



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

Appeal Number: PA/08147/2019

THE IMMIGRATION ACTS

Heard at Leeds

On 14 January 2020

**Decision & Reasons
Promulgated
On 26 February 2020**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**HTT
(ANONYMITY ORDER MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr J Holt, instructed by Berwicks Solicitors

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall refer to HTT as “the appellant”.
2. This is an appeal brought by the Secretary of State to challenge the decision of the First-tier Tribunal which, following a hearing in Bradford on 27 September 2019, allowed the appellant’s appeal against the refusal by the respondent of his protection claim.
3. The matter has a relatively long history. The appeal came to the First-tier Tribunal as a result of fresh submissions having been made in 2019 on

behalf of the appellant. There had been earlier decisions of the Tribunal at both levels in his case. One of those was a decision of Deputy Upper Tribunal Judge Holmes who, in 2018, had found that the First-tier Tribunal's decision involved the making of an error of law and set it aside, but then found that, on re-making, the appeal should nevertheless be dismissed.

4. Unfortunately, the Secretary of State was not represented at the hearing in September 2019. The Secretary of State sought to appeal the judge's decision on a number of grounds. One of those was that the appellant's representative, it was said, had failed to disclose to the court that the appellant's brother with whom he lives had been granted asylum and then naturalised as a British citizen, on the basis of a claim that he was an Iranian national. That was significant because the appellant's claim to international protection involved the assertion that he was a national of Iraq.
5. Mr Holt, who appeared before the First-tier Tribunal, and appears today on behalf of the appellant, has put forward evidence pursuant to an application made under rule 15(2A) of the Upper Tribunal Rules, which shows beyond doubt that the Secretary of State was incorrect in asserting that the appellant's brother had been granted protection and subsequently citizenship on the basis that he was an Iranian national.
6. Mr Diwnycz, who appears on behalf of the Secretary of State, helpfully confirmed that no information to support the assertion in the grounds could be found. It is plainly extremely unfortunate that whoever produced these grounds did not check the matter so as to ensure that this obviously erroneous assertion did not feature in them. It is particularly unfortunate, given that the way in which the ground was fashioned amounts to an allegation of professional misconduct on the part of those representing the appellant. I therefore consider that, at the very least, the appellant's representatives should receive a written apology from the Secretary of State for this error.
7. Another of the grounds of challenge of the Secretary of State relates to whether or not Najaf, a place in Iraq, is a place where CAS documentation is handled in respect of those emanating from Mosul. Again, it is now manifest from the Country Guidance that Najaf has been found by the Upper Tribunal to be a place where that activity occurs. It is also manifest that it is some 100 kilometres from Baghdad, which is precisely what the First-tier Tribunal Judge described. Again, therefore, there is no merit whatsoever in this ground.
8. The sole surviving ground of challenge to the First-tier Tribunal Judge's decision is that the judge should have considered himself bound by the principle in Devaseelan to make a finding compatible, or in line, with that of Judge Holmes regarding the issue of re-documentation in Iraq. At paragraphs 22 and 23 Judge Holmes said this:-

- “22. Although the Judge’s decision does not refer to it, the Appellant accepted at interview [Q8] that he had previously been issued with a legitimate Iraqi passport. There is no obvious reason on the Judge’s findings why he would be unable to approach the Iraqi Embassy in London for a replacement since he could give both his biographical details, and his fingerprints to confirm who he is, and to allow him to be matched to the biographical details already held by the passport department of the Ministry. Despite the fact that there is no evidence that he has done so yet, I am therefore satisfied that his return is feasible, and, that he will be able to return to Iraq upon a current legitimate passport, if he were to co-operate with the Iraqi authorities. It would be in his interests to do so, because otherwise he would be returned to Iraq upon a laissez passer which would be confiscated upon return to Baghdad; AAH.”
23. The Judge found that the appellant could obtain the issue of a CSID. That finding is unchallenged. It was open to the Judge to make such a finding because, even bearing in mind the most recent country guidance of AAH the Appellant would be able to obtain such a document either in the UK in advance of his return to Iraq, or, immediately upon arrival in Baghdad, since he is able to obtain the issue of a replacement passport.”
9. The First-tier Tribunal Judge in the present case conducted a long and detailed analysis of the appellant’s case, as it was before him, by reference to the relevant Country Guidance. He concluded at paragraph 63 that the appropriate CSA office for the appellant was in Najaf, as I have said, and that that place was some 100 kilometres from Baghdad. The judge found that the appellant would, as matters stood, have significant difficulties in achieving this journey without the CSID card to start with; and that although he may have some money provided by the Secretary of State for his return, this would be limited and helpful for only a few days. The overall risks of travelling to Najaf without the CSID card was a factor upon which the appellant’s claim succeeded.
10. Mr Holt submits that the Devaseelan principle does not carry the Secretary of State the requisite distance. He points to paragraphs 173 to 187 of AA (Iraq), where it was found that the Iranian Embassy in London cannot provide a replacement CSID for undocumented persons. Mr Holt submits that the Country Guidance does not appear to provide any basis upon which the appellant could re-document himself as the former holder of an expired passport. The appellant’s claim was always that the former passport was left behind in Iraq.
11. I find myself in agreement with Mr Holt on this issue. The finding in Judge Holmes’s decision was not a pure finding of fact regarding the appellant’s history. It was in large part an attempt to prognosticate what the position might be in relation to re-documentation. Paragraph 22 of Judge Holmes’s decision is, in my view, entirely about the issue of obtaining a passport in order to return to Iraq.

12. The important issue of the CSID was dealt with by Judge Holmes at paragraph 23. That finding, based as it was upon the conclusions of the previous judge, is not one which sits easily with the Country Guidance as it was at the time of Judge Holmes's decision. The point is a narrow one but, nevertheless for this appellant, an important one. It is whether the fact that he had a passport in the past, which he no longer had, nevertheless means that he would be able to obtain a CSID card or some variant thereof in the United Kingdom, before he returned to Iraq. I am satisfied that there is no Country Guidance that specifically says that this would be possible in the particular circumstances of the appellant's case. The judge who reached his decision in October 2019 carefully considered all the relevant Country Guidance. I do not find that he committed an error in terms of Devaseelan in not finding the predictive aspect of Judge Holmes's decision, based as it was on the decision of the previous judge. The position would have been otherwise, of course, if those predictions had been more firmly rooted in Country Guidance; but, for the reasons I have given, they were not.
13. This meant, therefore, that the First-tier Tribunal Judge was entitled to reach the conclusions he did in paragraphs 63 and 64. He was entitled on the evidence before him and on the basis of the Country Guidance to conclude that there was a real likelihood that the appellant, even if returned to Baghdad, would have to find his way to Najaf in order to obtain a CSID card. For the reasons he describes, that would be seriously problematic for the appellant's safety. Also, as matters stood at the time, the judge was entitled to conclude as he did at paragraph 64, regarding the lack of feasibility of relatives being able to access Najaf on the appellant's behalf. Although it is not necessary for me directly to have regard to the latest Country Guidance in SMO [2019] UKUT 400, it is noteworthy that the Country Guidance in that case points to the Article 3 risk that may be encountered by somebody, even with an Iraqi passport, making their way to another place in Iraq in order to obtain a CSID or its ID successor.
14. For these reasons, the sole remaining ground of appeal by the Secretary of State does not have merit. I do not consider that the Secretary of State has shown that the First-tier Tribunal Judge committed an error of law such that I should set aside the judge's decision. That means that the decision of the judge allowing the appeal in terms of humanitarian protection stands.

Appeal dismissed

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 their 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

Date 21 February 2020

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber