



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/00462/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 18 May 2021

On 1 June 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AMA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr A Islam, instructed by Fountain Solicitors

For the Respondent: Mr A McVeety, Senior 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. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

Appeal History

1. The appellant, who is an Iraqi national of Kurdish ethnicity and Sunni Muslim faith, with date of birth given as 1.1.94, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 30.4.19 (Judge Obhi), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.12.18, to refuse his claim for international protection.
2. The appeal in the Upper Tribunal was heard by Deputy Upper Tribunal Judge Juss. The decision promulgated 23.10.19 found no error of law in the decision of the First-tier Tribunal and, therefore, dismissed the appellant's appeal to the Upper Tribunal.
3. By an in-time application dated 8.11.19, the appellant sought permission to appeal the Upper Tribunal's 'no error of law' decision to the Court of Appeal on the grounds that the Upper Tribunal had failed to provide adequate reasoning for finding that the First-tier Tribunal had made adequate reasoned findings as to fact, injuries sustained, risk and internal relocation. On consideration of that application on 21.7.20, Upper Tribunal Judge Coker found that those grounds were a mere unamplified statement, concluding, *"It is not arguable that the DUTJ failed to make adequate reasoned findings for his conclusion that the FtT judge had not erred in law in reaching her findings."*
4. However, Judge Coker found that although the DUTJ had set out the ground of appeal in relation to identity documents, he had failed to address that ground and make findings on it. Judge Coker considered that this lack of consideration, by both the First-tier Tribunal and the DUTJ, may have had a material outcome to the appeal, had it been considered, observing that *"There was no clear finding in either judgement."* Judge Coker considered the appropriate approach would be for the Upper Tribunal to review the decision in accordance with Rule 45(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. Reviewing the decision of the DUTJ, Judge Hanson found that Rule 45(a) was engaged, on the basis that the DUTJ had *"overlooked a legislative provision or binding authority which could have had a material effect on the decision."* Exercising the Upper Tribunal's power to set aside the impugned decision of the Upper Tribunal, Judge Hanson directed the appeal be listed for a remote hearing in the Upper Tribunal *"to enable it to consider whether First-tier Tribunal Judge Obhi erred in law in a manner material to her decision to dismiss the appeal, by reference to the issue of the appellant's identity documents and any matters arising from the decision of the Upper Tribunal in SMO as identified by Judge Coker."*

6. At the error of law hearing before me on 2.2.21, Mr Islam sought to reopen the first ground, namely alleged inadequacy of reasons for rejecting the appellant's core factual account, in respect of which ground both the DUTJ deciding the error of law issue and the UTJ considering the application for permission to appeal considered to be without merit. After due consideration, I was not persuaded by Mr Islam's submissions that the first ground should be revisited for a third time. It follows that the rejection of the appellant's core factual claim by the First-tier Tribunal must stand and there remains no reason to depart from those findings.
7. It followed that the error of law consideration listed before me on 2.2.21, was necessarily limited to the question of any error of law in the First-tier Tribunal's dealing with the issue of the appellant's identity documents.

Relevant Background

8. The relevant background is that the appellant was born, raised and lived in Kirkuk, Iraq. His biological parents are deceased, and he was raised by foster parents. Although the refusal decision asserts that Kirkuk is within the IKR, Mr Bates accepted that this is not accurate. Whilst it is very close to the IKR border and regarded by many as a Kurdish city, Kirkuk lies outside it in a governorate that was previously considered to be a 'contested area'. It follows that the appellant does not emanate from the IKR and, as Mr Bates confirmed, the Home Office policy is to only enforce return to Baghdad. However, as a Kurd, the Country Guidance is clear that he will not be refused admission to the IKR. Leaving aside the issue of relocation to Baghdad, whether he can make his way from Baghdad International Airport to the IKR, either Erbil or Sulaymaniyah, depends on the identity documentation issue.

