



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00218/2018**

THE IMMIGRATION ACTS

**Heard via Skype for Business at Field
House
On 12 November 2020**

**Decision & Reasons
Promulgated
On 28 May 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**YFH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukherjee, instructed by Rodman Pearce Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed to the First-tier Tribunal against a decision of the Secretary of State of 18 December 2017 refusing to grant asylum. The basis of his claim was fear on account of the group that was responsible for his brother's death if he were returned to Iraq, and also his fear of the general situation in Kirkuk, his home area, as a result of the presence of ISIS there.

2. The judge noted that the appellant was born on 25 May 2000 and was therefore aged 17, nearly 18. His evidence was that he and his family originally lived in Hawija, a town in the Kirkuk governorate. His eldest brother, S, worked for the American armed forces from around 2005. He left the area when the American forces left although the appellant did not know exactly when that was. His other brother, G, worked thereafter in a barber's shop. G was killed in August 2007 by a group which was notorious in the area for attacking and killing soldiers or people working with the government. G had been expressing the opinion that the group's activities were wrong.
3. The appellant's father reported G's murder to the police but no-one was apprehended at that time. Subsequently the family moved to Qadesiyah, a district of Kirkuk, in 2010, and again the appellant's father reported the murder of G. Subsequently a person was arrested who it was believed was a member of the group and was responsible for killing G and others and this man was sentenced to death.
4. The appellant's family continued to live in the same house until 2017 without apparent problems. However, towards the end of April 2017 the appellant's father told him he was no longer safe and he had to leave the country, and arrangements were made for him to leave under the control of an agent and he was smuggled over land and sea eventually to the United Kingdom.
5. The appellant had no personal knowledge of any of this and relied entirely on what he was told by his mother and father. In particular, he had no personal knowledge of the reason behind G's murder, who the group it was alleged to be responsible were or what led his father to decide that he should flee Iraq.
6. The Judge accepted that S worked for the American forces, that G was killed, and that the appellant's father believed that G had been killed by an anti-American, anti-government group. However, the judge did not accept that the group found the family in 2017 and threatened the father. Despite family association with the American forces since 2005 and G's murder in 2007, they were left unmolested in Hawija for three years and in Kirkuk for a further seven years. In any event, it appeared that the appellant had concluded that the group had threatened his father simply because his father had told him to take more care out and about. The appellant had also said that the lack of security then in Kirkuk was part of the reason why his father decided he should leave.
7. The judge was therefore not persuaded that it was reasonably likely that the appellant was targeted by the group who had killed G nor that he was personally targeted by any group. Even if he were wrong about that, it was the appellant's own case that the police in Kirkuk acted on his father's complaint and secured an arrest, conviction and sentence of death in his brother's case. The alleged threat to the appellant and his family arose

after ISIS had taken control of Kirkuk. The appellant accepted that ISIS had been driven out of Kirkuk and there was no basis to suggest that he and his family would not be able to turn again to the authorities for protection from this group if indeed any risk remained.

8. The judge also noted that the appellant had contacted the Red Cross twice, once to seek their help in tracing his family, and wanted to obtain a letter confirming he had done so. A letter from the Red Cross made it clear that the fact that a tracing request was or was not opened should not be considered as evidence that the person sought was or was not missing or indeed that they did or did not exist. Nor should the opening of a tracing request be considered as credible evidence of efforts to contact family members. The letter also made it clear that the British Red Cross did not intend any information concerning its tracing service or specific related cases to have any formal standing or evidentiary weight and that it did not wish to see its humanitarian endeavours or any relevant findings relied upon in Tribunal proceedings.
9. This led the judge to conclude that he could not accept that a tracing request had been opened and had yet to be successful as evidence that the appellant's family was no longer in Kirkuk, that he would not be able to contact them if necessary or alternatively that he could not do so reasonably quickly in country if necessary. Also he had led no evidence of any attempts to contact his brother S, who it was said worked for the American armed forces. If the family had relocated internally to Baghdad or the IKR then the judge considered that it would be not unreasonable or unduly harsh to expect the appellant to relocate to be with the rest of his family.
10. The judge also placed reliance on the findings of Sir Ross Cranston in Amin [2017] EWHC 2417 (Admin) and the fact that Kirkuk was no longer a contested area.
11. The appellant sought permission to appeal the judge's decision. Permission was refused by first a Judge of the First-tier Tribunal and then by a Judge of the Upper Tribunal but subsequently on a Cart judicial review the refusal by the Upper Tribunal to grant permission was set aside and permission to appeal was granted as a consequence.
12. The matter came before me in February 2020 at which time by common ground it was agreed that the judge had erred in relying on the decision of the Administrative Court in Amin since that decision had itself been set aside in QA (Iraq) and it was common ground that in light of the judge's error of law in relying on Amin the matter was appropriate to be reconsidered in light of the guidance that was forthcoming in SMO [2019] UKUT 00400 (IAC). It was noted that there was no challenge to the findings of the judge in respect of the evidence but it was appropriate for there to be update evidence.

