



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07961/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 24 January 2020

Decision & Reasons Promulgated
On 31 January 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C M

(ANONYMITY DIRECTION MADE)

Claimant

Representation:

For the Appellant:

Mr A McVeety, Senior Home Office Presenting Officer

For the Claimant:

Mr F Aziz instructed by Lei Dat & Baig Solicitors

DECISION AND REASONS

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Bannerman promulgated on 5 November 2019, allowing on humanitarian protection grounds only the claimant's appeal against the decision of the Secretary of State, dated 8 August 2019, to refuse his protection claim made on 5 December 2016.
2. First-tier Tribunal Judge Grant granted permission to appeal on 9 December 2019.

Error of Law

3. For the reasons set out below I find there was an error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and I remake the decision in the appeal by dismissing the claimant's appeal.
4. Judge Bannerman accepted the claimant's factual claim to have been the director of a short film depicting a fictional kidnapping of a woman by a terrorist group but rejected the claim that it had been shown to hundreds of people, or that in consequence of that or any other reason ISIS or others raided his home, or that he had for any such reason to flee Iraq. Neither did the judge accept that there was any longstanding family feud or threat of honour killing made against him as claimed. I note that there has been no cross-appeal against any of these findings and facts and therefore they must stand as made.
5. Contrary to what appears in the screening interview, the judge accepted that the appellant had not stated that he had an ID card in the UK and the judge found that at that time he did not have direct contact with his family in Iraq.
6. At paragraph 84 of the decision the judge stated of the appellant "He has not made any genuine attempt to get a CSID card it appears, and I take this into account". There is a confusing sentence at paragraph 85 of the decision where the judge stated, "Returning to Iraq in the case of AA, he does from have a CSID card or a passport and I do not find that he can reasonable obtain one ...". It may well be that the judge intended to find that the claimant does not have a CSID card but it is not entirely clear. Mr Aziz submitted that it was an unfortunate typo and I am inclined to agree. However, the judge went on within the same paragraph to find that the claimant does not have family in Baghdad and that his family are in the Kurdish area (IKR). As a Kurd he would be returning as a member of a minority community without a sponsor and would have no support on returning into Baghdad.
7. At paragraph 86 the judge accepted that the claimant does not at the present time have any form of documentation or means to obtain them through the civil registry in Baghdad. More significantly, however, the judge pointed out in the same paragraph that there was no evidence of any attempt by him to obtain a CSID in the UK. Despite that, the judge found that his civil registry will be in the Kurdish area but that he does not at the moment have any family members who can assist him in obtaining documentation. I confess that I do not understand that finding when there was no attempt to obtain documentation. At paragraph 87, the judge found that he would have to return via Baghdad and although he is not a known ISIS associate or returning to an ISIS area he is a single man of fighting age. For those apparent

reasons, the judge concluded at paragraph 88 that for humanitarian protection reasons the claimant would be unable to safely return and therefore allowed the appeal.

