



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2023-000740
FtT Appeal Number: PA/52046/2021
IA/06516/2021

THE IMMIGRATION ACTS

Heard at Field House
On 13th September 2024

Decision & Reasons Promulgated
On 18th October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

PS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Mrs Johnrose, a solicitor
For the Respondent: Ms R Arif, a Home Office presenting officer

DECISION AND REASONS

Introduction

1. The appellant, who was born on 1 March 1989, appeals against the decision of Judge of the First-tier Tribunal (FTT) Malik (the judge) to dismiss his appeal following a hearing in Manchester on 30th of May 2022.

Background

2. The appellant applied to the respondent for asylum and humanitarian protection in the UK on 28th of January 2021. In particular, the appellant who was from the Kurdish Region of Iraq (KRI) and is of Kurdish ethnicity, claimed to have worked as a mine clearer. As such he was responsible for preparing a patch of land belonging to a local tribe. He claims that a mine exploded in that area and a member of the local community was badly injured, but he was blamed for the incident. The family of the person concerned (called "BD") accused him of having planted the mine in question on behalf of Hasht Al Shaabi (HAS).
3. The respondent considered the appellant could safely return to his home area and did not accept he was at risk from BD's family. The respondent did not accept that the appellant had no CSID - the onus being on him to prove its absence. In addition, his account was incredible and the respondent did not accept that the appellant would have a problem with the wider community. Nor did the respondent accept (at page 373 of the 458-page consolidated bundle for the Upper Tribunal (UT)) that the appellant would face a real risk on return from Bahadin Dara and the Shwankar tribe who have links to PUK. As far as the documentation was concerned, the respondent did not accept that the appellant had proved the lack of a CSID document and accordingly the respondent did not accept that there was anything that would put him at risk on return. Indeed, he could rely on his family to re-document him there.
4. In reaching his decision the judge had to consider an earlier decision by Judge Pickup (PA/10879/2018) dated 23 October 2018 in which FTT Judge Pickup had concluded that BD's family were aware of the appellant's involvement with mine clearing on 5 December 2017 but had not extracted any revenge on him for the death of BD. He found that the appellant was aware of BD's family's knowledge of his involvement with mine clearing. If he had been in fear for his safety, he would not of attended a site visit on their land on 6th December 2017. BD's family were well-connected as was widely known. If BD's family wanted to extract some revenge from the appellant they did not whilst he was there and not have waited before doing so.

5. The respondent relied on the decision of the First-Tier Tribunal (FTT) dated 23rd of October 2018, regarding it as the starting position for the determination of the outcome of the present appeal. This was in accordance with the decision of the Immigration and Asylum Tribunal in Devaseelan [2002] UKIAT 702.

The appeal to the Upper Tribunal (UT)

6. In the most recent appeal to the FTT the judge had dismissed the appeal on 12 June 2022, following the hearing on 30th May 2022. An initial application for permission to appeal was refused but on 17 April 2023. Upper Tribunal Judge Rintoul gave the appellant permission to appeal. He considered it to be arguable that the judge had not approached the appeal on the basis that the appellant was likely to be returned to Baghdad. The judge had, arguably, erred “in his approach as to whether documentation would be available” to the appellant to enable him to return safely to his home area. Judge Rintoul considered the other grounds (ground 1, which alleged that the judge had failed to take account of material evidence, and ground 4, which alleged that the judge had acted unfairly by failing to give anxious scrutiny to the case whilst making findings on material evidence) to have “conspicuously less merit”. However, all of the grounds were arguable.

The hearing

7. Mrs Johnrose argued that it was incumbent on the judge to take full account of the May 2022 CPIN which deals with risk on return. She submitted, by reference to the respondent’s rule 24 response at PDF page 25 of the consolidated bundle, that the respondent’s position remained that the appellant could safely return to the IKR by taking an internal flight, presumably, from Baghdad. However, the respondent was not wholly consistent, as Mrs Johnrose noted. Paragraph 50 of the refusal had canvassed returning the appellant directly to Sulaymaniyah and although it had been the respondent’s case that the appellant could return voluntarily to that area (see page 386 of the consolidated bundle) the appellant did not wish to do so. Overall, the respondent had given consideration to the point of return but concluded that the point of return would be Baghdad. There was no evidence, she said that immigration control had passed back to the IKR and she said he could not return to the IKR voluntarily. Mrs Johnrose submitted that a fundamental error in the decision of the FTT related to its failure fully to appraise the risk on return to Baghdad. The judge had gone on to assess the risk to the appellant of returning him to Sulaymaniyah but had failed to consider the key country guidance cases of AAH [2018] UKUT 212 (**Iraqi Kurds-internal relocation (CG)**) (AAH) and SMO (iv) SMO, KSP & IM (**Article 15(c); identity documents)** **Iraq CG** [2019] UKUT 400 (IAC) (SMO). The judge had been wrong to conclude that failed asylum seekers can be returned to the IKR given the case guidance referred to. Those cases grapple with the extent to which an undocumented person