13. At the hearing before me Mr Mukherjee confirmed that the issues before the Tribunal were whether the appellant had a well-founded fear of persecution in his home area, a formerly contested area of Kirkuk, and the risk of serious harm there and whether he could obtain a CSID or other ID.
14. I questioned whether this issue was in fact before the Tribunal since it had not formed part of the judge's findings and nor had it formed part of the appeal.
15. Mr Walker was content for the matter to be argued as being something the Secretary of State thought had been part of the continuation of the hearing and that it would be difficult to take it out of the equation for the appellant as it had been part of the SMO guidance.
16. The first witness was Dr Rebwar Fatah, who had provided a report dated 22 October 2020. He confirmed that the information in the report was correct and he was happy for it to be considered as part of his evidence.
17. He was referred to what he said at paragraph 318 of his report that it was possible that the appellant might be able to evade the risk from a blood feud by relocating to the IKR. He considered that there was a blood feud issue. It was accepted that in 2005 the appellant's brother S joined the Americans and in 2007 when the appellant was 7 his other brother was killed. Dr Fatah believed that this was linked to the other brother's job. The family had stayed in the Hawija district in Kirkuk, and in 2010 they had gone to live in the south of Kirkuk and stayed there until the appellant left.
18. Dr Fatah was not sure from the papers that it was accepted that the family had lodged a complaint against the group and a member of the group was sentenced to death but if it was accepted that the family had caused this execution of a group member it was likely to turn into a blood feud, given the strong tribal structure of Hawija. Of course the case went back a long time. The insurgency had been at its highest in 2006 to 2007, and there were thousands of deaths in Iraq in that period. There had been a huge security vacuum. There was a question of whether the family were still chased and it was hard to know, if one did not know the nature of the group and very hard to argue the family would still be under attack by working for the US in 2005. If the group members were tribesmen from Hawija it could lead to a blood feud or tribal feud. The two terms were synonymous.
19. The appellant left in 2017 aged 17 and usually in tribal disputes females were not killed or those under 14 or 16. Hence there could be a tribal feud.
20. He was asked whether that was plausible on the evidence accepted by the judge and Dr Fatah said one should probably consider there was a blood

tribal feud, yes, if one accepted the group was from Hawija, which was a very tribal region.

