



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03416/2019 (V)**

THE IMMIGRATION ACTS

**Heard remotely via video (Skype for
Business)
On 4 March 2021**

**Decision & Reasons
Promulgated
On 15 March 2021**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**BH
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Holmes, Counsel

For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court

directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. Having already found an error of law in the decision of the First-tier Tribunal ('FTT') dated 20 February 2020 (see my 'error of law decision' dated 26 August 2020), I now remake the decision concerning the appellant's appeal against the respondent's decision dated 22 March 2019, refusing his international protection and human rights claims.

Background

2. The appellant is a citizen of Iraq of Kurdish ethnic origin, who claimed asylum in the United Kingdom ('UK') on 8 December 2015, for reasons relating to his fear of ISIS and the internal armed conflict in his home area of Mosul, which is located in the Ninweh Governorate of Iraq. The appellant fled Mosul in April 2015, the city having been occupied by ISIS around a year earlier.

Hearing

Adjournment application

3. At the beginning of the hearing Mr Diwnycz applied for an adjournment following 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 UT 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. He argued that it would be premature to proceed absent the anticipated revision of SMO.
4. Mr Holmes resisted the application on the basis that the appeal did not turn on the issue of the family book details knowledge and the resulting delay this would necessitate in a case that has already been plagued by delay.
5. Having considered the overriding objective, I am satisfied that the hearing can fairly proceed prior to a fuller reconsideration of the country guidance in SMO. As discussed below, it is agreed that the issues in dispute in this case are very narrow. The available evidence on those issues is available in detailed reports contained within a consolidated bundle and supplementary bundle that have been served in accordance with directions. I agree with Mr Holmes that the result in this case does not turn on the appellant's knowledge of the family book details. Even assuming against his

case he has that knowledge, it remains necessary to address whether he is able to redocument himself by obtaining the requisite Iraqi identity documentation (as explained in my 'error of law decision'). This can be fairly and properly determined on the country background evidence available.

6. In determining that the matter can fairly proceed I also bear in mind that there has already been considerable delay in this case. Following his initial 'screening' interview ('SI') on 11 December 2015, there was a delay of some three years before the appellant underwent a substantive asylum interview ('AI') on 16 November 2018. The appellant's claim was refused the following year, by way of a letter dated 22 March 2019. Over five years have elapsed since the appellant made his unresolved asylum claim. Mr Diwnycz acknowledged that a decision in the remitted SMO case is unlikely to be imminent given the developments in Iraq and the time that a country guidance decision normally takes prior to promulgation. Continued uncertainty is not in the interests of either party when the matter can be fairly resolved now.

Evidence

7. As I have already indicated, I have been provided with over 600 pages of information in electronic bundles. I have read all the country background information including the respondent's *CPIN on Iraq: Internal relocation, civil documentation and returns*, dated June 2020 ('the CPIN') and EASO's *Country Guidance: Iraq* dated January 2021 ('the EASO report').
8. The appellant confirmed his most up to date witness statement dated 26 February 2021. Mr Diwnycz confirmed that he did not wish to cross examine the appellant and accepted his claim that he was unable to contact his family members.

Submissions

9. Both parties confirmed that following my 'error of law decision' and the developments in Iraq, the appellant's claim now turns entirely upon whether he will be able to re-document himself. Mr Diwnycz accepted on behalf of the respondent that the country guidance supports the proposition that the appellant faces serious harm in Iraq if he is unable to access the requisite identity documentation in the UK or within a reasonable time in Iraq.
10. I invited Mr Diwnycz to address me on the only two material issues Mr Holmes identified to be in dispute in his comprehensive skeleton argument dated 3 March 2021. Mr Diwnycz confirmed that matters had moved on since the respondent's decision letter and the respondent was "hamstrung" by the CPIN. He accepted the

appellant's evidence that he was not in possession of his CSID (contrary to the position at [73] of the decision letter dated 22 March 2019). He also accepted that the CPIN and SMO read together made it clear that the appellant could not obtain a replacement CSID or an INID prior to, or within a reasonable time upon, his return to Iraq.

11. Mr Holmes's submissions were very brief in the light of the pragmatic position adopted by Mr Diwnycz, on behalf of the respondent.
12. After hearing submissions, I reserved my decision, which I now give with reasons.

Legal framework

13. This case turned on its facts and the relevant legal framework was not in dispute. At all times the appellant has the burden of proof, albeit to the lower standard of proof.

Findings

14. I first turn my attention to whether the appellant is in possession of a CSID or any other evidence capable of establishing his identity for the purposes of seeking to obtain a replacement CSID at the Iraqi Embassy in the UK. I do so having already determined that the appellant would need both his family book details and some type of identification evidence to successfully apply for a replacement CSID – see my 'error of law decision' at [6] to [11].
15. My 'error of law decision' left open the possibility that the parties might be able to rely upon additional evidence beyond the CPIN, which might lead to a revision of my findings in the error of law decision. Both parties accepted that they did not on the present state of the country background evidence seek to re-argue the matter and accepted the conclusion that I reached.
16. I now turn to whether the appellant would be able to access the requisite identification evidence (which is necessary over and above knowledge of the family book details) to obtain a replacement CSID. As set out in my 'error of law decision', the FTT's findings in this regard were less than clear. The FTT made adverse findings of fact against the appellant but failed to make clear sustainable findings on his ability to access the requisite identification evidence.
17. The adverse findings of fact certainly weigh against the appellant and I have factored these into my assessment. I bear in mind the FTT's finding at [63] regarding the appellant's lack of knowledge as to whether his parents took their documents and whether he

discussed with his parents how they would contact each other if they became separated to damage his overall credibility.

