



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**Case No: UI-2023-003690
First-tier Tribunal No:
PA/01103/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 09 July 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**SK
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr M Brooks, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 8 July 2024

DECISION AND REASONS

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.

INTRODUCTION

1. The appellant is a national of Iraq and of Kurdish ethnicity. He arrived in the United Kingdom and made a claim for asylum on 10 February 2016. The claim was refused by the respondent in a decision dated 10 August 2016. The appellant's appeal against that decision was dismissed by First-

tier Tribunal Judge Anthony (“Judge Anthony”) for reasons set out in her decision promulgated on 25 August 2017. At paragraphs [11] and [12] of the decision, Judge Anthony said:

“11. Since the respondent's decision, the appellant has been able to obtain a document from Iraq which he calls his Iraqi national ID card via his friend Kayfi Ismail who visited Iraq on 21 February 2017. The appellant asked Mr Ismail to go to his uncle's address in Kirkuk to bring the ID card and the supporting letter from Martyrs Foundation. Mr Ismail returned to the UK on 20 May 2017 and brought the documents to the appellant, Mr Ismail did not attend the Tribunal to give evidence and neither was a witness statement produced from him.

12. I will have to consider the reliability of the documents in the round with the other evidence, bearing in mind the guidance given by the Tribunal in *Tanveer Ahmed** [2002] UKIAT 00439. I have carefully considered the document presented by the appellant. As stated above, the appellant describes this as his Iraqi national ID card. The English translation of this document states that it is a "General Directorate of Nationality Affairs Personal Certificate issued according to the Reformed Iraqi Civil Law number 65 of the year 1972". The top of the document states, "Republic of Iraq Ministry of Interior" and the District office is "Kirkuk" and the certificate has a number assigned to it. On the top left of the document is the page number. I have considered the appellant's account of how he obtained the document. I find that his evidence in this regard to be entirely plausible.”

2. Judge Anthony said, at [30]:

“Having considered the appellant's account in the round, I find that he has been consistent throughout his claim that he is from Abu Sabah village in Kirkuk and that the family farm was attacked by ISIS on 12 December 2015 which caused him to flee Iraq. I accept his evidence as credible that he tried to return to the family farm but he was not allowed to by the Peshmerga forces. I find the appellant's account credible that he stayed with his uncle in Kirkuk for a month prior to his uncle arranging for him to leave Iraq with an agent. I have already found that he has provided credible and plausible evidence pertaining to provenance of the ID card. I accept the *(sic)* ID card presented by the appellant as corroborative of his identity as a national of Iraq. It is accepted that he speaks Kurdish Sorani and that he is of Kurdish ethnicity. The only point against the appellant is the untruthful evidence regarding his age. However, he has now provided a plausible explanation for why he did that. I find that the fact that he lied about his age does not mean that the rest of his account is untruthful. As I have found the appellant's account to be on the whole reliable, I find I can be satisfied that the appellant is from the Kirkuk province in Iraq. I find that he has established to the low standard of proof that he is a national of Iraq born on 1 January 1997.”

3. Judge Anthony went on to address the appellant's claim for international protection and found that Kirkuk is no longer a contested area. She found, at [33], that the appellant could return to Kirkuk and live with his uncle, even if it was for a short period until he secures employment and his own accommodation. Judge Anthony found that the appellant would not be at risk upon return to his home area and is not a person in need of humanitarian protection. She dismissed the appellant's appeal.

