



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005446

First-tier Tribunal No: IA/04242/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

FAS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sepulveda, Legal Representative from Fountain Solicitors

For the Respondent: Miss Z Young, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 2 May 2023

Order Regarding Anonymity

The First Tier Tribunal made an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

We make such order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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

Documentary evidence

1. We had before us a digital bundle (DB) of 622 pages. When referring to a page number within this decision, we are referring to the page number of the DB, not the internal pagination of the Appellant's or Respondent's bundles.

Discussion and analysis

2. The Appellant, an Iraqi national, appeals with permission a decision of First-tier Tribunal Judge Juss ('the Judge'), promulgated on 9 September, in which the Judge dismissed the Appellant's appeal against the refusal by the Respondent to grant him asylum. Before the Judge, the Appellant claimed asylum on the basis of mistreatment on return to Iraq due to his political opinion; and humanitarian protection based upon a fear that if returned to Iraq he would suffer unlawful killing, torture, or inhuman and degrading treatment.
3. In the initial grounds of appeal, the Appellant had pleaded:
 - a. Ground 1: Inadequate reasons had been given for the Judge's findings in relation to the Appellant's evidence that he was not in contact with his family; that the Judge had materially misdirected himself in relation to how the Appellant had received the threatening letters; that in finding the letters unreliable because they did not make sense, the Judge had failed to provide reasons as to why they did not make sense, thereby reducing the weight to be attached to them;
 - b. Ground 2: The Judge had failed to apply country guidance because:
 - i. The Judge at, para 22, found "that 'Bagdad is a safe place', and it was unclear whether the finding was "that the Appellant can return to Iraq, via Baghdad, or that he can relocate to Baghdad";
 - ii. If the Judge has found that that the Appellant could return and relocate to Baghdad, he failed apply the headnotes B, C and D of SMO & KPS (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (SMO2), that set out what ought to be considered when assessing proposed return and relocation to Baghdad; and
 - iii. In the alternative, notwithstanding the Appellant's claim for protection, the Judge failed to make findings, in line with the relevant considerations contained within headnotes A - E of SMO2, on whether the Appellant could safely and reasonably return to his area of origin in Iraq, within the

weaker grounds, including Article 8, and would concentrate on Ground 2, and Miss Young, on the basis of Miss Sepulveda's position, confined her submissions to Ground 2.

7. Miss Sepulveda submitted:

- a. Whilst the Judge stated that Baghdad was safe, at para 22, the Appellant comes from Mosul, and the Judge did not state if the Appellant would go on from there to his home area, or if it is suggested that he could relocate in Baghdad.
- b. The Appellant had stated that he had never had a passport, but in his screening interview (DB, p 279), the Respondent had stated that the Home Office had a copy of the Appellant's passport on file (p 101 of DB). The Home Office only had a copy, not the original, and he could not be returned on a copy passport.
- c. The Appellant disputed that he had any contact with his family, and there had been inadequate reasoning in the Judge's decision on how the Appellant could obtain a CSID when he has no original documents. The Judge did not consider how the Appellant would get from Baghdad to Mosul.
- d. Mosul is in the Formerly Contested Areas, and it is not safe in Mosul. The Judge did not consider whether the Appellant could return safely to a Formerly Contested Area safely and securely, applying SMO2. If he could not, there is no consideration as to where he could relocate.

8. Miss Young stated that as Miss Sepulveda was not pursuing Grounds 1 and 3, she would focus her submissions on Ground 2. She submitted:

- a. It was accepted that the Judge referred, at para 22, to SMO Iraq CG [2019] UKUT 400 (SMO1), but the Respondent's position is that because of the findings made in paras 22 - 23, the error was not material.
- b. The Judge found, at para 22, that the Appellant does have family in Iraq and, at para 23, that the Appellant "is not bereft of a CSID card", that is, that the Appellant is not actually without a CSID card.
- c. Pursuant to SMO2, the Appellant will be returned to Baghdad. The Judge does not make reference to the IKR as the place of return; he refers to Baghdad.
- d. Pursuant to SMO2, the Judge did not need to consider relocation because the Appellant was not at risk in his home area of Mosul, and this was open to the Judge against the backdrop of adverse credibility findings pursuant to Devaseelan.

