



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

First-tier Tribunal No: PA/03345/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 February 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ASK
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Warren, Counsel instructed by Sutovic and Hartigan Solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 9 December 2022

Order Regarding 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 or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1980. The Respondent intends to deport him. The Appellant seeks to resist that deportation action by showing that it would be contrary to his protected human rights.

Case History and Matters in Issue

2. The Respondent has lived in the UK since 2002, when he arrived here as a 22 -year-old and sought asylum. His asylum claim was rejected, and subsequent appeal dismissed. It was accepted that he is a Sunni Kurd from Sulaymaniyah, but not that his fear of persecution at the hands of Islamist militias was well-founded.
3. The years passed and the Respondent was never removed. He met a British woman and they had a child together, born in October 2005 ('C1'). Eventually, in 2012, the Respondent succeeded in regularising his position: he was granted indefinite leave to remain.
4. What went wrong is that the Respondent kept committing crimes. The 'index' offence, that is to say a conviction that led the Secretary of State to make a deportation order against him, was the attempted theft of a Rolex watch from a shop in the Trafford Centre in 2016. For that crime the Court imposed, on the 1st February 2017, a sentence of 14 months imprisonment. This was not the first time that the Respondent had been convicted; nor had it been the first time he understood himself to face possible deportation. Prior to this he has been accrued 10 convictions for 14 other crimes, including assault and a breach of a restraining order. He had already received at least one warning from the Secretary of State. It was against this background that the Secretary of State on the 15th December 2017 made an order to deport the Respondent to Iraq.
5. This was an 'automatic' deportation decision under s32 Borders Act 2007 so when the Respondent brought his appeal against it to the First-tier Tribunal it was for him to show that one of the 'exceptions' to the automatic process applied. These exceptions are set out in s33(2) of the 2007 Act and materially for the purpose of this appeal they provide that a deportation will not proceed where to do so would place the United Kingdom in violation of its obligations under either or both of the Refugee Convention 1951 or the European Convention on Human Rights 1950.
6. On the 25th June 2021 the First-tier Tribunal (Judge Raikes) allowed the Appellant's appeal on both protection and human rights grounds. The First-tier Tribunal found that the exceptions to the automatic deportation procedure were engaged on three grounds. It accepted that:
 - (i) The Respondent's deportation would amount to a disproportionate interference with his Article 8 family life in the UK, in particular that shared with C1;
 - (ii) The Respondent's deportation would place him at a real risk of inhuman and degrading treatment such that would place the UK in violation of its obligations under Article 3 ECHR. There were two parts to this decision.
 - The first was that the Appellant's lack of identity documentation, and the real risk that he could not get new documentation, placed him at risk of destitution

- The second turned on what would happen to the Appellant's mental health should he be returned to Iraq.
- 7. The Secretary of State subsequently applied for, and was granted, permission to appeal to this Tribunal against that decision.
- 8. The administrative history of the appeal since then has been unfortunate. The matter first came before me at Manchester Civil Justice Centre on the 8th December 2021. I heard submissions from the parties on whether the decision of Judge Raikes should be set aside, but towards the end of proceedings the emergency alarm went off and the building had to be evacuated due to a suspected gas leak. Before adjourning I had indicated to the parties that the decision in 'SMO II', the Iraqi country guidance revised in light of the judgment of the Court of Appeal, was believed to be imminent. I indicated that I may revert to them and invite further submissions if necessary, should that decision become available before I reached my decision.
- 9. Unfortunately in the confusion caused by the emergency evacuation of the CJC something went awry, and the file was not returned to me until the 24th June 2022. In my written decision of that date I offered the parties my apologies for that lengthy delay. I also made a decision, and gave directions, to the following effect:

The following findings are preserved:

- i) The Article 8 findings in respect of the 'go' scenario - it would be unduly harsh for C1 to travel to Iraq with his father;
- ii) The Appellant gave his Iraqi identity card to the Home Office 20 years ago and it has since been lost;
- iii) The Appellant suffers from complex PTSD;
- iv) The Appellant's home area is Sulaymaniyah, where new 'INID' terminals are in operation;
- v) The Appellant is an undocumented Sunni Kurd and as such it would be a breach of the UK's obligations under Article 15(b) of the Qualification Directive and/or Article 3 to return him to Baghdad because he would quickly become stranded and destitute on his journey home.

