



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004602
First-tier Tribunal No:
PA/50974/2022
IA/02831/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 June 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

RS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel of Counsel, instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 30 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellantis 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.

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DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Agnew promulgated on 24 July 2022, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 25 February 2022 was dismissed.
3. The Appellant is a national of Iraq, born on 5 March 1996, who first arrived in the United Kingdom on 20 August 2020 and claimed asylum on the basis that he was at risk on return to Iraq from ISIS having informed one of their members to the police, with subsequent threats of revenge.
4. The Respondent refused the application on the basis that the Appellant's claim was not reasonably likely, it was not detailed and it was not internally consistent. The Appellant was not considered to be at risk on return to Iraq and in any event the police were involved who could offer sufficiency of protection. There was no risk to the Appellant in terms of Article 15(c) of the Qualification Directive. The Appellant had a CSID card and family in Iraq who could assist his redocumentation. The Appellant did not meet the requirements of the Immigration Rules on the basis of private or family life and there was no basis for a grant of leave to remain outside of the Rules.
5. Judge Agnew dismissed the appeal in a decision promulgated on 24 July 2022 on all grounds. In summary, Judge Agnew found that much of the contents of the reasons for refusal letter was based on speculation as to how various people would act in Iraq and that section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 did not apply to damage the Appellant's credibility as it was accepted that the Appellant was under the control of an agent during his travel and followed their orders in the hopes of being reunited with his wife. However, Judge Agnew considered a credibility point not made by the Respondent in the reasons for refusal letter as to the Appellant's claim that he had not been in contact with his family in Iraq and considered his evidence about trying to locate his wife as lacking credibility; such that it was found that the Appellant was still in contact with family and friends in Iraq and if he brought his CSID card from Iraq and gave it to an agent en route to the United Kingdom, those family members could assist the Appellant in obtaining new documentation. The Appellant's claim that he could not internally relocate to the UK was found not to be supported by the current country guidance in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). Finally, it was noted that whilst corroboration was not required in asylum cases, the Appellant in this case had failed to provide evidence of any attempt to contact the police in Iraq for evidence that he had sought their assistance. Overall the Appellant was not found to be credible and had not established a well-founded fear of persecution on return to Iraq; further there were no grounds for a grant of humanitarian protection.

The appeal

6. The Appellant appeals on four grounds as follows. First, that the First-tier Tribunal materially erred in law in making perverse and/or irrational findings in relation to

credibility. Having found that the Appellant had given a consistent account which was not inherently implausible or improbable and that section 8 did not apply, the Judge then made an adverse credibility finding solely on the basis of the Appellant's attempts (or not) to contact his family and without any reasons for rejecting the Appellant's explanations about this. Secondly, that the First-tier Tribunal materially erred in law in requiring corroboration of the Appellant's claim on a matter not raised at all by the Respondent (either in the reasons for refusal letter or at the hearing) and with no assessment of whether the evidence suggested from the police in Iraq could be easily obtained. Thirdly, that the First-tier Tribunal materially erred in law by perversely finding that the Appellant's account was 'simple' in circumstances where he had been interviewed about it for a period of five hours, had made a detailed written statement and answered 54 questions in cross examination and 21 questions from the Judge during the oral hearing. Finally, that the First-tier Tribunal materially erred in law in making irrational findings on the issue of whether the Appellant had a CSID. His claim that it had been taken by an agent is consistent with the modus operandi of people smugglers and in any event the Appellant could not now obtain a CSID by proxy and had no documentation to travel safely to his home area to obtain an INID. The Judge adopted an approach set out by the Respondent which was contrary to the findings in SMO.

7. At the oral hearing, Ms Patel relied on her skeleton argument (which closely followed the grounds of appeal but in a different order and also highlighted several factual errors in the decision as to the Appellant's date of birth, date of refusal decision, nature of claim and name of the Home Office Presenting Officer). In relation to the Appellant's identity documentation, the Appellant's case was that he gave his CSID card to the agent in Turkey and without identification, could not travel to his home area after a return to Baghdad to obtain a new INID card. His claim to have left Iraq with his CSID card is consistent with his attempt to internally relocate to the IKR for which he would have needed his CSID for travel and to live there. Ms Patel submitted that it was not entirely clear whether the First-tier Tribunal found that the Appellant had his CSID card or not in paragraph 32 of the decision, but in any event the findings that he could redocument are contrary to the country guidance in SMO.
8. In relation to the credibility findings, Ms Patel reiterated the positive findings that the Appellant's claim was consistent with background country information, which included evidence of ISIS continuing to operate in the Appellant's home area in March 2020 and December 2021; that the account was internally consistent and not inherently implausible and that on no rational view could the account be described as 'simple' given the length of interview, written and oral evidence. Further, the point on which the adverse credibility finding was made was on a minor issue to do with family contact which could not undermine the credibility of the core of the claim. There was also a matter of procedural fairness that the matter of corroboration by evidence from the police in Iraq had not been raised before or during the hearing.
9. On behalf of the Respondent, Mr Wain relied on the rule 24 notice and made more detailed oral submissions as to the appeal. In relation to documentation, Mr Wain did not accept that the Respondent had in the reasons for refusal letter explicitly accepted that the Appellant's CSID card had been given to an agent in Turkey, even though the letter and subsequent Respondent's review focused on the issue of re-documentation. The First-tier Tribunal only referred to redocumentation 'if' the Appellant no longer had his CSID, which was not expressly accepted either.

