



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001959
First-Tier Tribunal No: PA/52629/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

LBAM
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr A Khan, instructed by Fountain Solicitors
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 August 2023

ORDER REGARDING ANONYMITY

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Iraq. He claimed asylum on 16 January 2018. His claim was refused by the respondent for reasons set out in a decision dated 18 May 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Elliot ("the judge") for reasons set out in a decision dated 27 October 2021.
2. There were two strands to the core of the appellant's claim for international protection. First, he claimed that he was at risk because of a relationship that he had formed with a girl whose family were members of the PUK Secret Service. Second, he claimed he had joined the Peshmerga because he believed that would protect him from the girl's family, but he had disobeyed military orders not to fight against the militia.
3. Judge Elliot noted that it is not disputed that the appellant is an Iraqi citizen of Kurdish ethnicity and a Sunni Muslim, who comes from Kirkuk.
4. Having rejected the appellant's claim that he will be at risk upon return to Iraq for the reasons he claimed, the judge went on to address the appellant's claim that he has no contact with his family in Kirkuk and that he does not have his identity documents, and in particular, his CSID or passport. The judge rejected the appellant's claim that he has had no contact and has not retained any contact details for his family since leaving Iraq in 2017. The judge found, at [105], that the appellant would be able to contact his family in Iraq who could send him his passport. He also found, at [106], that the appellant is able to contact his family and was satisfied they could provide him with his CSID. The judge accepted Kirkuk is a governorate where INID terminals have been installed, and that without a CSID or INID it would not be possible for the appellant to travel onwards from Baghdad to Kirkuk. The Judge accepted the appellant could not internally relocate to Baghdad. At [110], he said that he is however satisfied that with his family's assistance the appellant will be able to obtain his CSID and passport before he is returned to Iraq, or that he may be able to obtain a replacement passport from the Embassy and his family could bring the CSID card to him on arrival in Baghdad. He could therefore safely travel onward from Baghdad to his home area in Kirkuk without encountering treatment contrary to Article 3 ECHR.

THE GROUNDS OF APPEAL

5. The appellant advances six grounds of appeal. In summary he claims:
 - a. The judge made contradictory findings. At paragraph [106], he said he does not know where the appellant's CSID is, but in the same paragraph states he is satisfied the appellant is able to contact his family and they could provide him with his CSID.
(ground 1)
 - b. The judge erroneously found, at [104], that it is highly unlikely that an adult male, who has been employed in Iraq in the past, and

who has had to prove his identity in order to join the Peshmerga, would not have had recourse to his Family Book number relying upon the decision of the Upper Tribunal in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC) (“SMO I”). (ground 2)

- c. The judge materially erred, at [110] in finding the appellant would be able to obtain his CSID with the assistance of his family. The appellant claims clear findings as to the location of the CSID are required to assess whether it would be reasonable for the appellant to obtain his CSID. The judge gave inadequate reasons for rejecting the appellant’s claim that he has lost contact with his family, and why his family will be able to provide him with his CSID. (ground 3)
- d. The judge gave inadequate reasons as to why the appellant’s human rights claim under paragraph 276ADE(1)(vi) is not made out, and failed to adopt a ‘balance sheet’ approach in assessing the appellant’s Article 8 claim. (ground 4)
- e. The judge failed to adequately address the persecutory risk that the appellant faces on return to Iraq as a result of his relationship and his activities as a Peshmerga. (ground 5)
- f. The judge failed to apply the correct standard of proof. (ground 6)

6. Permission to appeal was granted by FtT Judge Karbani on 6 December 2021.

DECISION

7. I address each of the appellant’s grounds of appeal and the submissions made before me by Mr Khan and Ms Arif, but before doing so, it is helpful to recite what was said by Lord Hamblen in *HA (Iraq) v SSHD* [2022] UKSC 22.

“72. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:

- (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
- (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.

- (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope."

GROUND 1; CONTRADICTION FINDINGS

8. Mr Khan submits that at paragraph [106] of his decision, the judge said he did not know where the appellant's CSID is. If the judge does not know where the CSID is, the judge's conclusion in that same paragraph that he is satisfied that the appellant is able to contact his family and that they could provide him with his CSID, is nothing more than speculation.
9. There is no merit to this ground at all. The appellant's evidence regarding his passport and CSID is set out at paragraphs [44], [45] and [48] of the decision. He claimed his passport is at home in Iraq with his family. In re-examination, he confirmed his CSID was at home in Kirkuk. He said that he had not contacted his family to try and get his CSID card or his passport. At paragraph [104], the judge summarised the appellant's claim that he does not have his CSID or passport. The judge noted the appellant's claim that his CSID card was left in Iraq when he left in 2017, and he does not know where it is, although in re-examination the appellant said it was at home in Kirkuk.
10. It is in that context that one must read the judge's findings and when paragraph [106] of the decision is read as a whole, it is abundantly clear there is no contradiction. The judge said he did not know whether the appellant's CSID is with the appellant in the UK, or with his family in Iraq. That was nothing more than an observation. He was plainly entitled to go on and say that he was satisfied that the appellant is able to contact his family and that they could provide him with his CSID. The finding is rooted in the evidence before the Tribunal.

