



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000256
First-tier Tribunal No:
PA/51434/2022
IA/06421/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AAH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Timpson, instructed by Kings Law Solicitors Ltd.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 13 September 2024

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

1. The procedural history is set out at [2] of the determination of Deputy Upper Tribunal Judge Sills promulgated on 15 May 2024 in the following terms:
2. The Appellant is an Iraqi national of Kurdish origin. He arrived in the UK in 2016 and claimed asylum. He claimed to be at risk due to a blood feud. He claimed to have

been aware of a relationship between his cousin HHM and NIJ, who was married. When the relationship was discovered all three claimed to be at risk from NIJ's family. They left Iraq along with NIJ's children and are now all in the UK. His first asylum claim was refused and the appeal dismissed by the FTT in December 2017 and the account found to be not credible. In those proceedings only the Appellant gave evidence. The Appellant lodged further submissions leading to a second refusal and appeal to the FTT. At the FTT hearing in October 2022, the Appellant, HHM, and NIJ all attended. The Appellant also relied on evidence to argue that that NIJ's husband was in Germany looking for her. The FTT Judge dismissed the appeal. In the Decision under appeal, the FTT Judge found that while NIJ's husband was living in Germany, there was no evidence that he was looking for NIJ. The FTT Judge again found the Appellant's account not to be credible and did not accept that the Appellant would be at risk for this claimed reason. In the alternative, the Appellant had not established there would not be sufficient state protection. The FTT Judge accepted that the Appellant no longer had 'any Iraqi issued identification documents, either by his own design or due to their removal by the agent who arranged his transit' (para 33). The FTT Judge rejected the claim that the Appellant did not have access to supportive family members in the IKR. He could easily make use of a proxy to obtain his family book entry. It was highly likely that the Appellant would know this information (para 45). The FTT Judge relied upon the most recent the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns July 2022 (the 2022 CPIN). The FTT Judge found 'I infer that either return will be to the IKR as was always intended, or that at a point of entry to Baghdad, that a replacement CSID will be provided to enable onward travel, in a manner that would not constitute an Article 3 breach. The appeal was dismissed on all grounds (para 51).

2. The appeal was listed for a Resumed hearing before Upper Tribunal Judge Kamara sitting at Manchester on 21 June 2024 although she had to adjourn the hearing as a result of there being no attendance on behalf of the appellant. In her adjournment notice dated 26 June 2024 Judge Kamara writes:
 3. There was no attendance by or on behalf of the appellant. An Upper Tribunal clerk telephoned Kings Law Solicitors Ltd to make enquiries. He was informed that the firm's administration had not checked the firm's emails and as such the notice of hearing sent on 20 May 2024 had been missed. Owing to this error, the appellant was unaware of the hearing date.
3. The solicitors were directed to explain why this situation had arisen which they communicated in a subsequent letter. The lack of attention to detail and/or professionalism in relation to this appeal by Kings Law Solicitors was, however, further demonstrated today. Mr Timpson had received instructions to represent the appellant. When the case was called on he indicated that the instructions he had received from his instructing solicitors indicated the matter was listed for an error of law hearing. He did not have, for example, the decision of Deputy Upper Tribunal Judge Sills. It is not known why Mr Timpson was put in that position as the representative received a notice of hearing which makes it abundantly clear it is for the purpose of remaking the decision. They would also have received a copy of Judge Sills' determination. Fortunately as there was another matter in the list that allowed Mr Timpson time to liaise with the solicitors, receives the documents he needed, read those documents, take any further instructions required, and to place himself in a position to represent the appellant properly. Accordingly, the resumed hearing was able to proceed.
4. Judge Sills found an error of law, as conceded by the Home Office Presenting Officer, in the decision of First-tier Tribunal Judge Codd ('the Judge') in relation to the issue of documentation. At [5 - 6] Judge Sills wrote:

5. Upon resuming the hearing, Ms Newton stated that the Respondent now conceded that in the light of the 2022 CPIN, the FTT had made a material error of law and that that aspect of the Decision must be set aside. As is made clear at paras 4.5.5-6 and Annex D of the 2022 CPIN, by that stage, the replacement of the CSID by the INID in the IKR was complete. The only part of Iraq still issuing CSIDs was Nineveh Governate. The Appellant would need to travel to his home area to obtain an INID. The FTT Judge's findings at para 51 was inconsistent with the country evidence contained in the Respondent's 2022 CPIN. The FTT Judge had erred in law finding that the Appellant would be provided with a replacement CSID on return to Iraq. I characterise this error as a material mistake of fact. I add that para 2.6.9 of the 2022 CPIN also states that those who return to Iraq or the KRI without a CSID or INID, cannot obtain one on arrival via a family member, and who would be required to travel internally to a CSA office in another part of Iraq or the IKR to obtain one would be at risk of a breach of ECHR Article 3. In the light of the Respondent's concession, Mr Shea confirmed it was not necessary to consider whether the FTT Judge had erred at para 45 in relation the Appellant's knowledge of the information contained in the family book and did not seek to pursue any challenge to the decision to dismiss the appeal on asylum grounds.
6. I then raised the question of whether the decision could be remade after submissions at that hearing, as based on the 2022 CPIN the Appellant would appear to be at risk. Ms Newton argued that the question of risk needed to be considered on the basis of up to date evidence, namely the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns October 2023 (the 2023 CPIN). On the basis of that 2023 CPIN, Ms Newton argued that para 5.1.3 showed that even if the Appellant were returned direct to the IKR without an INID or CSID, he would not be at risk travelling to his home area as a family member could travel to the airport to act as a guarantor and the Appellant would be issued with a seven-day residency permit. Mr Shea agreed with the Respondent that there needed to be a further hearing at which the question of whether the Appellant would face a real risk of serious harm travelling from his point of return to his home area without a CSID or INID would be considered. Both parties agreed that the decision should be remade in the UT. In view of the parties' position, I decided that the decision could not be fairly remade at the same hearing. The Appellant needed the opportunity to submit evidence concerning the question of risk identified above given the change in the Respondent's position concerning risk on return. Ms Newton confirmed that at the next hearing the Respondent would be relying on the 2023 CPIN and did not intend to file and serve any further evidence. I informed the parties that the Decision on the humanitarian protection and human rights (ECHR Article 3) appeal by the FTT Judge would be set aside and remade by the UT after a further hearing.
5. Judge Sills notes the appellant's representative did not pursue any argument concerning the rejection of the appeal on asylum grounds which Judge Sills specifically finds is upheld. The scope of the hearing is limited to considering the appeal on humanitarian protection and human rights Article 3 ECHR grounds on the basis of Judge Sills findings at [9] in the following terms:
 9. The decision in relation to the appeal on humanitarian protection and human rights (ECHR Article 3) grounds will be remade by the UT at a further hearing. At the resumed hearing, the UT Judge will need to consider the following issue which will determine both outstanding grounds of appeal. It has been found by the FTT Judge that the Appellant no longer has any Iraqi issued identification documents. The Respondent accepts that the Appellant's home area no longer issues CSIDs. Hence, he will be returning to Iraq without either a CSID or INID. He will need to travel from his point of return to his home area where he can apply for an INID. The question to be determined at the next hearing is whether the Appellant faces a real risk of serious harm and a breach of his ECHR Article 3 rights travelling from his point of return to his home area without a CSID or an INID.

Discussion and analysis

6. References made to paragraph 5.1.3 of the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns, Version 14.0, October 2023 which reads:

5.1.3 The Inspection Report on Country of Origin information, Iraq and Myanmar (Burma) undertaken by the Independent Chief Inspector of Borders and Immigration (ICIBI), published June 2023 (ICIBI report June 2023), quoting Dr Rebwar Fateh, an expert witness on the Middle East, stated: 'If a failed asylum seeker is returned to Iraq without an ID document, they will be detained at the airport.

a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee's Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.

b) At this time, the returnee's claimed name and address will also be cross referenced against suspect names in possession of the security services.

c) Next, the returnee will be asked to phone their immediate family to bring their ID.

d) If they claim to have no immediate family, the returnee will be asked to contact a paternal uncle or cousin for their ID.

e) If this is negative too, another relative will come to the airport with their own IDs to act as a guarantor for the returnee. This would allow the returnee a seven-day residency permit pending proof of identity.

f) During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID - such as a letter from the nationality department to show that their ID is pending via the usual procedure.

g) If the returnee has no such luck, they must find a local Mukhtar [local chief or village elder] by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID.

h) If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence on their identity.

i) The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the witnesses will need [sic] to give evidence under oath, stating how they know the returnee.

j) Once the chief has been convinced, the process of obtaining the ID will start. Once these steps have been completed, the returnee needs to communicate back to the security services at the airport, or their guarantor will face legal consequences.'

7. This supersedes both the 2022 CPIN referred to by Judge Sills and the decision in SMO & KPS (Civil status documentation, article 15) CG [2022] UKUT 00110 heard on 5 October 2021 and promulgated on 16 March 2022.