21. He was asked whether it was possible for interest in the family to remain ten years after the brother worked for the USA. Dr Fatah said that he thought that if the person sentenced to death was from a tribe following a successful complaint and if they knew the appellant's family though little was known about the group and he had to make assumptions, but if they had caused the death of a family member it was plausible that they knew each other and it could lead to a tribal feud. Tribes felt strongly about such a matter many years after the event. He referred to a case in Sulaymaniyah of the killing of three brothers. It was a question of what was plausible in the region. Iraqi Kurdish politics was based on tribes and sects. This was exemplified in the IKR with the different tribal makeups of the PUK and the KDP.
22. With regard to the appellant's ability to obtain some form of ID to return to Iraq, the country guidance in SMO was correct in what it said at paragraph 42 about the information needed in order to obtain a CSID.
23. When cross-examined by Mr Walker, Dr Fatah was asked if there would still be a risk for the appellant given the passage of time since the death of his brother and also the ensuing events. He said that there were issues first with regard to the USA and he could not support that the family were still at risk from the son working for the USA but on the other point if it was now a tribal feud then it was plausible that it would give rise to a tribal issue/feud. He did not say it was a norm of the societies in the region but it was plausible that the passage of time was relevant to the feud and it would be seen as an insult.
24. He was asked whether this meant in effect that it would be never-ending until satisfied and he said it was very difficult to end until the tribe felt it had been cleansed. It depended on the tribe. They might give up or it might go on for generations. It was not known about this group but he assumed it was a local group. If it was ISIS then there would not be so much local support and they would have left or been eliminated. If they were local and the person had been brought to justice as a consequence of a death sentence it was very plausible that it would turn into a tribal feud. It was not known and one had to make assumptions/speculations.
25. He was asked whether it was therefore the case that the appellant would be at risk in his home area from them and he said it was likely. He thought that the appellant would not go back to Hawija as they had left there in 2010. The case had come to justice in the city of Kirkuk and hence he assumed they knew his family's whereabouts.
26. With regard to obtaining a CSID when there were no family members to contact he was asked what the basis was for that. He was asked also

whether it was impossible without family members to assist in confirming the details.

27. Dr Fatah said that the appellant could hire a local lawyer or make use of relatives or neighbours who could also work on his behalf. He would have to do a proxy and that was not difficult and could do it from the embassy. Of course you had to know some details. It was a question of the family registering and which year. It was not impossible. Of course there had been a lot of displacement in Iraq. For example the Yazidis were an instance of this.
28. On re-examination Dr Fatah was asked by Mr Mukherjee about the ability to obtain a CSID by proxy from the family book in Iraq if the appellant wanted. He said yes but he would need the details, for example which registration office in Baghdad and the file numbers and that it was necessary to narrow it down to details. A lawyer acting as a proxy would need the office where the registration was, the page of the book and the file - the number of the file. A lawyer would not take the case without such details. As to why you would need the file if you have the other matters and unless you went through all the files of the year, and it would not be practical to instruct a lawyer otherwise.
29. In his evidence the appellant adopted and relied on his three statements and also his answers at the interview in 2017.
30. He was referred to the letter of 8 January 2018 from the Cambridgeshire and Peterborough NHS Foundation Trust. It was said there that he had been put on a list for cognitive behavioural therapy. He had had such therapy, having had five or six sessions of therapy approximately five or six months ago. He had stopped the sessions as they were not helping him and he had found that every time he went. He was asked how his mental health was now. In the letter it was said he was severely depressed and anxious. He said he was trying to help himself to control his emotions and he was feeling much better now. He agreed that in the later statement he had said he did not know the whereabouts of his family members. Nor was he in touch with anyone else in Kirkuk such as his extended family, friends or neighbours.
31. When cross-examined by Mr Walker the appellant was asked whether he had kept up-to-date in respect of the Kirkuk area where he was from and he said he was informed a little bit how the situation was. He was asked whether for example he knew if his school was still operating in Kirkuk and said he did not have a lot of details about Kirkuk but what he knew was that people were killed on a daily basis.
32. He was asked what attempts he had made to track down family members and said last year he had visited the Red Cross. He had made an appointment with them and gave them some initial information but at that time the fighting was going on in Kirkuk and a lady from the Red Cross had

contacted him and said that at the moment because of this it was very difficult for them to get any information about his family. This had been last year. He had not gone back to them since last year because where he lived in Peterborough there were many Kurds who lived there who had been in contact with the Red Cross and they had not been able to find anyone's family. This was true of all his friends. They had got nowhere.

