



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003771
First-tier Tribunal No:
PA/51892/2021
IA/06666/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

ZRK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M H Zadeh, United Immigration and Visa Services
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

Heard at Field House on 2 May 2023

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, a citizen of Iraq born in 1988, appeals with permission against the decision of First-tier Tribunal Judge O'Garro (the judge) who dismissed on 17th May 2022 her appeal against the Secretary of State's refusal of her asylum, humanitarian protection and human rights claim on 8th April 2021.

2. The appellant had entered the UK clandestinely on 17th March 2016 and claimed asylum. That claim (on the basis of ISIS and fear of her family) was refused, and her appeal dismissed in July 2019 before First-tier Tribunal Judge Ross. Following further submissions in December 2019 the appellant claimed that her brother wanted her to divorce her husband (who is a dependant on her claim with her three children) and she feared her brother and father should she return to Iraq. In her previous claim the appellant had also asserted that her family would remove her children because her brother wanted her to divorce her husband. Judge Ross had roundly rejected her claim that she would be at risk of persecution from her family.
3. The refusal decision letter dated April 2021 identified that the onus is on the appellant to show she cannot reasonably obtain the documentation, that the CSID card (a key document for accessing services) was still being used and there remained some parts of Iraq where the INID (the biometric card replacement for the CSID) had still not been rolled out. It was accepted that a person returned to Baghdad would not be able to travel through Iraq without a CSID or INID. An applicant rather than proxy needed to attend a centre in person for issue of an INID.
4. The grounds for permission to appeal stated that the judge had been reminded that SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) had been set aside and cited section 2.6.15-16 of the CPIN June 2020 on Iraq: Internal Flight: Civil Documentations and Returns. The grounds added that the appellant had reminded the judge that the appellant 'has no CSID or INID card and no relatives or links in Iraq to assist him [sic] in travelling there safely. He would be unable to obtain this document by proxy.' The grounds submitted return would breach Article 3 ECHR and the appellant would be at enhanced risk of suffering persecution as a Sunni Kurd and not just an ordinary Iraqi citizen. Further the appellant had 'exhausted all possible avenues in terms of trying to connect with his (sic) family as evidenced by the letter from the Red Cross, that he had evidenced his attempts to obtain his documentation through his representatives'.
5. At the hearing we checked with Mr Zadar that these were indeed the grounds of appeal as they appeared to have been written with a male appellant in mind. We were assured that they were the correct grounds. Although he had limited papers as they were being transferred from another legal firm, he nonetheless confirmed that he did not seek any adjournment and wished to proceed.
6. Mr Zadar submitted that there was a further ground he wished to raise which related to the best interests of the children but we declined to admit this ground because (i) the matter had not been pleaded in the grounds (ii) no permission had been granted in that regard and (iii) the judge, as we indicated, had clearly addressed the issue at [53] where he noted that the best interests of the 'quite young' children was to remain in the care of their parents and grow in the culture of which they were nationals'.
7. We therefore refused permission to raise this ground afresh.
8. Mr Zadar also submitted that the appellant could not secure a new CSID by proxy, she hailed from Mosul and would be unable to travel through Iraq without a relevant card.

9. Ms Willocks Briscoe confirmed that there was no Rule 24 reply but submitted that the grounds were not arguable. A key finding at [35] was that the judge rejected that the family were seeking to harm the appellant, found that the claim was a complete fabrication and there was no intent from the family. It was not accepted therefore that the appellant did not have documentation and indeed that was not the claim that could be discerned from the appellant's witness statement. At [42] the judge found that both the appellant's and her husband's family could assist and 'get the required documentation she will need'. It was not unreasonable to infer the family would be able to get the documentation to the appellant. There was no suggestion from the appellant's own evidence that the appellant had lost or destroyed her documentation just that the agent had her passport, and it was reasonable to conclude that the documents were with their family. Whilst the judge did not address SMO [2022] in the determination the findings made were sufficient to support the overall dismissal of the asylum claim.

Analysis

10. The background to this claim was that the appellant's previous appeal had been dismissed in 2019 with adverse credibility findings made. That decision noted that it was specifically not accepted by the Secretary of State that the appellant was no longer in possession of her CSID. Further the judge referred to the appellant's claim in relation to her family as 'made up' or exaggerated. The judge specifically stated at [21] of his decision that he did not accept 'she would not be able to obtain identity documents'. He found there were no very significant obstacles to her return to Iraq.
11. The judge in this case applied the principles in Devaseelan v The Secretary of State for the Home Department [2002] UTIAC and similarly found the appellant's claim not to be credible. The judge found there was no 'marriage exchange' honour crime (where two sets of siblings marry and then one couple divorce the other couple should also do so) and indeed found the present claim to be similar to the one raised in 2019. There was no objective evidence of the honour crime and indeed no challenge was made to any of the judge's findings on credibility.
12. In her witness statement dated 6th June 2021 the appellant wrote
- 'I have no IDs as I had fled my country in fear of persecution and agent was helping to arrange for documentations and would use the documents provide and prepares by the agent. The agent had retained my passport and I do not have any ID with me'.*
- As Ms Willocks-Briscoe observed, there was no suggestion that the appellant had lost or mislaid her documentation which she would have needed when in Iraq merely that she did not have it with her. It was the passport not the CSID which was given to the agent. This was not a case of redocumentation.
13. We find that it was therefore open to the judge having found against the appellant on credibly grounds to find at [43]
- 'To conclude, the appellant will have an ID document and as she is of Kurdish ethnicity [and] can be returned to the IKR.'*
14. Albeit that the judge did not refer specifically to SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 in the decision this was

not material to the decision under challenge because simply the judge did not accept that this was a case where the appellant did not have the relevant documentation and could not secure it. The matter did not rest on the possibility of redocumentation because the judge did not find the appellant credible and did not, from a careful reading, find that the appellant would be unable to locate the documentation. It is reasonable to infer as Ms Willocks-Briscoe submitted that a family member, from whom she was found not to be at risk, would be able to send a CSID to her. As pointed out, her witness at the First-tier Tribunal hearing had visited Iraq in 2019 and had visited the family including the appellant's mother and sister and the appellant's husband's uncle. In the fact sensitive analysis made, it was open to the judge to find that the appellant's underlying claim was a 'fabrication' [50] and that the claim that she would have to be redocumented was also a fabrication. In essence, the appellant would be returned in her family unit to their extended families in Iraq who could assist them in resettling and that would include transmitting the documentation to the United Kingdom.

Notice of Decision

The decision of the First-tier Tribunal contains no material error of law and will stand. The appellant's appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

9th May 2023