



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003434
First-tier Tribunal Nos:
HU/50505/2022
IA/00770/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

SAH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, Counsel, instructed by Liberty Solicitors
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House on 25 September 2023

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of SAH who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iraq born on 11 September 1984. She appeals against the decision of First-tier Tribunal Judge Louveaux following a hearing on 27 October 2022, with a decision and reasons signed on 31 October 2022. The judge dismissed her appeal against the decision of the respondent dated 7 January 2022 refusing her further submissions of 5 May 2021 in respect of her asylum claim.
2. Permission to appeal was granted by Judge Boyes on 30 December 2022.
3. This has been a hybrid hearing with Mr Hussain appearing by video and Mr Basra and myself being in the Tribunal room.

Background

4. Further background to this case is as follows. The appellant entered the UK on 11 November 2016 along with what were then her two children and claimed asylum. Her asylum claim was then withdrawn at her request and she asked for her and her children to be added to her husband's claim as dependants. The appellant's husband's asylum claim was refused on 2 August 2017 and his appeal against that decision was dismissed by First-tier Tribunal Judge Dearden on 8 February 2018. Permission to appeal was refused by the First-tier Tribunal on 8 February 2018 and the Upper Tribunal on 10 August 2018.
5. This appellant made further submissions on 29 August 2019 with her husband as a dependant on her claim. These were refused on 12 November 2019 and the appellant's appeal against the decision was dismissed by First-tier Tribunal Judge Sills on 18 March 2020. The appellant then made further submissions on 5 May 2021, the refusal of which on 7 January 2022 is the subject of this appeal.
6. The appellant's case in summary is that she at risk of persecution in Iraq because of:
 - (a) her husband's conversion from Islam to Zoroastrianism;
 - (b) her husband's sur place activities; and
 - (c) that she is undocumented, has no contact with her family as they have disowned her due to her marriage, and she is a Sunni Kurd who does not speak Arabic, and is unable to obtain a replacement CSID card or an INID card.
7. The appellant also relies on her rights under Article 8 of the European Convention on Human Rights. She claims that there would be very significant difficulties for her, her husband and their now three children, a third child having been born in the UK since their arrival, integrating in Iraq.
8. The First-tier Tribunal Judge in this case directed himself by reference to Devaseelan [2002] UKIAT 00702, taking the findings of the previous judges, First-tier Tribunal Judge Dearden in relation to the appellant's husband's claim and First-tier Tribunal Judge Sills in relation to her claim, as the starting point for the consideration of her further submissions. The judge noted that both the previous judges had found the appellant and her husband not to be credible witnesses,

First-tier Tribunal Judge Dearden in respect of the appellant's husband and First-tier Tribunal Judge Sills in respect of the appellant.

9. The First-tier Tribunal Judge in this case, Judge Louveaux, noted at paragraphs 18 to 20 as follows:
 18. FTTJ Dearden found that there was sufficient evidence before him to find, to the lower standard, that the Appellant had converted from Islam to Zoroastrianism. However, he did not find the remainder of the Appellant's husband's claim to be credible and found that the Appellant's husband would not be at risk of persecution in Iraq on account of his conversion.
 19. FTTJ Sills did not find the Appellant's claim to be have been ill-treated by her own family on account of the Appellant's conversion to Zoroastrianism to be credible and did not accept that the Appellant or her family would be at real risk of persecution in their home area on return.
 20. FTTJ Sills also found that the Appellant and her husband have, or has access to, their CSID card and could therefore safely return to the IRK.
10. Judge Louveaux went on to find that the appellant and her husband were not credible witnesses giving reasons for so finding at paragraphs 21 to 23. The judge then found that the element of the claim based on the husband's conversion to Zoroastrianism was not made out, there being no evidence that justified a departure from the findings of the previous judges. Judge Louveaux then considered the further submissions on her husband's sur place activities but concluded for detailed reasons given at paragraphs 25 to 31 that the appellant had not proven that her husband had come to the attention of the authorities in Iraq or the IKR.
11. So far as the CSID card is concerned, First-tier Tribunal Judge Sills had found as follows:
 - "31. I find that the Appellant and her family can safely return to their home area and resume their lives amongst their families there. I have considered and applied the case of SMO1 to the facts of the Appellant's case. The Respondent provided a copy of the Appellant's CSID card at the hearing and the Appellant accepted this was hers. I find that the Appellant has, or has access to, her CSID card. It was not suggested that Mr Abdalla had lost his CSID card. In any event, in view of the adverse credibility findings made at his previous appeal hearing by Judge Dearden, I am satisfied that Mr Abdalla either has, or can access, his CSID card. I find that the Appellant has or has access to the necessary documentation for her children. I find that the Appellant and her family can safely return to and enter their home area in the KRI. The Appellant is well-educated and worked in the KRI previously. The Appellant, along with her husband, can find work to support the family on return there. Having rejected the Appellant's claims about her problems with her family, I find that the Appellant would have family support on return. The Appellant and her family would not face any hardship on return. I dismiss the appeal on humanitarian protection grounds".
12. Judge Louveaux then in this appeal found as follows with regard to the CSID card at paragraphs 32 to 35:

- “32. Mr Hussain sought to undermine the findings of FTTJ Sills that the Appellant and her husband have, or have access to, their CSID card and could therefore safely return to the IRK. Mr Hussain submitted that there was no basis for FTTJ Sills to have come to such a finding.
33. I disagree with Mr Hussain’s submissions. FTTJ Sills had clearly found the Appellant not to be credible and had, in his possession, a copy of the Appellant’s CSID card supplied by the Appellant herself.
34. I accept that the position with respect to the issuing of CSID cards is constantly evolving, not least following the transition to INID cards. However, the caselaw is still that someone in possession of a CSID card (or with access to it) is not at risk on return to Iraq.
35. I find that the Appellant is essentially attempting to re-litigate a matter already determined by FTTJ Sills. As the Appellant herself acknowledged in cross-examination, she sought and was denied permission to appeal FTTJ Sills’ determination to the Upper Tribunal. I therefore see no reason to depart from FTTJ Sill’s findings”.
13. Judge Louveaux in this case then went on to address the Article 8 claim and found that the family had lived in Iraq until late 2016 and would have family support on return, the judge having expressly rejected the appellant’s contention that she was no longer in touch with her sister in Iraq. Judge Louveaux directed himself to the children’s best interests under Section 55 of the Borders, Citizenship and Immigration Act 2009 and concluded that the Article 8 rights of the appellant and her family did not outweigh the interests of immigration control and on that basis dismissed the whole appeal.

Discussion and conclusions

14. The grounds of appeal in this case made four points. In the end much of the time of this hearing has been occupied with the third of those and what I am going to do is to deal with each of those four points taking the shorter points first and then concentrate on the longer point which was labelled as the third point in the grounds of appeal. I do not set out the parties’ submissions, but I deal with the substantive points made in my reasons below.
15. The grounds of appeal assert first that Judge Sills’ decision concerned the appellant’s husband’s appeal and that she was not a witness to those proceedings so adverse credibility findings against her should not have been treated as persuasive by Judge Louveaux on this appeal. On that point, and to be fair Mr Hussain has not pressed that point greatly today, it seems to me that the grounds of appeal have misunderstood the position when they asserted that the appellant had not been a witness before Judge Sills and so his adverse credibility findings should not have counted against the appellant in this appeal. On reading the whole of Judge Louveaux’s judgment it seems to me that Judge Louveaux fully understood the position. Judge Dearden’s decision was concerned with the husband’s appeal and made adverse credibility findings against the husband. Judge Sills’ decision however was concerned with the appellant’s appeal and included adverse credibility findings against this appellant who evidently was a witness in that case. In those circumstances, Judge Louveaux has not made any error in law in applying Devaseelan to the facts of this particular case and the approach that he or she took to the judgment in this appeal. There

is no error of law in the judge's approach on that point and it seems to me that he or she has not misunderstood what had happened in the previous two appeals.

