Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13974/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 4 February 2020	**On 27 February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

KJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Ms. H. Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appeal came before me to be remade following the decision of Deputy Upper Tribunal Judge Hutchinson promulgated on 14 June 2019.

The hearing

2. The Appellant was not represented. He was assisted by the interpreter, Mr. Ali Zalme, who confirmed that they both fully understood each other. The language used was Kurdish (Sorani).

3. I explained to the Appellant that the outstanding issue to be decided was the feasibility of his return to Iraq, with reference to the country guidance caselaw of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). I explained that the findings of the First-tier Tribunal up to and including [45] had not been set aside, and that these findings related to his account, which had not been accepted.

4. It was confirmed by Ms. Aboni that the Appellant would be returned to Baghdad, as stated in the reasons for refusal letter. The Respondent's position was that the Appellant could then either return to Kirkuk, or could relocate to the IKR. She submitted that following the case of SMO, there was no Article 15(c) or Article 3 risk for the Appellant in Kirkuk. She confirmed that it was accepted in the reasons for refusal letter that the Appellant did not have a CSID.

5. I explained these issues to the Appellant. I explained how the hearing would proceed. Ms. Aboni stated that she had no questions for the Appellant. I asked him some questions. Ms. Aboni confirmed that nothing had arisen out of these questions on which she wished to cross-examine the Appellant. Ms. Aboni made submissions to which the Appellant responded. I reserved my decision.

6. In addition to the oral evidence, I have taken into account the documents in the Respondent's bundle (to Annex E), the Appellant's statement dated 18 January 2019 and the documents provided by Insight Healthcare. I have also taken into account the country guidance case of SMO, promulgated since the Respondent's decision.

Decision

7. As stated above, the findings of the First-tier Tribunal up to and including [45] are preserved. These findings relate to the Appellant's account which was not accepted. It was found that the Appellant was not of interest to the Iraqi police [39], nor that he was of any interest to ISIS [44].

8. The Appellant said in submissions that he had had other problems in Iraq relating to religion, as he was not practising Islam. He said that he had been beaten up by radicalised, strict Muslims who wanted him to practise Islam and to contribute to the mosque. He feared those groups in his area. He said that he had told his solicitors about it.

9. Ms. Aboni submitted that this was an attempt to embellish his claim as he had not raised it before. She referred to Q113 and Q114 of his asylum interview where he

had not raised any other issue, and had confirmed that there were no other reasons why he could not return to Iraq.

10. In response the Appellant said that this was not the main reason that he had left Iraq, but that he thought it right to mention it. He had not thought that these responses at interview would be used against him, as he thought that the interview questions only referred to the "big matter".

11. I find that the Appellant was given the opportunity at his asylum interview to state if there were any other reasons that he wished to remain in the United Kingdom, and he did not mention that he had been beaten up due to not practising Islam. In his witness statement he said that he could not return to Baghdad as he was Sunni and Baghdad was controlled by Shia. He also said that he was a non-practising Muslim "and this will be known" [6]. He made no reference to having had any problems in the past, and no reference to having been beaten up, on account of not practising Islam.

12. I do not accept the Appellant's claim made at this very late stage that he was beaten up in Iraq on account of not practising Islam.

Article 15(c)

13. The Appellant's account that he is at risk in Kirkuk was rejected. It was submitted by Ms. Aboni that, following the case of SMO, Kirkuk is no longer a contested area. Especially given that the Appellant was not represented, I have carefully considered what SMO says about any Article 15(c) risk. SMO states at headnote [1]:

"There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD."

14. The Appellant's area of Kirkuk does not fall into the exception to this set out at headnote [2]. The headnote states at [3]:

"The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant."

15. [4] refers to perceived association with ISIL, which is not relevant to the Appellant [4]. Headnote [5] states:

"The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area."

16. The only one of the factors listed which may be of relevance to the Appellant is "*Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area*".

17. The Appellant's home area is Kirkuk. He is a Kurd, and a Sunni Muslim. At [300] of SMO it refers to minority groups, and the cautious approach which needs to be taken. At [252] it refers to ISIL's presence in Kirkuk:

"ISIL controls no territory as such in Kirkuk governorate but it is certainly present and active, particularly in the areas surrounding Hawija and the Hamrin Mountains. There are pockets of fighters in these areas, or permanently operating attack cells, as they are also called in the background material." [252]

18. The Appellant comes from Kirkuk. While there is evidence of ISIL activity in the area, it does not control any territory, and the Appellant does not come from one of the areas where ISIL are most active. SMO also refers to the presence of PMFs in the area, but namely in Hawija (see [29] of SMO). This is not the Appellant's home area. I find, adopting the "sliding scale" assessment, that the Appellant's return to Kirkuk would not be contrary to Article 15(c).

