



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004220
First-tier Tribunal No:
PA/53239/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

DOA (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Scott, solicitor for Pickup and Scott Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 21 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and/or any member of his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the appellant and/or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the substantive remaking of the Appellant's international protection and human rights appeal against the decision of the Respondent dated 1 August 2022 (as supplemented by an additional refusal letter, dated 5 December 2023) which refused the Appellant's asylum claim made on 15 February 2019.
2. This decision should be read in conjunction with this Tribunal's earlier error of law decision dated 10 December 2023 in which the decision of the First-tier Tribunal (dated 27 June 2023) was set aside in part.

Relevant background

3. In the error decision, we concluded that the First-tier Tribunal had materially erred in its consideration of the issues relating to the Appellant's ability to return to Iraq and his re-documentation.
4. At paragraphs 8 & 9 of the error of law decision, we specifically preserved the other findings made by the First-tier Tribunal which I summarise here as materially relevant to the assessment of the substantive appeal:
 - a. Prior to leaving Iraq the Appellant was subject to domestic abuse by his father and stepmother.
 - b. The Appellant had not established that this constituted a Convention reason for the purposes of the Refugee Convention.
 - c. The Appellant would not face a real likelihood of risk from his father or stepmother on return to Iraq.
5. As a consequence of the error of law findings, the narrow issue before the Tribunal on remaking is whether the Appellant can establish that he would face a real risk of serious harm on the basis of his status as a person without documentation.

The hearing

6. The appeal hearing was conducted in person at Field House in London. The Appellant was briefly cross-examined by Mr Tufan and gave his evidence without difficulties via the Tribunal's Kurdish Sorani interpreter.
7. At the end of the evidence, I heard oral submissions from both representatives of which I have kept my own note and at the end of the hearing I formally reserved my decision.

Findings and reasons

8. In coming to my conclusions, I have had careful regard to the Appellant's consolidated bundle of 22 PDF pages provided for the error of law hearing in the Upper Tribunal and the Respondent's bundle for the First-tier proceedings consisting of 369 PDF pages; I have also taken into account the

supplementary refusal decision provided by the Respondent, dated 5 December 2023.

9. In assessing the factual matrix itself I have applied, where necessary, the lower standard of proof and applied the same to the assessment of risk upon return to Iraq.

The Appellant's documentation

10. Despite the passage of time, there was some lack of clarity in the Appellant's case in respect of the documentation which he says he had access to when he lived in Iraq. It is clear that the Appellant has always said that he left Iraq by plane to Turkey on his own passport and that this passport was taken away from him by the agent in that country; this was never disputed by the Respondent in the refusal letter and does not appear to have been challenged at the First-tier Tribunal hearing.
11. However, it is also plain that the Judge of the First-tier Tribunal recorded (at paragraph 10) that the Appellant had confirmed that he had a CSID and a passport when he left Iraq.
12. In the hearing before me, the Appellant only referred to a passport until I asked him why the previous Judge had made reference to evidence given about a CSID. The Appellant responded that he did not recall ever saying that he had had a CSID when he left Iraq. In his submissions, Mr Scott submitted that it was the Appellant's case that he had not said that he had a CSID to the First-tier Tribunal. In my view, it is far too late in the day for the Appellant (who is legally represented) to dispute the factual finding of the Judge (at paragraph 10) when it was not subject to appeal and where these findings were preserved in the error of law decision.
13. I nonetheless note that Mr Tufan did not argue that the Appellant in fact had access to his CSID in the UK or that he could have the document sent to him. I also take into account that he told the Respondent that he did not have any documentation with him when he entered the United Kingdom in 2019 (see Q148 of the asylum interview) which itself was not contested by the Respondent in the refusal letter.
14. It is obviously unsatisfactory that this point should only have emerged during this substantive hearing but, for reasons which I have just given, I conclude that nothing particularly turns on the point in light of the way that the Respondent put his case.
15. I have therefore proceeded on the basis that the Appellant does not currently have access to his CSID (if he did in fact ever have one in Iraq) or his passport and that his sister in Iraq does not have access to these documents.

Return to Iraq

16. The Appellant has not disputed, by the production of a background or expert evidence, the Respondent's current position that returnees to Iraq

can be sent to any airport in Federal Iraq and to Erbil/Sulaymaniyah airports in the IKR (*Iraq: Internal relocation, civil documentation and returns* (Version 14.0 - October 2023) at para. 3.6.2).

17. In the same document, the Respondent asserts that there are no longer any administrative offices in Iraq which issue CSID documents and that these offices now only issue INIDs. The Appellant does not contest that the Respondent is incorrect when he also asserts that CSID cards are still accepted at checkpoints in Iraq due to the gradual way in which INIDs are being introduced (para. 3.3.4).
18. The Respondent also accepts that evidence from the British Embassy in Baghdad post-dating SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) (“SMO (2)”) shows that it is no longer possible for a person to obtain a replacement CSID in the UK, (paras. 3.7.11. & 3.7.12).
19. I therefore start by finding that the Appellant could be returned by way of a direct flight from the UK to Erbil where he lived before coming to the United Kingdom. This is of course subject to the Respondent’s observation at para. 3.8.12 which I deal with later in this decision:

“Ethnic Kurds who pass residency requirements and are documented or can be redocumented upon or shortly after return are able to be returned to the KRI directly via Erbil or Sulaymaniyah airports (see Annex C).”

20. Mr Scott tentatively suggested that the Appellant might not be able to obtain a Laissez-passer due to not having any relevant documentation or copies of relevant documentation.
21. I find that the Appellant has not established that he could not reasonably likely obtain a laissez-passer. Mr Scott did not challenge the Respondent’s position in the supplementary letter (at para. 5) or the Respondent’s CPIN (at para. 3.4.6 onwards) that in the absence of any relevant documentation the Appellant would be interviewed by the Iraqi embassy in London and could establish his nationality that way. The Appellant remains in contact with his sister in Erbil and there is no reason why she could not confirm his nationality if that was required either during the laissez-passer enquiry or on the Appellant’s arrival at the airport in Erbil if need be (para. 3.5.3).
22. I reject Mr Scott’s suggestion that the Appellant might face a risk of serious harm during the process of being screened in Erbil. I can see no material factors which might cause such a risk to arise, applying HN 25 of SMO (2):

“25. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.”

23. In respect of the requirement in para. 3.8.12, I find that no good reason has been given for concluding that the Appellant could not travel to his home area in Khalifan and attend the relevant office there to register for an INID.
24. It is important to bear in mind at this juncture that the First-tier Tribunal found that the Appellant did not face a real risk of persecution and/or serious harm on the basis of his previous unfortunate experience of domestic abuse from his father and stepmother (and to some extent her family) and therefore the Appellant has not established that he could not return to his home area safely.
25. There is equally no good reason given for why he could not seek accommodation and help from his sister in Erbil. I also find that the Appellant did not give a good reason during the hearing for not being able to look to his maternal uncle for help: the Appellant said that he had stopped contact with his uncle because he was worried about repercussions from his family but, as I have already recorded, the Appellant did not challenge the First-tier Tribunal's finding that he does not face a real risk of persecution or serious harm from his father and stepmother.
26. I therefore conclude that the Appellant has not established, even at the lower standard of proof, that he could not re-establish contact with his uncle through his sister. In any event, I have found that the Appellant's sister can be expected to assist the Appellant if required and, in any event, as submitted by Mr Tufan, the Appellant could apply for an Assisted Voluntary Return package of £1500 to help him financially as he initially reintegrates.
27. In respect of the journey from Erbil airport to the Appellant's home area of Khalifan, I have taken into account the Respondent's position in the CPIN:

"3.6.6 Internal travel is possible for those persons who would arrive in Iraq either in possession of a CSID or INID or who would be able to be redocumented on arrival at the airport, or shortly after arrival at a location that does not require passing through a checkpoint. They would then be able to travel to their home governorate (or elsewhere) through the various security checkpoints and are, in general, unlikely to encounter treatment or conditions contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 ECHR.

3.6.7 However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the KRI to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection)."

28. There is really no evidence before me as to the presence of checkpoints on any relevant routes to Khalistan. There is certainly reference to checkpoints on the border between the IKR and central/southern Iraq in the

CPIN, SMO (2) and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 (IAC) but nothing before me to show that there is a reasonable likelihood of the Appellant being stopped enroute from Erbil airport to Khalifan (which is in the Erbil governorate).

29. In respect of the reference at para. 3.6.7 to the risk arising for a person having to travel to a different *area* of Iraq or the IKR without documentation: in the absence of evidence of internal checkpoints between Erbil airport and Khalistan, I take 'area' to mean a different governorate where the likelihood of a border checkpoint becomes more than reasonably likely. The only clear exception on the evidence before me is the situation in Baghdad and other insecure areas of Iraq – there is no evidence of such a prevalence of internal checkpoints in governorates within the much more secure IKR.
30. I therefore conclude that the Appellant could obtain an INID in a reasonably speedy time after return to Erbil and that he would be able to obtain such a document without a breach of Article 3 ECHR or paras. 339C/339CA(iii) of the Rules.

Notice of Decision

The Appellant's Humanitarian Protection and Article 3 ECHR appeals are dismissed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 March 2024