



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

Appeal Number: PA/12316/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
(via Skype for Business)
On 24 July 2020**

Decision & Reasons Promulgated

On 6 August 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

**HARDI MOHAMMAD ABDULLAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Broudie, Jackson & Canter,
solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 18 July 1990 and is a male citizen of Iraq. He entered the United Kingdom in September 2019. By a decision dated 29 November 2019, the appellant was refused international protection by the respondent. He appealed to the First-tier Tribunal which, in a decision promulgated on 12 March 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had argued before the First-tier Tribunal that he was at risk of return to Iraq on account of his fear of militias operating there and also because he claims to be an atheist. Those claims were rejected by the judge and that rejection is not now disputed before the Upper Tribunal. The only issue remaining to be determined concerns the judge's conclusions regarding the appellant's present risk on return to Kirkuk, the appellant's home area.
3. There are three grounds of appeal., It is asserted that the judge made findings without evidential foundation. The appellant asserts that the judge found that the appellant is in possession of his passport and his CSID identity document. There was no evidence before the judge to justify those findings. The appellant would have been searched upon being encountered by the authorities in the United Kingdom and the judge has failed to explain how the appellant had been able to conceal his identity documents through that process.
4. Mr Bates, who appeared for the Secretary of State, accepted that the appellant may not have been able to have hidden a passport and identity document from those searching him in the United Kingdom. However, he pointed out that the judge had found that the appellant either had these documents with him in the United Kingdom or that he could access those documents with the assistance of family or others from abroad. At [231], the judge writes that, 'the appellant claims that he does not have a CSID card. I found him to be generally incredible. I therefore find that I am not satisfied, even to the lower standard of proof, that the appellant is not in possession of a CSID card *or that he could not retrieve his CSID card within a reasonable period of time.*' [My emphasis]. I agree with Mr Bates that the judge has not made a categorical finding that the appellant has the identity documents with him here in the United Kingdom. However, he has found that the documents have not been destroyed, that they exist and that the appellant could, if required to do so, obtain the documents from abroad. That was a finding available to the judge on the evidence.
5. The second ground of appeal complains about the form of expression used by the judge, in particular his use of double negatives at [221] and [231]. The appellant relies on *ME (Sri Lanka)* [2018] EWCA Civ 1486 at [18]:

"I also consider that it is unsatisfactory in a case of this kind for the fact-finder to express findings of fact in the negative. For example, at [35] the FTT said (more than once) "I do not find that he is now perceived as a threat." If the test were that of the balance of probability, a finding expressed in that way is equivalent to a finding that he is not perceived as a threat. That is because whether a fact has been proved is a binary question, which can only be answered "yes" or "no". But where the question is whether there is a real risk that ME is perceived as a threat, a finding expressed in those terms does not squarely confront the relevant question."
6. Whilst it is true that the Court of Appeal states that the expression of findings of fact in the negative is 'unsatisfactory' the complaint raised in

the paragraph quoted concerned the Tribunal's failure consider whether there was a real risk that the appellant was now perceived as a threat; instead, the Tribunal had considered only whether the appellant was 'now perceived as a threat.' The passage quoted is not authority for finding that the expression of findings of fact by way of double negatives (whilst it may make for inelegant prose) is *per se* an error of law. In the present appeal, the judge's habit of using double negatives, whilst it may be unhelpful for an individual, such as the appellant, who does not speak English, has not led him into legal error. Further, the submission that the judge had failed to confront the relevant question, that is whether it is really likely that an asylum seeker, having taken the refugee Trail cross Europe, arrived in the United Kingdom without documentation has been addressed above; whether or not the appellant has travelled with his identity documentation, it was the judge's clear finding that he can access that documentation, if he needs to do so.

7. The third ground of appeal concerns the assertion by the appellant that the judge has failed to follow the country guidance of *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 (IAC). The Upper Tribunal found that 'mere knowledge of the book and page number family registration details are insufficient without an assessment of the 'state of the documents available' [headnote 13 of SMO]. This ground again ignores the finding that the appellant can obtain his documents from abroad. Arguably, the judge's discussion of whether or not the appellant can remember his book and page number is nugatory given that the appellant can obtain documents which are already in existence from his family in Iraq. However, it is not a material error of law.
8. I find that the judge's conclusion, that the appellant has not lost touch with his family in Iraq, that he has identity documents including a passport and CSID and that he can contact his family members and ask for these documents to be sent to him securely in the United Kingdom was available to him on the evidence. His further finding that, once in possession of those documents, the appellant would be able to travel safely to Baghdad and thence onwards to his home area was likewise open to him. In consequence, the decision is sound in law and the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 30 July 2020

Upper Tribunal Judge Lane