Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01218/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 20 January 2020	**On 28 January 2020**

Before

Upper Tribunal Judge Pickup

Between

AS
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr S Ell, instructed by Thompson & Co Solicitors
For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Thorne promulgated 17.9.19, dismissing on all grounds his appeal against the decision of the Secretary of State to refuse his protection claim and to deport him to Iraq.

2. Permission to appeal was granted by Designated Judge Shaerf on 17.10.19.

3. The appeal in the Upper Tribunal was heard by Mr Justice Lane, President, on 2.12.19. It was noted that there was no challenge to those aspects of the First-tier Tribunal's decision that involved the issuing by the respondent of a certificate under section 72 of the 2002 Act, nor to the judge's adverse findings in respect of Article 8 private and family life in the UK.

4. However, in the decision promulgated 13.12.19, an error of law was identified in the making of the decision of the First-tier Tribunal. The President set aside the FTT decision, "solely by reference to the issue of risk of serious harm on return and whether there may in terms of the Rules be very significant obstacles to his returning to (Iraq). The findings regarding the absence of relevant Article 8 life in the United Kingdom stand."

5. The appellant was directed to set out in writing in detail the case case he wished to advance, "It will then be for the Upper Tribunal at the remaking to hearing to consider that case, making such findings as are necessary." The President anticipated that by the time the case came before the Upper Tribunal to be remade, there may be fresh Country Guidance on Iraq. "If that is the position then both parties will be expected by the Upper Tribunal to make their submissions by reference to it."

6. In addition to the appellant's bundle submitted to the FTT, the Tribunal has received and taken into account the appellant's Statement of Case (SC) and Further Witness Statement (FWS), both dated 13.1.20 were served late, with permission, given the recent promulgation of the Upper Tribunal's Country Guidance on Iraq in SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). Shortly before the commencement of the hearing Mr Ell's skeleton argument was handed in, which I have now also considered.

7. All the relevant documents, evidence and submissions have been taken into account in the round, in the context of the whole, before making any findings of fact. I have also taken into account that in large part the appellant's oral evidence was given through an interpreter in Kurdish Sorani.

Relevant Background

8. The appellant arrived in the UK in January 2007 as a minor. He was born and raised in Peramagrum, near Sulaymaniyah, which is within the IKR of Iraq. He made a claim for asylum alleging that he worked as a shepherd for MH. One day men stole the sheep and his angry employer threatened to kill him. He therefore fled Iraq in December 2006. The asylum claim was refused in February 2007 but as he was a child he was granted Discretionary Leave to Remain until June 2007. In July 2010 he was granted Indefinite Leave to Remain.

9. In October 2014 the appellant was convicted after trial of an offence of rape of a woman and sentenced to 6 years' imprisonment. This led to the decision in January 2016 to deport him to Iraq. At the First-tier Tribunal appeal hearing, the appellant

maintained that he was innocent of the charge and had been wrongly convicted. Even though the woman was drunk and asleep, he maintained that she had consented to sex. He also claimed to be in a relationship with a British woman and to have a parental relationship with four women.

10. He maintained that he had never been issued with a CSID or passport, did not speak Arabic and knew no one in Baghdad.

11. Judge Thorne found that the appellant was a foreign criminal who failed to rebut the presumption that he had been convicted of a particularly serious crime and constitutes a danger to the community. It follows that he was excluded from protection of the Refugee Convention and from humanitarian protection.

12. Judge Thorne also concluded that the appellant failed to demonstrate that he had any family life in the UK, there being no evidence of any ongoing relationship with a partner or British citizen children, and evidence in fact that he had split from his partner many years ago and had no contact with any child. By the President's direction, that part of the decision must stand.

13. The remaining aspect of the appellant's claim was that he was in need of international protection on a risk of serious harm on return, arising from the fact that he was from the IKR but without any family who could assist him. He claimed that his father had passed away and that his mother and brother lived in Turkey. However, he told the author of the psychiatric report that his mother had relocated to Iran. His father allegedly emanated from Kirkuk and he had an uncle in that city but was no longer in contact with him. For justifiable reasons, upheld by the Upper Tribunal, the judge found that the appellant was not an honest witness.

14. At [54] of the FTT decision, Judge Thorne rejected the claim that he had no family in Iraq to help him obtain a CSID on return which would allow him to enter and work in the IKR. In the alternative, Judge Thorne decided that he could consider the appellant's case by reference to Iran, and that he could go to live with his mother in that country, when Iran did not feature in the respondent's decision and relocation to Iran was never the respondent's case. For that reason, the President identified this as an error of law.

