



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13157/2018

THE IMMIGRATION ACTS

Considered on the papers
On 9 September 2020

Decision & Reasons Promulgated
On 15 September 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MH
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

Appellant: Mr Cole, Parker Rhodes Hickmotts Solicitors
Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent 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.

DECISION AND REASONS

Introduction

1. In this decision I remake the decision on the appellant's international protection appeal. This decision must be considered alongside my 'error of law' decision, promulgated on 17 May 2019. In that decision the parties agreed that the First-tier Tribunal ('FTT') erred in law in its approach to the appellant's identity documentation and this aspect of the appeal should be re-made in the Upper Tribunal ('UT') at a 'resumed hearing'.

Procedural history

2. The resumed hearing was listed to be heard on 12 March 2019 but was adjourned because the respondent's representative was too ill to attend court. In directions dated 8 April 2020 (at a time when face to face hearings were not taking place) I indicated that there should be a telephone case management hearing ('TCMH') with a view to the resumed hearing taking place remotely. Pursuant to those directions, the UT received a skeleton argument dated 30 April 2020 and a consolidated bundle from the appellant; and nothing in response to this (in breach of directions) from the respondent.
3. At a TCMH on 28 May 2020, the parties agreed the following matters, and directions were made accordingly:
 - (i) the central issue in dispute i.e. the appellant's ability to obtain replacement suitable identification (it having been accepted on behalf of the respondent that the German authorities have failed to respond to the requests for the return of the identity documents the appellant said he submitted to them) is a very narrow one, requiring limited factual findings;
 - (ii) it is unnecessary for the appellant to give evidence and the decision can be re-made on the basis of written submissions only in accordance with an agreed time-table.

Submissions and evidence

4. The respondent relies upon written submissions dated 28 May 2020. The appellant relies upon his skeleton argument dated 30 April 2020 and a consolidated bundle of evidence filed on 1 May 2020, and his reply to the SSHD's submissions dated 10 June.
5. Having reviewed the submissions made by both parties, I remain of the view that the limited issues in dispute are such that it is appropriate for the re-making decision to proceed on the basis of written submissions only in the light of the Pilot Practice Direction, the UTIAC Guidance Note No 1 of 2020 and the overriding objective in the Tribunal Procedure (Upper Tribunal) Rules 2008.

Issues in dispute

6. The following matters are not in dispute: the appellant is an Iraqi citizen of Kurdish origin. He is from Jalawla in the Diyala governorate and cannot return to his home area. His CSID was taken by the German authorities and both parties have been unsuccessful in obtaining a response from them regarding it. It follows, by agreement, that the overarching issue that remains in dispute is whether the appellant is able to obtain the requisite identity documentation to be able to safely reside in Iraq.
7. The respondent accepts that the most recent country guidance 'CG' case of SMO (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) together with the older CG cases (referred to below) support the proposition that the appellant faces serious harm in Iraq if he is unable to access the requisite identity documentation in the UK and he would be unable to obtain a CSID within a reasonable time in Iraq to obviate the risk of serious harm there.
8. This appeal turns on the appellant's ability to obtain a CSID from the Iraqi Embassy in the UK prior to his return to Iraq. Mr Diwnycz focused his written submissions entirely upon this issue and acknowledged that on the issue in dispute is this very narrow one.
9. This is not a case in which the respondent submitted that there were family members or others who could assist the appellant via proxy. The respondent's case was limited to this: there was some evidence to suggest the appellant might be able to obtain the requisite identity documentation from family members in order to obtain a CSID from the Iraqi Embassy in the UK, but that is a matter for the UT to make factual findings in relation to, without the need for oral evidence or cross-examination.
10. I note from SMO that some governorates have replaced CSIDs with new biometric Iraqi National Identity Cards. However the parties did not make any submissions on this. This is presumably because these have not been introduced in the appellant's home governorate and in any event the appellant would need to get to his home area in person to gain one and the FTT has found he could not do so. In addition he would need some form of identity documentation to get there.

