



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006266
First-tier Tribunal No:
PA/52413/2021
IA/06258/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SALEEM PEERDAWD SAEED
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Young, a Senior Home Office Presenting Officer.
For the Respondent: Ms Khan, instructed by Freedom Solicitors.

Heard at Phoenix House (Bradford) on 5 May 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Ali ('the Judge') promulgated following a hearing at Bradford on 24 November 2022, in which the Judge allowed Mr Saeed's appeal.
2. Mr Saeed is a citizen of Iraq, of Kurdish ethnicity, born on 1 January 1971. He originates from Mosul and claimed asylum on the basis he feared he would be killed upon return to Iraq.
3. The Judge noted an earlier decision by First-tier Tribunal Judge Moxon promulgated on 2 February 2018 who dismissed the appeal against the first refusal of Mr Saeed's claim for international protection.
4. The Judge sets out findings of fact from [31] of the decision under appeal. In that paragraph it is recorded that Mr Saeed's nationality, ethnicity, and home area of Mosul were not in dispute either before the Judge or Judge Moxon.
5. The Judge sets out the correct self-direction in relation to the Devaseelan guidance and analyses a number of issues in detail in deciding whether it is appropriate to depart from the earlier findings or not.
6. At [42], when considering the issue of whether Mr Saeed will be at risk in his home area the Judge notes that it was accepted Mosul was a contested area in

the cases of AAH and SMO1 and that considering the objective evidence submitted on behalf of Mr Saeed, and the findings in SMO1, the position remained very volatile on the ground, such that Mr Saeed will be at risk in his home area. The Judge therefore concluded that the evidence did not allow him to depart from the findings made by Judge Moxon in relation to the fact Mr Saeed cannot return to his home area of Mosul.

7. The Judge goes on to consider the issue of internal relocation from [43] findings that Mr Saeed cannot relocate to the IKR as found by Judge Moxon, based upon an acceptance by the Secretary of State that Mr Saeed did not have the appropriate documentation to enable him to do so. Those documents include his CSID.
8. In considering the issue of documentation for himself, the Judge writes [45]:

45. I then turn to address the issue of documentation. The Appellant has been consistent throughout his asylum process and in evidence before me that his documents were retained by the Sheikh Ghanem a fact that I have accepted as credible. I therefore accept that the Appellant is telling the truth and that he does not have the relevant documentation to facilitate a return back to Iraq as was the case in his previous appeal. The Appellant in evidence confirmed that he had been to the Iraqi Consulate to ask for assistance with redocumentation but that yielded no positive outcome and in support of this he has provided photographs. I accept his evidence as credible and find that he has taken whatever steps within his capability but to no avail and I therefore find that he has no documents and thus I do attach weight to the photographs of him going to the Iraqi Consulate. I also accept that all involuntary returns are to Baghdad. I make reference to SMO which confirms that he can only stay in Baghdad briefly to avoid a breach of Article 3 ECHR. I also refer to the Home Office CPIN, which confirms that he cannot be redocumented from outside Iraq if he comes from a place where the INID system has been rolled out. I refer to the background reports which confirms that the INID system has been rolled out in Makhmour which forms part of Mosul and also the IKR. I therefore find that the Appellant would need to get to his home area in order to provide his biometrics in order to obtain an INID but he cannot do that from outside of Iraq. I therefore find that on that basis he cannot be redocumented or returned back to his home area, the IKR or Iraq in general and in doing so I depart from the findings of Judge Moxon.

9. The Secretary of State sought permission to appeal on the basis there had been a misdirection in law/failure to give adequate reasons. The judge who granted permission found it arguable that Judge at [42] applied country guidance in SMO [2019] UKUT 400 rather than the later decision in SMO and KSP (Civil Status documentation, article 15) (CG) [2020] UKUT 00110 which was published on 22 April 2022.

