IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005149
First-tier Tribunal No: PA/00055/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13th February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

HMK
(ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Ms R Arif, Senior Home Office Presenting Officer
For the Respondent: Ms Sepulveda, Fountain Solicitors

Heard at Birmingham Civil Justice Centre on 22 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 in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is HMK. However, for ease of reference, in the course of this decision I now adopt the parties' status as it was before the FtT. I refer to HMK as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Iraq and of Kurdish ethnicity He claims he was born in Jabara, in the Diya Governorate. His immigration history is lengthy, but for present purposes it is sufficient for me to record that the appellant first arrived in the United Kingdom in February 2008 and claimed asylum. His claim was refused by the respondent and an appeal against that decision was dismissed by 'Immigration Judge Graham' for reasons set out in a decision dated 9 July 2008. Judge Graham did not find the appellant to be a credible witness and she entirely rejected the core of the appellant's account of the events leading to his departure from Iraq. Further submissions made by the appellant between 2008 and 2011 were refused by the respondent. The appellant claims that he left the UK in October 2018 and remained in Calais for a short period before returning to the UK, undocumented, at the end of November 2018.

3. Following his return to the UK, the appellant made further submissions to the respondent. Although the respondent again rejected the claim for international protection for reasons set out a decision dated 3 September 2021, the respondent accepted the further submissions amount to a fresh claim, giving rise to a further right of appeal.

4. The appellant's appeal was allowed by First-tier Tribunal ("FtT) Judge Chamberlain ("the judge") for reasons set out in a decision promulgated on 29 June 2022. In paragraph [20] of her decision the judge said that in the absence of any new evidence particular to the appellant, the findings previously made by Judge Graham in 2008 regarding the core of the appellant's claim stand. However given the significant passage of time since that decision, the judge went on to consider whether the appellant is able to return to Iraq now. She heard evidence from the appellant, his partner and his brother. She found them to be credible witnesses. The judge referred to the current country guidance that is set out in in *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC) ("SMO and Others") and found that the appellant will be returning on a Laissez Passer which would get him to Baghdad airport. At paragraphs [34] and [35] of her decision, the judge concluded:

> "34. I find the Appellant has shown that his return to Iraq is not feasible. Even though his asylum claim was not accepted in 2008, as at today's date he cannot be returned to Iraq following SMO. At [59] of the decision letter the Respondent's acceptance that he could relocate to the KRI is based on the fact that he could obtain the necessary documentation prior to his arrival in Iraq. However I have found that this is not the case. The Appellant could therefore not travel either to his home area, or to the KRI for the

purposes of internal relocation. Without a CSID or INID, or any family support in the KRI, I further find that internal relocation there would be unduly harsh.

35. Considering all the above, I find the Appellant's claim to be a genuine refugee in need of international protection to be well founded. I find that there is a real risk that he will suffer persecution on return to Iraq, and so his claim succeeds on asylum grounds. As I have allowed his appeal on asylum grounds, I do not need to consider his claim to humanitarian protection. I find that returning him to Iraq would cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR."

THE GROUNDS OF APPEAL

5. The respondent acknowledges that the judge's focus is upon the lack of documentation and the appellant's inability to acquire relevant documentation. However, the respondent claims that having confirmed that the findings previously made by Judge Graham in 2008 regarding the core of the appellant's claim stand, it was not open to the judge to find that there is a real risk that the appellant will suffer persecution on return to Iraq, and so his claim succeeds on asylum grounds. The respondent claims the judge gives no reasons for her finding that there is a real risk the appellant. will suffer persecution on return to Iraq. The respondent claims the focus should have been upon the appellant's circumstances on arrival in Baghdad and whether the appellant will encounter treatment or conditions which are contrary to Article 3 ECHR.

6. Permission to appeal was granted by Upper Tribunal Judge Pickup on 27 April 2023. He said:

"3. The appellant claimed to fear return to Iraq on grounds that he would be kidnapped by a terrorist group. At [20] of the impugned decision, the judge found no reason to depart from the previous findings of the First-tier Tribunal in 2008 dismissing the asylum appeal, noting that no new evidence had been provided.

4. However, the judge went on to consider whether the appellant would be able to return to Iraq in the alleged absence of identity documentation. At [33] the judge found that as the appellant would be returning on a laissez passer, he would not be able to travel beyond Baghdad Airport to either his home area or the IKR. On that basis, the judge found at [35] that the appellant was a genuine refugee with a well-founded claim to need international protection: "I find that there is a real risk that he will suffer persecution on return to Iraq, and so his claim succeeds on asylum grounds." The judge went on in the next sentence to state that as the appeal had been allowed on asylum grounds, there was no need to consider the claim to humanitarian 2 protection. Not only is that finding arguably inconsistent with that at [20] of the decision that the asylum claim could not succeed, itis arguably made in error of law because concerns as to circumstances on arrival and travel beyond Baghdad are matters for humanitarian protection and/or article 3 ECHR, not the Refugee Convention. Arguably, the First-tier Tribunal Judge has misunderstood the law and the difference between the different heads of claim."

THE HEARING OF THE APPEAL BEFORE ME

7. At the outset of the hearing before me Ms Arif confirmed the respondent does not challenge the decision of the FtT to allow the appeal on Article 8 grounds. She accepts that it was open to the judge, on the basis of the finding that the appellant and his brother are not in contact with any family in Iraq, to conclude that there would be very significant obstacles to the appellant's integration into Iraq and that he meets the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.

8. Ms Arif submits the judge erred in allowing the appeal on asylum grounds. The judge provides no reason for concluding the appellant is a refugee having noted the core of the appellant's claim had been rejected previously in 2008 and finding that there is no new evidence before the Tribunal to undermine the findings previously made.

