



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09064/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House *via Skype for Business*
On 22 April 2021

Decision & Reasons Promulgated
On 05 May 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. K Wood, Legal Representative, IAS (Liverpool)
For the Respondent: Mr. S Kotas, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Alis ('the Judge'), sent to the parties on 16 December 2020, by which the appellant's appeal against a decision of the respondent to refuse his protection claim was refused.
2. Judge of the First-tier Tribunal Beach granted the appellant permission to appeal on all grounds.

Appellate history

3. The appellant's appeal was previously considered by Judge of the First-tier Tribunal Lang by means of a decision dated 30 October 2019. This decision was set aside by a decision of Deputy Upper Tribunal Judge Chapman, dated 11 March 2020, to the extent that the appeal was remitted to the First-tier Tribunal to determine in the light of the country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC):
 - i) Whether the appellant can safely be returned to Kirkuk; and
 - ii) If not, whether it would be reasonable and not unduly harsh to expect him to internally relocate.
4. Judge Chapman confirmed the preservation of the unchallenged findings by Judge Lang that the appellant does not have a well-founded fear of persecution in Iraq and that he would be able to obtain his original CSID or a replacement within a reasonable time frame.

Remote Hearing

5. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in the same manner as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

Anonymity

6. The Judge made an anonymity order and no party before me requested that it be set aside. I confirm the order at the conclusion of this decision.

Background

7. The appellant is a national of Iraq and is presently aged 35. He is a Turkman who was born and resided in Kirkuk. Turkmen are a minority ethnic group in Iraq who are of Turkic origin and who mostly adhere to a Turkish heritage and identity.¹The respondent's CPIN, *'Iraq: Sunni Arabs'*, version 3 (January 2021), references at para. 3.1.2 the Australian Department of Foreign Affairs and Trade (DFAT) *'Iraq Country Information Report'* (August 2020) which observed that Turkmen are regarded primarily as an ethnic rather than religious group in Iraq.
8. The appellant clandestinely arrived in the United Kingdom in August 2015 and claimed asylum soon after his arrival. He asserted a fear of ISIS (also known as ISIL). By a witness statement dated 25 January 2016 the appellant stated that he last saw his parents and siblings in 2014 when his village was invaded by ISIS. He confirmed that he did not know what happened to them and they may have been killed. He explained that two men whom he knew from the mosque stopped him and asked whether he would assist them. They approached him three times. The appellant believed that they worked with a terrorist group. Upon informing his uncle as to the approaches, he was advised to leave the country.
9. In his asylum interview held on 12 September 2018, the appellant confirmed that his siblings had been killed. He explained that he was working in a garage when a group of people approached him in July 2015 to undertake some metalwork on their behalf. He was invited for meals. He was subsequently informed that they wanted to convert some cars into armoured cars. He saw these men on three or four occasions. They tried to recruit him. They advised him to keep the conversations secret and informed him that they would kill him and anyone he spoke to if he discussed such matters. He informed his uncle who advised him not to undertake the work. After his refusal, the men planted a bomb in front of his uncle's house.
10. In his second witness statement, dated 11 October 2019, the appellant detailed, 'I believe that my mother and siblings were killed when ISIS destroyed our village - I don't know this for certain - but it is something I strongly believe happened'.
11. The respondent refused the application for international protection by a decision dated 5 September 2019. It was accepted that the appellant is an Iraqi national, ethnically Turkman and from Kirkuk. Consequent to several identified inconsistencies in the appellant's stated history, and the failure to raise relevant facts in his screening interview, the respondent did not accept the appellant's assertions as to his fear of ISIS.

¹ The last reliable Iraqi census permitting minorities to register was in 1957. Whilst there is no accurate record as to the number of Turkmen residing in Iraq, reputable estimates range from 10 to 13% of the population (3 to 3½ million), with the majority residing in northern and central regions of the country.

12. Judge Lang found, at [31] of her decision, that there were many inconsistencies in the appellant's account of the threats made to him. She determined that the appellant would be able to obtain his original CSID or a replacement within a reasonable timeframe, at [35].