can obtain CSID or other appropriate document to re-admit him into the IKR. Broadly, the view that had been taken is that an individual requires an identity document to live in a particular part of Iraq, such as the IKR, but that replacement documents can be obtained. Such documents may be acquired in a variety of ways. Mrs Johnrose argued that it was for the respondent to establish that the appellant qualified for admission into the IKR region by establishing a criterion for return existed.

8. Mrs Johnrose argued that the country guidance cases and in particular the case of **SMO 1 and 2**, established that if the appellant were returned to Baghdad it would expose the appellant to a risk of having to traverse to Sulaymaniyah, which would represent a risk to his personal safety.
9. Next, Mrs Johnrose turned to ground 3 which considered the feasibility of return and the documentation required. She said this that this was dealt with at paragraph 22 of the decision, where the judge noted that the appellant had been in contact with his parents, four brothers and sisters in Iraq, with whom he had previously lived, but that his brother had now gone missing. The appellant relied on emails from the Salvation Army and the Red Cross to indicate that those agencies were unable to find his family but the judge rejected these-holding in that paragraph that they did not indicate he had told them of the family members in the IKR/Iraq. The judge decided that there was no reason to depart from the previous decision of the earlier judge that the appellant did have family he could stay with and whom he could contact. They would be able to maintain and accommodate him on his return.
10. Mrs Johnrose argued that the assessment of feasibility of return was different from risk on return. She said that the risk had to be identifiable. The issue here is whether return without a passport or a *laisse passé* would put the appellant at risk. She argued that paragraphs 22-23 of the decision were inadequate in this regard. It would not be up to his family to provide him with a *laisse passé* and therefore great care was needed. Both this judge and the earlier judge had concluded that the appellant did not have a CSID card. The Upper Tribunal was assessing the situation “today”. It was not disputed by the judge in the earlier decision or in the in the current decision under appeal that the appellant could obtain CSID card. She suggested that the evidence that family members can assist in obtaining a CSID card was highly tenuous. The CPIN from 2022 suggested that the appellant would need a new identity document. She particularly referred to the CPIN at 2.6.9, which was quoted at paragraph 25 of the grounds of appeal at page 20 of the consolidated bundle. This suggested that those who return to Iraq cannot obtain a CSID card or an INID card via a family member but on arrival would be required to travel internally to the CSA office in another part of the Iraq/IKR to obtain one but the risk of encountering treatment or conditions that

would be contrary to the humanitarian protection requirements and regulations and/or the ECHR in so doing would lead to a potential breach of the respondent's obligations in international law.

