



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001826
First-tier Tribunal No:
PA/52306/2020
IA/02045/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 March 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

ZSA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Winter, instructed by Katani & Co, Solicitors, Glasgow
For the Respondent: Mr J Mullen, Senior Home Office Presenting Officer

Heard at George House, Edinburgh on 29 November 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Prudham, promulgated on 27 July 2021, dismissing his appeal against the respondent's decision of 28 August 2020, rejecting his asylum and protection claim.
2. The appellant is a citizen of Iraq. He entered the United Kingdom, was encountered, and claimed asylum on 24 May 2016. His claim for asylum was refused on 4 November 2016 and his appeal against that decision was dismissed by Immigration Judge Ross for the reasons set out in a decision of 24 August 2017.
3. Permission to appeal to the Upper Tribunal was refused and the appellant then made further representations which gave rise to a fresh refusal for asylum, the decision against which this appeal lies. The appellant's case is that he was born and lived in Mosul, Ninewah Province, Iraq. He is Kurdish and a Sunni Muslim. His father and brother were members of the Ba'ath Party, his father dying some years ago. The remaining family no longer live in Iraq and he cannot return there as he has no documentation to permit him to travel. His case is that he has no family or friends there who can assist him to obtain documents, nor can he return to Mosul or other parts of Iraq as it is under the control of Shia militia. He cannot return to the IKR as his father's connection to the Ba'ath Party means he would not obtain security clearance to enter, and he is at risk also previously having worked for a US oil company.

The Respondent's Case

4. The respondent relied on the 2017 decision noting that in that determination the judge had found the appellant to be lacking in credibility, rejecting his assertion he had been able to travel to the IKR because of his father's activities, rejecting that he would be at risk from Shia militia or as an ex-employee of a US oil company. It had been found that he could relocate either in Baghdad or the IKR. Although accepting that the country situation in Iraq had changed since the 2017 determination, the situation in Iraq did not reach the Article 15(c) threshold. The respondent concluded that the appellant could re-document and return to Iraq.

The Hearing before the First-tier Tribunal

5. The judge heard evidence from the appellant and his brother MSAR who is now a naturalised Norwegian citizen. Having directed himself in line with Devaseelan [2002] UKIAT 00702 the judge held that the starting point was the 2017 determination [33] in which the following findings had been made:

- (a) The appellant's account was not credible. In particular, his account of the loss of his documents and his time in Turkey. The appellant's immigration history further damaged his credibility.
 - (b) There was no threat to the appellant from his father's activities or from Shia militia men.
 - (c) The appellant had never been targeted because he is a Sunni Muslim.
 - (d) The appellant's assertion that he was unable to travel to the IKR due to his father's activities was rejected.
 - (e) The appellant can be re-documented and return to Baghdad or the IKR.
6. The judge referred [34] to [39] to the documents adduced to establish the appellant was from Mosul. The judge also noted that the appellant's brother had provided copies of his Norwegian passport showing Mosul as his birthplace. The judge did not attach weight to the documents, having considered them in the round in light of Tanveer Ahmed [39] noting the adverse credibility findings made against the appellant and the inconsistencies in the documents and their origin, attaching little weight to them. He observed also there was no explanation to why these documents had not been made available at the 2017 determination.
7. The judge noted that the appellant's brother's Norwegian passport gave his place of birth as Mosul but he did not know on what information that was based given he had arrived in Norway without documents. He observed that there was a contradiction between the appellant and his brother's evidence [40], finding [41] that the documentary and oral evidence does not alter the findings made at the 2017 determination, including the finding that the appellant's account lacked credibility. He noted also that the appellant's country expert, Dr Fatah, did not consider the appellant would be at risk as a failed asylum seeker or at any increased risk from Shia militias, and in relation to specific findings in respect of the appellant Dr Fatah had not referenced or seen the 2017 determination or the credibility findings. He therefore he attached little weight to the report insofar as it relates to a specific risk to the appellant returning to Iraq.
8. Turning to the prospect of re-documentation, having had regard to SMO [2019] UKUT 400 and the June 2020 CPIN "Iraq: Internal relocation, civil documentation and returns", the judge found [45] the appellant would be able to obtain a laissez-passer as he still retains contact with his family in Iraq, he had obtained the registration document there and he could relocate to the IKR.
9. The appellant sought permission to appeal on the basis that the judge had erred:
 - (i) in reaching an unclear finding as to whether the appellant is from Mosul or not as he had relied on the previous determination which in turn contained an apparent inconsistency as to where the appellant

was from, the first judge appearing to have accepted at [36] that he was from Mosul

- (ii) in failing to give adequate reasons as to why it rejects other documents such as the Italian identity card of the appellant's brother and an eviction notice, both of which indicated that the appellant's family lived in Mosul.
- (iii) in failing to make proper findings as to how the appellant would get from Baghdad Airport to Mosul without a CSID or INID, the CPIN indicating that he would have to travel to his home area to obtain an INID.

10. Permission to appeal was granted on all grounds.

The hearing on 29 November 2022

- 11. Mr Winter accepted that the core issue with respect to return flows from whether or not the First-tier Tribunal Judge had made a clear finding of fact as to the appellant's place of origin. He accepted if there was a clear finding then it was difficult for his case to succeed.
- 12. Mr Mullen submitted the judge had identified the correct starting point, had looked at all the documents properly and had given himself a proper self-direction. He submitted that the judge had not erred in finding that the appellant could be returned and re-documentation was feasible.
- 13. In response to my questions, Mr Winter submitted that it was not inevitable that the judge would have taken the same approach to the documents specifically the Italian ID card and the eviction notice as he had done to the other documents; this needed to be looked at properly. Had the documents been looked at together then the decision as to the evidence may well have been different. He submitted that the findings as to credibility were as a result vitiated by material error, that there was no clear finding as to where the appellant is from, if he has a CSID or can assess it, and that having family did not resolve the issue of getting to Mosul from Baghdad.

