Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00449/2015

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice
On 23 November 2020

Decision & Reasons Promulgated
On 15 June 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SA
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Burrett, Counsel instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and so is entitled to privacy.

2. This Decision and Reasons follows a finding of an error of law in a decision of the First-tier Tribunal by a panel of this Tribunal comprising myself and Upper Tribunal Judge Blundell. Our Decision and Reasons for finding an error of law was promulgated on 27 January 2020 but in order that this document can be understood in its entirety without reference to anything else I explain something of the history of this case.

3. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent on 25 June 2015, but explained

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further in a letter dated 7 July 2017, refusing to revoke a deportation order made against him.

4. It is accepted that the appellant was born on 1 January 1980 and is a citizen of Iraq. He has been previously the subject of a deportation order that was signed on 21 August 2007. He was not able to appeal that successfully and he left for Iraq on 7 December 2007 but returned irregularly in January 2009 contrary to his obligations under the deportation order. He came to the attention of the authorities on 25 January 2010 when he was arrested for an offence of burglary. He made representations on human rights grounds but the respondent refused to revoke the deportation order in a decision dated 22 March 2010. In January 2014 the respondent made a further decision to refuse asylum and human rights based claims and there was a further decision on 25 June 2015 refusing him asylum and leave to remain on human rights grounds and the deportation order remained in force.

5. On 1 July 2016 he was sentenced to twenty years' imprisonment for conspiracy to supply drugs of class A, namely heroin.

6. As we explained when we found there was an error of law it is clear to us there is no prospect of the appellant being released from prison for another five years. He is accepted to be an Iraqi Kurd and, without being in any way disrespectful to him on that account or to the people of Iraq generally, there are proper reasons to anticipate significant changes in conditions in that country in the intervening time. I understand why the appeal was being pursued. Once an application is made and decided it can be difficult for an applicant not to continue with an appeal without creating the risk of any future application being processed summarily. The respondent, however, could simply withdraw the decision but she chose not to do that. I must do my best to make a decision on the evidence but I do note a substantial air of unreality in the process. If I may say so (because I recognise this is arguably not part of my function) I understand the point of making a decision to deport a prisoner sufficiently before a release date to give effect to that decision after any appeal and before the offender is released in the United Kingdom. However, the periods of time involved here, without explanation, make it very difficult to see what the point is in these proceedings.

7. Nevertheless they have been brought and I must do my best with them.

8. It is for the appellant to prove his case. Insofar as he relies on Article 3 of the European Convention on Human Rights he must show there is a real risk of his being subjected to serious ill-treatment in the event of his return.

9. There are more unusual aspects to the case. When the appeal came before me the appellant was not present. He was in prison. It was explained that he was unwell but Mr Burrett was careful to say that he was not seeking an adjournment but wanted to make submissions based on the evidence that was before me. He is of course entitled to present the case like that and Mr Burrett is more than sufficiently experienced to understand the difficulties that would follow. I do have a bundle and that includes witness statements, they do not appear to be all signed and there is obviously no opportunity to cross-examine. The evidence from the appellant is weak.

10. Again, to summarise by way of introducing my decision so it is easy to follow, it is the appellant's case that he cannot be returned safely because he does not have the necessary travel documents to travel across Iraq to a place where people of Kurdish ethnicity can avoid a real risk of serious ill-treatment. Again for the purpose of outlining the case, the appellant says he cannot get the necessary travel documents. It was Mr Burrett's case that, notwithstanding the weak evidence in support of that contention, when looked at carefully it is so plausible a claim that I need to accept it, bearing in mind the lower standard of proof.

11. The supplementary letter of 7 July 2017 says nothing about any difficulties the appellant might have in returning to a safe part of Iraq.

12. Appropriately, Mr Burrett relied particularly on his skeleton argument, which I summarise below.

13. The error of law was summarised as a finding that the First-tier Tribunal had erred by failing to give proper reasons to explain why the appellant would be able to obtain a CSID card and therefore travel freely in Iraq.

14. The issue before me was whether the appellant had shown me that he would not be able to obtain the necessary documents to enable his return to Iraq. Although he carries the burden of proof, it is sufficient of her proves his case to the low "real risk" standard.

15. The grounds reminded me of the decision in **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)**, which is the most up-to-date country guidance and where we said at paragraph 7 and 8 of the headnote:

> "7.Return of former residents to the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.
>
> 8. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents."