9. Ms Arif submits the focus was upon the issues that now arise in such claims by reference to the country guidance set out in SMO and Others and that on a proper application of the guidance set out in SMO and Others, the asylum claim could not have succeeded. She submits a copy of the appellant's CSID is provided in the respondent's bundle at annex 'G1 and G2', and the judge erred in finding that the appellant will not have the relevant document for safe passage from Baghdad to his home area.

10. In reply, Ms Sepulveda adopted the rule 24 response, and in summary she submits the judge gave adequate reasons for her decision. She submits the respondent does not challenge the findings made by the judge that the appellant and his brother are not in contact with any family in Iraq and that the appellant does not have a passport.

11. I drew Ms Sepulveda's attention to paragraphs [24] and [25] of the decision of the FtT and the finding that the appellant had given his ID card to the respondent in 2008 and that the document has not been returned to the appellant. Ms Sepulveda submits that in the respondent's decision of 7 September 2021, the respondent considered the feasibility of the appellant's return to Iraq, and in paragraphs [74], [87] and [88] of the decision, the respondent proceeds on the premise that the appellant has failed to establish that he would be unable to obtain a CSID or retrieve documents from his family or via a proxy. The respondent appears therefore to proceed on the premise that the appellant's CSID is not held by the respondent. She accepts the appellant's claim that he handed the CSID was based on the appellant's evidence before the FtT, but she submits, there was no evidence that the document is still held by the respondent.

12. Ms Sepulveda submits that the focus of the judge was upon the documents available and that even if the appeal should not have been allowed an asylum grounds, it was open to the judge to find that the appellant's return to Iraq would cause the UK to be in breach of Articles 3 and 8 ECHR.

DECISION

13. It is clear in my judgement that the judge erred in allowing the appeal on asylum grounds and the decision to do so, must be set aside. At paragraph [9] of her decision, the judge referred to the respondent's decision. The respondent had set out relevant extracts from the decision of Judge Graham who had comprehensively rejected the core of the appellant's account as to the events relied upon by the appellant as the foundation for his asylum claim. The respondent confirmed the appellant had provided no new evidence in relation to those aspects of his claim. At paragraph [20], Judge Chamberlain said:

> "In relation to the Appellant's asylum claim, this was previously determined in a decision of Judge Graham dated 9 July 2008. Ms Sepulveda accepted that the Appellant had not provided any new evidence. The expert report provided did not relate to the Appellant himself but to a different individual. It is not based on his individual circumstances. I attach little weight to it. In the absence of any new evidence particular to the Appellant, I find that those findings stand in accordance with the case of Devaseelan."

14. There is nothing in the decision of the FtT which explains why, having concluded that the previous findings of Judge Graham stand, the judge allowed the appeal on asylum grounds. The judge did not revisit any of the findings and there are no discernible reasons at all for the decision to allow the appeal on asylum grounds.

15. The focus of the judge, quite properly, was upon the significant passage of time since the decision in 2008 and the way in which the country guidance has developed regarding documentation and feasibility of return.

16. There is reference to the appellant's ID card in paragraph [23] of the decision of Judge Graham and it was plainly referred to in the respondent's previous decision of 19 May 2008. At paragraph [33] of her decision, Judge Graham noted the appellant had submitted documents including an Iraqi ID card. At paragraph [38] of her decision, Judge Graham expressed doubts about the reliability of the documents relied upon by the appellant. At paragraphs [24] and [25] of her decision, Judge Chamberlain said:

> "24. The Appellant gave evidence that he had submitted his Iraqi ID to the Respondent in 2008. A copy of his ID is found at G1- G2 of the Respondent's bundle. The Appellant gave evidence that he had given his original ID card to the Respondent in 2008 and it had never been returned to him. The Respondent has premised her decision on the fact that the Appellant can obtain an ID card by proxy. She has made no reference to being in possession of the Appellant's ID card. She has not asserted that she can return it to him so that he can use it as proof of his identity.
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> 25. I find that the Appellant gave his ID card to the Respondent in 2008 and that she has not returned it to him since. I find that he does not have an ID card, neither a CSID nor an INID."

17. It was plainly open to the judge to find that the appellant gave his ID card to the respondent in 2008 and that she has not returned it to him since. That is plainly correct. The respondent was not represented at the hearing

before the FtT, and it is right to note that a copy of the appellant's CSID was, as Ms Arif submits, provided at Annex 'G1 and G2' of the respondent's bundle. It is not entirely clear why the respondent made no reference to being in possession of the appellant's CSID in the decision to refuse the appellant's claim. The judge refers to the copy of the appellant's ID document at Annex G1 and G2 and was plainly aware that the respondent has at the very least had possession of the document in the past. However, the judge was right to say the respondent has not asserted in her decision that the CSID can be returned to the appellant so that he can use it as proof of his identity.

18. In SMO and Others, the Upper Tribunal confirmed in headnote [11]:

> "*The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. 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. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.*

19. Standing back, in my judgement the judge has given adequate reasons for her finding that the appellant cannot obtain a CSID, as the respondent claimed, by the use of a proxy as he is not in touch with any family members in Iraq.

20. It follows in my judgement that it was open to the judge to find that returning the appellant to Iraq would cause the UK to be in breach of its obligations under Article 3. The judge did not therefore err in allowing the appeal on Article 3 grounds.

NOTICE OF DECISION

21. The decision of First-tier Tribunal Judge Chamberlain to allow the appellant's appeal on asylum grounds is set aside.

22. I remake the decision, dismissing the appeal on Asylum grounds

23. The decision of First-tier Tribunal Judge Chamberlain to allow the appellant's appeal on human rights grounds (Articles 3 and 8) stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 January 2024