Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05698/2019**

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 6 February 2020	**On 13 February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR L M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard, Solicitor
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant, an Iraqi national aged 39, came to the United Kingdom on 14 October 2018 and claimed asylum the following day. The respondent refused his application on 6 June 2019 and the appellant lodged an appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 on 17 June 2019 on behalf of both himself and his son.

His appeal came before Judge of the First-tier Tribunal Meichen on 20 August 2019 and in a decision promulgated on 6 September 2019, the Judge dismissed the appellant's appeal on all grounds.

Permission to appeal was initially refused on 20 September 2019, but a renewed application for permission was considered by Upper Tribunal Judge O'Callaghan on 9 November 2019. The Upper Tribunal Judge found there was no material error on the appellant's claim that he had had an adulterous relationship with a high-powered married woman in Iraq, but found there was an arguable error of law in the Judge's approach to the CSID documentation and the proportionality assessment under Article 8 insofar as the appellant's son was concerned.

The respondent filed a Rule 24 response on 2 December 2019 and in essence submitted that the failure to cite specific Country Guidance case law did not amount to an error in law in light of the fact the Judge had concluded the appellant had access to an ID card. The respondent also argued that although the Judge had not engaged in the context of Article 8 ECHR, nevertheless such a failure was not material because the Judge had considered the impact of any disruption to treatment in paragraphs 26 – 28 of the decision.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

SUBMISSIONS ON MATERIAL ERROR IN LAW

Mr Howard adopted the grounds and invited the Tribunal to find there had been an error in law both on the issue of the CSID card and the assessment under article 8 ECHR. He argued that the Judge had failed to refer to the previous Country Guidance cases and had failed to engage with the points raised within them. Whilst the court record reflected the fact that the appellant's CSID was in Kurdistan with his wife, the Judge failed to address whether he (a) had any contact with his family in Iraq; (b) whether his wife would send the CSID document or details of it to him or (c) whether he would be able to obtain a CSID from either the Iraqi consulate in the United Kingdom or from the registry in Baghdad.

Mr Howard submitted that if the Tribunal concluded he did not have a CSID card or access to one, then the remaining ground of appeal (article 8) must also succeed because without such a document he would be unable to obtain treatment for his son. However, assuming the Tribunal concluded that he did have access to a CSID, Mr Howard submitted that the Judge had failed to carry out a full proportionality assessment by failing to attach weight to the age of the child, the level of treatment and care provided in this country for the child

and the best interests of the child generally. He referred the Tribunal to the decision of R (SQ (Pakistan)) v The Upper Tribunal [2013] EWCA Civ 1251, which set out the approach a court should take when considering an Article 8 private life claim where the Court had previously rejected it under Article 3 ECHR.

Mr Bates opposed the application and submitted that the appellant had access to his CSID because he had previously told the Tribunal his family did have his CSID and this was not a case where he did not have contact with his wife, but simply he had claimed his wife was not keen to provide the information. He submitted the Judge had rejected the core claim about his adulterous affair and Mr Bates submitted that was the only reason why the appellant claimed his family did not want to have contact with him. Having made an adverse finding on this issue, the only conclusion the Judge could have reached was that he did have access to the information and following the recent Upper Tribunal decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) the appellant was expected to know the necessary information which would enable him to obtain a replacement CSID. He had also taken no steps, according to the First-tier Tribunal's record of proceedings, to contact the Iraqi Consulate in the United Kingdom. The Judge found he had come to this country as a health tourist and he submitted that there was no material error in the Judge's approach to the CSID despite the lack of reference to the country guidance cases.

Turning to article 8 ground of appeal, Mr Bates, whilst accepting there were some deficiencies in the Judge's approach, submitted these were not material. Whilst the appellant's son has had medical treatment in this country, he had previously been treated in Iraq and there was medical treatment available in Iraq.

Whilst concern was raised about how the appellant and his son would be returned and how this would affect the appellant's son, Mr Bates submitted the child had embarked on a difficult journey to this country and any return journey would be by air and without the stresses that were encountered on the way there.

Mr Bates submitted that following the decision in PF (Nigeria) [2019] EWCA Civ 1139, this was not a case that could possibly succeed on health grounds and any possible error was not material.

Mr Howard reiterated that there must be an error in law because the Judge had failed to make the necessary findings and had failed to have the best interests of the child when considering the overall decision.

FINDINGS ON MATERIAL ERROR IN LAW

This appeal involved two separate grounds of appeal albeit if there was an error on the first ground of appeal that would impact on the second ground of appeal.

The first ground centred around the issue of whether the appellant had access to either his CSID card or could obtain one. I accept the Judge's assessment on the availability of the CSID and how it would be obtained was limited. In paragraph [31] of the decision that the Judge stated, "I note that the appellant has an ID card and there are international flights to Erbil where his family are based."

The decision letter does not deal with whether the appellant actually had a CSID card although noted he had produced his army ID card. The thrust of the respondent's consideration in the decision letter centred around the credibility of his claim. Although at paragraph [93] of the decision letter, the respondent concluded that as he had family support, he could obtain his CSID (or details) and that once in possession of that document he could relocate within the IKR.

