Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08622/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34
On 14th June 2020

Decision & Reasons Promulgated
On 24 June 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SMS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to directions dated 21 April 2020 indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside; the parties agreed with no objections being raised and both made written submissions on the issues raised in the appeal. This decision has therefore been determined on the papers in light of those submissions and the full appeal file.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Chamberlain promulgated on 22 November 2019, in which the Appellant's appeal against the decision to refuse his protection and

human rights claim (albeit accepted as a fresh claim) dated 15 August 2019 was dismissed.

3. The Appellant is a national of Iraq, born on 3 March 1992, who last arrived in the United Kingdom clandestinely on 9 October 2015. His asylum claim was refused on 6 January 2016 and his appeal against refusal was dismissed on 19 July 2016, becoming appeal rights exhausted on 20 October 2016. The Appellant made further submissions on 5 January 2018 which were refused and made further submissions again on 4 July 2019. The Appellant is from Kirkuk (he is Kurdish and a Sunni Muslim) and his latest claim was on the basis of fear of ongoing violence in his home town and risk from ISIS. Further, that the Appellant did not have a CSID card and would not be able to obtain one within a reasonable timeframe and he does not have family in Baghdad or any other support network.

4. In the reasons for refusal letter, the Respondent referred to the dismissal of the Appellant's earlier appeal by First-tier Tribunal Judge Loughbridge, with the findings that the Appellant previously had a CSID card that was with his family, whom he was in contact with and that he could reasonably return to Baghdad or the IKR (in particular Erbil where he went to university) and use his qualifications to gain employment.

5. In accordance with the then country guidance in AAH (Iraqi Kurds, internal relocation) Iraq CG [2018] UKUT 00212 (IAC), the Appellant would not face an Article 15(c) risk on return to Kirkuk (or anywhere else in Iraq) and the Respondent went on to consider more recent evidence about the position in Kirkuk, finding that he could return to the IKR (but not Baghdad) if he did not wish to return to Kirkuk. The Respondent considered that the Appellant could obtain the necessary documents from his family to obtain a new CSID in the United Kingdom to return and that he would be able to seek accommodation and employment in the IKR.

6. The Respondent did not find that there was any new evidence to show that the Appellant would be at risk on return to Iraq generally or to the IKR specifically, including nothing to suggest any risk from ISIS or other terrorist groups; nor because of his ethnicity or political opinion, nor his religion, and as such he was not entitled to asylum or humanitarian protection, nor would the refusal breach any of his human rights under the European Convention on Human Rights. In relation to private and family life, the Appellant had not established any family life in the United Kingdom and did not meet the requirements for a grant of leave to remain under paragraph 276ADE of the Immigration Rules.

7. Judge Chamberlain dismissed the appeal in a decision promulgated on 22 November 2019 on all grounds. The First-tier Tribunal identified the starting point in accordance with the principles in *Devaseelan* as the earlier decision of First-tier Tribunal Judge Loughridge and went on to consider the further evidence in this appeal. In relation to his identity documents, the First-tier Tribunal did not find it credible that the Appellant

had lost contact with his family since the previous appeal in 2016, nor that there was any reason why they would be unable to send him his CSID from which he could obtain an Iraqi passport. The Appellant would therefore have the practical means to relocate to the IKR and gave no reasons as to why he could not return there. The Appellant's claim not to have ever been to Erbil and studied instead in Koya, which was linked to the Erbil Polytechnic University from which he obtained his qualification was not accepted or found to be credible. The First-tier Tribunal found that although the Appellant had no family in the IKR, he was still in contact with family in Iraq and would have friends and contacts in Erbil from his time studying there. The Appellant was a healthy, well educated young man who had previously run his own business and would have the advantage of funds from the Voluntary Returns Scheme such that he would be able to find stable employment (despite the high unemployment rate) and therefore afford appropriate accommodation.

8. The Appellant did not make any specific submissions in relation to his private and family life, but this was considered by the First-tier Tribunal in any event. There was no evidence of any family life, the private life requirements were not met and overall, taking into account the factors in section 117B of the Nationality, Immigration and Asylum Act 2002, his removal would not be disproportionate.

The appeal

9. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal materially erred in failing to take into account relevant considerations when concluding that the Appellant would be returned to Baghdad with a CSID and passport in circumstances where he is not in contact with any family and where he would be returned to Baghdad as a Kurdish Sunni Muslim who does not speak Arabic. The First-tier Tribunal failed to give adequate reasons for finding that the Appellant could obtain the necessary documentation to return to Kirkuk and a failure to follow the country guidance in AAH given the Appellant's accepted attendance at the Iraqi embassy in the United Kingdom and inability to attend an office in Baghdad with a male relative or in his home area given ISIS destroyed or damaged most of the registry offices in areas they controlled.

10. Secondly, that the First-tier Tribunal materially erred in law in applying the wrong burden of proof by requiring the Appellant to prove that he is not in contact with family members as opposed to using the lower standard of proof applicable in asylum claims. Further, the First-tier Tribunal has failed to give adequate reasons for the adverse credibility findings reached and applied the wrong approach to credibility.

