



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Appeal No: UI-2024-000609
First-tier Tribunal No: PA/50535/2023
LP/01548/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 9 August 2024**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

Between

MIA
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Nathan, Counsel, instructed by Barnes, Hamid, and Dyer
For the Respondent: Mrs A Nolan, Senior Office Presenting Officer

Heard at Field House on 27th March 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the respondent.
2. The appellant presented himself to the respondent on 21 August 2021. He said he was a Sunni Kurd from a village in Kirkuk, born on the 20th of March 2005. He said he and his parents fled Iraq on 15 May 2021. They had his CSID document but in transit they became separated, and he has no knowledge of where they are, and he has no other relatives in Iraq. He claimed protection based on ethnicity and religion and a fear of Hashd Al Shaabi, aka the Popular Mobilisation Front.
3. The refusal decision of 22 December 2022 is at page 486 in the electronic composite bundle. There had been an age assessment, and his age and identity were accepted by the respondent. It was accepted he was Kurdish, and the

claim potentially engaged the Refugee Convention by reason of race, namely, as a Sunni Muslim fearful of Shia militias.

4. The respondent did not accept he and his family were forced out of their village by militias. Reference was made to internal inconsistencies in the account where he claimed not to know if the villagers had to leave or how the militias treated the Sunni Kurds. He said his father was beaten and the family received death threats in 2017 yet they did not leave until 2021 and did not provide a reason for the delay. It was accepted that Kurds fled Kirkuk in 2017 but returned after days. In summary, it was not accepted he and his family had a well-founded fear of persecution. It was not accepted he had no contact with family or friends in Iraq. The refusal letter considered the question of documentation and recited the case law.
5. The refusal was reviewed on 4 May 2023 and maintained. The issues identified were the credibility of the account and the risk on return without documentation. On credibility, the account was not considered to be internally or externally consistent nor were the points raised in the refusal letter addressed by him. Regarding documentation, it was asserted that failed asylum seekers can be returned to any airport, in either Iraq or the Kurdistan region. The respondent said there was an airport in Kirkuk where he could fly to directly. Lack of documentation should not form the basis of a grant of asylum or humanitarian protection.
6. Referring to SMO 1 the respondent questioned whether the appellant had genuinely lost contact with his family and there was no evidence as to the outcome of a re-referral to the British Red Cross. It was contended that the appellant should know his CSA card number and reference is made to SMO 1 UKUT 400 at para 391:

391. We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual's volume and page reference in the civil register...

392. There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly, but we consider that it will be very much the exception...

The review then quotes from SMO2 [2022] UKUT 110 at 13/14:

13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant can provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities to ascertain whether the CSA office in question has transferred to the INID system.

14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case ... The Family Book details may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.

The First tier Tribunal

7. The decision and review raised credibility issues. The respondent did not accept the appellant and his family left because of fear of militias. It was not accepted the appellant was not in contact with his family. These two features fed into the question of documentation. The respondent also asserted the appellant would not necessarily be returned to Baghdad but could fly directly to Kirkuk.
8. First tier Tribunal Judge Dineen, following a hearing on 1 September 2023, allowed the appeal on asylum, human rights, and humanitarian protection. Mr Nathan represented the appellant, as he does now. There was a presenting officer in attendance, Mr Macrae. The written determination is short and is dated 17 October 2023.
9. These two aspects were set out in the appellant's original skeleton argument for the First-tier tribunal dated 22nd March 2023 (page 30 of the bundle). This was not drafted by Mr Nathan. The first related to the credibility of the claim for protection. The second related to documentation, on the basis he was to be returned to Baghdad. Reference is made to paragraph 11 of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) which states:

The CSID is being replaced with a new biometric Iraqi National Identity Card - the INID. As a general matter, it is necessary for an individual to have one of these two documents to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.

