



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000098
First-tier Tribunal No: PA/11460/2017

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 19 February 2023

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

AS
(ANONYMITY ORDER MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Joseph, instructed by TMC Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 15 December 2022

Anonymity Order

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (and his family) 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

Introduction

1. The appellant is a citizen of Iraq of Kurdish ethnicity who was born on 19 April 1996. He arrived in the United Kingdom with his family on 5 August 1999. His family came from Greece where the appellant had been born.
2. Between 30 September 2009 and 14 March 2014, the appellant was convicted of a number of offences. On 14 April 2014, he was convicted of false imprisonment at the Home Crown Court and sentenced to four years' imprisonment.
3. On 9 July 2014, the appellant was notified of his liability to deportation. Submissions were made on his behalf both in relation to asylum and human rights claims. On 23 October 2017, the Secretary of State refused each of those claims.
4. The appellant appealed to the First-tier Tribunal. In a decision sent on 22 December 2021, Judge Manyarara dismissed the appellant's appeal on all grounds. First, the judge rejected the asylum claim upholding its certification under s.72 of the Nationality, Immigration and Asylum Act 2002 (as amended). Secondly, the judge rejected the appellant's claim under Art 3 of the ECHR that he was at risk on return to the IKR based upon his claimed Jewish faith. Thirdly, the judge rejected the appellant's claim under Art 3 based upon a risk to him on return in the absence of ID documentation. Finally, the judge rejected the appellant's claim under Art 8 of the ECHR.
5. With permission, the appellant appealed to the Upper Tribunal. He only sought to challenge the judge's decision in relation to Art 3 and any risk on return to the IKR without identity documentation. He made no challenge to any other aspect of the judge's adverse findings and conclusions on his international protection and human rights claims.
6. Following an initial hearing on 11 August 2022, in a decision sent on 2 September 2022 I concluded that the judge had erred in law in reaching his adverse finding under Art 3. It was conceded at the hearing that the judge had been wrong to conclude that the appellant could obtain a replacement CSID from the Iraqi Embassy in the UK.
7. As a result, and to that extent, I set aside Judge Manyarara's decision. The appeal was adjourned in order to re-make the decision, limited to the issue of Art 3 and any risk on return to Iraq (the IKR) arising from (if that be the case) any absence of identity documentation.

The Resumed Hearing

8. The resumed hearing in order to re-make the decision was listed before the Upper Tribunal on 15 December 2022. The appellant was again represented by Mr Joseph and the respondent by Ms Rushforth.

The Issues

9. The sole issue to be determined, by agreement between the parties, was whether the appellant would be able to obtain in Iraq, an Iraqi National Identity Card (INID).

10. It was accepted by Mr Joseph, on the basis of evidence submitted by Ms Rushforth for the resumed hearing, that the appellant would be returned to the IKR, in particular to Sulamaniyah.
11. It was accepted that any identification document which the appellant could obtain would be an INID as the CSA office where his family were registered in Sulamaniyah only issued such documents. It was accepted, applying the most recent country guidance decision in SMO and KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) ("SMO and KSP") that an INID could only be obtained in person as it requires biometric enrolment.

The Submissions

12. Mr Joseph's case was that the appellant would be unable to obtain an INID. He accepted that the appellant would, if returned to the IKR, be able to enter safely. However, because of his circumstances it could not be established that he would be able to obtain an INID at his local CSA office.
13. Mr Joseph relied upon a number of factors. First, the appellant had not been born in Iraq but rather in Greece. He did not have an Iraqi birth certificate and he was not registered in the "Family Book" held at the local CSA office where his family's details, including that of his father, were recorded.
14. Second, the appellant would have no male relatives (particularly on the paternal side of the family) in Iraq to vouch for him. His paternal grandfather died in 2019 and, although he had paternal uncles, none of those lived in Iraq. His father lived in the UK. He had claimed asylum but that claim had been withdrawn and he had been granted ILR, Mr Joseph thought probably on the basis of an amnesty scheme, and was now a British citizen.
15. Thirdly, the appellant and his father had changed their family name from the name used by his father in Iraq which we will abbreviate to be "N". The family name was now different and we will abbreviate it as "S". Mr Joseph's submission was that the appellant would be unable to register, for the first time, at his CSA office without the relevant documents referred to, at least in the context of obtaining CSIDs in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC) at [25] ("AAH") (adopted in SMO and KSP at [62]) and in the absence of a male relative to vouch for the appellant. Mr Joseph submitted that the appellant's father could not be expected to return to the IKR and he made reference to the fact that the appellant's father was unwell.
16. Mr Joseph accepted that the appellant's claim was not based upon destitution as other relatives, as the judge found, could provide money for the appellant. However, nevertheless, Art 3 was engaged as the appellant would be unable to obtain access to relevant services without an INID.
17. Ms Rushforth submitted that the appellant could safely return to Sulamaniyah and it had not been established that he would not be able to obtain an INID at his local CSA office.
18. First, she submitted that the list of documents referred to in AAH at [25] related to obtaining a CSID and not an INID. There was no evidence of what documents were required in order to obtain an INID.

