



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00076/2020

THE IMMIGRATION ACTS

**Considered on the papers
On 2 November 2020**

**Decision & Reasons Promulgated
On 5 November 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge EMM Smith, promulgated on 11 March 2020. Permission to appeal was granted by First-tier Tribunal Judge Adio on 28 April 2020.

Anonymity

2. An anonymity direction was made previously owing to the appellant's then minority. I now make such a direction as he remains a young person and also owing to the nature of his protection claim.

Background

3. The appellant is a citizen of Iraq who entered the United Kingdom clandestinely during March 2019, aged 16. He applied for asylum on 20 May 2019. It is the refusal of that claim, communicated in a decision dated 1 November 2019, which is the subject of this appeal.
4. The basis of the appellant's protection claim is that he is of Kurdish ethnicity, hails from Erbil and was physically assaulted by the relatives of his girlfriend, 'R.' R's family were said to have a high political profile. That assault left the appellant requiring hospitalisation for 3 months, following which he stayed with relatives in Sulaymaniyah for a further 6 months. He returned to Erbil for 3 days prior to leaving Iraq during 2016. The appellant flew to Turkey and thereafter passed through a series of European countries before arriving in the United Kingdom.
5. In the decision letter of 1 November 2019, the respondent rejected the central plank of the appellant's claim, that he had received adverse attention from R's family. In addition, it was considered that the appellant could obtain a CSID upon returning to Erbil, following which he could relocate within the Iraqi Kurdish Region (IKR).

The decision of the First-tier Tribunal

6. Following the hearing before the First-tier Tribunal, the judge concluded that the appellant had failed to substantiate his claim and that he was an economic migrant. The judge further rejected the appellant's claim that he would be unable to obtain a new CSID or equivalent, considering *SMO & others (Article 15(c); identity documents) Iraq* [2019] UKUT 00400 (IAC).

The grounds of appeal

7. The grounds of appeal focused on the judge's findings in relation to the appellant obtaining a replacement CSID and in applying *SMO*. It was argued that the judge failed to take relevant aspects of the appellant's evidence into consideration.
8. Permission to appeal was granted on the basis sought. In addition, the judge granting permission noted that the First-tier Tribunal wrongly referred to the balance of probability at [27] in relation to the credibility of the appellant's account regarding his ability to access his CSID details.

The procedural history

9. On 28 July 2020, the parties were sent directions which expressed the provisional view that the questions of whether the First-tier Tribunal's decision involved an error of law and whether it should be set aside, could be determined without a hearing.
10. The parties were invited to provide submissions and respond to the proposal to consider the matter without a hearing.

11. The Secretary of State provided a response to the above-mentioned directions on 31 July 2020, agreeing that this appeal could be considered without a hearing. In addition, the respondent explained that the writer had not seen the grounds of appeal and therefore submissions would address only the grant of permission. The respondent did not accept that the First-tier Tribunal elevated the standard of proof and made reference to paragraphs [16] and [28] which referred to the appropriate standard. Furthermore, the phrase used by the judge was made solely in respect of the finding that the appellant's family were still in their former home.
12. The appellant's response to directions was received on 10 August 2020 and was accompanied by the grounds of appeal, for the benefit of the respondent. The appellant agreed that the question as to whether there was an error of law and the decision of the First-tier Tribunal should be set aside could be considered without a hearing. Otherwise, the submissions amplified the grounds of appeal as well as Judge Adio's grant of permission.
13. Given the time that has elapsed since the grant of permission as well as the Upper Tribunal directions, I consider that it is in the interests of justice that this appeal be progressed. In the absence of any objections from the parties or any other apparent reason to consider this matter at an oral hearing, I have resolved to decide the relevant issues on the papers.

Decision on error of law

14. I have taken into consideration both sets of submissions as well as all the evidence which was before the judge in reaching my decision.
15. At [27], the judge said the following regarding the claim that the appellant does not have a CSID card and has no family in Iraq to help him obtain one as he has no idea where they are. *"However, I am satisfied that bearing in mind that they had lived in the family home for 9 months after the incident and were still there when the appellant spoke with them when in Turkey, that it is **more than probable** that the family are still living in the family home not least because of the job as a taxi driver the appellant's father had which requires knowledge of the area he worked."* While the judge's reference to the incorrect standard was regrettable, it is the case that the correct standard was applied to the overall claim, as evidenced by [28] where the judge stated; *"the appellant has not satisfied me even to the lower level of proof that he does not know where his parents and brother are."* In addition, at [16], the judge's self-direction is faultless. Nonetheless, I conclude that the judge's use of the word '*probable*' in relation to the sole and crucial issue of the whereabouts of the appellant's family gives the overwhelming impression that a higher standard was wrongly employed here.
16. Furthermore, the judge's conclusion that the appellant could turn to his parents and brother for assistance with obtaining a CSID or equivalent was not supported by significant aspects of the evidence, to which the judge

made no reference. Evidence to which the judge did not refer includes the appellant's oral evidence that when he last spoke to his family, his father said that he was planning to sell the house and move elsewhere. The appellant stated the same during his asylum interview at [115].

17. The appellant left Iraq in 2016 and last spoke to his family upon his arrival in Turkey, which was the first country he travelled through and where he spent only 10 days. This aspect of the appellant's account was worthy of consideration, in view of the four years which has elapsed between his last contact with his family and the date of the hearing. Furthermore, I have no reason to doubt what is said in the appellant's submissions that his evidence at the hearing was that he had made efforts to trace his family, via the Red Cross. There is no mention of this matter in the decision and reasons. The judge's conclusion that the appellant could obtain a CSID with the help of his family is based solely on the finding that it was "*more than probable*" that his family were still living where they were when the appellant last spoke to them in 2016, despite his father having specifically stated that the family were going to move.
18. The failure of the First-tier Tribunal to cite the correct standard of proof or to consider relevant evidence regarding the core of the appellant's case which remained after his claim of persecution had been rejected, amounts to a material error of law, without which a different outcome might have been achieved. Accordingly, I set aside the decision of the First-tier Tribunal in relation to the ability of the appellant to obtain a replacement CSID. There was no complaint in the grounds in relation to the judge's findings at [17-24] regarding his alleged fear of his girlfriend's family and those findings are preserved.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Birmingham, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge EMM Smith.

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

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

appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date 19 November 2020

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email**