



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

Appeal Number: PA/05908/2019

THE IMMIGRATION ACTS

**At: Civil Justice Centre (Remote Hearing)
On the Papers 14th September 2020**

Decision & Reasons Promulgated

On 16 September 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**FHI
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

- 1.** On 7 October 2019 First-tier Tribunal Judge Kemp ('the Judge') dismissed the appellants protection and human rights appeal.
- 2.** Permission to appeal was refused by another judge of the First-tier Tribunal on 12 December 2019 in an arguably contradictory decision. Permission to appeal was, however, granted by a judge of the Upper Tribunal on 25 February 2020. Directions were sent out as a result of the Covid-19 arrangements seeking the views of the parties as to whether the question of whether the Judge had made an error of law that was material to the decision to dismiss the appeal could be considered on the papers without the need for a further hearing and providing the opportunity for further submissions to be made.

3. No response was received from the Secretary of State, but a response has been received from the appellant's current representatives in which they do not object to the question being decided on the papers.
4. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
5. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
6. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:
34.—
 - (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
 - (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
 - (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings. (4) Paragraph (3) does not affect the power of the Upper Tribunal to—
 - (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
 - (b) consent to withdrawal, pursuant to rule 17;
 - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
 - (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.
7. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers. There is nothing on the facts or in law that makes consideration of the issues on the papers not in accordance with overriding objectives at this stage.

Background

8. The appellant is a female citizen of Iraq who sought asylum in the United Kingdom as she claimed to be at risk of honour-based violence from her family due to her refusal to consent to an arranged marriage with her paternal cousin and her having been found by her brother with her boyfriend with whom she claims to have lost her virginity and of whom her family did not approve.
9. The Judge sets out findings of fact from [15] of the decision under challenge stating at [26]:

“Overall, upon consideration of all the evidence in the round, I find that I am not satisfied, even to the lower standard, that the appellant is at risk of honour-based violence from her family upon her return to Iraq either due to her refusal to marry her cousin or due to her alleged relationship with [D]. Therefore, I find that the appellant would not be at risk of persecution upon her return to Iraq on the basis of her and that consequently she does not require protection under the Convention. I also find that her claim under articles 2 and 3 on this basis also falls with her asylum claim”.

10. At [28] the Judge writes:

“The final issue to consider is whether the appellant would be able to return to her home area due to her lack of a valid CSID card and passport or other identity documentation. The appellant has male relatives in Iraq, namely her brothers, who could either send her original CSID card or help to secure her a replacement CSID if necessary; family members could also provide her with her passport or the necessary identity information to obtain a replacement passport. Therefore I find that I am in agreement with the respondent’s position that she could return to Baghdad on either her own passport or a laissez-passer if necessary, and that her family could then meet her at the airport and accompany her back to her home area (*AA (Iraq) v SSHD [2017] EWCA Civ 944* and *AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212* both considered and applied). Therefore, I am satisfied that her return to Iraq is both feasible and reasonable and that she cannot qualify for international humanitarian protection on this basis.”

- 11.** The original grounds of appeal asserted the credibility of the appellant had been considered in isolation without any reference to the background material; with specific reference to that relating to the return of a single woman to Iraq.
- 12.** In her further submissions the appellant asserts that basing the decision upon her credibility is an error of law as any perceived credibility issues arising from her own evidence should have been looked at holistically and that the inconsistencies in her evidence should not have had the effect of being used against her in contradiction of other evidence.
- 13.** The appellant asserts the Judge failed to consider any background material relating to the return of a single woman to Iraq which was information that had been made available to the Judge, which renders the decision unsound as a result of a lack of anxious scrutiny. It is argued the Judge has not considered adequately the inability of the appellant to return to Iraq as a single female without a CSID and without taking into account wider aspects of her case such as sex out of wedlock and threats to individuals in Iraqi society. It also argued the Judge failed to properly consider the decision in SMO [2019] UKUT 400 and difficulties highlighted in that case for appellants who have no identity documents; as without the same the appellant could not be repatriated to Iraq as there will be no way of identifying who she is, meaning she will be unable to find employment or accommodation.

