



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006080

First-tier Tribunal No: PA/51699/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 July 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

P S R
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Hussain, Counsel instructed on behalf of the appellant.

For the Respondent: Mr A. McVeety, Senior Presenting Officer

Heard at IAC on 17 July 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal (Judge Lester “the FtTJ”) who, in a determination promulgated on the 11 November 2022 dismissed the appeal of the appellant on protection, humanitarian protection and human rights grounds.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.
3. 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.

4. Following a late request for the hearing to be conducted by remote means, the hearing took place as a hybrid hearing with the appellant's Counsel appearing via CVP and all other parties being present at the hearing centre. There were no technical difficulties in the appeal being presented by the use of a hybrid hearing and both advocates were able to present their respective cases without difficulty.

The background:

5. The factual background to the appeal is set out in the decision of the FtTJ, the decision letter and the papers in the parties' respective bundles. The appellant is a national of Iraq of Kurdish ethnicity from Tuz Khurmatu, Saladin Province.
6. The appellant left Iraq by lorry on 5 August 2018. He travelled through Turkey arrived in the UK via lorry on 20 September 2018. He claimed asylum on the same day. The appellant's asylum claim was made on the basis that he had been threatened by a militia who had attempted to recruit him. The appellant's claim was also based on his father being a former member of the Ba'ath party, and he would face persecution as a result.
7. The Appellant's claim was refused, and he was unsuccessful in an appeal promulgated on 13 June 2019 by First-tier Tribunal Judge Boyes. He became appeal rights exhausted on 3 July 2019.
8. The Appellant submitted further submissions on 11 March 2020 which were refused on 8 April 2022 (the "decision letter"). They included a claim based on his sur place activities.
9. The appellant appealed the decision, and the appeal came before the FtTJ on 20 September 2022. In a decision promulgated on 11 November 2022, the FtTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.

The appeal before the Upper Tribunal:

10. Permission to appeal was sought on behalf of the appellant which was granted by FtTJ Dempster on 16 December 2022. At the hearing, Mr T. Hussain of Counsel appeared on behalf of the appellant and Mr McVeety, Senior Presenting Officer appeared on behalf of the respondent. Mr Hussain relied upon the written grounds of challenge which were supplemented by his oral submissions. Mr McVeety confirmed that there was no Rule 24 response on behalf of the respondent but provided oral submissions in answer to the grounds of challenge. I am grateful to both advocates for the submissions they have given.
11. There is only one ground of challenge advanced on behalf of the appellant which relates to the assessment of return and in particular the issue of documentation as addressed by the FtTJ at paragraph 37 of his decision. The grounds do not seek to challenge the FtTJ's findings of fact and assessment of his fresh claim at paragraph 36 nor his assessment at paragraph 34. The written grounds set out the factual background of the appeal and that there has never

been a finding – and it was not part of the respondent’s case – that the appellant is still in possession of a CSID card. Rather, the previous FtTJ found that the appellant had previously been issued with a CSID and could reasonably resume contact with his family in Iraq. As such, the previous Tribunal found that the appellant could either obtain a replacement CSID whilst in the UK or by proxy in Iraq or, alternatively, could be met by his family on his return to Baghdad and could ‘safely’ travel with them back to his home area to re-document (see the determination of FtTJ Boyes, promulgated on 18.06.2019, at paragraphs 39-46).

12. In the decision letter dated 8 April 2022, the respondent argued that the appellant could obtain a replacement CSID obtained by proxy by his male family members in Iraq. The respondent also asserted that there was no evidence that the Appellant’s hometown was issuing INIDs (see: RFRL paras.29-39, especially para.37). However as is clear from the Respondent’s own Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns Version 13.0 July 2022, Annex D: “CSA Offices still issuing Civil Status Identity Cards – July 2022”, the appellant’s local CSA office only issues INIDs. Mr Hussain also relied upon SMO(2) and that the appellant’s home area was one area identified as likely to be issuing INID’s.
13. The written grounds also cite the relevant CG decision and that it is clear from SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT110 (IAC) (“SMO2”), this means that it is not possible for the appellant to re-document by proxy. The only way he can obtain an INID is to personally attend the Civil Status Affairs (“CSA”) office at which he is registered (that is, in Tuz Khurmatu, Tooz District, Saladin Governorate).
14. It is therefore submitted that the FtTJ has materially erred at paragraph 37 in its assessment of the appellant’s ability to re-document as the FtTJ has clearly failed both to engage with the case-law and to apply it to the appellant’s appeal. It is submitted that the FtTJ was required, initially, to consider whether the Appellant’s local CSA office issues CSIDs or INIDs. However the FtTJ has failed to consider this material issue. In any event it is incontrovertible that the relevant CSA office issues only INIDs.
15. It is further submitted that the assessment at paragraph 37 that the appellant is able to obtain a new card is fundamentally flawed and a material error of law. Even if the FtTJ did not err in its finding that the appellant would know his Family Book details (or would be able to obtain this information from his family members in Iraq), the finding that, “through his contact with his family [he] will have the means to be able to access the details in order to obtain a new card” is a material error of law. The issue that needed to be considered was whether the Appellant could reasonably safely return to his home area without the relevant documentation in order to attend his local CSA office to obtain an INID. He cannot re-document any other way. Mr Hussain submitted that the FtTJ did not deal with return to Baghdad and how the appellant would get to his home area through checkpoints without an INID and that the reality was that on the evidence available that the appellant would be stranded in Baghdad.
16. Lastly, it is submitted that the implicit finding that he can obtain a new card by proxy is wrong in law and contrary to the country materials and the CG decision.