16. The second point made in the grounds of appeal is that it was submitted that Judge Sills did not find SH's husband had his CSID card but merely made an inference to that effect. However, inferences, if they are reasoned as they are in paragraph 31 of Judge Sills' judgment, are as much findings of judicial fact as other findings made by other routes and it seems to me that again Judge Louveaux makes no error of law in regarding that as being a finding of Judge Sills. Quite properly, and in line with Devaseelan, Judge Louveaux has applied his mind to the point again but has found no reason to depart from the judgment of Judge Sills insofar as it concerns the appellant's husband's CSID card.
17. The fourth point made in the grounds of appeal was that it was submitted that Judge Louveaux had erred in law in failing to consider when taking account of the children's best interests how they would be documented on return. On the face of the decision there is clearly a failure to consider that because in Judge Louveaux's decision at paragraph 39 when dealing with the position of the children there is no reference at all to the question of whether or not they are documented. Judge Sills at paragraph 31 in his decision had found that the appellant and her family could safely return on the basis that the appellant has, or has access to, the necessary documentation for her children but Judge Sills' decision itself does not deal with the position of the third child who has never been in Iraq and, it seems to me, that in relation to this point on the question of whether or not the appellant and her children have access to the necessary documentation, that raises the very same issue as is raised by the third point in the grounds of appeal which I am now going to come to.
18. The third point in the ground of appeal concerned the basis on which Judge Louveaux concluded that the appellant would have access to the necessary documentation. The nub of Mr Hussain's argument for the appellant, as advanced at this hearing, is that Judge Louveaux has not addressed or given reasons for concluding that this appellant would have access to her CSID card or the necessary documentation, given that the finding of fact that is made both by Judge Sills and by Judge Louveaux is that she only has a copy of her CSID card.
19. We spent some considerable time at the hearing with Mr Hussain elaborating on the reasons why somebody who is merely in possession of a copy of her CSID card would not be able to obtain the actual CSID card and why that is necessary, and with Mr Basra for the Secretary of State making submissions as to why somebody with a copy of their CSID card either could easily obtain the actual CSID card by dint of going through members of family in Iraq (in other words in this case the appellant's sister who Judge Louveaux found the appellant was still in contact with), or alternatively Mr Basra's submission was that as somebody from the IKR this family could simply be returned to the IKR safely without CSID documentation. I will go through each of those submissions in more detail in a moment, but the fact of the matter is that one does not find in the judgment under appeal any explanation as to why the judge has concluded that the appellant, who is in possession only of a copy of her CSID card, would have access to her actual CSID card and thus be able to return on a documented basis.
20. So far as Mr Basra's point about whether or not somebody from the IKR can be returned direct to Iraq without the need for a CSID card is concerned, it seems to

me that that does not properly reflect the country guidance as it stands now post-SMO2 and in the light of the current July 2022 CPIN. And, in any event, Mr Basra's submission in this regard is not the basis for the judge's decision in this case, so if Mr Basra is right that this is the answer to the case, there is evidently a failure by the judge to give adequate reasons. However, it also seems to me that Mr Basra's submission cannot be right. Mr Basra relied on what is in the headnote to SMO2 [2022] UKUT 110 (IAC) at paragraphs 7 through 10 about the feasibility of return for former residents of the Iraqi Kurdish Region. Those paragraphs state:

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.

8. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

9. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

10. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

21. What is said there by reference to the Court of Appeal's judgment in HF (Iraq) is that an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents. It seems to me, with all due respect to Mr Basra, that he has missed the point that was being made in SMO2 and in HF(Iraq), which was simply that if those documents are lacking so that the individual cannot feasibly be returned, then there is no need to consider the question of a hypothetical international protection claim. The individual cannot be returned so is not in need of protection. Further, insofar as it is suggested that an individual can be returned to IKR without a CSID or an INID, I accept Mr Hussain's submission that it is established that somebody being returned to Iraq without a CSID or an INID is likely to face a breach of their rights under Article 3. Paragraph 11 of the Headnote to SMO2, which replaced all previous country guidance, states: "*As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR.*" And paragraph 2.9.1 of the CPIN also makes that point, without any exception for individuals being returned directly to IKR as Mr Basra submits. So it seems to me that that Mr Basra's point is not a good one in law, but in any event to the extent that it is asserted that it was the basis for the judge's decision in this case that seems to me to be no answer to this appeal because that is plainly not what the judge has decided. There is no reference to that point in the judgment.

