



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000092

First-Tier Tribunal No: PA/50747/2023
LP/00824/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALI ZRAR HAMAD
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr S. Walker, Senior Presenting Officer
For the Respondent: Ms K. Wass, counsel, instructed by Barnes, Harrild and Dyer Solicitors

Heard at Field House on 10 May 2024

DECISION AND REASONS

1. The appeal is brought by the Secretary of State but for ease of reference I continue to refer to the Secretary of State as the Respondent and Mr Hamad as the Appellant in the remainder of this decision.
2. The Appellant is an Iraqi national who appealed the Respondent's decision dated 19 January 2023 to refuse his protection claim. That appeal was heard by a FTT judge in 2023. The Appellant had previously made an application for protection which had been refused by the Respondent and which another FTT judge had dismissed in 2019. I refer to the FTT judge who dismissed the appeal in 2023 as the "2023 FTT" and the FTT judge who dismissed the appeal in 2019 as the "2019 FTT".

3. At a hearing dated 16 February 2024 I decided that the 2023 FTT's decision of 28 November 2023 contained a material error of law. I directed that the appeal should be reheard in the Upper Tribunal, although the conclusion that the Appellant is unsuccessful in claiming to be a refugee was retained together with the findings relating thereto.
4. A copy of my decision is annexed hereto.

The Issue

5. The issue is whether the Appellant has a CSID and if that document remains in Iraq whether he could obtain it with the assistance of his family with whom he has been found to remain in contact. Without his CSID he would be at risk of persecution, serious harm or ill-treatment amounting to an Article 3 breach on return to Iraq.

The Evidence

6. The Appellant continues to rely upon the evidence adduced before the 2023 FTT (including the evidence which has been found to have been fabricated). The evidence has not been updated or amended. He was not called to give further evidence at the hearing before me. The hearing therefore proceeded by way of submissions only.

The Appellant's case

7. Ms Wass submits that the FTT had accurately summarised relevant credibility matters found by a previous FTT judge and to which the principles in Devaseelan apply. Those matters included a finding that the 2019 FTT did not find the Appellant to have lost contact with his family in Iraq or to have forgotten the relevant details he would need to obtain a replacement CSID. Accordingly, it is established that the Appellant is not in possession of his CSID.
8. Even if the Appellant is said to be in contact with his family, there is no evidence before this Tribunal that: (i) his family are still in possession of his CSID given that he came to the UK in 2017 and originates from Mosul; (ii) his family are willing and able to assist him; and (iii) that any assistance could be provided within a reasonable amount of time. In the absence of such evidence a conclusion that he would be able to document himself before or on returning to Iraq would enter the realm of speculation.
9. When I commented that there was no preserved finding regarding the ability of the Appellant to obtain his CSID from his family, Ms Wass explained that the Appellant was unable to provide further evidence. He could only say that he is not in contact with his family but there is a preserved finding that he is.

The Respondent's case

10. The Respondent accepts that Iraq no longer produces or issues CSIDs due to the rollout of the INID system and that applications for INIDs must be made in person. However, the Respondent says that the Appellant has previously been found to lack credibility in the 2019 FTT decision. On this basis the Respondent had stated in his refusal that the Appellant is not in fact undocumented as claimed and that he does have a CSID card. Given that the more recent 2023 FTT decision also found the Appellant to be lacking in credibility the Respondent continues to make that assertion.
11. Furthermore, the Appellant had failed to demonstrate that his CSID could not be obtained with the assistance of his family in Iraq who could send it to him or who could meet him on arrival there with his original documentation (on the assumption, that if his claim to be undocumented was accepted this was because the document remains in Iraq). The Country Information Policy Note dated October 2023 shows that CSIDs are still being accepted as forms of identification at checkpoints, when obtaining other types of civil documentation and when accessing services. The Appellant would therefore not be at risk of persecution, serious harm or ill-treatment amounting to an Article 3 breach on return to Iraq.

Decision and reasons

12. As I explained in concluding that there was an error of law in the decision made by the FTT in 2023, the 2023 FTT had correctly noted that the previous judge had not made a finding that the Appellant was in possession of his CSID. However, the 2019 FTT did not find that the Appellant did not have that document.
13. This was in the context of the fact that, as I explained previously, the CSID was not a “live” issue in the same way in the previous appeal. Whether the Appellant still had his CSID made less difference as the guidance from SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) showed that there was the potential to obtain a new one in the UK (assuming that the Appellant knew the relevant information). Therefore if he was lying and did have his CSID he could travel in Iraq and if he did not have his CSID it could be replaced given the judge’s other findings about his knowledge of the relevant information. That is the relevance of the finding made by the 2019 FTT that the Appellant had not forgotten the relevant details. The key before the 2019 FTT judge was whether the Appellant had genuinely attempted to replace the CSID and the judge found that he had not.
14. Therefore I do not agree with Ms Wass’ submission that the 2019 FTT found that the Appellant had lost his CSID. No such finding was made by the 2019 FTT.
15. This therefore leaves the issue of whether the Appellant has his CSID or can access it if it is still in Iraq at large. As the 2019 FTT noted, the evidence about obtaining replacement CSIDs has changed. The Country Policy and Information Note of October 2023 makes clear that it is no

longer possible to obtain a replacement in Iraq or from the Embassy in the UK. Instead a person has to apply in person at their Civil Status Affairs Office where they are registered to obtain an INID. That would involve internal travel in Iraq and it is recognised by the Respondent that without either a CSID or INID the risks of such travel would breach Article 3 or require humanitarian protection to be granted.

16. The only evidence before me on the matter of the Appellant's documentation is that of the Appellant who has been found to be lacking credibility by two previous FTT judges. He claims in his witness statement that he is undocumented but provides no explanation as to why this is the case. He has been found to have fabricated numerous details relating to his claim for protection by two judges and the finding that he lacks credibility was preserved by me. He offered no further evidence in the hearing before me.
17. I recognise that a person may be found not to be credible on some matters but credible on others. However, the Appellant has done nothing to engage with the issue of his documentation beyond relying upon previous evidence which has been found to be replete with fabrication. The previous evidence regarding his CSID was extremely limited as I have already mentioned.
18. I therefore find that he has not shown even to the lower standard, that he does not have his CSID. I find that this is another part of his claim which has been fabricated by him. That in itself means that his appeal should be dismissed.
19. However, the Respondent has also asserted that if the Appellant does not have the CSID with him he could obtain it with the assistance of his family. The Appellant has not engaged with this other than to maintain he has no contact with his family. The 2019 FTT rejected his account of ISIS seizing his family home and the evidence does not justify departing from that finding. The 2019 FTT and 2023 FTT have found him to be in contact with his family. The CSID is a very important document in Iraq and given the finding that he remains in contact with his family in Iraq and the paucity of evidence in relation to the CSID, I find that if the document is in Iraq rather than here he could get his family to send it to him or to meet him at the airport with it.
20. Accordingly, the basis of his claim to claim protection relying upon Article 3 is rejected by me and his appeal is dismissed.

Notice of Decision

21. The appeal is dismissed on both human rights and protection grounds.
22. Given that the appeal is dismissed no fee award is appropriate.

Tracey Bowler
Judge of the Upper Tribunal

Appeal Number: Case No: UI-2024-000092

Immigration and Asylum Chamber

20/05/2024

Annex



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000092

First-tier Tribunal No: PA?50747/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALI ZRAR HAMAD
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S. Mckenzie, senior presenting officer

For the Respondent: Ms Wass, counsel, instructed by Barnes, Harrild and Dyer Solicitors

Heard at Field House on 16 February 2024

DECISION AND REASONS

1. The appeal is brought by the Secretary of State but for ease of reference I continue to refer to the Secretary of State as the Respondent and Mr Hamad as the Appellant below.
2. The Appellant is an Iraqi national who appealed the Respondent's decision dated 19 January 2023 to refuse his protection claim.
3. First-tier Tribunal Judge Rastogi ("the Judge") allowed the appeal in a decision dated 13 December 2023.
4. Permission to appeal was granted by Judge Khurram in a decision dated 12 January 2024 in which it was decided that the decision arguably

contained a material error in that the Judge's findings were arguably insufficient to address the Respondent's assertion that a pre-existing CSID could feasibly be available to the Appellant here in the UK, or alternatively upon arrival in Iraq.

5. I gave the parties my decision at the hearing that there was a material error of law and this sets out that decision more fully.

The FTT Decision

6. The Judge referred to the findings made in a previous decision made by a FtT judge in which the Appellant's protection claim was dismissed as her starting point. The Judge acknowledged that the previous judge's adverse credibility findings were detailed and comprehensively set out. The Judge considered the documentary evidence which she found not to be reliable. She concluded that the evidence before her did not justify a departure from the previous findings of fact and found that the Appellant did not have a well-founded fear of persecution and was not a refugee.
7. The Judge then turned to the matter of documentation. Having referred to the country guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT (IAC), the Judge turned to consider the Respondent's latest Country Policy and Information Note ("CPIN"). The Respondent had identified that it was no longer possible to obtain a new CSID in Iraq or from the Iraqi embassy in the UK; and the new identity document, the INID, required the person themselves to attend the Civil Status Affairs office at which they are registered. The Judge acknowledged that in the previous FtT decision there was no finding made that the Appellant was in possession of his CSID. The Judge noted that the previous FtT judge had rejected the Appellant's claim that he does not recall the relevant details to obtain a replacement CSID; and that the Respondent had previously asserted that the Appellant could rely on his family to obtain a CSID. The Judge then said that applying this to the updated country situation the Appellant does not have a CSID or INID. The fact that he has the necessary information or the assistance of family to obtain a replacement CSID does not help as a CSID is no longer attainable.
8. The Judge then concluded that the Appellant would not be able to travel to the Civil Status Affairs office at which he is registered in Mosul without the risk of serious harm or a breach of Article 3.

