



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08476/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House
On 28 April 2021

Decision & Reasons Promulgated
On 17 May 2021

Before

UPPER TRIBUNAL JUDGE PITT

Between

[A S M]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Pennington, Counsel instructed by Kings Law Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a re-making of the appellant's claim to be in need of humanitarian protection under Article 15(c) as set out in paragraph 339C of the Immigration Rules:

"Substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country".

2. The appellant is a national of Iraq, born on 1 January 1989. He came to the UK on 27 November 2007 at the age of 18. He claimed asylum but that claim was refused on 16 January 2009. The appellant appealed to the Asylum and Immigration Tribunal and on 16 January 2009 Immigration Judge Wallace refused his appeal. As set out in paragraph 11 of the respondent's current refusal letter dated 21 August 2019, Judge Wallace did not find the appellant to be a credible witness and his evidence was found to be vague and to contain contradictions and inconsistencies. Judge Wallace concluded that the appellant "has manufactured an asylum claim in an attempt to legitimise his stay in the United Kingdom".
3. The appellant became appeal rights exhausted on 5 March 2009. He remained in the UK, however, and in 2018 applied for indefinite leave to remain. That application was refused on 19 April 2018. He made further submissions on asylum and protection grounds on 20 January 2019. The respondent refused to grant leave on the basis of those submissions but accepted that they amounted to a fresh claim.
4. The appellant appealed again, this time to the First-tier Tribunal. His appeal was dismissed by First-tier Tribunal Judge Ford in a decision dated 27 January 2020. Certain parts of that decision remain relevant to the decision that must be made now.
5. In paragraph 22 Judge Ford did not accept that the appellant had never had a CSID document. In paragraph 23 Judge Ford found that the appellant could be expected to obtain details of his CSID document from adult male relatives in Iraq but had chosen not to do so. In paragraph 24 Judge Ford found further that the appellant was not consistent about his evidence of being able to contact his family in Iraq. In paragraph 25 (vi) Judge Ford again found the appellant "to be incredible in his account of only having one contact with his family after arrival in the UK and I find that he has lied on this issue". She went on to find:

"I find that he can contact his family should he choose to do so. I also find that he has a father, uncle and brother who can approach the government office where his details were registered and assist him in securing the necessary details to re-document himself and secure a CSID".
6. In paragraph 28 of the decision Judge Ford accepted that the appellant was from Kirkuk. In paragraph 29 she again found that the appellant was able to contact adult male family members for assistance in securing documentation and that those family members could offer him material support on his return to Iraq.
7. In paragraph 30 Judge Ford concluded that the appellant's claim for protection because of a dispute with another family or for any other reason was not credible. She found:

"His account continues to be vague and inconsistent and he has only added to the credibility concerns in his further submissions. Having assessed the evidence as a whole, he has failed to establish even the core of his claim to the lower standard of proof".

8. The appellant appealed against the decision of First-tier Tribunal Judge Ford. His application was initially rejected by the First-tier Tribunal in a decision dated 5 March 2020. However, the Upper Tribunal, in a decision dated 15 May 2020, granted permission to appeal. The grant of permission said this:
- “2. I am however prepared to grant permission. It is in particular arguable that in its assessment of whether the Appellant would be reasonably likely to obtain an identity document from the Iraqi Embassy in London [at FTT §36] the Tribunal has failed to have regard to Dr Fatah’s evidence in AAH Iraq CG [2018] UKUT 00212 (IAC) that the embassy staff, and the central authorities in Iraq, are working under significant constraints and are not generally helpful. Whilst it may remain *possible* to obtain documents from the embassy, the question for the Tribunal was whether it was *reasonably likely* that this Appellant, who has been in the United Kingdom since 2007, could do so.
 3. Given the guidance in SMO and Others (Iraq) CG [2019] UKUT 00400 (IAC) the question of documentation was of critical significance, at least as far as humanitarian protection is concerned. The First-tier Tribunal accepts [at FTT §32] that the Appellant’s home area is Kirkuk. In SMO the Tribunal found [at UT §431] it to be likely that Kirkuk has a new ‘INID’ terminal and so it would not in fact be possible, as the First-tier Tribunal finds here [at its §36], for a family member to obtain a card by proxy on behalf of the Appellant. This would leave the Appellant at Baghdad Airport with no identity documents for onward travel, and in accordance with the Home Office concession accepted by the Tribunal in SMO, at a real risk of destitution, and conditions contrary to the minimum standards set out in Article 15(b) of the Qualification Directive”.
9. The appeal then came before Upper Tribunal Judge Perkins on 26 October 2020 for a decision on error of law. In a decision issued on 19 November 2020, Judge Perkins found an error of law in the decision of First-tier Tribunal Judge Ford. At the hearing before the Judge Perkins, indicated in paragraph 5 of the decision, the appellant indicated that he no longer intended to pursue the asylum element of his claim but maintained the ground of humanitarian protection. The issues in dispute at the error of law hearing were therefore limited to whether the appellant could obtain documentation enabling him to return to Iraq and travel safely to his home area of Kirkuk. The respondent accepted that the First-tier Tribunal had erred in the assessment of whether the appellant could obtain documentation enabling him to return safely to his home area; see paragraph 6 of the decision of Judge Perkins. The error of law finding was limited to this narrow point; see paragraph 10. The appeal was then reserved for a re-making on the limited issue of the appellant’s ability to obtain documentation enabling him to return to Iraq and travel safely to his home area. Thus the appeal came before me.
10. A great deal is no longer in dispute. It is common ground that the appellant does not have any form of identity document that will allow him either to return to Baghdad Airport or to travel from Baghdad Airport to his home area. From the decision of Judge Ford there are the extant findings that he is from Kirkuk and has a number of