10. In relation to the credibility assessment, the Judge set out the Appellant's account, the evidence and background and having considered the evidence as to contact with the Appellant's family, found that this was not credible and it was not accepted that he was no longer in contact with them. Mr Wain submitted that this was not a finding on a peripheral matter, but was part of the core of the Appellant's claim on family and internal relocation as well as background information as to ISIS in his home area. The Appellant's credibility was also damaged by his claim as to not being able to internally relocate because it was not consistent with country guidance. The decision expressly refers to the Appellant's oral evidence and acknowledged that there was no requirement for corroboration, but the lack of further evidence is a matter which the First-tier Tribunal is able to take into account.
11. Mr Wain accepted that the First-tier Tribunal referred to SMO in relation to documentation, but only assessed this in relation to the protection claim as opposed to consider whether it constituted a separate humanitarian protection or Article 3 claim.

Findings and reasons

12. The issues raised in the grounds of appeal fall into two groups, first, concerning the Appellant's identity document and the second concerning the assessment of the Appellant's credibility which covers the first three grounds of appeal. I deal first with the documentation point.
13. In the Respondent's reasons for refusal letter, the issue of documentation is considered in paragraph 37 which states:

"Consideration has been given to paragraph 11 to 16 with the CSID. It is noted that by your own evidence you had a CSID in Iraq and this taken away by agents. Given that your claimed problems in Iraq have not been accepted, it is not accepted that you lost contact with your family. It is considered that you could seek assistance from your family in Iraq to help re-establish yourself there, including with the relevant CSID documentation. Therefore, it is considered that on return to Iraq, you will have a support system that can assist you in readjusting to life in Iraq."
14. In paragraph 10 of the Respondent's review, she maintained that the Appellant would be able to gain access to relevant documentation within a reasonable time frame, stating that the onus is on the Appellant to show why he is unable to do so and given that it is not accepted that the Appellant is a witness of truth, it is also not accepted that the Appellant no longer has access to his documentation. In the following paragraphs, reference is made to the importance of the CSID and the likelihood that the Appellant would be aware of his CSID card number and/or volume and page reference of the entry in the Family Book to secure documentation. In paragraph 13 the Respondent's submits that in the alternative, although a replacement CSID or new INID could not be issued by the Iraq Embassy in the United Kingdom, the Appellant could obtain a 'Registration Document (1957) which on return could be used to apply for an INID.
15. The First-tier Tribunal decision deals with the issue of documentation in paragraphs 28 to 33, first as to whether a lack of documentation could itself found an asylum claim (which it could not in accordance with SMO) and quotes from the Respondent's review in paragraph 13 set out above. The conclusion is set out in paragraph 32 as follows:

"I find that the appellant has not established he is not still in touch with his family and friends in Iraq. I find he has not established that he could not have their assistance in obtaining new documentation, if he actually brought from Iraq and gave his identification card to an agent during his travels to the UK."

