



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/04611/2019**

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On the 30 August 2022**

**Decision & Reasons Promulgated  
On the 13 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SRF**

(Anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Howard of Fountain Solicitors.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** The appellant is a citizen of Iraq born on the 6 March 1990. His nationality and ethnicity as an Iraqi Kurd are not disputed.
- 2.** The appellant arrived in the UK on 21 January 2019 and claimed asylum the same day. The application was refused by the respondent and the appellant's appeal heard by a judge of the First-tier Tribunal who, in a determination promulgated on the 3 October 2019, dismissed the appeal.
- 3.** The appellant challenged that decision to the Upper Tribunal.

4. On 17 March 2020 Deputy Upper Tribunal Judge Roberts allowed the appeal in part. The relevant paragraphs of that decision read:
  14. Following the concession made by Mrs Aboni, I am satisfied that the FtTJ's decision contains a material error of law, in that the judge failed to give adequate consideration to or make findings as to where the Appellant would be returned, and on relocation if return were to be to Baghdad.
  15. I see no reason however to disturb the FtTJ's findings on the credibility of the Appellant's core account. The FtTJ has given more than adequate reasons for his findings on the core account. Therefore the findings rejecting the credibility of the Appellant's account and contained in [12], [13], [14], [15] and [16] of the FtT's decision are preserved.
  16. So far as the 276ADE/Article 8 private life claim is concerned, it seems to me that this aspect of the Appellants claim is dependent on the resolution of whether or not the Appellant can return to Iraq safely. It will be artificial to separate this part of the claimant bearing in mind that it has been conceded that the judge's conclusions at [20] were made on an inadequate consideration of whether return was viable.
5. The preserved findings of the First-tier Tribunal included a finding that the judge did not find the appellant at all credible and did not accept his claim that his brother killed a man [12], the appellant's inability to provide consistent details regarding a major incident was a strong indicator that it did not occur resulting in the First-tier Tribunal Judge concluding that it was not accepted that the appellant was threatened or that shots were fired and it was not therefore accepted that he would be at risk in Iraq [13], the appellant's explanation for why having travelled through Romania, Germany, and France, and having claimed asylum in Romania in Germany, but not in France, he did not await the outcome of his claims on the basis he was frightened of the agent was found to lack credibility [14], the appellant additionally stating that he feared cousins of the person murdered by his brother, who were also in Germany, was found by the First-tier Tribunal judge to be an explanation offered to support an already weak reason for not remaining in Germany whilst the asylum claim was processed [15].
6. At [16] the Judge finds "*I find that the Appellants intention was to gain entry to the UK and that he does not face a genuine risk in Iraq or from the agent. The Appellant stated question 127 SEF that "I didn't want to stay in these 2 countries because I was planning to come to the UK because I believe it is a safe country for me". I find that the Appellant's failure to wait for a decision in Romania and Germany and that his failure to claim asylum in France affect his credibility.*
7. The appellant attended the hearing today via the CVP platform from HMP Winson Green where he is on remand. The appellant's written evidence stood as his evidence in chief, and he was able with the assistance of the Kurdish interpreter to answer questions put to him by both Mr Bates and Mr Howard and to fully understand the submissions that were made to me.