male family members there who can be expected to assist him in obtaining the documentation. The finding in paragraph 431 of SMO that it is unlikely that the appellant's family in Iraq can obtain a CISD by proxy in Kirkuk was not disputed. The question was therefore whether the appellant could obtain an INID or other document from the Iraqi authorities in London enabling him to travel to Baghdad airport and onward to Kirkuk.

11. The parties before me accepted that the country evidence on how an undocumented Iraqi might be able to return safely to Iraq has moved on since the Tribunal's findings in SMO. The latest material was set out respondent's Country Policy and Information Note "Iraq: Internal relocation, civil documentation and returns" issued in June 2020. Both parties addressed me on this document.
12. The CPIN sets out in paragraphs 2.6.15 to 2.6.16:

"2.6.15 Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

'The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document [see paragraph 2.6.24 for list of national identity documents] and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents' names, place and date of birth to their nominated representative in Iraq.

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

'The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

- 2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq".

13. The CPIN at paragraph 5.6.4 relies on a European Asylum Support Office (EASO) "Country of Origin Information Report - Iraq: Internal mobility" document dated February 2019 as confirmation that an INID:
- "... cannot be issued through Iraqi embassies and Iraqis abroad must go to Iraq to get one. The cards cannot be issued to a proxy representative due to the need for fingerprints and iris scans".
14. The most recent country evidence therefore shows that the Iraqi authorities in London are advising Iraqi nationals without documentation to apply for a registration document. This document "must be applied for on the applicant's behalf by a nominated representative in Iraq". As before, it is not disputed that this appellant is has male relatives in Iraq who can make that application for him. The fact that the appellant does not currently have a copy of a national identify document is not a bar as he can cure that omission by way of a British power of attorney validated by the FCO and sent to his relatives in Iraq.
15. The appellant argues that this process would be difficult because of the approach taken by the Iraqi authorities in London. He relies on evidence given by an expert witness, Dr Fatah, in an earlier country guidance case of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC). At paragraph 105 the Upper Tribunal set out as follows:
- "Second, the anecdotal evidence on the willingness of officials to assist undocumented IDPs is not promising. Dr Fatah cites the findings of the NGO 'Ceasefire Centre for Civilian Rights' who were told by interviewees that they were met with indifference, corruption, incompetence and even sarcasm by bureaucrats. Dr Fatah confined his own observations on embassy staff in the UK to saying that they are, in general, 'not helpful'. Dr Fatah attributes this, in part, to the fact that post-Saddam many professional career civil servants were sacked in the process of 'de-Ba'athification'".
16. It is my view, however, that, set against the clearly laid out process for obtaining a registration document, the generalised statement from Dr Fatah that the embassy staff are "not helpful" is not sufficient to show that the appellant will be unable to obtain the documents he needs to return to Iraq and travel to his home area where he can obtain an INID.
17. Further, the information from the Iraqi authorities contained in paragraph 2.6.16 of the CPIN states that someone who has a registration document can return to Iraq and then obtain an INID from a "local office". This indicates that a registration document is sufficient for an individual to travel internally in Iraq to their home area and I was not taken to any material suggesting otherwise.
18. It is therefore my conclusion that the appellant can obtain the necessary documentation to return to Baghdad and then travel to Kirkuk and can then obtain the INID he needs to re-establish himself in Iraq.
19. For these reasons, it is not my view that the appellant has shown that he is in need of humanitarian protection.

Notice of Decision

The appeal is refused on humanitarian protection grounds.

Signed: *S Pitt*
Upper Tribunal Judge Pitt

Date: 6 May 2021