising. I conclude that the claimant would be able travel from Baghdad to Suleymaniah without any undue difficulty.

14. If the claimant does go to Suleymaniah this will not be a case of his taking advantage of an internal flight alternative. He will be returning home. It has not been argued on his behalf before me, and there is nothing in the materials before me, to suggest, that as a former resident of the IKR and as a Kurd he will not be admitted into the IKR. There is some evidence he has suffered from post-traumatic stress disorder and he makes mention of that in the most recent witness statement. He says that he has been prescribed medication in connection with mental health problems but he has chosen not to take it. But he was found to have misled regarding the antipathy directed towards him by members of his family. I do not accept that he does not have family in IKR who will be able to afford him some assistance should he need it as a consequence of any mental health difficulties he may have.

15. Nothing was said before me at the hearing and nothing was indicated in claimant's most recent witness statement to suggest he would be able to benefit from article 8 of the ECHR either within the Immigration Rules or outside them. I find no basis in the material before me to conclude that he could.

16. In the above circumstances, in remaking the decision, I have decided to dismiss the claimant's appeal from the Secretary of State's decision of 19 June 2018, refusing to grant him international protection.

Decision

The decision of the First-tier Tribunal has been set aside. In remaking the decision, the Upper Tribunal dismisses the claimant's appeal from the Secretary of State's decision of 19 June 2018.

MR Hemingway
Judge of the Upper Tribunal
Dated: 15 May 2019

Anonymity

The First-tier Tribunal did not grant the claimant anonymity. I was not invited to do so and it is not apparent to me that I should. Accordingly, anonymity is not directed.

MR Hemingway
Judge of the Upper Tribunal
Dated: 15 May 2019

**To the Respondent
Fee Award**

I make no fee award.

MR Hemingway
Judge of the Upper Tribunal
Dated: 15 May 2019