



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/11912/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 11 August 2022**

**Decision & Reasons Promulgated
On the 25 August 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SSK

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mozham on behalf of CB Solicitors.

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

DECISION AND REASONS

- 1.** In a decision promulgated on the 20 February 2020 it was found a judge of the First-tier Tribunal had erred in law such that that decision could not stand. A further hearing listed on 7 December 2020 was adjourned as the appellant failed to attend and came back before the Upper Tribunal on 28 April 2021 but was further adjourned in light of the imminent (believed) handing down by the Upper Tribunal of updated country guidance relating to Iraq which has now been promulgated with neutral citation SMO and KSP [2022] UKUT 00110.
- 2.** The matter returns to the Upper Tribunal today to enable it to determine the appeal.

- 3.** It is not disputed that the appellant is a citizen of Iraq of Kurdish ethnicity whose home area is Tuz Khurmatu in the Salah-al-Din province of Iraq.
- 4.** It is also not in dispute that there has been a change in the Secretary of States policy in that enforced returns are now to any airport within Iraq including the IKR.
- 5.** It was not made out the appellant as a Kurd would not be able to return to Iraq with a laissez passer or that he would experience any difficulties in being allowed to pass through the airport in either Erbil or Sulamanyah in the IKR.
- 6.** It is also not disputed that the appellant's home area is one in which the relevant CSA is not issuing CSID, but now only issue biometric INID.
- 7.** Mr Bates did not accept that the appellant's claim is credible.

The evidence

- 8.** The appellant's immigration history, from the asylum decision letter of 10 April 2014, is as follows:
 - a) The appellant left Iraq on 16 October 2017, travelling from Kirkuk by vehicle to the border of Syria, where he was issued with fake documents that stated he was Kurdish from Syria.
 - b) The appellant claimed that he crossed the border to Turkey where he stayed for one month. He was then taken in a car by an agent to a lorry in which he stayed for two nights.
 - c) The appellant claimed the agent put him in a second lorry which he travelled in for one night, claiming not to know the countries he went to.
 - d) The appellant claimed he was taken by van to the jungle where he stayed for one night after which the agent put him in another lorry; in which he arrived in the UK.
 - e) The appellant arrived in the UK on 24 October 2017 and was encountered arriving illegally by the Cheshire Police and taken into custody.
 - f) The appellant claimed asylum on 24 October 2017.
- 9.** In his screening interview the appellant claimed he had never been issued with a passport in Iraq and that he had nightmares over what he claims happened to his family.
- 10.** The appellant stated he left Iraq nine days previously and went to the Syrian border, collected papers, entered Turkey by car, and his immigration history as noted above.
- 11.** The appellant claimed that he had a lot of problems in that he feared ISIS and the Turkman in Iraq who were planning to kidnap his father and burnt down their house, and also the PUK as they wanted him to join to volunteer but he refused. The appellant stated that he fears that if returned he will be killed.
- 12.** When asked whether the appellant had been a member of any national Armed Forces he claimed he did not join but was forced to volunteer to join the PUK about 25 days ago for about two weeks.

- 13.** The appellant also claims he was detained by the PUK for questioning about his father, who was kidnapped by ISIS, approximately two years ago.
- 14.** In his asylum screening interview (SEF) dated 1 March 2018, the appellant confirmed that the information provided in the screening interview was correct.
- 15.** When asked whether he had any identification to prove his Iraqi nationality the appellant's reply question 7 was "*I lost my ID cards on the way and don't have a passport so don't have anything*". When asked what ID cards he lost the appellant replied "*Civil status ID card and national certificate*".
- 16.** The appellant claimed he had no family back in Iraq able to assist him to redocument himself claiming the only person he worked for as a shepherd had told him to leave as he could not support him any longer. In relation to his family the appellant claimed his mother died two years ago because of illness and his father "*about one year ago we knew he was in ISIS but I don't have information about him now*".
- 17.** The appellant claimed he had not been in contact with his family since he came to the UK.
- 18.** The appellant completed his primary education Iraq and stated that his occupation was a shepherd and farmer.
- 19.** The appellant claims his problems started with ISIS when they burned down the family property and took his father. When asked when this was the appellant claimed he didn't know exactly but stated in September 2014 the PUK security forces detained him for that reason. When reminded by the interviewing officer that they were talking about ISIS and his father (question 81) the appellant then stated his father disappeared in July 2014.
- 20.** The appellant claimed that his father was taken as a result of a "deal" then stated in response to question 83 that the PUK had said they had taken him to work for them to make trenches for them. When the appellant was asked to clarify whether it was the PUK who taken his father or ISIS as he originally claimed, he then stated it was Daesh which is another name for the militant Islamic fundamentalist group otherwise known as ISIS.
- 21.** The appellant then claimed he was arrested by the PUK who stated his father was working for Daesh.
- 22.** The appellant also claims that his father told him that ISIS were using them to make trenches for them against the Peshmerga and that approximately one year ago his father was in Hawija.
- 23.** Later in the interview when the appellant was asked about when his claim to have been detained by the PUK occurred, he stated it was in April and September 2015 as well as in September 2014. The appellant claimed to have volunteered to join the PUK two to three weeks before 16 October 2015 but contradicted that answer in his reply to question 139 when asked when he joined the Peshmerga to which he claimed it was on 16 October 2017.
- 24.** The appellant's account was rejected in the reasons for refusal letter, in relation to the fear of ISIS because his father was forcibly recruited by them on the basis there was no evidence the appellant had been personally targeted by ISIS or had any contact with them and because

