



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03189/2018

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunal Liverpool
On 19 September 2018

Determination Promulgated
On 26 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

JIA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, instructed by CAB Bolton.

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1 The appellant appeals against the decision of Judge of the First-tier Tribunal Tully dated 13 April 2018 dismissing his appeal against the decision of the respondent dated 20 February 2018 refusing the appellant's protection and human rights claims.

- 2 The appellant is a national of Iraq, of Kurdish ethnicity, and originating from the town of Jalawla in the Diyala governorate. The appellant arrived in United Kingdom in or around March 2017 and underwent a screening interview on 16 March 2017, and a SEF interview on 14 February 2018. The appellant claimed to fear serious harm in his home town for two reasons: in 2015 ISIS had taken over the town, and also in 2015/2016 the appellant's father had become involved in a tribal dispute, the father had been killed, and the appellant said that he remained at harm as a result of such dispute. He also asserting that the other parties to the dispute had influence and power in the Iraqi Kurdistan Region, (IKR) and the appellant could therefore not internally relocate there.
- 3 The respondent disputed the appellant's age. The appellant had asserted at the screening interview that his date of birth was 10 October 2000, and that he was then 17 (even though he would in fact have been 16 at the time if his claimed date of birth had been true). At the screening interview, the respondent had served on the appellant a document stating that his 'physical appearance/demeanour very strongly suggest that you are significantly over the age of 18 '. The respondent refused the application.
- 4 On appeal before the judge, the judge heard oral evidence from the appellant and made findings which included the following:
 - (i) in relation to the appellant's age, the appellant had not discharged the burden on him to establish his age, and the appellant was not a child when he was encountered by the respondent in March 2017 [23]; there was no innocent explanation for the appellant's discrepancies about his age, and (impliedly) the appellant had been dishonest about his assertions [24];
 - (ii) in relation to possession of ID documents, the appellant had been inconsistent about whether he had been in possession of an ID card and passport [25]; he had not been truthful or consistent about the documents he had previously held or what happened to them [26];
 - (iii) in relation to the protection claim, the appellant's account of the tribal feud was not credible [27-33];
 - (iv) in relation to humanitarian protection and consequences of return, the appellant was from Jalawla and his presence there would result in being subject to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the qualification directive [36]; considering the potential for the appellant to receive support on arrival in Iraq and the availability of internal flight, the judge noted that the appellant had previously held both a CSID card and passport, and he had not been honest about were those documents are and when he last saw them [38]; in particular:

“He claims variously that he never saw his CSID card or lost it en route to the UK. It may well be that he still has access to that document. He says that the agent took his passport from him after travel out of Iraq; I do not accept this claim in light of my findings above on credibility. The appellant says that he has not attempted to obtain replacements of his CS ID and passport. Again I consider it likely that he has access to that document” [38];

- (v) alternatively the appellant’s father had previously brought a box of family documents from Jalawla to the town of Khaneqeen, and even if the appellant’s mother had subsequently died, as asserted, the appellant had previously been able to contact a with a neighbour and could do so again [38];
- (vi) the appellant could pass through Baghdad for the purposes of onward travel and to obtain such documentation as he would need to go onto the IKR [39];
- (vii) the appellant could obtain a replacement CSID card either from the embassy in the UK or reasonably soon after returned to Baghdad [39];
- (viii) the appellant could internally relocate to the IKR [40-41].

5 The appellant’s appeal was dismissed.

6 The appellant’s subsequent grounds of appeal dated 17 April 2018 argue, in summary, that the judge misdirected herself in relation to whether the appellant was entitled to humanitarian protection:

- (i) in appearing to find that the appellant would, on arrival to Baghdad, be able to obtain a replacement CSID card, the judge failing to direct herself appropriately in accordance with AA (Iraq) v SSHD [2017] EWCA Civ 944, which, it was argued, provided that an applicant’s ability to obtain a CSID card was likely to be severely hampered if he is unable to go to the civil status affairs office of his own governorate, as in the present case (Grounds, para 2-3); and applying the same authority, he would not be able to obtain a replacement CSID card in Baghdad (grounds, para 4);
- (ii) if stranded in Baghdad, the appellant’s profile was such that, again applying AA (Iraq) v SSHD [2017] EWCA Civ 944, he would be destitute and street homeless, contrary to Article 3 ECHR.

7 Permission to appeal was granted by judge of the First-tier Tribunal Bird in a decision dated 15 June 2018 on those grounds, but *additionally* suggesting that the judge arguably erred in law in finding that the appellant had previously held a CSID or passport, the judge having arguably erred in failing to give reasons for that finding at [26]; further, the judge had arguably erred in law in her assessment of the

appellant's age, in relying only on one statement made by the respondent, referred to at [19] (ie the document served on the appellant regarding his physical appearance/demeanour); and the judge had failed to comment on the respondent's failure to carry out a Merton compliant age assessment.

8 It is thus clear that the grant of permission to appeal was significantly wider in scope than the issues raised by the appellant himself in the grounds of appeal.

9 I heard from the parties. Ms Patel adopted the grounds of appeal and confirmed that she intended to pursue the additional points raised in the grant of permission. Ms Patel drew to my attention certain passages within the country guidance set out at the annex to AA (Iraq) v SSHD [2017] EWCA Civ 944. She submitted that on the basis of that authority, it was not possible for a person from the Diyala governorate, such as the appellant, to obtain a replacement CSID card in Baghdad, and that the judge's approach to the appeal was flawed.

10 However, I pointed out to Ms Patel that the judge determined the appeal on the assumed basis that the appellant either had, or still had access to, his CSID card and passport, and that the judge's assessment of how he might obtain a replacement CSID card in Iraq was therefore immaterial.

11 Indeed, when I heard from Mr Mills, his position was that although there may have been some error of approach by the judge as to what documents could be obtained by the appellant from the authorities upon return to Iraq, given the judge's primary findings, any such error was not material. Alternatively, if such an error may have been material to the outcome of the appeal, then Mr Mills would request a rehearing of the appeal, and permission to rely upon a new Country Policy and Information Note on Iraq: "Internally relocation, civil documentation and returns" Version 7 dated September 2018. Any re-hearing of the appeal would also need to take into account the updated country guidance given in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (2.6.18), although that country guidance would not become relevant if there were no material error in the judge's decision.

12 Ms Patel therefore addressed me on the issue raised in the grant of permission to appeal, as to whether the finding that the appellant either still has, or has access to, his CSID and passport, was open to the judge on the evidence available, and whether the judge gave adequate reasons for such a finding.

Discussion

13 I find, contrary to the suggestion within of the grant of permission to appeal, that the judge's reasoning on this issue is not contained only at [26]. At [25], the judge noted that the appellant had been inconsistent in his evidence, asserting in the screening interview that he had an ID card, but had lost it on the way to the UK, whereas in his SEF interview he had said that his father had told him that a CSID

card existed for him, but the appellant had never seen it. The judge set out, and then rejected the appellant's explanation for the discrepancy.

14 Further, at [26], the judge noted that the appellant had specifically stated that he had left Iraq from Erbil, 'on his own passport'. The judge considered in some detail the appellant's evidence as to whether he, or an agent, had been in possession of that passport, and gave reasons which I find are adequate in law, for rejecting the appellant's credibility about who was in possession of the document. The judge held at the end of [26] that the appellant had not been truthful or consistent about the documents he had previously held or what happened to them. This finding was open to the judge.

15 One argument advanced orally by Ms Patel, which is not contained in the grounds of appeal, and is not raised by Judge Bird in the grant of permission to appeal, is that the judge had either proceeded under a mistake of fact in relation to part of the appellant's evidence about what documents he had previously possessed, or had failed to take such evidence properly into account, and that this mistake had materially affected the judge's assessment on credibility on that issue. The evidence which Miss Patel drew to my attention was that at page A9 of the screening interview, being a continuation of question 1.2 at A2, where the appellant had given his date of birth as 10 October 2000. At A9, the record of interview sets out the following:

"Q: The date of birth you've given makes you 16

A: How is this so?

Q: You are 16 until October this year, then you would be 17.

A: I don't know, I have seen 10/10/200 (*sic*) on my **civilian ID card**.

Q: Where is your ID card now?

A: I lost it on my way to this country" (Emphasis added)

16 Ms Patel points out that there are three different types of identity documentation in Iraq, the Civil Status ID (CSID), the Iraqi Nationality Certificate (INC) and Public Distribution System (PDS). I see, for example, the three forms of documentation being discussed at para 53 of AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC). Ms Patel's argument is that the reference to 'civilian ID card' at q 1.2 at A9 was in fact not a reference to a Civil Status ID card, but to the appellant's Iraqi Nationality Certificate (INC). Thus, when purporting to find that the appellant had given inconsistent evidence about whereabouts of any CSID card, the judge had proceeded under a mistake of fact, as the appellant had not been referring to his CSID card at question 1.2 at A9 at all.

17 I am perplexed by this argument. Not only was this alleged explanation for a discrepancy in the appellant's evidence not put forward by him in his witness statement dated 26 March 2018, nor on his behalf by Ms Patel before the judge at the hearing on 6 April 2018, it also defies all common sense. The judge was clearly, and perfectly entitled to treat the appellant's reference at 1.2 at A9 to his 'civilian ID

card' to be a reference to his Civil Status ID card, or CSID. The term used by the appellant is almost identical to the formal title of the document. Further, the term used by the appellant has no resemblance at all to the formal title of the Iraqi Nationality Certificate (INC). I informed Ms Patel but I thought this argument had no merit at all, and ultimately had to use my case management powers to curtail her submissions on the point which she sought to pursue at length.

- 18 I find that there is no material error of law in the judge proceeding to determine the appeal on the basis that the appellant either still has, or has access to, his CSID card and passport, as held at [38].
- 19 Further and in any event, there is no challenge to the judge's alternate finding at [38] that the appellant, having previously successfully contacted a neighbour in Khaneqeen, could do so again, to access family documents held in a box. The judge's finding might potentially seem somewhat speculative in this regard, but there is no challenge to it, and no Robinson obvious error arises.
- 20 Ms Patel also argued that the judge had proceeded under another mistake in fact, although this point was not mentioned in either the grounds of appeal, or the grant of permission to appeal. This supposed mistake of fact was that in stating at [40] that '...given that he is of Kurdish ethnicity and speaks Kurdish's Sorani and it is accepted that he (*sic*) from a Kurdish area...' ", the judge appears to proceed on the basis that the appellant is actually from the Iraqi Kurdistan Region, IKR, and thus she misdirected herself as to the approach to internal relocation. Ms Patel argued that the reference to the appellant being 'from a Kurdish area' was the crucial passage, and must mean that the judge had proceeded on the basis that the appellant was from the IKR, which of course he is not.
- 21 I find this submission totally without merit. The judge summarised the appellant's case at [1], that he had asserted that he could not return to his home area of Jalawla, which was in a disputed area, and further, that he could not *relocate* to IKR; the judge specifically referred to the appellant 'not coming from IKR' at [11]; the judge correctly directed herself, having found an Article 15 C risk in Jalawla, that it was necessary to see if the appellant could reasonably relocate elsewhere in Iraq, for instance to IKR; the judge again specifically refers to the appellant not coming from IKR at [37] and [40].
- 22 I take the judge's reference at [40] that the appellant is 'from a Kurdish area' merely to be a reference to Jalawla itself; the appellant's own witness statement dated 26 March 2018 states at [2] that he went to a Kurdish school and he lived in a Kurdish community. There is nothing in Ms Patel's point, and again, I had to use case management powers to curtail her submissions on the point.
- 23 The last point, raised in that the grant of permission to appeal, is that the judge may have erred in law in her assessment of the appellant's age. Insofar as the grant of permission to appeal suggests that the judge, in finding that the appellant had lied

about his age, took into account only the respondent's assertion in a written document that his physical appellant/demeanour very strongly suggested that he was significantly over the age of 18, this is simply not correct. The judge referred to various discrepancies in the appellant's evidence on the issue of his age; he had at one stage stated that he had no doubt that he was over 18, and was not child, and that if the authorities said he was born in 1992 he was happy with that assessment [20]; the appellant had been on notice since the screening interview that his age was in dispute, and had not provided any positive evidence of his own in relation to that issue [22]; the fact that if his date of birth were 10 October 2000, he would have been 16, not 17, as he asserted at the date of the screening interview [24]; and he had changed his account about whether or not he had ever seen his date of birth written down [24].

24 There were ample reasons supporting the judge's decision that the appellant had not been truthful about his age, and that he was an adult at the time of screening interview in March 2017.

25 Further, insofar as the grant of permission to appeal suggests that where is disputed, there must be an age assessment compliant with *R (B) v Merton LBC* [2003] 4 All ER 280, this is not the case. The respondent's policies and procedures on age disputes have been considered on a number of occasions, for example in *AA, R (on the application of) v SSHD* [2013] UKSC 49, where the Supreme Court took no issue with the general approach of the Respondent as to the assessment of age, setting out at [19] of the judgement, a relevant extract from the respondent's Enforcement Instructions and Guidance ("EIG"), paragraph 55.9.3.1:

"...UK Border Agency will accept an individual as under 18 (including those who have previously claimed to be an adult) unless one or more of the following criteria apply:

- * there is credible and clear documentary evidence that they are 18 years of age or over;
- * a full 'Merton-compliant' age assessment by social services is available stating that they are 18 years of age or over. (Note that assessments completed by social services emergency duty teams are not acceptable evidence of age);
- * their physical appearance/demeanour very strongly indicates that they are significantly over 18 years of age and no other credible evidence exists to the contrary."

26 Therefore, there clearly are circumstances when the respondent may lawfully treat a person as an adult if their physical appearance/demeanour very strongly indicates that they are significantly over 18 years of age and no other credible evidence exists to the contrary.

27 The appellant has failed to establish that there are any material errors of law in the judge's decision dismissing his appeal.

Decision

The decision did not involve the making of any material error of law.

I do not set aside the judge's decision.

The appellant's appeal is dismissed.

Signed:

Date: 21.9.18



Deputy Upper Tribunal Judge O'Ryan

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

This appeal concerns a protection claim. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 21.9.18



Deputy Upper Tribunal Judge O'Ryan