Error of Law Considerations & Decision

9. The appellant's argument, as originally set out in the grounds of application for permission to appeal to the Court of Appeal, was that the First-tier Tribunal failed to apply the applicable Country Guidance from: AA (Iraq) [2017] EWCA Civ 944; AAH (Iraqi Kurds -internal relocation) Iraq Country Guidance [2018] UKUT 00212 (IAC); and BA (Returns to Baghdad) Iraq Country Guidance [2017] UKUT 00018 (IAC). It was asserted that Kirkuk is a contested area; that the appellant has no biological family members in Iraq; and that he has never been issued with Iraqi identification documentation. It was submitted that without identity documentation, no family, and no connections within the IKR to assist him, he will not be able to obtain a CSID or travel from Baghdad to the IKR. In the premises, it was argued that the judge failed to provide adequate reasoning for concluding that the appellant will be able to obtain a CSID and relocate on arrival in Baghdad to the IKR.
10. In relation to the identity document issue, it can be seen that between [43] and [47] of the decision, the First-tier Tribunal addressed the issue of relocation to

either the IKR or Baghdad, noting the importance of a CSID. At [45] the judge found that the appellant was likely to be able to obtain a CSID from foster parents or other relatives in Kirkuk or the IKR. At [46] the judge considered but rejected the appellant's claim that he had not contacted the Iraqi embassy to seek replacement identity documents because he feared he would attract adverse attention amongst the Iraqi community in the UK, the judge concluding that he would be at no risk in doing so.

11. The appellant's evidence, summarised at [15] of the impugned decision, was that he was no longer in contact with his foster parents. He claimed not have heard from them since 16.10.16, when a militia group attacked, and his cousin was killed. Effectively, his case was that he was now unable to make contact with his foster parents or any biological family member. This was further advanced in his legal representative's closing submissions in the First-tier Tribunal, as recorded at [32] of the First-tier Tribunal decision, where Mr Khan submitted that he was a young man with no family support, who had had no contact with his foster parents since October 2016, and did not have any identity documents, and without a CSID he could not get to the IKR, where, in any event, he would have no family or friends support.
12. At the February 2021 error of law hearing, Mr Bates stated that he could not defend the decision and accepted that there was a material error of law in the judge's finding that the appellant will be able to obtain a CSID. He accepted that the judge failed to resolve that crucial issue, stating only at [45] of the decision that "*The appellant is likely to have a CSID at some time. He has foster parents and may have other relatives in Kirkuk or indeed in the Kurdish area. He is likely to be able to obtain a CSID.*" Mr Bates conceded that this finding and conclusion was inadequately reasoned.
13. For the reasons more fully set out in my error of law decision, I also found that the judge failed to resolve with adequate reasoning the issue as to whether the appellant remains in contact with his foster parents or has other means open to him to obtain a CSID, despite his assertions to the contrary. The judge appeared to have merely assumed that the appellant remained in contact with his foster parents and would be able to obtain a CSID, without explaining those findings any further.
14. For those reasons, I found a material error of law in the decision of the First-tier Tribunal requiring it to be set aside to be remade in the Upper Tribunal. I was also satisfied that the remaking of the decision in the appeal should be restricted to the issue of risk on return in relation to identity documentation or the lack of it, and so directed. The findings of the First-tier Tribunal rejecting as not credible the appellant's core factual account were preserved, save in relation to identity documentation.

Remaking the Decision in the Appeal

15. In remaking the decision in the appeal, I have carefully considered the various oral and written submissions and evidence, together with the updated oral evidence of the appellant, applying the lower standard of proof.
16. The Upper Tribunal has before it the appellant's First-tier Tribunal appeal bundle, purportedly comprising 308 pages, though only the first 32 are in the bundle with the Tribunal's case file. This includes the appellant's witness statement of 8.2.19. The absent documents do not matter, which Mr Islam confirmed, as the remaining pages primarily comprise case authorities and objective material including Home Office CPINs on Iraq blood feuds and Ba'athists, the contents of which do not appear to be relevant to the identity documentation issue. The respondent's bundle is also present.
17. The day before the Upper Tribunal hearing on 18.5.21, the appellant submitted further documentation, first comprising a letter dated 20.5.20 acknowledging a (then) recent tracing request but without stating what details had been provided by the appellant to enable tracing attempts. In addition, the appellant relies on an outdated UNHCR 'Iraq: Centre & South Bi-Weekly Protection Update', dated 21-31.8.17, and detailing IDP displacement movement by area. Mr Islam relied on the latter documentation in support of the appellant's further oral evidence that his foster family were displaced from Kirkuk. I have given careful consideration to all of these materials.
18. It is not disputed that the appellant is an Iraqi Kurd of Sunni Muslim faith who emanates from the Kirkuk area. Since the First-tier Tribunal decision, the Upper Tribunal promulgated the Country Guidance decision in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100*. I have borne in mind, however, that the Court of Appeal's decision dated 16 February 2021 to remit *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)* to the Upper Tribunal to reconsider the finding at headnote 13 that most Iraqi citizens would recall the family book information, and any other findings in the light of developments in Iraq. Nevertheless, SMO explains the importance of a CSID or INID in being able to return to the appellant's home area, or to the IKR. I have also noted the considerations set out at headnote [27] as to the difficulties for relocation to the IKR without family or other support.
19. Since SMO was promulgated, the situation in Iraq has moved on again, in particular in relation to Kirkuk. I confirmed with Mr McVeety at the outset of the hearing that the respondent accepts that Kirkuk is one of those governorates where INID terminals have been installed, which require attendance in person for the taking of biometric details. In consequence, no new or replacement CSID will be issued by the local CSA office or the Iraqi Embassy in London. It follows that if the appellant cannot gain access to his original CSID, return to Iraq and onward travel to either Kirkuk or the IKR is not feasible. A laissez-passer will get him to Baghdad International Airport but no further. However, as confirmed in SMO, "In the light of the Court of Appeal's judgment in HF

(Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents." It follows that in such circumstances the appellant could not succeed on asylum grounds but only on humanitarian protection or article 3 ECHR grounds because of the circumstances in which he would be left on return to Iraq without the ability to return to his home area or relocate to the IKR. As Mr McVeety submitted and Mr Islam agreed, this narrows the issues before the Tribunal even further.

The appellant's Factual Claim

20. With the assistance of a Kurdish Sorani interpreter, the Tribunal received the appellant's further oral evidence. In summary, he relied on his witness statement of 8.2.19 as his evidence in chief, supplemented by further evidence that should have been reduced to a further witness statement. He referred to the Red Cross letter of 20.5.20, explaining that he contacted the Red Cross after his foster family made contact with him in March 2020 through Facebook Messenger and went to the Red Cross to seek help in tracing them. His evidence was somewhat confused and difficult to follow but he said that his foster family had left Iraq and went through Turkey to Greece but that he had heard that there had been some boats wrecked and as he had had no further contact with them, he feared they may have been drowned. It was difficult to ascertain when the appellant had contact with his foster family and how this came about. He said that he has only had two contacts with them since he arrived in the UK. The first was in 2017 when they allegedly told him they had fled Kirkuk but failed to tell him where they went to. The second was in March 2020, when they were allegedly in Turkey planning to sail to Greece. He maintained that they had to flee for the self-same reasons he left Iraq, stating, "They get in trouble as well because of my issue. After my issue they could not stay. They told me they were under threat and threatened on many occasions." However, he agreed with Mr McVeety that these threats were made even though they had allegedly fled Kirkuk and that they evidently had not left Iraq until four years after the appellant had done so for the exact same reasons.
21. He claimed that the family had contacted him through Facebook Messenger with an 'add' request but also said that they did not have a Facebook account when they were in Iraq. However, the account they contacted him on has now ceased to exist. He was unable to explain how in the course of being smuggled through Turkey to Greece they were suddenly able to make contact with him through Facebook after silence of some three years.
22. The starting point for consideration of the identity documentation issue is the almost entire rejection of the appellant's factual claim by the First-tier Tribunal. At [37] of the First-tier Tribunal decision, Judge Obhi accepted that the appellant's parents were reasonably likely to have been killed in a bomb blast,

which would account for the appellant having shrapnel in his legs and living with a foster family, but the judge did not accept that this was a targeted attack, finding it to be a random attack. Neither did the judge accept that his foster family had been targeted or that the appellant was the subject of a family or blood feud. The judge also rejected the account of a fight in a restaurant and his life being threatened which, on the appellant's account, was the alleged trigger for his departure from Iraq. The judge also rejected the claim to be at risk because of his father's association with the Ba'ath Party, which even Mr Islam had accepted to be the weaker part of the appellant's case. As indicated above, at [46] of the decision the judge rejected the appellant's claimed reason for not contacting the Iraqi Embassy in London, finding there would be no risk to him in doing so. The judge concluded that a weak asylum account had been embellished and fabricated.

23. These First-tier Tribunal findings serve to undermine the general credibility of the appellant and in particular his claim that he has lost contact with his foster family (or others family or associations) in Iraq following a militia attack on 16.10.16, during which his cousin was allegedly killed.
24. In the context of the appellant's preserved overall credibility findings rejecting his factual account, and after considering the evidence in the round in the context of the whole, I found that, even applying the lower standard of proof, the whole account advanced of a further contact with his foster family in March 2020 not only confused but not at all credible. I do not accept as credible that they only made contact in the way claimed through Facebook but that account no longer exists. He did not provide any supporting evidence of this Facebook contact, even though I am satisfied that this should reasonably still be available to him. He told the First-tier Tribunal that he last had contact with his family in October 2016, though he may have meant October 2017, which is when he came to the UK. I also found it not credible that he should claim to have been told in October 2017 that the family had fled Kirkuk but didn't tell him where they went to. The account he has given suggests rather too much knowledge of their history when he claims only two contacts, stating that they were constantly under threat for the same causation entirely rejected by the First-tier Tribunal. His suggestion that they may have been lost in boat wrecks whilst crossing to Greece is little more than speculation but provides a convenient explanation for the loss of further contact and why he cannot retrieve his CSID from them. However, I reject the account as not credible, for the reasons highlighted above.
25. The appellant's witness statement of 8.2.19 does not deny that he has a CSID but claims that the last time he had it was in Iraq and that he does not know where it is now. He claimed that as he has no contact with anyone in Iraq he is unable to obtain his documents from there. He stated at [18] of the witness statement that following arrival in the UK he had a "successful contact" with his foster father

but claimed that number does not work anymore, "as though the telephone is switched off". He also maintains that he cannot go to Baghdad as he is a single male Sunni Kurd with no family contact there and who does not speak any Arabic.

26. I note from the Screening Interview (SI) that he said his birth certificate was in Iraq and that he did have an Iraqi passport for which his fingerprints were taken, but that this was retained by the agent. It appears from his witness statement that he was denying ever having had a valid Iraqi passport and that used a false passport procured by the agent. When challenged on this in evidence before me, he maintained that he never had a passport of his own in Iraq. He said that a friend of his foster father made a false passport for him. However, that does not explain his initial account that his fingerprints were taken in Iraq for the issue of a passport. I do not accept that fingerprints would be taken for the creation of a false passport and I reject the appellant's claim on this issue as incredible and a fabrication. I can only conclude that the appellant did have an Iraqi passport of his own, whether or not this has been retained by the agent.
27. I can give little weight to the Red Cross document. Evidently, the appellant only made contact with the Red Cross around or shortly May 2020, despite allegedly having lost contact with his foster family since 2017. No adequate explanation for the delay was provided save that it followed the alleged Facebook contact in March 2020. In oral evidence he claimed he provided details of both his foster parents, Mr Mahmood and his wife. However, the Red Cross letter refers only to relative in the singular. The appellant sought to blame interpretation for this error, but it is obvious that it is the Red Cross which has referred to a single relative. Unfortunately, the letter does not indicate who was referred to them or what details were provided. In the premises, I cannot be satisfied that the appellant has given correct details of his family for tracing and taking it in the context of the evidence as a whole it lends but little support to the appellant's claim to have only had contact with his foster family again in March 2020.
28. I have also considered the UNHCR IDP document produced by Mr Islam and accept that there was significant movement of displaced persons in Iraq including around Kirkuk in 2017. However, given that this Tribunal and the First-tier Tribunal has entirely rejected the factual basis as to why the family would have had to flee, I do not accept that his foster family has left Kirkuk. For similar reasons, I further do not accept that the appellant has lost contact with his foster family in Iraq. I entirely reject the claim to have had only two contacts with them since he arrived in the UK in 2017.
29. I note that the appellant declined to seek redocumentation at the Iraqi embassy in London and there has been no suggestion that he has tried again. In light of the matters set out above, it does not seem to me that he would be able in any event to obtain a replacement CSID given that INID terminals have been installed in