Hearing before the FtT

13. The appeal came before the Judge sitting in Manchester on 7 December 2020. It was dismissed by a decision sent to the parties on 16 December 2020.

14. The Judge observed amendments to the appellant's evidence, at [38]-[42]:

'38. In adopting his statements before me the appellant maintained the previous account but now claimed (a) he claimed his maternal uncle only had a copy of his CSID whereas previously he had claimed he had the original; (b) his uncle continued to live in the same house and (c) he last spoke to his uncle around three months ago.

39. With regard to the CSID card, Mr. Wood [the appellant's representative] invited me to accept the appellant's evidence and find the appellant had meant his uncle only had a good quality copy of his CSID card.

40. Mr. Royle [the presenting officer] referred me to what the appellant had said in his interview and second statement. I would also add Judge Lang recorded at paragraph [16] of his/her decision that the appellant believed his CSID card was probably still at his uncle's house. The appellant has not suggested the document was no longer with his uncle.

41. Until November 2020 the appellant had always stated his maternal uncle had his original CSID card and whilst I have considered his attended explanation, I reject that explanation. The appellant has used the same legal representatives throughout and a consistent theme throughout his evidence prior to November 2020 was his uncle had his original CSID.

42. Having considered all the evidence, I am satisfied that the appellant's maternal uncle is in possession of the appellant's original CSID card. I also find the appellant remains in contact with him.'

15. The Judge concluded as to the appellant's ability to return to Iraq and travel to Kirkuk, at [47]:

'47. As I have found the appellant has access to his original CSID card I find he could be returned on a Laissez Passer and then he would be able to travel within Iraq on his CSID card. he would not need to obtain an INID card but even if he did he could use his original CSID to obtain such a document in Kirkuk.'

16. In respect of the appellant's ethnicity, the Judge observed at [48]-[50]
- '48. The next issue is whether he can return to live in Kirkuk safely having regard to his ethnicity. Mr. Wood argued that the appellant would by virtue of his father's associations to the Ba'ath Party be perceived to have been involved with ISIL and in opposition to the forces currently controlling Kirkuk and given the presence of Popular Mobilisation Units (PMU) he would be at risk of harm as a result of belonging to the Turkmen ethnic group.
 - 49. In SMO Dr Fatah confirmed that Kirkuk was an ethnically diverse area with Kurds, Arabs, Turkmen, Christians and Assyrians living there. The UNHCR May 2019 guidance underlined the importance of considering whether an individual can take up residency and 'durably remain' in the area under consideration, particularly with reference to Sunni Arabs and Sunni Turkmen. The Upper Tribunal accepted that the situation in Iraq is incomparable to how it was in the period 2014-2017. However, a (massively depleted) threat from ISIL, and other security challenges remain, and it was clear that the security agencies including the PMU were rigorous about checking the identities of individuals who travel from one area to another.
 - 50. The conclusion of the Upper Tribunal in SMO was that where an individual had a connection with a formally contested area, there was no reason why that person would be unable to secure the necessary documentation to settle in such an area. Prior to coming to the United Kingdom, the appellant had lived in Kirkuk without difficulties save for the threat posed by ISIL.'
17. As to the appellant's fear arising from his father's involvement with the Ba'ath Party, the Judge observed that he was required to undertake a fact-sensitive, sliding scale assessment. He reminded himself at [51] that the impact of any relevant personal characteristics must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIS activity and the behaviour of the security actors in control of the area. He noted that a relevant factor is membership of a national, ethnic or religious group which is either in the minority in the area or not in *de facto* control of the area. The Judge concluded, at [52]:
- '52. His father died in 2004 and the appellant did not describe any other problems, other than the problems that led him to flee. I do not accept his father's association to the Ba'ath Party would lead to the PMU perceiving him to be involved with ISIL. He has a home to return to because he remains in contact with his maternal uncle who he told me continues to live in the same house. He has a support network in place taking into account Judge Lang's previous unchallenged findings together with what

is known about the appellant I am not satisfied that his ethnicity would place him at risk of serious harm.'