22. The second element of the argument between the parties that I need to deal with is what is being said by Mr Basra and Mr Hussain about obtaining replacement CSID cards for somebody who has a copy of a CSID card. On that, I need to work my way through the relevant paragraphs of the CPIN. One sees from paragraphs 2.5.4 to 2.5.6 of the CPIN that a copy of the CSID will suffice for obtaining a laissez passer which then means that return is feasible (i.e. the person can be admitted to Iraq) but the CPIN explains that laissez passers are then confiscated on arrival and that a CSID or INID being needed for onward travel, see paragraph 2.6.10. In context, it appears that it is an original CSID or INID that is required at that point. There is no suggestion that a copy will suffice. Obtaining a replacement CSID depends on being able to remember the Family Book reference which normally requires a credibility assessment (see paragraph 2.7.7), but if you have a copy of the CSID card it will include the Family Book page number (see paragraphs 4.2.5 and 4.5.3), with the result that somebody with a copy would not need to be subject to any credibility assessment because they would have the necessary Family Book reference. The difficulty is that whether or not you can obtain a replacement CSID from the UK depends on whether you would be able to obtain a replacement CSID in Iraq: see paragraph 4.5.5. That paragraph of the CPIN makes clear that a replacement CSID can only be obtained in the UK if the CSID is registered in a place where the new INID has not been rolled out. Mr Hussain's submits with reference to Annex D of the CPIN that the INID has been rolled out everywhere now except Mosul. (I note Annex D is no longer online, and the advocates before me today have not been able to explain why that is. It may be because Annex D is out of date already, but the status of Annex D will be a matter to be reconsidered when this case is remitted, as I have concluded it must be.) Assuming it is correct that the INID has now been rolled out everywhere except Mosul, it would follow that obtaining a replacement CSID is not going to be a straightforward matter. Indeed, based on what the advocates have taken me to in the CPIN today, there does not appear to be a route by which someone who only has a copy of their CSID card will be able to obtain a replacement CSID from the UK (even with a sister in Iraq) unless their CSID is registered in Mosul. What would be needed therefore would be an INID rather than a CSID. Neither advocate has addressed me on how the appellant might obtain an INID from the UK. Neither advocate has addressed me on the extent to which the appellant and the children could be redocumented by virtue of the appellant's husband having, as the judge found, access to his CSID card.
23. In short, all of these are matters that need to be explored, but what is clear is that the judgment of Judge Louveaux is plainly inadequate in its reasoning on this point as it proceeds on the assumption that someone who has a copy of their CSID card is someone who has 'access to' their actual CSID card and who is thus also in a position to redocument her three children. That conclusion may ultimately prove to be correct when the matter is fully explored in evidence and argument on a re-hearing, but I cannot at present see that it is correct, and the complete absence of reasoning supporting the judge's conclusion means that it is not possible to tell why this appellant has lost her appeal. There is therefore an error of law.

Disposal

24. So, for those reasons this appeal does succeed and the decision of Judge Louveaux insofar as it concerns the CSID card issue is set aside and needs to be re-made.

25. Paragraphs 7.2 to 7.3 of the Senior President's Practice Statement 2012 provides:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier

Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.

26. I have also considered the guidance *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512, where the Court of Appeal emphasised the importance of remitting a case where a party had been deprived of a fair hearing, the logic being that even if little further fact-finding is required, a party is still entitled to have a fair hearing before the FtT and then enjoy a right of appeal to the UT if need be, rather than being required to go straight to the CA.

27. In this case, it seems to me that the nature and extent of the judicial fact-finding that would be necessary to re-determine this appeal in relation to the CSID card issue as it applies both to the appellant and to her three children in this case does raise factual questions that it is appropriate for the First-tier Tribunal to adjudicate on first. Having reviewed with the advocates in some detail what the position is in relation to someone who has only a copy of their documents, it seems to me that this is a case that would benefit from fact-finding first of all in the First-tier Tribunal rather than that being addressed in the first instance at the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside insofar as concerns the documentation for the appellant and her three children. All other elements of the decision (including the finding that the appellant is in contact with her sister in Iraq and that her husband has access to his CSID card) are preserved. The decision shall be remitted to the First-tier Tribunal for re-making by a different judge.

The anonymity directions continue to apply.

Signed H Stout

Date: 3 October 2023

Deputy Upper Tribunal Judge Stout

