



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

Appeal Number: PA/08604/2019 (R)

THE IMMIGRATION ACTS

**Remote Hearing by Skype
On 18th May 2021**

**Decision & Reasons Promulgated
On 29th July 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**OHA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Jagadesham, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

An anonymity direction was made by the First-tier Tribunal (“FtT”). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, OHA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The hearing before me on 18th May 2021 took the form of a remote hearing using skype for business. Neither party objected. The appellant joined the hearing remotely. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I am satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I am satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.
2. At the conclusion of the hearing I reserved my decision. I informed the parties that my decision will follow in writing, with reasons. This I now do.

Background

3. The appellant is a national of Iraq. He is of Kurdish ethnicity and was born in Qaladze, a town in the Sulaymaniyah Governorate in the IKR. He arrived in the United Kingdom in April 2016 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 23rd September 2016. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge O'Hanlon for reasons set out in a decision promulgated on 22nd February 2017. The appellant was granted permission to appeal to the Upper Tribunal. His appeal was dismissed by Deputy Upper Tribunal Judge Alis on 3rd October 2017, who found there was no error of law in the decision of Judge O'Hanlon. The appellant made further submissions to the respondent in July 2018, but the respondent refused to treat the further submissions as a fresh claim

for reasons set out in a decision dated 26th October 2018. The appellant again made further submissions on 3rd July 2019. Although the respondent refused the claim for international protection, the further submissions were accepted as a fresh claim giving rise to a right of appeal. The appellant's appeal was dismissed by First-tier Tribunal Judge Lewis for reasons set out in his decision promulgated on 28th September 2019.

4. The matters leading to the claim for international protection made by the appellant were summarised in paragraph [13] of the decision of First-tier Tribunal Judge O'Hanlon. The appellant claims that whilst his wife was pregnant with their second child, he had an affair with a lady who I shall refer to as S. He claims that on 14th August 2015, whilst his wife was staying overnight with her parents, the appellant had met S. When his wife was returning home, she saw the appellant leave S's house. That led to an argument and the appellant's wife called her family. The appellant claims he was beaten so badly that he believed that if neighbours had not come to his assistance, he would have been killed. They then took the appellant's wife and children away with them. On 29th September 2015, the appellant's sister-in-law helped his wife and children flee from her parents home, to travel with the appellant to Erbil, where the appellant's friend had rented a property for them. On 8th November 2015 the appellant's brother-in-law and three men came to the property in Erbil and beat the appellant causing a stab wound to his face and breaking his right hand. Neighbours heard the screaming and shouting and came to the assistance of the appellant. The following day the appellant decided to flee Iraq. The appellant claims his father-in-law and brother-in-law are PUK Members and if he returns to Iraq, we will be subjected to an honour killing by his wife's family.
5. First-tier Tribunal Judge O'Hanlon did not find the appellant's account of his relationship with S to be credible. He also found the appellant's account of the circumstances surrounding the events of 14th August 2015 when his wife discovered his affair, to lack credibility. He rejected the appellant's claim of the beating that he had received from his wife's father and brother on 14th August 2015. He also found the evidence of the appellant and his wife regarding the incident on 8th November 2015

in Erbil, lacks credibility. At paragraphs [21] and [24] of his decision, Judge O’Hanlon said:

“21. On consideration of all of the evidence before me I am not satisfied that the Appellant’s account of his relationship with [S] and events which he stated followed his wife’s discovery of that relationship are reasonably likely to be true for the reasons set out. In the circumstances, the appellant has failed to show me that he has a well-founded fear of persecution on that basis.”

...

24. The Appellant’s claim to be at risk upon return to Iraq is based in part upon his claim that his wife’s brother and father are members of the PUK. In his asylum interview the appellant was only able to give information about the PUK in the vaguest possible terms. Although in his witness statement he has now given more details of this. Given that the alleged members of the PUK are his wife’s brother and father I would have expected the appellant to have more details about the PUK to be given in his asylum interview. Given the evidence of the appellant as to the extent of the influence of the PUK that he subsequently given in his evidence to the Tribunal and in his witness statement, I did not find it credible that the Appellant would risk incurring the attention of PUK members who were close relatives of his wife by embarking upon the affair with [S].