Country guidance and country background information

11. The CG cases on Iraq make it clear that in order to obtain a replacement CSID at the Iraqi Embassy in the UK, to enable the appellant to reside safely in Baghdad or elsewhere in Iraq, he requires: (i) relevant information to confirm his identity, and in addition; (ii) the relevant Iraq family book details. That this is so is clear from headnote 13 of SMO, which states as follows (my emphasis):

“Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual

will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal."

12. The reference to "the documents available" above must be considered by reference to the older CG cases on the topic in AAH (Iraqi Kurds - internal relocation) CG UKUT 212 (IAC) and AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). This is because at [383] of SMO, the UT made it clear they were not being asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK and in effect endorsed [26] of AAH which states this (my emphasis):

"If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity."

13. The Tribunal also endorsed [173] to [177] of AA which states this (my emphasis):

"Obtaining a CSID whilst in the UK

173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application."

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act "*as a proxy*" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad.

"In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport **and/or** the book and page number for their family registration details. For persons without such a passport, **or** who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring.

14. In his written submissions, Mr Diwnycz referred to other country background evidence including the respondent's *CPIN on Iraq: Internal relocation, civil documentation and returns*, dated June 2020 ('the 2020 CPIN') and information from the Iraqi Embassy website. Mr Diwnycz did not submit that the requirements set out in this evidence were materially different to the requirements in the CG cases. Indeed, he accepted that they did not "*seem to differ*". He expressly accepted that even assuming the appellant knows the relevant family book details there are "*nonetheless administrative hurdles*" to be faced at the Iraqi Embassy when making a voluntary application for replacement documentation. This too, is consistent with the CG summarised above.

15. Mr Diwnycz therefore accepted that the appellant would need both family book details and some type of identification evidence to successfully apply for a replacement CSID. That position is supported by the endorsement of the clear statement to that effect in [173] of AA at [383] of SMO. In AA the Tribunal also accepted Dr Fateh's evidence that "*it is necessary to prove who you are beyond reasonable doubt*" – see [22]. I note from the CG cases that the Iraqi government is highly bureaucratic and often very strict in the requirements for formal documentation and identification. I also note from the 2020 CPIN that the process of redocumentation is generally haphazard and fraught with difficulties – see also the caveats added by Dr Fateh at [104] and [105] of SMO. However, the Embassy is likely to be formalistic, less flexible and more bureaucratic in controlling who is entitled to a replacement CSID. It is a matter of common sense that the Iraqi government needs to be careful about who is permitted to enter and travel around Iraq, given the continuing problem with terrorist attacks and this is likely to mean careful vetting of identity and entitlement to a replacement CSID. I am satisfied that when making an application for a replacement CSID, the appellant would need to (i) provide his family book details and (ii) establish that he is that person referred to in the family book by providing some form of Iraqi identification considered satisfactory to an Iraqi official.

Application of CG to this appellant's case

16. As noted in my error of law decision both parties accepted that it would be necessary to remake findings on the appellant's ability to obtain a replacement CSID. Although the FTT accepted aspects of the appellant's account, it rejected others. However, in doing so, it was accepted that the FTT failed to take into account the CG cases relevant to this issue in dispute. With the consent of the parties I now re-make those factual findings, having taking into account the written submissions, the CG cases, the country background evidence, the appellant's own evidence and the un-appealed findings of fact made by the FTT.
17. I need to make factual findings in relation to two issues: when making an application for a replacement CSID, would the appellant be able to (i) provide his family book details and; (ii) establish that he is that person referred to in the family book by providing some form of Iraqi identification considered satisfactory to an Iraqi official. I note that the appellant held a CSID that was taken by the German authorities some time ago. The appellant fled Iraq in 2015 when he was a young man of 20. Although he would have used the CSID for a few years, and was employed in Iraq for a short while, the family book information will not have been used by him for an extended period of time. In addition, he has been without that information for a number of years now. Although the FTT considered that the appellant exaggerated them, it was accepted that he had "some mental health problems". A history of those problems is set out in a GP print out dated 3 January 2018. These support the appellant's claim that he finds it difficult to remember dates and details – see

for example Q 87 of the asylum interview. I note from the CG in SMO that many are likely know their family book details. I am nonetheless satisfied that this particular appellant is unlikely to know his family book details, in the light of his age, past mental health and time without access to the information. This information is critical, and without it the appellant would not be able to obtain a replacement CSID.