18. However, at [49] of its decision, the FTT accepted that the appellant was forced to flee Mosul "*in the circumstances described by him*". It has not been disputed that the appellant was formerly resident in Mosul prior to his departure from Iraq. The circumstances of his departure have been broadly consistent both internally and externally with the country background information at the time. Mr Diwnycz declined the opportunity to cross-examine the appellant and accepted the claimed circumstances of his departure from Mosul.
19. Having balanced the FTT's other adverse factual findings against all the other evidence before me, I accept the appellant's claim that the manner in which he left Iraq means that he did so without his documents and that he has lost contact with his family members. I accept the appellant's account regarding the circumstances in which he left Mosul to be reasonably likely. I therefore accept the following matters.
 - (a) The appellant fled Mosul in April 2015, at a time when it had already been occupied by ISIS and there was intense fighting. The appellant's summary in the AI (Qs 104, 107, 177) is consistent with the country background evidence that Mosul was in a state of open conflict between 2014 and 2017, with ISIS carrying out wide-ranging serious harm – see the summary provided within the EASO report at page 148.
 - (b) In the circumstances, it is reasonably likely that the appellant had to leave quickly and did not bring his CSID, passport and phone with him when he fled (AI at Qs 17 and 22).
 - (c) The appellant fled the city along with his family, and a large number of others who were also attempting to avoid the violence in the area (AI at Q 129).
 - (d) Given the confusion and fear at the time, whilst travelling out of the city the appellant separated from his family (AI at Q 125) and has not seen them or had contact with them since; he does not know what happened to them (AI Q 46). That is consistent with the significant displacement of individuals from Ninewa – although many have returned, the EASO report notes that (page 148) there has been considerable secondary displacement because of premature returns and blocked returns were also reported. Over 324,000 remain displaced.

- (e) The appellant travelled to Kirkuk where the military and local humanitarian organisations arranged for his transfer a refugee camp (AI Q135).
- (f) Having initially been hopeful that his family would also find their way to the camp, the appellant opted to accompany others travelling out of Iraq (AI Q139).
- (g) The appellant thereafter travelled through Europe to the UK where he arrived in or around early December 2015.
- (h) The appellant has tried to make contact with his family through the British Red Cross and 'Trace the Face' but been unsuccessful. This is consistent not only with their mode of departure from Iraq but also the country background information regarding the nature and extent of displacement of former Mosul residents.
- (i) In addition, the situation in Mosul is such that there is likely to be, at least, a reasonable degree of likelihood that the appellant's home, and its contents, will have been destroyed since he left Iraq. The EASO report concludes that indiscriminate violence remains high in Ninewa, and includes the following at page 149:

“The debris caused by Mosul destruction was reported to be heavily contaminated with explosive devices of different kinds, including unexploded ordnance and booby-traps, with one source declaring that the explosives contamination in Mosul is of a previously unseen magnitude. Significant destruction of houses was also reported, while the reconstruction of the destroyed neighborhoods of Mosul is advancing at a slow pace, due to the extent of the damage and the lack of funding by the Iraqi state. The lack of access to basic services (water, electricity, education) remains a challenge to the rural areas of the Ninewa Plains and Sinjar. The district of Sinjar is also suffering an intense contamination with unexploded ammunition and IEDs deliberately left by ISIL. “

- 20. The appellant also claimed, and I accept that he arrived on his own at Lailan camp in May 2015 before travelling to Turkey with the help of an agent (who gave him a false Syrian passport in returning for months of working for him). I therefore accept that the appellant has not been in the possession of his CSID card or any other valid Iraqi identification document since he left Iraq in 2015 and has no means of contacting his family members or anyone else in order to obtain replacement documents or assist him in securing any form of Iraqi identification.
- 21. Without any Iraqi identification documents the appellant would not be able to obtain replacement documents from within the UK. Mr Diwnycz accepted that this is not just supported by the absence of

Iraqi identification documents but a significant further matter. The 2020 CPIN now expressly concedes that redocumentation at the Embassy is highly unlikely, at [2.6.16]:

“Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.”

22. I therefore accept that the appellant will not be able to re-document whilst in the UK.
23. The appellant cannot obtain replacement identity documentation once forcibly removed to Baghdad (see headnote 15 of SMO) and onward safe travel cannot be undertaken either to his home area or the Kurdistan Region of Iraq, without such documentation (see headnote 23 of SMO).
24. In any event, Mosul now has the new INID system which would require the appellant’s presence there (see headnote 16 of SMO and the material in the supplementary bundle).
25. On the basis of all of the above, the appellant does not have Iraqi identity documentation and will not be able to re-document in the UK or within a reasonable time upon return to Iraq.

Conclusion

26. Without the requisite CSID or identity documentation, the country background information and CG cases make it clear and Mr Diwnycz accepted, that the appellant is at risk of serious harm in Iraq.
27. The appellant has not identified any Convention Reason for this harm and the written submissions are silent on the basis for allowing the appeal. This case succeeds on the basis that the appellant will be unable to reside in Iraq without coming to a real risk of serious harm for reasons relating to an absence of identity documentation. It follows that to return him to Iraq would be a breach of Article 3, ECHR and Article 15(b) of Council Directive 2004/83/EC as incorporated into the Immigration Rules.

Notice of Decision

28. I remake the decision by allowing the appeal on humanitarian protection and Article 3, ECHR grounds.

Signed: *UTJ Melanie Plimmer*
Judge of the Upper Tribunal

Date: 4 March 2021