19. Secondly, she submitted that the appellant's father could return to Iraq with the appellant. There was a copy of the CSID of the appellant's father and, no doubt, the change of name could be overcome by his evidence and a paper trail. Ms Rushforth submitted that the appellant had not established that, with the assistance of his father, the appellant could not establish his details to be included in the Family Book and registered, albeit for the first time, in his local CSA office. It had not been established that he would lack any necessary documentation to then obtain his INID.

Discussion

20. The appellant relies upon Art 3 of the ECHR. The single issue, in dispute between the parties, concerns whether the appellant can establish a breach of Art 3 due to the implications for him if he is unable to obtain an INID from the CSA office in Sulamaniyah on return to Iraq (the IKR). The burden of proving a breach of Art 3 lies upon the appellant to establish to the standard of a real risk or reasonable likelihood the circumstances said to give rise to serious harm namely, by living in Iraq without an INID. That includes, necessarily, the inability to obtain an INID.
21. Mr Joseph referred us to the *CPIN*, "Internal relocation, civil documentation and returns: Iraq" (July 2022), at para 4.4 where the *CPIN* sets out the nature of the INID.
22. At para 4.4.2, the *CPIN* cites an EASO Report ("Iraq - Key Socio-economic Indicators for Baghdad") published in November 2021 concerning the new INID as follows:

"In September 2015, the issuance of new electronic and biometric unified national cards (also called new national card, new ID card, al-bitqa alwataniya al-muwahhada, al-bitqa al-wataniya al-jadida) started in Iraq. The unified national card is supposed to replace the civil status ID and make the nationality certificate and ultimately the residency card obsolete, so that Iraqis will eventually have only one official ID document.

'... According to a diplomatic source in Amman interviewed by Landinfo... [the INID is] issued at the local offices of the Directorate of National Card Affairs, situated all over the country and were referred to as Civil Affairs Directorate (CAD) offices [Note: CPIT and the Home Office refer to these as 'Civil Status Affairs' offices]. This directorate is part of the Directorate of Civil Status, Passports and Residencies of the General Directorate of Nationality which belongs to the Ministry of Interior. The offices can be found in most cities and in the provincial capitals. Both types of ID cards [INIDs and CSIDs] could only be issued in the district where the family was registered, which made it difficult for IDPs [Internally Displaced Persons] to obtain new documents as they often needed help if they lived in a province other than where they were registered.

'Individuals applying for the unified national card had to book an appointment with the local office via the website of the Directorate of National Card Affairs and download an application form, which had to be completed and taken to the appointment. In addition, they had to submit their civil status ID and their nationality certificate. The website of the Directorate of National Card Affairs also requested applicants to submit their residency card with the application and it stated that the original documents needed to be presented.

'... It is mandatory for applicants to appear in person to submit their application, because a photo, an iris scan and fingerprints will be taken. Subsequently, the application is sent to a central office in Baghdad together with the biometrics, where the information is checked. It costs 5,000 Iraqi dinars (IQD) [£2.69 GBP11] to get the unified national card issued, both at the first issuance and upon renewal after the expiration of the validity period. Should the card be damaged or get lost, the issuance of a new card costs 10,000 IQD [£5.39 GBP12] and 25,000 IQD (£13.49 GBP13), respectively. In accordance with the Act on National ID Cards of 2016 a new unified national card has to be issued in the event of loss or damage to the card. All newborns will be given the unified national card provided that they are registered in an area where the population registration office has the necessary equipment.

'... With a few deviations, the aforementioned procedure applies for the KRI [Kurdistan Region of Iraq]. According to Abdulrahman Ismael Azaz, Director of the Directorate of Nationality and Civil Status in Erbil, which belongs to the Ministry of the Interior of the KRG [Kurdistan Regional Government], interviewed in 2018 by Landinfo and DIS [Danish Immigration Service], in Erbil, people did not need to make an appointment via the website, because many people did not have internet access. Applicants needed to present their civil status ID, their nationality certificate and their residency card with the application. The documents handed in were first checked at the Directorate of Nationality and Civil Status and only after the document check was finished, they were sent to the main servers in Baghdad, where the personal identification number was produced. According to Director Azaz, the applicants' fingerprints of all ten fingers had to be taken as well.