18. If I am wrong about this and the appellant does know his family book details, I must also consider whether the appellant would be able to provide the Embassy with the requisite identification documents. As conceded by Mr Diwnycz, the family book details alone would be insufficient to obtain a replacement CSID, absent the requisite identity documentation.
19. The appellant's account of the timing and circumstances of his departure from Iraq in August 2015 is consistent with the country background evidence. He fled when his home area was seized by Daesh in 2014. The FTT appears to have accepted that his father was killed at that time and he could not return to his home area because it was generally unsafe. The FTT noted at [46] of its decision that the only family the appellant could turn to for *support* was his stepmother, who lived in Baghdad and his uncle who lived in Khanaqin. There appears to have been no dispute that the appellant's mother died of cancer when he was a young boy and his father re-married. However the FTT made no clear finding regarding the ability of the uncle and / or stepmother to assist the appellant *in obtaining the requisite identification evidence*. Rather, the FTT found that the appellant would be able to obtain his CSID from the German authorities. The respondent now accepts this is not feasible. In addition, the FTT's findings were limited to the appellant having the potential support of his uncle and stepmother. No clear findings were made as to the contact between them and the current ability to make contact to elicit the necessary assistance.
20. I must therefore consider whether the appellant can obtain assistance to source identity documentation from his stepmother or uncle. In his witness statement dated 22 April 2020, the appellant explained that he no longer had any contact with his uncle and stepmother, and the reasons for this. Mr Diwnycz did not dispute this evidence and made it clear at the TCMH that he did not wish to cross-examine the appellant. In his written submissions Mr Diwnycz offered no reasons why the appellant's evidence as to his *current* lack of contact with family members should not be accepted. I note that the appellant has consistently maintained that he lost all contact with his very limited family members in Iraq (he was an orphan with no siblings) – see his asylum interview in March 2018 at Qs 14 and 15. I also note that the appellant's explanation that the uncle was concerned to distant his family from the appellant in the light of the appellant's mental health is supported by the GP history referred to above.
21. I have considered all the evidence in the round and accept the appellant's evidence that he has not been in contact with any family members and has no means of contacting them. It has not been disputed that the appellant lost both

his parents and was their only child. The appellant lived with his uncle when he fled his home area. His uncle assisted him with significant funds to leave Iraq. That does not necessarily mean that they remained in contact. I accept the appellant's evidence that his uncle felt a sense of duty to assist him given the circumstances but that they have not been in contact since his departure from Iraq in 2015. I also accept that it is reasonably likely that as claimed, the appellant lost touch with his stepmother when his father died in 2014. It must also be remembered that there has been significant displacement since the appellant left Iraq in 2015.

22. The appellant does not have contact with anyone in order to assist with obtaining the requisite identity documentation and would not be able to meet the requirements in order for the Iraqi Embassy to provide him with a replacement CSID, in the particular circumstances of this case.

Conclusion

23. Without the requisite CSID, the CG cases make it clear and Mr Diwnycz accepted, that the appellant is at risk of serious harm in breach of Article 3, ECHR.
24. The appellant has not identified any Convention Reason for this harm and the written submissions are silent on the basis for allowing the appeal. This case succeeds on the basis that the appellant will be unable to reside in Iraq without coming to a real risk of serious harm for reasons relating to an absence of identity documentation. It follows that to return him to Iraq would be a breach of Article 3, ECHR and Article 15(b) of Council Directive 2004/83/EC.

Notice of Decision

25. I remake the decision by allowing the appeal on humanitarian protection and Article 3, ECHR grounds.

Signed: *UTJ Melanie Plimmer*
Judge of the Upper Tribunal

Date: 10 September 2020