6. In support of the appellant’s further submissions of 3rd July 2019, the appellant maintained his previous claim and submitted a number of documents. At paragraph [5] of his decision, Judge Lewis summarised the appellant’s claim as set out in counsel’s skeleton argument:

“The appellant’s wife and three children are dependent on his claim. In summary the A(ppellant) faces a real risk of serious harm due to being at risk of an ‘honour crime’ from his father-in-law who is a member of the PUK. Further, or alternatively, the A(ppellant) would face a real risk of conditions/treatment contrary to Article 3 ECHR on account of his being an ‘undocumented’ Kurd”

7. At paragraph [7] of his decision, Judge Lewis refers to the claim made by the appellant that the Tribunal should depart from the previous decision of First-tier Tribunal Judge O’Hanlon, and that he relies on documentation which he claims establishes that his father-in-law was a member of the PUK, and that the appellant is at risk from him. At paragraph [8], Judge Lewis noted the second limb of the claim made by the appellant that he cannot internally relocate to the IKR, or elsewhere, because he is without a CSID and could not secure a replacement within a reasonable timeframe.

8. Judge Lewis sets out his findings and conclusions and paragraphs [16] to [31] of his decision.
9. At paragraph [16] of his decision, Judge Lewis confirms that he applies the Devaseelan [2002] UKAIT 00702 guidelines. The decision of Judge O'Hanlon stood as an assessment of the claim that the appellant was making at the time of the first decision. He noted the appellant's claim had been fully set out at paragraph [13] of the decision of Judge O'Hanlon, and at paragraph [20], Judge Lewis noted that Judge O'Hanlon rejected the claims made by the appellant. He noted however, at [21], that in support of the further submissions the appellant has provided a number of documents, including letters that he claims were written by his father-in-law and dropped off at his home in Iraq. He noted the appellant's claim that his mother had found the letters and the content had been read to her by the appellant's sister. At paragraph [22], Judge Lewis set out his reasons for finding that the letters are not credible. At paragraphs [23] to [30], Judge Lewis addressed the appellant's claim that he cannot return to the IKR because he will be found by his father-in-law and that he could not internally relocate to another part of Iraq.
10. Judge Lewis considered the photocopy ID cards and photographs relied upon by the appellant. He was satisfied the appellant does have a relationship with the person in the photographs and that the person is the appellant's father-in-law. At paragraph [25] he said:

"Notwithstanding my finding about the identity of the person in the card, the appellant has not discharged the burden on him to show that he is at risk of persecution for a Convention reason. Having made findings on the evidence out (*sic*) forward as part of the appellant's asylum claim, I also find that the appellant has not demonstrated that he is at real risk of treatment which would engage Article 2 ECHR or Article 3 ECHR."

11. At paragraphs [26] to [30], Judge Lewis considered the appellant's claim that he has no passport or ID card. At paragraphs [27], [28] and [30], he said:

"27. I do not find that the appellant has made every effort to redocument himself. The letter produced by the appellant from his friend states that he has visited the Appellant's parents. The Appellant has been in regular contact with his mother. The Appellant's parents and siblings could assist

him in obtaining replacement documentation. He has failed to demonstrate that he has enlisted their help or that they would be either unwilling or unable to assist him in obtaining replacement documents.

28. Mr Jagadeshm on behalf of the appellant submitted that even if the respondent were correct and the appellant did have the support of family members from whom he could obtain a replacement CSID card or other documentation, this would take 'some time'. Mr Jagadeshm could not say with any degree of confidence how long this will be, but submitted that the effect of the return of this appellant and his family would be to leave them in Baghdad for an unreasonable period of time in which they would suffer hardship per article 3 ECHR. Mr Jagadeshm relied on AAH, headnote paragraph 5, and [111-116].

...

30. For the reasons set out above, I find that the appellant could obtain a replacement card within a reasonable period of time upon his return, such that that (*sic*) Article 3 is not engaged in this case."

The appeal before me

12. The appellant claims Judge Lewis failed to address, adequately or at all, the relevant country guidance as to whether the appellant (accompanied by his family, including children) would be able to secure a CSID within a reasonable period of time. It is said Judge Lewis failed to address the reasons why the appellant would not be able to secure a CSID within a reasonable period of time that were set out in the skeleton argument relied upon. He claims Judge Lewis simply summarised, at [28], the appellant's arguments, but did not address any of them with adequate reasons. He did not address the circumstances the appellant and his family would face in Baghdad as non-Arab speaking Kurds without connections to Baghdad or the difficulties in securing a CSID as set out in AAH (Iraq).
13. Permission to appeal was granted by Upper Tribunal Judge Canavan on 10th February 2020.
14. The appellant has filed and served further written submission in support of the claim that the decision of the First-tier Tribunal is vitiated by a material error of law. Mr Jagadeshm submits Judge Lewis erred in finding that the appellant's parents and siblings could assist the appellant in obtaining documentation. He refers to the Country Guidance set out in AAH (Iraqi Kurds - internal relocation) CG [2018]

UKUT 212 (“AAH (Iraq)”) and submits it is common ground that the appellant is not in possession of a CSID. The appellant’s evidence before the First-tier Tribunal was that he was in contact with his mother only, and it cannot be inferred that his evidence was rejected. In the circumstances, the finding that the appellant’s family could assist the appellant in documenting herself within a reasonable time is unsafe. He submits that in the recent country guidance set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (“SMO & Others”), the Tribunal highlighted the importance of an individual having a CSID or INID in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3. The redocumentation of the appellant and his family remains a central issue that was not adequately addressed by the First-tier Tribunal.

