



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

Appeal Number: PA/08013/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House

On 24th February 2021

**Decision & Reasons
Promulgated**

On 19th March 2021

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel of Counsel, instructed by Hallmark Legal Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the documents in paper format.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Mensah promulgated on 20 November 2020, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 5 August 2019 was dismissed.
3. The Appellant arrived in the United Kingdom on 4 October 2018 and claimed asylum on the same day, having left Iraq on 21 July 2018, travelling via Turkey, Greece and France. The Appellant's nationality is in dispute, he has claimed both that he is Iranian and that he is stateless, but had been born and lived all his life in Iraq.
4. The Respondent refused the application on the basis that the Appellant would be returned to Iraq and would not face any risk on return there. The Respondent accepted that the Appellant was Kurdish but did not accept his claimed Iranian nationality, finding that the Appellant either had, or could obtain status in Iraq, where his family had previously been granted refugee status. The Appellant's claim to be a member of the KDPI was considered plausible and consistent with background evidence, but the Appellant's credibility had been damaged by his failure to submit a letter from the KDPI confirming his membership, which he stated would be submitted. There was no evidence of any KDPI activity in the United Kingdom and the Respondent did not accept that the Appellant had been threatened by the security services in Iraq in 2015. The Appellant's credibility was damaged by section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 by virtue of his travel through several safe third countries before claiming asylum in the United Kingdom. The Respondent considered the factors in paragraph 339L of the Immigration Rules, but these were not in the Appellant's favour.
5. The Respondent considered that the Appellant would be able to obtain a CSID card in Iraq given that he was in contact with his family there. In Iraq there would be a sufficiency of protection available to him and internal relocation if necessary. The Appellant would not face any risk of a breach of Article 15(c) of the Qualification Directive, nor any breach of his right to respect for private and family life under Article 8 of the European Convention on Human Rights. There were no exceptional circumstances to warrant a grant of leave to remain on any other basis.
6. Judge Mensah dismissed the appeal in a decision promulgated on 20 November 2020 on all grounds. In summary, the First-tier Tribunal accepted the Appellant's Kurdish ethnicity but overall found the Appellant to be a completely unreliable witness and rejected his claim in its entirety. It was not accepted that the Appellant was Iranian, nor that he had no documents or status in Iraq and it was found that the Appellant could return to the IKR and to his family where there would be no risk to him.

The appeal

7. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal misdirected itself on the issue of the Appellant's nationality, in

particular that it was not in dispute that the Appellant was Iranian but only whether he could obtain Iraqi status or nationality and that the First-tier Tribunal did not apply the correct standard of proof in accordance with KK and others (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC), as the first-tier Tribunal could not be satisfied on the balance of probabilities that the Appellant had obtained Iraqi nationality and he could do so only as a matter of discretion. Secondly, that the First-tier Tribunal failed to take evidence into account when assessing his claim, both in relation to the Appellant's attendance at the Iraqi embassy and the Appellant's explanation as to why he had been unable to obtain a letter from the KDPI in Paris. Thirdly, that the First-tier Tribunal wrongly applied the country guidance in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 which is relevant only to Iraqi nationals and not Iranian refugees, which the Appellant's family were.

8. At the oral hearing, Ms Patel relied on the written grounds of appeal and made additional oral submissions. In relation to the first ground of appeal, it was submitted that the Respondent had accepted that the Appellant is an Iranian national, which should be reflected in the record of proceedings and as such, if the First-tier Tribunal did not accept the concession made, it should have been raised at the hearing and reasons given for departure for it within the findings. Ms Patel said that the finding that the Appellant is not an Iranian national is material given that it taints the other credibility findings made in the decision. As to the Appellant's status in Iraq, the Appellant's evidence was that he had no CSID card and that his family had not been successful in obtaining status in Iraq, although the family had been recognised by the UNHCR as refugees, they were IDP's in Iraq. It is a matter of discretion as to whether the Appellant could obtain Iraqi nationality and it was not guaranteed.
9. In relation to the second ground of appeal, and paragraph 49 of the First-tier Tribunal's decision in particular, Ms Patel queried what evidence it was that the Appellant was expected to have produced and submitted that there was a failure to take into account that the Appellant had given all the evidence that he could. The Appellant had given evidence that he had visited the Iraqi embassy, but they could offer him no assistance when he told them he was Iranian. The Appellant's case before the First-tier Tribunal was that he had Iranian nationality on the basis that his parents were Iranian nationals.
10. In paragraphs 45 to 47 of the First-tier Tribunal's decision, the Appellant's evidence in relation to the letter about his KDPI membership is set out, including that the work to provide such letters had moved from Paris to the IKR in 2019 and the letter was sent straight to the Appellant's solicitors. The First-tier Tribunal however found this explanation to be inconsistent with the Respondent's Country Policy Information Note dated January 2019, but gave no reasons for preferring this to the Appellant's evidence.

