



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005583

First-tier Tribunal No: PA/51610/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MSA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood of the Immigration Advice Service.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 4 March 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 appellant appeals with permission of a decision of First-tier Tribunal Judge Drake (the Judge) promulgated following a hearing at Bradford on 23 December 2022, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other ground.

2. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 4 January 1992, who it is accepted lived in Kirkuk, and who left Iraqi 2015. He unsuccessfully sought asylum in Germany after which he travelled to the UK arriving here on 30 September 2019.
3. The Judge sets out his findings of fact from [25] of the decision under challenge.
4. The Judge finds the core of the appellant's claim to be entitled to a grant of international to lack credibility for the reasons set out at [26] and its related sub paragraphs. The Judge concludes that the appellant had not established a Convention basis for international protection and was therefore not entitled to asylum or a grant of humanitarian protection based upon the same factual matrix.
5. In relation to the issue of documentation, the Judge records that the appellant stated he left his identity documents and passport with the authorities in Germany when seeking asylum there and afterwards entrusted them to custody of a friend who had since lost them. The Judge writes at [20.10]:

20.10 The Appellant is undocumented and this is not challenged - the how or why is not entirely legally relevant in the light of both iterations of SMO particularly the 2022 iteration. I find that he does not satisfy me as to the likelihood that he cannot contact his family and that without such contact he cannot secure the necessary assistance to verify his identity or birth and family records so as to enable redocumentation, and that redocumentation is vital to his personal safety without facing risk of personal violence being imposed upon him;.

6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 12 April 2023, the operative part of the grant being in the following terms:

For the reasons stated in the grounds, I consider there is an arguable error of law in the Judge's decision as to the documentation issue. Paragraph 20.10 does indeed arguably contain an error, envisaging that he could redocument himself whereas it appears he would need to attend in person to obtain an INID which he cannot do.

Discussion and analysis

7. Although the Judge was not certain about some aspects of the appellants evidence there is a clear finding at [10] that he is undocumented. That finding has not been challenged by way of cross-appeal by the Secretary of State.
8. The only civil identification document now being issued in Iraq is the INID which requires a recipient to attend in person to provide their biometric details. The CDIN are no longer being issued.
9. The Judge doe sot explain how the appellant will be able to secure the necessary documents to enable him to be re-documented in Iraq in light of the need for the appellant to travel to his local CSA office which is in Kirkuk.
10. The appellant as a Kurd will be returned to either Erbil or Sulaymaniyah airports. It does not appear to have been disputed before the Judge that he will be able to obtain a laissez passer who found his family may be in a position to meet him at the airport.
11. To return to Kirkuk the appellant will be required to travel from the IKR into the government-controlled area of Iraq, through checkpoints that are likely to be manned by the PMF's and/or others. It is a settled fact that to pass through such checkpoints an individual must be able to produce either a valid CSID or INID, and that failure to be able to do so is likely to lead to ill treatment.
12. The only way in which the appellant would not have to take such a route would be if he was returned directly to Kirkuk airport. That is a major international

airport which was opened for civilian flights in October 2022; and to which flights from London, Manchester, or Edinburgh can be boarded with Turkish airlines to fly, via Ankara, to Kirkuk. When the question was posed as to whether this was an available option I was advised that it is not the Secretary of State's policy to return to Kirkuk.

13. It is accepted in the CPIN that a person who is undocumented will face a real risk within the community in which they are living sufficient to entitle them to a grant of Humanitarian Protection. This means that even if the appellant remained in the IKR he will be without the necessary identity documents which he could not obtain as he could not travel back to his local CSA.
14. It was not disputed, on the basis it was found the appellant is undocumented, that he was entitled to succeed in his appeal limited to a grant of Humanitarian Protection.
15. I find on that basis the Judge has erred in law in dismissing the appeal for the reasons set out in the application for permission to appeal, grant of permission to appeal, and set out above, and set the determination aside.
16. In light of the Secretary of State's position and current policy, I substitute a decision to allow the appeal on Humanitarian Protection grounds only.

Notice of Decision

17. The First-tier Tribunal Judge materially erred in law. I set that decision aside.
18. I substitute a decision to allow the appeal on Humanitarian Protection grounds only on the basis of the Judge's finding the appellant is undocumented.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 March 2024