Kirkuk. However, I am satisfied on the evidence that at some stage he has had an Iraqi passport issued in his own name during which process his fingerprints were taken. It follows that there would be utility in contacting the Iraqi Embassy. The First-tier Tribunal entirely rejected the claim that the appellant had anything to fear from contacting the embassy, which finding I accept and adopt. It follows that this failure to contact the embassy also serves to undermine the appellant's account as to his identity documentation.

30. In summary, I am driven to the clear conclusion that in his further oral evidence the appellant continues to rely on a fabricated and invented account of his reasons for leaving Iraq so that I can only conclude that he is no more than an economic migrant. I maintain the reject of his claim on asylum grounds, finding that he has no well-founded fear of persecution or that he would be at real risk of serious harm on return to Iraq.
31. Both representatives accepted that the outcome of this appeal turned on the appellant's credibility. If his account were to be believed, he would not be able to return to Iraq as he would have no access to a CSID, and whilst he could not succeed on asylum grounds the circumstances would, Mr McVeety accepted, breach article 3 ECHR. If his account is rejected, it follows that there is no reason not to conclude that he remains in contact with his foster family who will be able to provide him with his CSID, if he does not already have it.
32. In relation to the issue of identity documentation, I am satisfied that the appellant has lied about having lost contact with his foster family in Iraq. His account was comprehensively rejected by the First-tier Tribunal and nothing in the further evidence is sufficient to justify departing from those findings. I further find that the additional account presented in the oral evidence to me of a subsequent fleeting contact with his foster family in March 2020 is a further fabrication and entirely incredible, very likely designed to explain away why he can no longer be provided with his CSID he claims to have left in Iraq. I cannot say where his CSID is, whether it is in fact with him in the UK, or left with his family in Iraq, but I am satisfied that he remains in contact with them and that at the very least they will be able to provide him with his CSID.
33. It follows that there should be little if any difficulty for the appellant to return to Iraq. I am satisfied that he has had a passport in the past and should be able to obtain a replacement by contacting the Iraqi Embassy, which may explain his reluctance to attend the embassy for assistance. At the very least, I find that the appellant has failed to demonstrate that this will not be possible. In any event, at the very least the Home Office will be able to return him to Baghdad International Airport with a laissez-passer. As SMO confirms, he faces no risk at the point of return by reason of not having a current passport.

34. From Baghdad International Airport, I do not suggest it feasible for the appellant as a non-Arabic-speaking Kurd with no known family or support in Baghdad to relocate to Baghdad. However, I am satisfied that he will be able to access his CSID before return and with that will be able to return to his home area and the support of his foster family without encountering treatment or conditions which are contrary to Article 3 ECHR. SMO confirmed that, "With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR." I am satisfied that if the appellant wishes to return directly to the IKR he will be able to do so on a direct flight from the UK, as SMO confirms to be available. Alternatively, with his CSID he will be able to fly from Baghdad to Sulaymaniyah or Erbil in the IKR. From there he could either make the short journey to his family in Kirkuk, using their assistance to do so. Alternatively, he can return directly to Kirkuk, there being no article 15(c) risk in doing so. Once there, he will be able to attend for a biometric appointment to be able to obtain his INID. Alternatively, he can remain in the IKR where I am satisfied his family in nearby Kirkuk will be able to assist him to find accommodation and seek employment. Either way, whether remaining in the IKR or returning to Kirkuk, I am satisfied for the reasons outlined above that he will have the assistance of his foster family to settle and reintegrate.
35. In the premises and for the various reasons outlined above, the appellant's appeal must fail on all grounds.

Decision

The appellant's appeal to the Upper Tribunal is dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 18 May 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 18 May 2021