IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002544

First-tier Tribunal No: PA/01539/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 May 2023

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)

Between

[K A]

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Aziz
For the Respondent: Mr Tan, Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is the appeal against a decision of the First-tier Tribunal dated 4 March 2022 refusing the appellant's appeal. The position of the appellant is as follows. He is an Iraqi who arrived in the UK and claimed asylum, and was then refused asylum on 7 June 2016. Further submissions were made on his behalf on 8 December 2017 and those further submissions were themselves refused on 22 March 2021, leading to the decision which was reached on appeal.

2. The appellant's case is that he is an Iraqi and a Sunni of Kurdish ethnicity. He explains that he would be persecuted for those reasons were he to be returned. Issues were raised in relation to his place of origin. The respondent, in her decision and also before the First-tier Tribunal, contended that in truth the appellant could be returned to Baghdad, where his family could meet him with a CSID, used for onward travel to the IKR, he being a person who hailed from the IKR.

3. In evidence before the Tribunal, the appellant set out what has been rehearsed above and asserted that he came from Kirkuk, in particular from a place called Arab Koi. He feared being returned to Iraq as he had no original CSID card and no contact with anyone, be they family or friends, who would be able to assist him in that connection. He said that to be returned to Baghdad would be dangerous as he feared that he would be kidnapped or intercepted on his way to his home, the Kirkuk area. He said that he had attempted via the Red Cross to find his uncle, without success, but that he had been contacted by a friend in Iraq called Mohammed who had sent him documents in 2017 but with whom he had had no contact since. That was notwithstanding attempts to find him on social media. In essence, therefore, the claim made by the appellant was that he came from an area to which he would not be able to return without proper documentation, and that he had no family or friends in order to support him in that endeavour.

4. The judge in her decision placed reliance upon an age assessment report which had been undertaken on the appellant upon arrival which made a positive assessment of his demeanour, together with positive findings in relation to his background. That age assessment found that he was of the age he stated and therefore a minor. The appeal fell to be addressed of course at a time when the appellant was an adult. The judge, in reaching her findings of fact, had reference in particular to both the contents of the age assessment of 23 November 2015 and also the appellant's asylum interview on 8 June 2016. Her conclusions, in relation to that, were set out in paragraph 20 in the following terms:

> "20. … I find he gave different accounts of where he was born/lived and his age, namely:
>
> a. In his age assessment the appellant stated he was born in Arab Koi, a short distance from Kirkuk. Yet at AI [Asylum Interview] Q4 he was asked where he was born and is recorded as saying '*Halabja. Always lived there'*. Halabja is in the IKR.
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> b. At AI Q5 the appellant is recorded as saying he thinks Halabja is in Sulaymaniyah. At AI Q33 the appellant named a number of provinces neighbouring Sulaymaniyah, the distance between Sulaymaniyah and Halabja and questions in relation to surrounding areas. He was also able to name the KDP as being the political party in the IKR and the colours of the Kurdistan flag. He also spoke of how he exited Halabja with the assistance of his uncle.

c. He was asked at AI Q66 what he believed would happen if he was returned to Iraqi Kurdistan and is recorded as saying *'I don't expect any better than I am used to,...'* At AI Q 72, he was asked why he said in his screening interview (SI) that he was from Touz Kharmato and is recorded as saying *'That was wrong again, since I moved to the foster carers house as they were so nice and caring to me, I decided to give the correct details. I felt like I trusted and nobody hurt or harm to me'.*

d. In support of my finding that the appellant is untruthful regarding where he is from in Iraq, I also note that he acknowledged in his AI that he gave incorrect details regarding his age. In his age assessment, he gave his date of birth as 12/02/2000. In his AI he was asked why he initially claimed this to be his date of birth and is recorded as saying '*Because of fear, I didn't dare to give my correct details..... because I had fear installed by agents throughout the journey that the country might return me if I gave my correct details'.* The appellant in his AI therefore acknowledges that he gave his incorrect details. This again causes me to find the appellant is untruthful regarding his now claim be from the Kirkuk region.

