



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06721/2017

THE IMMIGRATION ACTS

Heard at North Shields
By video link to Field House
On 20 March 2020

Decision & Reasons Promulgated
On 27 April 2020

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S M K (IRAQ)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Marion Cleghorn, Counsel instructed by Halliday Reeves,
solicitors

For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS [V]

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S M K who is the subject of these

proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal to refuse him international protection under the Refugee Convention, humanitarian protection or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Iraq, a Sunni Muslim and an ethnic Kurd. He comes from Makhmour in western Iraq.
2. This has been a remote hearing which was not objected to by either party. The form of remote hearing was video [V] with the Judge at Field House and the parties in the North Shields hearing centre. A face to face hearing was not held because it was not practicable and both parties consented to a remote hearing by video link. The documents that I was referred to are set out in the decision and the order made is described at the end of these reasons.

Background

3. The appellant was born in 1983 and is nearly 37 years old. Makhmour, his home area, is now part of the Ninewah Governorate, although in the late 1980s and early 1990s, it was considered to be part of the Erbil Governorate. Before leaving Iraq, the appellant lived there with his family and worked as a kebab chef in a restaurant.
4. In August 2014, Makhmour was attacked and taken over by ISIS/Daesh. The appellant's father stayed behind, but the rest of the family fled to Erbil, about 40 miles away (just over an hour's car journey).
5. The Peshmerga quickly retook Makhmour. On the appellant's account, 20 days after leaving Makhmour for Erbil, he and his family were able to return, but his father appeared to have decided to support ISIS/Daesh while they were away.
6. Three or four months later (so in late 2014 or early 2015), the appellant's father left to join ISIS/Daesh, with three other men, one of whom the appellant knew. The appellant was working in the restaurant and did not see his father leave. His father and the man he knew left letters for their families, saying that they were going on a long journey.
7. A few hours after his father's departure to join ISIS/Daesh, members of the family of the other man known to the appellant came to the family home when the appellant was at work. One was the man's brother and a member of the Peshmerga. He had an AK47 rifle. They blamed the appellant's father for encouraging their relative to join ISIS/Daesh, and they humiliated the appellant's mother and uncle, threatening to take the appellant for questioning, or to harm him, because of his father's actions.

8. The appellant's uncle contacted him to tell him what had happened. His uncle collected him, took him to a garage, and arranged for the appellant to leave Iraq. The appellant travelled through Turkey, Bulgaria and France (at least) on the way to the United Kingdom, arriving here over a year later, in January 2016. In his oral evidence, the appellant claimed to have left Iraq at the end of 2016 and spent just 22 days on the way, travelling via Turkey in a lorry. He omitted to mention being fingerprinted in Bulgaria in September and October 2015, when he was briefly detained there. In cross-examination, he admitted that he had spent some time in France.
9. The appellant claimed asylum on 13 January 2016, stating that there was now a blood feud between the two families putting him at risk in his home area of Makhmour. He said it was unreasonable to expect him to return via Baghdad, because he is a Sunni Kurd. He could not be expected to travel from there to Erbil, or to find work in the KRG.
10. On 3 July 2017, the respondent refused his claim on all grounds and notified him of liability to removal.

First-tier Tribunal decision

11. The First-tier Judge found the appellant to be an unreliable, unsatisfactory and dishonest witness. He sought explanations of the difficulties in the appellant's time line, eliciting for the first time that he had spent time in France, for example, but found the appellant's explanations to lack credibility. The appellant told the Judge in evidence that he had a CSID card 'at home', clarifying when asked that he meant his United Kingdom home address.
12. The First-tier Judge noted that the country evidence showed that although Makhmour was taken by ISIS/Daesh on 8 August 2014, the Peshmerga liberated it on 10 August 2014, just two days later. The Judge found the appellant's suggestion that his father had been brainwashed into supporting ISIS/Daesh in just two days to be 'inherently implausible':

"25. ... I do not regard it as credible that the appellant's father could be 'brainwashed' into supporting ISIS/Daesh in the space of two days, or that an Iraqi Kurd would support ISIS/Daesh. All of the objective evidence clearly demonstrates that the rise of ISIS/Daesh has been opposed by the Kurds, who have fought against them, and the struggle against them has drawn different Kurdish groups together. There is no realistic basis for the appellant's father to abandon his home and family and throw in his lot with ISIS/Daesh who had attacked and taken his home town."
13. The Judge found that the appellant, who was in possession of a CSID card, could obtain the necessary documentation to return to Erbil and go from there, either to his home town of Makhmour, or any other part of the KRG that he wished. The appellant was a fit young man, who on his own account had travelled from Iraq to the United Kingdom, sustaining himself for over a year en route.

14. The First-tier Judge dismissed the appeal. The appellant appealed to the Upper Tribunal.

Permission to appeal

15. Permission to appeal was granted on the basis that the First-tier Judge erred in finding the appellant's home are to be within the Kurdish Regional Governorate (KRG) and that it was safe for him to return there, without reference to documentary evidence before him.