8. The purpose of the Inspection Report on Country-of-Origin information is said to help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspections. The Independent Advisory Group on Country Information (IAGCI) is a panel of experts and practitioners created to assist the Chief

Inspector of Borders and Immigration in fulfilling the powers set out in section 48(2)(j) of the UK Borders Act 2007. The review is said to cover matters discussed by the IAGCI at its meeting on 25 January 2023.

9. In relation to the review of the country of information concerning Iraq it is recorded that Dr Rebwar Fatah presented an overview to the committee of his comments on the Iraq country information that he had reviewed, recommended that the country policy and information note (CPIN) provide a summary and an introduction for each section, cautioned against an uncritical reliance on media reports from Iraq, as outlets are associated with particular political groups, advocated greater attention to specific regional conditions within Iraq as there is considerable variation in conditions across the regions, and suggested a more nuanced approach in discussing opposition to the government in Iraqi Kurdistan as not all parts of the region are under the control of the Kurdish Regional Government (KRG).
10. The information contained within the 2023 CPIN, which originated from Dr Fatah, is said to have been obtained from an Iraqi government official in the Erbil nationality department in June 2020.
11. Mr Timpson in his submissions made the point that the CPIN is not country guidance. That is correct. I accept a country guidance decision must be followed unless there is good reason to depart from it on the available evidence, but the opinion of Dr Fatah deserves proper weight being given to it. His bibliography reads:

‘Dr Rebwar Fatah is the director of Middle East Consultancy Services (MECS). He has been working as an expert witness since 2000, focusing on issues across the Middle East and North Africa (MENA), as well as Afghanistan, Iran, and Turkey. Dr Fatah has produced over 3,000 expert reports which have been commissioned for and cited in a number of immigration appeals, as well as family and criminal cases. He has also examined a large number of people from the Middle East whose nationality and/or ethnicity has been disputed. Dr Fatah has also examined and authenticated thousands of documents from the MENA region. From 2016 to 2019, Dr Fatah produced 126 reports on Iran, including Country Expert Reports, document authentications, and nationality assessments.’

12. When considering the available evidence, it is important to establish the correct starting point in this appeal. That is the decision of then First-tier Tribunal Judge Pickup promulgated on 28 December 2017 following a hearing at Manchester Piccadilly.
13. Judge Pickup set out the appellant’s case in summary at [12 - 14] of that decision in the following terms:
 12. In summary, the appellant’s case is that since 2013 his cousin H had been having an affair with NIJ, a married woman. The appellant was not only aware of this, but acted as a go-between, carrying messages and facilitating their secret rendezvous.
 13. NIJ’s husband discovered the affair and demanded testing of the paternity of his children. The appellant and H began to receive threats from H’s family and he was beaten up by NIJ’s brother. When the children were supposed to be tested at hospital, H, NIJ, her children, and the appellant, took the opportunity to flee Iraq.
 14. He fears it on return to Iraq he will be killed by NIJ’s family, because of his knowledge of the affair.
14. The claim was therefore risk on return as a result of a blood feud arising from the discovery of an affair between his two cousins, H and HIJ. Having assessed the appellant’s evidence and submissions Judge Pickup wrote at [31] “*having*

regard to the totality of the evidence, I find, for the reasons summarised herein, that I cannot accept any part of the appellant's factual claim as reliable or truthful, even applying the lower standard of proof". Judge Pickup gave sustainable reasons for that finding in the following paragraphs of his decision.