11. Mrs Johnrose said that the judge did not cover this ground adequately. She said that the judge did not give adequate reasons. He had been required to assess the evidence but had failed to do so.
12. She returned to ground one saying that the substantive case law had not been fully dealt with. She referred to "MAR" which stood for Muhammed Abubaker Raswl, who held the position of "Mine Field Inspector" and worked for the Mine Action Agency (part of the "Directorate of Technical Affairs" *sic*). She said that at paragraph 19 b) of the decision the judge had referred to an undated letter from MAR (at page 431-2). MAR said he was aware of an incident but did not say how he came by that information. This had been while he was working for the Mines Advisory Group (MAG). The judge said that whilst the MAR's letter addressed to those to whom it "may concern" set out that MAR worked for the MAG, the judge thought that MAR may have taken up another role in a different organisation but there was no reasonable explanation for the discrepancy which appeared to exist between this letter and the appellant's evidence as to when the appellant had taken up his position, the judge said. Therefore it was not possible to verify when he had finished work at that organisation. The judge found to the lower standard that the evidence did not assist the appellant. The judge was criticised for this approach, pointing out that MAR was also referred to as working in the same field (at page 435).
13. In response the respondent said that the documents from MAR were properly assessed by the judge at paragraph 19 b), for example. The judge pointed out that they said MAR was aware of the incidents concerned but they did not indicate how he came by this information. The judge was entitled to come to the conclusion he came to. The judge had not been satisfied that the appellant was working for MAR, as he had claimed. The evidence did not assist in one way or the other.
14. The judge considered the evidence in the round, including everything submitted, even if it had not been mentioned. Detailed reasons had been given for his conclusions of paragraph 19 a) - f) of his decision. This included the evidence from MAR which, he concluded, did not assist the appellant. The judge even considered Facebook posts and *sur place* activities which, in fact, were immaterial for the reasons given at paragraph 19.
15. Ground 2 dealt with the risk of return to Baghdad. The judge was required to assess the situation at the date of the hearing (30 May 2022.). At that time, the appellant could return to the IKR. Having put the appellant's representatives on

notice that the appellant could return to the IKR of Iraq via Baghdad he had not failed in his assessment of risk and return to his own area via or not via Baghdad. It was a safe place to which he was to be returned. Hence there was no error of law in relation to that either route.

16. Ground 3 was subject to the deep-seated principle that a tribunal must respect a decision on the facts by an earlier tribunal. The previous decision was made after the appellant entered the UK as an illegal entrant and claimed asylum on 28 February 2018. This was refused on 28th of August 2018 and the appellant's appeal against the decision was dismissed on 23 October 2018 by Judge Pickup. His appeal rights were exhausted on 20 February 2019. He lodged further submissions on 08 July 2020 which are the subject of further consideration. The judge in the present appeal had to respect the previous decision which stated that the appellant's family was still in Iraq, the appellant had been allowed to make contact with family members and he could make contact with them again (see paragraph 22 of the decision in this appeal at page 12 of the consolidated bundle). Therefore, the appellant could obtain the necessary details, apply for a *laisse passé* and if necessary return to his home. The appellant said that he would be unable to travel to the IKR. The judge had dealt fully with the CPIN 2.6.3 in paragraph 23 of his decision (page 12), which suggested that returnees could be sent to any airport in Iraq or the IKR. The journey to the IKR is feasible, it was claimed. The appellant would have or could obtain a *laisse passé* and will be able to find his family.
17. Dealing with ground 4, clearly this had had no basis – hence Judge Rintoul's characterisation of it as having “little merit”. The ground equally had no merit before the judge.
18. Miss Johnrose made a final response and she said that ground one was on the basis that it was incorrect to say the judge had considered all the evidence including emails. Had he done so had he done so he would have answered his own question to effect the appellant had worked in mine removal. This suggested that he that the judge had not properly appraised the efforts to present evidence of his mine working and reflected adversely on the judge's decision. This suggested he had not conducted a full assessment of the evidence.
19. Mrs Arif was criticised for maintaining her position. There are insufficient flights that the appellant would be able to join to the IKR, Mrs Johnrose claimed. The country guidance case of **SMO** and others have suggested it was significantly difficult for him to return there.
20. As far as IKR was concerned – the receiving country – Miss Johnrose pointed out she was concerned that may be the starting point but now there was updating evidence and other evidence which failed to identify a safe means of returning to

the IKR. She said that there had been a conflation between feasibility of return and ability of the appellant to return. The latter was not satisfied and her client would not be able to return and therefore article 3 of the ECHR applies, “if nothing else”.

21. With regard to ground 4, the appellant would need to file updating evidence, which would have to be considered at a fresh hearing would be necessary. Mrs Johnrose wanted this to be in the FTT heard *de novo* and for there to be a reappraisal of all the evidence.