Error of law

- 14.** When deciding upon the credibility of a claim it is necessary for a decision-maker to consider all relevant aspects of the evidence made available in relation to both an appellant’s subjective claims, relevant background material, and that relied upon by the respondent.

- 15.** The decision may not require findings to be made in relation to each aspect of the claim provided the evidence has been properly considered as part of the evaluation process.
- 16.** In this case it is not made out the Judge failed to apply the required degree of anxious scrutiny to the evidence available which is set out at [8] of the decision under challenge. The Judge correctly noted the issue in the appeal and had the benefit of seeing and hearing oral evidence being given by both the appellant and her witness.
- 17.** The Judge considered what weight could be given to the appellant's claim which included an assessment of the weight that could be given to the oral and written evidence. Having done so neither the appellant nor her witness was found to have told the truth. The Judge gives adequate reasons for such a finding, specifically concluding at [25] that the witness had been produced by the appellant to substantiate her asylum claim and to bolster her weak evidential position.
- 18.** The assertion the Judge failed to adopt a holistic approach is not made out.
- 19.** The appellant accepts there were inconsistencies in her evidence but argues they should not have been given the weight they were by the Judge despite the issue of weight being a matter for the Judge. The grounds fail to establish anything arguably irrational in the weight the Judge gave to the evidence.
- 20.** In relation to the assertion the Judge failed to consider background material relating to the return of a single woman to Iraq, the finding of the Judge is that the appellant is able to be returned to Baghdad and that she has male family members in Iraq who will be able to assist her in the required documentation and be able to meet her at the airport and accompany her back to her home area. There is no specific challenge to the Judge's finding to this effect which means the appellant will not have to live in Iraq as a single woman with the difficulties set out in the country material for such a person.
- 21.** The Judge finds the appellant's claim relating to the reasons why she had to leave Iraq to be a sham based upon a lack of truth. It was not made out the appellant could not return to her home in Iraq where she had lived previously without credible evidence of experiencing any difficulties.
- 22.** In relation to the assertion the Judge failed to properly consider SMO, the Upper Tribunal in SMO, KSP & IM (Iraq) confirm that, as the INID programme continues to expand, more and more CSA offices will have an INID terminal making obtaining a CSID by proxy more difficult: "The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely -as a result of the phased replacement of the CSID system -to issue a CSID, whether to an individual in person or to a proxy."
- 23.** It is accepted the new form of Iraqi identity card (INID) can only be obtained in Iraq, but the country information provided does not support a finding that no other form of identity document is available

to an Iraqi national at this time. Whilst for Iraqi nationals outside Iraq there is no facility for a INID to be issued the appellant has not established on the evidence that this means those outside Iraq have no means of obtaining any other form of identity document to confirm they are who they claim to be and an entitlement to be recognised as a national of Iraqi.

- 24.** A country report 'Kurdistan Region of Iraq (KRI) Report on issuance of the new Iraqi ID card' by the Danish Immigration Services, dated November 2018 in relation to possibility for issuance of new ID cards to Iraqis living abroad, record that when asked what Iraqi citizens abroad can do to either renew an old ID-card or to replace an ID-card that is lost, Director Azaz replied that Iraqi citizens, who live abroad, need to go to Iraq to obtain a new national ID card. When asked if it was possible for issuance of old ID cards to Iraqis living abroad he responded that an Iraqi citizen abroad, who wants to apply for an old ID card, an ID document that is still in use in Iraq, must go to an Iraqi embassy to have their fingerprints taken. In addition, an applicant must bring a power of attorney, and the three main documents: the old/expiring ID card, the nationality certificate, and the residency card (only held by the head of household). The way to prove Iraqi nationality to the embassy is by a power of attorney. The embassy will forward the application to the Ministry of Foreign Affairs and the Ministry of the Interior in Baghdad. The process is very long and can easily take from six months to a year. The source added that there are many problems in the procedure, and that the applicant must give proof of life. When the application is approved, the applicant will be issued an old ID card - not the new national ID card.
- 25.** In relation to obtaining a replacement CSID in the UK, the Upper Tribunal in SMO, KSP & IM (Iraq) at paragraph 383 endorse paragraph 26 of AAH (Iraqi Kurds -internal relocation) Iraq CG [2018] UKUT 00212 (IAC) which details the numerous and varied documents that are required in order to obtain a CSID from the Iraqi Embassy in the UK. Paragraph 26 of AAH states: *"If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an*