15. In relation to documentation Judge Pickup noted the appellant is from the IKR where he had both a passport and a CSID, and that on the basis of the rejection of the credibility of his claim, he had no reason not to return to his home area. Judge Pickup found the appellant could return directly to the IKR with preclearance from the relevant authorities and could obtain a replacement CSID in his home area.
16. First-tier Tribunal Judge Codd, whose decision was set aside by Deputy Upper Tribunal Judge Sills, in his determination following the appeal being heard at Birmingham on 13 October 2022, summarise the appellant's case, as put, in the following terms:
 5. The Appellant claims that he was aware of a relationship which had developed between his cousin HHM and NIJ another individual known to the Appellant, a sort of family friend. Essentially NIJ was a widow who had children from her first marriage. She re-married to FI and had four further children whilst married to him. It is asserted that the youngest two children were actually the biological children of HHM and were conceived as a result of an affair that had been kept secret.
 6. The Appellant asserted that he was the only person who knew about the affair as he was present at his Aunt's house, when NIJ and HHM would visit and on occasion he would act as a go between. The Appellant asserts that the family became suspicious of the affair and that he was believed to have information. He states that he was threatened by NIJ's family, including her husband and brothers and that in an incident in 2015 he was struck on the head with a metal bar. Within the previous proceedings he asserted a regular risk of violence from NIJ's family who were attempting to discover information from him.
 7. Matters are said to have come to a head in 2015, when it was suggested that a DNA test be undertaken in respect of NIJ's youngest two children. At paragraph 23 of his witness statement the Appellant states that the affair was discovered, he later clarifies this as a high level of mistrust. The Appellant asserts that the family suspected that he knew about the relationship, or, to some extent facilitated the affair, and had attacked him to find out what he knew, prior to confronting HHJ with a demand for a DNA test.
 8. As a consequence of these threats HHJ, NIJ, her six children and the Appellant fled to Turkey. It is suggested that at points they were separated, however all parties now reside in the UK.
 9. The Appellant alleges that subsequent to leaving Iraq, NIJ's brothers travelled to France in search of her and her husband had travelled to Germany in search of them. The Appellant feared that the family were searching for NIJ and HHM, and that he would also be implicated in this. He argues that if he is returned to Iraq that he would be exposed to a risk of persecution and therefore qualifies either as a Refugee or for subsidiary Humanitarian Protection. Finally as the Appellant is from the KRI region, he argues that if he is returned to Iraq that this would be a breach of his article 3 rights, as he is no longer in possession of his identity papers.
17. Judge Codd noted that very little evidence in the way of material facts had been placed before him that had not been considered by Judge Pickup in 2017.
18. At [30] Judge Codd finds that on any analysis the appellant simply cannot substantiate any claim whatsoever that FI is actively looking for him, NIJ or HHM. It was found that it is more likely that FI has sought out a new life in Germany. Judge Codd also records having seen no evidence to suggest the

brothers of NIJ are actively looking for the appellant. In short, he cannot substantiate his claim.

19. At [32] Judge Codd writes:

32. I am simply not convinced from the evidence before me that there is, or ever has been, a blood feud which has involved the Appellant. I simply cannot see that there is any ongoing risk of individuals seeking to track him down in the UK, or that there exists any risk from the family in Iraq. If there is a risk, he simply has not established the burden of proof upon him to evidence that risk.

20. Although both Judge Pickup and Judge Codd reject the credibility of the appellant's claim that he faces a real risk on return to Iraq there is a material difference in the finding by Judge Codd at [33] in which it is written:

33. I accept that the appellant no longer has any Iraqi issued identification documents, either by his own design or due to their removal by the agent who arranged his transit. I shall deal with the implications of that below.

21. That is preserved finding. It was not accepted by either judge, however, that the appellant had lost contact with his family in Iraq. At [45] Judge Codd finds the appellant has access to supportive family members in Iraq.

22. It is not made out the appellant would not be able to obtain a laissez passer with which he could be flown directly to Sulamaniyah or any other airport in the IKR.

23. Mr Timpson's submission was that the specific wording used by Judge Pickup is in the past tense, namely that the appellant "had" a passport and CSID. The appellant in his witness statement also claimed he had such documents, not that he has them at present.

24. It was not submitted by Mr McVeety that the appellant does have these documents and there was no cross-examination on this particular point. The appellant claimed he had lost the documents in transit to the UK.

25. The bulk of the cross-examination related to medical documents that the appellant had provided and his claim that he has moved address from Exeter and now lives in Coventry. Mr McVeety thought it implausible that the appellant travelled from Coventry to Exeter to attend appointments with his GP and with the mental health services on referral, but that is a separate issue.

26. The appellant was asked about his statement of 9 May 2022, and in his evidence in chief he claimed he had read the same and that the content was true in which he claimed he had no contact with any family in Iraq as they had problems and he did not want them to know where he was living.

27. The appellant also claimed not have details of family members and when asked why, he claimed it was because he had to flee for his life.

28. Placing reliance on such statements raises further credibility issues, firstly in the appellant claiming he had no contact with family in Iraq when it has been found by two judges that he does have contact and that his claims to the contrary lack credibility.

29. Secondly, the appellant's claim that he had no contact as he had problems, had to flee, and did not want the family to know where he was living lacks credibility, as it has been found the basis for such claims lack credibility by two separate First-tier Tribunal judges.

