



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

Appeal Number: PA/00797/2020 (V)

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 10 November 2020**

**Decision & Reason Promulgated  
On 20 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**HK  
(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Anzani, instructed by Barnes Harrild & Dyer Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 7 January 2020 refusing his asylum and human rights claim.

3. The appellant is a citizen of Iraq from Halabja, of Kurdish ethnicity, whose date of birth is given as 1 January 1989. He arrived in the UK on 4 September 2015, having left Iraq on 22 July 2015 and travelled through several countries, and claimed asylum on arrival. His claim was refused on 16 February 2016 and an appeal against that decision was dismissed on 9 October 2017. The appellant then made further submissions on 27 September 2019 which the respondent treated as a fresh claim, but then refused on 7 January 2020.

4. The basis of the appellant's initial claim, as summarised by the First-tier Tribunal in the decision of 9 October 2017, was that he feared return to Iraq as a result of a relationship he had had with the daughter of a powerful PUK leader in Sulemaniya who had refused his request to marry his daughter and had caught him at their home and shot at him. The appellant claimed to have escaped and to have gone into hiding after that incident and then fled to Turkey. The appellant's claim was disbelieved in its entirety by the respondent and the First-tier Tribunal, owing to inconsistencies in his account. The Tribunal concluded that the appellant had family who continued to reside in Halabja/Sulemaniya and that he would be able to contact his family to obtain details about his identity card, which he had left with them at his home, in order to obtain travel documentation from the Iraqi Embassy in London. It was concluded that he was at no risk on return to Iraq. That decision was upheld by the Upper Tribunal in a decision of 3 April 2018.

5. In the further submissions of 27 September 2019 made on behalf of the appellant it was claimed that he had attempted to obtain new documentation from the Iraqi Embassy in London in September 2019, but had been informed that he would have to obtain the documents in Iraq as he did not have the two original supporting documents required in order to obtain travel documentation in the UK. He claimed to have no contact with his family in Iraq and to have been unsuccessful in his attempt to trace them through the Red Cross. Accordingly he had no one in Iraq to assist him with his re-documentation. As such, it was claimed that his return to Iraq was not feasible. In addition he claimed to be unable to relocate to another area in Iraq as he would be persecuted by Shia militias. He would be at risk on the basis of his Kurdish ethnicity and as a Sunni Muslim. The submissions relied on new country guidance since the previous appeal in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944 and BA (Returns to Baghdad Iraq CG) [2017] UKUT 18, the latter in relation to the risks involved in relocation to Baghdad, an expert report dated 27 July 2015 on the general risks to Kurds returning to Iraq, a statement from the appellant, a statement from the interpreter instructed by his legal representatives who had accompanied him to the Iraqi Embassy in London and some photographs of the appellant attending at the Iraqi Embassy.

6. In the decision of 7 January 2020 refusing the fresh claim, the respondent considered that the appellant would not need to return to Baghdad and could return to his home area or relocate within the KRI, to where he could fly directly. It was accepted that he did not have the relevant Iraqi identity documentation in the UK but it was not accepted that he had no contact with

his family and it was therefore considered that he could obtain the required identity documents in Iraq from his family in order to enable him to obtain the travel documentation in the UK.

7. The appellant appealed against the respondent's decision and his appeal was heard in the First-tier Tribunal on 26 February 2020 by First-tier Tribunal Judge Ross. He produced an appeal bundle and a supplementary bundle for the appeal, which included his witness statement, a letter from the Mukhtar of his local area, a statement from his friend SI, a statement from AA, internet articles about the father of his claimed girlfriend in Iraq and witness statements from interpreters instructed by his legal representatives in relation to the visit to the Iraqi Embassy in London.

8. The judge heard from the appellant and from AA in person. The appellant explained that SI was a friend of his whom he had known since he was 12 years of age who had informed him that he had been to his (the appellant's) family home several times but nobody was there. SI had also obtained the letter from the Mukhtar and had sent it to him. SI had told him that his ex-girlfriend's father was still looking for him. AA gave evidence that he had met with his friend SI in Halabja during a visit in July or August 2019 and SI had given him a letter for the appellant, which he gave to him when he returned to the UK in November 2019. He had not previously known the appellant, but he had read the letter out of curiosity.

