



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004981
First-tier Tribunal No: PA/54824/2021
IA/14684/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 October 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SECRETARY FOR STATE FOR THE HOME DEPARTMENT

Appellant

and

RRO
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Rushforth, a Senior Home Office Presenting Officer
For the Respondent: in person.

Heard at Birmingham Civil Justice Centre on 9 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the above respondent, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Anthony ('the Judge'), promulgated on the 16 August 2022, in which the Judge allowed RRO's appeal on the basis he is likely to face a real risk of Article 3 ill

treatment when attempting to return to his home area of Kirkuk [83], as it was found he cannot get a replacement CSID or INID in the UK and that his only option was for him to apply for an INID at his local CSA office, yet without his CSID he could not travel to his home area to obtain an INID [82].

2. Permission to appeal was granted by another judge of the First-tier Tribunal in the following terms:
 2. The Grounds assert that the Judge made a material misdirection in law and/or provided inadequate reasoning and/or made irrational and perverse findings.
 3. The appeal was allowed on the sole basis that the Iraqi national Appellant would be unable to access a CSID document prior to, or within a reasonable period of, return to Iraq [64-82], and would therefore be unable to secure a replacement INID card which together with a lack of family contact would lead to a breach of Article 3 ECHR. The Judge's findings were that the Appellant was from Kirkuk. It is the Respondent's position that the Appellant is from the IKR.
 4. At [65] of the Decision and Reasons the Judge states; "At paragraph 26 of Judge Cary's decision, the Judge held that there was some merit in the argument that the appellant's lack of knowledge of Kirkuk was essentially due to his lack of formal education. Judge Cary went on to find that the possibility the appellant may be from the Kirkuk region could not be dismissed. I reach the same conclusion as Judge Cary. I find that in addition, the appellant's lack of knowledge of Kirkuk may also be explained by his age at the time of his interview. I conclude to the low standard of proof that it is reasonably likely that the appellant is from Kirkuk."
 5. In the context of the Devaseelan guidelines, the findings of the previous Judge and that the core of the appellant's account in respect of his asylum claim was found to lack credibility, it is arguable that the Judge gave insufficient reasons for her finding that the appellant had established to the required standard that he was from Kirkuk. This finding was material to allowing the Appellant's appeal.
 6. Although the Grounds do not disclose that the findings of the Judge were irrational or perverse or that she made a material misdirection in law, in line with established principles I grant permission to appeal on all grounds.

Discussion and analysis

3. The Judge found RRO arrived in the United Kingdom as an unaccompanied asylum seeking child with no documents. The Judge found RRO had some form of identity documents in Iraq but did not have them with him when he entered the UK. The Judge found that RRO had attempted to trace family in Iraq but that he could not rely on family members to provide details of the Family Book to obtain a replacement CSID.
4. The Judge at [75] finds that RRO is from Kirkuk and the question was whether he will be able to travel to his home area to obtain an INID. At [80] the Judge finds RRO would not be able to attend the CSA office in his home area of Abu Najm, or anywhere in the Kirkuk province for three reasons, firstly because he has no contact with his family and is not able to ask for them to provide his CSID, without a CSID he is unable to travel by land or air from Baghdad to Abu Najm safely without his identity documents and, thirdly, because RRO cannot obtain a replacement CSID or INID from outside Iraq.
5. The grounds seeking permission to appeal argue, inter alia, the Judge failed to give adequate reasons for the loss of family contact given the entire basis on which he

predicated his urgent flight from Iraq was found to be unmeritorious. In relation to the finding RRO was from Kirkuk, the grounds argue that Judge Cary, who made the earlier decision following a hearing at Taylor House on 16 August 2016, made no clear finding that they accepted RRO was from Kirkuk.

6. At [26] of that decision Judge Cary wrote:
 26. The Respondent took the view that the Appellant was both implausible and inconsistent. She was not even prepared to accept that the Appellant came from the Kirkuk region due to his lack of knowledge in relation to Kirkuk for the reasons explained in paragraphs 13-18 of the decision. Mr Reza asked me to accept that the Appellant's lack of knowledge was essentially due to his lack of formal education and there may be some merit in that argument. Accordingly, I cannot dismiss the possibility that the Appellant may be from the Kirkuk region. However, that does not mean that it is reasonably likely that the events he described actually occurred in view of the inconsistencies I have identified together with lack of detail. After giving the Appellant due allowance for, in particular, his age and state of education. I do not accept it is reasonably likely that his village was attacked as claimed, let alone that he was forced to flee his home area due to the hostile activities of ISIS. I reject his account.
7. Judge Cary noted the intention to return RRO to Baghdad which was found not to be feasible as he did not have the required documents.
8. Lack of clarity in Judge Cary findings at [26] is in part responsible for the grounds of challenge against the decision of Judge Anthony in relation to RRO's home area. However, at [65] of Judge Antony's decision, there is a clear findings that to the lower standard of proof it is reasonably likely RRO is from Kirkuk. That is not a decision based solely upon the previous finding but as a result of an assessment of the evidence by the Judge. It has not been made out before us that this is a finding outside the range of those reasonably open to the Judge on the evidence. As noted in the grounds seeking permission to appeal, the findings are neither perverse nor irrational.
9. The grounds challenge the Judge's findings in relation to the inability of the Red Cross to trace RRO's family. His evidence was that the Red Cross had been unable to trace his family and the Judge accepts that evidence is reasonably likely to be true [71]. The Judge's finding is that based upon the evidence trace and enquiries were unsuccessful meaning either his family are no longer alive or remain undiscovered by the tracing effort. That has not been shown to be finding outside the range of those reasonably available to the Judge on the evidence.
10. The only issue that occurs to us in relation to this appeal is that evidence provided by the Secretary of State is that returns to Iraq are to any airport, not just to Baghdad, for enforced returns. There is evidence that Kirkuk International airport officially opened for civil visitors on 20 October 2022. There are direct flights to the airport from Ankara in Turkey and soon from the UK. The chronology is important here is at the date of the hearing before the Judge, and the date of promulgation, there were no direct flights to Kirkuk. The Judge's findings in relation to the need to secure identity documents to enable RRO to travel to his home area is therefore a finding within the range of those available and supported by the country guidance case of SMO. Had the airport been opened prior to the date of promulgation the Judge may have been found to have erred in not considering the question of whether RRO was able to

return directly to Kirkuk and from there travelled to his local CSA office where he will go to provide his biometric details and obtain an INID.

11. Having considered the matter carefully we conclude that on the basis of the situation appertaining at the date of promulgation of the decision, and the evidence considered by the Judge, the findings made are supported by adequate reasons and have not been shown to be outside the range of those available to the Judge on the evidence.
12. The Court of Appeal have made it abundantly clear that appellate judges should not interfere with decisions of judges below unless there is clear evidence of a genuine legal error material to the decision under challenge. In this case no such error has been made out.
13. It will, of course, be for the Secretary of State to decide whether in light of the developments relating to civil flights to Kirkuk she decides to remove the appellant directly to that airport. That is however a post decision issue.

Notice of Decision

14. No legal error material to the decision of the First-tier Tribunal has been made out. The determination shall stand.

M Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 October 2023