Feasibility of return

19. It was confirmed that the Appellant would be returned to Baghdad. I have therefore considered whether the Appellant would be able to travel from Baghdad to Kirkuk. Following the case of SMO I find that the Appellant would need a CSID for internal travel in Iraq. I find that he will be able to be returned to Baghdad on a laissez passer but this will not enable him to travel to Kirkuk. SMO makes clear at headnote [12] that a laissez passer will be of no assistance in the absence of a CSID or INID.

20. At [15] of the headnote to SMO it states that that 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.

21. I find that the Appellant does not have a CSID. It was submitted by Ms. Aboni that the Appellant would be able to obtain a replacement CSID in the United Kingdom, or his family would be able to send his CSID to him from Iraq, or alternatively his uncle would be able to attend the office in Kirkuk, obtain a proxy CSID card and meet the Appellant in Baghdad for onward travel to Kirkuk.

22. At Q17 and Q18 of his asylum interview the Appellant stated that his Iraqi ID papers were at home. He stated in his witness statement "I only have the nationality certificate" [7], which appears to imply that he has this in his possession. He has not

given any reason for why he has not attempted to use the information contained on his nationality certificate to obtain a replacement CSID in the United Kingdom.

23. Further, paragraph [13] of the headnote to SMO states:

"Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. 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."

24. At [391] of SMO it states: "We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however." At [392] it accepts that there will be some who "can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family."

25. I find that the Appellant left Iraq under two years ago when he was 21 years old. He would therefore have been in possession of his CSID less than two years ago. He attended school until the age of 15 and there is no evidence that he has any problems with literacy or numeracy. Further, at [392] SMO concludes:

"Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back."

26. The Appellant said at his asylum interview said that he had maternal and paternal uncles in Iraq. His father had died a long time ago (Q11). At Q12 he gave evidence that his mother and two sisters lived in Iraq. At Q13 he said that he did not have any brothers. There are no preserved findings in relation to contact with his mother and sisters. At the hearing the Appellant said that he had spoken to his mother once last summer but he said that he was not in contact with her now. He said that he was not in contact with his uncle. He had no means or resources to make contact with Iraq and when he had asked at the Nottingham Refugee Forum no-one had told him or advised him how to contact his family. Neither had his solicitor.

27. The First-tier Tribunal Judge rejected the Appellant's explanation given at Q79 and Q80 of the asylum interview for why he could not contact his uncle. At [38] he found it highly unlikely that the Appellant or his uncle would not have the means to contact one another. Bearing in mind this finding, and given that the Appellant had

contact with his mother in 2019, I find that the Appellant would be able to make contact with his family in Iraq, including his uncle. I find that he would be able to obtain the necessary information to obtain a replacement CSID, if not the CSID card itself.

28. I therefore find that it is reasonably likely that the Appellant has the necessary information to obtain a replacement CSID in the United Kingdom. If I am wrong in this, I find that it is reasonably likely that he will be able to obtain the necessary information from his family. The Appellant's family could send the CSID to him in the United Kingdom. If it is out of date, he can use the information on it to obtain a new one from the Embassy in the United Kingdom. Alternatively, he could be met in Baghdad by his uncle with a CSID, either the one he has left at home, or a replacement one obtained by his uncle by proxy. He could then travel with his uncle back to Kirkuk.

29. I therefore find that the Appellant will be returning to Baghdad with a CSID or, alternatively, will be met by a family member in Baghdad with a CSID. He will then be able to travel onward either to Kirkuk, where he can return to his family, or it is open to him to relocate to the IKR.

30. I have considered whether it would reasonable to expect the Appellant to relocate there with reference to SMO. The headnote states:

"24. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

25. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

26. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

27. For Kurds without the assistance of family in the IKR the accommodation options are limited:

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely

overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

28. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID or INID;

(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers."

31. I find that the Appellant would be able to gain access to the IKR [24]. I find that he would be returning as a single male of fighting age but, coming from the United Kingdom, this would dispel any suggestion of having arrived from ISIL territory [25].

32. With reference to [26] of the headnote, the Appellant's evidence is that he has no family in the IKR. However, he has family in Iraq, in Kirkuk. Paragraph [27] sets out

the difficulties for those without family assistance in the IKR. Going through the issues set out there, I find that it is not reasonably likely that the Appellant would find accommodation in a refugee camp in the IKR (i). There is no suggestion that the Appellant would be able to afford between US$300 and US$400 per month from his own resources in order to rent accommodation (ii). At (iii) it states that he could resort to squatting, but it would be unduly harsh to expect an individual to relocate to the IKR if he would live in a "critical housing shelter" without access to basic necessities.

