



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000076

First-tier Tribunal No: PA/55013/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by Jackson Lees Group Limited.
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 30 August 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 is a male citizen of Iraq Kurdish ethnicity born on 1 August 1987 in New Halabja, Sulaymaniyah.
2. Following a hearing at the Manchester Civil Justice Centre on 9 April 2024 it was found a judge of the First-tier Tribunal had erred in law in a manner material to the decision which was set aside.

3. A number of findings of the First-tier Tribunal, including that the Appellant faces a real risk in his home area, findings in relation to contact with family and access to relevant documents, the rejection of the claim on any other basis, were found to be preserved findings, as nothing had been advanced sufficient to warrant disturbing those aspects of the determination.
4. In relation to the first of these the Judge wrote:
 25. The Appellant claims that three men, who were members of Hashd Al-Shaabi, attended the garage where he and his brother were working. That they demanded that the brake pads on their vehicle were replaced immediately, with which the Appellant and his brother complied due to fear of the men. He states that before the men took the vehicle, after the work had been completed, that it was checked by Appellant's brother, and it was in working order. However, after approximately one hour, one of the men returned, who appeared to be injured and shot the Appellant's brother; the man then turning his gun on the Appellant and shooting at him. The Appellant claims he was able to hide behind vehicles and escape via a rear entrance without being shot.
 26. The Respondent's lack of acceptance of this incident is confined to what she states are inconsistencies in the Appellant's account of the conversations that were held about the men leaving their vehicle in the garage and the lack of detail of the Appellant's claim to have been shot and why the Appellant remained unharmed (RFRL, page 23-24 of the combined bundle).
 27. In the Respondent's review at paragraph 11, it was stated that this would be further explored at the hearing. However, despite being given the opportunity to do so, Mr Hardy confirmed that he did not have any questions for the Appellant in respect of this incident.
 28. Having carefully considered the accounts of the Appellant, I do not agree with the Respondent's position on the Appellant's evidence. There is no inconsistency in the manner in which he describes how the arrangements were made for the car to have the brake pads replaced. The Appellant is clear in his accounts that the men were asked to leave the car with the Appellant and his brother to have the brake pads replaced and that they would be contacted once the work had been done, but that they refused and insisted that it was done there and then. Equally, the Appellant has provided sufficient detail to explain why he was not harmed, yet his brother was killed, namely his brother was at the front of the garage and the Appellant was at the back of the garage working on a car, with a number of cars and a distance of 15 metres between him and the gun man, with his escape route being only two to three metres behind him.
 29. I find that across the Appellant's accounts, by way of a screening interview, preliminary information questionnaire, asylum interview and two witness statements that his account in this regard has remained consistent. What I do question, and it is relevant to the plausibility of his account, is his evidence that one hour after the Appellant and his brother had worked on the men's vehicle, and which had been in working order when they left, that having been involved in an accident in which two of his colleagues had been killed - that the injured surviving member of the group returned almost immediately to exact revenge for the death of his colleagues. However, I have regard to Country Policy and Information Note Iraq: Actors of protection, December 2020 (CPIN: Actors') which confirms that the Iraqi state security apparatus consists of a number of organisations, including the Popular Mobilisation Forces/Units ('PMF'), (of which Hashd Al-Shaabi is a recognised component - for example see page 128, combined bundle and that extrajudicial killings occur frequently in Iraq and are committed by a range of government actors, including the PMF (paragraph 2.3.8) and that those responsible for human rights abuses committed by security forces are not generally punished (paragraph

2.3.14). I also note that there is reference to an incident of retaliatory killings by a faction of the PMF (paragraph 9.4.8).

30. Having regard to consistency of the Appellant's account, both internally and externally, the level of detail which he has provided and that there is only one area where the plausibility of his account may be called into question, I find that the Appellant's account of the incident involving Hashd Al-Shaabi at his place of work appears, to the lower standard, to be credible.

5. The preserved findings in relation to documentation read:

37. In his asylum interview, the Appellant confirmed that he has a passport and a Civil Status Identification Document at home in Iraq. He claims that he cannot obtain them from his family because his family has disowned him by reason of him informing them of his conversion to Christianity.