the appellant's claim of his father working for ISIS was found to be vague and lacking in detail with minimal evidence to substantiate that the appellant's father worked for them, resulting in that claim being rejected outright.

25. In relation to threats from the PUK, the decision-maker concluded it was inconsistent that the appellant would have waited three years to volunteer for the PUK in order to prevent them from accusing him when they had already done so on three occasions. It was also noted that there is a period of two years before the appellant left Iraq in October 2017 from the last time he had been detained which he claimed was in September 2015. It was said the appellant's account of being threatened by the PUK was inconsistent and vague and was rejected.
26. In relation to the assessment of future fear it was not accepted that the appellant's claim is credible, but that even if he could not go to his home area relocation would not be unduly harsh.
27. In his original statement dated 22 October 2018 the appellant responded to the refusal letter repeating the core of his claim although adding a claim he could not relocate anywhere as the PUK is the majority controlling the Kurdish regions, which is factually incorrect as they share this area with the KDP, and because he claims they were looking for him accusing him of being an ISIS sympathiser. The appellant also claims he has no ID card in his possession and could not obtain one as he does not know where his father is.
28. At paragraph [7 - 9] the appellant stated:
 7. I left Iraq in October 2017. I had joined the Peshmerga as a volunteer 2-3 weeks before I left Iraq because the people who had bailed me from detention by the third occasion advised that it would help me deter the Peshmerga from looking at me as a Daesh sympathiser. I could not just volunteer for the Peshmerga at any time they usually recruited people when they needed them to fight in occupied areas. In 2017 Hashd al-shaabi occupied Tuz, during this time I took the opportunity to join the Peshmerga as a volunteer.
 8. I was still being monitored during the time after my release at the time I volunteered for the Peshmerga. I was called a few times by the authorities and they would ask me where my father was and what information he had passed to me. They would always question about my father and stated that I would remain under their monitoring systems.
 9. When Tuz became occupied on 16 October 2017, I fled to Kirkuk in fear of my life. I had been given a weapon by the PUK Peshmerga considering that I was a volunteer to their fight. I did not flee to Kirkuk on my own, other volunteers fled too. I have received training in the first two weeks that I joined the Peshmerga as a volunteer but was not prepared for the nature of fighting that occurred. So many of the Peshmerga fighters were killed and there were not enough numbers to fight. I was in fear that I will be killed and so fled to Kirkuk. Because I fled with the weapon in my possession, the PUK accused me of stealing this weapon to join my father in fighting for Daesh. I was informed by the people who had bailed me from detention on the last occasion. They also informed me that they could no longer support me because they had been approached by the PUK asking for me. Hashd al-shaabi was arresting and killing Peshmerga fighters in that area, I knew that if I remained I would either be killed or captured by them. I could not have remained in Tuz under the circumstances I was known in the area as the PUK Peshmerga.

Discussion

29. The appellant's appeal against the respondent's decision to refuse his asylum claim came before a judge of the First-tier Tribunal sitting at Manchester on 22 November 2018. Having considered the written and oral evidence and submissions made that judge set out his findings from [39] of the determination. The First-tier Tribunal found the appellant's explanation for why he decided to join the Peshmerga to be lacking in credibility and between [46 - 48] found:

46. When I consider the Appellant's account in the round, for the aforementioned reasons taken together, I am not satisfied, even to the lower standard of proof, that the Appellant has given a credible account.
47. Whilst I do accept that the Appellant is an ethnic Kurd from an area of Iraq that was found to be a contested area by the Upper Tribunal in AA, and that objective evidence supports the Appellant's account that his home area came under attack in late 2017; having assessed all of the evidence in the round I believe it is far more likely that the Appellant was simply displaced from his home area due to the fighting that was taking place there and that he subsequently fled Iraq for that reason alone.
48. It follows from all that I have said that I am not satisfied that the Appellant has a profile that will be of interest to the PUK or the KDP should he be returned to Iraq. In particular I am not satisfied that the Appellant would be at risk of persecution or serious harm on account of being a suspected ISIS sympathiser. Having rejected the core of the Appellant's claim it follows that I am not satisfied that he would suffer persecutory ill-treatment on account of his imputed political opinion should he be returned to Iraq.