15. Before me, Mr Jagadeshm submits Judge Lewis failed to address the particular circumstances of the appellant and his family. The appellant and his family will be returned to Baghdad because they will not return to the IKR voluntarily. The appellant will not have a CSID during any “waiting period”, and as a non-Arab speaking Kurd with a young family, and no connections to Baghdad, the appellant and his family would face highly deleterious circumstances during the “waiting period”. The appellant also refers to the significant difficulties that were referred to in AAH (Iraq) regarding the securing of a CSID, and that in any case, it is unclear how any family could assist the appellant obtain a CSID whilst he is waiting in Baghdad. He submits that what is reasonable depends upon the particular facts. In AAH (Iraq), at paragraph [116], the Tribunal gave an example of someone that has contacts in Baghdad as against someone who has no contacts in Baghdad.
16. Mr Jagadeshm submits Judge Lewis failed to consider how the appellant could practically obtain a CSID. At paragraph [27], Judge Lewis states: “.. *The letter produced by the appellant from his friend states that he has visited the Appellant’s parents..*”, however the appellant’s case was that he was only in contact with his mother. That does not address the material question of whether the appellant can obtain a CSID within a reasonable time in Iraq. Finally he submits Judge Lewis makes a very

short statement regarding the children's best interests. He submits Judge Lewis did not address the particular characteristics of the appellants, the delay, and the practical difficulties they would encounter.

17. In reply, Mr Tan submits the appellant is from the IKR. He refers to paragraph [106] of the decision in AAH (Iraq) in which the Upper Tribunal held that whilst it remains possible for an undocumented returnee to obtain a new CSID, whether he is able to do so, or do so within a reasonable time frame, will depend on his individual circumstances. The Tribunal set out the relevant factors and referred to the presence of male family members who would be able and willing to attend the civil registry with the returnee. Mr Tan submits that although the appellant's evidence was that he was only in contact with his mother and that in his witness statement, the appellant had claimed that his mother had not told his father about the letters received as his father had already disowned the appellant, the appellant's account of the letters was rejected by Judge Lewis. He submits Judge O'Hanlon noted at [13(a)] of his decision, that the appellant has three brothers and five sisters who continue to live in Iraq. The appellant also has at least one friend in Qaladze who has assisted the appellant and was able to visit the appellant's family home. Mr Tan submits the finding in paragraph [27] of the decision of Judge Lewis to the appellant's parents and siblings being able to assist him in obtaining replacement documentation must be considered in context, and was one that was open to the Judge on the evidence before the Tribunal. Mr Tan submits the finding that the appellant could obtain a replacement card within a reasonable period of time upon his return such that he would not be at risk of treatment contrary to Article 3, was open to Judge Lewis on the evidence and the country guidance.

Discussion

18. The applicant's account of the events that caused him and his family to leave Iraq have been rejected by the Tribunal on two occasions. The appellant does not challenge the findings of Judge Lewis rejecting the

core of the appellant's account of events. Nevertheless, a critical part of the enquiry is the documents the appellant has or might reasonably be expected to get. At paragraph [26] of his decision, Judge Lewis notes the appellant's claim that he has no passport or CSID. In her decision of 16th August 2019, the respondent noted the appellant had previously stated that he held both an Iraqi ID card and a passport, but the documents were lost at sea whilst travelling to Greece. The question therefore was whether it is reasonably likely he will be able to obtain the required documents.

19. In AAH (Iraq), at paragraph [101], the Upper Tribunal noted that a returnee's ability to obtain a new CSID was a matter considered in AA (Iraq) at paragraphs 173 to 187. In AA (Iraq), at paragraph [177], the Tribunal said:

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".

20. Although SMO & others was not promulgated until after the decision of Judge Lewis, at paragraph [383] of its decision, the Upper Tribunal said:

"383. We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian

Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent's CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity.