Para 12 states:

To obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

10. The argument advanced on his behalf is that if the local CSA has moved to the INID system, which it has, as confirmed in the most recent CIPU report, no documentation can be obtained from the UK. The Appellant would not be able to obtain a CSID or INID in Iraq except at his local CSA office. He could not travel there from Baghdad without any documentation.
11. A further submission was lodged on behalf of the appellant on 4 September 2023, this time from Mr Nathan. It is at page 480-1 of the bundle. At hearing Mr Nathan advised us that he e mailed this to the respondent, copying in Mr Macrae, who was to be the presenting officer. It stated this further skeleton argument followed a Direction of First tier Tribunal Judge Dineen at the hearing on 1 September 2023. In the determination the judge refers to this at para 8 and mentions the failure by the respondent to respond. The further submission states it was agreed between the parties that removal would be to Baghdad rather than Kirkuk as stated in the review.
12. The determination by First tier Tribunal Judge Dineen starts off with the heading 'Background and matters not in dispute.' These include an acceptance that the appellant and his parents fled Iraq on 15 May 2021 and that he became separated from them. It states he and his family had encountered adverse attention from the militia referred to.
13. It states that the risk on return was not displaced at the hearing. The bulk of the short determination deals with documentation. Removal was to Baghdad. SMO & KSP [2022] UKUT00110 was cited. To get to Kirkuk from Baghdad he would need a CSID He does not have one. These are now only issued within the Mosul governate. Kirkuk has introduced the new INID system of documentation. To get this the appellant need to be physically present in Kirkuk. As the INID is a replacement for the CSID the latter cannot be obtained by the appellant. This was described as a 'catch 22' situation after Josph Heller's satire on bureaucracy. The judge found there was no effective challenge to the above. Consequently, they were very significant obstacles to reintegration within paragraph 276(ADE(1)(vi) of the immigration rules.
14. The respondent sought permission to challenge the decision of First tier Tribunal Judge Dineen in the Upper Tribunal. The challenge related to adequacy of reasons and that the judge should have given reasons in relation to issues raised in the refusal letter of 22 December 2022. It was contended the judge had not adequately addressed the credibility issues raised in the refusal letter, including the application of section 8. The judge's comments at paragraph 9 of the determination that his account was not displaced at hearing was not considered sufficient. It was contended that the judge failed to give adequate reasons as to why the appellant would be at risk on return as an undocumented person. It was also submitted that at the judge had not addressed his ability to obtain a CSID through his family in Iraq. Consequently, the judge's comments at paragraph 10 to 15 about documentation had not been adequately explained.
15. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal Judge Boyes on the 1st of February 2024, who found it arguable that the judge's conclusions were deficient in reasoning.

The Upper Tribunal

16. Mrs Nolan relied on the grounds for which permission had been granted. She highlighted paragraph 9 of the determination where the judge said the appellant's account of risk on return was not displaced but did not say more. She suggested there was therefore an inadequacy of reasoning on this point. The judge made no reference to the background material. She submitted there was also no finding in relation to the appellant's contact with his family. If there was a material error of law found she submitted there would need to be a rehearing and she suggested the First tier Tribunal as appropriate.
17. Mr Nathan acknowledged that the determination was brief, but it was important to read it in the context of the skeleton arguments submitted as referred to at para 8. He made the point that their inclusion in the consolidated bundle confirmed that the respondent had had sight of these. He said it was therefore disappointing that the grounds of appeal had been drafted without reference to those documents. The skeleton argument had identified the issues arising, the credibility of the claim made for protection and the risk on return in relation to documentation. He said at hearing the presenting officer, Mr Macrae, accepted that the respondent had not produced sufficient evidence to displace SMO 2 and the appeal proceeded on the agreed basis removal would be to Baghdad. Whilst there had been reference in the materials to the possibility of return via other routes the appeal was by agreement on the basis return would be to Baghdad. Mr Nathan argued on this basis alone at the very least the appellant should be entitled to humanitarian protection, as mentioned at para 17 of the determination.
18. He submitted the refusal letter and the grounds for which permission was sought ignored the fact that the issue was now not about obtaining a CSID but was about the new form of documentation. Apart from Mosel, all the other Governorates had the new procedure in place. We were referred to paragraphs 12 and 13 of the determination which sets this out. It was accepted that the appellant is from Kirkuk, but he cannot get there because he does not have documents, hence the Catch-22 situation described. He can only obtain an INID by appearing in person. For him to arrive in Baghdad without documents would be a breach of humanitarian protection. He submitted that the decision letter was simply out of date in suggesting his family could obtain a CSID card for him. They could not help him obtain an INID. He submitted that the issue about documentation was more than adequately covered in the determination. In relation to the protection claim, we were referred to paragraph 9 where the judge had said that the risk on return had not been displaced.
19. On the issue of credibility, Mr Nathan submitted that section 8 was not an issue, the judge having noted the appellant was a minor and under the control of an agent. Regarding the suggestion of inconsistencies between the Popular Mobilisation Front arriving in 2017 and the appellant's ability to remain with his family to 2021, an explanation had been given in the unchallenged witness statement. Essentially, a relatively large area was involved, and it was not until that stage that the appellant's village became targeted. Mr Nathan acknowledged that whilst the credibility challenge was met, in terms of the asylum claim the determination may have benefited from a clearer link with events but submitted that this was not a material matter. He suggested that if there were to be a rehearing then the First-tier Tribunal may be the appropriate forum. He indicated his instructions were that if the Upper Tribunal concluded