16. The First-tier Tribunal makes no finding as to whether the Appellant brought his CSID out of Iraq (or if it was left there, for example with a family member) and if so, whether he still has it in his possession. This is a point not expressly accepted by the Respondent, albeit the focus was on the ability to redocument in any event.
17. The first error with regards to the Tribunal's lack of finding on this point is that it erred in law in the alternative in finding that the Appellant would have family assistance to obtain new documentation when it is clear from SMO that this is no longer possible as his home CSA has transferred to the INID process, through which the Appellant must now attend his home office in person to obtain a document (there is no possibility of an INID being issued by proxy or by the Iraqi Embassy in the United Kingdom). The Respondent's reference in the review to a Registration Document is also inconsistent with the country guidance in SMO and should not have been relied upon by the First-tier Tribunal.
18. The second error is that the First-tier Tribunal also fails entirely to consider the humanitarian protection/Article 3 aspect to a lack of documentation and gives no consideration to how the Appellant could travel to his home area to re-document in the absence of an identity document (either CSID or INID), which SMO confirms would be a breach of Article 3 of the European Convention on Human Rights. These points would only be immaterial errors if there was an express finding that the Appellant still had in his possession his CSID card, or that he was in contact with a family member who had the CSID and could send it to him prior to return/onward travel from Baghdad.
19. For these reasons, the First-tier Tribunal erred in law in failing to make a finding as to whether the Appellant has, or has access to his CSID and in failing to consider the humanitarian protection/Article 3 aspect of not having appropriate documentation to travel within Iraq and to gain access to services there. If the Appellant does not have or does not have access to his CSID, on the facts in this case he should succeed in his appeal on humanitarian protection and human rights grounds (Article 3) in accordance with SMO. The errors are therefore material.
20. I also find that the First-tier Tribunal has erred in law in its assessment of the Appellant's credibility. Having made a number of positive findings about the claim, including (i) that he had made a consistent claim; (ii) which was not inherently implausible or improbable; (iii) at least some of which was consistent with background country evidence and country guidance; (iv) that section 8 did not damage his credibility; and (v) in dismissing most of the reasons given by the Respondent in the reasons for refusal letter as speculation; it was then irrational for the First-tier Tribunal to make an overall adverse credibility finding primarily based on the Appellant's claim not to be in touch with his family, the discussion on which relied on speculation as to how a person would act without giving adequate reasons for rejecting the Appellant's explanation of what he did and did not do or why, other than finding that it lacked credibility that he made no personal efforts or enlisted others to help contact his family. Further, it is not necessarily an adverse credibility point against a person that a claim is simple,

even if the Appellant's claim in this case could be properly described as such against the level of detail given at each stage of the process.

21. There were only two smaller points given as additional reasons for the adverse credibility findings. First, a point dealt with in two paragraphs of the decision that the Appellant's claim not to have been permitted to enter the IKR as that was inconsistent with the country guidance and the Appellant had not produced reliable documentary evidence in support of his claim. The second, also relying on a lack of corroboration in paragraph 34 that the Appellant had not attempted to contact the police in Iraq for evidence that he had sought their assistance. This latter part was not relied on by the Respondent prior to the appeal hearing and there is nothing to suggest it was raised at the hearing by the Respondent or the Judge. It is contrary to procedural fairness to rely on a point on which the Appellant had not been given an opportunity to respond either by having advance notice of an issue or by it being raised during the hearing. It does not appear that the Appellant was asked if he had sought any such documentation or whether it would be obtainable and he could not reasonably have anticipated this point. The First-tier Tribunal in any event failed to consider or make any finding on whether such evidence would be easily obtainable in accordance with the case law of TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40, which is cited in the decision. The same points can be made as to the lack of supporting evidence about entry to the IKR. The procedural unfairness in relation to at least the second point undermines the reliance on this as one of the credibility points taken against the Appellant and also infects the overall assessment.
22. The First-tier Tribunal's conclusions on the asylum claim based on credibility are found in paragraphs 35 and 36 of the decision. The Judge acknowledges that the Appellant has been consistent in his claim, but finds taking all the evidence into account, that the issues cited (which must be a reference to family contact, internal relocation and evidence from the police referred to above) undermine the centrepiece of the Appellant's account, going to more than just details of the account which might result from exaggeration or uncertainty; such that the Appellant is not a credible witness. There is no consideration of whether part of the claim may be true even if it is not accepted that the Appellant is no longer in contact with his family (even without the difficulties with that finding) and difficult to understand from the short conclusion the reasons why this aspect, particularly taking into account the procedural fairness points as to the other two more issues considered, undermines the core of the Appellant's claim as to why he fears return to Iraq. Overall the assessment of credibility by the First-tier Tribunal contained material errors of law which affected the outcome of the appeal.
23. For the reasons set out above, the First-tier Tribunal's decision contains material errors of law such that it is necessary to set the decision aside with no preserved findings of fact. A further hearing will be listed in the Upper Tribunal, with directions given for the same below. As indicated at the hearing, there may be a longer wait for a further hearing to be listed face to face but due to concerns as to the Appellant's ability to participate fully in a video hearing, I have listed this for a face to face hearing. If there are in fact no difficulties and a video hearing is preferred, the Appellant's solicitors may contact the Upper Tribunal promptly and the matter can be relisted before me.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions

1. The hearing to be relisted on the first available date before any UTJ for a face to face hearing in Manchester CJC with a time estimate of 2 hours. A Kurdish Sorani interpreter is required.
2. Any further evidence upon which the Appellant wishes to rely is to be filed and served no later than 14 days before the relisted hearing.
3. Any further evidence upon which the Respondent wishes to rely is to be filed and served no later than 7 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th June 2023