



IAC-FH-CK-V1

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

Appeal Number: PA/10365/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House
On 18 September 2020**

**Decision & Reasons Promulgated
On 14 October 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**AAM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Rogers, Counsel instructed by Immigration Advice Centre Ltd (Middlesbrough)

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

DECISION AND REASONS

Background and Immigration History

1. The appellant is a Kurdish citizen of Iraq born in December 1991. He is appealing against a decision of Judge of the First-tier Tribunal Atkinson promulgated on 10 March 2020.
2. In 2008 the appellant entered the UK and claimed asylum. He claimed that his father was kidnapped and killed; and that a substantial sum of money was demanded from his family. The asylum application was refused. His subsequent appeal was heard by Judge of the First-tier Tribunal Baker. In a decision promulgated in May 2009 Judge Baker dismissed the appeal. He found that the appellant had been dishonest. Amongst other things, he found, on the basis of a forged document report (which he described as being “utterly compelling”), that the appellant’s Iraqi ID card was counterfeit.
3. In March 2011 the appellant was removed from the UK.
4. In November 2011 the appellant returned to the UK and claimed asylum on arrival. The claim was refused. He subsequently made several further submissions the most recent of which was in July 2019. The further submissions have all been refused.
5. The appellant’s appeal came before Judge of the First-tier Tribunal Atkinson (hereafter “the judge”) at Bradford on 18 February 2020. In a decision promulgated on 10 March 2020 Judge Atkinson dismissed the appeal. The appellant is now appealing against that decision.

The Decision of Judge Atkinson

6. At the hearing, the appellant gave the same account of his father being kidnapped and killed, and of his family receiving a demand for money, as previously. In addition, he claimed that he no longer has family in Iraq.
7. He also claimed that in 2011, when he was returned to Iraq, his identity card was taken from him but he still managed to make his way home to his village, where he lived for seven months before returning to the UK.
8. The judge found that the appellant’s case, and the evidence relied upon, was materially the same as in the previous decision and therefore, following *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702, he accepted the previous findings and rejected the asylum claim.
9. The judge rejected the appellant’s contention that the fact he had been returned to Iraq previously showed that his identity card was genuine as otherwise he would not have been allowed to return. At paragraph 42 the judge addressed the issue of the appellant’s previous identity card, stating:

“I do not find that to be a matter that supports the appellant’s claim. That is because there is no documentary evidence before me as to the arrangements that were made for the appellant’s return to Iraq. In addition, the appellant in oral

evidence before me said that on return to Iraq his identity card had been retained by United Kingdom officials but nevertheless he had been able to return to his home area without his ID card. However, the background materials and the analysis in *SMO* show the difficulties in making such a journey to an extent that is inconsistent with the appellant's account of return to his home area. I find this to be a further matter that tends to undermine the credibility of his account."

10. Applying *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC), the judge found:
 - (a) The appellant could reasonably be expected to obtain a CSID through consular facilities. The judge found it to be reasonably likely he recalls the volume and page number of the entry in the Family Book in Iraq and that if he does not, he could obtain the required information from family members.
 - (b) The appellant could return to his home area where he would not face a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) Qualification Directive.
 - (c) Alternatively, he could relocate to Kirkuk as doing so would not be unreasonable and unduly harsh.

Grounds of Appeal and Submissions

11. The grounds of appeal argue that the judge's reasoning about the appellant's ID card was contradictory because if the card facilitated his return to Iraq and travel to his home area it followed that the card was genuine. It is also argued in the alternative that the judge failed to make findings on the evidence used to facilitate the appellant's return and how he was able to be returned without an ID card.
12. Ms Rogers on behalf of the appellant stated that she relied on the grounds and reiterated that there is a contradiction in paragraph 42 of the decision about whether or not the ID card was a forgery and how he was able to return to his home area if it was. She added that it is unclear whether it is being said that a different ID card was used and that there is an absence of a finding on this important point. She further stated that there is an error in paragraph 42 because the appellant's evidence was not that his ID card was retained by UK officials but that it was retained by Iraqi officials.
13. Mr Walker accepted that paragraph 42 is on its face contradictory but argued that this is not material because the judge made clear findings that the appellant could obtain an ID card and safely return to Iraq.
14. Ms Rogers argued that the error is material because it goes to the question of whether the appellant has been truthful, which in turn is relevant to whether he is credible and the issue of credibility is material to the question of whether he can obtain a CSID card at the present time.

Analysis

15. The judge considered the extant and recent country guidance case *SMO* on the question of obtaining a replacement CSID. At paragraph 13 of the headnote to that decision it is stated:

“Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members although it is necessary to consider whether such relatives are on the father’s or mother’s side because the registration system is patrilineal.”

16. At paragraph 56 of this decision the judge stated:

“I note that despite changes to the system of identity documentation, replacement CSIDs remain available through Iraqi consular facilities. I find that the appellant is reasonably likely to be able to recall the volume and page reference of the entry in the family book in Iraq, given the importance of that information. Even if not so able, then I further find that such information may also be obtained from family members. As previously found, I do not accept that the appellant no longer has family members on his father’s side to assist him.”

17. The judge’s reasoning in paragraph 56 of the decision is entirely consistent with *SMO*. It was therefore open to the judge, for the reasons he gave, to find that the appellant will be able to obtain a replacement CSID. The judge’s reasoning on this question did not depend on, or relate to, whether or not the appellant previously used a counterfeit document. Accordingly, even if the judge erred by making contradictory findings in paragraph 42, this is not material to the question of whether the appellant is presently able to obtain a replacement CSID.
18. Similarly, the judge’s finding that the appellant could relocate to Kirkuk, which has not been challenged, was not dependent on, or affected by, the issues raised in the grounds of appeal because there is nothing in the appellant’s case, even taken at its highest, to indicate that the individuals who he claims are targeting his family would be a threat to him in Kirkuk.
19. In conclusion, I agree with Mr Walker that although the judge’s findings in paragraph 42 of the decision about the counterfeit identification document are unclear and appear contradictory, this is not material because the findings on this issue do not undermine the judge’s sustainable findings, supported by adequate reasons, on the question of whether the appellant is currently able to obtain a CSID and can reasonably and safely relocate to Kirkuk.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and therefore is not set aside. The appeal is dismissed.

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 him or any member of his 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

D. Sheridan

Upper Tribunal Judge Sheridan

Date 8 October 2020