Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/00540/2020
[PA/51084/2020]

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre Remotely by Microsoft Teams On 25 November 2021	**Decision & Reasons Promulgated On 17 December 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

D S R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, instructed by Braitch Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Iraq who comes from Sulaymaniyah in the Iraqi Kurdish Region ("IKR"). He was born on 9 January 1990. He entered the United Kingdom clandestinely on 17 August 2017 and claimed asylum. That claim was refused by the Secretary of State on 14 August 2020.

3. The appellant appealed to the First-tier Tribunal and, in a decision, dated 26 March 2021, Judge J L Barker dismissed the appellant's appeal on all grounds.

4. The judge accepted that the appellant was a Kurd from the IKR, in particular Sulaymaniyah and had been a Peshmerga. However, the judge made an adverse credibility finding and rejected the appellant's claim to be at risk as a result of his having reported the involvement of an individual with ISIL to the authorities which had resulted in threats from that individual's family.

5. In addition, the judge found that the appellant would be able to obtain his Iraqi passport and CSID document which he had given to the German authorities when he claimed asylum there or, alternatively, he would be able to obtain a replacement CSID prior to his return to Iraq or within a reasonable time thereafter. As a consequence, the judge found that the appellant would not be at risk, on travelling from Baghdad, to which he would be returned, to the IKR due to a lack of identity documentation applying SMO and Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).

6. The judge consequently dismissed the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR. The appellant did not rely upon Art 8 of the ECHR before the judge.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal on two grounds. First, the judge had failed to take into account, in assessing the risk to the appellant on return, that it was accepted that he suffered from PTSD and that he was a vulnerable witness. As a person suffering from mental health problems, he fell into a risk category set out in SMO and Others, para (5) of the judicial headnote. Secondly, the judge erred in law in concluding that the appellant could obtain a replacement CSID or, possibly, an INID card in the UK or shortly after returning to Iraq.

8. On 13 April 2021, the First-tier Tribunal (Judge Saffer) granted the appellant permission to appeal on both grounds.

9. The appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 25 November 2021. I was present in court and Mr Vokes, who represented the appellant, and Mr Tan, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

The Submissions

10. I heard oral submissions from both representatives.

11. Mr Vokes adopted the two grounds of appeal which he developed in his oral submissions.

12. As regards ground 1, he submitted that it was accepted that the appellant suffered from PTSD. That was set out in the report of Dr Ahmed dated 7 November 2020 and was accepted by the Presenting Officer before the judge as set out in para 57 of her decision. Mr Vokes accepted that the judge had taken into account, to an extent, the appellant's mental health by treating him as a vulnerable witness (at para 12 of the decision) and as potentially explaining discrepancies in the appellant's evidence (at para 59 of the decision). However, Mr Vokes submitted the judge had been wrong to conclude in para 63 of her decision that the appellant did not fall into "any of the risk categories" identified in SMO and Others. Mr Vokes submitted that the appellant fell within the category of "individuals with disabilities" (which included mental illness) set out in headnote (5) of SMO and Others.

13. As regards ground 2, Mr Vokes submitted that the judge's assessment of whether the appellant could obtain a replacement identity document was wrong. He pointed out that the judge cited at para 69 of her decision the *CPIN*, "Iraq: Internal relocation, civil documentation and returns" (June 2020) in which the Home Office acknowledged that it was "highly unlikely" that an individual could obtain a CSID from the Iraqi Embassy in the UK and could not obtain an INID outside of Iraq (see paras 2.6.15 and 2.6.16). He pointed out that the only document that could be obtained would be a 'Registration Document (1957)', but that would only allow an individual to obtain a CSID or INID once in Iraq at the individual's local Civil Status Authority office ("CSA office"). The appellant could, therefore, only obtain an identity document at his local CSA office in Sulaymaniyah. Mr Vokes referred me to para 5.6.2 of the *CPIN* where the Danish Immigration Service and Landinfo Joint Report of November 2018 is quoted, stating that the new INID system has been implemented in the IKR "in the bigger cities". Mr Vokes submitted that Sulaymaniyah is one of those bigger cities. Mr Vokes submitted that, therefore, on the basis of SMO and Others, the appellant would not have a necessary ID document (an INID) to safely travel from Baghdad to the IKR (even if he could enter the IKR) and, as SMO and Others recognised, he would be at risk of serious ill-treatment contrary to Art 3 of the ECHR on the journey to his home area.