Discussion

22. Ground 1, which alleges a failure to take account of material evidence in relation to MAR, and ground 2, which alleges a failure to give anxious scrutiny to the case and consider the appellant’s evidence fairly, appear to be no more than disagreements with the FTT’s conclusion. In my view, Judge Rintoul was correct to characterise them as having “conspicuously less merit” than grounds 2 or 3. In particular, I am not persuaded to a different view after hearing Mrs Johnrose’s submissions.
23. The judge’s decision needs to be read with the earlier decision of Judge Pickup over the appellant’s degree of contact with MAR’s family in Iraq applying the Devaseelan principle. As is well known, that case establishes that the first judge’s decision is the starting point for subsequent judicial fact-finder’s fact findings save that the second judge will need to appraise new facts which have arisen since the original decision and consider events which occur in a new light. As the respondent points out, the appellant sought to rely on similar facts to those that had been considered by Judge Pickup in 2018. Judge Pickup had made an authoritative assessment of the appellant’s story at paragraph 39, including in relation to his involvement with MAR’s family and the extent of the risk arising from that. Judge Pickup had concluded that the appellant would not be at risk from them. The judge was indeed bound by the Devaseelan principle and was right not to interfere with findings made by the earlier tribunal in relation to credibility, including the extent of the appellant’s family relationships.
24. In relation to the principal grounds, 2 and 3, ground 2 is concerned with the safety of return to either Baghdad or the KRI. It seems that the respondent assumed the appellant would be returned to Baghdad (see paragraph 49 of the refusal at page 386 of the PDF) but dealt with the alternative scenario of the appellant returning to Sulaymaniyah by i.e. direct return to the KR I (paragraph 50 of the respondent’s decision) voluntarily. The judge raised the nature of the refusal with the appellant’s representative, a Miss Elle, at paragraph 4 of his decision (the respondent having attended the hearing). Miss Elle said she was content to

proceed with the appeal and did not object to the judge dealing with things in that way.

25. The judge was required to consider the important issue of risk on return at the date of the hearing and this involved not simply looking at the situation in Baghdad but also in the KR I. The judge was entitled to make an assessment based on the objective evidence presented to him at the date of the hearing. He was also required to consider the country guidance case law. The judge had regard to the case of **SMO and KSP (civil status documentation; article 15) Iraqi CG [2022] UKUT 001 0112 (IAC)** and concluded that the appellant would be able to travel on a laissez-passer which would enable the appellant to return to Iraq. He could then travel with his family to a local “CSA office” to obtain a new CSID document. This will enable him to obtain the necessary document to travel around the KIR. The respondent says that this finding is not contrary to the country guidance caselaw to which the judge referred or the objective information in the CPIN. Is this correct?
26. The key question to ask is whether the judge was entitled to conclude that the appellant’s family could provide the necessary details to enable him to obtain a CSID document which would enable him to travel to KRI. A laissez-passer, which, according to the evidence reviewed by the UT in **SMO** would provide him with sufficient documentation to travel to Iraq, would not enable him to get to the KR I. It is only if he is able to establish that his family would be able to supply the required information that is contained within the Family Book, as explained in paragraph 14 of **SMO**, that he would be able to travel safely to IKR. Mrs Johnrose argued that the judge had insufficient evidence to satisfy him that the appellant’s family would indeed provide the appellant with the information required so that he would be able to travel to his home area. This would require presentation of the Civil Status Affairs office (CSA). The reducing number of offices available to accept requests for CSID’s, the difficult technical requirements for obtaining these and generally the lack of evidence that the appellant would be able to call on his family in this way amounted to material errors of law. Travel from, say, Baghdad, to his home area of Sulaymaniyah would itself create an article 3 risk and/or a need for humanitarian protection.
27. In my view the judge fully grappled with these considerations and although he can be criticised for dealing with the critical issue of the appellant’s need for documentation when in Iraq as opposed to his difficulties in re-entering that country insufficiently thoroughly, his overall conclusions were sufficiently clear and cogent for this tribunal not to interfere with them.
28. The ground (ground 3) relating to the appellant’s ability to obtain civil status documentation and specifically a CSID document substantially overlaps with

ground 2. In relation to the third ground I have concluded that the judge was entitled to conclude that the appellant's relationship with his family was sufficiently close and their whereabouts sufficiently clear and/or easy to establish that the appellant would be able to obtain the necessary internal travel documents.

Conclusion

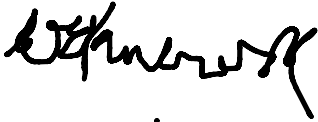
29. The appellant has not established a material error of law in the decision of the FTT.

Notice of Decision

The appeal is therefore dismissed.

An anonymity direction is made.

Signed



Date 14th October 2024

Deputy Upper Tribunal Judge Hanbury