11. In the further written submissions on behalf of the Appellant pursuant to the directions dated 21 April 2020, three issues are identified, first, whether the Appellant is at risk in Kirkuk for the purposes of Articles 15(b)

and 15(c) of the Qualification Directive; secondly, whether the Appellant would be able to obtain a CSID or INID within a reasonable timeframe on removal to Baghdad; and thirdly, whether it is reasonable to expect the Appellant to relocate to the IKR. The submissions on each of these three issues are however directed to a substantive remake of the Appellant's appeal, making submissions as to why the Appellant's appeal should be allowed under the Refugee Convention. The further written submissions do not in any way address the issue of whether the decision of the First-tier Tribunal materially erred in law, nor do they add to or expand upon the written grounds of appeal in the original application for permission.

12. In written submissions on her behalf, the Respondent opposes the appeal and submits that there is no error of law in the decision of the First-tier Tribunal. In summary, that the First-tier Tribunal approached the assessment of the evidence and of the Appellant's credibility entirely lawfully and appropriately, starting with the findings of the previously First-tier Tribunal in 2016 and giving detailed and cogent reasons as to why the Appellant's claim to have lost contact with his family was not accepted.

13. Further, the findings of the First-tier Tribunal were in accordance with the country guidance in AAH as well as the latest country guidance in SMO (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), promulgated after the decision under appeal but replacing all previous country guidance on Iraq. There is nothing in the country guidance to support any suggestion that the Appellant would be at risk of indiscriminate violence on return to the IKR, which has been found to be virtually violence free and with no Article 15(c) risk; and none of the factors identified in SMO under a sliding scale would assist the Appellant's claim.

14. In relation to internal relocation, the Appellant did not previously claim that internal relocation to the IKR would be unduly harsh and although relied upon in the latest written submissions, do not constitute an error of law in the First-tier Tribunal's decision.

Findings and reasons

15. I find no error of law in the decision of the First-tier Tribunal on either ground of appeal for the reasons set out below. As to the first ground of appeal, both the written grounds of appeal and further written submissions are drafted on the basis that the Appellant's claim in relation to having no contact with his family and about not being able to obtain his identity documents from them is credible; such that he would need to obtain a new CSID through the embassy or on return to Iraq (either in Kirkuk or Baghdad). Neither document acknowledges that the First-tier Tribunal did not find the Appellant credible on this point and neither engages with the reasons given for those findings, the finding was that the Appellant was in

contact with his family who could send him his CSID (as was the finding in 2016). As set out below in relation to the second ground of appeal, there is no error of law in the First-tier Tribunal's approach to credibility

16. In paragraphs 28 to 34 of the First-tier Tribunal's decision, the Appellant's evidence in relation to family contact and identity documents is set out, followed by clear and detailed reasons as to why this was not accepted. The reasons included that the Appellant's evidence was inconsistent as to when he last had contact with his family, which was on a core aspect of his claim; that he had failed to answer questions about his CSID (as to whether he had after the dismissal of his previous appeal asked his family to send this to him); that he had failed to take any reasonable steps to try and locate his family and was vague about who from Iraq he had asked about this. These are cogent and sustainable reasons on the evidence available for the finding that the Appellant is still in contact with his family and that they could send him his CSID.

17. On the basis of such findings, the Appellant would have his CSID in the United Kingdom and use that to travel back to Iraq and the IKR, either directly or via Baghdad. It is therefore unnecessary for the Appellant to obtain a new CSID from the Iraqi Embassy in the United Kingdom, nor to obtain one in Kirkuk or Baghdad on return to Iraq and the grounds of appeal dealing with these aspects of the case could not in any event be material to the outcome. In any event, there is no error of law in relation to those findings nor are they inconsistent with the current country guidance.

18. In relation to the second ground of appeal that the First-tier Tribunal applied the wrong standard of proof, there is nothing express or implicit in the decision which supports that claim. The applicable law is set out in paragraphs 3 to 6 of the decision, including at paragraph 6 an express self-direction and confirmation that the standard of proof is a low one, to a reasonable degree of likelihood. In circumstances where the starting point are the findings of the First-tier Tribunal in 2016 that the Appellant was in contact with his family who were in possession of his CSID and could send it to him, applying the principles in *Devaseelan* it is for an Appellant to establish, to the lower standard of proof, that things have changed or that there is further evidence such that the earlier finding is not sustainable. As above, detailed reasons were given for rejecting the Appellant's most recent claim about family contact, none of which required the Appellant to prove a negative nor imposed a standard upon him which was higher than the applicable low standard of proof. For the reasons given by the First-tier Tribunal, he failed to establish his case to the lower standard.

19. Further, there is nothing on the face of the First-tier Tribunal's decision to support the claim that it erred in law in its approach to credibility and no failure to take into account guidance on this in the context of protection claims. The approach taken was entirely lawful and the conclusions reached were open to the First-tier Tribunal on the evidence before it, with clear and detailed reasons given.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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 their 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.

Signed G Jackson Date 14th June 2020

Upper Tribunal Judge Jackson