16. We then said at paragraph 11 and 16:

> "11.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 to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.
>
> 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 the INID terminals have not been installed will

continue to issue CSIDs to individuals and their proxies upon production of the necessary information."

17. The skeleton argument then referred to the parts of the headnote where we said there were regular direct flights to the Iraqi Kurdish Region and to Baghdad and it is for the respondent to state where she intends to remove the appellant and in this case the appellant is to be removed to Baghdad.

18. Once a person who comes from the IKR is returned there, family members would be obliged by custom to accommodate him and living conditions generally would be acceptable. Where there is no family support there are critical housing shelters but they are often of an unacceptably low standard and would need to find somewhere between US$300 and US$400 a month for rent. A person returned voluntarily would get access to a capital sum.

19. As far as this case is concerned, Mr Burrett drew my attention to parts of the witness statement. It is the appellant's case that he left Iraq on 25 June 2001, re-entered the United Kingdom on 20 July 2001 and then was returned to Iraq on 6 December 2007 on documents issued by the UK authorities flying into Erbil.

20. He says he stayed with his aunt in Halabja but remained indoors and kept a low profile and did not use any form of ID while in Iraq. He left Iraq with the assistance of an agent and travelled clandestinely through Turkey, Greece, Italy and France and returned to the United Kingdom on 25 January 2009.

21. He denies having any contact with his parents or siblings since leaving Iraq in 2001 and no contact with his aunt since 2015.

22. He said he has never had an Iraqi passport and is not aware of having an Iraqi identity document. He does not know whether his father had one or whether his family was registered.

23. This is the outline of the case and I see no need to make further reference to the witness statements at this stage.

24. Mr Burrett submitted that the appellant's contention that he has lost all contact with his family is at least plausible. The appellant left Iraq thirteen years ago and has been in prison since 2015.

25. He drew attention in the appellant's bundle to the record of telephone calls the appellant had made from prison and there are no international calls shown. This, Mr Burrett submitted, strongly implies that the appellant has no continuing relationship with any relative or acquaintance in Iraq.

26. Significant it was established on evidence in an earlier country guidance case, **AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC)**, that there has been a large scale displacement of people in the KRI including the Sulaymaniyah district where the appellant's family and aunt are last known to reside. The appellant's claimed lack of contact is consistent with general evidence of dispersement and people getting lost.

27. It is the appellant's case that returning him to Iraq would be contrary to his rights under Article 3 of the European Convention on Human Rights because he could not get the necessary identity documents to return home or support himself in Baghdad.

28. Mr Burrett reminded me that in **SMO** we decided that the likelihood of getting replacement identity documents by proxy was diminishing anyway because of the introduction of the new INID system. The respondent intended to return the appellant to Baghdad without a CSID. To establish himself the appellant would have to travel internally to an office to try and obtain one and would risk ill-treatment on the way. Normally this gives rise to humanitarian protection claim. It was not argued that he still has strong ties to the United Kingdom although he has had a relationship with a British citizen and has British children.

29. The appellant has spent close to half of his life in the United Kingdom. He did go back to Iraq as he was deported and, discreditable as his return may be, it supports his case that he could not re-establish himself in Iraq. He did have some support when he returned in 2007 when he could be accommodated and supported in his home area but he would not be returned there and time has passed. He really has no-one to help him.

30. Mr Lindsay's submissions were essentially very simple and succinct. The burden of proof is on the appellant, albeit to the low "real risk" standard. The appellant is thoroughly discreditable (a point substantially acknowledged properly by Mr Burrett) and there is not enough evidence from other sources to support the conclusion that he really has no contact of any kind in Iraq that could help him obtain the necessary documents.

31. Mr Lindsay said that the clear fact that the records of telephone calls from prison do not show any overseas call proves only that no overseas calls are known to have been made by him. It does not follow that the appellant would have to contact somebody directly in Iraq or elsewhere outside the United Kingdom to arrange for help.

32. I asked Mr Lindsay what more the appellant could actually do to prove his case, assuming that he was telling the truth and Mr Lindsay pointed out that there are organisations, particularly the Red Cross, that provide tracing services. There was no indication that they had even been contacted. There really was no evidence of any serious effort to make contact relative and the appellant's claims that there was no-one to contact were from an incredible source. He had just not proved that he could not obtain a CSID.

