



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07147/2019**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC (Hybrid
hearing)
On the 2 August 2022**

**Decision & Reasons
Promulgated
On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**KK
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford instructed by Halliday Reeves Law Firm.
For the Respondent: Ms Rushforth, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on the 15 July 1985.
2. His immigration history shows he originally entered the United Kingdom in January 2003 but subsequently returned to Iraq under the Assisted Voluntary Return Scheme on 15 May 2006.
3. The appellant re-entered the United Kingdom on 3 September 2007 and claimed asylum the following day. That application was refused and an appeal against the same dismissed, although the appellant did

not leave the United Kingdom. Further applications were submitted in 2010, 2016 and 2019. All applications were refused and appeals against the 2010 and 2016 applications refused. The 21 May 2019 application was refused on 8 July 2019 and is the subject of this appeal.

4. The appellant claimed an entitlement to international protection on the basis of his claiming to be a convert to Christianity and, secondly, in relation to the appellant's claim that he did not have the necessary documents to enable him to return to Iraq.
5. The Upper Tribunal found no error of law in the First-tier Tribunal's rejection of the appellant's claimed risk as a result of an alleged conversion to Christianity but in relation to the second aspect found:
 11. There were two grounds of appeal brought by the appellant in this case. The first of those grounds concern the availability of a CSID. I accept that neither Judge Chohan nor Judge French tackled this issue. Judge French relied to a large extent on a previous decision and because Judge Chohan did not address this issue, it was incumbent upon Judge French to consider the country guidance and make findings on how the appellant could obtain the necessary CSID to enable him to be returned. It was common ground that without a CSID the appellant would not be returnable.
 12. Since the appeal came before Judge French, the Upper Tribunal have handed down further country guidance in SMO, KSP& IM (Article 15(c): identity documents) Iraq CG [2019] UKUT 00400. This case provides helpful guidance on the issue of both Article 15 (c) and the approach to be taken over CSID.
 13. The difficulty I had in concluding this case today was there was a lack of evidence considered by the Judge in respect of the CSID and consequently as the appellant was not present (and there was no interpreter booked), coupled with the fact that the appellant's representative wished to obtain further expert evidence following the decision in SMO. I concluded that whilst there was an error of law it was not something I could conclude without further evidence.

Discussion

6. Since the finding of material error, dated 11 February 2020, there have been further developments in relation to the country guidance case law and Home Office guidance concerning Iraq.
7. The appellants in SMO [2019] sought permission to appeal to the Court of Appeal which was granted by that court and the appeal allowed on the very limited issue of the finding by the Upper Tribunal that Iraqi nationals will be expected to know the details of the page number and family reference in the records to enable them to obtain replacement identity documents.
8. The Upper Tribunal took the opportunity when the case returned to them to also examine and make findings upon a number of other issues which had arisen and were causing concern to practitioners and decision-makers within the jurisdiction. This resulted in the handing

down of the recent country guidance decision of SMO & KSP [2022] UKUT 00110 which replaced all other country guidance.

9. A further development is the publication of the Secretary of State's CPIN, internal relocation, civil documents and returns, July 2022 which advised of a change to the Secretary of State's policy in that enforced returns are now to any airport within Iraq and not just to Baghdad or the IKR.
10. It is not disputed that the appellant's home area is Kirkuk or that this city has an international airport; although there was no evidence before me of international flights landing at the same.
11. It was not disputed before me that Kirkuk has a CSA office that is no longer issuing CSID.
12. The key point in the appeal, therefore, was whether the appellant had access to his CSID in the UK or whether a family member in Iraq will be able to send his CSID to him or meet him at the airport with the same.
13. I note in the appellant's asylum interview conducted in 2017 he was asked whether he had a CSID to which he stated he had one at home. The person conducting the interview did not explore what the appellant meant by this statement and whether the term "at home" related to home in Iraq or the appellant's home in the UK at that time. It is possible that the more common understanding of such a statement in such a situation and at that time is that it refers to his home in Iraq.
14. In cross-examination the appellant confirmed that when he left Iraq his father, mother and sister lived there, but that he had lost contact with them when he left the country in 2017. The appellant claimed he had no ongoing contact with them either directly, through social media, or otherwise.
15. The appellant contacted the Red Cross to trace his family in 2019, but so far without success.
16. The appellant was asked by Ms Rushforth that as three judges on previous occasions had found him not credible why should the Upper Tribunal at this stage believe his evidence to have lost contact with his family. The appellant's response was to refer to a witness who had come along to support him on the day.
17. That witness was properly described by Ms Rutherford as a surprise witness as he had provided no witness statement and there had been no prior indication that he was going to be called. Ms Rutherford confirmed that the witness will state that he had returned to Iraq on two occasions and travelled to the appellant's home area but had been unable to ascertain that the appellant's family was still there. The witness's passport and other documents confirming his travel to Iraq were obtained and shown to Ms Rushforth by Ms Rutherford on the camera used for the hybrid hearing.
18. Notwithstanding this late intervention, Ms Rushforth confirmed she did not require an adjournment and was happy to proceed and cross-examine the witness as well as the appellant, which she did.

19. Even if there are historical concerns regarding the truthfulness of the appellant's claim, predominantly related to his claim to have converted to Christianity, his evidence on this occasion was supported by the witness. It was not disputed that the witness had travelled to Iraq or that his British passport, that he now had, was genuine. The purpose of the witness travelling to Iraq, for medical treatment, was not disputed. Despite her best efforts to shake this aspect of the appellant's claim during the course of her cross-examination I find, to the lower standard applicable in an appeal of this nature, that the witness's evidence was not sufficiently undermined such that I can place little or no weight upon the same.
20. Therefore, although the appellant has been found to be untruthful previously his claim concerning lack of ability to contact family in Iraq is supported by a third party witness against whom there is no evidence of adverse credibility findings having been made, who travelled to Iraq and went to Kirkuk on two occasions, the most recent in 2022, who was unable to trace the appellant's family.
21. The situation therefore is that the appellant can be put on a plane, as it was not made out he would not be able to secure a laissez passer, will be able to be flown directly to the IKR as a Kurd, with there being no evidence that he will be arrested or receive adverse treatment on arrival, and that he will be able to leave the airport. The difficulty arises in that he would then be required to travel from the IKR to Kirkuk to enable him to obtain replacement identity documents. There is reference in SMO to the presence of checkpoints, some manned by armed militia, which the appellant will be required to go through. Without acceptable identification there is a risk that the appellant will be detained and face a real risk of ill-treatment. As noted in the CPIN at 2.4.4:

2.4.4 Decision makers must therefore first determine whether a person would face any harm on return stemming from a lack of CSID/INID before considering whether their return is feasible. In cases where a person would be at risk on return due to a lack of documentation (i.e. facing destitution or possible ill treatment due to the requirement to travel internally within Iraq to obtain a CSID/INID) a grant of HP would be appropriate.
22. I find in the absence of any evidence the appellant has family who could meet him at the airport to provide him with the necessary identity documents, that he faces a real risk of ill treatment due to the requirement to travel internally within Iraq to obtain his replacement identity documents, or that if he had to remain in the IKR that he faces the risk of destitution as a result of the absence of the necessary identity documents. On the basis of the respondent's own policy, a grant of humanitarian protection is appropriate.
23. I find the appellant has failed to establish an entitlement to be recognised as a refugee, but I accept that his appeal should be allowed on the basis set out in [22] above.

Decision

24. I allow the appeal.

Anonymity.

25. 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 9 August 2022