The First-tier Tribunal's findings on following matters are set aside to be re-made:

- vi) There were no Article 8 findings made on the 'stay' scenario - ie whether it would be unduly harsh for C1 to remain in the UK without his father;
- vii) There were no findings on whether there would be a risk of Article 15(b)/Article 3 destitution in the event that the Appellant is removed directly to Sulaymaniyah without a valid identity document;

viii) Given those omissions in the reasoning the s117C(6) global proportionality balancing exercise will need to be remade.

Further Evidence

10. At the resumed hearing on the 9th December 2022 I heard live evidence from C1 to supplement his witness statement of the 4th October 2022. In respect of the Article 8 claim there were also updated photographs of father and son, and a report by Clinical Psychologist Ms Hope Borland.
11. On the current situation in Iraq Mr Bates relied on the updated Country Policy and Information Note *Iraq: Internal relocation, civil documentation and returns* dated July 2022 and Ms Warren on a report by Kurdish expert Dr Kaveh Ghobadi. Both parties invited me to have regard to the findings of the Upper Tribunal in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO II').
12. I have had regard to all of this evidence, and that which was produced in the original appeal, even where it is not directly referred to in my decision.

Return to Iraq: Mental Health

13. I have two reports prepared by Susan Hope-Borland, Consultant in Forensic and Consultant Psychiatry. The first is dated the 9th January 2017, and a more recent addendum the 22nd September 2022.
14. The first report was prepared to assist the sentencing judge in the Crown Court trial where the Appellant was convicted of stealing the Rolex watch. It would appear from the contents that the Appellant was considering running a defence of duress. Ms Hope-Borland records the Appellant's evidence that he had suffered various traumas in Iraq. When he was 16 or 17 he had been kidnapped by al-Qaeda affiliated terrorists who tortured him with a view to forcing him to become a suicide bomber; at some point he was also subjected to what seems to have been a mock kidnap by fellow peshmerga commandoes with a view to "toughening him up". He had also experienced the full horror of growing up in a war zone: he recalled seeing bodies in the streets after bombs had fallen and describes these scenes as being like an action film. The journey to the UK was long and difficult; the Appellant went, for instance, for long periods without eating properly. He reported feeling low, and at times suicidal, in the years that followed. The symptoms he reported to Ms Hope-Borland were consistent with a diagnosis of Post-Traumatic Stress Disorder.
15. In her more recent report Ms Hope-Borland reiterates those findings.
16. In his closing submissions Mr Bates did not seek to go behind the diagnosis of PTSD, but he did point out that Ms Hope-Borland appears to have predicated her assessment on her acceptance that the Appellant was kidnapped and tortured when he was in Iraq. The trouble is that this was evidence that had been rejected by the First-tier Tribunal as long ago as 2003. Ms Warren objected to this submission on the ground that Ms Hope-Borland must have known that the Appellant's original asylum claim had been rejected for want of credibility. She invited me to find that there were a number of reasons why the Appellant might be traumatised. I can do that, but I do note that Mr Bates is quite right to say that Ms Hope-Borland

appears to have proceeded on the basis that the Appellant's claims about what happened to him as a teenager in Iraq are true. See for instance this extract from the most recent report:

4.30 I am of the opinion his mental health problems and indeed his physical health problems originate from his traumatic and abusive experiences that he went through as a child and adult in his country of origin. The latter together with the instability and difficulties that he has experienced since he has been in the UK.

4.31 Mr Korda saw fighting in Iraq, and he was kidnapped at the age of sixteen to seventeen years. He was kidnapped he describes by Jihadist terrorists. He describes being held captive and being tortured which included his skin being burnt with cigarettes, guns being placed into his mouth, being hit on the head with a back of a gun, being tied up and being threatened with getting blown up. Mr Korda had to pretend that he would become a suicide bomber to make his escape. He was young at the time that he was kidnapped. He thought that his life would be over, and he would be shot. Mr Korda then managed to escape and come to the United Kingdom to seek asylum.