e. The appellant said in his age assessment that his mother and father are dead. Yet in his AI Q6 he is asked what family he had in the Iraq and said his parents, together with extended family were in Sulaymaniyah. He was asked at AI Q 73, that in his SI, he said he feared return to Iraq as there was a war there and his mother and father were killed. He was asked why he was now saying differently. The appellant is recorded as saying '*As I have mentioned, when I travelled I was told by different people and agents to say this, when I was re housed with the foster parent who cared, I felt secure and looked after, I decided to tell my truth. The one I have mentioned is all true'.* Again, this causes me to find the appellant is now providing an incredible account as to having no family members in the IKR.

f. Whilst the appellant at the hearing effectively reverted to an account, as given in his age assessment, in his AI he provided his rationale for why he had previously lied. He has not addressed why he now relies on what is recorded in his age assessment and not what he said a year later in his AI. I find he prefers to rely on his earlier version because it suits his narrative not to be removed to Iraq."

On the basis of these findings, the First-tier Tribunal Judge found that the appellant was born in the IKR and had lived there prior to moving to the UK and accepted the answers which he had given in the asylum interview, acknowledging that the earlier information he had provided was incorrect. There was no Article 15(c) issue in the IKR or in Iraq at present, which would place the appellant at risk and therefore the judge went on to assess whether or not return to Iraq was feasible in the case of the appellant. Her conclusions in that connection were articulated as follows:

"23. I reject the appellant's account of his documents having been destroyed in a house fire, given his own admissions in his AI. I also

reject his claim that the documents he says were sent to him by his friend Mohammed are his copy ID/CSID given the contradictory accounts he gave in his AI and age assessment. I further find his claim as incredible that he gave his friend Mohammed a copy of these documents whilst in Iraq – again, more so given they record a different place of birth to which the appellant gave in his AI. Whilst the appellant says he attended the Iraqi embassy in Manchester, given I find the documents he says he produced cannot be relied upon, I find the likelihood of obtaining a CSID in the UK is not high.

24. Nonetheless, the appellant is of Kurdish ethnicity. As per my findings above, I find he was born and lived in the IKR prior to coming to the UK, based on his own answers at his AI. As a former resident of the IKR he can voluntarily return there with a laissez passer.

25. I further find the appellant has family members there and the uncle who he claims assisted him to come to the UK; should the appellant return via Bagdad, they can obtain a CSID for him by proxy and meet him there, before his onward journey to the IKR. Once in the IKR he can obtain a CSID/INID there. There is nothing to suggest they would not provide him with a home and support until such time he can secure employment and/or accommodation. He also claims his friend Mohammed previously assisted him and there is no reason why they could not do so again – more so as the envelop the appellant says Mohammed sent the documents to him was sent from the city of Sulaymaniyah. Whilst he claims not to have any contact with these individuals, there is no evidence of him contacting the Red Cross to locate them, other than his say so."

5. The First-tier Tribunal Judge then went on to assess Appendix FM, paragraph 276ADE(1) and Article 8. It was clear and undisputed that the appellant had no family life in the UK. At paragraph 27 the judge went on to consider Article 8 in the following terms:

"27. I find Article 8 family life is not engaged as the appellant has no family in the UK. Whist there is evidence he was attending a college course in the UK, there is nothing to suggest he could not attend a course in the IKR. Any private life he has acquired in the UK was at a time he had no basis to be here. In any event I find there is nothing to suggest he could not use the education acquired in the IKR or in the UK to seek employment in the IKR and develop a new private life there."

As a consequence of these findings, the decision which the judge reached was that the appellant had no claim to refugee protection nor would his return amount to a breach of his human rights protected by Articles 2, 3 or 8.

6. The appeal is advanced by Mr Aziz on the basis of five grounds. In effect, there is much in grounds 1 and 2 that are in common. His submission is that in reaching the findings which the judge did in paragraph 20, she failed to place emphasis on the fact that the appellant was a minor at the time of the investigation of his asylum claim and placed undue focus on the differential between the age assessment and the asylum interview. Furthermore, there was new evidence which was before the judge and which she should have afforded greater weight to. That material is in the form of two documents. In particular, one an Iraqi nationality certificate, records that the appellant was born in Kirkuk

in 1998, and the other a Directorate of Nationality and Immigration Personal Identification Card issued on 6 October 2009, which again records that the appellant was born in Kirkuk in 1998. This material does not appear, it is submitted to her, featured in the judge's assessment of the issue of where the appellant had grown up and came from when he arrived in the UK.

