Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09634/2019**

THE IMMIGRATION ACTS

Heard at Manchester (via Skype)	**Decision & Reasons Promulgated**
On 15 February 2021	**On 01 March 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MYH

(Anonymity direction made)

Respondent

Representation:

For the Appellant: Mr McVeety Senior Home Office Presenting Officer.
For the Respondent: Mr R Ahmed instructed by B Assured Law.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Myers ('the Judge') who in a decision promulgated on 10 March 2020 dismiss MYH's appeal on asylum and humanitarian protection grounds but allowed the appeal pursuant to Articles 3 and 8 ECHR.

2. The appellant is a citizen of Iraq born in 1979 whose immigration history is set out [1] of the decision under challenge.

Error of law

3. The Judge sets out the core findings which led to the appeal being allowed between [32 – 34] of the decision under challenge.

4. The Judge accepted that even if MYH had known the page number or volume of the entry in the Family Book initially he had now forgotten it after 18 years in the United Kingdom [32].

5. The Judge accepted MYH had no living relatives in Iraq who could help him to re-document himself and that without being able to provide the information/details referred to in relevant country guidance caselaw accepted MYH would not be able to obtain a replacement CSID within the UK [33].

6. The Judge finds in the alternative that even if MYH had family in Kirkuk, his home area, who could help, the Upper Tribunal in SMO found it unlikely that the CSA office in Kirkuk will be willing to issue a CSID to MYH through a proxy. The Judge concludes in [34] *"In conclusion, having found that the Appellant does not have access to an existing CSID and is unable to obtain a replacement whilst in the UK, I find that his return to Iraq, will be in breach of Article 3 and allow the appeal on human rights grounds."*

7. The Secretary of State sought permission to appeal which was granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:

> The grounds of appeal are that the First-tier Tribunal materially erred in law in (i) failing to have regard to the country guidance in SMO, KSP, & IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) that it would only be exceptionally that a person will not know the details of their family book entry and concluding that it was credible that the Appellant had forgotten it; and (ii) allowing the appeal of Article 8 grounds, as expressed in paragraph 276 A.D. he of the Immigration Rules where this is not applicable as the Appellant is a foreign criminal who circumstances are governed by part 13 of the Immigration Rules and section 117 C of the Nationality, Immigration and Asylum Act 2002.
>
> It is arguable that the credibility finding that the Appellant has forgotten the information required to obtain a new CSID fails to take into account the detailed country guidance on this (including how central this information is to a person and that it would only be exceptionally that a person did not have or could not find this information) and also fails to take into account the other adverse credibility findings made against the appellant, including about his claim that he never had a CSID because he was Kurdish, or provide reasons as to why one part of the claim was credible when the remainder was not.
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> The second ground of appeal is also arguable and could be material depending on the outcome of the first ground of appeal. The First-tier Tribunal arguably applied at the wrong part of the Immigration Rules and failed to have any regard to section 117 C of the Nationality, Immigration and Asylum Act 2002, the applicable provisions in a deportation context. In any event, it is arguable that the First-tier Tribunal failed to make any proper analysis of the Appellants are likely circumstances on return to Iraq and failed to give adequate reasons for allowing the appeal on Article 8 on European Convention on Human Rights.

8. The Upper Tribunal is grateful to Mr McVeety for bringing to the attention of all parties, in accordance with the duty of candour, the latest guidance produced by the Home Office which makes it clear that on the facts MYH would not be able to secure a replacement CSID in the UK.

9. It was also accepted that in light of the unchallenged finding that MYH has no relatives for family able to assist him in Iraq, the finding there is no one who could assist in acquiring the required documents to enable an application to be made to acquire the required documents in Iraq must stand.

10. Mr McVeety was left, as he accepted, with the submission that the Judge had failed to give adequate reasons in support of the findings made. In reply, by way of further submissions to the directions of the Upper Tribunal Judge Jackson dated 30 June 2020, Mr Ahmed sets out a number of submissions drawing upon the findings in the determination under challenge. These clearly show that the Judge considered the evidence with the required degree of anxious scrutiny, referred to the relevant case law, and that only having done so sets out the findings which are subject to challenge.

11. Although it is accepted the Judge erred in law in relation to the article 8 aspect of the appeal it was also accepted by the advocates that if the finding pursuant to article 3 stands any error made in respect of article 8 is not material.

12. The Court of Appeal have reminded us recently that when considering an appeal an appellate court must not find legal error by virtue of making its own assessment of the facts: see Lowe v Secretary of State for the Home Department [2021] EWCA Civ 62. In this case, as in Lowe, the Judge had the benefit of assessing YHM and the credibility of his claim through both the written and oral evidence given from the witness box and to decide, in light of all the information before her what findings to be made in this appeal. It was perfectly feasible for the Judge to accepts some aspects of the claim as credible but to dismiss others as lacking credibility, for which adequate reasons are given.

13. A reader of the decision can clearly understand what those findings are and why the Judge has arrived at them. It is not made out the decision is affected by inadequacy of reasoning. As the Judge's findings are adequately reasoned the weight to be given to the evidence was a matter for the Judge. It is not made out those findings are outside the range of those reasonably available to the Judge on the evidence.

14. Whilst it is appreciated that in a deportation appeal the Secretary of State will take issue with an appeal being allowed, it is not made out on the findings made and/or grounds of appeal, that the Judge has erred in law in a manner sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

15. As the finding pursuant to article 3 ECHR stands the clear error made by the Judge in relation to the article 8 assessment is not material.

Decision

16. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated 16 February 2021