Decision and analysis

10. On behalf of the Secretary of State Ms Young argued that the Judge needed to apply SMO 2, the later decision promulgated in 2020, to assess the issue of risk based upon the findings of the Upper Tribunal in that judgement. It was accepted that it was a narrow challenge but argued that analysis of the evidence on the basis of the findings made could make a difference to the decision.
11. The actual grounds on which permission to appeal was sought assert Mr Saeed should not have qualified for asylum and that the correct grant should have been one of Humanitarian Protection on the basis of the finding Mr Saeed would need to get to his home area in order to provide his biometrics and obtain an INID, which he could not do from outside Iraq.

12. Judge Moxon found Mr Saeed had given an internally consistent account and notes the expert evidence supported the general plausibility of that account, but at [64] wrote *"I have stood back and looked at all the evidence in the round remind myself of the low standard of proof. However, even upon the low standard of proof I am not satisfied that the Appellant's background account is truthful and in fact I am satisfied that he has fabricated an account to pursue an meritorious claim for asylum.*
13. At [65] is the paragraph referred to by the Judge in which Judge Moxon records that the Secretary of State accepted Mr Saeed did not have travel documents and therefore return to Iraq is currently not feasible. Judge Moxon did not accept, however, that Mr Saeed did not have family Iraq and did not have access to travel documents which perhaps remained in his family's possession.
14. Judge Moxon concluded that there was no basis for allowing the appeal on either protection or human rights grounds.
15. At [70] Judge Moxon finds as a Kurdish male Mr Saeed could reasonably relocate to the IKR if appropriate documentation was obtained, and he could reasonably travel to the IKR from Baghdad if he had such documents.
16. Judge Moxon finds there is no evidence that Mr Saeed will be exposed to a risk of serious harm anywhere within Iraq.
17. The Secretary of State's current practice is to return an individual to any airport within Iraq. As an Iraqi Kurd it was not made out Mr Saeed could not be returned to the IKR. It was not made out he would not be able to obtain a laissez passer from the Iraqi Embassy in the UK or that he would not be able to pass through the airport on arrival in Iraq. The issue is what he would do then.
18. The Judge makes a finding, which is not challenged, that he does not have required documentation and would not be able to obtain the same.
19. The Secretary of State's own position set out in the Country Policy and Information Note Iraq: internal relocation, civil documentation and returns, July 2022 accepts that a person without the required documents is entitled to a grant of Humanitarian Protection. At 4.10.3 it is written:

4.10.3 On 27 March 2022 the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) published a report, citing various sources, entitled 'Iraq Humanitarian Needs Overview 2022' which stated: 'The lack of identity and civil documents affects all aspects of a person's life, and the impact is multidimensional. People without an official recognition of nationality and identity have limited access to essential services and are often unable to exercise their fundamental rights. Without documents to prove identity, IDPs' and returnees' physical safety is at risk due to potential arbitrary arrests and detention, rights violation at checkpoints, and limited freedom of movement.
20. I find that it appears the Judge did consider SMO1 rather than SMO2 from a reading of the determination. Failure to follow existing country guidance is legal error unless there is sufficient to warrant departing from that guidance. The required test is set out in case law. There is nothing on the facts of this appeal to warrant the Judge doing so.
21. The Judge's finding in relation to the inability of Mr Saeed to redocument himself is not challenged by the Secretary of State. Even if Mr Saeed was returned to the IKR, so was not required to travel from Baghdad to Mosul, he would still be without the necessary documents to enable him to live life in Iraq without facing a real risk of harm according to the country material.
22. I find that the Judge has erred in law in allowing the appeal on asylum grounds. Even though the sliding scale is referred to in both decisions the Judge has not properly analysed the asylum claim by reference to the correct country guidance decision. It is noted at [42] the Judge finds Mr Saeed will be at risk in his home area but does not set out what that risk is or whether it is for a Convention reason or a risk entitling Mr Saeed to a grant of humanitarian

protection. On the facts as found it appears to be the latter. In light of the acceptance of lack of documentation the correct decision was that the appeal under the asylum ground should be dismissed, and the appeal allowed on humanitarian protection grounds.

Notice of Decision

- 23. The First-tier Tribunal materially erred in law. I set that decision aside.
- 24. I substitute a decision to allow the appeal on humanitarian protection grounds only.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 May 2023