



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003717

First-tier Tribunal No: PA/50093/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd February 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KSR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Mottershaw instructed by The UK Law Firm

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 14 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a determination promulgated on 22 November 2023 the Upper Tribunal found material error of law in a determination of the First-tier Tribunal, set that decision aside with preserved findings, and gave directions for the matter to come back before it for the purposes of a hearing to enable it to substitute a decision to either allow or dismiss the appeal. That is the hearing that occurred on 14 February 2024.

2. The preserved findings are that the appellant had not made out his claim it was reasonably likely that he would be subject to treatment amounting to persecution or serious harm on account of an imputed political opinion if returned to Iraq, and that the reasons for rejecting his claims based upon his sur place activities did not stand up to scrutiny. Those findings were not challenged by the appellant. The issue at this stage, therefore, is limited to considering the question of documentation.
3. The appellant has provided three witness statements, the first dated 22 October 2021, the second 8 March 2023, and his more recent witness statement dated 29 November 2023. He also filed a bundle and supplementary bundle for the purposes of this hearing. Mr Bates had not been served with the appellant's bundle but was provided with a copy by Miss Mottershaw which he was able to read, confirmed that he was not prejudiced, and was happy to proceed. The majority of the documents in that bundle, with the exception of the latest witness statement, had been provided previously.
4. While certain aspects of the evidence touch on matters previously considered they do not form any basis for warranting departure from the preserved findings.
5. The appellant is a citizen of Iraq, of Kurdish ethnicity, born 1 January 1987, whose home area is Tuz Khurmatu.
6. In addition to its written evidence the appellant was cross-examined by Mr Bates and re-examined by Miss Mottershaw.
7. In addition to the decision of Judge Austin, who made the preserved findings, an appeal by the same appellant was heard by First-tier Tribunal Judge Mensah in 2019 sitting at Bradford on 29 October 2019. Judge Mensah set out her findings of fact from [14] of that determination.
8. The appellant had claimed he will face real risk as a result of his father being a member of the Ba'ath party who disappeared in 2003. Judge Mensah found as a negative factor that the appellant appeared to be the only person who knew what his father did for the regime, and that the appellant's claim Hashi, a Shia militia group, would consider recruiting a Sunni man (the appellant) whose father was a Baath party member when the country evidence did not suggest recruitment of such an individual would occur, was not credible. Judge Mensah found the appellant's account not to be consistent with country information, that his account entirely lacked credibility, and that having weighed the positive and negative factors together the appellant was found to be an unreliable witness who had not told the truth about his reasons for leaving Iraq, that he was not pursued by a Militia group as he claimed, that his home had not been shot at, and that his evidence regarding his family or lack of contact was not accepted, and nor was it accepted that he is undocumented.
9. Judge Mensah went on to consider whether the appellant could be returned to his home area, which is in Salah-Al-Din province in light of the security situation, by reference to both the CPIN Version 5.0 November 2018: Security and Humanitarian situation and the determination of the Upper Tribunal in BA (Returns to Baghdad) Iraq CG [2017] UKUT 18. Having done so Judge Mensah concluded that the appellant could not be returned to Salah-Al-Din, and particularly Tuz Khurmatu at that time due to the general security situation.
10. Judge Mensah considered the Secretary of State's position of relocation to the IKR, noting the appellant is Kurdish, had failed to establish he is undocumented, or what his family circumstances are, had failed to show he has no contact with his family or has no family in the IKR, which in light of such circumstances meant he had failed to show he could not relocate internally to the IKR.
11. First-tier Tribunal Judge Austin found there was nothing to warrant re-examination or reconsideration of the earlier findings of Judge Mensah. Judge

