



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09713/2019**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 8 April 2022**

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

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MJK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway

For the Respondent: Ms Young, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was born in 1993. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 25 September 2019 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 22 December 2020, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

Grounds of appeal

2. There are three grounds of appeal. First, the appellant challenges the judge's finding that he had changed his account regarding possession of a national identity card, the CSID. The judge [61] found that, having claimed throughout his application for asylum that his CSID was in Iraq, the appellant had claimed at the hearing that he had only a nationality certificate and had never had a CSID. The judge considered this change of account had a severe impact on the appellant's credibility. Secondly, the judge refers to the Rule 35 interview and report and uses this document to compare other iterations of the appellant's account of past events in Iraq, including what he had said about medical treatment he had received there. The appellant complains that the judge's analysis was unfair as the Rule 35 process should properly have no bearing on an appellant's credibility. Thirdly, the judge had unfairly found that the appellant's failure to obtain medical evidence of scarring from an Iraqi hospital which had treated him counted against his credibility as a witness.
3. The appellant, whose home area is Kirkuk, had claimed that, in 2015, he had become involved in an incident at his home involving Da'esh. An injured Da'esh fighter had been left on the roof of the appellant's house following a firefight. The following day, the Peshmerga had arrived at the property and had abducted and later released the appellant. It transpired that the Peshmerga intended to exchange the appellant for the injured Da'esh fighter so the appellant fled. The appellant also claimed to fear Khalid Kholesood, an influential local man who had argued with the appellant's uncle. Before the First-tier Tribunal, the appellant's representative had submitted [46] that 'a link with Da'esh [ISIS]' was a risk factor identified in *SMO, KSP and IM (Article 15(c); identity documents)* Iraq CG [2019] UKUT 400 and that the Peshmerga would regard the appellant as an enemy sympathiser.

Discussion

4. I note that the judge at [61] finds that the appellant claimed for the first time at the appeal hearing that he had never had a CSID. However, at [66] the judge wrote: ' I am satisfied that [the appellant] does have a CSID and that it is at home with his parents. I do not find that his CSID was taken [by the Peshmerga]; this is a convenient addition to his evidence and not mentioned until the hearing.' That is a wholly different finding from that at [61] and it is, in my opinion, supported by reasoning that is discreet and unaffected by any misunderstanding which may have led the judge to find that the appellant had claimed that he never had a CSID. Even if the judge was wrong to find that the appellant had fundamentally changed his account, it is the case that the appellant had not claimed until very late in the day that his CSID had been taken from him; until the hearing during the several times the appellant had provided his account, he had claimed that the CSID was in Iraq at the family home. I find that the judge's finding at [66] is sound in law irrespective of any misunderstanding elsewhere in the analysis.

5. The effect of what I say at [4] above is that (i) the appellant's family in Iraq is in possession of his CSID and (ii) the judge was entitled to find that the family will send the card to the appellant before he departs for Iraq. Those findings of fact are determinative of this appeal irrespective of the other grounds for the following reasons. Even assuming that the Peshmerga in Kirkuk do regard the appellant as a Da'esh collaborator more than 7 years after the incident on the roof of the appellant's house (which I do not find reasonably likely in any event), the appellant can (i) request that his family send his CSID to him in the United Kingdom (as the judge found that they would [67]) and (ii) he can use the CSID to remain safely in Baghdad during the short period it will take for him to travel onwards to Sulaymaniyah, where his wife is living. It is not likely that Kurdish forces or authorities in Sulaymaniyah will be aware of an incident in Kirkuk in 2015 or that the appellant would be at risk there from any individual who had been in dispute with the his uncle in Kirkuk several years ago. Moreover, by assuming for the purposes of this analysis that the appellant's account of the 2015 incident is credible, the challenges to the judge's credibility findings set out in Grounds 2 and 3 fall away.
6. In the light of what I have said, this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Upper Tribunal Judge Lane
Date 3 May 2022

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.