



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03891/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On 16 October 2020**

**Decision & Reasons Promulgated
On 20 April 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**A A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Interpreter: Mr S Akram, attended to interpret the Kurdish Sorani and English languages

DECISION AND REASONS

1. I begin slightly usually by setting out in its entirety my Decision and Reasons for finding an error of law in this case. It has already been served on the parties but, strictly, it is part of this decision as I kept the case in the Upper Tribunal to be redetermined. It follows that the hearing before me on 16 October 2020 is a continuation of that hearing but my explanation of the reasons for finding an error of law also explain what the case is about. The anonymity direction made there still stands.

2. When I found that the First-tier Tribunal had erred in law I said:

1 Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant may be a refugee. When the appeal is reheard the appellant will be expected to make clear if [he] still maintains that he is a refugee or if he is relying solely on human rights grounds because of difficulties on return.

2 This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent refusing him leave to remain on Refugee Convention and human rights grounds.

3 The short point is that the appellant is identified a citizen of Iraq from Kirkuk. He is of Kurdish ethnicity and follows the religion known as Sunni Muslim. He says he cannot be returned to Iraq because he cannot obtain the necessary identification documents that would permit him to live there safely.

4 As I read the decision, although this can be reargued if necessary, it is accepted that if in fact the appellant cannot obtain the necessary documentation then he cannot be returned.

5 His case is simple. He said he entered the United Kingdom without the necessary documents somewhere in 2003. He claimed asylum but the application was refused as were further submissions leading eventually to the decision of the Secretary of State complained of on 28 March 2019.

6 The First-tier Tribunal Judge found the appellant to have been dishonest and this illuminated his own findings.

7 The appellant said that he could not obtain a CSID because he tried in the United Kingdom and had not been assisted by his Embassy and he had no contacts anywhere in the country. The judge did not believe that he had no contacts anywhere in Iraq. Neither did the judge believe that he had enquiries of the Red Cross who had been unable to trace his family and had not been in contact with him since his initial enquiry.

8 I have considered carefully the grounds of appeal. The first point taken is that the judge did not make any findings that explained why the appellant's apparent attempts to obtain a document from the Iraqi Embassy in London were not indicative of somebody who was genuinely trying to re-document himself. The appellant had given detailed evidence about how he had gone to the Embassy and how he was pursuing an application that was not processed because he did not have the necessary CSID and the judge did not engage adequately with his evidence at all. This point is made out.

9 It is also argued that the judge did not give adequate reasons for rejecting his claim to have contacted the Red Cross and who received no help from them.

10 Additionally, the judge is criticised for not giving a lawful explanation for rejecting his claim to have lost contact with his family. The judge said at paragraph 23 that:

“Modern communication methods as such that the Appellant would have been well able to maintain with anybody who he could be put in touch with through such networks that clearly exist to find out what happened to his family and, in particular, whether

steps could be taken to provide him with the necessary certification.”

11 The complaint is that this conclusion is unsupported by reference to background material and that the reason given for rejecting the claim from an unknown person, identified only as “Mr Ali”, that he had bad news about some of the appellant’s relatives is not lawful.

12 The judge also failed to give any acknowledgement of the consistency in the appellant’s claim and particularly the consistent claim that he had no documentation. He has maintained this position since 2003.

13 I have reflected on Mr Melvin’s submissions but I have concluded that the reasoning given by the judge is absent or inadequate. I cannot ascertain what the judge made of the appellant’s claim to have visited the Embassy.

14 I find this a particularly difficult case. Clearly the burden is on the appellant but there is only so much he can do to prove a negative. It may be that the judge has reached a permissible conclusion on the evidence but he has not explained it in a way that I find lawful. The judge has given clear indications of what strands of evidence he has found unpersuasive or disbelieved outright but has not given proper reasons for his conclusions that they are unpersuasive.

15 I have decided that the proper course is to set aside the decision of the First-tier Tribunal.

16 I have also decided to keep the appeal in the Upper Tribunal to be determined further. It may be that the Upper Tribunal will be assisted by submissions addressed to the proper approach to take when there is limited evidence available but where, if an appellant is telling the truth, there is likely to be limited evidence.

Hearing on 20 October 2020

3. The appellant gave evidence before me.
4. He adopted earlier statements. In the statement dated 22 January 2019 he repeated his claim that he was an ethnic Kurd from Kirkuk. He explained how he had tried to obtain a passport from the Iraqi representation in London on 23 November 2018. He attended with an interpreter. He explained that he wanted to apply for an Iraqi passport but when he said that he did not have an Iraqi identity card or nationality certificate but was “undocumented” he was told he would not be able to obtain a passport.
5. He was asked if he had any document other than those he had already identified to show that he was an Iraqi or anything to help find his parents or family and he said that he did not. He told the receptionist that he could not contact anybody in Iraq and it was clear he was not going to get the document that he had sought.
6. He produced an attendance certificate to support the statement that he had attended the embassy.
7. He then said he tried to trace his brother through the agencies at the British Red Cross in November 2018. He gave them the information that he could but they called to tell him that it was insufficient. He said he had done all that he could and could do no more and could not relocate.