17. I accept that this does mean that the weight to be attached to the psychology reports must be reduced. The originating cause of the trauma is not however, strictly speaking relevant. I proceed on the basis of the uncontested evidence that the Appellant does suffer from symptoms of PTSD. As Ms Warren says, Iraq was the scene of much violence in the years before the Appellant left, and his journey across the Middle East and Europe at the hands of people traffickers cannot have been easy. That does not however take the matter much further. That is because he is not – and has far as I can tell never has – been receiving any treatment for his condition. He does not have a GP, and is prescribed no medication to help with his symptoms. He is not undergoing the talking therapy that Ms Hope-Borland believes he could benefit from. Ms Warren submits that this could be because he has found it difficult to access care, but as Ms Hope-Borland points out, there are numerous charities and indeed parts of the NHS that would have been available to the Appellant, even as someone subject to deportation proceedings. This means that the question posed to Dr Ghorband – would the Appellant be able to access treatment in the IKR – is rather irrelevant. The IKR of 2023 is obviously a very different place to the IKR that the Appellant left in 2001. He has no objectively well founded fear of returning there; the uncertainty about his future that hangs over him today will be over; he will be reunited with close family members.
18. I accept that return to the IKR after all of this time will not be easy for the Appellant. I accept unreservedly that he will miss his son and feel profound sorrow that they are separated. I am however unable to find that this sadness, even deepening of a clinical depression, will come anywhere close to meeting the high threshold required for a breach of Article 3 to be shown.

Return to Iraq: Documentation

19. As I note above, the First-tier Tribunal was satisfied that the Appellant is not in possession of a valid Iraqi identity card. It was further satisfied that if he were to be returned to Baghdad without one, he would quickly face

serious difficulties, since without identification he could not freely move, or pass through checkpoints, nor access any state aid, work or secure accommodation for himself. Since his home registry in Sulaymaniyah is now issuing the biometric INID cards he could not rely on a family member to get him one and bring it to the airport, since these are only issued to the individual concerned.

20. The Respondent does not argue with any of that. She does however contend that for the purpose of this appeal that is all irrelevant, since this man will be deported directly to Sulaymaniyah. That is her stated intention and it is consistent with the assertion in the CPIN that returns can now be made direct to the IKR. In those circumstances it is not an assertion that I query, save to say that the Respondent must remain vigilant that this is the basis upon which this appeal has been decided, and that if for any reason the Appellant cannot in fact be forcibly removed to Sulaymaniyah if and when the time comes, the Respondent must have regard to the now uncontested findings that the Appellant will face a real risk of Article 1`5(b)/Article 3 inhuman and degrading treatment if removed to Baghdad.
21. The report of Dr Ghobadi was most instructive on the likely scenario that will meet the Appellant upon arrival in Sulaymaniyah. Although not Iraqi himself, Dr Ghobadi lived and worked in Iraqi Kurdistan for ten years of his life, and has maintained a network of contacts there, whom he called upon in order to assist him with answering the questions put to him by the Appellant's solicitors. He explains that a friend of his, a lecturer at Salah al-Din University Dr Karwan Osman, put him in touch with Lieutenant Colonel Hemn Mahmoud Aziz, the director of the Office of Garmiyan National Identity Card in Kalar, IKR. Lieutenant Aziz confirmed the evidence set out in the July 2022 CPIN that CSIDs are no longer being issued in the IKR at all, and that every office is now issuing what we refer to in English as INIDs. As the panel in the country guidance case heard, this means that the applicant must present himself at the relevant office, in order to have his iris scanned, his photograph and fingerprints taken.
22. Dr Ghobadi then contacted a lawyer he knows in Erbil, a Mr Mahdi Hassan. Mr Hassan reported that the process for obtaining a new INID requires the enrolment of biometric data, but it also requires, as with the old CSIDs, cross checking with the old-style 'family book' where the civil details of all Iraqi nationals were logged. Mr Hassan reports that for a returnee with a male family member in the locality this process is "relatively straightforward", but it will take between one and two months.
23. Ms Warren fairly submitted that this time lag in the Appellant being redocumented was potentially very significant: it is not simply a case of proceeding directly from the airport to the office. She points to the Appellant's vulnerabilities, to his diagnosis of complex PTSD and the fact that he will be returning to a country that he left when he was 20 years old. It is against this background that he will have to survive until the card is issued that enables him to work, find accommodation etc. Given his lengthy absence from Iraq, Ms Warren suggests that I could find it to be reasonably likely that it would be the longest estimate given by Mr Hassan, and that it would evidently be possible to fall into destitution in a space of 8 weeks without the means to support oneself.