9. Judge Ross applied the principles in Devaseelan, having regard to the findings made in the appellant's previous appeal and then going on to consider the new documentary evidence and submissions. The judge did not find the letter from SI to be a reliable document and found AA's evidence to be lacking in credibility. He found the evidence from the interpreters instructed by the appellant's solicitors to be totally unreliable and he accorded no weight to the internet articles. The judge concluded that the situation was no different for the appellant than it was in 2017 and that he could obtain the required documentation from his family who remained in Halabja. He therefore considered that the appellant could return to the IKR or to Baghdad and that his removal would not breach his human rights. He accordingly dismissed the appeal.

10. The appellant sought permission to appeal Judge Ross's decision to the Upper Tribunal on the following grounds: that the judge's finding about his Iraqi documentation being in his family home was contrary to the evidence he had given at the hearing; that the judge's consideration of the evidence of SI was flawed; and that the judge made irrational findings about the witness statement from the two interpreters in regard to the visit to the Iraqi Embassy.

11. Permission to appeal was refused by the First-tier Tribunal but was granted by the Upper Tribunal on 22 July 2020. In the grant of permission, Upper Tribunal Judge Blundell indicated that counsel for the appellant at the First-tier Tribunal hearing, Mr Tawiah, would need to produce his note of the evidence and a statement in regard to grounds 1 and 2.

12. The matter came before me. A further bundle was produced for the appellant containing a witness statement from Mr Tawiah, in which he stated that he had been unable to locate his note of the appellant's evidence but that he was producing his skeleton argument before the First-tier Tribunal and his attendance note emailed to his instructing solicitors following the hearing.

13. Mr Tawiah gave evidence before me, remotely, confirming that the appellant's evidence before the First-tier Tribunal, when asked to clarify his previous statement that his CSID document was in his family home in Halabja, was that he meant that the document was left with his family, with whom he no longer had any contact. Mr Tawiah said that the visits by SI to the appellant's family home had been the main part of the evidence before the First-tier Tribunal and that the appellant had said that he had communicated with SI through Viber. The appellant had been cross-examined about the whereabouts of his CSID and it was at that point that the judge had intervened to clarify the evidence as to whether the document was in his family home. It was then that the appellant said that he meant that the document was with his family. When cross-examined by Mr Lindsay, Mr Tawiah said that he did not have his notes from the hearing when he prepared the grounds of appeal but the appellant's evidence had been fresh in his mind.

14. Both parties then made submissions. With regard to the first ground, Ms Anzani asked me to accept Mr Tawiah's evidence and accept that the appellant had made it clear that his evidence was that his CSID document was left with his family rather than in the family home. Since he no longer had contact with his family, that was a material matter and it meant that he was not able to locate his CSID. As for the second ground, Ms Anzani submitted that the judge's findings, that it was not credible that IS and AA would not know each other if they were mutual friends of the appellant and that it was not credible that AA would have read SI's letter, were irrational and unreasonable. She submitted that the judge had failed to consider the evidence that SI had asked a neighbour about the appellant's family's whereabouts and that he was wrong to find that the Mukhtar had given no information about the appellant's family. As regards the third ground, the judge had given no reasons for finding that the evidence of the appellant's attendance at the Iraqi Embassy with an interpreter was unreliable. Mr Lindsay resisted all three grounds, submitting that grounds one and three were immaterial as the judge did not accept that the appellant's family had left their home and therefore the appellant would be able to access the required documentation from Iraq.

## **Discussion**

15. As Mr Lindsay submitted, grounds one and three fall away if the judge made no errors in rejecting the appellant's claim that he had lost contact with his family. Indeed, much has been made about the judge's record of the appellant's evidence as to the whereabouts of his CSID document, namely whether he had properly clarified that the document had been left with his family or that his evidence was that he had left the document in his family

home. Yet that was plainly immaterial if the appellant remained in contact with his family and they still remained in the family home.

