



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

**Appeal Number: IA/02294/2020
(PA/50034/2020)**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On the 11 February 2022**

**Decision & Reasons Promulgated
On the 30 March 2022**

Before

**UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE BRUCE**

Between

KF
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brakaj, Iris Law Firm.

For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 1 July 1988, who entered the United Kingdom on 4 February 2016 and claimed asylum. The application was refused on 20 January 2020 and his appeal against that decision dismissed by First-tier Tribunal Judge JM Holmes ('the Judge') sitting at North Shields in a decision dated 18 January 2020.

Error of law

- 2.** Permission to appeal was granted by the Upper Tribunal on a renewed application in the following terms:

“Although the judge gave the most cogent reasons for finding the appellant’s account to be largely untrue, it is arguable that he impermissibly went behind express concessions in the refusal in reaching those findings. In Carcabuk OO/TH 01426 , the IAT held that a concession which was not withdrawn was binding upon an adjudicator. It has been a slew of decisions from the Court of Appeal in recent years concerning the proper approach to concessions and their withdrawal, but I’m not aware of any which relates to the precise circumstances which arose in this case, of a judge deciding to go behind concessions in a refusal letter as a result of concerns arising during oral evidence. It is arguable that the progression of the oral evidence entitled the judge to depart from those concessions, providing he followed a fair procedure in doing so. On the other hand, it is arguable that the judge remained bound by the concessions in the letter unless and until the respondent was permitted to withdraw those concessions. If you would clearly benefit from full argument, including reference to the reported case of the Court of Appeal in AK (Sierra Leone v SSHD EWCA Civ 999; [2017] Imm AR 319 is but one example.”

- 3.** Acceptance of aspects of evidence regularly appear in refusal letters and pleadings before the tribunals. Where such arises it is important for a decision-maker to consider (a) is a concession being made and (b) if so, in what terms. In a case where it appears a judge has made a decision contrary to a concession an appellate court is required to consider whether the judge should in fact have been bound by the concession or whether on the facts the judge should have indicated that the evidence suggested departing from the concession giving the parties the opportunity to make submissions addressing the point. The issue in all cases is that of fairness.
- 4.** In *SS v Secretary of State for the Home Department* [2010] CSIH 72 the Secretary of State considered that it was credible that the Claimant had been involved in film production. The Judge did not accept that the Claimant was a filmmaker. The Court of Sessions noted that the Judge had before him, as a starting point as to the veracity of the Claimant’s version of events, an acceptance by the Secretary of State that the Claimant was a filmmaker. Although the Judge was not bound to accept that conclusion, any departure from a position established as true by both parties would require explanation. In its absence, the reasonable inference was that the Judge had misunderstood or left the evidence out. The error was therefore properly categorised as one of law.
- 5.** In *ST (Child asylum seekers) Sri Lanka* [2013] UKUT 292(IAC) (Blake J) it was held that a judge should alert the advocates where minded to depart from a favourable assessment of credibility made by the UKBA (as noted by the AIT in *WN (Surendran; credibility) DRC* [2004] UKIAT 213.)
- 6.** It was reiterated in *IM (Pakistan)* [2018] EWCA Civ 626 that the authorities indicated that a tribunal could raise doubts about a concession made and it would only be if the concession were still maintained that the tribunal should accept it.

- 7.** What is clear from a reading of the reasons for refusal letter is that there was an acceptance of certain aspects of the appellant's asylum claim by the Secretary of State. These are specifically noted by the Judge at [18] of the decision under challenge in the following terms:
18. The Respondent accepts that;
- i) the Appellant is in Iraq Kurd
 - ii) the Appellant's family were involved historically in a feud
 - iii) the Appellant had to flee Baqurta as a result of Daesh
 - iv) the Appellant fought with Peshmerga against Daesh
 - v) in the circumstances the Appellant is a former resident of the KRG
- 8.** At [19] the Judge notes a number of aspects the Secretary of State did not accept.
- 9.** The Judge refers in the decision to the fact it was common ground the appellant is an Iraqi Kurd, and we find does not make specific findings that to go behind the points accepted by the Secretary of State. We note the grounds seeking permission to appeal specifically refer to [57] of the decision under challenge where the Judge writes:
57. As set out above it is clear that the Appellant has been inconsistent in significant and material aspects, even in his written evidence. In the circumstances I approach the Appellant's evidence with caution. In my judgement his cross examination went further, and exposed him to be a thoroughly unreliable witness.
- 10.** The Judge opened herself up to challenge by the use of the language in this paragraph as it cannot be said that the appellant is a thoroughly unreliable witness if aspects of his evidence had been accepted as true by the Secretary of State. It is clear, however, that the Judge does not make findings contrary to the points accepted in the refusal letter and therefore no legal error has been established.
- 11.** The concerns that have arisen in this matter relate to a more detailed reading of the determination. There are challenges in the grounds to the Judge's findings in relation to ID documents, place of origin, whether the appellant has family contact, the Judge's finding the appellant could not have survived without his CSID in Iraq when many IDP's have no such documents, the lack of any evidence that appointments could be made with the Iraqi embassy in the UK and a failure to consider the CPIN which confirms the embassy in the UK is unable to assist with obtaining replacement CSID documents.
- 12.** In relation to identity documents and the specific findings set out in the "Conclusion" section from [55], the Judge's findings that the appellant would have required his CSID to be able to survive in Iraq having fled Daesh does not appear to consider the point that those who fled Daesh and did not have documentation when they fled their homes were able to survive without a CSID in the camps. The finding that it was also unlikely the appellant would have been able to fight for the Peshmerga without production of his CSID is not supported by any evidence we have seen within the evidence provided. It is not disputed the appellant does not have a CSID and the observation by

the Judge that because these forms of identity are being phased out that did not mean they were no longer being issued at [74] is clearly wrong when there was evidence in the CPIN that following introduction of the new Iraqi ID document CSIDs were no longer being issued. The Judge's disagreement with the appellant's representatives claim to this effect at [74] is factually incorrect. The Judge in this paragraph also refers to a Registration 1957 document which can be obtained in the UK but there is insufficient analysis of whether that document will enable the appellant, who the Judge accepts will be returned to Baghdad, to be able to travel within Iraq to allow him to return to his home area or obtain the necessary documentation if he does not have his CSID. Without proper documents the Judge's finding the appellant will be able to join an internal flight to the IKR is not made out.

- 13.** The appellant's grounds raise the issue of the Judge's failure to address, when finding the appellant had contact with his family, that it appears to have been accepted that the appellant and his family fled their home area when it was invaded by Daesh. We cannot see in the determination any analysis of whether the family reached the same IDP camp as the appellant or if they did that they would have had any documentation in their possession that could be provided to the appellant.
- 14.** We cannot see within the evidence material supporting the Judges assumption that the appellant would have required his CSID to join the Peshmerga to fight against Daesh or that if that organisation created a record that he had joined them, as noted by the Judge at [43], this would have meant the appellant has in his possession sufficient documents with equivalent status of his CSID or of a replacement CSID.
- 15.** We do not find it made out that the Judges findings are supported by the evidence made available to us. If the appellant cannot obtain necessary documentation, whilst he could be returned to Iraq using a laissez passer, he would not be able to travel to the IKR. There is no finding in the determination that the appellant would be able to remain in Baghdad safely.
- 16.** We find the determination unsafe for lack of adequate reasons, making findings that do not appear to be supported by the evidence, for making findings that are clearly wrong; especially in relation to the CSID and appellant's documentation. We find those matters will need considering afresh and remit the appeal to the First-tier Tribunal for such purpose in light of the fact the Upper Tribunal will imminently be publishing its decision in the country guidance case known as SMO (2) which is further examining issues of relevance to this determination following SMO [2019] UKUT 400 being remitted by the Court of Appeal and the inclusion by the tribunal reconsidering the matter of further relevant aspects that they have been asked to consider including the status of the Registration 1957 document.

Decision

17. The Judge materially erred in law. We set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Newcastle to be considered afresh by a judge other than Judge JM Holmes.

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 18 February 2022