embassy abroad for the individual who is unable to verify his or her identity.” If the appellant is claiming it is reasonably likely that she will not be able to obtain a replacement CSID in the UK as she does not have access to the required documents, this was not made out on the evidence before the Judge who found that her CSID and other document could be sent to her by her family, hence not needed a replacement and being able to furnish official proof of her identity.

- 26.** The respondent’s latest Country Policy & Information Note dated 30 June 2020 contains information at Appendix I from the Respondent’s Returns Logistics Department. This states the following:

“CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a ‘Registration Document(1957)’ which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.” Thus, it appears that the Iraqi Embassy in London will not issue a CSID but instead will issue a ‘Registration Document (1957)’ which can be used to apply for an INID in Iraq. SMO, KSP & IM (Iraq) is very clear that to safely pass through checkpoints in Iraq it is necessary to show a CSID or an INID and other forms of identity document (even a passport) is not acceptable. It is submitted that the appellant would be unable to travel safely across Iraq even if he were able to be issued with a ‘Registration Document (1957)’ by the Iraqi Embassy in London. A copy of this document appears at Annex A to this judgment.

- 27.** The Registration Document is an official document issued by the authorities in Iraq as confirmation of an individual’s status as an Iraqi national. It is also clear that the stated intention of the Iraqi authorities is that possession of such a document is a means to enable an individual to obtain further identity documents required which, in light of the up-to-date country information, must refer to the new Identity Document when they do not have the means to obtain the same for themselves in Iraq.
- 28.** The appellant made several claims in her appeal which have been shown not to be true. It was found the appellant can contact her male relatives and obtain her documents. The appellant has not established such a finding is unsafe or that she cannot obtain the required documents. The brothers own entry in the family book will enable the appellants family details to be traced.
- 29.** The appellant also attended school in Iraq, according to replies given by her in her asylum interview, where there should also be required details concerning her CSID number and/or other information confirming her official identification in accordance with normal procedures. It is known that a valid CSID is required to enable an Iraqi national to obtain access to education.
- 30.** As the appellant has not made out that she cannot be returned to Iraq with an identity document issued by the Iraqi authorities and/or a valid passport she has not made out she will not be able to be returned to Baghdad and, in light of the return of availability of internal flights within Iraq, travel further. If land travel was required, the appellant fails to establish that the documentation that she will possess, which will not be removed from her possession on arrival at the airport, will not be sufficient to enable her to travel internally especially with a male relative who can vouch for her identity if required.

- 31.** It is not disputed that the appellant could not remain in Baghdad as she has no family or other connections in Baghdad.
- 32.** This is an appeal in which all the claims adverse to the appellant's case made before the First-tier Tribunal were found to lack credibility. It is also a case in which the appellant relies upon case law and country evidence to support her claim to be unable to return to Iraq or obtain the necessary documentation to enable her to live reasonably in Iraq; but the ability or otherwise to do so is fact specific. The appellant has not helped her case by relying on what the First-tier Tribunal effectively found are lies. The factual matrix as found does not support the appellant's claim that when applying the guidance contained in SMO and country information she is entitled to a grant of international protection. The appellant is no more than a failed asylum seeker who has not established even to the lower standards applicable in an asylum appeal that she cannot obtain her passport, officially issued identity document, does not have a support network available to her on return to Iraq, or has lost contact with her family. The evidence clearly supports a finding that it is the opposite of what the appellant is claiming that is the true position.
- 33.** I do not find the appellant has made out her case that the Judge has erred in a manner material to the decision to dismiss the appeal. Clear findings within the range of those reasonable open to the Judge have been made supported by adequate reasons. The Judge confirms consideration of the relevant country guidance case law and no material error is made out in relation to the current position that warrants the Upper Tribunal interfering any further in this matter.

Decision

- 34. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 35.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 14 September 2020