



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01075/2020

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC (Remote)
On 12 November 2020

Decision & Reasons Promulgated
On 17 November 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ALK

(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Dhokia, Oakmount Law

For the Respondent: Mr Bates, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1989. He appeals with permission against the decision of the First-tier Tribunal (Judge Ficklin) to dismiss his appeal on protection and human rights grounds.

2. Permission was granted by Designated Judge of the First-tier Tribunal Shaerf in limited terms. Judge Ficklin had dismissed the Appellant's claim insofar as it related to an alleged risk of honour killing, and *sur place* online activity; Judge Shaerf found no arguable error in those findings. He was however prepared to grant permission on the approach that Judge Ficklin took to issues of return and documentation.
3. Judge Ficklin's findings on these matters were as follows [at §34]:

“There is no evidence that the Appellant cannot receive assistance from his family to obtain his civil status documents. On that basis he can either obtain his CSID at Baghdad from a family member or an intermediary so he can travel on to Sulaymaniyah, or they can send it to him here in the UK, or he can obtain one from the Consulate or Embassy with their assistance. The Appellant submitted evidence of his visit to the Iraqi Consulate in Manchester ... however I find this attempt is not genuine because the Appellant has not exhausted the other means he has to facilitate the redocumentation process...”
4. Whilst the Appellant accepts that the Tribunal directed itself to the applicable country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) it is submitted that in reaching these findings it failed to properly apply it. In particular it is submitted that the Tribunal failed to take into account the matters set out in the relevant country guidance decision(s) in respect of the difficulties in obtaining documentation from the United Kingdom or Baghdad, made no findings on where the Appellant is from, what civil registration system is in place there and what conditions the Appellant's family may be living in.
5. The Respondent opposed the appeal. Whilst Mr Bates accepted that some of the alternative solutions posited by the Tribunal may not be sustainable – in particular the ability of the Appellant to obtain documentation here – he submitted that in a situation such as this, where the Tribunal has found the Appellant not to be telling the truth about his contact with his family, the Tribunal can only make findings on the evidence it has. It would be for the Appellant to show that he is unable to be redocumented. No evidence was produced one way or another about the IDs available in Sulaymaniyah.

Discussion and Findings

6. Notwithstanding that he is a former resident of the IKR the First-tier Tribunal proceeded on the basis that the Appellant was to be returned to Baghdad, and it is not in issue that it was right to do so. The Respondent has, subsequent to the decision in SMO confirmed this to be the case: see the latest Iraq CPIN, (published in June 2020) *Internal Relocation, Civil Documentation and Returns*:

2.6.29 Previously the KRG (Kurdistan Regional Government) authorities had responsibility for immigration; this is now centralised

with the authorities in Baghdad deciding on immigration matters for the whole of Iraq. **Former residents of the KRI who do not return voluntarily are returned to Baghdad**, from where they will travel to their destination. Those who are prepared to obtain a travel document can return to the KRI voluntarily, to either Erbil or Sulamaniyah, without having to transit Baghdad (see Returns Logistics information on the Iraq country page on Horizon and the Country returns guide (this guide is updated regularly)).

7. The finding in SMO, as in AAH (Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), was that in order to get out of Baghdad airport the Appellant will need a valid identity document. He cannot use the laissez-passer that he has travelled in on. He needs either a CSID or a new biometric identity card – an ‘INID’ – to pass through the many checkpoints on the roads, and would not be permitted to board a domestic flight without one: see section C of the headnote to SMO.
8. The First-tier Tribunal clearly appreciated that to be the case, since it has framed its findings at its §34 in terms of the Appellant needing that card whilst still in Baghdad. It posited various alternative solutions to this logistical problem. Two are not sustainable in light of the findings in SMO.
9. Where the Tribunal states “he can either obtain his CSID at Baghdad” – this fails to take into account the guidance at §15 of the headnote: *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
10. Where the First-tier Tribunal suggests that he could obtain a CSID from the consulate in the United Kingdom the Tribunal fails to reason that finding in light of the extensive evidence set out not only in SMO, but in AAH and indeed AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). Each of those country guidance panels found that whilst it was technically *possible* to obtain new documents from within the United Kingdom, the bureaucratic obstacles were such that decision makers had to give careful consideration to whether it was reasonably likely that the returnee would fail to achieve this. It has been Dr Fatah’s consistent evidence that the consular staff in the United Kingdom are not particularly interested or motivated in helping undocumented asylum seekers and that applications must be supported by a panoply of documents, none of which, it would appear, are immediately available to this Appellant. I note that the difficulties identified by Dr Fatah, and confirmed by other sources, have latterly led the Respondent to conclude that it is “highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the United Kingdom” [2.6.16] June 2020 CPIN.

11. That leaves the First-tier Tribunal's remaining alternatives: that a family member or "intermediary" could get a card for the Appellant and either bring it to Baghdad to meet him, or alternatively send it to him here. If the civil registry in Sulaymaniyah is still issuing CSID cards, those are, on the findings of the First-tier Tribunal, certainly options open to the Appellant which would defeat any claim under Article 15(b). If however Sulaymaniyah is now issuing only biometric INIDs, this option is closed to the Appellant since these cards can only be issued in person: see headnote (16) of SMO. In those circumstances he must succeed in his appeal.
12. On first reading I was certainly concerned that the Tribunal does not appear to have addressed its mind to these issues. Nowhere is there any exploration of whether the civil registry in Sulaymaniyah is operational (see headnote (14) SMO). Nor is there any consideration of whether the family members left in Sulaymaniyah would be in a position to assist: see headnote (1)(iii) to AAH. Finally, having directed itself to the evidence in SMO about INIDs, the Tribunal has apparently forgotten that the new system has been introduced. Those are certainly difficulties with paragraph 34 of the decision. They are not however difficulties which would justify setting this decision aside. That is because the evidential burden lies on the Appellant, and there was nothing before Judge Ficklin to assist him with any of these matters. No background evidence was produced about whether identity documents might be available in Sulaymaniyah, and if so which ones. As to the Appellant's family he had of course denied that he had any contact at all, but this had been rejected as not credible : in that kind of credibility vacuum the judge could not be expected to make any assumptions one way or the other about whether the relatives in Sulaymaniyah were maternal/paternal or documented themselves. Even if the Judge had addressed his mind to the questions identified by the country guidance cases, the Appellant would not have been able to discharge the burden of proof. It follows that the errors in the decision are not such that the decision should be set aside.

Anonymity Order

13. The Appellant continues to seek international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

14. The appeal is dismissed.
15. There is an order for anonymity.

Upper Tribunal Judge Bruce

13th November 2020