24. I accept that this is the case. The real question, however, is whether the presence in Sulaymaniyah of the Appellant's family would obviate that risk. This is acknowledged by Dr Ghobadi who states: "In my opinion the Appellant will not be at risk of encountering conditions that would be in breach of Article 3 ECHR provided that he has the support of his family". At the First-tier Tribunal hearing in June 2021 the Appellant told Judge Raikes that he was still in contact with his mother, and younger brother. He has sisters in the area but they are married with families of their own. Ms Warren points out that the Appellant left Iraq in 2002, when his little brother was an infant, and they have not seen each other in person since that time. She asked me to consider whether this young man, now in his late 20s, would be either willing or able to help the Appellant out while he is waiting for his INID to be issued. The economy in the IKR is in difficulties and many young men are facing unemployment and hardship of their own.
25. I have considered this submission but in light of the candid evidence of the Appellant himself I am unable to find that there is a real risk that the family will turn their back on the Appellant. The Appellant has been able to maintain contact with them whilst he has been in the UK: in 2017 he told Ms Hope-Borland that he spoke to them regularly and that he had a cousin who was a doctor. There is no reason to believe that he has become estranged from these family members today. In AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) the Upper Tribunal heard evidence from Dr Fatah to the effect that even in the face of their own extreme economic challenges the cultural expectation is that families in the IKR will help their own:

122. An estimated 64% of IDPs living in the IKR are accommodated in 'private settings' and the vast majority of these are living with other family members. Some of these families will be living in extremely straightened circumstances, with one or more adults unemployed, but they benefit from pooling resources and having some security in their accommodation. It is the cultural norm in Iraq for individuals, even married adults, to remain living within the extended family. Dr Fatah thought, and we accept, that it would be socially unacceptable for a lone IDP to live apart from his family, and it would be the norm for him to live with them.

26. In the absence of any reason to believe that this family will depart from that social norm, I am unable to find it reasonably likely that the Appellant's brother and other family members would not help him out by providing accommodation, basic food and emotional support. In those circumstances, even having regard to the Appellant's mental health difficulties, I am unable to find that the burden of proof is discharged in respect of Article 15(b)/Article 3.

Article 8

27. C1 obviously loves his father very much. I have read and listened to his evidence carefully, and find it wholly consistent with that given by the Appellant himself, and the observations made by Ms Hope-Borland. I accept that they enjoy a genuine, loving and really warm relationship. C1 looks to his father for support and guidance, and hugely enjoys the time that he gets to spend with him. The impression I got from the photographs

supplied is that the Appellant and C1 have a lot of fun together. I acknowledge C1's fears about how his father's deportation might impact upon him. In his oral evidence he suggested that it could have a detrimental impact on his mental health, although he later agreed that there wasn't a specific mental illness he was thinking of - he has not suffered any mental health problems generally - he just meant that it would make him really very sad, angry even. He would feel low and miss him a lot. That's how it was when his dad went to prison - that was a very difficult time for him and he was supported a lot by school. Although C1 has not lived with his father since he was a young child they have very frequent and regular contact and see each other in person at least once a week. C1 is grateful to have that contact - he knows that not everyone is so lucky as to have two good parents.

28. Accepting all of that evidence I am quite satisfied that the impact on C1 would undoubtedly be harsh, and contrary to his best interests, which would be to have both parents close by as he grows into full adulthood.

