



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

Appeal Number: IA/01592/2020
PA/51350/2020 (UI-2021-001411)

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On : 4 April 2022**

**Decision & Reasons Promulgated
On : 8 June 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MOAFAQ TAWFIQ RASULL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, instructed by Barnes Harrild and Dyer
Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 28 October 1990 in Makhmour, which was outside the Iraqi Kurdish Region (IKR). He claims to have arrived in the UK on 4 April 2008 and claimed asylum the same day. His claim was refused on 17 August 2010 and his appeal against that decision was

dismissed in the First-tier Tribunal on 4 October 2020. He was granted permission to appeal to the Upper Tribunal but the decision of the First-tier Tribunal was upheld and he subsequently became appeal rights exhausted on 9 September 2011.

3. The appellant then lodged further submissions on 31 July 2012 and 21 September 2017 which were rejected on 24 January 2013 and 7 November 2019 respectively. He lodged more submissions on 19 December 2019 which were treated as a fresh claim and were refused on 20 August 2020. It is that decision that has given rise to these proceedings.

4. The appellant's asylum claim was made on the basis that he was at risk on return to Iraq due to his father's previous employment in the new Iraqi police force. He claimed that his father had previously been a Ba'athist police officer and his family had encountered problems in 2005 when they were attacked by a rival family who accused his father of being responsible for the execution of one of their family members. He (the appellant) was shot and injured by the same rival family some weeks later, but after a financial agreement was reached his family did not encounter any further issues until 2008 when his family house was attacked by a terrorist and both his parents were injured and his father died. He fled Iraq after receiving a threatening letter from the terrorists whilst he was hiding at his uncle's house in another village.

5. First-tier Tribunal Judge Foudy, who dismissed the appellant's appeal against the refusal decision on 17 August 2010, accepted the appellant's account of a dispute with another family but did not accept his claim beyond that. She rejected his account of his father being in the new Iraqi police force and being threatened by terrorists. The judge found that the appellant still had family in Iraq to whom he could return and did not accept that he would be at any risk on return. The appellant was also relying upon a relationship with a British citizen, but the judge did not accept that there would be any breach of Article 8 on that basis if he was removed from the UK.

6. The appellant's new submissions of 19 December 2019 relied upon evidence of his attempts to re-document himself in the United Kingdom, on the fact that he had no contact with his family in Iraq and on his continuing fear of return to his home area, Makhmour. Reliance was placed on the country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400. The appellant claimed that his return to Iraq was not feasible since he did not have an Iraqi passport or CSID and was undocumented. He could not call on the support of any male family member to assist him in obtaining a CSID as he had lost contact with his family. He did not remember the details on the register of the Civil Affairs Office. Any onward travel from Baghdad required a CSID and without a CSID he was likely to face significant obstacles including being detained. Having no family to assist in obtaining a CSID would result in potentially lengthy and repeated detentions. He had attended the Iraqi Consulate in Manchester and London to request the issue of Iraqi documentation but was told that without any original evidence of identity and nationality he was not eligible for new Iraq documentation.

7. The respondent, in refusing the appellant's claim, considered that he could safely return to his home area or relocate within the IKR. The respondent did not accept that the appellant was unable to contact his family and considered that he had immediate family in Iraq who could help him in establishing his nationality and in obtaining replacement documents. He was not at risk on return to Iraq and his removal to that country would not involve a breach of Article 3 or 8 of the ECHR.

8. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Garratt on 18 November 2021. The appellant's evidence before the judge was that he could not return to his home area because it was not safe and there were militants present along with members of ISIL, and that he would not be able to travel from Baghdad to his home area in any event because he was undocumented and could not get to the Civil Affairs Office in Makhmour to issue him with a new INID card. He claimed that he would be stranded in Baghdad without a CSID which would lead to destitution. He had attempted to obtain new documents from the Iraqi Consulate in Manchester in November 2019 and September 2020, and in London on 27 May 2021, but they could not help him as he did not have his original CSID. The appellant also claimed to have attempted to contact his mother through the British Red Cross family tracing services and through the Salvation Army but had not been successful. He had last had contact with his family in 2016.

9. The judge noted that the appellant had not made further assertions about his original claim to fear return to his home area on account of his father's involvement with the Iraqi police force and therefore relied upon the findings of the previous Tribunal which had rejected that account. The judge accorded little weight to the evidence relating to the British Red Cross and the Salvation Army and found that the appellant was not making any serious effort to identify the location of his family. The judge concluded that the appellant had not lost touch with his family in Iraq and that he and his family members had the necessary information to obtain a replacement identity document. There was no evidence that the CSID system had yet been replaced by the INID system in Makhmour and the judge therefore concluded that the appellant could obtain a replacement CSID with the assistance of his relatives which could be sent to him, to facilitate his journey from Baghdad to his home area. The judge did not consider that Makhmour was an area to which the provisions of Article 15(c) applied but considered in any event that the appellant could relocate to the IKR. The judge concluded that the appellant could therefore safely return to Iraq and that his removal would not breach his human rights.

10. The appellant sought permission to appeal the decision to the Upper Tribunal on the grounds that the judge had failed follow the country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 in relation to obtaining documentation through the use of a proxy.

11. Permission was granted in the First-tier Tribunal on the grounds that the basis on which the judge had found that the appellant had the necessary information to obtain a CSID was arguably unclear as he had not made any findings as to whether he was in contact with family members on his father's side.