- Austin also found the respondent's reasons for rejecting the appellant's claim to be at risk as a result of his sur place activities were credible and did not stand up to scrutiny.
12. The error made by Judge Austin related to his finding at [37] in which the Judge appeared to indicate that the appellant does not have an INID and that whether or not he has access to family and to his CSID, he would not be able to obtain an INID within the UK or have the means to travel from Baghdad without documentation to Tuz Khurmatu to present himself and obtain an INID. It was found that if the Judge was inferring that the appellant would not be able to travel even if he had access to his CSID, that was clearly wrong.
 13. I make the above reference to the previous determinations as Miss Mottershaw submitted that the appellant should be found to be credible regarding his documents despite the earlier substantial adverse credibility findings.
 14. As an Iraqi Kurd the appellant will be returned to the IKR. Judge Mensah found that in light of the lack of credibility in the appellant's claim he had not established he could not internally relocate there or that it will be unreasonable or unduly harsh for him to do so. If the appellant relocates the IKR he will still require documentation to enable him to live a normal life, being either a CSID previously issued to him or one of the new biometric INID documents. It is accepted to get an INID the appellant will be required to return to his home Civil Status Affairs Office to enable his biometrics to be taken, which is likely to be in Tuz Khurmatu.
 15. The focus was therefore upon the question of availability of documents and contact with family in Iraq.
 16. I accept there is evidence of the appellant visiting the Iraqi Embassy in the UK but is it irrational to expect that they will be able to assist him if he claims not to have any Iraqi documents in his possession which he can provide to them.
 17. Similarly the appellant claims to have contacted the British Red Cross and has provided a letter from them dated 2 March 2020 and evidence the appellant has consented to his details being uploaded to the Trace the Face database, but no evidence that the family have been successfully located. I accept the letter provides evidence that details have been registered but little more. The Red Cross themselves in their correspondence makes it clear what they say is not to be used as evidence in any court or tribunal and is not evidence in relation to whether the family can be traced or not. It is therefore of neutral evidential value.
 18. Mr Bates relied on the reasons for refusal letter which at [33] states the appellant had also failed to demonstrate that he was no longer in contact with his family or that he had exhausted all avenues in order to re-establish contact with his family.
 19. So far as his CSID is concerned, the Secretary of State's position set out in the refusal letter is as follows:
 - 52 It is confirmed above that, individuals can now be returned to any airport within Iraq, however in order to travel within the country it is necessary to be in possession of either a CSID or INID.
 - 53 Within your Further Submissions you have claimed that you do not have access to your CSID as you are no longer in contact with your family. This claim has been rejected previously by the Immigration Judge in your appeal and you have failed to provide evidence to demonstrate contact has been lost, therefore it is not considered unreasonable for a family member to meet you on arrival to provide you with the original document or a replacement. As you would have access to a CSID it is also not accepted that you would be seen as a terrorist. The above guidance confirms that once in possession of the document you would be able to safely travel to the KRI without encountering

- treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR.
- 54 You have failed to provide any evidence to show why you cannot reasonably obtain the necessary documents.
- 55 You may be able to apply for a replacement CSID from the Iraqi Consular Services within the UK if you are registered with a CSA office that has not transferred over to the INID system. In order to do so you would need to make reference to key information from the Family Book. If this cannot be provided from memory it can be obtained from family members.
- 56 In order to obtain an INID an individual must attend the CSA office in person to enroll their biometrics. The offices in which INID terminals have been installed are unlikely to be able to issue a CSID however offices that have not had these terminals installed will continue to issue CSIDs.
20. It is accepted that the statement the appellant could obtain a replacement CSID from the Iraqi Consulate Services within the UK is no longer applicable following confirmation from the Iraqi authorities that CSID's are no longer being issued.
21. In his witness statement dated 8 March 2023 appellant claims is not sure when his CSI D1 has lost all taken by the PMF militia when they raided his house in Iraq that he does not remember his Iraqi ID number. He claims to have lost contact with his family and not be sure what has happened to them [24] [29].
22. In his statement dated 29 November 2023 the appellant claimed he was not at home when the Popular Mobilisation Force/Unit (PMF/U) raided his house as he had fled for safety in August 2018, that it is well known that homes were raided, destroyed, and looted by the PMF/U and that it was not safe in the area and he was not there [7] at that date [8], and that he had fled prior to the PMF/U coming to his home area [9].
23. The appellant claims all its identity documents were left in Iraq and claims to have explained in his interview that he has no contact with his family.
24. It is not disputed that the PMF/U and the Kurdish Peshmerga forces were engaged in armed conflict in the appellant's home area in 2017. On October 16, fierce clashes erupted between Iraqi government forces, supported by the PMF/Us and Kurdish Peshmerga forces in Tuz Khurmatu. The city, with a population of Kurds, Turkmen, and Arabs, was previously under the control of the Kurdistan Regional Government.
25. Civilians lost their lives due to indiscriminate attacks during these clashes, hundreds of properties were looted, set on fire, and destroyed, primarily in Kurdish neighbourhoods.
26. There was forced displacement with thousands of civilians being forced to flee their homes. The UN's Assistance Mission for Iraq reported that nearly 35,000 civilians fled Tuz Khurmatu since October 16.
27. Iraqi government forces, PMUs, Turkmen fighters, and Turkmen civilians engaged in arson by setting homes on fire, looting via stealing from civilian properties, and demolition by destroying civilian homes.
28. The appellant's claims in relation to what happened at this time is supported by country material, but he specifically claims that he left the area prior to the PMF/U coming to his home area.
29. The importance of Iraq identity documents, including the CSID, to enable a person to live a normal life within Iraq is well documented. It is therefore more likely that if the appellant and his family members, as with many others, left their homes to avoid any harm or loss at the hands of the PMF/U, with a view to finding a place of safety in which they could settle, they would have taken their documents with them. It is not irrational to find that such documents would have been necessary to enable them to resettle elsewhere in Iraq and would not have been abandoned in light of the appellant and family leaving prior to the

- PMF/U coming to his home area. I find the appellants claim in the alternative to lack credibility.
30. The appellant claimed he last had contact with his family on 20 August 2018 and has not had contact since he left Iraq. The appellant claimed that his family had no mobile telephones, and he could not maintain contact with them, but the weight to be given to such claims has to be assessed in light of the other evidence and the adverse credibility findings.
 31. The appellant has been found to be inconsistent. It is also unclear why, having fled his home area, no doubt together with family members, he would not have maintained contact with them. His claims not to be able to do so were firmly rejected by Judge Mensah, a finding upheld by Judge Austin. Other than repeating his claim to have no contact with his family the appellant has provided no persuasive evidence to show this is true or to warrant departing from the earlier findings in accordance with the Devaseelan principle.
 32. I find the appellant has not established that he has no contact with his family or that he or they do not have possession of his CSID or other important documents.
 33. I note also that the appellant claims the last contact was 20 August 2018. PMF/U came to the Kurdish areas of Tuz Khurmatu in October 2017 indicating there was a period when the appellant, on his own account, was in contact with his family and able to survive within Iraq for which identity documents were required. It also appears from his immigration history that the appellant was able to travel from Iraq and entered the UK clandestinely on 10 January 2019 which would have involved considerable cost which he must have had access to the necessary funds for. If the services of an agent were employed they ordinarily require payment of half the cost upfront with the balance payable once the individual has been successfully brought to the intended destination, in this case the UK. Such arrangements necessitate contact between the individual such as the appellant and the family in his home area who may be responsible for making the final payment, which is the basis for the Secretary of State's assertion in many cases that some form of contact must have been agreed and maintained which has not been shown to be lost after an individual's arrival in the UK.
 34. I do not accept Miss Mottershaw's submission that despite the earlier adverse credibility findings there is sufficient evidence to enable me to find that the appellant has been a credible witness in relation to the issue of contact with his family and access to required documents. I do find the evidence that may postdate the decision of Judge Mensah, but pre-dates that of Judge Austin or since, does not establish that the appellant has been consistent in his account.
 35. There is, in particular, insufficient evidence to enable me to find the appellant's claim he is undocumented, that he is not in contact with his family who will not be able to either meet him at the airport on return, and/or not assist him in enabling him to travel to his home area to apply for his INID, is credible.
 36. I therefore conclude that the appellant has not discharged the burden of proof upon him to the required standard to show he is entitled to a grant of international protection or leave to remain in the United Kingdom on any other basis. I find the appellant is an individual who lacks credibility. On that basis I dismiss the appeal.

Notice of Decision

37. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 February 2024