16. The Judge also found that the First-tier Judge at the hearing on 14 August 2017 had erred in law in failing to have regard to relevant country guidance and to the decision of the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944.

Error of law decision

17. On 4 April 2018, the appeal came before Upper Tribunal Judge Dawson and Deputy Upper Tribunal Judge Zucker, who noted that there was no challenge to the First-tier Judge's findings of fact and credibility, but expressed concern that Mr Diwnycz, who represented the respondent before that panel (as he does today) was unable to specify whether the appellant would be returned to Baghdad or to Erbil. The panel found that the appellant would not be at risk in his home area of Makhmour, but that, absent a clear indication whether the appellant would be returned to Baghdad or to Erbil, they could not assess whether he could reach Makhmour safely on return.

18. The decision was set aside, the sole issue for the remaking being identified as 'whether the appellant can safely make his way from wherever it is proposed that the Secretary of State would return him' and directions were given for a statement of case from the respondent and a skeleton argument from the appellant, together with such further evidence as each party wished to adduce, to a timetable of 4 weeks.

19. On November 1 2018, the remaking of the decision in this appeal was stayed to await a decision in the Upper Tribunal's forthcoming country guidance case, which was published on 20 December 2019 as *SMO, KSP & IM* (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC).

20. The appeal was then relisted for remaking by the Upper Tribunal.

SMO and others submissions

21. Although *SMO and others* was promulgated on 20 December 2019, by 13 March 2020, a week before the hearing, neither party had made submissions or prepared a statement of case thereon. I therefore directed that they do so by 17 March 2020, so that the parties' case was clear before the hearing.

22. The respondent served a statement of case on 18 March 2020, and the appellant's submission was received on 19 March, bearing a date of 18 March 2020. Although both parties had complied late with my direction, I have had regard to these documents.

23. For the respondent, Mr Diwnycz's position statement was brief but cogent:

"1) The appellant remains in possession of his CSID card at his domestic address in the United Kingdom. It is submitted this document is sufficient to vouchsafe his internal travel from Baghdad International Airport (where he would be removed to, if so done by the Secretary of State, as previously detailed in responses to the Tribunal), according to the ratio in *SMO and ors*. The Presenting Officer will elaborate on that decision and its ramifications if required to at the hearing.

2) Possession of a CSID will permit the appellant to be issued with an Iraqi passport, either on his own application, or by the hand of the Secretary of State. Armed with both these necessary documents, it is submitted he may return or be returned to Iraq via Baghdad, and may then either proceed overland to Makhmour, or seek to enter the IKR, as an ethnic Kurd. It is submitted the return can be effected voluntarily, or by the hand of the Secretary of State.

3) It is submitted that the security situation in Makhmour is not at a level which would place its inhabitants at a risk of indiscriminate violence which would get over the threshold of article 15 (c) . The situation in Makhmour does not warrant the appellant to succeed under the threshold of article 3 of the HRA 1998."

24. Ms Cleghorn's skeleton argument sets out at some length the evidence of Dr Fatah in *SMO and others*. She contends that Makhmour remains in a disputed area, as identified in *SMO and others*, and the appellant therefore cannot be expected to return to his home area. The core of her argument is that this appeal should be approached on the basis of whether the appellant has an internal relocation option to the IKR or to Baghdad, both of which would require him to produce a CSID, which (on the evidence in his witness statement) the appellant no longer had.

25. At [259] the Upper Tribunal in *SMO and others* adopted Dr Fatah's evidence about Makhmour:

"259. The threat from ISIL in Ninewa is higher than in Kirkuk. We note and take seriously the view expressed by the US Consulate and USAID that ISIL is viewed as a threat to the civilian population in Ninewa (and elsewhere). As in Kirkuk, it holds no territory as such but it has an established presence of attack cells, some of which are heavily armed and well organised. Dr Fatah and other commentators agree that there are relatively few incidents involving civilians and that ISIL is more selective in its targets. The focus remains on targeting figures in military or authority positions. There are nevertheless indicators of a higher threat to civilians in this governorate, including the detonation of a truck bomb in a market, the emptying of villages and ISIL attempts to impose taxes on villagers in rural areas. Parts of the population are subjected to physical and psychological pressure from ISIL, particularly at night. We are grateful to Dr Fatah for his update on the recent developments in Makhmour, in which ISIL are said to have become increasingly brazen and have been burning fields and undertaking other activities in this remote region in an attempt to secure territory."

26. Ms Cleghorn notes that Makhmour appears to be in a mountainous area above Baiji in Iraq, in which case, it falls within the exception at [2] in the country guidance in *SMO and others*:

“1. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.