18. The Judge determined at [54]:

'54. I therefore conclude that this appellant, on the facts of the case, could safely return to Iraq specifically to live in Kirkuk. His return will be via Baghdad on a Laissez Passer, but he would be able to travel safely on his CSID card to Kirkuk without interference.'

Grounds of Appeal

19. The concise grounds of appeal raise two grounds of challenge:

- i) Inadequate reasons as to the reasonableness of the appellant returning to Kirkuk consequent to his father's involvement with the Ba'ath Party.
- ii) Inadequate reasons as to the reasonableness of the appellant returning to Kirkuk as an ethnic Turkman.

20. In respect of [52] of the decision, detailed above, the grounds assert at §5:

'5. It is respectfully submitted that Judge Alis has failed to provide any reasoning for his material findings of fact above. The Appellant is unable to comprehend why his appeal has been refused. The absence of reasoning required by SMO must vitiate Judge Alis' overall adverse conclusion on the Appellant's appeal. Had Judge Alis not materially erred in law then the First-tier Tribunal could have come to a different conclusion on the Appellant's appeal. The Appellant seeks the remedy of having Judge's Alis' decision set aside and his appeal reheard.'

21. The grounds of appeal do not advance a complaint concerning internal relocation. Such ground would only be considered if the appellant could succeed as to his present grounds of appeal, which are concerned with his case that his return to Kirkuk would breach his protected article 3 rights and/or article 15(c) of the Qualification Directive.

22. Judge Beach gave reasons when granting permission to appeal:

'3. The First-tier Tribunal Judge considers the appellant's ethnicity and his claim that he would be at risk because of his father's previous involvement in the Ba'ath Party [52]. He notes that the appellant did not previously face problems as a result of his father's claimed involvement with the Ba'ath Party. The First-tier Tribunal Judge refers to the UNHCR evidence with regard to ethnicity and the need to ensure that a returnee could take up residence and 'durably remain'. [49]. The First-tier Tribunal Judge gives some reasons for finding that the appellants would not be at

risk as a result of his ethnicity. However, it is arguable that he did not fully engage in the arguments before him with regard to ethnicity and that he did not give clear reasons as to why the appellant would not be at present risk as a result of his father's claimed involvement in the Ba'ath Party (notwithstanding that he did not face problems in the past).

Decision on Error of Law

Ground 1

23. In his witness statement, dated 11 October 2019, the appellant stated in simple terms that his father used to work in local government during the time of Saddam Hussein, at §5; that as his father worked under Saddam Hussein such fact would cause him problems in Kurdistan, at §29; and that as his father was 'in the Ba'ath Party' he could not live in Kurdistan, at §42.
24. Before Judge Lang the appellant detailed his belief that people would be able to tell from his name that he was his father's son and that his father had harassed people. He accepted that he had not experienced problems when living in Iraq in respect of his father but stated that this was because he had resided in a small village outside Kirkuk, residing mainly amongst Shi'a and Turkmen. He is a Sunni and informed Judge Lang that he had never experienced problems living in a Shi'a dominated area. He believes this was because most people did not realise that he is Sunni.
25. The Judge addresses this issue concisely at [52], simply observing that the appellant's father died in 2004 and the appellant had not detailed any problems arising in relation to his father's previous local involvement with the Ba'ath Party. Upon careful consideration, I am satisfied that the judge failed to give adequate reasons as to why the appellant would not be at present risk consequent to present circumstances. Such approach is erroneous in law.
26. However, I am satisfied that such failure is not material upon consideration of the facts and issues arising in this matter. The appellant accepts that he suffered no difficulties consequent to his father's political history whilst residing in Iraq up and until leaving the country in 2015.
27. Before me, Mr. Wood relied upon paras. 2.4.5 and 4.1.3 of the respondent's CPIN, 'Iraq: Baathists' version 2 (January 2020). Para. 2.4.5 is concerned with societal treatment:

'2.4.5 In general, former Baath Party members are not at risk of harm by societal actors. Although Shia militia have sometimes targeted some alleged or actual former Baathists, such targeting is not systematic and is often dependent on a person's past profile and activities within the

Baath party (see Treatment of Baathists and Risk profiles). Whether a person faces treatment amounting to persecution will depend on their former or current profile and activities, and the capabilities and motivation of the non-state actors who they fear. Each case will need to be considered on its facts, with the onus on the person to demonstrate that they are at risk of persecution.'

28. Para. 4.1.3 is concerned with the link between Baathists and ISIS:

'4.1.3 The June 2019 EASO report stated:

'Even though not all former Baathists were enthusiastic about ISIL, the remnants of the party generally shared relations with the Islamic State. There has been a close cooperation between the remnants of the former Baath Party and ISIL not least because of the shared hatred of the Shia-led government in Iraq. Saddam-era Baathist military and police officers were recruited by ISIL. It was also reported that former Saddam-regime officers ran three of the most crucial of ISIL's 23 portfolios: security, military and finance. The list of the most wanted ISIL members published by Iraqi authorities in February 2018 contained several high-ranking former Baath party members.

'On the one hand, ISIL recruited former Saddam-era Baathist military and police officers who have been a powerful factor in the rise of ISIL and were instrumental in the survival of its self-proclaimed caliphate. On the other hand, former Baathists had their own political goals in mind and were aiming for the establishment of a Sunni-dominated tribal nation from Damascus to Fallujah to Mosul, thus covertly undermining ISIL's caliphate.

'The former Baathists were not able to compete with ISIL. In fact, many former Baathists were arrested and killed by ISIL due to rivalry. To tame any opposition, ISIL arrested a number of local Baath party leaders and members in 2014, suggesting fractures in the local Baathist-ISIL alliance. Former Baathists and their properties, particularly those belonging to former officers of the Iraqi Army under Saddam Hussein, were also targeted in the military operations against ISIL by the progovernment forces, including militia groups.'

29. The sole expressed fear identified by the appellant as to his link with his father being recognised is through his name. No detailed evidence is given as to how such identification would be made in respect of a man who died some 17 years ago. It is not said that the appellant's name is unusual. It is not said that his father held a medium or significant role within the local or national party. It is not said that the appellant's father worked either for the police or the security/intelligence regime. The appellant's father was one of many who worked in local government during the time of the Ba'athist regime, which came to an end in 2003. The

appellant's reference to his father harassing people is outlined in very general terms, with no identification as to the substance and nature of such harassment. The paragraphs of SMO relied upon by Mr. Wood do not aid the appellant. They do not identify a risk to children of Ba'athist party members who themselves had no connection with the party. The very limited evidence presently relied upon by the appellant comes nowhere near close to establishing to the requisite standard that his return to Kirkuk consequent his father's connection to the Ba'ath Party over two decades ago would result in a breach of article 15(c) or breach protected article 3 rights. This ground of appeal is dismissed.

Ground 2

30. The complaint made is that the Judge did not fully engage in the submissions advanced by the appellant in respect of his ethnicity. Mr. Wood succinctly addressed me on this point, relying upon [251] and [256] of the country guidance decision in SMO:

'251. All of Kirkuk governorate is disputed between the GOI and the IKR. It is an ethnically diverse governorate which has seen a great deal of upheaval in recent decades. We were struck by Dr Fatah's evidence that an individual who had lived in Kirkuk since the 1970's would have seen it change hands several times. Kirkuk City itself was never taken by ISIL although Hawija was, and Hawija was one of the last places in Iraq to be liberated, in October 2017. The battle for Hawija caused significant damage to its infrastructure. Since control over Kirkuk was taken back from the peshmerga in the aftermath of the Kurdish Independence Referendum, the whole governorate is controlled by the ISF, with a significant presence of PMU militia.'