7. The answer in my judgment to these points are set out in the judge's conclusions in paragraph 20 and subsequently in paragraph 23. It is clear that the judge had regard to all of the documentation which was before her in reaching a conclusion on the central question of where the appellant came from. She had regard, as she was entitled to have regard, to all of that evidence and to assess it in the round. It is clear from her reasons, that of central importance to her assessment was the difference, and it was a stark difference, between the account given by the appellant when he was giving his age assessment and that which he gave in the asylum interview, which not only differed from the age assessment's account of his origins, but also provided an explanation for why he accepted that he had lied when providing the age assessment evidence at an earlier stage. The documentation was, for the reasons that the judge gave in paragraph 23, of little, if any, weight in the assessment of that issue, in particular, because having reached the conclusions that she did, it was inconsistent with those conclusions. It formed part of her holistic assessment of the origin of the appellant and the ultimate conclusion which she reached in paragraph 21 that the appellant had been born in the IKR and lived there prior to coming to the UK, as he described in his asylum interview. In all of those circumstances I am unconvinced that there is any substance in grounds 1 and 2 of the appeal.

8. Ground 3 is directed to the findings that the judge reached in paragraphs 23 to 25 of her decision, which I have set out above. It is submitted that these were conclusions which were not properly open to the judge, in particular as they pertained to the CSID card. Mr Aziz, in his submissions contends that the judge failed to have regard to the appellant's difficulties were he to be removed on a forced basis to Baghdad and failed to provide adequate reasons as to why she had concluded either that the uncle could not assist him or that the visits to the Red Cross had not borne fruit. In my judgment, the judge in paragraphs 23 to 25, against the background of her conclusions in paragraph 20, provides a coherent basis for her conclusion that the appellant, whilst unable to obtain a CSID card in the UK, would have the necessary support and assistance from family members and friends in accordance with paragraph 13 of the headnote in the case of **SMO, KSP and IM (Article 8 15(c); identity documents) Iraq CG [2019] UKUT 00400** so as to ensure that he could be safely returned to the IKR where he could obtain the necessary documentation. In those circumstances, the conclusions which the judge reached were open to her, they were not contrary to country guidance, and they were findings of fact which related to the evidence which she had received when that evidence was assessed in the round.

9. Ground 4 is the contention that the judge's assessment of Article 8 in this case was inadequate. It was submitted by Mr Aziz there out to have been a greater degree of detailed analysis, in particular in paragraph 27 of the judge's conclusion. She fails to reflect that the appellant had been present in the UK for seven years and therefore her description of the private life to which he was entitled to have respect was inadequate and insufficiently particularised.

10. Having assessed that submission, and whilst the judge's conclusions are succinct, there was, in this case, no need for her to say more than she did. This was an appellant who had been present in the UK for some time, but such private life as he had acquired was at a time when he had no status in the UK and there were no particular features to which my attention or indeed the judge's attention have been drawn, which would add weight to the private life in the assessment of the Article 8 balance. Thus, I am satisfied that the reasoning which the judge provided, albeit brief, sufficed for present purposes and that the conclusion which she reached on the evidence which was before her discloses no error of law.

11. Finally, ground 5 is the contention that the judge failed to consider exceptional circumstances. It is true that there is not an assessment of exceptional circumstances nor are they expressly dealt with. However, given the conclusions reached in paragraph 27, and the position of the appellant on the basis of the evidence before the judge, the omission of an assessment of exceptional circumstances in this case, does not amount to an error of law which would lead to any alternative conclusion. The decision which would be reached in the present case would be the same. This is not an appellant who could rely upon exceptional circumstances, nor in the course of the proceedings before the First-tier Tribunal Judge or indeed today, have there been any exceptional circumstances particularly relied upon in connection with his case.

12. It follows, for all of the reasons which I have set out above, I am not satisfied that any of the five grounds on which this appeal has been advanced are made out and therefore this appeal must be dismissed.

Ian Dove

President of the Upper Tribunal
Immigration and Asylum Chamber

16th May 2023