



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: PA/08736/2018 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC  
On 3 March 2021

Decision & Reasons Promulgated  
On 12 March 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

HF

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr K Wood, instructed by IAS (Liverpool)

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote resumed hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). At the conclusion of the hearing, I outlined in brief terms my decision and reasons, which I now set out. The order made is described at the end of these reasons.

1. The appellant, who is a citizen of Iraq of Kurdish ethnicity and Sunni Muslim faith, born in Debz, Kirkuk, with date of birth given as 1.1.77, has appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 10.6.20 (Judge McClure), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 22.6.18, to refuse his claim for international protection based on a well-founded fear of persecution arising from his imputed political opinion.
2. The previous First-tier Tribunal appeal decision (Judge Siddiqi) promulgated 25.3.19, dismissed the appellant's appeal on all grounds. However, that decision was set aside by the Upper Tribunal (Deputy Upper Tribunal Judge Chapman) and remitted to be remade in the First-tier Tribunal, limited to the issues of internal relocation to the IKR and whether the appellant had the required identity documentation to enable him to travel to the IKR. The findings of the First-tier Tribunal on the appellant's core factual account were preserved. Complicating the remaking exercise was that subsequent to both the First-tier Tribunal and Upper Tribunal decisions, new country guidance was issued in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), which was considered by the First-tier Tribunal (Designated First-tier Tribunal Judge McClure) in remaking the decision.
3. Judge McClure dismissed the appeal, finding no reason to depart from Judge Siddiqi's finding that the appellant and his family would not be at risk in their home area of Kirkuk for any Convention reason. However in considering the issue of relocation, Judge McClure found there was no longer an Article 15(c) risk to the appellant in his home area of Kirkuk, whereas Judge Siddiqi considered herself bound by the Country Guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) that there was a state of internal armed conflict in certain parts of Iraq, including Kirkuk, so that there were substantial grounds for believing that any civilian return there, would solely on account of their presence face a real risk indiscriminate violence reaching the Article 15(c) threshold.
4. Noting that the appellant has a valid INC (as well as other documents) and that SMO found that Iraqis can be expected to know the relevant volume, page number and details in the Registry, Judge McClure found that there was no reason why the appellant would not be able to obtain his CSID from the local registry. It follows that there was a means open to the appellant to obtain the required identity documentation. That included providing the information to an attorney in Iraq to obtain the CSIDs enabling the appellant and his family members to travel to their home area of Kirkuk. In consequence, the protection claim was dismissed. The judge also dismissed the human rights claim based on article 8 ECHR.

5. In summary, the grounds of appeal to the Upper Tribunal argued that:
  - a. The judge made a material misdirection in law and permitted procedural unfairness by ignoring the finding of the Upper Tribunal that the appellant could not safely return to Kirkuk and that the appeal was remitted to the First-tier Tribunal the issue of reasonable relocation to the IKR. It is asserted that the judge erred by concluding that the appellant could safely return to Kirkuk and in failing to consider internal relocation to the IKR;
  - b. The judge erred in law by failing to take account of material matters and/or failing to provide adequate reasons on a finding of fact material to the outcome of the appeal, with reference to the finding that there is no article 15(c) risk to the appellant on return to Kirkuk. It is argued that the judge failed to make a fact-sensitive assessment and to take account of the factors and evidence identified in SMO as to the risks present in Kirkuk;
  - c. The judge erred in relation to the use of proxies in obtaining replacement CSID cards when at paragraph [425] SMO found that the likelihood of obtaining a replacement identity document by the use of a proxy had reduced due to the introduction of the INID system, where an individual has to attend in person to enrol their biometric details and that CSA offices which INID terminals have been installed are unlikely to issue a CSID, whether to an individual in person or to a proxy. It is argued Kirkuk is one of the areas in which INID terminals have been installed;
  - d. The judge erred by materially misdirecting himself in law as to the consideration of the appellant's attempts to obtain a replacement CSID care in the UK.
6. In my error of law decision promulgated 28.9.20, I carefully considered the decision of the First-tier Tribunal in the light of the oral and written submissions and the grounds of application for permission to appeal to the Upper Tribunal. At [30] of my decision, I concluded that there was an error of law in the decision of the First-tier Tribunal but only to the limited extent of the issue of the appellant's ability to obtain identity documentation which would enable him to return to his home area of Kirkuk. The remaining findings from the decision of Designated First-tier Tribunal Judge McClure were all preserved in the directions within my error of law decision. The remaking of the decision, limited to the narrow issue identified above, was reserved to the Upper Tribunal. The matter was then relisted before me on 3.3.21.
7. In compliance with the directions issued, the Upper Tribunal has now received the respondent's response to directions drafted by Mr Tan and dated 22.10.20; the expert report of Dr Fatah, dated 11.12.20, accompanied by the summary set out in the email from the appellant's representative, dated 31.12.20.

