



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004326

First-tier Tribunal No:
PA/12296/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th September 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Aram Ali Abdulrahman
(no anonymity order made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V, Adams, Counsel instructed by JCWI
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard remotely at Phoenix House (Bradford) on 25 September 2023

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1976. The Respondent wants to deport him because he is a foreign criminal. On the 11th January 2018 he was sent to prison for 3 years for sexually abusing his former stepdaughters, who were aged 9 and 14 at the time of the offences. The Appellant seeks to resist deportation on protection and human rights grounds.
2. The Appellant's appeal was dismissed by the First-tier Tribunal (Judge Lodato) on the 14th March 2022. He was granted permission to appeal to this Tribunal on the 15th November 2022 by Upper Tribunal Judge Pickup.

3. There were seven grounds advanced in writing on the Appellant's renewed application or permission, and here I address those grounds in the order in which they were advanced before me by Ms Adams.

The Appellant's Documentation

4. The first ground concerns whether Judge Lodato erred in concluding that the Appellant had failed to show that he would be reasonably likely to fall into destitution in Iraq because he will not be in possession of a valid identity document.
5. It was the Appellant's case before the First-tier Tribunal that he is not currently in possession of a valid identity document. He admitted that he does have a document, but stated that it is no longer available to him. It was in the possession of his sister, who lives in Mosul, but her husband does not approve of him and has seized the card. He is refusing to give it back. The Appellant would therefore, on his case, be stuck in Baghdad without the ability to travel to Mosul, the site of the relevant civil registry.
6. The relevant findings by the Tribunal are at its paragraphs 67-68:

67. I begin my assessment of this issue by accepting that if the appellant were to return to Baghdad as an involuntary returnee without Iraqi identification documentation and without any realistic prospect of acquiring such documentation, he would almost certainly find himself stranded in the city. In such circumstances, he would be at real risk of suffering conditions that would amount to a breach of Article 3 of the ECHR. This contention was amply supported by the findings of the Upper Tribunal in SMO and the expert report of Dr Fatah whose evidence I had no cause to doubt in any material respect. The essential question I must ask myself is whether there is a real risk of this situation unfolding for the appellant if he were returned to Baghdad.

68. This is not a case where it can be said that the appellant is entirely ignorant of the whereabouts of his Iraqi identification documents. He gave clear evidence that his sister, who lives in Mosul, has in her home an identity document bearing the appellant's details. However, I did not accept his evidence that she has no ability to access this document because her husband, displeased at her family background, has taken possession of it and would not be minded to release it to her. It struck me as odd that a man who exercises such tight control over his wife's affairs would tolerate her communicating daily with the person identified in the document. The notion that the appellant has no access to any such document or even the information contained within it was at odds with the 2013 application he completed for a travel document in which he included a 9-digit identification document number [p. 74 of the consolidated respondent's bundle]. His ability to secure a power of attorney from the UK to enable him to use a proxy to arrange his divorce in Iraq was also contrary to his professed ignorance on this topic. Dr Fatah set out in some detail

the information that would be needed to obtain power of attorney from the UK and possession of identification documents was an essential pre-requisite. The appellant has never adequately explained how he was able to satisfy the Iraqi authorities in the UK of his Iraqi identity details to be granted power of attorney if he did not have access to identification documents. If he had such a document then, I have no reason to think he does not still have such a document today.

7. The written grounds are that this reasoning is “insufficient”. In granting permission Judge Pickup very fairly noted that the decision in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (‘SMO II’) had only become available two days after the hearing and in those circumstances the findings on the documentation issue may need to be revisited. In her oral submissions Ms Adams took advantage of these two rather wide observations to submit that there were several specific problems with the reasoning of the judge. She submitted that there was “no clear finding” about whether the Appellant himself was in possession of a usable document, or whether his sister was in possession of one. She submitted that the reference to the application for a travel document, made in 2013, offered only a partial reading of that document, since the Judge had omitted to mention the Appellant’s statement therein that he did not have any original document. She also criticised the judge for relying on the 2005/06 application for a power of attorney, on the grounds that there was no means of knowing whether Dr Fatah’s evidence on the point applied in 2005/06.
8. None of this is arguable, and if it is, none of it is material.
9. At the hearing before Judge Lodato it was for the Appellant to show that there was a reasonable likelihood that he did not have a document, nor had access to one. This he failed to do, because a) he was a generally non-credible witness, having failed to satisfy Judge Baird (the judge in his original asylum claim) or the jury in his criminal trial that he was telling the truth, b) there was specific reason to reject his evidence that his brother-in-law was going to stand in the way of his sister returning his document to him and c) there were other indications that he may have had a document with him in the UK (the 2013 application and the application for power of attorney). Contrary to the submissions of Ms Adams it was not incumbent on the judge to make a “clear finding of fact that the Appellant was in possession of a card”. The only thing the judge had to do was determine whether the Appellant had discharged the low burden of proof in showing that he didn’t. The reasons the judge gives for finding that burden not to be discharged were perfectly reasonable.
10. At the hearing before me, the shifting country background material means that none of that is relevant anymore. That is because the Respondent now intends, as indicated by Mr Diwnycz, to forcibly remove the Appellant directly to Sulaymaniyah, where he can go directly to the civil registry and get himself an INID. There is therefore no real risk of him facing destitution, and he is not entitled to a grant of humanitarian protection.

The Appellant’s EEA partner

11. The 7th ground of appeal concerns the Tribunal’s rejection of the claimed relationship between the Appellant and a Ms Bratu, a Romanian national. The

Tribunal refused to accept that the couple were in a durable partnership and Ms Adams submits that in reaching that conclusion the Judge failed to take material evidence into account, including the sentencing remarks of the trial judge and the reports of the probation service, all of which refer to her as his partner. It is further submitted that no findings are made on the oral evidence of Ms Bratu, who appeared before Judge Lodato to speak to their relationship.

12. Ms Adams contends that these failings were material to the outcome of the appeal in two respects.
13. First of all she pointed out that there was, as far as the First-tier Tribunal was concerned, an EEA appeal before it. Had the Appellant managed to satisfy the Tribunal that he was the extended family member of Ms Bratu his deportation would have to be considered within the framework of the Regulations. Had he established that he was entitled to permanent residence in that capacity, he would have attracted an enhanced level of protection.
14. The trigger for that EEA appeal was not altogether clear. Although Ms Adams was correct to say that there was an 'EA' reference number generated by the Tribunal this appeared to relate, on the papers before me at least, to a decision taken on the 24th January 2020 to refuse to recognise the Appellant as an extended family member. That followed the Appellant's application on the 26th November 2019 and three reasons were given. It was not accepted that this was a genuine relationship, the Appellant's convictions (there had been a number prior to the index offence) meant that the Secretary of State was not prepared to exercise discretion in his favour, and it was not even accepted that Ms Bratu was a qualified person:

28. This evidence is insufficient in demonstrating that your sponsor is genuinely self-employed as you claim. There is no evidence from HMRC to confirm she is registered as a self-employed person, or that she pays correct tax and national insurance in the form of SA302 tax calculations or tax returns submitted and confirmed as received by HMRC. There is no evidence of annual income/ profit from this work and there is no further evidence of any deposits into the submitted bank statements of potential self-employment work.

29. Therefore, it cannot be deemed that she is a genuine qualified person who is exercising treaty rights in the UK.

15. Those reasons were adopted and amplified a little later on by the Respondent in a supplementary refusal letter dated the 18th February 2021:

Based on the provided evidence, it cannot be deemed that the EEA national sponsor: Miss Ionela Bratu is a genuine qualified person who is exercising treaty rights in the UK. It is also not accepted that you are in a "durable and subsisting" relationship with Miss Bratu. Even if a person is in a "durable" relationship they are only entitled to a residence card as an extended family member if it is considered appropriate to issue the card. It has been concluded that your offence was so serious that you represent a genuine, present and sufficiently serious threat to society, your actions demonstrate that it is not appropriate in all circumstances to issue you a EEA 150 Residence document as the

claimed extended family member of an EEA national. Should the decision to refuse a residence card be later overturned on the basis of your durable claimed relationship's authenticity, you would still be refused an EEA Residence card on the basis of the criminality that you have committed and the nature of your offending, which is deemed extremely serious. The attached letter explains in detail the relevant criteria and why the application for an EEA Residence card was refused.