33. On re-examination he was asked about his CSID card and the information on it and whether he knew the office where the information was kept in Iraq. He said he had never seen in his life his own ID card and that the paperwork was always dealt with by his father and he had never understood how his father obtained it or how it was organised.
34. In his submissions Mr Walker relied on the refusal letter. As regards what Dr Fatah said about motivation for possible fear for the appellant in his home area, the passage of time since his brother had been working for the USA in 2005 to 2006 made the risk to the appellant less. Dr Fatah said there was a blood feud as a possibility given also where in Kirkuk the appellant was from. The appellant would not be at risk in his home area with regard to his brother from the US forces connection. As regards return to Iraq the appellant had not had any contact with his family, he said, nor did he know their location. Dr Fatah said it was possible for someone from the UK to obtain via a proxy details to obtain a CSID. It was quite clear from the country guidance in SMO that it could be difficult to obtain a CSID from outside but not impossible, as Dr Fatah's evidence showed. The appellant would know his date of birth and parents' names and where he was born. It was not impossible. The appeal should be dismissed.
35. In his submissions Mr Mukherjee said that with regard to the element of real risk in the former home area the judge's findings were binding as at paragraph 36 with regard to the brother working for the US forces and the other brother being killed by an anti-US, anti-government group. The judge had not accepted that the family had problems in 2017. This was unclear but it was a finding. The appellant's father had twice reported his son's death to the authorities and on the second time there was an arrest and death sentence though it was unclear whether the sentence was carried out.
36. The situation in Kirkuk had improved over the last few years. Dr Fatah had been accepted in SMO as a highly qualified expert and his evidence had been commended as being expert and measured. That was the case of today's evidence also. He had indicated the gaps in his knowledge. In his report he said there was still violence in the former contested areas of Northern Iraq and ISIS activities and a civil war basis and a high level of sporadic violence. This was as the appellant had told Mr Walker.
37. Dr Fatah said that there would be no real risk with regard to the appellant's brother's association with the US forces, but he believed that if

there were localised problems from local anti-government elements given the tribal nature of Iraqi politics, and it would be a tribal/blood feud and it was plausible that this was a localised dispute and not part of a wider confrontation with a larger group such as ISIS. Dr Fatah had said that if it were a local group then it would be a tribal/blood feud and it was likely that the appellant would face persecution or serious harm on return to Kirkuk despite the passage of time and such feuds could last for generations and it was a matter of thirteen years here. That was not a significant passage of time. There was a real risk.

38. The appellant would be returned to Baghdad, not to the IKR. Mr Walker had not addressed the issue of internal relocation. Reference was made to the guidance in SMO on this with regard to the difficulties with relocation from Kirkuk to Baghdad and the appellant had significant mental health problems and would be unable to relocate there. He was therefore a refugee.
39. With regard to obtaining any form of ID documentation to return to Iraq, the evidence was clear. He had never had a CSID and was unaware of it but this was understandably so as he was a minor when his father had got it and would know the information and it was consistent that he had no CSID card.
40. Dr Fatah's evidence had also been clear on how to obtain such a document and family members could assist and if not, one could pay someone to help but the information definitely required was specific. It could be that if the file number was not known a lawyer could try and search to find the record but where none of that information was known and the appellant did not have the funds anyway, so the information was not obtainable. He had been born in Hawija and his family moved to Kirkuk city and it was unclear in which the record would be. It was argued that it was impossible for a proxy to obtain that information. There was consistent evidence that he was not in contact with his family and no dispute that he had contacted the Red Cross and they had made enquiries. The area was one of widespread fighting until very recently and the lack of contact with the family in the circumstances was understandable. The appeal should be allowed.
41. I reserved my decision.

Discussion

42. I consider first the issue of risk on return from the group which it is said carried out the killing of the appellant's brother and which would have an adverse interest in him on account of the killing having been reported and the responsible person having been apprehended and sentenced to death.
43. In his first witness statement, dated 3 November 2017, the appellant referred to the occasion when his brother was shot dead in August 2007

and the fact that subsequently when the killing was reported for a second time to the authorities the police captured a member of the group that had killed the appellant's brother G and the police believed he was the one who had killed him and other people. From what the appellant heard from his father this person was tried in court and sentenced to death but he did not know whether he was executed or not. He went on to say that when ISIS attacked Hawija this group joined ISIS and the group knew and were aware that his father had reported them to the authorities which led to one of their members being captured.

