



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005237
First-tier Tribunal No:
PA/50222/2022
IA/02098/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RRA
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood, instructed by Tann Law Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 13 July 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.
2. The appellant is a national of Iraq of Kurdish ethnicity born on 8 August 1994 in Suleymaniyah. On 23 April 2018, he applied for entry clearance to the UK as a Tier 4 student to undertake a 15- month course of study. His application was refused on 21 June 2018 on the grounds that it was not accepted that he was a genuine student. The appellant then flew to the UK on 25 March 2019 using a false passport and claimed asylum that day.

3. The appellant claimed that he was at risk from the husband and brother of a woman, S, with whom he was having a relationship in Iraq, having been caught with S by her husband on 16 March 2019. He claimed to have received a text from S on 18 March 2019 telling him that her husband had reported him to the police and he fled Iraq on 20 March 2019 and travelled to Turkey from where he flew to the UK. The appellant claimed that on 13 April 2019 his sister had emailed him a copy of an arrest warrant issued against him by the authorities. He claimed that he would be killed by S's husband and brother if he returned to Iraq or that he would be arrested by the authorities.

4. The respondent refused the appellant's claim in a decision dated 17 January 2022, accepting his nationality and ethnicity but rejecting his claim to be at risk from the family of S and to be the subject of an arrest warrant. The respondent considered that the appellant would not be at risk of serious harm on return to Iraq and that he could obtain his identity documents from his sister and brother-in-law to enable him to return to his home. The respondent considered that the appellant could gain entry to the IKR on arrival. It was considered that the appellant was not entitled to humanitarian protection and that his removal to Iraq would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Kelly on 18 August 2022. The appellant gave oral evidence at the hearing. The judge rejected the appellant's account of his relationship with S and the claimed problems and threats arising from that relationship and considered that he had fabricated the core of his claim in an attempt to secure leave to remain in the UK, having been refused entry clearance only nine months previously. The judge concluded that the appellant did not face any risk to his personal safety and that there would be not be any other significant obstacles to his reintegration (such as lack of access to an official Iraqi identity document) upon his return to Iraq. The appeal was accordingly dismissed on all grounds.

6. Permission was sought on behalf of the appellant to appeal against that decision to the Upper Tribunal, on one ground only, namely that the judge had failed to consider the country guidance in SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 in relation to the issue of re-documentation. Permission was granted in the First-tier Tribunal on 3 November 2022.

7. The respondent filed a rule 24 response on 9 November 2022 accepting that the judge erred in that respect but inviting the Upper Tribunal to preserve the asylum findings which were not challenged and to re-make the decision on the sole issue of the appellant's ability to obtain documentation.

8. The appeal was listed for a hearing on 19 April 2023. On 11 April 2023 the appellant's representatives advised the Upper Tribunal that the appellant had new evidence which he wished to submit and made a Rule 15(2A) application to adduce that evidence. That evidence consisted of a witness statement from the appellant dated 6 April 2023, a statement from a witness, and evidence in support of the new claims made in his witness statement. By way of that new evidence the appellant was introducing four further strands to his case: firstly that he now had a witness to support his claim in regard to his relationship with S and the problems arising from that relationship; secondly, that he had been politically active in the UK and was at risk on return to Iraq as a result of his *sur place* activities; thirdly, that he was now an atheist and was at risk on that basis, and further that his sister no longer had any contact with him as a result of that; and fourthly that he had evidence of unsuccessful attempts to obtain Iraqi identification documents in the UK.

9. The matter then came before Upper Tribunal Judge Reeds on 19 April 2023. Judge Reeds adjourned the hearing because of the new evidence which had not previously been seen by counsel for the appellant or the Home Office Presenting Officer. She made directions for the appellant to file and serve a skeleton argument setting out all issues and legal arguments relied upon and for the respondent to file and serve any amended rule 24 response. The directions were issued and sent out in writing on 31 May 2023. On 4 July 2023 the respondent provided confirmation that the previous rule 24 reply was still relied upon.

10. The matter then came before me on 13 July 2023.

Hearing and Submissions

11. There was some discussion as to the scope of the hearing, following the respondent's rule 24 response and in light of the new evidence produced by the appellant. That evidence post-dated the decision of the First-tier Tribunal and raised new issues which had not been part of the appellant's case before Judge Kelly and which accordingly, in the normal course, would not, therefore, be relevant to an error of law consideration. However, if the respondent's position was that Judge Kelly's decision's ought to be set aside and re-made with the adverse findings on the appellant's asylum claim preserved, I did not see how the re-making of the decision could be confined to the issue of re-documentation without considering the new evidence relating to new asylum grounds since that evidence impacted upon the appellant's ability to re-document himself through his sister, with whom he was now claiming to have lost contact as a result of becoming an atheist.

12. It was Mr Tan's submission, however, that the respondent's position was that Judge Kelly's failure fully to address the re-documentation issue was not a material error requiring the setting aside of his decision, since there could have been no other outcome to the appeal had the matter been fully addressed by the judge. The new evidence and new matters raised by the appellant were not, therefore, relevant to that consideration. What had to be considered was the evidence before the judge at the time he made his decision.