The Respondent's grounds of appeal

9. In summary, the Respondent says the Judge failed to adequately consider why the Appellant would not have access to his original CSID card. It is submitted that given the credibility conclusions reached by both FtT judges and wholesale rejection of the Appellant's account, it is unclear why the fact that he maintains he has no access to his original card has been accepted in isolation. The Judge should have considered whether the Appellant has his CSID or that his family, with whom he has been found to

be in contact, could send it to him or meet him on arrival in Iraq with it, as asserted in the reasons for refusal letter of 19 January 2023.

10. At the hearing Mr Parvar submitted that the Judge's reasons for concluding that the Appellant did not have a CSID were inadequate. It appears to have been assumed that the previous FtT judge had reached that conclusion, but no such finding had previously been made.

The Appellant's response

11. Ms Wass relied upon a skeleton argument in which she submits that the Judge properly considered all matters before finding that the Appellant does not have a CSID. The findings were made in clear contemplation of the adverse credibility conclusions.
12. At the hearing Ms Was submitted that the previous FtT judge's decision took the Appellant's lack of documentation as its starting point for considering his ability to obtain a replacement CSID under the system as applied at that time. The Judge was clearly aware of the relevant issues and the Respondent's application was no more than an attempt to relitigate.

My decision

13. The Judge has set out a focused and clearly reasoned decision in relation to the Appellant's claim to be a refugee. Consistent with that clarity and full consideration of the evidence and issues, no challenge has been made to that part of her decision.
14. Turning to the documentation issue, the Judge correctly starts by considering the previous FtT judge's findings regarding documentation. On first glance that previous decision would appear to have implicitly concluded that the Appellant did not have his CSID. However, no such finding was made. The Judge correctly noted that the previous judge had not made a finding that the Appellant was in possession of his CSID, but neither did the previous FtT judge find that the Appellant did not have that document.
15. Indeed, the CSID was not a "live" issue in the same way in the previous appeal. Whether the Appellant still had his CSID made less difference as the guidance from SMO showed that there was the potential to obtain a new one in the UK (assuming that the Appellant knew the relevant information). Therefore if he was lying and did have his CSID he could travel in Iraq and if he did not have his CSID it could be replaced given the judge's other findings about his knowledge of the relevant information. The key therefore before the last FtT judge was whether the Appellant had genuinely attempted to replace the CSID and the judge found that he had not.
16. Whether the Appellant still had his CSID had become a very real issue in the appeal before the Judge because of the latest position of the

Respondent (described in the CPIN) which meant that in the Appellant's case he could no longer simply go to the Embassy to obtain a replacement. The Respondent had implicitly recognised that position in the refusal letter of 19 January 2023 in asserting that, instead of replacing the CSID, the Appellant could ask family members, with whom he has been found to be in contact, to send it to him or to meet him at the airport with the document.

17. The Judge specifically refers to paragraph 33 of the Respondent's refusal letter where the Respondent states that the Appellant had failed to demonstrate he could not obtain the required documentation with the assistance of his family and/or that he had made genuine attempts to obtain it, but understandably interpreted that as referring to the previous judge's findings regarding the ability of the Appellant to obtain a replacement CSID. In fact, at paragraph 30 of the refusal letter the Respondent sets out his position that the Appellant could obtain his existing CSID with the assistance of his family. It is that key point which has not been addressed by the Judge, but the point was far from obvious from the way in which the refusal letter was drafted. It is unfortunate that the Respondent's refusal letter did not properly cross refer to this in paragraph 33, particularly in the context of a long and dense refusal letter.
18. I also accept the respondent's submission that the Judge's reasons for finding that the Appellant does not have a CSID are not clear in the context of the wholesale rejection of the Appellant's account otherwise by both the Judge and the previous FtT judge.
19. As a result of these conclusions I must set that part of the decision made by the Judge relating to the Appellant's CSID aside. All other findings are retained, i.e. all those in paragraphs 15-33 of the Decision.
20. I have regard to the principles set out in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) in determining whether the appeal should be remitted or retained in the Upper Tribunal. Given the narrow issue which needs to be addressed I have decided that the decision in that respect should be remade by this Tribunal at a resumed hearing.

Notice of Decision

21. The making of the decision of the First-tier Tribunal involved the making of a material error of law. The decision of Judge Rastogi is set aside but the findings made in paragraphs 15-33 are retained.
22. The remaking of the decision will take place in the Upper Tribunal at a resumed hearing.
23. The skeleton argument provided for the hearing before the Judge shows that the Appellant has also sought leave to remain on the alternative basis of his private life in the UK and obstacles to return to Iraq. Given that any decision about the ability of the Appellant to rely upon humanitarian protection and/or Article 3 depends upon the remaking, the parties should

be prepared to address not only the CSID documentation issue but also the Appellant's appeal based on his private life.

24. An anonymity order was in place previously but given that the Appellant's claim to be a refugee in need of protection has been dismissed and that conclusion has not been challenged I have lifted the anonymity order.
25. In the circumstances, full and detailed skeleton arguments need to be produced for the resumed hearing setting out the case for each party.
26. I therefore DIRECT that:
 - a. No later than 7 days before the hearing, the parties shall file and serve skeleton arguments setting out in full their legal submissions in relation to the appeal.
 - b. The parties are at liberty to apply.

Tracey Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27/02/2024