14. On behalf of the Secretary of State, Mr Tan submitted that it was accepted that the appellant was a Kurd from Sulaymaniyah in the IKR. Further, the judge's decision to reject the appellant's asylum claim and that he was not credible was not challenged. Further, the judge had found, and again this was not challenged, that the appellant would have family support in the IKR (see paras 52 and 73 of the decision). Mr Tan also pointed out that the grounds did not challenge the judge's finding in para 72 that the appellant

could be reasonably expected to obtain on inquiry his passport and CSID document which, on his own evidence, he had left with the German authorities when he claimed asylum there.

15. As regards ground 1, Mr Tan submitted that the relevance of the enhanced risk categories in para (5) of the headnote in SMO and Others was to whether a risk contrary to Art 15(c) of the Qualification Directive was established. He submitted that it was clear that the IKR was free from violence and he referred me to [419] of SMO and Others that there was no general Art 15(c) or Art 3 of the ECHR risk there. The vulnerability factor which the appellant now relied on, Mr Tan submitted, was therefore irrelevant as the appellant could not establish on any basis that he faced a risk of indiscriminate violence as a result of an internal armed conflict contrary to Art 15(c) of the Qualification Directive.

16. Mr Tan submitted that the judge had found that the appellant would not be of interest to the authorities in the IKR on return as a result of being a Peshmerga at checkpoints en route to the IKR (see para 77 of the decision). Mr Tan submitted that the judge had been entitled to find that the appellant could not succeed, not only in his asylum claim, but also under Art 15(c) of the Qualification Directive and Art 3 of the ECHR.

17. As regards ground 2, Mr Tan accepted that the judge's reasoning in relation to replacement documentation was a "bit muddled". However, he submitted that it was wholly immaterial to the outcome of her decision. Her primary finding was at paras 72-73 that the appellant would be able to obtain his Iraqi passport and CSID document from the authorities in Germany and, therefore, he could safely return and travel within Iraq whilst in possession of those documents.

18. When pressed by me, Mr Tan acknowledged that the appellant would not be able to obtain a CSID or INID in the UK in the light of the *CPIN* at paras 2.6.15 and 2.6.16. He did not accept, necessarily, that the appellant's local CSA office was one of those which now only issued (necessarily in person) INIDs. However, as I understood Mr Tan's submissions, if the appellant's case turned upon redocumentation then the judge's "muddled" reasoning was problematic as to how he would, before travelling from Baghdad, obtain the necessary documentation to safely reach the IKR.

19. In his reply, Mr Vokes accepted that if the appellant had a CSID and passport at Baghdad that would make his arrival and journey a lot easier. He accepted, when I raised it with him, that the appellant was not challenging the judge's finding in paras 72-73 that he would be able to obtain his ID documents from Germany. He accepted that he could not argue that those documents would not suffice to allow him safely to travel within Iraq.

Discussion

Ground 1

20. As regards ground 1, the appellant's case is that the judge failed properly to take into account in assessing "risk" to him on return to Iraq that he suffers from PTSD. The appellant relies on headnote (5) of SMO and Others which identifies as a relevant "personal characteristic" those "individuals with disabilities". As is clear from para (312) of SMO and Others that includes those suffering with "mental illness". There it is stated:

> "The inclusion of category (vi) – persons with disabilities – is justifiably premised on a section of the EASO Report which records that there is sadly discrimination, and inadequate provision of healthcare and a high risk of violence, particularly against those with mental illness."

21. The difficulty with Mr Vokes' submission is, as Mr Tan pointed out in his submissions, that the UT in SMO and Others was considering the risk to an individual under Art 15(c) of indiscriminate violence arising from internal armed conflict in one of the "Formerly Contested Areas", namely the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din (see headnote (3)). That is not an assessment concerned with an individual within the IKR. As para [419] of SMO and Others points out, in the IKR: "[t]here is no general risk there, whether under Article 15(c) or Article 3 ECHR."

22. However, the UT recognised in [419] that individuals with a "specific profile" could nevertheless be at risk in the IKR and that a decision maker should apply the enhanced risk categories (summarised in headnote (5)) in considering whether an individual might be at risk in the IKR: that would be relevant to Art 3 of the ECHR. The UT pointed out three important factors, namely actual or implied association with ISIL, coming from an ISIL area, and being of fighting age. Of course, the appellant neither comes from outside the IKR nor is it suggested that any of those factors would apply to him, indeed, he was a Peshmerga working under the control of the PUK in the IKR.

23. Consequently, whilst I accept that the enhanced risk factors may be relevant to a person such as the appellant, they will only be so if taken into account with all the circumstances in determining whether the appellant is at real risk of serious harm falling within Art 3 of the ECHR or Art 15(b) of the Qualification Directive. They cannot be relevant to an individual such as the appellant in assessing any Art 15(c) risk in the IKR not least because Art 15(c) is predicated upon the risk of indiscriminate violence arising from, inter alia, "internal armed conflict". There is no such "internal armed conflict" in the IKR.

24. The point, understood in that way, reverts to be whether the judge erred in assessing that there was no Art 3 risk to the appellant of serious harm arising, in effect, from the fact that he is a person suffering from mental illness. In my judgment, the judge did not materially err in concluding that the appellant could not succeed under Art 3 on this basis.

25. First, although the country evidence before the judge, which was relied upon in respect of this issue, seems to have been no more than the "personal characteristic" of him being an individual with a disability and what was said in para [312]. The point made by the appellant in his grounds is that, as a person suffering from mental health, he is more at risk of being targeted. His claim is not that his mental health will result in harm to him as a result, for example, of a risk of suicide. The threshold of "serious harm" under Art 3 of the ECHR (and also Art 15(b) of the Qualification Directive) is a high one. In that regard, the judge made a number of findings, including that the appellant has family in the IKR who would provide support to him (see for example para 80). The appellant was also a person who worked for the controlling PUK government as a Peshmerga. Given the rejection of his asylum claim, there was nothing in the evidence to suggest that he would be a targeted individual on that basis.

26. In fact, the judge refers to the appellant's "mental health issues" in the IKR in para 81 of her decision. She clearly had those matters in mind. Further, at para 82 the judge found, having accepted the psychiatric evidence that the appellant suffered from PTSD, that the treatment proposed by Dr Ahmed in his report was in fact available and accessible to the appellant on his return. At para 82, the judge said this:

> "Although Mr Vokes did not address me on the issue of treatment on return, I have seen nothing that suggests that the treatment proposed by Dr Ahmed, or the medication required to treat the appellant's mental health issues is not available or accessible in Iraq, given my other findings about his family support. In fact, the Respondent's recent Country Policy and Information Note, 'Iraq: Medical and healthcare provision', version 2.0, published January 2021, specifically confirms that such treatment is available (13.1.3 pages 43 & 46)."

27. As the judge pointed out, the appellant's Counsel did not address her in relation to the availability of treatment for the appellant's PTSD on return and the judge's finding in para 82 is not now challenged in the grounds of appeal.

28. In his report Dr Ahmed recommends that the appellant should be treated by the initiation of antidepressant drugs and trauma-focused Cognitive Behavioural Therapy. In the *CPIN*, "Iraq: Medical and healthcare provision" (January 2021) at pages 43 and 46 the document notes the availability of "psychiatric treatment of PTSD by means of Cognitive Behavioural Therapy" at a private facility in Erbil and the availability of antidepressants, such as sertraline and citalopram also at a private facility in Erbil respectively. Whilst the appellant, of course, comes from Sulaymaniyah in the IKR, Erbil is nevertheless part of the IKR.

29. Although the judge refers to the appellant at times in her determination as if he were internally relocating to the IKR (see paras 76 and 81), in fact the appellant comes from the IKR and the issue was not whether it was unreasonable or unduly harsh for him to live there but whether, on this

issue at least, his return to the IKR would breach Art 3 of the ECHR because he would be at real risk of serious harm.

30. Having regard to the judge's findings that I have set out and that the judge clearly had in mind the appellant's mental health issues, it was reasonably and rationally open to the judge to conclude that the appellant could not succeed in establishing the high threshold for Art 3 (or indeed humanitarian protection under Art 15(b) of the Qualification Directive) based upon his mental health on return to the IKR. For these reasons, therefore, I reject ground 1.

Ground 2

31. I turn now to consider ground 2.

32. In SMO and Others, the UT recognised the importance of a CSID to an individual and the safety of their travel within Iraq and their ability to live thereafter. At para (11) of the headnote the UT said this:

> "The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel."

33. Further, at paras (13)-(16) of the headnote, the UT dealt with the issue, inter alia, of obtaining replacement CSID or INID documents. The UT said this:

> "13. 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.
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> 14. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.
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> 15. 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. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.

> 16. 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. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information."