'The card was valid for ten years but, when the civil status changed, e.g., through marriage or divorce, a renewal was required by submitting a new application for the issuance of a new unified national card.'" (footnotes omitted)

23. At para 4.4.5, the *CPIN* quotes an Australian Government Department of Foreign Affairs and Trade country information report on Iraq (August 2020) as follows:

"The Iraqi National ID card is an electronic biometric card issued by the Ministry of Interior, which holders are required to carry at all times. The National ID card is a credit card-sized plastic card with an embedded radio frequency identification (RFID) chip. It is covered with multi-coloured guillochés (an ornamental pattern formed of two or more curved bands that interlace to repeat a circular design). All information on the card is in Arabic and Kurdish. The front side of the card shows the coat of arms of Iraq and the words "Republic of Iraq", "Ministry of Interior" and "General Directorate of Nationality". It also contains the photograph of the holder, the holder's 12-digit national identification number, the 9-alphanumeric digit access number for the RFID chip, the holder's given name, father's, mother's and paternal grandfather's names, tribe and the holder's sex and blood type. The rear side contains the issuing authority, dates of issue and expiry, date and place of birth (city or town), 18-alphanumeric digit family number, and machine-readable zone.'" (footnotes omitted)

24. Whilst the material to which we have referred does not explicitly set out the documentation required in order to obtain an INID, in our view, on a fair reading it is plain that obtaining an INID is based upon the provision of the very same range of documents and information required previously to obtain a CSID with the addition of the biometric material - a photo, an iris scan and fingerprints which are a feature of the digital INID.

25. We note that the extract from the EASO Report refers to INIDs being issued in the district where the “family was registered” and contemplates the first issue to a newborn and also the INID being issued in the event of “loss or damage”.
26. In AAH, Mr Joseph referred us to [24]-[28] concerned with the obtaining of a CSID in Iraq and (but this is irrelevant to the appellant) from the consulate in London. The UT set out the evidence of Dr Fatah, a recognised country expert, and it was not suggested before us that the UT did not, in substance, accept Dr Fatah’s evidence. At [24], the UT referred to obtaining of a replacement CSID with the production of a “old or damaged CSID” or, in its absence, to locate (perhaps with more difficulty) “the relevant page in the family record”. At [24], the UT said this:

“In his main report Dr Fatah sets out means by which this might be possible. The ideal would be production of an old or damaged CSID. This would enable the Registrar to quickly and easily locate your family record in the ledger. Absent a CSID or copy thereof there are a number of other ways in which the Registrar could locate an individual's details. If that individual had an Iraqi passport, an INC or a PDS card these could all be used to 'track back' through layers of bureaucracy in order to locate the original record.”

27. Then at [25], the UT set out Dr Fatah’s evidence in respect of the documents that must be produced in order to apply for a CSID within Iraq as follows:

“Dr Fatah states to his knowledge the documents that must be produced in order to apply for a CSID within Iraq are:

- i) Application form
- ii) Birth certificate
- iii) A 'housing card' or a letter from the local council confirming the applicant's residence
- iv) (In the IKR) a recommendation from the *mukhtar*
- v) PDS card
- vi) Two photographs of the applicant (or in the IKR, four)

This information broadly accords with that reproduced by Landinfo (December 2015), who confirm this list but add that the ID card of a close relative would also be required. Dr Fatah has been told by practitioners in the IKR that a person returned to Iraq from abroad who wishes to replace his CSID would, before making his application, also require a certificate from the Ministry of Foreign Affairs.”

28. At [26], the UT set out Dr Fatah’s evidence concerning an application for a replacement CSID in the UK. That, of course, in the light of the introduction of INIDs is no longer an option.
29. At [27] the UT continued with Dr Fatah’s evidence concerning obtaining a replacement CSID in Iraq and gave the example of Dr Fatah’s own daughter, who was born in the UK, obtaining a CSID in one day from the office in Sulamaniyah. The UT said this:

"If you are in Iraq, and have all of the required documents, in normal circumstances the process is straightforward and quick and should take no more than three days. Dr Fatah's own daughter was born in the United Kingdom and he managed to obtain her a CSID in one day from the office in Sulaymaniyah, upon payment of a small fee. Dr Fatah was less optimistic about the efficiency of the process if in the United Kingdom. He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful."

