



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

Appeal Number: PA/03680/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 3rd January 2020**

Decision & Reasons Promulgated

On 4th March 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE KING TD

Between

BLA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs H Masih of Counsel, instructed by Braitch RB Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq who entered the United Kingdom illegally in October 2015 and claimed asylum. That claim was refused in a decision of 2nd October 2019.
2. The appellant sought to appeal against that refusal, which appeal came before First-tier Tribunal Judge French for hearing on 18th June 2019.
3. It was accepted that the appellant was of Kurdish ethnicity and may indeed have been a Peshmerga soldier. It was not accepted, however, that he received threats from ISIS because of that involvement but in any

event, the hold of ISIS in certain areas of Iraq were no longer in existence. It was not accepted that the appellant faced any danger upon his return.

4. Certain findings were made as to credibility, particularly having regard to the fact that he had claimed asylum in Hungary but had not stayed to pursue that. The explanation given by the appellant for leaving Hungary was that he had been beaten up by the Hungarian police. The Judge noted that explanation but also noted that it had not been an explanation that had been given before. That, together with a number of inconsistencies in the accounts, led the Judge to find that the appellant lacked credibility.
5. The Judge found that the appellant could obtain the necessary documents and return. Accordingly, the appeal was dismissed.
6. The appellant sought to appeal against that decision and permission to do so was granted particularly on the basis that the Judge had failed to consider whether the appellant had or would be able to obtain a CSID prior to return or within a reasonable time thereafter.
7. At the outset of the hearing before the Upper Tribunal Mrs Aboni accepted two matters on behalf of the respondent. The first was that the Judge's treatment as to whether or not the appellant would be able to obtain the necessary documents to facilitate return was inadequate such as to constitute an error of law.
8. Secondly, she conceded that the Judge failed to give due consideration to the then country guidance case.
9. It was her submission, however, in accordance with the respondent's response under Rule 24 filed on 7th October 2019, that the findings as to credibility were properly made.
10. Mrs Aboni asked for the matter to be reconsidered at a further hearing and she asked me to preserve the findings as to lack of credibility.
11. It is argued on behalf of the appellant that essentially the finding of credibility, or lack of credibility, was focused more upon the issues in Hungary rather than a more holistic consideration of the evidence. It was accepted that the appellant was a Peshmerga soldier, thus there should have been perhaps a more detailed consideration as to the reasons why the appellant left Iraq. So far as the comments made by the Judge as to the explanation as to why the appellant left Hungary it is submitted that no consideration was given to the witness statement of the appellant dated 7th June 2019 which had made reference as to why it was that he had left.
12. Given the concessions made by the respondent that there were material errors of law in the decision, it seems to me that there is little alternative but for me to set the decision aside to be re-made. In terms of credibility I do not preserve such findings, although it would be open to the First-tier Tribunal upon a re-hearing to adopt what was set out in the original decision if need be.

13. There are a number of features which will arise for consideration in this case. The appellant is from Sulaymaniyah which is a safe area. He has an uncle and relatives living in that area, although he claims that he has had no contact with them. There was no indication as to whether the appellant has made any effort to try and make contact with them.
14. I bear in mind that there has been a recent country guidance case in **SMO, KSP and IM (Article 15(c), identity documents) Iraq CG [2019] UKUT 00400 (IAC)** and that flights directly to Sulaymaniyah are now possible. The decision sets out the arrangements that are currently available for the issue of identity documents.
15. It may be that the question of credibility is of importance in this case. The finding at paragraph 391 and 392 of that case was that, given the importance of such documents to daily life, it would be reasonable to expect that people who leave Iraq would take such documents with them and/or have a clear recollection as to the details on such a document so as to obtain a replacement. While certain matters were not canvassed with the appellant, he was asked about his ability to source documents and in his initial interview at 4.4 he spoke of having all the information on mobile phone photos. It may be argued that if he took the trouble to take photographs of such documents the CSID would be one of those. In his interview at question 12 the appellant indicated that he destroyed his passport in 2015 in Turkey. Why he should do so was not the subject of any investigation. Such may be relevant as in another passage he seems to indicate that his passport was lost.
16. No doubt these other matters would be of some concern to the Tribunal upon re-hearing.

Notice of Decision

17. The decision of the First-tier Tribunal should be set aside to be re-made by a de novo hearing in the First-tier Tribunal.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed P.D. King

Date 14 February 2020

Deputy Upper Tribunal Judge King TD