8. In summary, the grounds assert that the judge's findings on the issue of availability of a CSID card are contradictory and effectively irrational. It is said to be irrational for the judge to find that the appellant cannot reasonably obtain a CSID on return whilst finding he has made no genuine attempt to obtain one: "The appellant has not demonstrated that the outcome of any genuine attempt would be fruitless and therefore could not obtain a CSID prior to or on return to Iraq".
9. In granting permission, Judge Grant considered it arguable that the judge erred in finding that the appellant cannot reasonably obtain a CSID on return to Iraq whilst at the same time finding that he has made no genuine attempt to obtain one. "The findings are arguably not reconcilable and amount to an arguable error of law which is material to the outcome of the appeal".
10. Even if the claimant does not presently have a CSID, it is clear that he has family in Iraq either in Kirkuk or within the IKR. Bearing in mind that ISIS is no longer in control of the Kirkuk area which is relatively close in travelling distance to the IKR (less than 120 kilometres) there appears to be no reason why the claimant's family cannot assist him with providing or obtaining the necessary volume and page number of the family book to enable him to renew or replace his missing CSID, either from an Iraqi consulate in the UK, or shortly after return to Iraq and the IKR. If necessary, they could travel to the IKR to assist him to do that. As the judge found that the claimant had made no genuine effort to obtain a CSID, I accept and find that it was irrational and unreasonable for the judge to conclude that he would not be able to obtain the necessary identification document on or before returning to Iraq.
11. There are other difficulties with this decision. Although the refusal decision stated at paragraph 62 that the claimant was from Kirkuk and would be returned there via Baghdad and Sulaymaniyah (which is in the IKR) it was the appellant's case and the judge appears to have found that he was living within the IKR at the time he decided to leave Iraq. He claims to have fled from there to Kirkuk from where he made his way out of Iraq and to the UK. As he emanates from the IKR, it follows that he can be returned there directly and does not have to transit Baghdad. The judge was informed by the respondent's representative at the hearing, and provided with documentary evidence in support, that direct flights to Erbil and Sulaymaniyah have resumed. It follows that the claimant did not need to return via Baghdad at all; the decision proceeded on an incorrect factual basis. The judge erred in law in failing to explain whether this evidence of the availability of direct flights was accepted, and if not why not.
12. On the evidence that was available to the First-tier Tribunal, confirmed in the recent country guidance of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 0400 (IAC), although promulgated after the First-tier Tribunal decision, it remains the case that the claimant can be returned directly to the IKR without

needing to transit Baghdad, as the respondent contended at the First-tier Tribunal appeal hearing. In the light of the judge's factual findings, I am satisfied that even if he is not presently in direct contact with his family, there is no good reason why he cannot make contact either from the UK or shortly after arrival in the IKR. In the circumstances, I am satisfied that the claimant will have available to him the assistance of his family to provide the necessary information to obtain a CSID, either while still in the UK from an Iraqi consulate, or shortly after arriving in the IKR from the civil registry. Given the availability of assistance from his family, it is the respondent's case, and I so find, that return will be feasible. With the information that his family can provide, he will be able to obtain either a passport or a laissez passer which will allow him to land in the IKR. SMO states that the laissez passer is confiscated on arrival, but that will not prevent the claimant from gaining entry to the IKR in the first place, as the Country Guidance available to the First-tier Tribunal explained.

13. In all the circumstances, I find that the decision of the First-tier Tribunal contains such error of law that it cannot stand and has to be set aside. In setting it aside I preserve the findings of the First-tier Tribunal rejecting the factual claim of the claimant including that there is no family dispute to prevent him getting in contact with his family members. It is not clear to me whether his family are in Kirkuk or the IKR. It seems to have been assumed in the hearing before me that they are within the IKR, if so then it will be all the more easier to make contact with them. There is no reason for him not to do so and nothing preventing him from doing so. In SMO, the Upper Tribunal pointed out that given the importance of the document, most Iraqis will have memorised and know the page number and volume number of their CSID document. Even if the claimant does not have his CSID document information at the present time, I am satisfied that it is perfectly reasonable to expect him to make contact with his family and to obtain the necessary information in order for him to renew his CSID in the UK or at the very latest shortly after arriving in the IKR. With family support, with a CSID card, and given his personal circumstances, there is no reason why the claimant would not be able to settle and integrate in the IKR. Whilst there is a high unemployment the claimant is fit and healthy and able to work. He will have family support. Given the assistance of return funds of up to £1,500 he will be able to afford accommodation and maintain himself even without family assistance for several months and will not need to access a critical shelter facility or an IDP camp.
14. In all the circumstances it is clear that this appeal cannot succeed on any grounds. The asylum and Article 8 grounds were rejected by the First-tier Tribunal and there has been no cross-appeal against those findings.
15. Considering the assistance that the claimant is likely to have on return I am satisfied that the appeal cannot succeed on the humanitarian protection grounds either or on Articles 2, 3 or 8 of the ECHR.
16. In all the circumstances this appeal must be dismissed.

Notice of Decision

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law such as to require the decision to be set aside.
18. I set aside the decision.
19. I remake the decision in the appeal by dismissing it for the reasons set out above.



Signed
Upper Tribunal Judge Pickup
Dated 30 January 2020