



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006467
First-tier Tribunal No:
PA/53409/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

RM
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Galliver-Andrew, Counsel instructed by Freemans Solicitors
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House on 5 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. 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.

DECISION AND REASONS

1. The appellant is a citizen of Iraq who claimed asylum in June 2019, aged 17. On 2 July 2021 his protection claim was refused. He appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Shiner ("the judge"). The judge dismissed the appeal. The appellant is now appealing against this decision.

The Appellant's Claim

2. The appellant claims to be a Kurdish Sunni Muslim from Sulaymaniyah. He claims to face a risk of an “honour killing” on return because he had a relationship with the daughter of a prominent KDP member. I will refer to the woman with whom he had a relationship as Ms T. He claims that he was attacked by Ms T’s brother and shortly afterwards fled Iraq.
3. The appellant also claims to have attended political demonstrations in the UK which have given rise to a risk on return.
4. A further claim made by the appellant is that, whilst in Turkey, he threw away (or gave to an agent) his CSID.

Decision of the First-tier Tribunal

5. The judge did not accept that the appellant had been truthful about being in relationship with Ms T, and found that he did not face a risk of being a victim of an honour killing. The judge also found that the appellant’s sur place activities had been minimal and did not reflect a genuine belief.
6. The appellant claimed to be unable to contact his family and to have attempted to locate them through the Red Cross. The judge summarised the evidence relating to this in paragraph 32, where he stated:

“32. In oral evidence the Appellant was unable to give me an address for his family home explaining that there was no postal address because post was not delivered to it. He told me that he provided an address to the Red Cross. He told me of the contact he had had with the Red Cross. He told me that he did not have telephone contacts for any of his family. He said that his uncle’s telephone number was stored in a phone given to him by the agent. He told me that he was very concerned to contact his family because of the fear he would receive bad news and then put in a stressful situation. Now he is older he said he wants to make contact with them.”

7. The judge’s findings on this issue are at paragraph 63, where he stated:

“63. I find the Appellant’s evidence in respect of the Red Cross to be unsatisfactory. He has not established what information he has provided to the Red Cross. He told me in oral evidence that he had asked the Red Cross to stop searching for his parents because he said he was concerned to receive bad news and was concerned bad news would have upon them. He did not say what bad news he anticipated or could have received. I reject the Appellant’s evidence in this regard as implausible as he gave no reason to fear for his family other than to postulate that they might be at risk from [Ms T’s] family but the Appellant has failed to establish this aspect of his claim. I judge that the Appellant intentionally provided limited information as to his parents whereabouts in the SEF and no further evidence to the Red Cross and then asked them to not search for his parents because had they found his parents in Sulaymaniyah it would have undermined his asylum claim. I judge for the same reasons that he has failed to provide detail of his uncle’s whereabouts to the Red Cross or any direct evidence from the Uncle for those same reasons.”

8. The judge did not make a finding in respect of the appellant’s claim to have discarded or given to an agent his CSID. In paragraph 66 the judge considered whether the appellant would be able to redocument himself on return to Sulaymaniyah and concluded that he would. The judge found:

“66. I have concluded that the Appellant is in contact or has the means to contact both his mother, father and probably his brother (who will no be an adult) and paternal uncle. I further find having regard to SMO [2022] that the Appellant could safely return to Sulayminiyah. I note that Sulayminiyah uses the INID system as such it will be for the Appellant to attend personally at the INID centre to obtain re-documentation. I judge that he will be able to do so. He will have the support of his mother, father and paternal uncle and possibly his brother. Any of those individuals it seems to me will be able to obtain the family registration details. I reject Mr Galliver-Andrews suggestion that the Appellant will be at risk travelling within Sulaymaniyah through want of documentation as he submits to me. Such a submission was not founded upon evidence. I have had particular regard to SMO [2022] [30] to [32]. The Appellant has not established that he would be at risk from security screening should he arrive by a direct flight to Iraq into Sulaymaniyah. He will be able to show that he does not come from a family, nor area associated, with ISIL, and will be able to show that he has been in the UK from 2019 and was child before then.”