At the First-tier Tribunal hearing the appellant was asked about his CSID and he admitted that this document was held by his family in Kurdistan and when asked whether they could post it to him he indicated that they were "not keen to contact him". He also told the Tribunal that he had not been to the Iraqi Consulate because he did not know where it is.

Mr Bates submitted that based on the Judge's rejection of the core claim and taking into account the appellant's admission that as he is in contact with his family and following the decision in SMO, he would be able to obtain the necessary documents and consequently any erroring approach was not material.

Having considered the oral submissions from both Mr Howard and Mr Bates, I am satisfied that whilst the Judge did not address the issue of CSID in any detail, this did not, on the facts of this case, amount to a material error of law.

The Judge had rejected the appellant's core claim about his affair with a married woman and permission to appeal that finding has been refused. The appellant's account of why he and his family were in danger had therefore been rejected. The Judge concluded the appellant was a health tourist and found that this was his motive for coming to this country.

Having rejected the core claim, the Judge noted that the appellant did have access to a CSID card and he was in contact with his family. The Judge was entitled to conclude that he did have a CSID card, albeit in Kurdistan, and could, by implication, either await receipt of that document or obtain the information from his family to enable him to obtain a replacement either from a consulate or in Baghdad.

In cases where there is contact with family members who have the necessary document, the Upper Tribunal have made clear in SMO, that an appellant will either have the document itself or can be expected to obtain a replacement. I therefore do not accept there has been a material error in law in the approach to the CSID card.

The second area of appeal concerned the Judge's approach to the appellant's son's medical condition. The Judge was sympathetic to the son's circumstances. The appellant's son is now 10 years of age and had a diagnosis of cancer which required the removal of a tumour from his buttock area followed by a course of chemotherapy. His father also suffered from colon cancer which required him to wear a colostomy bag and he and his son were awaiting either further care or treatment. The Judge clearly addressed the issue of a claim under Article 3 ECHR and permission to appeal on that issue was not sought. The issue raised in the grounds of appeal is whether the Judge's approach to Article 8 was flawed.

Reference was made in the grant of permission to the decision of SQ. The Court of Appeal made clear in that case that it is incumbent upon a Judge to identify all features of private life which would be subjected to interference upon removal. In this case one of those features would be the discontinuation of any treatment the appellant's son was receiving in this country.

The Tribunal has to consider in a proportionality assessment any health considerations and the discontinuance of any UK treatment. A failure to do so would amount to a material error in law.

Mr Bates submitted that the appellant and his son arrived with medical conditions and had entered the country unlawfully. The Judge had accepted and made a finding that the appellant was a health tourist and the Court of Appeal made clear in the above case that "this country is under no international obligation to act as the hospital of the world".

Mr Howard submitted that the Judge had erred by not giving sufficient weight in the proportionality assessment to the age of the child and the level of treatment and care that he was being provided with.

At paragraph [26] of the decision the Judge started his assessment of the appellant's and his son's medical conditions. It is clear that medical treatment was being received by them in Iraq and whilst the appellant was critical of the treatment given to his son, nevertheless, there appears an acknowledgement that treatment was available.

I accept that the journey to this country would have been both difficult and traumatic for the appellant's son. The Judge did not accept that the appellant's wife would be unable to take their child to hospital and that finding is not challenged.

The Judge accepted that the appellant's wife could provide the necessary care for their son and it should not be overlooked that the son would only be returned with his father as a family unit. Whilst the appellant's son has been receiving medical care in this country, the Judge rejected the arguments advanced about the seriousness of his condition. The Judge was clearly aware of the appellant's age and was aware of the level of treatment and care provided. The availability of medical condition was discussed in paragraphs [27] and [28] of the Judge's decision.

The respondent accepted there was no specific Article 8 assessment but for there to be a material error the appellant has to show that the dismissal of the claim under ECHR legislation was flawed.

The appellant provided medical evidence that undermined the argument that his son could not receive treatment and clearly, were the appellant and his son to be returned to Iraq it would not be in the back of a lorry but instead by aeroplane.

I was referred in submissions to the medical report on page 84 of the appellant's bundle but this report refers to problems with going to and from school and does not address the feasibility of a flight back to Iraq. The report on page 83 of the appellant's bundle does not address the long-term prognosis save it would help the appellant to have his wife in this country.

I am satisfied that whilst the Judge did not go into any detail about a specific Article 8 claim the only conclusion, based on the evidence presented by the appellant, was that it would not be disproportionate to require the appellant and his son to leave the United Kingdom.

Weight must be placed on the importance of immigration control, especially when a finding has been made that the appellant came here, with his son, as a health tourist.

This is not a case where the medical treatment required by the appellant is said not to be available in Iraq or that he does not have access to medical treatment because he clearly did prior to his departure from Iraq.

The Judge did have regard to overall circumstances and whilst the decision could have been worded better, I am satisfied that there is no error in law as argued by Mr Howard.

Decision

I dismiss the grounds of appeal and uphold the original decision.

Signed 11 February 2020

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award is made because I have upheld the dismissal of the appeal.

Signed 11 February 2020

Deputy Upper Tribunal Judge Alis