30. The Upper Tribunal at the error of law hearing in relation to the ground challenging the adverse credibility findings wrote at [11 - 13] of their determination:

11. Ground 5 submits that the FTT made no clear finding regarding the appellant's claim that his father was abducted and forced to act on behalf of ISIS. I do not accept this submission. The FTT made it clear at [46 - 48] that it rejected the entirety of the appellant's claim, other than he was forced to leave his home area of Tuz because it came under attack in late 2017, having earlier expressed concerns regarding the account regarding the appellant's father at [42 - 43]. One of these concerns included the FTT being "*unclear*" as to why the appellant would be suspected to be an ISIS sympathiser. The point made on behalf of the appellant was that a pro-ISIS political opinion will be imputed to him, with the attendant risk of serious harm by state and nonstate actors, by reason of his father's linked to ISIS, irrespective of the circumstances that led to the father working for ISIS and the appellant holding no sympathies to ISIS whatsoever.
12. As ground 5 submits, the FTT judge failed to direct himself to whether it is reasonably likely that a pro-ISIS political opinion will be imputed to this appellant, in light of the country background evidence on this issue. The headnote in AAH states as follows:

"Whether P will be at particular risk of ill-treatment during the security screening process must be addressed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known

association with ISIS (ii) coming from an area associated with ISIS and (iii) being a single male of fighting age."

13. This guidance is to be found in more detail at [120] of AHH. Whilst this guidance deals with the security screening process, it is reflective of the wider country background material as to imputation of an adverse political i.e. pro-ISIS, profile. The FTT failed to consider that this appellant meets all three of the heightened risk factors. As recorded at [43] of AAH: *"there is in general a suspicion of people, particularly single young man, moving from areas formally (or still) controlled by ISIL ... Dr Fatah concludes that single male IDP's face a higher risk of arbitrary detention, and disappearance, than those with families."*
- 31.** Notwithstanding the Upper Tribunal identifying an alleged failure by the First-tier Tribunal judge to consider risk profile rather than error in the general adverse credibility findings affecting the appellant's claim, and rejecting the challenge in the grounds that the judge below made no clear findings regarding the appellant's claim his father was abducted and forced to act on behalf of ISIS, the Upper Tribunal directed that the credibility of the appellant's account as to what happened to him and his family members must be considered again.
- 32.** The appellant was cross-examined by Mr Bates at the hearing before me. There was no re-examination.
- 33.** I find the concerns about the credibility of the appellant's evidence identified by the First-tier Tribunal are well-founded. Considering all of the evidence, from screening interview up to and including the replies to questions given by him to questions asked in cross examination, I find the appellant's claims to lack credibility.
- 34.** The appellant does not claim either he or his father were ISIS sympathisers who fought for this group against the PUK or the Iraqi authorities, but rather that his father had been forced to work for them following his being kidnapped. There is nothing in the evidence to show the appellant had ever demonstrated pro-ISIS sympathies and nothing to support a claim or actual adverse profile such as to place the appellant at risk.
- 35.** In relation to the claim that such may be imputed to the appellant, I find that claim to be without merit. I accept the appellant's profile does include a number of the factors identified in the earlier country guidance as indicating a person may be imputed with such an adverse opinion, but the appellant's own evidence is that despite his father working for ISIS and his coming to the direct attention of the PUK he was not persecuted or ill treated sufficient to warrant a grant of international protection, and on three occasions was released and was even allowed to join the Peshmerga to fight on their behalf and to receive a weapon from them. It is implausible that a person with a genuine pro-ISIS profile, actual or imputed, would at that time have been armed or put in a position where he could have caused harm to those who are opposing ISIS. Country material suggests those who were suspected of supporting ISIS at the time would not be released or armed but would have been detained. This undermines the appellants claims in relation to his father and his own alleged experiences flowing from the same.