8. The second statement was dated 14 May 2019. This again rehearsed something of the history and reasserted his claim that he had tried and failed to obtain help from the Iraqi Embassy in London.
9. He explained that the trip to the embassy having failed to gain him a passport, he now understood that applications had to be made "online". On 17 April 2019 he attempted to make an application. Again he had the same problem. He did not have his CSID number and was told that he was not entitled to a passport.
10. He went to the embassy on 13 May 2019 explaining that he wanted a passport and did not have the necessary documents and was told there was nothing that could be done. He produced an attendance certificate from that but no independent confirmation of the attitude taken by the embassy.
11. He then explained how Kirkuk had become unsafe. He had no contact with family members since 2007. An attempt to contact a brother through the agencies of the British Red Cross in November 2018 failed but on 23 April 2019 he went to the Wimbledon branch of the British Red Cross and explained the help that he wanted to see if there was anything that could be done. They said they had contacted their branch in Iraq but he had heard nothing from them.
12. He then explained that he could not go to another part of Iraq because it was too dangerous if he did not have an official document.
13. He also reasserted his claim that after now sixteen years residence in the United Kingdom it had become his home and he did not want to leave.
14. He made a further statement which he actually signed at the hearing before me but it had been served before.
15. Some of it repeats things that had been said before and refers to his original claim for asylum.
16. He asserted that he arrived in the United Kingdom without documents, but he said from the beginning that he did not have his national identity card and did not know his identity card number. Nothing had happened in the intervening seventeen years to help him remember. He again referred to attempts to obtain documentation. He referred to a trip to the embassy with an interpreter on 29 July 2020 when he made an online application but the application could not be submitted without the CSID number. He was told again that he could not have documentation without the required proof.
17. He explained to his legal representatives what had happened and he was advised to contact the Kirkuk INID Office which, his lawyer explained to him, was an agent of the Iraqi government issuing new biometric identity cards. The office was based in Kirkuk and he was given a telephone number. He gave details of his telephone calls. He was told he had to be in Kirkuk to make an application without documents. He was required to report to the office with a family witness, ideally a brother or father with their own identity documents. The official could not help at all while he was in London.

18. He then commented on the links with the Red Cross. The information he had was described as insufficient for them to trace his brother. He had a little bit more information than he had disclosed before. He had been advised by the Red Cross that they may be able to help if he had been out of the country for no more than five years but he could not help after seventeen years lack of contact. He said he had done everything he could and had failed.
19. He then gave details of anything he thought might help and why it could not. He had no connections with any political party or high profile people in Iraqi who could help him or obtain documents for him. He left school when he was 11. He worked in a grocery shop for a short time before arriving in the United Kingdom. His brother Akim was associated with the Ba'ath Party but he "disappeared" in 2003. He had never known his father and his mother died in 2007. He had an uncle who died in 2013 and no aunts. He had no-one left in Iraq except, he hoped, his brother but he had no contact with him since 2003. He explained how he had been very ill with heart problems and nearly had a heart attack in October 2019.
20. He was asked a few supplementary questions which were intended to give more details about his health and also attempts to engage the Red Cross. He gave confident answers which appeared to be satisfactory.
21. He was cross-examined.
22. With respect Mr Tufan had a very difficult task. There was little with which he could work on.
23. He began by asking the appellant when he first went to the embassy. The appellant was not immediately sure if he had gone three, four or five occasions. He was pressed. This led to the question "Why had it taken him sixteen years to go to the Iraqi Embassy?" He had said that no-one had advised him to go earlier.
24. He was asked what he had said to the embassy and replied, predictably, what he had said indicated in his statement.
25. He was asked by Mr Tufan if he had been truthful about not contacting his family members. That question seemed to confuse the appellant but he said he had been truthful.
26. He was asked if it was the case he had an uncle and a brother in Iraq. He denied this. He said his brother had disappeared in 2003 and his uncle had died in 2013. His friend "Ali" from Kirkuk had told him about his uncle's death but Ali had not made himself available to give evidence.
27. He referred to a friend who as far as he knew was in the United Kingdom but was not helping by answering his phone and had not responded to messages.
28. He said that his family had its own house in Kirkuk and he did not know what happened to it after the fall of Saddam. He was asked if he had ever tried to find out what had happened to the house and he did not answer that directly. He said his friend Ali had been asked to investigate and he understood it had been taken over by the Kurdish Peshmerga.