30. Despite the appellant claiming he had no contact details of family as he had to flee for his life, it is noted in an earlier determination he claimed he had contacted a cousin in Turkey indicating that he must have taken contact details with him.

31. I find that the appellant lacks credibility and there is no evidence of anything occurring to him in Iraqi that would give rise to a real risk on return as a result of a blood feud, or for any other reason.
32. I find the appellant has contact with his family members in Iraq as the reasons he gives for not having such contact lack credibility in light of the preserved findings.
33. I find the reality is that the appellant has come to the United Kingdom for a better life rather than as a person entitled to a grant of international protection as a refugee. He is an economic migrant.
34. That does not, however, disqualify him if he is entitled to leave pursuant to Article 3 ECHR or grant of humanitarian protection in relation to the documentation issue.
35. The CPIN at section 6.18 refers to the possible consequences of not holding identity documents and refers to the lack of identity documents directly increasing the risk of other serious protection incidents and rights violations of the concerned individuals, especially at checkpoints manned by armed and security actors.
36. Returning to 5.1.3 of the CPIN, it is accepted the appellant will be detained at the airport if he returns without an ID document and interviewed, although the authorities will be aware of his return as the same will have been communicated to them by the respondent's officials in the removal team. It is not disputed the appellant is from Sulamaniya in the IKR and there is nothing to establish that this would not be accepted by the Iraqi authorities.
37. It is not made out the appellant will not be able to provide details of his full name and home address which will allow that to be cross referenced to data possessed by the security services. At 6.15.6 of the CPIN it is recorded:

6.15.6 The DIS report, published March 2023, considered security lists in Iraq and stated: 'In addition to the airport, the authorities at land borders all over Iraq and at checkpoints between KRI and Federal Iraq have access to the exit ban list also known as security list or security clearance. There are many cases of people being denied travelling between KRI and Federal Iraq due to similarity of their names to the names of persons wanted for terror-related issues. These cases are usually sorted out, but it takes a lot of time.'

38. The appellant is not seeking to travel from the IKR to Federal Iraq or to cross any land border between the two administrative areas. There is also insufficient evidence to warrant it being found that the appellant's name will appear on the security list. It is therefore not made out that the appellant will face real risk of ill-treatment or detention at the hands of the security authorities at this stage of the process.
39. The appellant admits he had both a CSID and passport in Iraq. His claim not to be in contact with his family has been rejected which is a sustainable finding. He has not made out he will be unable to telephone his immediate family and ask them to bring their identity documents to the airport.
40. There must also be a record on the digital database of the appellant's details in relation to his obtaining a passport and identity documents. It is not made out the authorities would not be able to access the same on the basis of the evidence the appellant is able to produce with family support.
41. It is accepted that to live a normal life in Iraqi the appellant will have to obtain his own ID documents. It is not made out he will not be able to make an appointment at his local CSA office prior to return, or shortly thereafter, to commence the process of providing his biometrics to obtain an INID.
42. As the appellant will be able to provide evidence of a potential sponsor and he is an Iraqi Kurd from the IKR, it is not made out he will not be granted entry.

43. In relation to the need for a security clearance permit at 6.15.1 of the CPIN it is written:

6.15.1 The January 2021 UNHCR report stated that:

'... [S]ecurity clearance from relevant security agencies is generally needed in all areas, irrespective of the person's profile/origin. Sunni Arabs and Sunni Turkmen from formerly ISIS-held or conflict-affected areas may be denied security clearance or run the risk arbitrary arrest and detention under the Anti-Terrorism Law of 2005 (Law No. 13 of 2005) on the basis of broad and discriminatory profiling.

'... Upon entry to the KR-I (at either an internal border checkpoint or the airports in Erbil or Sulaymaniyah) and following security screening, the Asayish (Kurdish security agency) generally provides such persons with a temporary entry authorization valid for 30 days.

44. It is not made out the appellant will not be granted a 30-day security permit which will enable him to leave the airport.

45. It is not made out the appellant will be without support, as clearly he has family to whom he can return to in the IKR.

46. It is not made out that the appellant will not be able to redocument himself within a reasonable period of time after returning to the IKR.

47. It is therefore not made out that he will be without the required identity documents required to enable him to live an ordinary life within the IKR.

48. In particular, it is not made out that if returned he real runs a real risk of ill-treatment sufficient to engage Article 3 ECHR on the basis of being undocumented or is entitled to a grant of humanitarian protection on that basis.

49. As the appellant has not established he is entitled to a grant of protection, or leave on any other basis, the appeal is dismissed.

Notice of Decision

50. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024

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