



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002897

First-tier Tribunal No: PA/00667/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A A
(anonymity order in place)

Appellant

and

S S H D

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Mukhtar & Co, Solicitors

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 10 January 2024

DECISION AND REASONS

1. By a decision promulgated on 4 May 2023, FtT Judge O'Hagan dismissed the appellant's appeal. On 14 June 2023, FtT Judge Cartin refused permission to appeal to the UT.

2. The appellant applied to the UT for permission, on one ground: ...

... error at [45] by failing to take account of a "change in country guidance on ability to recall family book number"; rather than it being considered "unlikely that an individual would be unable to recall their family book details", this should have been approached on the basis that some Iraqi citizens were likely to recall such a matter and others were not; "a fact sensitive assessment ... would have potentially led to a different conclusion".

3. The relevant citations are supplied in the grant of permission by UT Judge Sheridan on 1 September 2023:

Given the reliance by the previous judge [*FtT Judge Komorowski*] on what was said in para. 13 of the headnote to *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)* about most Iraqis recalling their volume and page reference number in the Family Book in Iraq, the judge [*FtT Judge O'Hagan*] arguably erred by not revisiting the issue in the light of para. 14 of the headnote to *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)*.

4. Mr Winter (who was not the author of the original ground of appeal) was instructed not long before the hearing. Having perused the papers, he sought to advance an additional ground, forwarded to the UT on 9 January:

...

The FTT also appears to refuse the appeal on the basis that the appellant's solicitor was unable to say whether CSIDs were still being issued in the appellant's home area. Unfortunately the Home Office were not represented. There is a mistake of fact amounting to unfairness where the respondent's Country Policy and Information Note Iraq: internal relocation etc July 2022 stated at Annex D the areas where CSIDs were still being issued. The appellant's home area is not one of those. *MM (unfairness: E & R) Sudan [2014] UKUT 00105 (IAC)* at paragraph 25 confirms that there is some flexibility and where the appellant may not be excluded from benefitting from the error even if the solicitor is to blame. The evidence is material where it indicates that the appellant's home area was not issuing CSIDs.

5. At the outset of the hearing Mr Mullen, fairly, (i) accepted that Judge O'Hagan made a slip in not framing her decision by reference to the updated country guidance ("*SMO 2022*", rather than "*SMO 2019*"), and (ii) did not object to the proposed further ground being considered. He indicated that he would take the line that neither matter was material, because the findings made did not show entitlement to protection by reference to current country guidance and background evidence.
6. Mr Winter, also commendably and fairly, having further delved into the particulars of the case, drew attention to previous findings, including one which I had made in a previous appeal.
7. Notwithstanding my previous involvement, the appellant raised no objection to my considering the error of law issue.
8. Those previous findings are as follows:

Decision of FtT Judge Mrs D H Clapham, promulgated 16 May 2018, case ref PA/12470/2017, p 150 of his FtT bundle, p 463 (of 494) of the bundle before the UT:

[62] ... it is accepted that the appellant was in the military and therefore would have been well documented. In any event, the appellant states that he had a CSID.

My decision in the consequent appeal to the UT, promulgated on 17 January 2019, p 153, p 475, of the corresponding bundles:

[10] The decision of the FtT has been set aside. The appellant has shown no reason to revisit its findings of primary fact. Accordingly, he has access to a CSID, has no difficulty in travelling or in accessing services, and has family members to help him in returning home. Standing those findings, and applying country guidance, he does not qualify for protection.

Decision of FtT Judge Komorowski, promulgated on 6 May 2020, case ref PA/11062/2019, p 174, p 492:

[1] ... There being no new evidence of sufficient weight to upset the adverse credibility findings made by the tribunal in his first appeal, and there being insufficient evidence that the appellant might be unable to obtain a CSID, I dismiss the appeal.

Explaining his decision under reference to the guidance then current, Judge Komorowski said: ...

[25] ... [the appellant] does not, in my view, provide a plausible explanation as to how his CSID number might be forgotten. Accordingly, I do not have any satisfactory basis to make any finding other than that there is no real risk that the appellant could not obtain a CSID.

[26] The appellant was also cross-examined as to what contact he might have with his family in his country of origin, but given my finding as to his own recall of his CSID, that issue is moot.

9. Once those findings are identified, the question whether recall of details was to be appraised by reference to *SMO* 2019 (relevant for Judge Komorowski's purposes) or to be updated by reference to *SMO* 2022 (overlooked by Judge O'Hagan) is a sterile one.
10. The appellant did not show, either before Judge Komorowski or before Judge O'Hagan, cause to revisit the clear findings previously made. Neither the change in country guidance (the original ground) nor the non-availability of a CSID in his home area (the additional ground) assist his case. The FtT made no material error.
11. The FtT made an anonymity order. There is no obvious need for one, but as the matter was not addressed in the UT, anonymity is preserved herein.
12. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 January 2024