



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07205/2019

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)
On: 27th January 2021

Decision & Reasons Promulgated
On: 2nd March 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SHM
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Islam, Fountain Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1989. He appeals with permission the decision of the First-tier Tribunal (Judge Broe) to dismiss his protection appeal.
2. There were two limbs to the Appellant's case before the First-tier Tribunal.
 - i) That he had a well-founded fear of persecution for reasons of his political opinion/ethnicity viz that as a former *peshmerga* he was

'wanted' by the Shi'ite militia *Hashd al-Shaabi* in his home area of Tuz Khurmato;

- ii) In the alternative his appeal should be allowed with reference to Article 15(b) of the Qualification Directive and/or Article 3 ECHR pursuant to the Secretary of State's concession in SMO and Others (Article 15(c) identity documents) Iraq CG [2019] UKUT 400 that an undocumented returnee, who is unable to re-document himself within a reasonable time frame, will face a real risk of falling into destitution.
3. The First-tier Tribunal found against the appellant on both these matters and the appeal was dismissed. The submissions before me take no issue with the Tribunal's conclusion in respect of (i), save that there is disagreement with the Tribunal's finding that the Appellant is not in fact from Tuz Khurmato. The focus of the challenge in this Tribunal relates to the findings in respect of (ii).

Error of Law: Discussion and Findings

Tuz Khurmato

4. By her refusal letter dated the 22nd July 2019 the Respondent had not accepted that the Appellant was from Tuz Khurmato as claimed. At interview he had not been able to correctly name the Mayor of the town when he left, said that the river Awa Spi was to the south when it is to the north, and said that there were no mountains in the area when in fact the entire town is overlooked from the west by mountains. He also gave a history of fighting in the area inconsistent with the known background evidence, and denied that there is a hospital in the city when there is one. The Appellant's explanation for most of these difficulties in his evidence was that he had suffered a head injury after being assaulted by a militiaman and his memory was poor. He had largely stayed hidden in his house for five years between 2012 and 2017 so could recall little about the town. On the issue of who the Mayor was, the Appellant maintained that he was right and the Respondent had got her information wrong.
5. The First-tier Tribunal was prepared to accept that the Respondent may be poorly informed about who the Mayor of Tuz Khurmato was but was unable to accept, even to the lower standard, that someone who claimed to be a shepherd did not know that the locality was mountainous or where the river ran. There was no medical evidence supporting his claim to have lost his memory in respect of his home town. His evidence about fighting against *Hashd al-Shaabi* in 2012 ran contrary to the objective evidence showing that this organisation came into being in 2014. For various additional reasons that I need not set out here the entire account was found to be lacking in credibility.

6. The grounds as originally drafted take no issue with the findings in respect of the Appellant's origins. However in further written submissions, drafted in response to 'Covid-19 directions' made by Upper Tribunal Judge Grubb in June 2020, it is submitted that the Tribunal here failed to take into account all of the correct answers that the Appellant gave at his interview when asked about that locality. Mr McVeety objected to the grounds being amended in this way and asked me to exclude the written submissions.
7. In fact it is a controversy I need not resolve, since the ground is unarguable. The Appellant did, I accept, manage to give some accurate information about Tuz Khurmato, but even taking all of that into account his narrative was fatally undermined by the significant and blatant inconsistencies identified in the determination. Even accounting for the difficulties that many people have in providing a coherent timeline, it is, as the First-tier Tribunal found, not at all credible that a shepherd would be unable to describe the dominant physical features of his surroundings and his claim to have memory problems was not supported by medical evidence. The First-tier Tribunal was quite entitled to reject the Appellant's claim that he is from Tuz Khurmato.

Documentation

8. The Appellant does have permission to argue that the First-tier Tribunal erred in its approach to whether he would be able to obtain new documentation in Iraq, enabling him to access basic services. The Respondent accepts that in the absence of such documentation or other support he would face a real risk of falling into destitution such that would engage the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) of the Qualification Directive.
9. Mr McVeety accepts that in at least some respects, the First-tier Tribunal did err. At its §35 the decision reads:

“He has not offered any reason why he could not in any event obtain a replacement passport from the Iraqi embassy or engage a lawyer in Iraq to obtain identity documents”.