34. As will be clear, at that time, the UT recognised that a CSID could be obtained from, for example, the Iraqi Embassy in the UK provided the individual had the required documents and, "critically", knew the volume and page reference of the entry in the Family Book in Iraq. By contrast, an INID – to which transition in issuing these was being made in Iraq – could only be obtained from the local CSA office by the individual in person, not least because it is a biometric document.

35. In her decision, the judge addressed the issue of whether the appellant would be at risk on return to Iraq because he would not have the relevant ID documents. At para 72, the judge concluded that the appellant would not need a replacement document as he could obtain both his passport and CSID from the German authorities which, on his own evidence, he had left with them following his asylum claim there:

> "72. However, the appellant accepts that he has an Iraqi passport and CSID document, which are currently with the authorities in Germany following his asylum claim there. I find it reasonable to expect these documents can be obtained on entry."

36. As Mr Vokes accepted, this finding is not challenged in the grounds. It is, in my judgment, determinative of the appellant's case that he would be at risk of treatment or ill-treatment contrary to Art 3 of the ECHR or Art 15(b) of the Qualification Directive on return because he would lack the relevant ID documents. That finding is not challenged and no basis has been put forward to suggest that it was not properly open to the judge given it was entirely consistent with the appellant's evidence as to where these documents were and that there is no reasonable basis for concluding that they could not be obtained from the German authorities.

37. It follows, therefore, that the judge's consideration of whether, in the absence of that original document, the appellant could obtain a replacement CSID or INID was not material to the outcome of the appeal. Any error, therefore, in reaching her finding that the appellant would be able to obtain a replacement document either in the UK or within a reasonable time after returning to Iraq (see para 72 of her decision) would not be a material error of law.

38. That said, I should note my view that the judge's reasoning on the issue of obtaining replacement documents would be difficult to sustain. First, she

seems to conclude that the appellant could obtain a CSID in the UK. That, of course, is consistent with what was said in SMO and Others at headnote para (13). However, even though SMO and Others is a country guidance case, the judge had evidence before her in the Home Office *CPIN* at paras 2.6.15 and 2.6.16 that it was "highly unlikely" that the appellant would, on the basis of new evidence, be able to obtain a CSID from the Iraqi Embassy. It was, at least, incumbent upon the judge to consider that evidence and whether it amounted to "very strong grounds supported by cogent evidence" to depart from SMO and Others (see SG (Iraq) v SSHD [2012] EWCA Civ 940).

39. Of course, the appellant could not obtain an INID from the UK. If his local CSA office had moved to the new INID system, he would have to obtain it in person at that office which, of course, he could not safely reach without an identity document (see SMO and Others at headnote paras (16) and (11)). There was material before the judge, as Mr Vokes pointed out in his submissions, in para 5.6.2 of the *CPIN* that the new INID system had been implemented in the bigger cities in the IKR which, at least on one view, would include Sulaymaniyah if that was the locus of the appellant's local CSA office. It was, at least, relevant to resolve the issue of whether his local office was only issuing INIDs because, even applying SMO and Others and the (then) country guidance that the Iraqi Embassy was still issuing CSIDs, it would not do so if the appellant's local CSA office had moved to only issue INIDs.

40. Finally, although it is not entirely clear from the judge's reasoning in paras 69-71, the issue of the 'Registration Document (1957)' raised in para 2.6.15 of the *CPIN*, refers to a document which, as para 2.6.15 of the *CPIN* points out and is cited by the judge at para 69, allows an individual to apply for a CSID or INID card "once they have returned to Iraq". The judge does not consider the issue of whether that document, even if the appellant could obtain it in the UK, would allow him to safely travel from Baghdad back to his home area in the IKR.

41. Had, therefore, it been central to her finding that the appellant could not succeed under Art 3 or Art 15(b) of the Qualification Directive because he would be able to obtain a replacement ID document, the issues in her reasoning that I have identified would have led me to conclude that her finding was unsustainable. But, her finding in relation to whether the appellant could obtain a replacement document was made in the alternative if, contrary to her primary finding, he was not able to obtain the original documents (namely his passport and CSID) from the German authorities. As I have already said, that primary finding is determinative against his claim under Art 3 or Art 15(b) of the Qualification Directive that he could not safely travel from Baghdad to his home area in the IKR. For those reasons, any error in her reasoning concerned with obtaining replacement documents, was not material to the outcome of the appeal and, for those reasons, I reject ground 2 also.

Decision

42. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of a material error of law. That decision stands.

43. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
6 December 2021