THE DECISION OF THE FIRST-TIER TRIBUNAL PROMULGATED ON 3 JULY 2023

4. On 24 August 2022 the appellant made further submissions to the respondent. Although the respondent again rejected the claim for international protection in a decision dated 12 November 2022, the respondent accepted the further submissions amount to a fresh claim giving rise to a further right of appeal. The appellant's appeal against that decision was dismissed by a panel of FtT Judge Hickey and FtT Judge Thapar ("the panel of the FtT") for reasons set out in their decision promulgated on 3 July 2023.
5. The panel of the FtT noted, at paragraph [11], that the appeal before them "relates to *sur place* activity and loss of the Appellant's ID document". As far as the appellant's *sur place* activities are concerned, the panel of the FtT said:

"22. The Appellant has not claimed that he was politically active when he lived in Kirkuk and no such ground was raised at the first appeal. The appellant did not begin to post political content on Facebook or attend demonstrations until after he became appeal rights exhausted on 9 January 2018. He claims he attended his first demonstration on 22 July 2021. His first Facebook post is 29 November 2021. We are of the opinion that this not only undermines his credibility when he states that he became politically active in 2017, but also as to whether the political activity is genuinely held and therefore whether he would continue to engage in protest if he is returned to the KRI. We are not persuaded that the political beliefs are genuinely held and are of the view that this undermines the Appellant's account that he would be at risk on return. We find that he would not be politically active on his return. We are of the view it would not be unreasonable to expect him to delete his Facebook profile before return and that a timely deletion would neutralise any risk during any screening."

6. At paragraph [26] of the decision the panel of the FtT referred to the appellant's claim that he no longer has his ID document and cannot get it. At paragraphs [27] to [29] of the decision, the panel of the FtT said:

"27. The Appellant said in his statement dated 9 June 2023 that he had sent his original ID card to the Home Office as part of his original asylum claim and it was never returned. We had a copy of the promulgated decision. In that appeal the appellant's nationality was in dispute and First Tier Judge Anthony examined the ID document and he stated at paragraph 12 of his decision:

"I have carefully considered the document presented by the appellant. As stated above the appellant describes this as his Iraqi national ID card. The English translation of this document states that it is a "General Directorate of Nationality Affairs Personal Certificate issued according to the Reformed Iraqi Civil Law number 65 of the year 1972".

The Judge went on to describe it in more detail. We are therefore satisfied that he presented it to First Tier Judge Anthony who then examined and relied upon it as evidence of his identity.

28. Before us the Appellant explained in cross examination that he had provided it to the Judge at the hearing and never got it back. He went on to

say he never got it back from the Home Office and that they still retained it. The Home Office Presenting Officer then made the important concession that from his experience the ID document would indeed have been retained by the Home Office.

29. We heard no evidence from the Appellant that he had sought to have it returned. We therefore do not find that it is unavailable to him and subsequently we do not find there is a reasonable likelihood of a real risk of suffering serious harm upon return.”

7. The panel of the FtT therefore dismissed the appellant’s appeal.

THE GROUNDS OF APPEAL AND ERROR OF LAW

8. The appellant claimed the finding by the panel of the FtT at paragraph [29] of their decision that an identity document was available for the appellant and he would therefore not be at risk on return, is flawed. It was said that the panel of the FtT were satisfied that the appellant had presented his identity document to Judge Anthony, who then examined and relied upon the document as evidence of the appellant’s identity. The appellant claimed that the appellant’s identity document had been retained by the respondent since the appeal before Judge Anthony and had not been produced for the purposes of this appeal, as conceded by the Home Office Presenting Officer and recorded by the Tribunal at paragraph [28]. The appellant claimed he would not be able to obtain a CSID through the Iraqi Consular facilities in the UK and since the “appellant’s office has transitioned to INIDs”, the appellant would not be able to obtain his INID from within the UK. Therefore, if returned to Iraq, the appellant would face treatment or conditions which are contrary to Article 3 ECHR, as recognised in the relevant country guidance; *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)*.

9. Permission to appeal was granted by First-tier Tribunal Judge Monaghan on 21 August 2023.

10. The appeal was heard by Deputy Upper Tribunal Judge Zucker on 27 October 2023. At paragraphs [6] and [7] of his decision, he said:

“6. Although Judge Anthony at the first appeal had seen the document which the Appellant had contended was his ID card with a translation stating it was a “General Directorate of Nationality Affairs Personal Certificate issued according to the Reformed Iraqi Civil Law number 65 of the year 1972”, that document was retained by the Respondent and not produced at the later appeal before the panel, which it is contended did not make a finding, as it is submitted was required in conformity with the country guidance whether the ID document was a CSID or INID, thereby erring in law.