16. I therefore turn to the second ground, relating to the evidence of the whereabouts of the appellant's family. The findings of the previous Tribunal, which Judge Ross took as his starting point, were that the appellant had family who remained in Halabja/ Sulemaniya, that he had left his identity card with his family at home and that there was no reason why he could not contact his family with a view to obtaining details in relation to his identity card. The appellant's evidence for his fresh claim was that he had lost contact with his family and therefore could not access the documentation and was unable to obtain new identity documents and travel documents from the Iraqi Embassy without the information and documents from Iraq. In support of that claim the appellant relied upon documents produced for the appeal before the First-tier Tribunal, namely a letter from the Mukhtar of his local area dated 29 July 2019 and a letter from his friend SI. Judge Ross found neither to give weight to the appellant's claim and found the latter to be unreliable and to have been made up to assist his claim.

17. In my view the judge was fully entitled to accord the weight that he did to the documents and he gave clear and cogent reasons for doing so. The grounds simply quibble with his reasoning but do not provide any proper challenge. Sub-paragraphs (a) to (d) of [10] of the grounds address each separate reason given by the judge at [18] to [20] of his decision for rejecting the evidence as unreliable, and assert that each reason is irrational. However it seems to me that when the reasoning is taken together the judge was fully entitled to make the adverse findings that he did, bearing in mind also the previous significantly adverse findings made against this appellant. With regard to the assertion at [10(d)] of the grounds that the judge was "plainly wrong" to say that the Mukhtar gave no information about the appellant's family, it is clear that the judge's findings are taken out of context, as the judge found that there was nothing in writing from the Mukhtar about the appellant's family, which is perfectly correct - the letter purportedly from the Mukhtar, translated at page 6 of the appeal bundle, says nothing about the appellant's family. In so far as the grounds appear to be referring to paragraph 3 of the letter from SI, it is not at all clear that the latter part of that paragraph is the evidence of SI or of the Mukhtar, but in any event when taken as a whole together with all the evidence, the judge was fully entitled to conclude that there was not anything in that evidence of any weight. The appellant's challenges to the judge's adverse findings simply go nowhere near meeting the high threshold required for a rationality challenge and the judge was perfectly entitled to find that his fresh claim to have lost contact with his family had been made up in order to assist his case that he could not obtain the required documentation to travel to Iraq.

18. As Mr Lindsay submitted, in such circumstances the third ground, relating to the visit to the Iraqi Embassy in London, also falls away, since the reasons the appellant gave for the Iraqi Embassy not being willing to issue him with documentation were of no weight when he was able to obtain documentation

from his family in Iraq. In any event I find nothing unreasonable or irrational in the judge's criticisms of the appellant's evidence in support of his visit to the Embassy. That evidence consisted of three statements: the first, dated 27 September 2019 and produced with the appellant's further submissions of 27 September 2019, was from Mrs Gulallah Ahmadi who confirmed that she was instructed by the appellant's solicitors to accompany the appellant to the Iraqi Embassy as his interpreter and she provided details of that visit; the second was from Mr Bavel Salam whose statement was in identical terms, confirming that he was the appellant's interpreter during the visit to the Embassy; and the third was from Mrs Ahmadi again, to say that her first statement was made in error and that she had not in fact attended the Embassy with the appellant. Given that the contents of the first statement from Mrs Ahmadi and the statement from Mr Salam were identical aside from the different names and signatures and the date being a few months apart, and given that Mrs Ahmadi, in her second statement, stated that she attended many such interviews and the details must have been mixed up with a different client, it is difficult to see how the appellant's representatives could have expected anyone to accord weight to the statements as reliable evidence of a visit to the Iraqi Embassy. Ms Anzani sought to explain the matter as an "anomaly", but I can see force in the criticism made by the judge and I certainly do not agree that it was an irrational criticism.

19. In my view, the judge was perfectly entitled to conclude that the further evidence produced by the appellant was unreliable and did not support his claim to have lost contact with his family in Iraq or to be unable to provide the relevant documents and information to enable him to obtain travel documentation from the Iraqi Embassy in the UK. For all of these reasons I find the grounds of challenge do not identify any errors of law in the judge's decision. I consider that the judge was perfectly entitled to make the adverse findings that he did and to conclude that the appellant would be able to return to Iraq with the relevant documentation.

## **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 stands.

### **Anonymity**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede  
2020  
Upper Tribunal Judge Kebede

Dated: 12 November