33. Any grant from the Voluntary Returns Scheme would only last for a limited period of time. The Appellant would need to find employment to secure an income once that ran out. He would have some family support from his family in Iraq. Ad hoc charity is not a long-term solution (iv).

34. Factors to be taken into account when considering employment are set out at [28] of the headnote. There is 70% unemployment (ii). The Appellant would have a CSID so he would therefore be allowed to work (iii). There is an advantage for those with family connections (iv). The Appellant has no family connections in the IKR, but he has family in Kirkuk. Skills, education and experience are important (v). The Appellant's evidence is that he attended school until he was about 15 years old. He worked at a car auction in Iraq for two to three years. He said that he was responsible for general maintenance. While he has no specific skills or qualifications, he has some education and also work experience. I find that he would be able to find some form of employment in the IKR, if he chose to relocate there rather than returning to his family. I find it is not unduly harsh to expect him to relocate to the IKR.

Conclusions in relation to refugee protection, humanitarian protection and Articles 2 and 3

35. Considering all the above, I do not find the Appellant's claim to be a genuine refugee in need of international protection to be well founded. I find that he has failed to demonstrate that there is a real risk that he will suffer persecution on return to Iraq, and so his claim fails on asylum grounds. I find that he does not have substantial grounds for believing that, if returned to Iraq, he would face a real risk of suffering serious harm and so his claim to humanitarian protection fails. I find that returning him to Iraq would not cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR.

Article 8

36. Although no submissions were made in relation to Article 8, given that the Appellant is not represented, I have considered Article 8. I have also considered the evidence of the Appellant's mental health. At the hearing the Appellant said that he had been prescribed medication to help him to sleep, but had not been prescribed any other medication. He had been referred to counselling, but could not see the benefit of "talking and talking". The medical evidence before me is dated September 2018. I

have no more up to date evidence. This was submitted for the hearing of the First-tier Tribunal which took place in February 2019. There is no evidence that the Appellant has had any treatment since September 2018, when no formal diagnosis was made in any event. He gave no evidence at the hearing before me that there was any change to this position. I find that there is no evidence to show that his mental health is such that Articles 3 or 8 are engaged.

37. The Appellant has no relatives in the United Kingdom, nor does he have a partner or child. I find that he has no family life here for the purposes of Article 8.

38. In relation to private life, I find that he does not meet the requirements of paragraph 276ADE(1) of the immigration rules. He has been in the United Kingdom for under two years. He is 23 years old. He has spent the vast majority of his life in Iraq. I have found above that he can return to Iraq. He has strong family, social, cultural and linguistic ties to Iraq. I find that the Appellant has failed to show that there are very significant obstacles to his reintegration into Iraq.

39. I have considered Article 8 outside the immigration rules in accordance with the steps set out in Razgar [2004] UKHL 27. To the extent that he will have built up a private life in the short time that he has been in the United Kingdom sufficient to engage the operation of Article 8, I find that the decision is an interference in his private life. I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would not be significant and that it would be proportionate.

40. In considering proportionality I have taken into account all of my findings above. I have taken into account the factors set out in section 117B of the 2002 Act, insofar as they are relevant. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. The Appellant cannot meet the requirements of the immigration rules in relation to private life. There is a strong public interest in refusing leave to remain to those who do not meet the requirements of the immigration rules. I have no evidence of the Appellant's English language skills (117(B)(2)). He used an interpreter at the hearing. He is not financially independent (117B(3)).

41. Little weight is to be given to a private life established either when a person had precarious leave, or when he was here unlawfully (117B(4), 117B(5)). The Appellant has never had leave to remain in the United Kingdom, and therefore I attach little weight to his private life. Section 117B(6) is not relevant.

42. I find that the Appellant can return to Iraq where he will be able to re-establish his private life. Taking into account all of the above, and giving weight to the public interest in maintaining effective immigration control, I find the Appellant has failed to show on the balance of probabilities that the decision is a breach of his rights to a family or private life under Article 8 ECHR, or indeed any other rights protected by the Human Rights Act 1998.

Notice of Decision

43. The appeal is dismissed on asylum grounds.

44. The appeal is dismissed on humanitarian protection grounds.

45. The appeal is dismissed on human rights grounds.

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.

Signed 14 February 2020

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal so there can be no fee award.

Signed 14 February 2020

Deputy Upper Tribunal Judge Chamberlain