- 36.** The appellant was asked by Mr Bates about the efforts he had made contact his father who he stated had contacted him on the telephone, but I found the appellant's evidence not supportive of his claim that such an event actually occurred. The appellant was asked by Mr Bates about the telephone call and whether since that call he had made any attempt to try and contact his father which the appellant claimed he had not. The appellant claimed he had no one in Iraq who could help him, but the appellant had clearly made no effort to contact the Red Cross or anybody else to trace his father. The appellant claimed he had a mobile telephone when he last spoke to his father when asked whether he tried to ring his father back he claimed that he had tried although; it was noted that his evidence to the First-tier Tribunal recorded [43] was in the following terms "*the height of the Appellant's evidence was that his father contacted him on one occasion by telephone but he provided no level of detail about what they discussed on this occasion or how his father managed to contact him at a time when he was under ISIS control. The Appellant also failed to adequately explain why he had made no effort to contact his father again since this time..*" On the one hand the appellant was claiming not to have made any effort to contact his father before the First-tier Tribunal yet before me claimed that he did try to contact his father. When asked by Mr Bates how many times he had tried to contact his father he claimed he tried several times.
- 37.** Another area of concern related to the appellant's evidence concerning his CSID. The appellant was asked by Mr Bates in cross examination when he had last seen his CSID card to which he claimed he had never seen it. When asked whether he was claiming never to have seen this ID documents the appellant claimed that his father had it. When the appellant was asked why he did not have it with him when he was an adult he claimed it was because he was a shepherd. When asked to clarify whether he was saying that when he left Iraq his CSID card was left in his home the appellant confirmed it was.
- 38.** The appellant was asked whether he would have required the CSID when volunteering for the Peshmerga, to prove his identity, but he claimed that he was able to do so without providing this source of personal identification.
- 39.** The appellant was also asked whether he needed to show his CSID when travelling to the border, which that may have required him to go through checkpoints, but he claimed he did not.
- 40.** When cross-examined about the answers to questions 7 and 8 of the screening interview which I set out above, in which the appellant had claimed that the last time he saw the CSID was on the way, and asked to clarify what he meant, he claimed it was a national certificate which was the identification he was referring to; but this is not at all made clear from the answers the appellant gave to a fairly straightforward questions.
- 41.** The appellant also raised allegations documents were fake but this does not appear in any part of the interview.
- 42.** I find a clear interpretation of the answers given by the appellant in the screening interview, not undermined by his attempt to provide an

- alternative explanation, was that he did have his CSID with him on his journey to the UK which undermines the credibility of his claim.
- 43.** In relation to his claim the PUK had stated they could not protect the appellant; he was asked why he remained in his home area if his life was at risk and the PUK not able to protect him. The appellant's explanation was not at all satisfactory. There was no evidence of anything the appellant had done to enable him to travel elsewhere before the date he did, despite claiming his father had been detained by ISIS and he was a single man with no obvious ties preventing him from relocating elsewhere if he was credibly at risk.
 - 44.** The appellant's claim to face a real risk is undermined by the fact that he remained in Iraq between 2014 and 2017 with no credible evidence of his facing a real risk of harm.
 - 45.** The appellant was asked who paid the cost of him leaving Iraq and travelling to the United Kingdom. The appellant claimed that he worked as a shepherd and he saved money. The appellant was asked how much the trip cost him to which he stated 13 million Iraqi dinar which equated to about US\$10,000.
 - 46.** It is not disputed the appellant paid an agent and probably paid that sum of money as the chronology of him leaving Iraq and being able to get to the UK very quickly indicates that this was not the case of an individual whose route was not prearranged or properly funded, as the appellant was clearly not one of those who stayed in the jungle in France for a considerable period of time before arrangements could be made for them to get to the UK.
 - 47.** The appellant was asked how much he earned as a shepherd per month which he claimed was about 400,000 Iraqi Dinar. Information available within the public domain shows that average income in Iraq is about 2,050,000 Dinar per calendar month with a low level of income being approximately 850,000 Dinar and a higher level 9,150,000 Dinar.
 - 48.** When asked how much of his income he was able to save the appellant claimed 200,000 Dinar per month which if one divides the amount he claims to have paid the agent by the sum he claimed to be able to save equates to approximately 65 months savings or 5.42 years. The appellant did not claim to have other residual funds that he was adding to. At 300,000 dinar pre month saved this would have taken the appellant 4.33 years. Both these periods are in excess of the two year period that the appellant claimed to have remained in Iraq since the situation arose that required him to leave.
 - 49.** The appellant's evidence concerning not having his CSID flies in the face of everything that is understood about this means of identification. The appellant claimed that he did not require the same as a shepherd but he would have been required to prove his identity on numerous occasions within Iraq where he would be expected to do so by producing this document. The appellant would not have been able to attend school, receive goods or services within Iraq, or to have voted in Iraq without being able to personally prove his identity. The appellant was asked whether he had voted in Iraq in question 56 of the asylum interview which he claimed in reply to 57 that he did in 2010 when he voted for the PUK.

- 50.** I find the appellant's evidence on this point is also undermined by the replies given in his screening interview, explored in cross examination, that he had the document on him when he left Iraq.
- 51.** I do not find there is any credible basis for the appellant's claim did not understand the questions asked during his screening interview. They are straightforward, have the required degree of clarity, and the appellant did not indicate any misunderstanding at the time of the interview. The appellant specifically knew the question related to his CSID but tried now to claim that he thought it was his nationality certificate. There is no indication in the earlier evidence of mentions of photographs or matters that he now disclosed.
- 52.** There are concerns about the rate of income the appellant claimed he was able to earn as a shepherd within Iraq. He stated in his earlier evidence that the person who he worked for had indicated he could not support him any longer so he had to leave. The appellant claims to be an uneducated shepherd yet failed to provide any evidence in relation to his claimed rate of income or that he was able to save the amounts from this income he claims to have done. I do not find the appellant's claim in regard to this aspect of his evidence to be credible.
- 53.** I also have concerns regarding the appellant's claims relating to his father. It seems implausible that a person who claims to be concerned about the whereabouts of their father has made no effort after one telephone call to attempt to contact him. His evidence before the First-tier Tribunal changed in response to questions from Mr Bates, that he tried on numerous occasions but without success. There is also the fact the appellant has made no attempt via the Red Cross or other known international organisations to try and locate his father. There is merit in Mr Bates's submission that the reason the appellant has made no attempt to trace his father is because he knows where his father is.
- 54.** I find the appellant's claims concerning his father lack credibility, reflecting the conclusion of the First-tier Tribunal on this specific point.
- 55.** I find the appellant has failed to show he is of adverse interest to the authorities in Iraq.
- 56.** Even if the appellant is from the area he claimed, which has been accepted by the respondent, it is not made out that if he is return to Iraq now he would have an adverse profile creating a real risk for him on return. There is no credible evidence of an actual or imputed adverse view of him being taken when he was in Iraq that led to his suffering harm.
- 57.** I find that the appellant's claimed events concerning his father or in relation to his CSID lack credibility. I find the appellant has failed to establish that he has no contact with his family in Iraq or that he does not have access to his CSID.
- 58.** With that document the appellant can travel to his home area where there is no evidence of a real risk sufficient to warrant a grant of international protection at this time or, in the alternative, he could relocate to the IKR. It is not made out the appellant is at risk from anybody within the PUK or KDP in Iraq.
- 59.** The appellant has family in Iraq and it was not made out they could not assist with his relocation.

- 60.** Even though the home area was an area of conflict and other families internally displaced this does not mean the appellant's claim that that happened to his him or his father is credible as there are countervailing factors identified from the evidence that undermine his claim.
- 61.** The fact it took two years from 2015 to 2017 before the appellant left indicates no real risk to him during this period especially as he could have left to travel to another part of Iraq as he claims he was able to accumulate substantial sums of money from his earnings in this time, even though I find that aspect of undermined for the reasons set out above.
- 62.** In relation to article 15(c) of the Qualification Directive relied upon by Mr Mozham, I accept that certain areas of the province are occupied by ISIS but the appellant has failed to establish any real risk to him. They are no longer in control of the governorate as a whole and even looking at the sliding scale of risk I find the appellant has failed to adduce sufficient credible evidence to establish a claim of international protection.
- 63.** Although Mr Mozham claimed the appellant had no family in the IKR making it unduly harsh or unreasonable for him to relocate there I find such claim not made out even taking into account the guidance provided in SMO [2022].
- 64.** In conclusion I find the appellant has failed to discharge the burden of proof upon him to the required standard to establish his claim is credible. Whilst it is understandable that with the situation that prevailed in Iraq previously with ISIS those with the ability to do so left the country, the appellant's claim to face a real risk for the reason he did and what occurred to his family has not been shown to be credible. The appellant has failed to establish he faces a real risk on return to his home area or otherwise, fails to establish it is not reasonable for him to internally relocate if required, fails to establish that he does not have access to required documentation to enable him to do so, fails to establish he has no family in Iraq who can assist him, and accordingly is no more than a failed asylum seeker who can be returned to Iraq.

Decision

- 65. I dismiss the appeal.**

Anonymity.

- 66.** 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 15 August 2022