12. The matter then came before me for a hearing.

13. Mr Hussain submitted that the judge's finding, that the appellant could obtain a replacement CSID using a proxy, was contrary to the findings in AAH, as adopted in SMO and that obtaining replacement documentation could only be done with a close male relative. The appellant would not be able to obtain a replacement CSID and the judge had erred by finding that he could. Mr Bates pointed out, in response, that the reason given by the appellant for not being able to obtain a replacement CSID was that he had lost contact with his family members. He did not argue that he only had female family members, but simply that he had no contact with any family members, but that was rejected by the previous and current Tribunals. The previous Tribunal had rejected the appellant's claim about his father being killed and had rejected the core of his claim, and Judge Garratt had taken those findings as his starting point in accordance with the principles in Devaseelan. The appellant had therefore failed to meet the burden of proving his claim not to be able to obtain a CSID and the judge was entitled to find as he did. The country guidance found that a CSID could be obtained by proxy if there was no INID terminal in the home area and the judge had found that there was no evidence of the INID system having been introduced in the appellant's home area. The judge's findings were therefore not contrary to the country guidance.

14. In response, Mr Hussain submitted that the judge had not made a distinction between male and female family members and had therefore erred in that regard. He submitted further that even if the appellant still had family members in his home area, that would not assist him when considering the documentation process set out in AAH at [24] and [25], as further documents were required. In addition, Mr Hussain relied upon the country guidance in SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37 as authority for finding that it was wrong in law to rely upon a future possibility of obtaining documentation. He submitted that, at the time of the hearing, the appellant was irremovable and ought to have succeeded on that basis on Article 3 grounds. He submitted that it was not sufficient for the respondent to say, and the judge to find, that the appellant could obtain a CSID in the future with the assistance of his family, as that was contrary to the guidance in SA.

Discussion

15. As Mr Bates submitted, the appellant's case for not being able to obtain a replacement CSID was put on one basis only, namely that he had lost contact with all his family members. He did not suggest any alternative, such as that he only had contact with female family members who could not assist him or that the CSID system in his home area had been replaced by the INID system whereby he would have had to attend at the CSA office in person. Indeed,

Judge Garratt observed at [41] that the appellant had not indicated that the CSID system had been replaced in Makhmour and he therefore found that, in accordance with the country guidance in SMO, the possibility of obtaining a CSID by proxy was still available. He also referred at [41] to the information available from the Family Book in Iraq being obtained preferably by male family members and was therefore fully aware that that was an issue when considering the appellant's ability to obtain his documentation. As his starting point, Judge Garratt relied upon the findings of the previous Tribunal which rejected the appellant's claim to have lost contact with his family members and rejected the appellant's account of his father's role in the police force and the problems he encountered as a result. His claim that his father had been killed was therefore also impliedly rejected. It was on the basis of those findings, as well as the further findings fully and cogently made at [40], that Judge Garratt concluded that the appellant retained contact with his family members in Iraq and it was on that basis that the judge concluded that he would be able to obtain a replacement CSID. There was nothing inconsistent in such a conclusion with the country guidance and indeed it was part of the guidance that CSID documentation could be obtained with the assistance of family members.

16. It was Mr Hussain's submission that even if the appellant had family members who could assist him, that was not sufficient in itself and he relied upon the findings at [24] and [25] of AAH, which required an applicant to also have various stated documents in order to obtain a CSID. He submitted that since the appellant did not have those documents, he could not obtain a CSID, even if he had family members who could assist him. However, [24] and [25] of AAH simply set out the evidence of the expert Dr Fatah and are not findings. The relevant country guidance, which took account of Dr Fatah's evidence and all the other evidence, is to be found at [16] of the headnote to SMO, which was specifically referred to by Judge Garratt at [41], namely:

"13... Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal. ."

"16. The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information."

17. Therefore the findings made by Judge Garratt were entirely consistent with the country guidance and he was entitled to find that the appellant would be able to obtain replacement documentation with the assistance of his family in Iraq.

18. As for the point Mr Hussain made in relation to SA, that was clearly misconceived and was based upon a misunderstanding of the findings and guidance in SA. SA was concerned with the issue of removability, finding that the relevant issue was the risk in the destination of enforced removal rather than the destination of a possible voluntary return. The issue of obtaining documentation in the future was in relation to an undertaking by the Home Office and had nothing to do with family members obtaining documents on the appellant's behalf, as is clear from the following:

"44. As Mr Bazini submits, J1 v SSHD provides a clear basis for rejecting the respondent's submission that she can undertake not to remove an individual to Baghdad until such time as they have a CSID. Where it is clear that the absence of that document would give rise to a breach of Article 3 ECHR upon return, the acceptance of such an undertaking would cut down the legal protection to which he is entitled and would delegate a material element of the legal claim which falls for determination by the Tribunal....The Tribunal cannot, therefore, accept an undertaking that the respondent will not remove to Baghdad until such time as an asylum seeker has a CSID. That is clear from the authorities I have cited, just as it is clear from AA (Iraq) v SSHD."

19. There is accordingly nothing in the judge's findings and conclusions which is inconsistent with the guidance in SMO or SA. On the contrary, the judge plainly took full account of the country guidance when reaching his conclusions. His findings at [41] as to the appellant's ability to obtain documentation and travel back to Iraq and on to his home area were in line with the country guidance and were fully and properly open to him on the evidence before him. For all of these reasons I uphold the judge's decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stand.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 7 April 2022