there were deficiencies in the asylum claim then the appellant would be content with humanitarian protection alone.

20. In reply, Mrs Nolan referred to the appellant's statement where he said he had documentation when he left and that his parents had this, but it was not accepted by the respondent he was not in contact with them.

Consideration

21. The determination is commendably brief. It is clear from the refusal and the review that the appellant's credibility was not accepted by the respondent. It was accepted in the determination that his account of events leading up to the family's departure could be relied upon. The respondent did not accept his claim that he was not in contact with his family. The appellant claimed that they held his documentation when they left their home country but then they became separated, and he does not know their whereabouts. The refusal indicated the intention was to return the appellant to Baghdad. The country guidance decisions indicate that without documentation the appellant could not safely travel onwards. In the review it was suggested that there were other routes available and said that there was a direct flight to Kirkuk.
22. The judge was clearly aware of events in Iraq and the complications arising because of documentation. The judge had considered the original skeleton argument and went so far as to direct the parties at hearing to make further submissions for use in preparing the determination. The subsequent skeleton argument for the appellant is contained in the appeal bundle. The judge comment that the respondent did not comply. We would agree with Mr Nathan that the refusal decision did not properly reflect developments in relation to documentation.
23. It is significant that the judge starts the determination under the heading 'Background and matters not in dispute.' It recorded he had been separated from his parents and refers to the claim made in the skeleton argument and subsequent submission. He refers to the basis of the asylum claim, namely his family had encountered adverse attention from the militia and that he would be at risk on return. It is in the context of these undisputed issues that paragraph 9 should be read. It should not be read in isolation as conveying reasons. Rather, it should be read along with the skeleton arguments. From these the judge concluded his account of the risk of return had not been displaced. It was our view this was something open to the judge to find and we find no material error of law. Given what was agree the judge did not need to go into greater detail in relation to reasons.
24. In terms of documentation, the judge found the appellant was not in possession of a CSID. Kirkuk had moved to the INID system. To get this the appellant would have to travel there, which of course he could not do without documentation. This documentation could not be obtained in the United Kingdom nor could a replacement CSID, given that the new system was in place. We find that the judge correctly dealt with the issues around documentation and was entitled to make the findings set out.

25. It would follow that without documentation, apart from the fact the appellant could not physically return, they would be very significant obstacles to his reintegration under paragraph 276 ADE(1) (vi).

26. We find that the judge was entitled to find that the appellant was entitled to humanitarian protection because of the absence of documentation. We also find that he is entitled to the protection of the Refugee Convention based upon past events and the future risk. We find no material error in the judge allowing the appeal on human rights grounds. When the decision is read in the context of what was agreed we find no deficiency in the adequacy of reasons. Consequently, the decision of First tier Tribunal Judge Dineen shall stand as no material error of law has been demonstrated.

Decision

No material error of law has been established in the decision of First tier Tribunal Judge Dineen.

The respondent's appeal is dismissed.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber