



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

Appeal Number: PA/03335/2020

THE IMMIGRATION ACTS

**Heard at Bradford (via Microsoft teams)
On the 25 March 2022**

**Decision & Reasons
Promulgated
On the 19 April 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GSS

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham instructed by Fisher Stone Solicitors.

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

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Hillis who in a determination promulgated on 23 April 2021 dismissed the appellant's appeal on all grounds.
- 2.** The appellant is a citizen of Iraqi born on 21 January 1991.
- 3.** In addition to the written material the Judge had the benefit of seeing and hearing oral evidence being given, as well as the submissions

made by the advocates for both the appellant and the Secretary of State.

4. The Judge sets out his findings of fact from [23] of the decision under challenge in which it is noted the appellant's age, gender (male), nationality, Kurdish ethnicity and Sunni faith are not disputed.
5. The Judge confirms he has carefully considered the appellant's account of events. The Judge noted a country expert's report relied upon by the appellant.
6. The Judge found the appellant had failed to show, to the lower standard, that he and his family had been attacked in Iraq on 18 January 2018 by members of the Hashd al-Shaabi - Popular Mobilization Units (PMF) [30] at [32 - 33] writes:
 32. In my judgement, it is simply not credible in light of the Appellant's account and the contents of Dr Ghaderi's report of the danger facing the Kurdish community at the hands of the PMF and/Shia Militia that they would permit a known Peshmerga supporters to open up another shop when their previous shop was burned to the ground due to it being used for provisions by the Peshmerga and as a meeting place if the Appellant and his family were of adverse interest to them as Peshmerga supporters or for any other imputed political opinion.
 33. I conclude on the evidence taken as a whole that the Appellant has failed to show, to the low standard required, that he faces the risk of death, persecution or ill-treatment on removal to Kirkuk Iraq for a reason recognised by the Refugee Convention and, in particular, and imputed political opinion.
7. The Judge accepted the appellant will be removed to Baghdad airport and could only travel overland or by air from there to an area of safety in Iraq or the IKR if he was in possession of his CSID or INID card at the start of the journey [36]. The Judge rejected the appellant's claim that all his family documents were lost when their house was burned to the ground and that the appellant's claim that his father was seriously ill and had access to healthcare in Kirkuk must have meant that he had his own CSID or INID to be able to access the same. The Judge also finds that his brother would have had to have a CSID or INID to enable him to legally open and operate a shop in Kirkuk [38].
8. The Judge at [41] did not find it credible that the appellant was able to travel by car from Tuz Khurmatu to Kirkuk, which involved him passing through checkpoints, without his CSID. The Judge confirms that in coming to such a conclusion he compared the appellant's account with the expert report [42].
9. The Judge concluded on the basis of the evidence taken as a whole that the appellant would have been unable to pass through all the checkpoints he had to go through between Tuz Khurmatu and Kirkuk and Kirkuk and Erbil and then onwards to the Turkish border in the way he describes without being in possession of an original CSID and did not accept that he was not in possession of the original CSID [43].
10. When considering whether the appellant could internally relocate the IKR the Judge finds at [48] that the appellant would face destitution in that area and that relocation there is not a viable option for him.

- 11.** The appellant sought permission to appeal asserting inadequate or otherwise unlawful reasoning on the basis of the inherent probability of the appellant's grounds, and a failure to resolve the dispute between the parties as to whether relocation to Kirkuk is reasonable.
- 12.** Permission to appeal was granted by another judge of the First-tier Tribunal on the basis it was said to be arguable the Judge failed to give adequate findings or conclusions based on the inherent implausibility of the appellant's account and failed to give adequate consideration as to whether internal relocation was reasonable for the appellant.
- 13.** The Secretary of State opposes the appeal in a Rule 24 response dated 2 September 2021 asserting the appellant's grounds, properly seen, amounts to no more than an attempt to reargue the first instance appeal and that the Judge had expressly given careful regard to the background material and given clear and cogent reasons in support of the key findings.

Discussion

- 14.** Submissions made in advance of the hearing on behalf of the appellant contended:
 1. In relation to ground 1, the A will submit that (inter alia) the Judge's approach to credibility/plausibility was contrary to the cautionary guidance given by this Tribunal in *KB & AH (credibility-structured approach : Pakistan)* [2017] UKUT 491 (IAC), e.g., at [28]-[30]. The A will also rely on the approach as described in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11, e.g., at [102].
 2. In relation to ground 2, the A will submit that the Judge failed to conduct the requisite assessment of whether it would be reasonable for the Appellant to relocate to Kirkuk, adequately or at all: the requisite assessment is described in *AS (Afghanistan)* [2019] EWCA Civ 873 at [61]. This necessarily includes (inter alia) the Judge's failure to take account of or address the fact that the A indicated that he had lost contact with his family, who were (*previously*) in Kirkuk (A's first statement, para 11, and see the A's supplementary statement). The A would add that this failure is also relevant to the Judge's erroneous belief that the A's family could send him his CSID (see ground 1 of grounds of appeal, paras 5 to 7 and see determination, [43]).
 3. Further submissions will be made at the forthcoming hearing. The Tribunal is invited to find that the Judge materially erred in law and that the determination should be set aside in its entirety. Given the necessary fact-finding, the matter should be remitted to the First-tier Tribunal for a *de novo* re-hearing of the appeal.

Vijay Jagadeshm
Garden Court North
21 Mar. 22

- 15.** The main issue that arose before the Upper Tribunal, which was accepted by Mr Diwnycz, relates the Judge's finding at [31] in which the Judge writes:
31. I have considered the Appellant's future risk on return to Kirkuk if his account of the night of 18 January, 2018 is taken at its highest. On the Appellant's own account, his family were still living in Kirkuk and his brother with whom he ran the shop in TK is now running a similar shop in Kirkuk which when he last spoke to them was not able to meet all the family's financial needs and they were being helped by friends. In these circumstances taken at their highest I conclude that the PMF and the Shia Militia in the area have no interest in the Appellant or any members of his family. Additionally, it is significant evidence that undermines the Appellant's claim that the PMF have his name on a wanted list. If this was true his family would have been subjected to detention, questioning and harassment by the PMF on a regular basis in an effort to locate him.
- 16.** The point at issue is that the appellant's case was not that his family were in Kirkuk. Mr Diwnycz referred to the memorandum of the Presenting Officer before the First-tier Tribunal who noted that the appellant's case was that he had lost contact with his family and that they were not there. The appellant also claimed not to have his CSID.
- 17.** The advocates agreed this is a fundamental error which undermines the Judge's findings set out in the determination; as the foundation on which such findings are based does not reflect the evidence given would there is insufficient analysis and reasoning as to why an alternative position was relied upon in the determination.
- 18.** I also find legal error in relation to Ground 2. That relates to the failure of the Judge to make proper findings in relation to the reasonableness of internal relocation if the appellant is unable to return to his home area. Mr Jagadeshm referred to material in the country expert report as well as that in the other country material provided. The appellant's home area was TK and if he could not return there is the Judge's finding that he could return to Kirkuk? There is no specific finding made by the Judge this is the case or analysis of the evidence other than that supporting the appellants case that he cannot relocate to the IKR.
- 19.** It was accepted by the parties that the fundamental error in understanding the appellant's case means that the determination should be set aside as a whole and remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Hillis. At that further hearing, which is best not listed before the handing down by the Upper Tribunal of the awaited country guidance case more commonly referred to as SMO 2, any issues of documentation can be properly considered in addition to where it is proposed the appellant can return to and if, not his home area, the reasonableness of internal relocation.
- 20.** There shall be no preserved findings.

Decision

21. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh.

Anonymity.

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

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

Signed.....
Upper Tribunal Judge Hanson

Dated 6 April 2022