



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005289
First-tier Tribunal No:
PA/51257/2022
IA/03574/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AJA
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms L King, Counsel, instructed by Asylum Justice
For the Respondent: Miss S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 27 July 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 national of Iraq. He arrived in the United Kingdom and claimed asylum on 28 March 2023. His claim was refused by the respondent for reasons set out in a decision dated 28 March 2022. The respondent accepted the appellant is a national of Iraq and that he is of Kurdish ethnicity. However, the respondent rejected the core of the appellant's account and concluded that he would not be at risk upon return to Iraq.
2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Lester for reasons set out in a decision promulgated on 19 August 2022.
3. In summary the appellant claims that in reaching his decision, Judge Lester materially erred in failing to adequately set out his findings of fact in relation to the appellant's lack of documentation and ability to re-document himself upon forced return to Baghdad. It is said that Judge Lester failed to correctly apply the relevant principles set out in the country guidance decision of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO & Others II"). The appellant claims that as someone of Kurdish ethnicity the appellant will, in accordance with SMO & Others II, be returned to Baghdad and will require his CSID or INID for his journey from Baghdad. The appellant claims Judge Lester failed to make any finding as to whether the appellant is in possession of his CSID.
4. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 25 November 2022. He said:

"1. It is arguable that the judge failed sufficiently to engage with the process the appellant would have to follow in order to obtain a CSID document, at paragraph 68. Arguably, the judge's finding that "he will have access to documentation" is unclear. The judge may have meant that the appellant would be able to access his previously held documentation through his family (as the respondent had contended at paragraph 15 of the Respondent's Review, quoted - or, rather, pasted - at page 7 of the decision). Conversely, the judge may have meant that the appellant would be able adequately to re-document himself from within the UK. If the judge meant the latter, arguably it was incumbent upon the judge expressly to address the relevant country guidance.

2. It may be that, read as a whole, the judge adopted the reasoning of para. 15 of the Respondent's Review (albeit without expressly saying so), but for the purposes of granting permission to appeal, I consider that this point is arguable."

The hearing before me

5. On behalf of the appellant Ms King confirmed the appellant does not challenge the adverse credibility findings made by the judge regarding the core of the appellant's account of events in Iraq. She submits the issue before me is a narrow one and the focus is upon the finding made, at paragraph [68], that the appellant "will have access to documentation". Ms King submits that in SMO and Others II, the Upper Tribunal set out a number of steps that a decision maker must consider in order to establish whether an individual is at risk upon return because of the lack of a CSID

or INID. Here, Ms King accepts Judge Lester found that the appellant's family are still in the area (*the appellant lived in a village in Erbil*) and that the appellant has had contact with them. Those findings are not challenged.

6. At paragraph [28] of the appellant's witness statement, he claimed he does not have a CSID and cannot remember being issued with one. He claimed he will be unable to go to the Civil Status Affairs Office in his home governorate of Erbil because of the conditions there, and, he does not have the necessary documents to apply for a CSID. He claimed that his ability to obtain a CSD card on return, is best not simple, and at worst, impossible. Ms King submits that evidence was not addressed by Judge Lester and the judge did not clarify in the decision what documents the appellant will have access to.
7. Ms King was unable to draw my attention to anything said by the Upper Tribunal in SMO and Others II that suggests that an Iraqi national of Kurdish ethnicity who arrives in Sulaymaniyah, will face difficulty with onward travel within the IKR. She however drew my attention to paragraphs 2.6.9 and 2.8.11 of the respondent's 'CPIN; internal relocation, civil documentation and returns, Iraq, July 2022'.
8. Ms King submits there must be clear findings of fact as to the documents available and here, Judge Lester does not go on to say that the documents, whatever they may be, could be sent to the appellant or he could be met in the IKR with those documents. She submits the reasoning of Judge Lester falls short and the attention required is not given to an important issue in the appeal. The use of the word "documentation" creates inherent uncertainty and the risk upon return cannot, she submits, be adequately addressed applying the relevant country guidance, without a critical finding as to whether a CSID is available.
9. The respondent has filed a rule 24 response dated 20 December 2022 that was adopted by Miss Rushforth. The respondent submits Judge Lester set out the issues in the appeal at paragraph [28] of his decision, and when that paragraph is read with paragraph [68], it is clear Judge Lester rejected the appellant's claim that he does not have access to his identity documents. The respondent submits Judge Lester was entitled to find that the appellant has access to his CSID. In the respondent's review, which Judge Lester cited, the respondent had stated the document can be transferred to the appellant prior to departure or he could be met at the airport by his family members with it. The respondent submits the Judge was not required to identify whether the CSA office in the appellant's home area had transferred to the new INID system, given the appellant had been found to already have access to his CSID which he could use to travel within Iraq, and to exchange this for an INID after his return.

Error of Law decision

10. Before turning to the decision of Judge Lester it is useful to begin by reference to what was said by the respondent in her decision regarding the documents available to the appellant. The respondent said:

“46. In consideration of above, you state that you previously had a CSID card and passport in Iraq (AIR Q97). It is also noted that you claim to not know what the registration number was in your family booklet number (AIR Q100). It is considered reasonable to expect you to contact your family in Iraq and request for a family member to provide you with these details by sending them over to you in the UK. Alternatively, it is also reasonable to expect you to make arrangements to meet your family on return in order for them to help you re-register for your documentation. Your family could send you your CSID and your passport or they could bring your CSID card and passport to you on your return. You stated in your interview that your father helped you flee Iraq by arranging your journey to the UK (AIR Q176-Q182). There are no reasons to suggest that your father could not help you on return by providing you with the relevant documentation. It is noted that the only barrier to contacting your family in Iraq is your own reluctance to as you claim you don't want your family to know where you are (AIR Q105-Q106).

...

48. You are able to get a direct flight to the IKR without having to go through Baghdad where you would need your CSID card to travel on to the IKR. There are regular direct flights from the UK to Kurdistan which would remove the immediate requirement for the CSID card which you would be required if you were returning to Baghdad and had to travel to the IKR. It is noted that you are of fighting age, however you are not coming from a family with a known association with ISIL and you have come from the UK and not from ISIL territory. With family assistance you will be able to lead what SMO concluded as a 'relatively normal life'. Due to the assistance of your family you would not require access to one of the refugee camps in the IKR, you would not need to rent an apartment in a new neighbourhood because of your family, you would not require 'critical shelter arrangement' or live in a critical housing shelter.

49. You would be returning to Sulaymaniyah. Therefore, you would not be returning to a formerly contested area...”

11. Judge Lester copied into his decision, the appellant's skeleton argument, the respondent's response following a review, and the appellant's response to the respondent's review. The appellant's evidence is set out at paragraphs [36] to [54] of the decision. The judge's findings and conclusions are set out at paragraphs [55] to [68]. At paragraph [68] of his decision, Judge Lester concluded:

“Having considered all of the evidence in the round I find that the appellant was not a convincing witness and was not credible. Having found that he is not credible I then turn to how this impacts the issues which were set out at the start of the hearing. I find that there is no blood feud between the two tribes as the appellant stated there are (*sic*) was. I find that his family are still in the area. I find that he has had contact with them. Due to this I find that he will have access to documentation. I also find that there is no risk on return or relocation. The respondent explained that the method of return would be to an area where he would not have to make an overland journey and therefore SMO issues do not arise. As I have found the appellant not credible I find that he is not at risk from the Kurdish groups in the area. Having fun (*sic*) the appellant not credible I do not think this is an issue between two families or tribes as he is not credible.”

12. The appellant does not challenge the decision of Judge Lester to reject the core of his account regarding the claimed events of 17 October 2018 and the blood feud. The focus of the grounds of appeal and the submissions before me are upon the availability of the documents required for the appellant's return to Iraq, and in particular, the use of the words "*..I find that he will have access to documentation ..*" in paragraph [68].
13. The appellant lived with his parents in Koya, prior to his departure from Iraq. That is is a town and district in the Erbil Governorate in the Kurdistan Region, of Iraq. The appellant does not challenge the judge's finding that the appellant's family are still in the area and that he has had contact with them. Judge Lester said that "*due to this I find that he will have access to documentation*". Judge Lester went on to say; "*The respondent explained that the method of return would be to an area where he would not have to make an overland journey and therefore SMO issues do not arise*".
14. In SMO and Others II, the Upper Tribunal said:
- "B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)***
- 7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.***
- ...
- E. IRAQI KURDISH REGION***
- 26. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.***
15. Here, the respondent has made it clear in her decision that the appellant will be returning to Sulaymaniyah, in the IKR. The appellant's claim in the grounds of appeal that the appellant will in accordance with SMO and Others II, be returned to Baghdad and will have to arrange onward travel by land or air to the IKR, for which he will require his CSID is misconceived. The respondent set out in her decision, and Judge Lester accepted in his decision, that the appellant will be returning to Sulaymaniyah in the IKR by direct flight to the IKR without having to go through Baghdad where the appellant would need his CSID card to travel on to the IKR.
16. I reject the claim made by the appellant that there is some ambiguity in the findings made by Judge Lester as to the documents available to the appellant. Although the decision could have been better expressed, I do not accept the submission made by Ms King that there is a material gap in the findings made by Judge Lester and that he failed to properly and adequately identify the documents that he had in mind, when making the findings set out in paragraph [68].

17. Judge Lester 'cut and paste' the respondent's response, following a review of the appellant's skeleton argument at paragraph [21] of his decision. One of the issues identified in the appellant's skeleton argument was whether the background evidence shows the appellant would be at risk of mistreatment upon return to Iraq sufficient to engage Article 3 ECHR on the basis of a lack of Iraqi documentation. I pause to note the use of the word "documentation", by the appellant's representatives in that paragraph, rather than any express reference to the lack of a CSID or some other document. In her response, the respondent had said, at paragraph [15]:

"... the Respondent's position is that the Appellant's family in Iraq could provide him with his registration number; or they could meet the appellant on his return to help him reregister for his documentation; or they could send the appellant his CSID card and passport; or they could bring these documents to the appellant on his Return."

18. In my judgment, the finding made by Judge Lester that the appellant will have access to documentation encompasses access to the appellant's CSID. Judge Lester comprehensively rejected the claims made by the appellant as set out in his evidence before the Tribunal and in light of the findings made, it was clearly open to the Judge to find the appellant will have access to the documents he requires. I accept Judge Lester does not expressly state that the documents could either be sent to the appellant by his family prior to his return to Iraq, or that he could be met by his family in Sulaymaniyah, but it was in my judgement sufficient for Judge Lester to find the appellant will have access to documentation. The appellant's claim that he has no contact with his family was rejected. It is sufficient that the appellant has access to the documents. Whether the appellant and his family choose to have the documents sent to the appellant in the UK or to meet the appellant on return, is immaterial.

19. A judge is not required to address each and every claim made by an appellant and he properly noted that the appellant would be returning to an area (Sulaymaniyah) where he would not have to make an overland journey from Baghdad to the IKR. The appellant therefore gains no assistance paragraphs 2.6.9 and 2.8.11 of the respondent's 'CPIN; internal relocation, civil documentation and returns, Iraq, July 2022'. Paragraph 2.6.8 of the CPIN is more relevant to the appellant's circumstances on the findings made:

"2.6.8 Those persons whose return is feasible and who would arrive in Iraq or the KRI in possession of a CSID or an INID, or could be provided with an original or replacement document soon or shortly after arrival, would be able to return to their home governorate via the various security checkpoints and are, in general, unlikely to encounter treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR.

2.6.9 However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival (*my emphasis*) and who would be required to travel internally to a CSA office in another area of Iraq or the IKR to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the

Immigration Rules/Article 3 of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection).

20. On any view, the appellant will have or be able to obtain appropriate documents to facilitate his return to the IKR without the appellant having to travel from Baghdad to the IKR. I have reminded myself of what was said in *MD (Turkey) v SSHD* [2017] EWCA Civ 1958 that adequacy of reasons means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. Although the decision of Judge Lester is not as well-structured or well-expressed as it might be, to identify an error of law there has to be more than a general literary criticism. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in *AH (Sudan) v SSHD* at [30]:

"Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."

21. Reading the decision as a whole, it is in my judgement clear that in reaching his decision, Judge Lester considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. The decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb in an effort to identify errors. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. I am satisfied that Judge Lester's decision is a sufficiently reasoned decision that was open to him on the evidence.
22. In my judgment, the grounds of appeal do not disclose a material error of law capable of affecting the outcome of the appeal.
23. It follows that I dismiss the appeal.

Notice of Decision

24. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia
Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 July 2023