30. At [28], Dr Fatah's evidence recognised that it might be possible to obtain a CSID even if all the documents he has listed were not available, and that there might be "some degree of flexibility" about the process. The UT set out his evidence as follows:

" If some of the documents were missing it might generally take you up to a month to collate and replace them all. In his live evidence, when pressed by Mr Singh, Dr Fatah acknowledged that it may be possible, when dealing with some officials, to obtain a CSID even if one does not have all of the documents listed above. He conceded that an official might be 'persuaded' to overlook the official requirements, and that there may be some degree of flexibility about the process in some governates. He maintained however that it would normally be the case that these documents would be required. The key piece of information that the individual would however have to have would be his family's volume and page reference number in the civil register. Without that, the individual "is in trouble". He could only obtain a new CSID if the Registrar was prepared to trawl through volume after volume looking for the family record. In his evidence before the Tribunal in AA (Iraq) Dr Fatah wondered if such an official would be willing to undertake such a task, or could be "made willing". The Tribunal concluded that this was not likely. The only way that a totally undocumented Iraqi could realistically hope to obtain a new CSID would be the attendance at the civil registry of a male family member prepared to vouch for him or her. The production of a CSID from, for instance, an uncle, would enable the Registrar to trace back through the record to find the individual's father, and in turn him."

31. In this appeal, of course, it is not simply a matter of identifying the appellant's details on the relevant page in the "Family Book" in his local CSA office. His details are not present because, it is accepted, having been born in Greece his birth was not registered. In our view, that would have to take place, in effect, before an INID could be issued to him.
32. Whilst there are, therefore, more complications in the appellant's case than in the usual situation where an individual, who is able to, can point to the relevant family material in the "Family Book" held by the CSA office, we are satisfied that the appellant has not established that there is a real risk or reasonable likelihood that he would not be able to obtain an INID on return to Sulamaniyah.
33. First, we accept that the basic material required would be available to the appellant. We do not accept that the appellant's father could not accompany him to Iraq to support his ancestry and claim to be registered. The appellant's father withdrew his asylum claim in the UK and his basis for ILR and subsequently British citizenship does not, in our judgment, provide any reason why he could not reasonably be expected to accompany the appellant to Iraq. The appellant's father has a copy of his own CSID. Further, even if the appellant's birth certificate obtained in Greece does not show the Iraqi family name of "N" (and we are not entirely clear from what we were told whether that is the case), we see no reason why the appellant's father could not provide supporting evidence

of the appellant's ancestry and that he is his son and so that his details can be registered in the relevant Family Book.

34. Second, we accept that the documentation required to obtain a replacement CSID is mirrored in any application for an INID with the addition of the relevant biometric material. Even if, as Mr Joseph submitted, the appellant cannot provide all the documents set out by Dr Fatah and referred to by the UT in AAH at [25], Dr Fatah's own evidence was that there was "some degree of flexibility" such that an official may be persuaded to overlook the need to produce all of the documentation.
35. We would observe that it is said by Mr Joseph that the appellant's case is somewhat unusual in that he was not born in Iraq and, therefore, his details were not registered in Iraq. We would point out that the example of Dr Fatah's own daughter given in [27] of AAH is, itself, of an Iraqi national who was born not in Iraq, but in the UK, and that she was able to obtain a CSID within one day from the office in Sulamaniyah upon the payment of a small fee. Of course, the details of her precise circumstances are not made clear in [27]. However, it does illustrate that a replacement CSID (and we would say also a replacement INID) may be obtained even by an Iraqi citizen not born in Iraq.
36. In short, therefore, we are not satisfied that the appellant has established a real risk or reasonable likelihood that he will not be able to obtain an INID with the assistance of his father and the documentation available to him through his father on return to Sulamaniyah.
37. For these reasons, we are not satisfied that the appellant has established, on the only basis outstanding in this appeal, that he will face a risk contrary to Art 3 of the ECHR on return to Iraq because of the absence of identification documents.

Decision

38. For the reasons set out in the UT's decision promulgated on 2 September 2022, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law.
39. We re-make the decision dismissing the appellant's appeal under Art 3 of the ECHR.
40. The First-tier Tribunal's decision to dismiss the appellant's appeal on asylum grounds and the claim under Art 3 of the ECHR (unrelated to identification documentation) and Art 8 of the ECHR were not challenged; they are preserved and stand.
41. Consequently, the appellant's appeal is dismissed on all grounds.

Andrew Grubb

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2023