13. Mr Mahmood submitted that, on the contrary, the failure of the judge to consider the re-documentation issue was a material error requiring the entire decision to be set aside and remitted to the First-tier Tribunal or alternatively for the re-making to be carried out in the Upper Tribunal on the basis of the new evidence relied upon by the appellant.

14. I asked Mr Mahmood to explain to me why he considered there to have been a material error by the judge. I asked him how the judge could have reached any different conclusion in the appeal if he had undertaken a more detailed assessment of the re-documentation issue, given that he had rejected the basis of the appellant's claim in its entirety and given that the evidence before him at the time was that the appellant was in contact with his sister and brother-in-law and that he had had an Iraqi passport and national identity card when he made his entry clearance application. I gave Mr Mahmood an opportunity to take instructions from the appellant which he did. He then suggested that the appellant's evidence in his appeal statement, that his documents had been left in his flat which his sister would not have been able to access, could have led the judge to find that he would not be able to re-document himself.

15. Mr Tan's response was that the only evidence given by the appellant before Judge Kelly in relation to problems of re-documentation was at [28] of the appellant's statement, which did not take the appellant's case any further. In addition, Mr Tan

submitted, the appellant would be returned directly to the IKR and had family members who could vouch for his identity, supported by the details in his own Iraqi passport, a copy of which had been before the First-tier Tribunal. In accordance with SMO he would therefore be allowed into the IKR and could then go to the relevant office to document himself. He would not encounter the difficulties addressed in SMO of passing through checkpoints on a journey to the IKR.

16. Mr Mahmood, in response, accepted that the appellant would be returned to Suleymaniyah, but he submitted that the question of what would happen was speculative and even though he may have been in contact with his brother-in-law and sister in August 2022, the position now was that he was not in contact with them and therefore he would have no-one to confirm his identity.

17. Having heard from both parties, I advised Mr Mahmood that I did not find any basis for admitting the new evidence and opening the appellant's case to the new strands to his asylum claim. I did not agree that the judge's decision should be set aside. I set out my reasons as follows.

Discussion

18. Judge Kelly rejected the appellant's entire asylum claim as a fabrication. The appellant has not challenged that finding. The only issue raised in the appellant's grounds was the judge's failure to give full reasons in regard to the question of re-documentation. I am in agreement with Mr Tan that that failure was not a material flaw in the judge's decision requiring it to be set aside since the evidence before him was such that he could have reached no other conclusion than the one that he did.

19. As a starting point, it is relevant to note that it is not the case that the judge failed to give any consideration to the matter of re-documentation and the risks arising in that respect. He clearly did consider the matter at [28] of his decision, where he concluded that "*the appellant does not face any risk to his personal safety and that there would be not be any other significant obstacles to his reintegration (such as lack of access to an official Iraqi identity document) upon his return to Iraq*". The only arguable failing by the judge was to give more detailed reasons for that finding, with reference to SMO. However I fail to see how, had he made direct reference to SMO, his conclusion could have been any different. The judge made clear that his conclusion was based upon the factual findings he had already made, which included the fact that the appellant had previously made an entry clearance application to the respondent and that he had fabricated his claim in order to give him a basis for leave to remain in the UK after his entry clearance application was refused. The evidence before the judge was that the appellant's passport had been provided to the respondent when his entry clearance was made and a copy of the passport was held in the Home Office records, that the appellant at that time confirmed that he had a passport, a CSID and a new national identity card and provided details of each to the respondent, and that he had a close relationship with his sister who had obtained documents for him previously (a copy of a purported arrest warrant) to support his claim. No mention was made by the appellant of any problems in regard to re-documentation in his initial asylum statement and, whilst his evidence at his interview was that he had left his documents behind in his flat in Iraq, the only suggestion in his evidence that he would have problems accessing his documents was in his appeal statement, whereby he stated, at [28], that:

"..the arrest warrant covered the whole of Iraq and therefore I would still be in danger, it would risk my life if I was to return to Iraq, regardless as to whether my sister and brother in law could obtain my documents/family book information for a CSID card. My sister does not have a key for my flat and she doesn't want to go there in case the police see her

there. She doesn't want to put herself and her husband in danger. Besides, the landlord probably put another tenant in the flat because I've been away for a long time and haven't paid any rent. Therefore, it is highly unlikely that the CSID card is still in the flat.”

20. However firstly, such claimed difficulties were based upon the appellant’s claim that the police were looking for him, a claim which the judge had rejected as a fabrication. Secondly, as Mr Tan submitted, the appellant would be returned directly to his home area of Suleymaniyah, as was the respondent’s case before the judge, and he would therefore be able to enter the IKR with no problem, being vouched for by his sister and brother-in-law, with whom he claimed, at that time, to be in close contact, and could then attend at the relevant offices to apply for his national identity card with the benefit of the identity details already held by the Home Office. This was therefore not a case of his CSID or national identity card being required for him to pass through checkpoints from Baghdad to reach the IKR and therefore any detailed assessment of the country guidance in SMO would not have assisted the appellant’s case in any way. In the circumstances I cannot see how the judge’s decision could have been any different had he cited SMO and made specific references to the country guidance in his findings at [28].

21. For all these reasons, I reject the suggestion that any arguable error made by the judge by failing to give full and proper reasoning in that regard was a material error requiring the decision to be set aside. I accordingly uphold the decision of Judge Kelly.

Notice of Decision

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 July 2023