11. The third ground of appeal is that the First-tier Tribunal applied the country guidance in AAH inappropriately as that decision did not concern Iranian refugees, only Iraqi nationals. It was an error of law to extrapolate this guidance to apply to the Appellant and at best the decision included reference to some assistance being available to those without a CSID card and that IDPs were given PDS cards for rations. Ms Patel confirmed that the Appellant had not relied on any specific evidence in relation to the position for Iranian refugees, nor what documents, if any were required for them to access services. The Appellant's own evidence was that he did not require a CSID to access education or healthcare and he was not asked for any documents for employment.
12. On behalf of the Respondent, Mr Lindsay referred to the decision letter and accepted that it did not expressly refer to the Appellant's claimed Iranian nationality as a fact which was either accepted or rejected but in any event whether or not the Appellant is an Iranian national, has no material bearing on the issues about whether he would be at risk on return to Iraq and the Respondent has only proposed a return to Iraq. In any event the Respondent's position is clear in the context of the decision letter as a whole that the Appellant's claim was not credible and specifically that there was a lack of documentary evidence of the Appellant's claimed Iranian nationality. Mr Lindsay accepted that there was an apparent concession at the outset of the hearing before the First-tier Tribunal, but submitted that this was not a formal concession that the Appellant's claim was credible on any basis but rather recognition that the Respondent was content for the First-tier Tribunal to proceed on the basis that the Appellant was entitled to Iranian nationality. Again it was emphasised that this was in any event not material to the issues to be decided.
13. In relation to the first ground of appeal, was submitted that the Appellant was really challenging the conclusion in paragraph 52 that the Appellant is not Iranian and has no lawful status in Iraq. The nationality finding does not of itself undermine any of the reasons given for the adverse credibility findings against the Appellant which were clear, cogent and sustainable. As to the Appellant's status or otherwise in Iraq, the Appellant has relied significantly on his own assertions, evidence and credibility rather than by reference to any documentary and background evidence. This claim was in essence that he had lived his whole life in Iraq without a CSID and without any problems accessing services, accommodation or employment and it was submitted that the First-tier Tribunal was entitled to reject that for the detailed reasons given. It was simply not believed that the Appellant did not have a CSID card. The evidence before the Upper Tribunal in AAH from Dr Fatah was that a CSID is a crucial document for adult life in Iraq. Whilst it is accepted that there is no specific reference in the country guidance case to refugees in Iraq, the evidence was in relation to adults and not specifically only to Iraqi nationals. Considering the evidence in the round, it would be entirely speculative for the First-tier Tribunal to have found that the country guidance didn't include the Appellant in relation to the importance of a CSID.

14. In relation to the second ground of appeal, it was submitted that the First-tier Tribunal had carefully considered the evidence relied upon by the Appellant and had given clear reasons for the findings reached in paragraphs 46 to 49 of the decision. It was open to the Tribunal to find that in circumstances where the Appellant had not taken any documents to the Iraqi embassy, he had not done all he could, nor made best efforts to obtain their assistance. In relation to the KDPI, the First-tier Tribunal considered the documents in the round in accordance with the principles in a *Tanveer Ahmed*, there being no explanation as to the different language that the document was sent in, nor any explanation as to how the document was sent to the Appellant's solicitors rather than directly to the national authorities. Mr Lindsay submitted that no reasonable Tribunal could have concluded that the KDPI letter was credible in all the circumstances.
15. In reply, Ms Patel noted that the CPIN relied upon by the First-tier Tribunal, predated the explanation given in a letter from the KDPI in the IKR that the location of their operations had moved in relation to membership letters, a point not addressed by the First-tier Tribunal.

