



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001859
First-tier Tribunal No:
PA/58450/2023
IA/00939/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 June 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN &
DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

AI
(ANONYMITY ORDER MADE)

Appellant (in the FtT)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent (in the FtT)

Representation:

For the Appellant: Mr T Haddow, counsel, instructed by Gray & Co, solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh, on 12 June 2024

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

Introduction

1. We make an anonymity direction because this appeal arises from the appellant's protection claim.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the respondent against the decision of First-tier Tribunal Judge Rea, dated 18/03/2024, which allowed the Appellant's appeal on humanitarian protection grounds.

Background

3. The Appellant is an Iraqi national who was born on 01/07/1998. On 06/10/2023 the respondent refused his claim for international protection.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Rea ("the Judge") allowed the appeal on humanitarian protection grounds.
5. The respondent lodged grounds of appeal, and, on 26/04/2024, Tribunal Judge Robinson gave permission to appeal stating

2. Ground 1 asserts that the Judge fails to give adequate reasons for the Appellant's inability to travel safely from any arrival airport in Iraq to his home area in order to redocument himself.

3. Whilst the Judge found that the Appellant's account with regard to threats made to himself is generally credible, it is arguable that in light of the subsequent finding that the Appellant does not have a well-founded fear of persecution and that his family members remained in Kirkuk, Iraq, the Judge has given inadequate reasons for concluding that his family would not be able to assist him on return to Iraq, with regard to SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC), (SMO2).

The Hearing

6. For the respondent, Ms Blackburn moved the grounds of appeal. Ms Blackburn told us that the Judge did not engage with the respondent's argument that there was potential for the appellant to recover his identity documents from Germany. She said that [19] of the decision is not a finding of fact, but a rehearsal of the appellant's case.

7. Ms Blackburn told us that the decision is not adequately reasoned. She said that the Judge does not explain his finding that the appellant does not have identity documents, nor does the Judge explain why he finds that the appellant is not in contact with his family.

8. Ms Blackburn referred us to passages in the transcripts of screening interview and asylum interview in which the appellant says that he had his identity documents, but that they were taken from him by German officials when he claimed asylum in Germany.

9 Ms Blackburn asked us to set the decision aside and to substitute our own decision dismissing the appeal on all grounds.

10. For the appellant, Mr Haddow opposed the appeal. He told us that the Judge's key findings are at [20] of the decision. There, the Judge finds that the appellant does not have a CSID. He conceded that the decision is not comprehensively worded, but told us that between [9] and [20] there is a careful analysis of credibility, concluding with an acceptance that the appellant's evidence is credible, but his claim does not amount to a claim of persecution.

11. Mr Haddow told us that even if the decision contains an error of law, it is not material. He referred to a news article from Shafaaq News (reproduced at document 169 of the papers before us). He told us that the search for the appellant CSI D is now irrelevant because the newspaper report says that the Iraqi Ministry of Interior decreed that, from March 2024, the only identification document which can be used in Iraq is the new national ID card.

12. Mr Haddow said that even if the appellant was in possession of his CSID today it would be no use to him.

13. Mr Haddow asked us to dismiss the appeal and allow the decision to stand.

Analysis

14. It is difficult to see where the Judge makes findings of fact in the decision. [6] to [9] of the decision is simply a rehearsal of the appellant's position. [10] is a summary of the reasons for refusal letter.

15. At [11] the Judge finds that the appellant's credibility is not damaged. At [12] and [13] the Judge discusses whether or not there is an inconsistency in the evidence. And at [14] to [16] the Judge rehearses the respondent's arguments.

16. At [17] the Judge finds that the appellant gives a credible account but does not establish a well-founded fear of persecution. At [18] the Judge records the appellant's claim to be undocumented, and at [19] the Judge correctly takes guidance from SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC).

16. In the first sentence of [20] the Judge unequivocally makes a bold finding of fact. There, he finds that the appellant does not hold identification documents and would have to travel overland to Tikrit to be redocumented. That finding of fact is entirely unexplained.

17. The evidence before the Judge included transcripts of the appellant's screening interview and asylum interview, in which the appellant says that his CSID is in the hands of the German government. The Judge did not analyse that evidence. The Judge does not explain how he finds that the appellant is undocumented when, on the appellant's own evidence, the appellant knows where his CSID is.

18. Failure to reconcile evidence and failure to give adequate reasons are errors of law. The errors are material because the existence of documentation is capable of affecting the outcome of the appeal. Because the decision is tainted by material errors of law we set it aside.

17. Mr Haddow's submissions on materiality raises a need to consider whether there is sufficient background material to justify departing from country guidance. There is conflicting evidence about the ability to use a CSID in Iraq since March 2024 which has still to be considered. For that reason, we find that a fresh hearing in the First-tier Tribunal is necessary.

Remittal to First-Tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having

regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. We have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

20. We remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Rea. An Arabic interpreter will be required.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision dated on 18 March 2024 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed **Paul Doyle**
17 June 2024
Deputy Upper Tribunal Judge Doyle

Date