29. That is not however the test. The test is whether the deportation would be *unduly* harsh for C1 if his father were to go back to Iraq without him. As the courts have repeatedly pointed out, this does not require decision makers to consider whether the deportation would be upsetting, or difficult, for the people concerned. The consequences must be severe before deportation can be stopped: they must be *bleak*. I am grateful to C1 for coming to court and giving the evidence he did, and I stress that I accepted everything he told me, but the reality is that this high test is not met on the evidence. At the date of writing C1 is seventeen years old. He is on the verge of going into the world and establishing his own life independent of his parents. A glimpse of that independence could be seen in his desire to get a job, earn money and go to Iraq himself if he had to, in order to visit his father, grandmother and other Kurdish relatives. That maturity will also help him to understand why his family is being interfered with by the government. He knows and understands that his father is not leaving the UK by choice. Their separation will not be the end of their relationship. They can maintain the contact that they currently have using telephones and messaging services such as whatsapp, and as C1 says, it will always be open to him to go to Iraq to visit his father. Taking all of those factors into account I am unable to find that the test of 'undue harshness' is met.

30. I must finally consider whether there are very compelling circumstances in this case such that the Appellant's deportation would be disproportionate, even having regard to the substantial public interest in the action proceeding.

31. There are a number of factors which cumulatively, place significant weight in the Appellant's side of the scales in this balancing exercise. The Appellant has lived in the UK a long time. A good many of the years that he spent here were with lawful leave to do so: prior to the decision to deport the Appellant had indefinite leave to remain in this country. He has built a life for himself here, consisting of friends, family and more broadly a way of life. I see no reason to reject his evidence that he feels 'westernised' and that he now considers the UK his home. I find that the Appellant is socially and culturally integrated in the UK. The converse is also true: he will probably feel some degree of alienation upon return to Kurdistan, which will obviously have

changed a lot since the day that he left. It will take him some time before he is able to 'feel at home' there. I also accept that since the index offence in 2017 the Appellant has received no further convictions, and I am prepared to accept that he has made a conscious effort to turn his back on his pro-criminal peers and to lead a law abiding life. I accept that his previous criminal offending was driven by a combination of substance misuse, desperation and youthful stupidity. I accept that the Appellant regrets his actions and that he is ashamed of his past behaviour, particularly given how that has affected C1. I also accept that, for whatever reason, the Appellant has suffered from poor mental health and has over the years suffered from varying degrees of depression and associated symptoms of PTSD. In his worse moments he has thought about killing himself. I find that the consequence of this deportation that is likely to have the most severe impact on the Appellant is his physical separation from C1, whom he plainly loves very much. I do not underestimate how deep that love is, and how horrible it is going to be to say goodbye to him.

32. I must however be guided by the law. The law requires that this appeal may only be allowed on Article 8 grounds where the consequences for the individuals concerned are so severe that they outweigh the very substantial public interest in the deportation of those who come to live in the UK, and commit serious crimes while they are here. When I evaluate the reasons that tend to weigh in the Appellant's favour, I see that each of those adverse consequences will to one extent or another be capable of mitigation. The Appellant is a personable man, who will I am sure be able to re-establish a private life for himself in Iraq. He will in time make friends and build a new social network. He was 22 years old when he left Iraq, but his family home, and indeed family, remain there. He has made an effort to maintain contact with them over the years, and continues to attend mosque. He speaks fluent Sorani. I am not satisfied that he has become altogether unfamiliar with the culture of Iraqi Kurdistan, a place he grew up in, and left as an adult. The Appellant will likely continue to suffer from poor mental health, but absent the uncertainty that has been hanging over him, and with the support of his family, this could in time improve. Most importantly his relationship with C1 can be maintained by telephone, social media messaging and in time, in person visits. For all of those reasons I find that the weight that the Appellant's case has attracted in the balancing exercise, although significant, is limited. It is not capable of displacing the very great weight that must be placed in the Secretary of State's side of the scales in a s117C(6) assessment.

Decisions

33. The decision of the First-tier Tribunal is set aside.
34. I remake the decision in the appeal as follows:
- “The appeal is dismissed on protection grounds.
- The appeal is dismissed on human rights grounds”.
35. There is an anonymity order in place in this ongoing protection appeal.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, flowing style.

Upper Tribunal Judge Bruce
24th January 2023