



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003619
First-tier Tribunal Nos:
PA/55845/2022
PA/00358/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

HWA
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, Counsel; instructed by AB Legal Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 18th March 2024

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. The Appellant appeals against the decision of First-tier Tribunal Judge Gribble dismissing his protection and human rights claim.

2. The Appellant applied for permission to appeal on two grounds and was granted permission to appeal by First-tier Tribunal Judge Dainty in the following terms:
 - “1. The application was in time.
 2. The grounds assert that the judge made improper or irrational findings or failed to give reasons on material matters. In particular it is asserted that the Appellant’s CSID cannot have been left with his family in Iraq because the Appellant travelled over land from Erbil to Baghdad and he would not have been able to without his CSID.
 3. There is an arguable error of law in failing to give full or proper reasons for finding that the Appellant left behind his CSID in the IKR albeit his evidence was that he travelled over land to Bagdad. That being the case if, as the Appellant contends, he took his CSID and no longer has it, there is an arguable error of law in failing to consider the risks to the Appellant if he were returned to an airport in GOI controlled Iraq which (even if there is a practice to return to the IKR) is something that is open to the Respondent based on the July 2022 CPIN and SMO 2022 and further in failing to consider the risks, if any, to the Appellant if returned to the Sulaymaniyah district in that the Appellant would need to return to Erbil to redocument”.
3. Before me, Ms Everett confirmed that the appeal was contested and that there was no Rule 24 response from the Respondent.

Findings

4. At the conclusion of the hearing I reserved my decision which I now give. I find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.
5. Before giving my reasons I note that both the Appellant and the Respondent were unrepresented before the First-tier Tribunal, which would not have made this an easy matter for determination by any means. Consequently, both parties expressed that this may be the reason why there are missing portions to the judge’s analyses, which may have led to the materiality of this inadvertent, unforced error.
6. In respect of Ground 1, in short it is argued by the Appellant’s solicitor that the Appellant’s case before the First-tier Tribunal was that he had left Iraq with a CSID and a passport, that passport having been confiscated by the Greek authorities, which the judge accepted. However, the judge did not accept that the CSID was taken from the Appellant by his agent who arranged his travel, and instead the judge finds at paragraph 61 that the Appellant “would not need a CSID card on leaving” and thus found it “reasonably likely this was not taken by an agent because it was left in Iraq”. This finding is inadequate as it fails to adequately explain and reason why the Appellant’s account of having a passport which was confiscated by the Greek authorities is accepted on the one hand, but why his account of having the CSID and that being retained by the agent was not accepted on the other. It was insufficient to merely state that the Appellant would not have needed the CSID to leave Iraq because, the judge has not first grappled with the Appellant’s evidence that he travelled overland from the IKR (Iraqi Kurdish Region) to GOI (“Government of Iraq”) controlled Iraq in order to

leave the country. Both parties accepted that the Appellant's evidence in his witness statement at paragraph 30, that he had avoided KDP checkpoints and travelled with the CSID until he reached central government controlled territory, was not grappled with by the judge before pronouncing that the CSID was left in Iraq. Indeed, were the CSID to be left in Iraq, the Judge would have also needed to grapple with how the Appellant was able to travel from the IKR to GOI controlled territory in Iraq without a CSID, or whether or not that part of his account was or was or was not fabricated and the reasons for why that might be so. However, as the judge has not explored either alternative in how this evidence might have been treated before pronouncing his view that the CSID was left in Iraq, the finding is incomplete. For those reasons, it appears that the judge may have made an innocent oversight in failing to consider the Appellant's evidence against the fact that the CSID could not have been said to have been left in Iraq without more, as it would leave his apparent departure from Iraq and the means by which that came about, unclear. I note in particular that the judge's finding at paragraph 61 that the Appellant flew from the IKR to Baghdad and then to Turkey does not reflect the Appellant's case and is an unexplained statement.

7. Turning to the second point made in respect of whether or not there is a risk on return to the Appellant given that the judge has found that the Appellant could obtain a Greek passport to return, as noted by Judge Dainty in granting permission, I agree that even if there is a practice in returning persons to the IKR, there is an error in respect of the risk to the Appellant if he were returned to an airport in GOI controlled Iraq which is something that is open to the Respondent based on the July 2022 CPIN and the case of *SMO and KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC), and further in failing to consider the risks, if any, to the Appellant if returned to the Sulaymaniyah. I pause to remind myself of paragraphs 26-31 of *SMO and KSP*:

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.*

Kurds

27. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
28. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

29. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
30. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.*
31. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*

8. In particular, I note that given that the parties devoted time to arguing whether or not it would be possible for the Appellant to obtain his Greek passport and whether or not it would be possible to then be removed to the IKR, as opposed to GOI controlled Iraq, and given that this is a protection claim, I find that the error is one that cannot be said to be immaterial and requires further determination.

9. I therefore find that the First-tier Tribunal has materially erred for the reasons given above.

Notice of Decision

10. The Appellant's appeal is allowed.

11. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Gribble.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 April 2024