Findings and reasons

16. I consider the first and third grounds of appeal together as they raise overlapping issues on the facts and findings of the First-tier Tribunal as to the Appellant's nationality and/or status in Iran and Iraq.
17. The finding of the First-tier Tribunal that Appellant had not established to the lower standard of proof that he is an Iranian national is wholly immaterial to the overall conclusion on the Appellant's credibility and the outcome of his appeal, and in any event, was a finding which was rationally open to the First-tier Tribunal to make on the evidence (or lack of evidence) before it. The Respondent proposes to return the Appellant to Iraq, with no suggestion of him being returned to Iran and therefore the First-tier Tribunal were required to assess only risk on return to Iraq and the Appellant's status, if any, there. The Appellant did not claim to be at risk on return to Iraq because of Iranian nationality and to the contrary, claimed that his family were recognised refugees in Iraq, a country where he was born and had lived his whole life before travelling to the United Kingdom. Whether or not the Appellant is an Iranian national therefore has no bearing on whether he would be at risk on return to Iraq. Further, the First-tier Tribunal has given clear and detailed reasons for the adverse credibility findings made against the Appellant which do not rely in any significant way, if at all, on whether he had established that he was an Iranian national.
18. The finding was in any event open to the First-tier Tribunal even if the Respondent had unequivocally conceded that the Appellant was an Iranian national (which was not accepted in the decision letter). The Appellant's claim before the First-tier Tribunal was said by Ms Patel to be that he was an Iranian national, however there was no evidence supporting that claim

and to the contrary, there were written statements before the First-tier Tribunal from the Appellant that he was not an Iranian national and that he was stateless (with a similar suggestion that his parents were also stateless in Iraq). At best, the Appellant's own evidence on this point was contradictory. There was no background country evidence on nationality law in Iran (for example as to whether this was passed to children of Iranian nationals born outside of Iran) and no other supporting evidence from the Appellant's family (who he is in contact with) or any other documentary evidence. On this basis, in the round and in the context of the other adverse credibility findings, it was lawfully and rationally open to the First-tier Tribunal to conclude that the Appellant had not established that he was an Iranian national.

19. The Appellant's second part of the first ground of appeal as to the standard of proof of whether he could obtain Iraqi citizenship is misconceived given that the First-tier Tribunal made a clear finding not that he was merely entitled to apply for Iraqi nationality or documents but that he had lawful status in Iraq and was not undocumented there, but had a CSID or other documentation. That was a finding entirely rationally and lawfully open to the First-tier Tribunal for the detailed reasons given in the decision, primarily relying on the evidence in AAH in contrast to the Appellant's own account.
20. In relation to AAH, the First-tier Tribunal set out the Appellant's evidence as to accessing education, employment and healthcare in Iraq and his family access to communication in paragraphs 27 to 29 of the decision. In essence this was that the Appellant was able to access all of these things and obtain a food ration card only through use of his birth certificate and that neither he nor any of his family members ever had a CSID card. The First-tier Tribunal then set out findings and extracts of the evidence before the Upper Tribunal in AAH in paragraphs 30 and 31, before concluding that the Appellant's account was inconsistent with the background country evidence available.
21. The First-tier Tribunal acknowledged that AAH was not specifically concerned with Iranian refugees in Iraq, but that it did include evidence as to the importance of the CSID card to all adults, and that from the CSID card (or information in the civil register) a person could obtain a Public Distribution System card (a PDS). It was not accepted that an Iranian refugee in Iraq would be able to access services which an undocumented Iraqi would not be able to because of the lack of a CSID. That is an entirely rational and lawful conclusion on the evidence before the First-tier Tribunal. It was wholly unexplained how an Iranian refugee would be in a better position than an undocumented Iraqi or why different rules would apply to them and it is inherently implausible that it would. The Appellant did not submit or rely on any background country evidence as to the position for Iranian refugees, nor did he rely on any other evidence to support what amounted to no more than an assertion in his evidence that either his birth certificate alone was sufficient or he was not required to produce any documents at all.