15. The President found that Judge Thorne failed to provide adequate reasons for the findings regarding family in Iraq, failed to state what aspects of the evidence in this regard had been accepted or rejected. In particular, the judge failed to give a legally adequate response to the evidence regarding the following matters: "firstly, whether the appellant emanated from the IKR; and secondly, and importantly, whether the appellant's father emanated from the IKR or as the appellant contended, from Kirkuk; thirdly, whether there may be a relative, such as the uncle, who is in a position to assist the appellant and, if so, where that relative might be." Reasons needed to be provided for the conclusions set out at [54] of the First-tier Tribunal decision.

16. It follows from the above that the issues before the Upper Tribunal in the remaking of the decision in the appeal have narrowed to the risk of serious harm on return and/or whether there may be very significant obstacles to the appellant's integration in Iraq, pursuant to paragraph 276ADE of the Immigration Rules or article 3 ECHR outside the Rules.

17. The appellant maintains that he was born in Peramagrum, near Sulaymaniyah, which is within the IKR, that his father has passed away, and that his mother and siblings live in Iran. His new witness statement asserts, "My father and paternal uncle lived in Kurdistan but I believe that they were born in Kirkuk," but admits that he has no evidence to support the assertion. He claims that his uncle is presently in Kirkuk but that he has not spoken to him since he left Iraq in 2006. He claims he cannot recall where the uncle lives and does not have any contact number for him. Until October 2019 he was in regular contact with his mother in Iran but her phone is now disconnected. The appellant does not have a "current CSID" or a passport, current or expired, and his instructions remain that he has never held either document. He maintains that he does not know the volume or page reference in the Family Book relating to his family and neither do his family members in Iran. It is submitted that in the circumstances, there is no prospect of the appellant obtaining a CSID either before or on arrival in Baghdad.

18. As stated above, Judge Thorne found the appellant was not an honest witness and the President considered that conclusion justified. Without the need to repeated them in full, for the same reasons, I also find that the appellant's credibility is undermined. For example, he maintains his innocence of the rape offence and falsely maintained that he had family life with a partner and children in the UK. There are also internal inconsistencies in the appellant's account. For example, although he claims that he believes his father, who allegedly passed away in 2016, and his paternal uncle were born in Kirkuk, in the screening interview he stated that his father was born in Peramagrum village, as was the appellant.

19. I also found the appellant to be a poor, uncooperative and evasive witness in his own cause. He appeared either unable or unwilling to answer straightforward questions from Mr Tan with a straight answer and on several occasions prevaricated or became aggressive in his answers. I had to advise him that he did not help his case when not answering the question asked. It also appeared that his evidence was evolving during the hearing as he was pressed about his family circumstances in Iraq. Asked to explain why he believed both his father and uncle had been born in Kirkuk, he claimed that when in Kirkuk he had seen his uncle's passport which stated that he was born in Kirkuk and he assumed that as they were brothers, his father must also have been born there. Mr Ell accepted that this does not feature in any of the appellant's various previous accounts. Mr Tan also had difficulty in getting the appellant to answer whether he knew this fact before he left Iraq. The appellant appeared unwilling to directly answered the question and after being pressed repeatedly he finally said that before he left Iraq he didn't know where his father was born. However, it was pointed out to him that in the Screening Interview he had stated in 2007 that his father was born in Peramagrum, which is near Sulaymaniyah

in the IKR and was asserting in oral evidence that his father was born in Kirkuk. Pressed on this discrepancy, he claimed that when he came to the UK he only knew that his father had lived and grown up in Peramagrum and therefore believed at that time that he was born there. That explanation makes no sense, given he stated his father's birthplace in the Screening Interview in 2007. In reality, none of his answers provided any satisfactory explanation of the inconsistency and I concluded that the appellant was not being truthful in his oral or written evidence, further undermining his credibility. Further inconsistencies were put to him, including that he claimed that his father had passed away in 2016 but had apparently told Dr Khristy that he died in 2015, to which he claimed never to have said that. No attempt had been made to correct the alleged error and in the context of the whole, I find that he did tell Dr Khristy that his father passed away in 2015, but the difference is so slight that I am satisfied that it has no overall effect on his credibility.

20. However, he also maintained in oral evidence that he had but the one uncle in Iraq and no aunts but at Q25 of the asylum interview had said that he had both aunts and uncles in Iraq, in the plural. He tried to rationalise the inconsistency by suggesting that they do not live there anymore. He went on to allege in evidence that these were maternal aunts who lived in Iran and visited his mother in Iraq for a few months at a time before returning to Iran. I found the appellant's evidence on this entirely incredible and incapable of belief, given that this was the first time he claimed that the relatives he had mentioned in interview were maternal and merely visiting Iraq in the way he described. None of his explanations or account on this issue made any sense of the assertion in evidence that he had but one uncle and no aunts in Iraq and I concluded that he had fabricated this evidence. Mr Tan also pointed out a significant discrepancy between the claim in the appellant's recent witness statement that he last contacted his mother in October 2019 but before then had claimed it was June 2019. At the First-tier Tribunal appeal hearing in August 2019 he said it was six months since he had contacted his mother, which would be about February 2019.

21. Similarly, the appellant was vague when pressed as to other details about his family. He could not say where his parents married or when. Despite the relevance of the issue as to whether he could obtain identification documents from Iraq, as highlighted in SMO at [383], I found it incredible that he had never asked his mother or siblings for copies of their identity documents, or a copy of the marriage certificate, or for his mother's Iraqi residence documents. He was aggressive when answering Mr Tan's questions about this issue and appeared unwilling and uncooperative. He also maintained that his mother had no contact with his uncle, but agreed that he had not asked her about that, stating that the uncle was on his father's side. He maintained that he had not been able to speak to his mother since October 2019.

22. Even making due allowances for the difficulties with the court interpretation, particularly when the appellant chose to answer some questions in English, I found the appellant's account on these key issues evasive and unpersuasive so that I reached the firm conclusion that he was not telling the truth. It follows that I can place little weight on any assertion by the appellant as to his family circumstances in

Iraq. Given the appellant's overall credibility, which has been significantly undermined for the reasons explained, I found that I could not accept the claim to be no longer in contact with his mother. I am driven to reject the claim that he has lost touch with his family members and I reach the conclusion that he remains in contact with both his mother, siblings and paternal uncle, but that it suits his case to claim that he has now lost all contact so that he can claim that he is unable to obtain their assistance to obtain ID documentation, or to assist him on return.

23. In relation to being able to return to Iraq, I recognise the importance of the CSID in assessing whether there are very significant obstacles or a risk of serious harm on returning to the IKR, or whether it would be unduly harsh to expect him to do so. I also accept that if he does not have a CSID and if were to be genuinely unable to provide himself or obtain the Family Book volume and page number, the appellant would not be able to obtain a CSID before returning to Iraq.

24. The Country Guidance provides that whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. "Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal." Taking into account the appellant's general lack of credibility, I do not accept the claim that he has somehow lost contact with his uncle, or even his mother and siblings. It would be remarkably unlucky for him to have lost contact with all of them, as claimed. In this regard, I also note that the appellant's case is that his uncle suggested and funded the appellant's journey to the UK to the cost of $14,000. I am satisfied that the uncle would have retained a close interest in the appellant's progress and taken steps to remain in contact. I also note that the appellant was able to use a neighbour in Iraq to help provide some information. Considering the evidence as a whole, I am satisfied that the appellant remains in contact with family in Iraq and with his mother in Iran and could but has chosen not to seek assistance in retrieving the information necessary to obtaining a CSID in an effort to avoid being returned to Iraq.

25. It is the appellant's case that he was born and raised within the IKR, where his mother, father and uncle also lived. He lived and worked there himself until leaving the country in 2006, at the alleged age of about 15 years. It will, therefore, not be necessary to go to Kirkuk to seek his CSID; it can be obtained within the IKR in the Sulaymaniyah Province. The Country Guidance confirms that all CSA offices have reopened.

26. Further, I do not accept the claim that his uncle lives in Kirkuk. It is not at all clear to me why the uncle would go to live in Kirkuk when the appellant's original claim was that both his father and his uncle lived in Sulaymaniyah Province within the IKR and that his father, and thus it may be presumed his uncle, were both born there. Nevertheless, Kirkuk is relatively close to the IKR, within 120 Km, and given the

demise of ISIS there is no reason based on safety why the appellant's paternal uncle would not be able to travel to Sulaymaniyah to retrieve the necessary volume and page number, or a replacement or first-issue CSID for the appellant. Considering the evidence as a whole, I find that I cannot accept his claim to have lost contact with family members, so that I am satisfied that they, or at least his paternal uncle, will be able to assist him obtain the necessary information with which he will be able to obtain a CSID through an Iraqi Consulate before leaving the UK.