...

'256. There is a security vacuum in the rural parts of the governorate, left by the departure of the peshmerga in late 2017. ISIL has some support in the region and has been able to move freely and expand its operations in the region as a result of that vacuum. It is regarded as one of the core areas for ISIL's rebuilding efforts by Joel Wing and other respected contributors. We also accept the evidence given by Dr Fatah about the effect of the PMU in Kirkuk governorate. Whilst they lessen the threat from ISIL in the region, they have also brought renewed sectarian tension, for instance by renaming Sunni sites with Shia names. The fact that Kirkuk remains a Disputed Territory also contributes to the uncertainty experienced by residents of the Governorate.'

31. The Tribunal observed in SMO that the situation in the Formerly Contested Area of Kirkuk is complex, encompassing ethnic, political and humanitarian issues which differ by region. The Judge observed and applied the Tribunal's guidance

that consideration as to whether the return of an individual to such an area would be contrary to article 15(c) requires a fact-sensitive, 'sliding scale' assessment. A relevant question in respect of this appellant when undertaking the sliding scale assessment is his membership of an ethnic group that is a minority Kirkuk and that he is a Sunni Muslim, such group not being in *de facto* control of the area surrounding Kirkuk.

32. I observe that appellant placed very limited objective evidence before the Judge in respect of the position of Turkmen in Kirkuk, beyond reliance upon SMO and CPINs. I observe four newspaper articles concerned with explosions in Kirkuk. One is dated 8 September 2018 and the other three are concerned with a series of explosions in late May 2019. The September 2018 article was authored by Al Arabiya and identifies that there was no immediate claim of responsibility for the bombing, though reference is made to ISIS mounting hit and run attacks in respect of the government. The May 2019 articles all observe that there were no claims of responsibility in respect of the explosions. Reference is again made to the use of hit and run attacks by ISIS. These newspaper articles are not evidence as to Turkmen being targeted by armed groups in Kirkuk consequent to their ethnicity.
33. Whilst the Judge's consideration as to the appellant's ethnicity was concise, I am satisfied that it was lawful. Evidence before the Judge as to the actions of the PMU was extremely limited. Whilst the appellant's legal representatives have written to this Tribunal indicating that they are in the process of seeking expert evidence from Dr Fatah, and this was confirmed to me by Mr. Wood, such evidence was not before the Judge. In the circumstances, I am satisfied that the Judge had no cogent evidence before him to conclude that the PMU act in such sectarian manner to permit the appellant to rely upon article 15(c) in respect of his return to Kirkuk, or to permit the appellant to succeed on article 3 grounds. The evidence relied upon by the appellant was predominantly directed towards a purported threat from ISIS if he returned to Kirkuk, not to his suffering significant, adverse sectarian discrimination upon return consequent to his ethnicity. The Tribunal is a specialist one and is aware that Turkmen political parties are active in Kirkuk, e.g., the Iraqi Turkmen Front. The predominant religious group in the governorate of Kirkuk are Sunni Muslims and whilst the Shi'a PMU is active, it is one of several security actors operating in Kirkuk governorate, including the Iraqi army, the Counter-Terrorism Service, federal and local police, and various intelligence services.
34. The Judge was mindful of the Tribunal's consideration of evidence from various experts and the UNHCR in SMO.
35. In the absence of relevant objective evidence supportive of the appellant's contention as to risks flowing from his ethnicity if returned to Kirkuk and noting Judge Lang's uncontested finding that the appellant has a support network available to him upon his return to the city, the Judge could reasonably reach his

conclusion that having placed relevant evidence into a sliding scale assessment the appellant's ethnicity was not such as to require him to allow the appeal. This ground of appeal must therefore be dismissed.

Notice of decision

36. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
37. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
38. The anonymity order is confirmed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

39. I make the following anonymity order:

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 26 April 2021

TO THE RESPONDENT
FEE AWARD

No fee was paid and so no consideration is given to a fee award.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 26 April 2021