GROUND 2; THE FAMILY BOOK

11. Mr Khan submits the judge referred, at paragraph [104], to the appellant's claim that he does not know his Family Book number. The judge rejected the appellant's explanation for that. Mr Khan submits that in reaching his decision the judge attached undue weight to the appellant's lack of knowledge of his Family Book number. In reaching his decision the judge, Mr Khan submits, was influenced by what was said by the Upper Tribunal in 'SMO I'. However, in *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC) ("SMO II") the Upper Tribunal clarified (*headnote 14*) that whether an individual is likely to recall the volume and page reference of the entry in the Family Book in Iraq is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. Mr Khan submits the judge failed to give adequate reason for his conclusion that the appellant's explanation lacks credibility. Furthermore, the judge said it is 'highly unlikely' that the appellant would not have had recourse to his

Family Book number, and therefore adopted too high a standard when considering the appellant's evidence in that regard.

12. There is in my judgement no merit to this ground. In SMO II, the Upper Tribunal confirmed, as Mr Khan accepts, that whether an individual is likely to recall the volume page reference of the entry in the Family Book in Iraq is a question of fact, to be considered against the factual matrix of the individual case. The judge plainly considered the factual matrix of the appellant's claim. He accepted the appellant's claim that he had joined the Peshmerga and that he had attended training near Sulaymaniyah before being posted to the Kirkuk area. It was against that background that the judge concluded that given the importance of the Family Book number to Iraqis, it is highly unlikely that an adult male, who has been employed in Iraq in the past and who has had to prove his identity in order to join the Peshmerga, would not have had recourse to his Family Book number even for those purposes, let alone for other day to day purposes. The use of the phrase 'highly unlikely' is unfortunate but when paragraph [104] of the decision is read as a whole and alongside the judge's assessment of the core of the appellant's claims, it is in my judgment clear that the judge was not adopting a higher standard of proof than that applicable in protection claims.

GROUND 3; THE APPELLANT'S CONTACT WITH HIS FAMILY AND THE AVAILABILITY OF A CSID

13. Mr Khan submits the judge failed to adequately address the appellant's claim that he has lost contact with his family. The judge found Kirkuk is a governorate where INID terminals have been installed. Mr Khan submits the judge failed to make any express finding as to whether the CSID could be sent to the appellant in the UK or how the family would be able to meet the appellant in Baghdad.
14. This ground too has no merit. The appellant's evidence regarding the lack of any contact with his family is set out at paragraphs [35], [41], [42], [44], and [46] of the decision. The judge adequately addressed the appellant's claim that he is not in contact with his family in Kirkuk at paragraph [103] of the decision. He found the appellant's account that he has had no contact and has not retained any contact details for his family since leaving in 2017, not to be a credible one. It was undoubtedly open to him to do so, for the reasons he gave.
15. I accept the judge accepted the appellant will be returned to Baghdad and the appellant cannot obtain a CSID or INID from the Iraqi Embassy in London. The judge also accepted that without a CSID or INID the appellant cannot safely travel from Baghdad to Kirkuk.
16. The Judge referred at paragraph [104] to the appellant's claim that he does not have his CSID or passport. As I have already noted, the appellant's evidence regarding his passport and CSID is set out at paragraphs [44], [45] and [48] of the decision. Having rejected the appellant's claim that he is not in contact with his family, it was open to the judge to conclude that the appellant could obtain his passport by contacting his family and having it sent to him. Similarly, it was open to

the judge to find that the appellant's family could provide him with his CSID.

17. The difficulty for the appellant, as Mr Khan was bound to acknowledge before me is that the appellant's family can send his CSID to him in the UK, or alternatively, could meet the appellant in Baghdad with his CSID. Either way, the appellant will have no difficulty in travelling from Baghdad to Kirkuk without being at risk of ill-treatment contrary to Article 3. It was plainly open to the judge to conclude as he did at paragraph [110]:

"... I am satisfied that with his family's assistance he will be able to obtain his CSID and passport before he is returned to Iraq, or that he may be able to obtain a replacement passport from the Embassy and his family could bring the CSID card to him on arrival in Baghdad, and that he could therefore safely travel onward from Baghdad to his home area in Kirkuk without encountering treatment contrary to Article 3 ECHR."

18. The judge is not required to delve into the minutiae of how the appellant's family might themselves make the journey from Baghdad to Kirkuk. It formed no part of the appellant's case that they are unable to do so.

GROUND 4; THE ANALYSIS OF THE ARTICLE 8 CLAIM

19. Mr Khan submits the judge made inadequate findings regarding the question whether there would be very significant obstacles to the appellant's integration into Iraq. He submits the reasons given by the judge at paragraph [112] of the decision are inadequate. Mr Khan, quite properly in my judgement, accepted that the judges assessment of the Article 8 claim must be informed by the previous findings he had made regarding the core of the appellant's claim and whether the appellant can safely make the journey from Baghdad to his family in Kirkuk.