*Error of Law Findings in Summary*

8. For the reasons set out between [8] and [15] of my earlier decision, I concluded at [15] that Judge McClure was entitled to consider the viability of the appellant's return to his home area in the light of SMO. I was satisfied that what Deputy Upper Tribunal Judge Chapman intended to preserve were the findings of fact up to and including [41] of the decision of First-tier Tribunal Judge Siddiqi promulgated 25.3.19. I was further satisfied that there was no specific finding by either the First-tier Tribunal or the Upper Tribunal that the appellant could not safely return to Kirkuk. I also considered that it would be entirely artificial not to permit the First-tier Tribunal whether the required identity documentation could be obtained by or on behalf of the appellant in his home area.
9. At [16] of my decision, I concluded that there was no procedural unfairness in refusing an adjournment to enable the appellant to address the issue raised by the First-tier Tribunal Judge of the appellant returning to Kirkuk. Judge McClure offered the appellant the opportunity to make further written submissions, which were taken into account before the First-tier Tribunal made its decision.
10. At [17] of my decision, I was satisfied that the First-tier Tribunal did not err by addressing the remitted issue of relocation to the IKR. Given that the judge found the appellant could return to his home area of Kirkuk, relocation elsewhere did not arise, and that matter did not require resolving.
11. At [24] of my decision, I was satisfied for the reasons given in the preceding paragraphs, that Judge McClure made an appropriate assessment of the risk on return to Kirkuk, taking into account the preserved findings and the criteria referenced at headnotes [3] and [5] of SMO.
12. However, for the reasons set out between [25] and [30] of my error of law decision, I concluded that Judge McClure erred in failing to deal with the specific difficulties for a person in the appellant's circumstances in obtaining a CSID to enable him to return to Kirkuk.
13. In summary, the appellant had an INC but his CSID card was regarded by the respondent as a forgery. Judge McClure concluded that with his INC the appellant would be able to obtain a CSID from the Kirkuk Registry, using a proxy or an attorney and that he had failed to demonstrate that he did not know the page and volume reference of the family registration.
14. In the light of SMO, the appellant could be returned to Baghdad Airport on a laissez-passer without any risk of harm at that point. However, in order to travel from the airport to Kirkuk, the appellant would need either a CSID or the new INID. He would not be able to obtain a CSID in Baghdad. The difficulty is that the Kirkuk CSA office has introduced an INID terminal and Mr Wood asserted in the error of law hearing that in those circumstances a CSID would not be issued,

and the appellant would need to attend in person to provide his biometric details. These difficulties were highlighted at [431] of SMO. It was this issue which I reserved to a continuation hearing in the Upper Tribunal.

*Remaking the Appeal Decision on the Limited Issue of Obtaining Identity Documentation*

15. At the outset of the hearing before me, I queried with Mr McVeety what the respondent's position now is on redocumentation in the light of the respondent's own views and the very recent expert evidence of Dr Fatah. Mr Tan's written submission was made before and therefore without sight of Dr Fatah's report.
16. Mr McVeety conceded that the evidence now is that Kirkuk was the first Governorate to introduce an INID terminal and no longer issues CSIDs, whether in person or by proxy. It is accepted that a person has to attend the CSA office in person for their biometric details to be taken before an INID can be issued which Dr Fatah explains at [179] of the report includes photograph, iris scan, and thumb and fingerprints. Mr McVeety accepted the expert evidence as consistent with the respondent's own understanding that where INID terminals are in operation a CSID will not be obtainable from the Iraqi embassy or a consulate in the UK at the present time.
17. It follows from the unchallenged expert evidence that whilst the appellant could be returned to Baghdad Airport, he does not have and cannot presently obtain identity documentation to travel onwards to his home area of Kirkuk. A CSID or INID is necessary to pass through security checkpoints. Neither assistance by a family member, nor a proxy, nor an attorney, can assist the appellant to redocument himself, particularly where the CSA office in Kirkuk has apparently been issuing INIDs since 2019 and no longer issues CSIDs. Dr Fatah states at [188] that if an individual was able to relocate to Iraq without the necessary identity documents, they may not be able to move freely within Iraq. At the present time, there is no formal process for obtaining an INID from outside Iraq. Neither would the appellant be assisted by a Registration Document, for which he would need his CSID details, and which in any event is not able to be used to pass through security checkpoints in Iraq.
18. In the premises, Mr McVeety considered that he was unable to oppose the appeal being allowed on humanitarian protection article 3 grounds, on the basis that if returned to Iraq there was a real risk that the appellant would become destitute in Baghdad, unable to return safely to his home area. Mr Wood agreed with Mr McVeety's assessment. In the circumstances, it was not necessary to take any evidence from the appellant or hear any further submissions.
19. At headnote [9] of SMO, the Upper Tribunal held that,

*"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."*

20. It follows from the preserved findings that there is no valid asylum or subsidiary protection under article 15(c) claim. The claim for international protection cannot succeed on the basis of a risk of harm arising from absence of identity documentation. However, I find that the appellant is entitled to succeed on humanitarian protection grounds only, on the basis that he would face destitution and circumstances breaching article 3 ECHR if returned to Iraq without adequate identity documentation to enable him to return to his home area of Kirkuk.

### **Decision**

The appeal is dismissed on asylum grounds.

The appeal is allowed on humanitarian protection article 3 ECHR grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 3 March 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: 3 March 2021