Discussion

- 14. As Mr Winter accepted, this is an appeal which has to be seen through the lens of Devaseelan. It needs also to be borne in mind that the focus of the appeal in 2017 was different from how an appeal would be now given the changes in country guidance and, for that matter, what is now known about documentation in Iraq; the withdrawal of the CSID and its replacement by the biometric INID in effect means that personal attendance to have biometric enrolment at the relevant office is necessary and an INID cannot be obtained by family members.
- 15. I bear in mind also that an Appellate Tribunal should be loath to overturn the findings of fact made by a First-tier Tribunal particularly where it appears to have directed itself properly as to the law.

16. It is relevant to consider the careful terms in which Judge Landes granted permission. She stated:

“4. If the appellant’s home area is Mosul, then on the evidence of Dr Fatah’s report for the appellant, this was an area where INIDs were being issued and the appellant could only obtain such a document in Iraq. The judge referred to the appellant being able to obtain a registration document but did not explain how this would help the appellant pass the various checkpoints. I note in passing that in the 2017 decision the judge found [at 25] that it lacked all credibility that the appellant’s personal documents including his CSID happened to be in a bag which was left in a lorry. However, when the judge in 2017 considered how the appellant could be returned to Iraq the judge explicitly considered the lack of documents (see [32] onwards and in particular at [36] referring to a new CSID) suggesting that the judge in 2017 had not made a positive finding that the appellant had his CSID with him in the UK and could use it on return to Iraq”.

17. It is sensible to start with Judge Ross’ decision from 2017. The judge found as follows:

“23. I find that the appellant is not a credible witness. I found that his credibility is damaged by his failure to claim asylum until after he had been encountered in the UK and served with a liability for removal notice, given that three months earlier he had been encountered at the port of Dunkirk and had not claimed asylum at that time”.

18. The judge also found:

“25. I find the appellant’s account that all his personal belongings including his CSID and his company identification happened to be in a bag which was left in a lorry, lacks all credibility. I find that the appellant has manufactured his account so as not to have produced documents which would enable him to be returned to Iraq. I find that the appellant has been prepared to change the basis of his protection claims so as to fit in with changing circumstances”.

19. The judge concluded [29] the appellant was not a refugee in need of international protection and dismissed his claim. He also dismissed his humanitarian protection claim [30] having directed himself in line with the then extant country guidance. The judge then at [32] turned to the submission made by the appellant’s representative that it was not feasible to return him to Iraq due to a lack of documents. The judge directed himself in line with AA (Iraq) [2017] EWCA Civ 944 which he discussed further at [33] to [35].

20. The judge then concluded at [36]:

“36. Taking all matters into consideration applying the above country guidance I am satisfied that the appellant can be returned to Iraq. I am satisfied that the appellant could obtain an Iraqi passport or a laissez-passer from the United Kingdom, given that he was

previously fully documented in Iraq. I find that his return to Iraq is feasible. The appellant thereafter has the option of remaining in Baghdad and obtaining a new CSID from the Mosul office in Baghdad or of relocating to the IKR which I find is reasonable, given that the appellant is a Kurd. It was not disputed that there are daily inexpensive flights from Baghdad to Erbil”.

21. I do not consider that the findings set out above are necessarily inconsistent. The finding at [25] is that the appellant’s *account* of what has happened to documents is not true. It is *not* a finding that he then possessed the documents but was avoiding having to produce them which implies he had access to them. The findings at [33] onwards are in effect almost findings in the alternative. They have to be seen in the context of the assessment of the feasibility of return and in the light of the then extant guidance and the question which had to be asked, as noted at [34], was whether he has a CSID or will be able to obtain one. In that context it needs to be recalled that, looking at the determination as a whole, the judge had rejected that the claim that the appellant did not have contacts or family in Iraq. Paragraph 36 makes more sense if the judge were considering it in the alternative, that is, that the appellant did not have in his possession or access to a CSID. Thus, I am not satisfied that there was, in reality, a material inconsistency.
22. There is in any event no suggestion that the judge had not read the whole of the 2017 decision. It is clear from [33] that he had done so.
23. Accordingly, I am not satisfied that the judge erred in his approach to the previous determination bearing in mind the other sustainable reasons that the judge reached for doubting the appellant’s credibility in addition to those made by Judge Ross. I refer in particular to the findings of inconsistencies with regard to the documentary evidence at [35] to [37] and between the appellant’s evidence and that of his brother.
24. I accept that the judge does not refer expressly to the Italian ID card or to the eviction notice. But, however, as the judge notes in the self-direction at [30], and at [39] that there was no explanation as to why documents were not made available in 2017, that this applies also to the Italian ID card and the eviction notice. Given the ID card was issued in May 2016 and the eviction notice earlier than that. I have not been taken to any indicator that an explanation was given for this.
25. Accordingly, for these reasons, I consider the judge was entitled to reject the documentary evidence. The submission that he had done so that having looked at the matters in the round fails properly to note that the judge in a careful decision directed himself properly in line with Tanveer Ahmed, nor is there any indication that the two documents drawn to my attention in the grounds were the subject of any particular submission. The judge was clearly entitled to attach little weight to the documents.
26. It follows therefore that the decision of the first-tier Tribunal did not involve the making of an error of law.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed
Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

Date 6 January 2023