44. As regards the further point made in that statement about the group locating his family after they had moved to Qadesiyah, the judge's finding that he did not accept that the group found the family in 2017 and threatened the appellant's father has not been disturbed and remains therefore part of the findings in this case.
45. In his second witness statement, dated 26 January 2018, the appellant said among other things that it was true that most of the information he had about his brother who was killed and his death he heard from his father but he had no reason to suspect that the information was untrue. At paragraph 6 of the statement he said that his brother was killed by this group of tribesmen which was known to everyone in the area as they were dangerous and killed other people besides his brother. In his interview he said that the group were tribesmen who remained in Hawija. He did not know which tribe they belonged to.
46. There does not appear to be any suggestion in the appellant's evidence that he faced risk on account of a blood feud or tribal feud. As I have set out above, in his first statement he referred to the group as having joined ISIS when ISIS attacked Hawija. It would appear that on his evidence they were a group of tribesmen therefore who joined ISIS and what happened to them thereafter is of course not clear. I can accept that the appellant would have obtained his information from his father rather than first-hand. However, I do not accept the contention that there was anything in the nature of a blood feud here. It formed no part of the appellant's evidence and, as Dr Fatah properly accepted, we do not know more than a little about the nature and identity of this group and as he also properly accepted, his evidence in this regard was essentially speculative and conjectural. The fact that, bearing in mind the judge's findings, the family suffered no problems from this group after the killing in August 2007 and of the initial reporting of the incident to the authorities before the move to Qadesiyah in around 2010 or thereafter until the appellant came to the United Kingdom in 2017, and the lack of any ongoing adverse interest in the appellant that that evidences is in my view a matter that is of clear and significant relevance to the claim to be at ongoing risk with regard to the adverse activities of the group. That element of the claim is not made out on the evidence, and, returning to the country guidance in SMO, the appellant does not conform to any of the characteristics that might place a person at risk as a consequence.

47. In the guidance in SMO on the CSID, it is said inter alia that 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, this system continuing to underpin the Civil Status Identity process. It is said that given the importance of that information, most Iraqi citizens will recall it. It is said that that information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilinear.
48. It is clear from Dr Fatah's evidence that it may be possible to obtain a CSID through an extended family member or a neighbour or lawyer, acting as a proxy, provided that they can provide the details of the office where the person was registered, the page of the book and the file. He accepted that it might not be necessary for the file number to be known as there would be a finite number for any given year and a lawyer might be prepared to work through them to find the particular person.
49. The appellant's evidence on this was that he had never seen his own ID card and that the paperwork was always dealt with by his father.
50. I find this evidence to be against what was said in the country guidance in SMO. Although I accept that the appellant was aged 17 when he left Iraq and therefore not an adult, it is clear from the country guidance that most Iraqi citizens will recall the relevant information to enable them to obtain a replacement CSID, given the importance of that information. I bear in mind also that the appellant's credibility is to an extent in question, given that the judge did not accept material aspects of his evidence, in particular the claim that the family was located by the group which had an adverse interest in them, in 2017. On his evidence his mental health is much better than it was when the report was written in 2018, which was after all nearly three years ago and no update medical evidence has been provided. I do not accept therefore that there is any material problem with his health which can be said either to make him more vulnerable on return or to make it less likely that he would recall important details such as those that would enable the replacement CSID to be obtained. As a consequence, I do not accept his evidence in this regard. I consider that in line with the country guidance and even bearing in mind his age, he would recall sufficient details to enable contact to be made if not with his family (it remains unclear whether he has contacted them, bearing in mind his denial but also the damage to his credibility) or via former neighbours or via a proxy such as a lawyer. Accordingly, his evidence in this regard is not accepted and I find that he would be able to obtain a CSID, so he is neither at risk on return to Iraq nor is there any technical difficulty surrounding his ability to obtain a CSID that would preclude his return.
51. This appeal is therefore dismissed.

Notice of Decision

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
Upper Tribunal Judge Allen

Date 18 May 2021