38. I have regard to my findings above in respect of the Appellant's failure to demonstrate to the lower standard of proof that he has converted to Christianity. In addition, I find that it is not reasonably likely that the Appellant would have disclosed his conversion to Christianity to his family within two months of arrival in the UK, having kept it secret from his family for approximately four years and which he was seemingly not actively practising at that time. I find it even less likely that he would make such a disclosure in the circumstances of his family being involved in arranging and funding his exit from Iraq and him being in a country where he had no support - when he would know that the reaction of his family would be likely to be adverse to him. I also note that he made no mention of the issues with his documentation until his asylum interview, 12 months after he arrived in the UK. and despite being asked in the Preliminary Information Questionnaire, whilst assisted by representation, 'Why do you fear returning to your home country and what do you fear will happen if you were to return'.

39. I therefore find that the Appellant's claim in this regard is not credible and agree with the Respondent's position that he could reasonably contact his family in order to obtain his identification documentation.

6. The Appellant's witness statements of 28th April and 16 October 2023 stood as his evidence-in-chief with the parties agreeing that they will proceed by way of submissions only.

7. Ms Patel relied upon her skeleton argument dated 19 August 2024 in which she writes:

13. The previous judge's findings that the Appellant is at risk in his home area has been preserved. The Appellant's home area is Khanaqin, Diyala Governorate. The Appellant is not a former resident of the IKR and therefore his return would be to Baghdad as per headnote 7 of SMO. The country guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) states at headnote 7

7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad.

14. Since returns are to Baghdad for the Appellant, he would need a CSID or INID and he cannot obtain that in Baghdad. The appellant is not from Baghdad and therefore would not be able to obtain a CSID or INID from there. The Appellant would not be able to obtain his documentation within a reasonable timescale whilst in Baghdad.

15. His documentation is with his family in his home area where he would be at risk according to the preserved findings. The Appellant has to attend his local CSA office

to obtain replacement documentation and therefore requires him going to his home area where he will be at risk.

16. Since the Appellant is at risk in his home area, he cannot return there to obtain his documentation from his family. In order to internally relocate to the IKR the Appellant would need his CSID or INID. Without documentation the Appellant cannot secure accommodation, employment or any other support in the IKR.
17. The Appellant also does not have family members living in the IKR and therefore his accommodation options are limited -see headnote 33 of SMO and others. Furthermore, in relation to whether the Appellant is able to secure employment in the IKR the Appellant relies on headnote 34 (ii), (iii) and (iv) of SMO and others.
18. The Appellant respectfully submits that internal relocation to the IKR is not a viable option and/or is unduly harsh in the circumstances and the Appellant's appeal should be allowed on asylum and/or humanitarian protection grounds.
8. It was submitted the Appellant could not be considered to be a former resident of the IKR and that this tribunal was bound to follow the finding in SMO 2 that the point of return would be to Baghdad.
9. It was submitted the CPIN relied upon by Mr Bates stating otherwise was not law, and that the law is that set out in the country guidance case, meaning return will be to Baghdad.
10. It was submitted the Appellant would be at risk on return to Baghdad.
11. Ms Patel also made to 3.6.7 of the CPIN which reads:

3.6.7 However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the KRI to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection).

12. Ms Patel submitted the appellant's case is that he does not have the necessary documents meaning he will be at risk on return on the basis of the Secretary of State's own guidance.
13. In the alternative, it was submitted the Appellant would also be at risk in the IKR. In his witness statement the Appellant claimed the authorities were looking for him in all of Iraq and submitted this will be so even if his family send him documents. Consideration should be given to the real risk that he would be handed over voluntarily.
14. Ms Patel submitted the Appellant does not have the protection of family according to his evidence, no documents, and so would not be able to function. She also submitted he had no skills so would not be able to find work although the fact that he had skills may not be enough in isolation.
15. It is claimed the country guidance case of SMO provides reference to the issues and options for people who do not have contact/network and that in light of the risk it is not reasonable to expect him to internally relocate, which will be unduly harsh on the evidence.
16. I accept that a country guidance decision must be followed unless there is good reason to depart from it. In this appeal the decision in SMO 2 reflects the evidence given to the Upper Tribunal at that hearing, in light of the situation concerning returns to Iraq then.