33. I now look on to consider the evidence in the case. Very little can be said with certainty about this appellant because he has told so many stories and has admitted telling stories. However, his date of birth is said to be 1 January 1982 and he claims he entered the United Kingdom in July 2001. That means he was 19 years old when he entered the United Kingdom.

34. In different statements he denies ever having a Civil Status Identity Document (CSID). In his statement at page 186 in the bundle he says: "I am not aware if I had a Civil Status Identity Document. As far as I am aware I have never had any form of

ID in Iraq." In his statement dated 17 August 2018 he says: "I wish to state I do not believe I have ever had an Iraqi ID or have never seen one."

35. Both of these statements are surprising. As was explained by this Tribunal in **<u>MK</u> (documents - relocation) Iraq CG [2012] UKUT 00126 (IAC)** and has not been disproved in later country guidance, the CSID is an important document for its own sake and as a gateway to other documents within Iraq. I have looked at the Country Policy and Information Note on Iraq dated June 2020. I do not think this is controversial. It is a public domain document and here dealing something that will be well understood by anyone with experience in cases involving returning people to Iraq. At 5.4.3 it quotes a 2015 Landinfo report describing that the CSID is

> "Deemed to be the most important personal document, since it is used in all contact with the public authorities, the health service, the social welfare services, schools, and when buying and selling houses and cars. In addition, the ID card must be presented when applying for other official documents, for example passport."

36. I appreciate that Kurdish people often had a looser relationship with the State of Iraq than do other ethnic groups and the appellant was young when he claims to have left but he was not a child and he was not unaware of at least some of the details of civil society. It would be extraordinary if he did not know if he had a CSID card but useful for his purposes to be vague about whether he had one or not.

37. The appellant had no difficulty saying categorically, not necessarily truthfully, that he had never been issued with an Iraqi passport (paragraph 28 of statement 2 May 2014 page 78).

38. He said there how, when he had returned to Iraq, he contacted a friend who had also been returned to Iraq. They went to his aunt's house. His aunt had claimed to have no knowledge about the whereabouts of his relatives but his aunt advised him that it was not safe and helped him keep a low profile whilst he found an agent and paid £1,000 and then travelled through Turkey, Greece, Italy, France and then back to the United Kingdom.

39. I do not know if these claims are true. I appreciate that many people, apparently, are able to move between countries without proper documentation and it might be right that he has not got proper documentation but I see no reason to accept his evidence about anything and I am not satisfied that even that part of his case is truthful.

40. I do not accept his claim that he did not have a CSID card because that is not a likely to be right and he is not a truthful person.

41. His claim to have completely lost contact with his family is made particularly clearly at paragraph 7 of his statement dated 2 May 2014. It makes sad reading. He described his father, mother, and two brothers as "whereabouts unknown", another brother as "deceased", three sisters as "whereabouts unknown", and two sisters as "deceased" and then he claimed to have a nuclear family in the United Kingdom.

42. He has said that he had had no contact with his parents or siblings since leaving Iraq in 2001. I accept that there is no evidence that directly refutes this claim. As was pointed out by Mr Burrett, there is clearly no evidence of him actually making contact with anybody outside the United Kingdom at all.

43. Nevertheless, having been deported to Iraq, and he was able to live there for a little while while he organised his way to come back to the United Kingdom. This does not prove that he has identity documents and I do not say that it does but it does leave me doubtful when he claims to have no documentation at all. Certainly, documentation would have been useful in that time.

44. I have looked carefully at the report of Dr Alan George dated 30 September 2017. Dr George is a well-known commentator on conditions in Iraq and the parts of the report that deal with the background situation in the country are, I find, extremely helpful. He comments on the plausibility of the appellant's account but that, although helpful on in its own terms, is not particularly relevant for me.

45. There is nothing in Dr George's report or the expert's report or other evidence which compels the conclusion that the appellant is telling the truth when he says he has no contact with his family and so many of his relatives have died. I accept that there has been considerable disruption in the part of the world that the appellant calls his home and the claim that his family have moved away and he has lost contact is not inherently unbelievable but that is not sufficient to satisfy that there is a real risk to the appellant in the event of his return.