21. In my judgment, the difficulty with the submissions made by Mr Jagadesham is that they are premised entirely upon the position that the appellant and his family would find themselves in upon return to Baghdad without a CSID, whereas here, Judge Lewis found the appellant has not made every effort to redocument himself. At paragraph [26], Judge Lewis referred to the appellant's evidence that he has been to the Iraqi Embassy in London and his claim that he has made every effort to redocument himself but has been unsuccessful. Judge Lewis noted, at [27], that the appellant has been in regular contact with his mother. He noted the appellant's parents and siblings could assist him in obtaining replacement documentation. He noted the appellant has failed to demonstrate that he has enlisted their help or that they would be either unwilling or unable to assist him in obtaining replacement documents.
22. I reject the claim that it cannot be inferred that Judge Lewis rejected the appellant's claim that he only has contact with his mother. Judge O'Hanlon previously noted in his decision the evidence of the appellant that his parents, three brothers and five sisters continue to live in Iraq. The appellant claimed in his witness statement dated 3rd October 2019, at paragraph [2], that he does not have any contact with family in Iraq. At paragraph [3] he claimed that letters written by his father-in-law were dropped off at his parents home in Iraq, and were found by his mother. He claims his mother did not tell his father about the letters as his father had disowned him. At paragraph [9] of his witness statement the appellant claims he does not have contact with any male family members as they have disowned him and he is unable to obtain any

documents from Iraq to assist with his application to redocument himself. The appellant's claim that has been disowned by his family is linked to his underlying claim of his affair with [S]. However, the Tribunal has now rejected his account of his relationship with [S] and the events which he claims followed his wife's discovery of that relationship, on two occasions. It follows that in my judgment it was open to Judge Lewis to find that the appellant's parents and siblings could assist him in obtaining replacement documentation.

23. The appellant's father remains in Iraq, as do three of the appellant's brothers. The appellant's father and his brothers will be able to assist the appellant with the book and page number for their family registration details. I am satisfied that on the evidence before the judge at the hearing, and the country guidance set out in AAH (Iraq) that it was still possible to obtain a CSID card from the Iraqi Embassy in the UK by contacting male family members in Iraq to send any documents required as well as providing the family book and page reference number. It was open to Judge Lewis to find that the appellant has not made every effort to redocument himself. There is no reason why a power of attorney cannot be provided to the appellant's father or brothers in Iraq who can thereafter undertake the process of obtaining the CSID for him from the Civil Status Affairs Office in their home governorate. There was no evidence before the First-tier Tribunal that the appellant had made a meaningful attempt to secure a CSID or that one would not be issued, even if the proper steps were taken. Once a CSID is obtained, it is clear that the appellant will be able to travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR, so that he can return to his home in Qaladze, a town in the Sulaymaniyah Governorate in the IKR.
24. I turn then to the assessment by Judge Lewis of the best interests of the appellant's children. At paragraph [31] of his decision, Judge O'Hanlon previously found that the children are not British citizens and the best interests of the children are to remain with their parents to be raised in the country of their nationality. In the further submissions made to the respondent under cover of a letter dated 26th June 2019 (*which erroneously refers to the appellant as being from Kirkuk and having*

never lived in the IKR), the appellant's representatives made no attempt to suggest that there is further evidence now relied upon capable of undermining the assessment previously made regarding the best interests of the children. In her decision of 16th August 2019, the respondent considered the best interests of the children, noting in particular that the children have close family in Iraq, including their grandparents and they would be able to access education in the IKR with valid CSID's, which could be obtained with the help of the appellant's family in Iraq. The appellant did not advance any further evidence regarding the best interests of the children in his witness statement. It formed no part of the appellant's case before the First-tier Tribunal that the appellant's youngest child who was born in the UK, would be unable to secure a CSID. The judge cannot be criticised for failing to consider a claim that was not advanced before him. At paragraph [29] of his decision, Judge Lewis confirmed that he has considered the best interests of the children, and it is perhaps unsurprising that nothing further was said, when there was no further evidence for the Judge to engage with.

25. It follows that in my judgement it was open to Judge Lewis to dismiss the appeal for the reasons set out in the decision. An appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis of the evidence for that of the Judge by a narrow textual analysis which enables it to claim that the Judge below misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.
26. Having carefully considered the decision of Judge Lewis I am quite satisfied that the appeal was dismissed after the judge had carefully considered all the evidence before him and upon a proper application of the country guidance then in force. In my judgement, the findings made by Judge Lewis were findings that were properly open to him on the evidence before the FtT. The findings and conclusions reached cannot be said to be perverse, irrational or findings that were not supported by

the evidence. There is in my judgement no material error of law capable of affecting the outcome.

27. It follows that I dismiss the appeal.

Notice of Decision

28. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

20th July 2021