17. It is not disputed the Appellant will be able to obtain a Laissez Passers from the Iraqi Embassy in the United Kingdom.
18. Although the CPIN: Iraq: Internal relocation, civil documentation and returns, version 14.0 October 2023 is not a statement of law in the same terms as a country guidance case is, a CPIN is a document compiled using a wide range of factual sources listed in the 'bibliography' section at the end of the document, containing both policy and information.
19. Whilst weight can be placed upon the CPIN I accept that it cannot be assumed that everything contained within the document is a statement of the Secretary of State's policy and subject to the legal duties that would apply in respect of a policy or gives rise to the duty to follow policy, absent good reason not to do otherwise, but requires consideration on a factual basis taking into account the specific facts of an appeal.
20. In section 5.1.1 of the CPIN it is written:
 - 5.1.1 Iraqi Nationals can be returned to any airport in Federal Iraq or to Erbil and Sulaymaniyah international airports in the IKR (see Annex C). Relocation of non ethnic Kurds to the IKR is commented on in Entry and residency requirements in the Iraqi Kurdish Region (IKR).
21. This practice is underlined by the fact that successful returns of Iraqi Kurds have been to the IKR for some time.
22. I find it is therefore appropriate to depart from the finding in SMO 2 in relation to the point of return and reject the submission the Appellant will be returned to Baghdad. It is also noted he was born in Sulaymaniyah which is the airport to which Mr Bates stated he will be returned.
23. In relation to the status of documents, the preserved finding is that the Appellant could contact his family in Iraq who are in possession of his passport and CSID. It was not made out those documents could not be posted to him in the UK pre-removal or that a family member could not meet him at the airport with the documents and hand them over to him for examination by the authorities.
24. Mr Bates was permitted to make submissions on a point of law after Ms Patel, to which she was given a right of reply, in relation to the legal context of documentation, by reference to paragraph 6.1.1 of the CPIN where it is written:
 - 6.1 Legal Context
 - 6.1.1 In October 2021 the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) published a report written by Protection Cluster Iraq (PCI) entitled 'Protection Analysis Report – Right to identity and civil documentation' which stated: 'The right to legal identity is the right to be recognized by the State as a person before the law, which allows the person to access further rights, benefits and responsibilities in the country. In practice, one's legal identity is established through the issuance by the State of identity documents, which provide official recognition of someone's nationality and identity. Consequently, identity documents (Civil Status ID Card, Iraqi Nationality Certificate, Unified ID Card [also known as the Iraqi National Identity Card INID]) are different from, but a requirement for, civil documents (Birth, Death or Marriage Certificates). In Iraq, the right to a legal identity and to civil documentation is enshrined in various bodies of law, including the Constitution of the Government of Iraq of 2005, the Civil Status Law No. 65 of 1972, the Civil Status System Law No. 32 of 1974 and the Iraq Nationality Act No. 26 of 2006.'
25. It is not made out the authorities in the IKR will refuse the Appellant entry on the facts.

26. As a person with valid identity documents, it was also not made out he would not be able to pass through checkpoints within the IKR.
27. Although the Appellant claimed he will face a real risk of being handed over to Hashd Al Shaabi I do not find the same made out. I do not find this is an issue that will be likely to prevent internal relocation to the IKR or make it unreasonable or unduly harsh.
28. The Appellant claims that three members of Ahil Haq, a fraction of Hashd Al Shaabi, attended the garage where he was working. Al-Hashd al Sa'abi is the Arabic what is in English known as the Popular Mobilisation Forces (PMF), an umbrella term for a number of Iraqi armed groups, a number of whom are loyal to Iran. It is also defined otherwise as an Iraqi state security service that Iran has infiltrated and used to wield significance in Iraq.
29. The PMF originated as part of the effort to stop ISIS and the infiltration of Iraq from Syria and was formed in June 2014.
30. It is not made out that the specific group the Appellant claims came to his garage have any influence within in Iraq generally or more specifically in the IKR which is an independently governed area of Iraq under the control of the PUK and KDP.
31. I accept that on return to the IKR the Appellant is likely, as with any other returnee, to undergo security screening, but it was not made out the Appellant will be of interest to the Asayish (Kurdish security agency) or present any actual or perceived security risk. I find he is likely to be able to pass through the airport into the IKR. I was not provided with any material to indicate the Appellant would appear in any security list held by the Asayish based upon affiliation or support for ISIS, as there is no reason for anybody to conclude that he is or ever has been.
32. In SMO 2 it was found:

'Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.'

33. If the Appellant has family in Sulamaniyah, which Mr Bates submitted was the case, he will be able to seek accommodation with them and their assistants in re-establishing himself in Iraq. If he does not have family members within the IKR it is not made out on the evidence that they would not be able to provide him with support, remotely if needed.
34. The CPIN refers to SMO 2 and the guidance for Kurds without the assistance of family in the IKR, reinforcing as always that these are intently fact specific questions.
35. Ms Patel referred to difficulties in finding employment in the IKR, claiming the Appellant had no skills, but that is not true as his claim is based upon the fact he was a mechanic who worked in a garage with his brother.
36. In relation to employment the Tribunal found in SMO2:

'Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

- (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;
- (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;
- (iii) P cannot work without a CSID or INID;

- (iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;
- (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;
- (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.' [Paragraph 144 (30-34)]

37. In dealing with the above: the Appellant is clearly not a lone woman. Whilst the employment rate for IDP is living in the IKR is high that does not preclude an individual, who has transferable/employable skills from finding employment. The Appellant has a CSID. Although the Appellant does not have family in the IKR according to his evidence he is not an unskilled worker and any decline in the construction industry reducing the number of labouring jobs is not directly relevant to his skill-set as a mechanic.
38. The IKR has a number of vehicles registered as well as garages providing services for the needs of the motorists. It is not made out the Appellant will not be able to secure employment in one or the other of them, sufficient to make internally relocation unreasonable or unduly harsh. Although the presence of family or support in the IKR makes life easier country guidance does not say it makes employment impossible. The Appellant will have to approach prospective employers himself, as many job seekers do worldwide.
39. In relation to accommodation, the Appellant states that he has no family in the IKR with whom he can be accommodated. SMO2 refers to the cost of living in an apartment in a new neighbourhood but it was not made out on the evidence that family would not be able to assist him in meeting the costs of accommodation until he establishes an income from his employment. In particular, it is not made out the Appellant would not be able to access basic necessities as he is entitled to a grant under the Voluntary and assisted return scheme which would provide him to access to £1500 according to SMO 2. It also found that consideration should be given to whether a returnee could obtain financial support from other sources such as (a) employment, (b) remittances from relatives (abroad or otherwise) (c) the availability of ad hoc charity and being able to access Public Distribution System rations.
40. I find any claim the Appellant will not be able to access these not made out. There is no evidence to support such a subjective view especially as the Appellant has been found not to be truthful about other aspects of his claim he had made up or tailored to prevent his removal from the United Kingdom.
41. I therefore find it is not made out the Appellant will not have access to the required documentation.
42. I find it is not made out the Appellant will be refused entry to the IKR as a returning Iraqi Kurd.
43. I find it is not made out that he will be denied entry to Iraq following his return to Sulamaniyah in the IKR in accordance with the Secretary of State's policy. I find that warrants departing from the finding in SMO2 that return would be to Baghdad.
44. I do not find it made out the Appellant will not be able to seek assistance from family in Iraq, wherever they may be based.
45. I find it is not made out the Appellant does not possess a necessary skill sets that will enable him to obtain employment within the IKR.

46. I do not find it made out the Appellant will not have access to sufficient resources to enable him to meet his basic needs whilst he gets himself established.
47. I do not find it made out the Appellant will not be able to seek and secure suitable accommodation in the IKR.
48. I do not find it made out the Appellant will not be able to live a normal resource for life in the IKR as others within that area do.
49. I do not find it made out that internal relocation will be unduly harsh or unreasonable in all the circumstances.
50. I do not find it made out the Appellant is entitled to a grant of international protection and/or leave to remain in the United Kingdom on any other basis.
51. I do not find the Appellant has discharged the burden of proof upon him to the required standard to show otherwise.

Notice of Decision

52. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 September 2024