27. The appellant accepts the Country Guidance that former residents of the IKR will be returned to the IKR. The Guidance also notes that there are direct flights to Erbil or Sulaymaniyah and, therefore, the appellant will need not make either a transit at Baghdad Airport or an overland journey from Baghdad to the IKR. He will need either a Laissez-passer or a passport to be able to be returned to Iraq. However, in the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez-passer, if the Tribunal finds that return is not currently feasible on account of a lack of any of those documents. The respondent's case, advanced by Mr Tan, is that the appellant can seek the assistance of family to obtain the necessary information to enable him to both obtain a CSID and travel documentation to facilitate return to Iraq and the IKR. Considering the evidence as a whole, I am satisfied that the appellant will be able to obtain a CSID and with that document will, in due course, be able to obtain either a passport or Laissez-passer to enable him to be returned to Iraq. It follows that I find that return will be feasible within a short time, depending on the appellant's cooperation.

28. In summary, for the reasons set out herein, I find as a fact that the appellant was born and raised within the IKR and that his father and uncle were also born and lived there. I reject the claim that either uncle or father were born in Kirkuk. I reject as not credible the claim that his paternal uncle is in Kirkuk, it making no sense for him to relocate from the IKR to Kirkuk. It follows that he is entitled to return to the IKR and will not need to visit Kirkuk. Even if I am wrong and the uncle is in Kirkuk, I find that the appellant has not lost contact with him and find that his uncle will be able to assist the appellant to obtain the necessary information to enable him to obtain a CSID either in the UK or shortly after arriving in the IKR, to where he will be able to fly without needing to transit Baghdad Airport or making an overland journey, as per the country guidance. Kirkuk is less than 120 Km from Sulaymaniyah and there is no reason why his uncle would not be able to meet him on return.

29. I accept, however, that the appellant has been consistent that his mother is in Iran and it follows that he cannot be expected to return to live with her there. However, I find that he remains in contact with his mother and siblings and, if necessary, can call on their assistance for information that will assist him to obtain a CSID and travel documentation, including information about the siblings own CSIDs and the marriage details of his mother and father.

30. Applying the country guidance, I am satisfied that on arrival in the IKR the appellant will be able to go to the CSA office for the place where he was born, raised and lived until leaving Iraq in order to obtain a replacement CSID. Even if he does not obtain a CSID before leaving the UK, with the assistance of his family members and the information they can provide, I am satisfied that he will be able to obtain a replacement CSID that will give him access to state support, employment, etc.

31. There has been no challenge to the First-tier Tribunal finding that notwithstanding moderate depression, the appellant is of general good health and will in any event be able to obtain appropriate medical treatment on return to Iraq. Nothing in the medical evidence suggests that he will be unable to work. In addition, he will be entitled to the assisted voluntary return funds of up to £1,500 which will be more than adequate to fund accommodation, maintenance and basic necessities for several months whilst he settles and seeks employment. He will, in the circumstances, not need to go to an IDP camp or rely on critical shelter arrangements on his return to Iraq.

32. Given that he has no well-founded fear of persecution and will not be at risk of serious harm, there is no reason why he should not return to his home area. However, if he does not wish to do so, he can undoubtedly relocate in safety within the IKR, for example to Erbil, and it will not be unduly harsh or unreasonable to expect him to do so. As he will be able to evidence his arrival from the UK he will face no suspicion of ISIS involvement and will be at no risk at any screening interview on arrival in the IKR. I do not accept that he will be without family assistance in the IKR, but even if his uncle is not there or not able to come to the IKR to assist him, he will still be able to call on financial support and other assistance from his uncle to be able to settle in the IKR.

33. In all the circumstances, for the reasons outlined above and after fully taking into consideration the new evidence and submissions, there is no reason for the appellant not to return to Iraq and the IKR. I am satisfied he will face no risk of serious harm and that there will be no very significant obstacles to his return. The findings of the First-tier Tribunal on article 8 ECHR issues stand as made.

Decision

34. I remake the decision in the appeal by dismissing the appellant's appeal on all grounds.

Signed 

Upper Tribunal Judge Pickup

Dated 27 January 2020