16. As these letter makes clear, there was no question of the Appellant being able to rely on the Immigration (European Economic Area) Regulations 2016 because he had never been recognised as an extended family member. If the Appellant intended to demonstrate to the Tribunal that this was wrong he would have had to show not only that the relationship was genuine, that Ms Bratu had been exercising treaty rights throughout the relevant period, and that the decision to refuse to exercise discretion in his favour was somehow unlawful. It follows that the alleged failings identified by Ms Adams in the Tribunal's approach to the evidence about Ms Bratu do not in this context take her very far.
17. The failure to have regard to relevant evidence could however remain relevant in the context of Article 8. If the Appellant had, as claimed, been in this relationship since 2016 it would be open to him to argue that the Article 8 exception to his automatic deportation was engaged by it being 'unduly harsh' for Ms Bratu if he were to be removed to Iraq. The difficulty is that there is no evidence at all that this high test would have been met. In her letter of the 10th June 2019 to the Home Office Ms Bratu speaks in heartfelt terms about her hopes to be able to live with the Appellant and start a family; she explains that they are in a genuine relationship and she wants to be with him. There is however nothing at all in that evidence which could lead a properly directed Tribunal to conclude that it would be unduly harsh for her if he were to be deported. Neither the written grounds nor the oral submissions of Ms Adams identify anything which could possibly justify such a conclusion.

Dr Thomas

18. The Appellant relied on a report by Consultant Psychologist Dr Thomas. Dr Thomas saw the Appellant for two hours and prepared that report on the 18th March 2021. She opined that the Appellant was suffering from PTSD and depression, and that although the roots of this conditions lay with his experiences in Iraq many years prior, they had been exacerbated by his present predicament. She was concerned that if he were to be removed to Iraq the Appellant's mental health could rapidly deteriorate. She also expressed the view that his mental health problems could have impeded his ability to give clear and consistent evidence.
19. In respect of the Article 3 claim the First-tier Tribunal gave a number of reasons why there was a limit to the weight that could be attached to that report, and before me Ms Adams vehemently took issue with them. It does however come down to this. This report pre-dated the appeal before the First-tier Tribunal by a year. At its highest all it could say was that at the date that Dr Thomas spent those two hours interviewing the Appellant, those were her conclusions. There was no more recent medical evidence before the Tribunal, bar the Appellant's own oral evidence that he was taking a standard SSRI anti-depressant, and

sleeping pills, both of which are widely available Iraq. Even if the Tribunal had accepted Dr Thomas' conclusions in full, it could not have led it to conclude that the Appellant's deportation would place the UK in breach of its obligations under Article 3 because by that time the evidence was a year old. There was simply no evidential foundation upon which the Tribunal could properly have concluded that the high threshold required to succeed in an Article 3 health claim was made out.

20. Insofar as Judge Lodato's findings about this medical report impacted upon her assessment of the Appellant's credibility, I am unable to find any of that material. Judge Baird rejected his claim over a decade ago. It was accepted that those findings were the *Devaseelan* starting point. The fact that the Appellant might have got confused about certain matters was neither here nor there given that the basis of his claim (that his father was a collaborator with the Ba'athist regime) has since been found to no longer be a 'well-founded' basis of claim.

The Appellant's Sister

21. The Appellant's sister lives in Mosul. She is in regular and frequent contact with him. The Judge concluded that he was unable to accept the suggestion that she would for some reason not offer assistance to her brother if he were to come back to Iraq. Again, Ms Adams took issue with this on the basis that the Judge should have made 'clear findings' to the effect that his sister would for instance move to Sulaymaniyah to look after him. I reject the submission that any such findings were required. It was part of the Appellant's case that he could not look to his sister for support (for his mental health issues, getting redocumented or otherwise) and the judge rejected that, pointing to the sister's committed support for the Appellant whilst he is in the UK. That was manifestly a finding open to the Judge on the evidence. It is also one, I am bound to add, of minimal significance given that the Appellant is an adult male perfectly capable of looking after himself.

Decision

22. The decision of the First-tier Tribunal is upheld and the appeal is dismissed.
23. There is no order for anonymity

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
26th September 2023