2. The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.”

27. Ms Cleghorn accepted that it was not clear whether Makhmour fell within the area marked on the map at Annex D but submitted that it was likely that it was indeed in that area and was still an area of Article 15(c) internal armed conflict risk.
28. The appellant could not relocate to the Formerly Contested Areas because of his lack of an original CSID and of family support there. Ms Cleghorn asked that the appeal be allowed.
29. That is the basis on which this appeal came before the Upper Tribunal in the video link hearing on 20 March 2020.

Upper Tribunal hearing

30. The appellant gave evidence to the Upper Tribunal through a Kurdish interpreter. He confirmed his name and address and his signature on his latest witness statement, dated 26 February 2020, which he said was true.
31. In that statement, the appellant asserted that his original CSID was not ‘at home’ in the United Kingdom but back in Iraq. He continued to fear returning to Iraq, particularly via Baghdad, which was a Shi’a Muslim majority area, and therefore hostile for him as a Sunni Muslim. In the absence of original documents, he would not be able to travel from Baghdad to Makhmour, his home town. He continued to state that he would not be safe in Makhmour, even if he could get there.
32. The appellant had not been able to contact his family in Iraq since the end of 2015, because he did not know any family members’ telephone numbers by heart and the agent had taken his mobile phone during the journey, as he said it was not safe for the appellant to have it.
33. In oral evidence, the appellant changed his account about the original CSID card again. He admitted that it was in his pocket when he arrived in the United Kingdom in January 2017. He gave it to the police, who asked him what it was, and he told them it was an Iraqi identity card. The police then returned the card to the appellant and, on his account, told him to post it in a red post box. It had not been returned.

34. In response to further questions, the appellant then said that it was his solicitor who had told him to put the original CSID card in the red post box because the Home Office were asking for it. He was given a stamped addressed envelope, and he put the card in that and posted it. This had happened when he was living in Middlesbrough, 2½ to 3 years earlier (so between March and September 2017).
35. The appellant was asked to explain why he had told the First-tier Judge in August 2017 that he still had the card at home. He said that he did still have it then but was asked to send it to the Home Office later. He only had a copy of his CSID now, which was not at home but with his solicitor.
36. The appellant was asked whether he had taken that copy of his CSID to the Iraqi Embassy to get a replacement. He said that he had not: he was certain, without going, that the Iraqi authorities would not accept a copy. If returned, he could not travel on a photocopy of his CSID because checkpoints would not accept it. It was impossible to get a new one with a copy: he had no need to go to the Embassy to establish that, and why should he go there, the appellant asked.
37. In cross-examination, Mr Diwnycz, who had remote access to the respondent's GCID, told the appellant that he had checked for letters to him or his solicitor in 2017 asking for the original CSID to be posted to the Home Office, but there were none. He put it to the appellant that the Home Office had never made such a request: the appellant insisted that he had sent the card.
38. There was no re-examination.
39. In submissions, Ms Cleghorn relied on her written case and said she had nothing to add. Mr Diwnycz relied on the respondent's statement of case and his recent submissions.
40. I reserved my decision, which I now give.

Analysis

41. The appellant's position on whether he has a CSID card lacks credibility. He admits he had it on entry and that the police gave it back to him, yet in his witness statement signed in February 2020, he said it was in Iraq. In oral evidence before the First-tier Tribunal, he said he had it at home in the United Kingdom.
42. In his oral evidence to the Upper Tribunal, the appellant changed his account and said he had posted the CSID to the Home Office, in a stamped addressed envelope which they provided, either at the request of the police on entry, or his solicitor later, but in any event, between March and September 2017 (the First-tier Tribunal hearing was in August 2017). The GCID has no record of any such request.
43. The appellant has had several years to take his copy CSID (if that is what he has now) to the Iraqi Embassy and seek a replacement document. He has not done so and cannot be certain that he would not receive a replacement document if he did.

44. I consider that the appellant has fabricated his evidence about the CSID and that the truth is the simplest one: he had it with him when he came, gave it to the police on entry and they gave it back, and the original CSID is now at his home in Middlesbrough.
45. Even having regard to the lower standard applicable in international protection claims, I do not accept the evidence in the appellant's statement that he has no contact with his family in Iraq, nor that the agent took his mobile phone and he cannot remember any telephone numbers for his family members. I find as a fact that he still has family in Iraq, in either Makhmour or Erbil, who could help him resettle if he were returned with his CSID, via either Erbil or Baghdad.
46. I have had regard to the country guidance in *SMO and others*. Ms Cleghorn's case is put exclusively on the basis that the appellant has no CSID, but I have found that he does have the original CSID. Accordingly, even if there remains an Article 15(c) risk in his home area of Makhmour, this appellant can reasonably be expected to exercise an internal relocation to Erbil or Sulaymaniyah, to both of which cities there are now direct flights. Erbil is only 40 miles from Makhmour and whether his family are in Erbil or Makhmour, they will be able to assist him in resettling.
47. This appeal is dismissed.

DECISION

48. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. I remake the decision by dismissing the appellant's appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 5 March 2020