46. If the appellant were known to be a truthful person in other respects the fact that his claim to have lost contact with his relatives is plausible might be sufficient, given the low standard of proof, to support a finding in his favour. It is not sufficient on its own. To overcome the disadvantages the appellant has acquired by his various and dishonest accounts and dishonest life in the United Kingdom, I find I need something specific rather than general and although he tells a plausible account I find that is insufficient on its own to lead me to the conclusion that the appellant has established a real risk.

47. I am particularly impressed with Mr Lindsay's obvious but apt observation that the appellant not even attempted to engage with the Red Cross or other organisations that specialise in reuniting relatives. The Red Cross should not have to be bothered with people who are not sincere. Sometimes Red Cross officials put themselves at considerable personal risk trying to reunite families and it must be very galling for them when the real purpose of the enquiry is to show that relatives cannot be found. However, that step has not even been taken here. It might not have achieved very much but it adds to the picture of someone contend to find reason why he cannot be returned to Iraq rather than keen to find ways to establish himself there.

48. In his reply to submissions Mr Burrett said that the past history had never really been disputed. I should remember it is hard to prove a negative. Looked at objectively, the probability is that the appellant is telling the truth.

49. I do not agree. The appellant is telling a story capable of being true but it does not have to be true. It is not even highly likely to be true. It is merely plausible. The appellant is not plausible. The appellant is a liar. That does not stop him being plausible but it does not mean he has to be believed.

50. Where I disagree with the First-tier Tribunal is that I am not prepared to say that I am satisfied that the appellant has got a CSID or would be able to obtain necessary

documentation. I do not know. However, I am satisfied that he has not persuaded me that he cannot and that is what he had to do. Without credible evidence from him I see no proper basis for assuming that the plausible nature of his account means that the account should be believed.

51. I do appreciate the subtleties that arise from concluding that something is plausible but not accepting that it is reasonably likely to be true.

52. I have re-read the judgment of the Supreme Court in **MA (Somalia) v SSHD [2010] UKSC 49**. Sir John Dyson SCJ said at paragraph 21:

"For Appellants who appeal to the AIT in Refugee Convention or Article 3 cases, the stakes are often extremely high. The consequences of failure for those whose cases are genuine are usually grave. It is not, therefore, surprising that appellants frequently give fabricated evidence in order to bolster their cases. The task of sorting out truth from lies is indeed a daunting one. It is all too common for the AIT to find that an appellant's account is incredible. And yet there may be objective general undisputed evidence about the conditions in the country to which the Secretary of State wishes to send the appellant which shows that most of the persons who have the characteristics of, or fall into the category claimed by, the appellant would be at real risk of treatment contrary to Article 3 of the ECHR or persecution for a Refugee Convention reason (as the case may be), but that a minority of these, because of special circumstances, are not subject to such risk. How should the AIT approach such general evidence where they do not believe the evidence given by the appellant that bears on the question of whether such special circumstances apply? That was the problem which confronted the AIT in the present case. The Secretary of State wished to return MA to Somalia. This involved sending him to Mogadishu. The objective evidence about conditions in Somalia was that only a person who had close connections with powerful actors (such as prominent businessmen or senior figures in the insurgency or in powerful criminal gangs) was likely to be safe if returned to Mogadishu. MA gave a great deal of conflicting evidence to the effect that he had no connections in Mogadishu at all. The AIT found that he had not told them the truth about his links and circumstances in Mogadishu (para 109). But they were unable to find positively that he did have connections there, still less that he had close connections with "powerful actors"."

53. At paragraph 48 he said:

In our view, on a fair reading of paras 109 and 121 in the light of para 105, it is clear that the AIT was not throwing up their hands and rejecting MA's appeal because he had lied without more. They were saying that, because he had told lies, they were unable to make any relevant findings and the appeal failed because MA had not discharged the burden of proof.

54. On that occasion the Supreme Court upheld the Upper Tribunal's approach.

55. I confirm that I am not dismissing the appeal because the appellant has told lies. I dismiss the appeal because I cannot believe what he tells me and although there is background evidence making his account plausible in important parts that is not enough to persuade me that it is reasonably likely to be true in this particular case. It does not have to be true. It does not follow that because there has been huge disruption in his home area and many people have departed that the appellant's family are amongst them. It does not follow that because many people have lost contact with their close relatives the appellant's family members have lost contact with him. There is no independent evidence that makes good the gap created by the appellant being unreliable.

56. Putting all these things together, I dismiss this appeal.

Notice of Decision

57. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 11 June 2021