



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006026
First-tier Tribunal No:
HU/50796/2020
IA/02064/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

Mr Rawa Taufiq Faraj
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Dhanji, instructed by Biljana & Co Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 24 April 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Davey ('the FtT'), who in a decision promulgated on 30th November 2022, dismissed the appellant's appeal based on protection and human rights claims. At the core of the appeal was the appellant's claim to fear persecution because of an honour killing, specifically as a result of a relationship he had entered into in his country of origin, Iraq. An additional issue was whether, as an Iraqi national of Kurdish ethnic origin, who claimed to have lost contact with his family in the IKR, his return would risk breaching his rights under Article 3 ECHR on the basis that he claims not to possess a CSID or INID.
2. The FtT considered a previous Tribunal decision rejecting the appellant's claim in May 2011. The FtT considered and applied the well known authority of Devaseelan [2002] UKIAT 702, in rejecting the appellant's renewed protection claim. There is no appeal against that decision.

3. In considering the appellant's article 3 ECHR claim, the FtT cited the authority of SMO, KSP and IM (Iraq) CG [2019] UKUT 400 as authority for the general proposition that it was not unreasonable to expect the appellant to relocate internally to Baghdad, as the appellant did not fall within one of the risk categories identified, and the FtT did not accept that the appellant could not get in touch with his family and obtain an identity document. For completeness, I add that whilst the FtT's decision was promulgated on 30th November 2022, the FtT heard the evidence on 3rd February 2022, apparently prepared the judgment on 5th February 2022, but the FtT signed the judgment (and so clearly had not finalised it) until 30th November 2022. The decision does not give a reason for the delay in promulgation.

The grounds of appeal and grant of permission

4. On 12th December 2022, the appellant appealed on three grounds. First, the delay between the hearing and promulgation made the FtT's decision unsafe, on the basis of R (S(Sri Lanka)) v SSHD [2018] EWCA Civ 1391, because of the second and third grounds. Second, in the period between the hearing and the promulgation date, the Country Guidance had been replaced with SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110, on which the appellant had not had an opportunity to address the FtT. Third, the appellant had consistently claimed that he could not obtain his CSID from abroad because of a breakdown in contact between him and his family members. The FtT's assessment of the appellant's credibility in relation to that breakdown were affected by the FtT's delay in finalising the judgment and the FtT's reasons were inadequate.
5. Judge Hatton of the First-tier Tribunal granted permission on 30th December 2022. The grant of permission was not limited in its scope.

The hearing before me

6. Ms Everett began by formally conceding that the effect of the delay in the FtT's promulgation resulted in two errors of law. First, the appellant had not had an opportunity to address the new Country Guidance. Second, the delay was likely to have affected the FtT's assessment of the appellant's oral evidence, on which he was cross-examined at the hearing, in relation to the claimed breakdown in communications between him and family members in Iraq. For the avoidance of doubt, the FtT's decision on the protection claim was not appealed and Mr Dhanji agreed was not affected by the accepted error.

Decision

7. I accepted Ms Everett's concession in relation to the Article 3 claim, that the FtT's decision, in so far as it relates to the appellant's ability to obtain an identity document, is unsafe and cannot stand. The FtT erred in law in relation to the Article 3 ECHR claim, which I set aside. In doing so, I set aside the FtT's findings in relation to the breakdown in contact between the appellant and his family members.
8. However, the FtT's decision in which he rejected the protection appeal is not appealed, and stands.

Disposal of proceedings

9. Both representatives urged me to remit remaking back to the FtT, on the basis that the appellant's credibility needed to be reassessed, so that, bearing in mind paragraph 7.2(b) of the Senior President's Practice Statement, the nature and extent of the judicial fact finding which will be necessary, means it is appropriate to do so. I agreed, and remit matters back to the FtT, to a Judge other than Judge Davey.

Notice of Decision

The FtT's decision on the protection claim is not appealed and stands.

The FT's decision on Article 3 ECHR, in relation to the appellant's ability to obtain an identity document, contains material errors of law and I set it aside.

I remit the Article 3 appeal to the First-tier Tribunal for a rehearing. No findings in relation to the appellant's claimed breakdown in communications with his family are preserved.

Directions to the First-tier Tribunal

The Article 3 ECHR appeal in connection with the appellant's ability to obtain an identity card is remitted to the First-tier Tribunal for a rehearing, with no preserved findings of fact in relation to the claimed breakdown in communications with the appellant's family.

The remitted appeal shall not be heard by First-tier Tribunal Judge Davey.

No anonymity direction is made.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th April 2023