- e. Before the Judge, the Appellant, pursuant to SMO2, failed to identify the possible risk categories that applied to the Appellant if he were returning to his home area of Mosul.
 - f. As to the need for a CSID, and which CSA offices were still providing CSIDs and which areas had switched to providing an INID, further information is contained within the July 2022 CPIN. There are a number of offices within Mosul that still provide a CSID. The Judge's finding that the Appellant would be able to obtain a CSID was not legally flawed, and any error within the decision is not material.
9. In reply, Miss Sepulveda submitted that the Appellant is a Sunni Muslim and the Judge had not explicitly found that the Appellant could return to his home area, which is a Formerly Contested Area, where there may be Shia militia, or whether the Appellant was expected to remain in Baghdad.

Reasoning

10. The Judge's findings, in relation to the Appellant's claim for asylum, are at paras 21 - 23, and these are against the backdrop of the credibility findings made by Judge Pirotta, who heard the Appellant's asylum appeal on 21 November 2002, which was made on the basis of political opinion prior to the Appellant's departure from the UK to Iraq in 2005. The Judge notes that what Judge Pirotta "repeatedly" found in 2002 was that "There was no credible reason advanced for supporting the PKK which the Appellant knew to be a terrorist organisation" and that the Appellant's evidence before her was riddled with inconsistencies. The Judge noted that "The Appellant now has altered his protection claim to say that it is ISIS that he fears" (see para 20 of the decision). The Judge also noted that the Appellant "despite putting forward a claim based on PKK fear as vigorously as he had done, had then gone back to Iraq and he stayed there until 2014" (para 21).
11. The Judge found:
- a. The Appellant had contact with his family members because "there is no reason why he would be talking to them in 2019 (when it is said that they sent him two letters via his friend) and then stopped talking to them after that";
 - b. The entire veracity and reliability of the letters was questionable because of the timing of these letters, said to have been sent well after he departed Iraq in 2014, with letters provided for 2017 and 2018, but none for 2019. The Judge also stated that the letters, as translated did not make sense. The Judge did not believe the Appellant's evidence that the letters had been sent to him via a friend, rather than them having been posted from Iraq; he stated

that the Appellant had “made-up this story” because he could not point to the addressed envelopes which the Respondent Home Office asserted were absent. In his WS (at §7) the Appellant actually states that ‘I lost the envelopes in which the letters arrived in’.

12. The Judge stated that the letters do not make sense, going on to clarify that in the Appellant’s witness statement, at para 7, he stated “that ‘initially’ his claim ‘was about the PKK not ISIS as ISIS came to power in 2014’. However, 2014 is the very year in which he came to the UK and it is simply not credible that ISIS would have sent him two threat letters in 2017 and 2018 especially as he also states in his WS (at §7) that ‘threats continued until 2019 and that is when I received the letters’, bearing in mind that there is no 2019 letter at all and no explanation for its absence. This is to say nothing of the fact that the letters, as translated, do not make any sense at all.” We note that when asked why he had not provided a letter for 2019, the Appellant responded with ‘my life is not safe’ and did not state why there was no letter for 2019.
13. In her submissions, Miss Sepulveda touched upon the Appellant having no contact with his family, which contradicts the finding made by the Judge, in which the Judge states “In the Appellant’s case it is reasonably likely he has contact with his family.” We find that this is a finding that was open to the Judge in the context of (i) pursuant to Devaseelan, the adverse credibility findings made by Judge Pirota; (ii) the finding that despite having vigorously pursued his asylum claim, when his asylum appeal failed, the Appellant left the UK and lived in Iraq from 2005 to 2014; (iii) the Appellant’s evidence was that the letters were given by his own family to his friend and his friend brought them to the UK – it is not clear why his friend would have known where the Appellant’s family was, but the Appellant did not.
14. Miss Sepulveda stated that the Judge stated Baghdad is safe, and that it is unclear if that is where the Appellant is expected to relocate, because the Judge does not state whether the Appellant’s home area, Mosul, which is in a Formerly Contested Area, is safe for the Appellant to return to, pursuant to SMO2. She submitted that if it was envisaged that the Appellant would then travel to Mosul, the Judge failed to consider the risk factors for those who were returning to a Formerly Contested Area, such as Mosul. If he was expected to stay in Baghdad, then the Judge failed to assess whether it was safe for the Appellant to remain in Baghdad, pursuant to SMO2, at headnote para 25.
15. Miss Young submitted that the Judge found that there was no risk to the Appellant from ISIS on return to his home area. As there was no risk from ISIS, the risk factors to be considered on return to the home area if the Appellant returned to a Formerly Contested Area were the same in SMO1 and SMO2. This submission is correct; the risk to the Appellant was said to be from ISIS, not the Shia militia, and at no point during the