Grounds of Appeal should and Submissions

9. In ground 1 the appellant submits that the judge erred in fact in paragraph 63 when finding that he intentionally limited the information he provided to the Red Cross about his family in order to avoid undermining his asylum claim. It is stated that the judge’s findings on the appellant’s contact with the Red Cross are inconsistent with a letter from the Refugee Council dated 28 October 2021 confirming that he had an active case with the Red Cross and evidence of efforts by the appellant to contact the Red Cross in November 2022. It is acknowledged that in August 2019 the appellant told support workers that he did not wish to proceed with the tracing service because of a lack of updates but it is argued that he was a child when he said this and there was no indication that the tracing ceased.
10. Ground 2 concerns the appellant’s identity documents. It is stated that the judge failed to take into account that the appellant has been consistent about his CSID being thrown away at the instruction of agents. It is also submitted that there is no way for him to redocument himself without encountering harm that engages Article 3 ECHR. A further argument made as part of this ground is that the judge’s finding that the appellant’s family could support him in redocumenting himself is undermined by the factual error regarding his engagement with the Red Cross (as discussed in ground 1 above).
11. Ground 3 concerns the judge’s application of the country guidance *SMO and KSP civil status documentation Article 15 Iraq CG* [2022] UKUT 110 IAC. It is submitted that *SMO* was misapplied because the judge stated in paragraph 66 that he had particular regard to paragraphs 30 to 32 of *SMO* when these paragraphs are a summary of the respondent’s submissions, not the country guidance that the judge was required to follow.
12. I have not set out the submissions of Mr Galliver-Andrew and Mr Basra. However, I have considered them carefully and they are incorporated into my assessment of the grounds below.

Ground 1: Findings of Fact Relating to the Appellant’s Engagement with the Red Cross

13. It is well established that the Upper Tribunal must be cautious before interfering with findings of fact (as well as evaluations of facts and inferences drawn from facts) by the First-tier Tribunal. See, for example, paragraph 29 of *Lowe v The Secretary of State for the Home Department* [2021] EWCA Civ 62.
14. The appellant is asking me to interfere with the judge's findings of fact concerning his engagement with the Red Cross. I am not satisfied that this is justified. Whilst there was some evidence before the First-tier Tribunal indicating good faith engagement with the Red Cross by the appellant (in the form of the correspondence referred to above in paragraph 9), there was also some evidence before the judge pointing to the appellant not wanting the Red Cross to locate his family. This includes the appellant's oral evidence at the hearing, as recorded in paragraph 63 of the decision, where he stated that he had asked the Red Cross to stop searching for his parents because he was concerned about receiving bad news; and his 2019 witness statement where there is a reference to not wishing to proceed with tracing his family. It was not irrational for the judge (who had the benefit of hearing oral evidence and considering the "whole of the sea of the evidence") to place more weight on the appellant's oral evidence and witness statement than on correspondence with the Red Cross. There is therefore no basis for me to interfere with the judge's findings of fact in respect of the appellant's engagement with the Red Cross.
15. Mr Galliver-Andrew argued that the appellant was a child when he came to the UK (and when his 2019 witness statement was written), and argued that this had not been adequately factored into the judge's assessment. I am not persuaded by this because, as highlighted by Mr Basra, the judge (at paragraph 54) stated in clear terms that he had regard to the appellant's young age when the events took place and noted, with reference to well-established authorities, the caution that must be exercised when considering evidence given by a child.
16. Accordingly, I am not persuaded that ground 1 identifies an error of law.

Ground 2: Obtaining a New Identity Document

17. It is submitted in the grounds that the judge erred by not accepting the appellant's evidence that he threw away his CSID before coming to the UK. I am not persuaded that this argument identifies an issue relevant to this appeal. The judge did not make a finding that the appellant has retained his CSID and there is nothing in the decision indicating that the judge did not accept that the appellant discarded his CSID prior to coming to the UK. Paragraph 66 of the decision, where documentation is considered, takes as its starting point that the appellant does not have his CSID and would need to obtain a new identity document (the INID) on return to Sulaymaniyah. In other words, the judge's assessment of the redocumentation issue is premised on an acceptance that he does not have his CSID and therefore any error concerning whether the appellant discarded his CSID would be immaterial.
18. Mr Galliver-Andrew argued that the appellant will be unable to obtain an INID without family support. He submitted that the judge erred in finding that the appellant would have such support because of the factual error relating to his engagement with the Red Cross. This argument cannot succeed in the light of my finding in respect of ground 1. Accordingly, the appellant cannot succeed on ground 2.

Ground 3: Misapplication of SMO

19. The judge stated in paragraph 66 that he had “particular regard” to paragraphs 30 – 32 of *SMO*. The grounds submit that this indicates an error because paragraphs 30 – 32 record the respondent’s submissions, not the Upper Tribunal’s findings, in *SMO*. There is no merit to this argument because, as pointed out by Mr Basra, it is tolerably clear that the judge was referring to paragraphs 30 – 32 of the headnote to *SMO*, which set out country guidance concerning return to the IKR. Mr Galliver-Andrew accepted this, but submitted that a headnote is not part of the decision. This submission does not assist the appellant because the headnote is extracted from the decision; i.e., it replicates paragraph 144 of *SMO*.

Conclusion

20. None of the grounds of appeal identify an error of law. The appeal is therefore dismissed.

Notice of Decision

21. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22.5.2023