



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001953

First-tier Tribunal No: HU/51573/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 July 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SMH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by Batley Law
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard by remote video at Field House on 12 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision of the First-tier Tribunal dated 17.12.21, the appellant has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Fisher) dismissing his appeal against the respondent's

decision of 21.4.21 (confirmed in a review of 6.7.21) to refuse his international protection and human rights claims made on entry to the UK on 6.12.19.

2. The appellant is accepted to be an Iraqi citizen of Kurdish ethnicity. There is no challenge to the findings of the First-tier Tribunal rejecting the factual basis of his protection claim.
3. The sole ground of appeal is that of allege irrational reasoning on the issue of identity documentation and return to his home area of the IKR. At [24] of the impugned decision the judge accepted that the appellant did not have access to his CSID, stating:

“Turning to the issue of documentation, I am prepared to accept that the Appellant’s CSID and passport were seized in Greece. This part of his account was not seriously challenged in cross examination. Nevertheless, he could return voluntarily to the KRI with his family via Erbil or Sulaymaniyah airports. If he chose not to do so, he would have to apply for a Registration Document (1957) and use it to apply for a passport or INID on return. He has family members in Iraq who could no doubt assist with the application and he could complete a British power of attorney to be sent to his nominated representative in Iraq.”

4. The grounds, drafted by Mr Greer on 19.9.21, relied on the CPIN V11.0 of June 2020 to the effect that the appellant could not be redocumented by the Iraqi embassy in the UK; is not able to obtain an INID by proxy; and that his enforced return would be to the Baghdad, from where he could not travel safely to the IKR without either a CSID or INID (see 2.6.18). In his oral submissions to me, Mr Greer also argued that even by the standard of SMO1, the 1957 Registration Document could not have facilitated the appellant’s return.
5. However, matters have moved on considerably since the decision of the First-tier Tribunal was promulgated in September 2021.
6. First, whilst SMO1 was the then current Country Guidance, it has been replaced by SMO2, [SMO & KSP (Civil status documentation; Article 15) Iraq CG [2022 UKUT 110 (IAC)] promulgated on 16.3.22, which held at headnote [7] that former IKR residents will be returned to the IKR and need only be in possession of a current or expired passport or laissez passer; at [26] that there are now direct flights to the IKR, either Erbil or Sulaymaniah; and at [30] that once at the IKR border, a former resident will be admitted with no restrictions.
7. Second, the most up-to-date version of the CPIN is V13.0 of July 2022, which confirms that the Guidance of SMO2 remains valid, and at 3.3.1 that a failed asylum-seeker can be returned to any airport in the IKR.
8. Mr Greer argued that the findings at [24] of the impugned decision were perverse and that even on the basis of SMO2, the appellant would not be able to travel from the airport to the Civil Affairs Office in order to apply for an identity document, which has to be done in person.
9. Ms Nolan accepted that there was an error of law at [24] but suggested that the appeal could simply be remade by applying SMO2 and the current CPIN. However, whilst I accept that there was an error of law in the decision of the First-tier Tribunal, I am not satisfied that there that error is material in light of the current case law and Home Office policy. I am satisfied that on the basis of both SMO2 and the July 2022 CPIN, the appellant will be able to be returned directly to the IKR without needed to land in Baghdad, and will only need a laissez passer to make that journey. Undoubtedly, he will have no difficulty in being issued with a laissez passer whilst in the UK. Once arrived at Erbil or Sulaymaniah, he will be

granted entry and will be able to make his way without hinderance to the Civil Affairs Office for the issue of an INID identity document. I reject the argument advanced by Mr Greer that the appellant will not be able to proceed beyond the airport without his CSID. It follows that there is no need to remake the decision as the outcome of the appeal would be the same. Unarguably, the appellant will be able to be returned to the IKR without his CSID and, as stated above, once within the territory, will be able to present himself in person to obtain a new INID.

10. There were no other grounds of appeal. It follows from the above that on the limited grounds upon which permission was sought and granted, whilst there was an error of law in the decision of the First-tier Tribunal, it was not a material error because as things stand, inevitably the appeal would be dismissed even if remade now.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order for costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2023