submission made on behalf of the Appellant before the Judge at [15] was it suggested Mosul was unsafe for the Appellant to return to, absent risk from ISIS. No submissions were made as to the risk factors that would be applicable to the Appellant if he were to return to Mosul. The focus of the submissions on behalf of the Appellant was on the Appellant's inability to obtain a CSID. The Judge found:

“23. Finally, this brings me to the requirement of a returnee having the necessary documentation. I have to decide this case in the light of the guidance in SMO [2019] UKUT 400, that the appellant would require either a CSID or an INID in order to survive in Iraq or to travel to his home area. The Appellant has family back home I find that he is not bereft of a CSID card...it is well known that it has been for many years necessary to have either a CSID or an alternative form of Iraqi identity document in order to move around the country. ...The Appellant is not without family connections to assist him there. This is not a case where the Appellant does not have either one of a passport or CSID, or does not know the volume and page reference of the entry for his CSID in the Family Book, or has lost contact with his family, or does not have family or friends who would be able to assist him. It would not be consistent with SMO to find that (a) the claimant would not be able to obtain a CSID prior to, or within a reasonable after, arriving in Iraq; and that (b) consequently he would be at real risk of being unable to live and travel within Iraq without encountering treatment or conditions contrary to Article 3 ECHR.”

16. These findings were open to the Judge on the evidence before him. The Judge clearly found that the Appellant would be able to obtain a CSID prior to leaving the UK or within a reasonable period of time of arriving in Iraq, and that this would facilitate his travel within Iraq.
17. Within the grounds, there is an attempt to establish a material error of law by reference to the redocumentation process as set out at headnote C of SMO2, and the Respondent's CPIN of July 2022. In the grounds at para 18, it is stated that the CPIN at Annex D confirmed that “...no government departments in the IKR are issuing CSID, thus, the Appellant would not be able to obtain a CSID by proxy”.
18. Headnote C (13) of SMO2 provides:

“Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the

Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.”

19. It is clear from Miss Sepulveda’s submissions that the Appellant comes from Mosul. Miss Young submitted that CPIN July 2022 at Annex D confirmed that there were a number of offices within Mosul that provided a CSID. We note that no submissions were made to the Judge in relation to where the Appellant’s CSA was located, or that that particular CSA office no longer issued CSIDs. It was therefore not made out before the Judge that the Appellant’s CSA office no longer issued CSIDs. The Judge found that the Appellant would be returned to Baghdad; as the Appellant would have a CSID pursuant to his findings. It would be a matter for the Appellant where he would wish to travel once in Iraq, and it is likely to be where he has family.
20. We find that the Appellant has failed to establish a legal error material to the decision to dismiss the appeal.

Notice of Decision

21. No legal error material to the decision of the Judge to dismiss the appeal is made out. The determination shall stand.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2023