10. Here, Mr McVeety accepts, the Tribunal failed to have regard to the guidance in SMO and Others (Article 15(c) identity documents) Iraq CG [2019] UKUT 400 to the effect that where the Iraqi authorities have rolled out the new biometric 'INID' system, it is no longer possible to acquire new documents by proxy. The individual himself must attend the relevant civil registration office. Further, the Tribunal's notion that the consulate in London could provide documentation has been overtaken by events in that the Respondent accepts, in the June 2020 CPIN *Iraq: Internal relocation, civil documentation and returns* that this is not going to happen:

2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.

11. Mr McVeety further accepted that another error of fact appears at the First-tier Tribunal's §37 where it finds that the Appellant would be returned to the IKR. In fact, as an involuntary return, he was always being sent to Baghdad.
12. Having accepted that the decision of the First-tier Tribunal contains those difficulties, Mr McVeety was not prepared to accept that the decision should be set aside. I return to the question of materiality below.
13. The grounds themselves focus on an entirely different paragraph. Issue is taken with the Tribunal's §34 where it says this: "I do not accept that he has no such documents or family support in Iraq". This is criticised as speculation, and comparison is drawn with the form of words used by the First-tier Tribunal in the appeal of SMO: "the appellant's CSID was 'possibly' at the family home". In SMO the Upper Tribunal held that this was insufficiently clear reasoning.
14. I am not persuaded that such unclear findings have been made here. The Appellant advanced an account which is expressly rejected by the First-tier Tribunal for several very sound reasons. It is against this background that the Tribunal concludes that the Appellant's bare assertions about any matter – including the whereabouts of his family or documents – attract insufficient weight to discharge the burden of proof. Furthermore the Tribunal has specific reason to reject the evidence on this matter [at §30]:

"The Appellant is adamant that he has had no contact with his family since he left Iraq. On his account they provided a significant amount of money to an intermediary who paid the agent in instalments for the various parts of his journey. It follows that there must have been a line of communication between the Appellant or the agent and the intermediary or the Appellant's family. Logic dictates that the Appellant's family must have approved the instalments and were therefore aware of the Appellant's location. I do not find it credible that the Appellant has had no contact with his family. At least they would want to know that he had arrived safely in this country. If, as he claims, they have disappeared, there would be no need for the intermediary to hold the money".

15. I am satisfied that Judge Broe's reasoning on this point is flawed for neither perversity nor impermissible speculation. The finding that the Appellant has failed to show that he has lost touch with his family is free from error and is upheld.

16. I return to the points made by Mr McVeety. It was his submission that the difficulties with the Tribunal's reasoning at its §35 and §37 made no difference to the outcome of the appeal. For the following simple reason, he is correct.
17. The decision in SMO gives claimants who would otherwise fail something of a lifeline in its findings about documentation. At its §317 it says this:

The starting point for our consideration must be the respondent's repetition, at [150] of her closing submissions, of her concession in previous cases that "it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR". This section of our decision is therefore principally relevant to those who have or are able to obtain a CSID (or INID) within a reasonable time or have family members from whom they can secure assistance or support.

18. From there it goes on to find that the Respondent's concession will be engaged in circumstances where the returnee is in effect stuck in Baghdad, either because he does not have family members who could assist him (by bringing existing, or newly issued documentation to him there - enabling him to travel within the country and accordingly reach home) or because he is from an area where the new INID terminals are installed and his physical presence is required before a card will be issued. Where a claimant can prove, to the lower standard, that he will fall within these categories, his claim will succeed pursuant to the Respondent's concession. This Appellant, however, has been unable to establish either matter. Judge Broe expressly rejected the Appellant's claim that he has lost touch with his family. He is unable to establish that his home civil registry is now issuing INIDS, because nobody knows where he is from. As Mr McVeety puts it, the First-tier Tribunal was being asked to solve a jigsaw puzzle with half the pieces missing. The burden of proof lay, in all matters, on the Appellant, and he failed to discharge it. In those circumstances any error in the Tribunal's approach, as outlined above, was immaterial.

Anonymity

19. The Appellant continues to seek international protection. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

"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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

20. The determination of the First-tier Tribunal contains no material error of law and it is upheld.
21. There is an order for anonymity.

Upper Tribunal Judge Bruce
9th February 2021