20. Although the Article 8 claim is addressed only briefly in the decision of the FtT, I reject the claim that the judge failed to give adequate reasons. The judge said:

"The Appellant is a young man of working age with experience of employment in Iraq. He has family in Kirkuk who can help him with accommodation and obtaining work. I do not accept that he is likely to face destitution on return, or that, given his network of family support, nationality, ethnicity and language skills that he would face any significant obstacles to integrating into life there."

21. When read alongside the findings made by the judge, it was in my judgement open to the judge to dismiss the appeal on Article 8 grounds. There were no additional factors or evidence relevant to the appellant's private and family life and it is not suggested that the judge failed to have regard to material evidence .

GROUND 5, FAILURE TO ADEQUATELY ADDRESS THE PERSECUTORY RISK THE APPELLANT FACES ON RETURN TO IRAQ

22. Mr Khan submits the judge's findings and conclusions that are to be found at paragraphs [82] to [102] of the decision regarding the core of the

appellant's claim and the assessment of the risk upon return, is vague and generalised. This ground too has no merit.

23. A judge is required to consider the wide canvas of evidence before the Tribunal and to consider the evidence as a whole. In assessing the credibility of the appellant and the core of the claims advanced by him, the judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. Clearly, some of those factors may be more relevant in an individual case than others. If an account is littered with internal inconsistencies that may be enough for a judge to dismiss the evidence of an appellant as incredible.
24. The decision must be read as a whole and it is clear that the judge considered the two strands that formed the core of the appellant's case by reference to the appellant's claims, and by considering the evidence in the context of all the other evidence before the Tribunal, and the findings the judge made.

GROUND 6, THE STANDARD OF PROOF

25. Mr Khan submits that at paragraphs [89], [92], [93] and [104] of the decision, the judge uses the term "highly unlikely" when addressing particular aspects of the claims advanced by the appellant. He submits that imports the wrong standard of proof to the analysis of the appellant's claims, and that reading the decision as a whole, the Tribunal cannot be satisfied that the judge did in fact apply the lower standard that applies in an international protection claim.
26. I do not accept the judge applied the wrong standard of proof. At paragraph [65] of his decision, the judge correctly directed himself as to the relevant standard of proof. He said:

"The burden is on the Appellant to show in an asylum appeal, that their return will expose them to a real risk of an act of persecution for a Refugee Convention reason. The standard of proof is a reasonable degree of likelihood, which is also described as a reasonable chance, or a serious possibility. These descriptions are treated as meaning the same. This standard, which is lower than the civil standard of a balance of probabilities, applies to both the assessment as to whether the Appellant has a 'well-founded fear' and also the assessment of future risk on return"
27. Having given himself that self-direction, I have considered whether there is any merit to the claim made by the appellant that by using the term that something is "highly unlikely", the judge applied the wrong standard. It is unfortunate that the judge adopted the phrase "highly unlikely" in considering some of the claims made by the appellant, but when what is said by the judge in the paragraphs relied upon by Mr Khan is put in context, and read alongside what is said by the judge elsewhere, it is clear that the judge had in mind, and applied the correct standard of proof. The terms "highly unlikely" appears to have been adopted to demonstrate the

weight of the evidence against the appellant or the strength of the reasons given by the judge for rejecting the appellants claim.

28. In the critical passages of his decision, the judge said:

“94. I find therefore that, although the Appellant may have had some form of relationship with a girl in Iraq, he has failed to establish to the standard required that he has a genuine subjective fear that he is at risk of a so-called honour crime at the hands of his girlfriend’s family, or that he joined the Peshmerga on account of his fear of them. I therefore find that he has not established even to the low level required in a protection appeal, that he is at risk of persecution on account of his membership of a particular social group, as he has claimed. *(my emphasis)*

...

102. Thus, whilst I am satisfied that the Appellant was a member of the Peshmerga, I find that he has not demonstrated that there is a reasonable likelihood that he would face persecution either from the Iraqi government, the Hashdi-Shabi or the PUK on account of any participation as a rank and file soldier in the Peshmerga involved in the defence of Kirkuk. *(my emphasis)*”

29. Reading the decision as a whole, it is clear that having given himself a proper self-direction as to the relevant standard of proof, when standing back and considering the appellants claims, the judge was not satisfied that the appellant has established, even to the lower standard, that the appellant has a well founded fear that he is at risk upon return to Iraq.

CONCLUSION

30. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when the judge was making material findings. In my judgement, the judge identified the issues and gave a proper and adequate explanation for his conclusions on the central issues on which the appeal was determined. The findings made by the judge were findings that were properly open to the judge on the evidence before the FtT. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. Having carefully considered the decision of the FtT I am quite satisfied that the appeal was dismissed after the judge had carefully considered the facts and circumstances of the claim, and all the evidence before him, applying the correct standard of proof.

31. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT, and it follows that the appeal is dismissed.

NOTICE OF DECISION

32. The appeal is dismissed and the decision of FtT Judge Elliott stands.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 January 2024