17. Mr McVeety on behalf of the respondent confirmed that there was no rule 24 response. He submitted that the previous IJ did not make a finding that the appellant did not have a CSID card and that the appellant's grounds are mistaken or misconstrued. Mr McVeety pointed to the decision of IJ Boyes and that he rejected the appellant's factual claim about the militia and that as he disbelieved the appellant's account, the appellant still had a CSID card. He submitted that the appellant was found not to be a credible witness, and that it was an unchallenged primary finding that the CSID card was burnt and the problem with the grounds is that there was a fundamental misunderstanding of what IJ Boyes had found. Therefore whilst it was accepted that the appellant's home area only issued INID's, and the FtT failed to consider that, any error was not material. Thus Mr McVeety's submission was that the grounds start with a fundamental misunderstanding as to what IJ Boyes had found.
18. Mr Hussain by way of reply referred to the procedural history before the previous FTT and the present FTT. He submitted that when reading the decision of IJ Boyes between paragraphs 39 - 43 there was no finding that the appellant was in physical possession or could be, of his CSID card but that those paragraphs refer to the appellant's ability to obtain a new card with the assistance of family members with whom he was still in contact with. As he had held a card in the past it would assist him in obtaining a new card. He submitted that there would be no necessity for the FtTJ to consider the methods by which it was said he could obtain a new card if the judge had found that he was still in possession of his own card, or his family have the card. He submitted that the grounds did not fundamentally misconstrue or misunderstand the decision of IJ Boyes.
19. Mr Hussain referred to the country guidance decision and the acceptance that there was now an INID terminal in his home area and that he would not be able to travel from Baghdad to his home area in order to register his biometrics and obtain an INID and this was not appreciated by the FtTJ when he made his finding at paragraph 27. In summary, he submitted that there was no ambiguity, nor was there any misunderstanding made in the grounds and on the application of the CG decision available to the FtTJ at the hearing, the appellant was entitled to succeed under Article 3 of the ECHR.

Discussion:

20. In order to assess whether the submissions made on behalf of the appellant are made out and that on the assessment of the relevant CG decision that the appellant would have succeeded in his Article 3 claim, it is necessary to consider the submission made on behalf of the respondent as set out above. This has entailed a careful examination of the previous procedural history of the appeal and the issues identified by the parties for the present appeal.
21. Having done so, and contrary to the submissions made by Mr McVeety the grounds of challenge were properly framed and do reflect the basis of the appeal that was before the FtTJ. Having been directed to the relevant documents before the FtT by Mr Hussain, which include the previous decision of FtTJ Boyes but importantly the documents which formed part of the new procedure adopted by the FtT in hearing appeals namely the filing of the appellant's skeleton argument ("ASA") and the respondent's review, they set out the issues and the factual basis underpinning those issues.

22. The respondent's case before the previous judge was recorded at paragraph 21 of his decision. It was suggested that the appellant could obtain documents as he had previously held a CSID card and there were male family members who would be willing or able to assist him as he attended the local CSA office. Paragraph 23 was that there would be no risk on return to Baghdad and he could travel to his home area after being met by family members.
23. The FtTJ (IJ Boyes) further identified at paragraph 25 that the issue that he had to determine (in relation to the issue documentation) was, "even if I find the appellant not credible and not believable as to the militia and his father one nevertheless has to consider whether he is able to obtain or re-obtain a CSID card within a relatively short timeframe". On the first issue, IJ Boyes found against the appellant and did not find that he was in fear of the militia as the appellant claimed nor that his father's membership of the Baath party would lead to any problems on return. On the 2nd issue the judge found that the appellant could obtain a replacement CSID whilst in the UK, or in the alternative by proxy in Iraq and by meeting his family on return to Baghdad so he could "safely" travel with them back to the home area to redocument (see paragraphs 39 - 46).
24. Notwithstanding Mr McVeety's submission that the previous judge disbelieved the core of the appellant's account, paragraph 25 identified the issue that even if the appellant was not believable as to his account relating to the militia, that the issue documentation would still be an issue to assess. As noted in a number of decisions, the fact that an appellant may not be believed about one part of his account does not mean all he has stated is not capable of belief. Furthermore the submission made that the appellant's account was that his CSID card was burnt, does not appear to be what was stated. At paragraph 28 (IJ Boyes) reference is made to the appellant, who when asked if he had had a CSID card stated he did but it was lost when the PMU came to their village and burnt it down. Thus the appellant had stated that he had lost his CSID.
25. Notwithstanding those submissions, on any reading of those paragraphs as identified within the FtTJ Boyes decision paras 39-46, it demonstrates that the FtTJ proceeded on the basis that the appellant had a card in the past and that he would be required to replace the CSID card and having had one in the past would be more able to regularise the position than those who never had had a card (see paragraph 14). The decision makes reference to "I find he has held a card in the past", "the appellant has male members who can meet him in Baghdad". Paragraph 45 refers to the "replacement card" and being able to travel to Baghdad. As Mr Hussain submits there would be no reason to make those findings at all if his decision was based on the appellant being in possession of a CSID.
26. Therefore the grounds and Mr Hussein's submissions are correct to state that the previous FtTJ that the appellant could reasonably resume contact with his family in Iraq and therefore could obtain a replacement CSID whilst in the UK or by proxy in Iraq or, alternatively, could be met by his family on return to Baghdad and could "safely" travel with them back to his home area to redocument.
27. That factual assessment is also supported by the stance taken by the respondent in the decision letter of 8 April 2022 following the submission of a fresh claim on 11 March 2020. The decision letter quotes the decision of IJ Boyes

and in relation to the issues of documentation at paragraph 29, and by reference to the June 2020 CPIN that the appellant could obtain a CSID card in the UK or by proxy. From paragraph 31 onwards, the respondent refers to the appellant being able to travel to Baghdad (paragraph 32) and at paragraph 34 addressed the appellant's claim that his home area was only issuing INID's but that he had not submitted evidence to substantiate this and there was no external evidence to show that was the case. At paragraph 35 it was recorded that the position remained that those with male family members in Iraq could assist them in obtaining a CSID by proxy.

28. Thus the respondent's position before the FtT was set out in that decision letter that the appellant could obtain a replacement card via a number of methods. This is supported by the conclusion of paragraph 39 that the appellant's home area was no longer contested area and he would be able to obtain a replacement CSID card by travelling from Baghdad to his home area.
29. The ASA filed on 20 June 2022 by counsel set out a number of issues in the schedule. It is not necessary to address the other issues as they are not in contention between the parties. However issue (c) was identified as "whether the appellant situation on return would lead to the article 3 rights being breached as he is unable to obtain a CSID /INID prior to his return to Iraq and within a reasonable timeframe."
30. The ASA set out the appellant's ability to obtain a CSID/INID between paragraphs 14 - 22 of the document. It was expressly set out at paragraph 17 that the appellant does not have a CSID or a copy and at paragraph 18 reference was made to SMO (2) and headnote 11 that the appellant would need a valid CSID or INID. Paragraph 19 set out the evidence in the respondent's CPIN dated June 2020 at 2.6.16, that it was unlikely that an individual would be able to obtain a CSID from the Iraqi embassy while in the UK; reference is made to the registration document. Further references were made to the current CG decision and headnote 11 and being unable to travel to the local CSA office from Baghdad to apply for new documentation without a current CSID or INID.
31. The respondent's review replied to the issue set out in the ASA. The respondent's position was that the appellant's schedule of issues was agreed including issue (c). On a reading of that document the respondent's position was that the appellant would be able to obtain a document in the context of the findings made by IJ Boyes as to him being in contact with his family and that the appellant would be aware of his CSID card number and volume of the family book.
32. Thus the grounds and the submissions of Mr Hussain do reflect the procedural background as identified in the issues between the parties based on the appellant not having a CSID but being able to obtain a replacement document with a reasonable timeframe. That was the position before FtTJ Lester, and he expressly recorded the position of the appellant at paragraph 6. The FtTJ also confirmed that the respondent stated the issues were those set out in the review (see paragraph 20).
33. Having reached the conclusion that the grounds were correct in their position that there had not been a finding made nor had it been part of the respondent's case that the appellant was in possession of his CSID card or could be, it is necessary to address the issue of whether on the assessment made by the FtTJ

he failed to apply the CG decision and by reference to the appellant's home area.

34. In his decision the FtTJ set out his findings at paragraph 37 which deals with issue (c) of the schedule of issues as follows:

"c. Whether the appellant's situation on return to Iraq lead to a breach of his Article 3 ECHR rights due to his being unable to obtain a CSID/INID prior to his return to Iraq or within a reasonable time following return;

37. As set out above I have already found that the appellant is not credible. Also that he remains in contact with his family in Iraq. Within the stitched bundle (p1548 of 1667) is an undated statement from BS who states that he accompanied the appellant to the Iraqi embassy on the 10th of March 2020 as an interpreter. He states that the appellant was unable to be assisted by the consular staff as he had no contact with his family back in Iraq and had no documentation. Given that I have already found the appellant not credible and that he remains in contact with his family I give this statement little weight. In the previous case the appellant had conceded that he had previously held a CSID card. I find therefore that even on the SMO No2 case law the appellant will be aware of his family book number and through his contact with his family will have the means to be able to access the details in order to obtain a new card. "

35. There is no dispute that the appellant's home area is in Tuz Khurmatu, Saladin province. Whilst the decision letter dated 8th of April 2022 took issue with the appellant's submission that his home area had moved to issuing INID's on the basis that the respondent considered there was no evidence from any external sources to support that position, at the time of the hearing before the FTT as set out in the appellant's ASA the position had changed, and that SMO (2) found that it was not possible for the appellant to obtain document by proxy, and as the CPIN dated July 2022, at Annex D set out, the appellant's local CSA office only issues the INID. Mr McVeety accepted in his submissions that the appellant's local CSA office has moved to the INID system.

36. That being the case, the decision reached by the FtTJ was not consistent with the CG decision and July 2022 CPIN available at the time of the hearing. The relevant paragraphs of the headnote to SMO("2) are set out below:

11. The CSID is being replaced with a new biometric Iraqi National Identity Card - the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.

12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

- 13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.*
37. At paragraph 60 of SMO (2) the Upper Tribunal considered that CSID's continued to be available at the Iraqi embassy but only for individuals who are registered at a CSA office which has not been transferred to the digital INID system. However if the individual is registered at a place where the INID has been rolled out, they would not be able to apply for a CSID in Iraq or in the UK. If the INID has not been rolled out in the place of registration, an appellant could apply for a CSID in Iraq, in person or by proxy, or from the UK using the intermediary facility provided by the embassy (see paragraph 61).
38. Had the FtT applied the country guidance case in conjunction with the July 2022 CPIN, the only way that the appellant could obtain an INID would be to personally attend the CSA office in which he is registered in Tuz Khurmatu.
39. As a former resident of Iraq (government-controlled area) the appellant will be returned to Baghdad. He would be returned with a laissez passer, but the document would not allow him entry into Iraq, nor would it enable onward travel as it is confiscated on arrival (see paragraph 18). An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there.
40. It is not suggested that the appellant could obtain a replacement CSID or INID whilst in Baghdad, and even if he has knowledge of his family book as found by the FtT, or even if his family could meet him in Baghdad to assist him, he would not be able to travel or make the onward journey to Tuz Khurmatu without holding a relevant document and in safety.
41. As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the respondent's position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID may be at risk of enduring conditions contrary to Article 3 of the ECHR.
42. I therefore accept the submission made by Mr Hussain that when assessing the issues identified as the relevant issues before the FTI and the light of the relevant CG decision that had it been correctly applied, the appellant demonstrated that return to Iraq would be in breach of Article 3.
43. There is no challenge in the grounds against the dismissal of his asylum claim(either as to events in Iraq or his sur place claim) and the only issue is that relating to Article 3 based on documentation.
44. Consequently the appellant has been established that the FtT's decision involved the making of an error on a point of law, therefore the decision in so far as it relates to the issue of documentation, is set aside and remade allowing the appeal on Article 3 grounds.

Notice of Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside and remade as follows: the appeal is allowed on Article 3 grounds.

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds

18 July 2023