7. It is the Appellant’s case that he has neither of these documents (and cannot obtain them), which he would need if he were to be able to return to Kirkuk. It was his case that the document produced before Judge Anthony was a birth certificate so that the finding by the panel that the Appellant might use the document in the Respondent’s possession to effect his return was incorrect.”

11. There appears to have been some discussion before Deputy Upper Tribunal Judge Zucker as to whether the panel of the FtT should have adjourned the hearing before them, whether or not an application for an adjournment had been made. At paragraphs [9] to [11] he said:

“9. I canvassed with both parties, however whether the panel should themselves have adjourned the matter notwithstanding there having been no application for adjournment and directed the Respondent to produce the document since it seems that the whole case would have turned on it. In canvassing this point I invited comment on the “best evidence rule”.

10. The "best evidence" rule states that a party must produce the best evidence which the nature of the case will permit. In cases involving documents, the "best evidence" of a document will be the original document itself.

11. Of course, it would be a different matter if the document did not exist but it does. I was invited by Ms Ferrin to find that there was a material error of law absent the document. I understood her reasoning but it seemed to me that there was no prejudice in acceding to the joint application for there to be an adjournment, which there would have to be in any event if the matter were to be re-made in the Upper Tribunal, and so I adjourned the matter today but made the following directions which were made with the consent of both parties.”

12. Deputy Upper Tribunal Judge Zucker directed that the respondent shall file and serve a copy of the ID document of the appellant in her possession. He directed that default by the respondent shall be deemed by the Tribunal to be acceptance by the respondent of there being a material error of law in the decision of 29th June 2023 so that the decision of the panel of the FtT shall be set aside to be re-made in the Upper Tribunal.

13. On 10 November 2023, the Upper Tribunal received an email from the respondent in the following terms:

“...The respondent has reviewed the physical files held for [the appellant]. She confirms that she was unable to find any ID document. Therefore, it is proposed that the UT set aside the FTT decision (in relation to documentation and to preserve unchallenged findings) and to remake the matter at the UT.”

14. The matter was referred to Deputy Upper Tribunal Judge Zucker and in a further decision issued on 14 November 2023, he found that the decision of the panel of the FtT contained a material error of law and is set aside to be remade in the Upper Tribunal.

THE HEARING OF THE APPEAL BEFORE ME

15. By virtue of s12(4) of the Tribunals, Courts and Enforcement Act 2007 I may make any decision which the FtT could make if it were re-making the decision.

16. At the outset of the hearing before me, Ms Arif confirmed she is instructed to withdraw the respondent’s decision with a view to granting

the appellant leave on the basis that the CSID is not in the possession of the respondent, and the appellant does not have a CSID available to him to facilitate return to Iraq.

17. Although it is not entirely clear to me from the chronology that I have set out above that the respondent has ever accepted that the document that the appellant relied upon before Judge Anthony was a CSID, or that the document was ever handed to the respondent and retained by the respondent, the respondent accepts that the appellant does not have access to a CSID that would enable him safe passage from Baghdad to his home area.
18. Mr Brooks acknowledges that the respondent seeks to withdraw the underlying decision with a view to granting the appellant leave to remain. Quite properly in my judgment, he did not therefore object to the respondent withdrawing the decision dated 12 November 2022.
19. I have had regard to Rule 17 of the Tribunal Procedure Rules 2014. The respondent has orally at the hearing before me, given notice that the decision to which the appeal relates has been withdrawn with a view to granting the appellant leave to remain for the reasons set out in paragraph [16] above.
20. I conclude therefore that this appeal should be treated as withdrawn following the decision of the respondent to withdraw the underlying decision and the appeal is at an end, there being no good reason not to do so.

NOTICE OF DECISION

21. The respondent has withdrawn the decision of 12 November 2022 and this appeal is treated as withdrawn.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 July 2024