29. His uncle did have children. They were daughters. Three of them. He did not know what had happened to them.
30. I was referred to the Determination in 2003 when he was not believed. He was asked why he should be believed in his claims not to have relatives in Iraq. There was no obvious answer to that.
31. He was asked if the problem with the Red Cross was his not being able to give them sufficient information. The appellant could not really comment on that but understood the point.
32. He said the person who went with him was an interpreter working for the solicitors rather than the friend.
33. He was not re-examined.
34. I then heard from Alan Adel who adopted a witness statement signed on 5 October 2020. Mr Adel said that he was working on the instructions of the appellant's solicitors and accompanied him to act as an interpreter at the Iraqi Embassy on 29 July 2020. He said they both entered the embassy at about 12.30am (I assume he means pm) and waited in reception. The appellant was given a "waiting ticket". In order to assist everyone he explained that the appellant had made an online application for a passport but did not have the necessary documents. The receptionist said that they would not be able to help. He helped the appellant explain that he had no contact with anyone since 2007.
35. He was cross-examined. He said that he heard the appellant confirm that he did not have a record number.
36. He was asked about the CSID and said that some people remember the number and some do not.
37. Essentially that was the evidence before me.
38. I have considered the bundle I prepared for the hearing before me. Of particular interest is the material relating to the asylum claim made in 2003. In his screening interview he complained, understandably, that he was tired and had a headache although was in good general health. He gave his normal occupation as "farmer" He denied ever having a passport. He was asked if he had an identity card and he said he did not and he was asked for his identity card number and he replied, "I don't know".
39. He had left Iraq on 10 July 2003 and arrived in the United Kingdom on 5 August 2003.
40. Although he denied having an identity card or knowing the number he appeared to indicate that one had been issued in the Nationality Office in Kirkuk in 1980. He gave names and years of birth for his parents. He said that his father had died and his mother lived in Kirkuk. He had an uncle in Iraq and the uncle had told him to introduce himself to the authorities, particularly the police, as soon as he could after he had arrived in the safe country to which he would be taken. He explained in a supporting statement that his brother was an active member of the Ba'ath Party and made enemies by reporting local people to the authorities.
41. The Adjudicator's decision dismissing his appeal against refusal is dated 19 December 2003. The Adjudicator did not believe the appellant. The

appellant was vague about his brother's role. He also gave very clear evidence about the family home being destroyed in the aftermath of the fall of Saddam Hussein but when pressed accepted that he did not know from his own knowledge because he was not there but his mother had told him what had happened.

42. There were inconsistencies in the chronology which troubled the Adjudicator. The Adjudicator did not consider him to be at risk on what he had been able to establish.
43. I have looked at the decision of the Adjudicator in December 2003. The appellant's claim to have been singled out for ill-treatment was disbelieved, as was his claim to be unable to be relocate within the boundaries of Iraq. There was no specific finding that I have noticed on any documentation that he may have or might find or what relatives or other support there might be available to him in Iraq. It does not go very far as a guide to present credibility.
44. I have reflected on the Secretary of State's arguments but I find this is a case that has been established to the low standard of proof necessary.
45. I had no hesitation in believing the appellant's evidence about attending the embassy and being given short shrift and contacting the Red Cross and their being unable to assist. There is nothing about those accounts which is in any way unbelievable and I accept what I have been told.
46. That is not the end of the matter. An inability to find something is dependent at least in part on the desire to find the object that is sought. I do not know what links there might be available to the appellant in Iraq or who might be able to help him because he has not said and the Secretary of State has not been able to throw any light on the matter. This is not to criticise the Secretary of State. The fact is she is not able to offer any helpful suggestions.
47. It is very much in the appellant's favour that he has been consistent. His claim not to have documents was made at any early stage and has continued. His claim to have a few contacts in the country has been made for some time. The idea he lost contact with his brother because of the enormous social upheaval that followed the fall of Saddam Hussein and subsequent events is entirely believable. There is no element in the appellant's case which is inherently improbable and there is nothing about the way he has told it which makes it irrational to believe it.
48. I do remind myself the CSID numbers are things that people in Iraq tend to know. This is a difficult thing. Perhaps an analogy can be drawn with service numbers in the armed forces. I believe that many service personnel remember the number they are given for the rest of their lives but some do not. The fact that many do remember does not mean that those who claim not to be remember are untruthful. The discreditable elements of the story identified in the earlier decision are not of a kind that make is safe to write off anything the appellant says.
49. I have reflected on the decision of the Adjudicator but credibility as a whole is not so destroyed that I can or even feel inclined to disbelieve anything he says.

50. In short, I believe that he presented himself at the embassy in an apparent attempt to obtain a passport and was rebuffed. I believe that he does not have any identity documents and does not know his CSID number. That has long been his case and he was not shaken in cross-examination. Mindful of the low standard of proof I accept too his evidence that he is not able to contact anyone in Iraq who could help him. He has been away for many years. There is no evidence that he has contact with anyone there and I have no reason to reject his account that his aunt has died and he has lost contact with anyone else. Certainly, there is no positive evidence before me that he had any such contact.
51. As everyone has agreed, this is a narrow point and I resolve it in the appellant's favour. This is a humanitarian protection case. He cannot travel safely to his home because he cannot get the necessary documents. If for some reason I am wrong and he should not have the humanitarian protection then the appeal should be allowed on Article 3 grounds.

Notice of Decision

52. This appeal is allowed.

Jonathan Perkins

Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 April 2021