22. In these circumstances, there was no error of law in the First-tier Tribunal's conclusion that the Appellant had a CSID or other documentation in Iraq, without which he would not have been able to access education, healthcare, employment, food aid or accommodation and without which his family would not have been able to do the same. On the basis of this finding, confirmed in the conclusion in paragraph 52 of the decision, it was not necessary for the First-tier Tribunal to go further and consider whether the Appellant could apply for and be granted Iraqi nationality.
23. The second ground of appeal is also in two parts as to the Appellant's evidence of his attendance at the Iraqi embassy and about his KDPI membership. In relation to the embassy visit, the First-tier Tribunal recorded in paragraph 49 the Appellant's evidence that he attended the Iraqi embassy but took no documents with him to try to establish his status in Iraq because he did not have the knowledge. The First-tier Tribunal found that this damaged his credibility, particularly as the Appellant had sufficient understanding to know that documentary evidence was needed for his asylum claim. It is not entirely clear what it is the Appellant says the First-tier Tribunal has failed to consider in relation to his evidence on this matter and the oral submissions simply questioned what evidence the First-tier Tribunal could reasonably expect in relation to this. However, the actual conclusion was that the Appellant's explanation for not taking any documents with him to the Iraqi embassy (and he states he had an Iraqi birth certificate, a ration card and the UNHCR letter and at least copies of some of these were submitted to the Respondent and Tribunal) was not accepted and that he had not therefore done all he could to obtain assistance from the Embassy. There is no error of law in that conclusion, which was reasonably and rationally open to the First-tier Tribunal on the evidence before it.
24. The second part of the second ground of appeal is that the First-tier Tribunal failed to take into account the Appellant's explanation as to why he had not been able to obtain a letter from the KDPI in Paris. The Appellant's explanation was set out in part, but not in full, in paragraph 46 of the decision, although there is express reference to his witness statement such that it is reasonable to conclude that the First-tier Tribunal did take this into account when considering the documents and the weight to be attached to them. Similarly, there is express reference to the letters themselves from the KDPI, which includes one containing an explanation that the confirmation of membership has moved from the office in Paris to the IKR.
25. The First-tier Tribunal then quoted from the Respondent's Country Policy Information Note from January 2019 as to verification of membership of the KDPI. The First-tier Tribunal concluded that little and negative weight was to be attached to the KDPI letters because (i) the Appellant has not filed any evidence to show how his solicitors received the letters, (ii) they were at odds with the country evidence available as they were not sent

directly to the Respondent, without any explanation, and the documents were in English, not French.

26. The KDPI letters all post-date the publication of the CPIN by several months, with the explanation of who a response on membership will come from having changed since that date. This is not expressly considered by the First-tier Tribunal and if accepted, arguably undermines one of the reasons for attaching little weight to the documents that they are not in French – whilst letters coming from Paris would reasonably be in French, there is no reason why letters originating from the IKR would be sent in French. However, the explanation does not undermine the other two reasons given by the First-tier Tribunal in paragraph 47 of the decision, that there was no evidence of how the solicitors received the letters and no explanation as to why the letters were not sent directly to the Respondent. These matters are not explained at all by the Appellant, his solicitors or the letter from the KDPI. In these circumstances, whilst the First-tier Tribunal appears to have overlooked the chronology, there remain lawful and rational reasons as to why little weight was given to the documents and weight is primarily a matter for the First-tier Tribunal absent irrationality or perversity, which is not even suggested.
27. In any event, the Appellant has not sought to challenge the First-tier Tribunal's findings that he had not been threatened in Iraq or had any problem with the authorities there; nor that the Appellant's attendance at one meeting of the KDPI in the UK would be known to the authorities on return or would place him at risk of any harm whatsoever. Even if the KDPI letters were given weight to support the Appellant's claim to be a member of the KDPI, this could not, in the context of the other findings, have in any event made any material difference to the outcome of the appeal as the Appellant was not at risk on return given the unchallenged findings on this which were not dependent on whether or not the Appellant was a member of the KDPI.
28. For these reasons there are no material errors of law in the First-tier Tribunal's decision which is confirmed.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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 their 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 G Jackson
2021

Date 16th March

Upper Tribunal Judge Jackson