## **Discussion**

- 8.** The witness statement of 6 August 2019 sets out the claim which has been rejected as lacking credibility. In relation to the question of return and possession of relevant documents the appellant claims not to have his CSID or an Iraqi passport, claiming the agent took both documents from him together with his Iraq National Certificate card whilst in Turkey, and claims there will be no one able to assist him in obtaining a new one.
- 9.** The appellant claims that it is impossible for him to relocate within the IKR as the family of the man who died have influence there and their tribal will be able to find him throughout the Kurdish region.
- 10.** In his more recent statement of 4 June 2020 the appellant repeats his claim concerning lack of documentation and the allegation that there is no one who will be able to assist in obtaining a new one, that he does not know his family book details, and nobody in Iraq could assist in getting a new CSID. The appellant also claims to have nobody who could provide him with support, claims to have nowhere to live and will be destitute in the IKR.
- 11.** The appellant also refers the fact he is suffering from epilepsy and claims he will not be able to receive adequate treatment for his medical health problems as a result of this condition.
- 12.** The scope of the resumed hearing was clarified in directions provided by Upper Tribunal Judge Pickup on 23 July 2020 referring to the fact that the error of law findings was confined to two issues, namely:
  - a. The failure of the First-tier Tribunal to give adequate consideration as to where in Iraq the appellant will be returned to and, if return to Baghdad, the issue of relocation;
  - b. Paragraph 276ADE Immigration Rules/Article 8 ECHR (private life claim): which in reality turned on the resolution of the issue whether the Appellant could return safely to Iraq.
- 13.** Since the last hearing of this appeal the Upper Tribunal has handed down updated country guidance reported as SMO & KSO [2022] UKUT 00110 which is now the only country guidance case relating to Iraq.
- 14.** The Secretary of State has updated her position in light of SMO and an internal policy change in the Country Policy and information note (CPIN): internal relocation, civil documentation returns, Iraq, July 2022.
- 15.** There is reference in the CPIN at 2.6.4 to the confirmation in SMO [2022] in that in order to enter and pass through security checkpoints a person will require a civil identity document (a CSID or INID), on the basis that many of the checkpoints in the country are manned by Shia militia who are not controlled by the Government of Iraq and are unlikely to permit an individual without such documents to pass.
- 16.** It is stated at 2.6.5 that the decision-maker must assess whether a person will be returned to Iraq in possession of the necessary civil documentation or can obtain replacement documents in a reasonable timeframe.
- 17.** In all cases the burden is upon the appellant to show why he cannot reasonably obtain the necessary documentation.
- 18.** A further change is that the Secretary of State now makes enforced returns to any airport within Iraq including the IKR.

19. The appellant states he is from Kalar about a two hour drive from Sulaymaniyah. A town by this name is located in the Garmian region of southern Kurdistan in the Sulaymaniyah Governorate. It is not made out that the appellant cannot be returned with a laissez passer obtained from the Iraq Embassy the UK to Sulaymaniyah airport. I find he can.
20. On behalf of the appellant Mr Howard submitted that the appellant does not have a CSID on return and that his claim that the agent had taken the same was credible. Reference was made to the fact that CSID's cannot be obtained within the UK.
21. I accept from information provided by the Secretary of State that it is highly unlikely the appellant's local CSA is still issuing CSID's.
22. The appellant's evidence is that he has had contact with his family but claimed that this was six months ago and that there had been no contact since as he has been in prison.
23. It was submitted it should be accepted as credible that the appellant did not have any facilities to obtain a CSID as he did not know the relevant details such as the page number of the family book. It was submitted that without either a CSID or INID the appellant would not be able to settle and live a normal life in Iraq and so the appeal should be allowed.
24. I have considered the oral submissions together with those set out in the skeleton argument filed by Mr Howard in relation to both this aspect and the appellant's human rights claim and the issue of his epilepsy.
25. The appellant like a vast majority of those claiming asylum when questioned about their identity documents claim that they were taken by their agent who facilitated their journey to the UK whilst in Turkey.
26. While some aspects of the claim lack credibility and others can be accepted as being credible, the First-tier Tribunal judge rejected the appellant's claims is totally lacking in credibility. That is a matter that has to be borne in mind when assessing the evidence currently.
27. I make a finding of fact that the appellant has contact with his family in Iraq. There is reference in the finding of the Deputy Upper Tribunal Judge to [20] of the First-tier Tribunal in which the written: *"I have not accepted the Appellant's account as stated above and find that he can return to Iraq. The Appellant has a brother, father and mother who will be able to assist him in obtaining evidence of his nationality. And the relevant documentation to return to Iraq. The Appellant states that he is not maintained contact with his family and his only reason for doing so is that his parents are old and cannot use a phone. I do not accept this explanation, the Appellant's brother is in Iraq, he also confirmed that he has friends in Iraq, and I see no reason why he cannot not contact his parents through his brother or friends. The Appellant would be returning to family members in Iraq, he speaks the language, as previously self employed in Iraq and for the reasons stated above I do not find that there are any insurmountable obstacles to his integration in Iraq."* The above paragraph was not specifically preserved by the Deputy Judge as a result of that final line and the relationship between that and the error conceded by the Secretary of State's representative. In light of the evidence of the

- appellant's ability to contact his parents having contacted them through a friend, the presence of family members in Iraq, including male family members, the majority of that finding is repeated here.
- 28.** The appellant's claim that his father would not be able to assist him due to mobility issues is not made out and insufficient credible evidence has been provided to establish the appellant's claim that his brother is in prison in Iraq, put forward as an explanation for his brother not being able to assist him. This claim was part of the package of evidence which was found to be not credible.
  - 29.** What cannot be disputed is that the appellant is from the IKR. He will be flown directly to the airport in Sulamaniyah and it was not made out there is any credible reason why members of his family, who he can advise of his return in advance, would not be able to meet him at the airport and take him to his home and assist in the redocumentation process by providing the relevant family details and taking the appellant to his local CSA office to enable him to provide his biometrics.
  - 30.** It is not made out the appellant will not be able to pass through the airport in the IKR and I do not find it made out he would experience any difficulties in doing so.
  - 31.** In SMO [2022] at [32] of the head note it is written "*if P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances He would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis*". In this appeal the reason the appellant claims his family cannot assist have all been found to lack credibility.
  - 32.** The information in SMO [2022] of the need for identification to enable a person to pass through a roadblock manned by the Shia militia has not been shown to have any application to travel within the IKR which remains under the protection of the Kurdish authorities. Similarly there are no language issues in this case as it is not made out that the appellant will be required to speak Arabic and he clearly has detailed knowledge of the Kurdish (Sorani) dialect which is used within the IKR.
  - 33.** In relation to the medical issues, the appellant confirmed that he had received treatment for epilepsy whilst in the IKR and it was not made out he would be unable to access the same in the future. There is, however, no medical evidence to show the impact of his suffering epilepsy had an adverse impact on him in Iraq sufficient to make it disproportionate to return him to his home state. There are varying degrees of epilepsy and it was not made out that any treatment required would not be available. It is not claimed that the high threshold identified in AM (Zimbabwe) in relation to Article 3 ECHR for medical matters is met in this appeal.
  - 34.** There is also no evidence that epilepsy would have an adverse impact upon the appellant's ability to work, as he did previously in Iraq.
  - 35.** It is not made out the appellant is entitled to a grant of international protection. It is a preserved finding that he does not face a real risk on return for the core reasons claimed. I find there is no credible evidence

- of any objectively verifiable well-founded fear of persecution or ill-treatment/harm for a Convention reason or otherwise.
36. I find the appellant has family in Iraq to whom he can return. That is no credible evidence the appellant faces a real risk from family or from the authorities within the IKR.
  37. I find the appellant's family will be able to meet the appellant on return, take him home, and assist him with the provision of the details that he requires to identify the page in the family book which will be recorded on their own documentation in any event. There is insufficient credible evidence to show this is not the case. I find the appellant has not established that he will not be able to make an appointment at the local CSA office to enable him to obtain the required documents to enable him to lead a normal life in Iraq.
  38. I find it not made out that there are any insurmountable obstacles to the appellant's reintegration into Iraq. I find the appellant has failed to establish an entitlement to leave to remain pursuant to paragraph 276ADE of the Immigration Rules.
  39. I do not find the appellant has made out that any interference with his private life is sufficient to outweigh the public interest in his removal from the United Kingdom and make a finding of fact that the Secretary of State has established that the decision is proportionate. The appellant's status in the UK has always been precarious and his private life has been formed during a time when he knows that he has no right to remain.
  40. I have considered as part of the article 8 private life claim the appellant's medical issues, but do not find they add great weight to balancing exercise in light of the finding that his epilepsy existed in Iraq, he received treatment when he was there, that he has not established that treatment is not available to him on return, or that it would not be sufficient to meet his needs. It has also not been established that he has a relationship with those responsible for his medical care the loss of which will be sufficient to tip the balancing exercise in his favour.
  41. I find the claim to lack credibility and that the appellant can be returned to Iraq without United Kingdom government being in breach of any of its obligations of any international convention or otherwise.

## **Decision**

### **42. I dismiss the appeal.**

Anonymity.

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. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....  
Upper Tribunal Judge Hanson

Dated 2 September 202