



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06219/2019

THE IMMIGRATION ACTS

Considered at Manchester CJC
On 16 September 2020
At a remote hearing via Skype

Decision & Reasons Promulgated
On 21 September 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

HAH
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

Appellant: Ms Evans, WTB Solicitors
Respondent: Mr Tan, Senior Home Office Presenting Officer

Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent 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.

DECISION AND REASONS (V)

Introduction

1. In this decision I remake the decision on the appellant's international protection appeal. This decision must be considered alongside Lane J's 'error of law' decision, promulgated on 13 December 2019. In that decision the

parties agreed that the First-tier Tribunal ('FTT') erred in law in its approach to whether the appellant could obtain a replacement CSID and this aspect of the appeal should be re-made in the Upper Tribunal ('UT') at a 'resumed hearing'.

Procedural history

2. At a telephone case management hearing ('TCMH') on 22 May 2020 the parties agreed that the resumed hearing should take place remotely and there would be limited cross-examination. This is because it was agreed that there were (then) only two issues in dispute.
 - (1) Did the appellant dispose of his CSID en route to the UK or did he leave it with a family member in Iraq, who would be able to send it to him?
 - (2) Even if it is accepted for the purposes of (1) that the appellant no longer has access to a CSID and must obtain a replacement identity document, can he do so from the UK? This must be considered in the light of the SSHD's acceptance in her position statement that as "*the CSA office in Tuz Khurmatu is no longer issuing CSID cards, the appellant will be unable to obtain a replacement CSID card from the UK*".
3. In advance of the hearing, the SSHD helpfully updated her position in writing. The SSHD now accepts that in the light of evidence post-dating SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ('SMO'), obtaining a CSID from the Iraqi Embassy while in the UK is highly unlikely - see 2.6.15 to 2.6.16 of the CPIN on Iraq: Internal relocation, civil documentation and returns v.11 (June 2020). Mr Tan expressly conceded that in the light of this, the case turns on issue (1) above only.

Hearing

4. At the beginning of the hearing both parties clarified the limited evidence available (a witness statement from the appellant dated 1 July 2020), in the light of the accepted sole narrow issue in dispute. The appellant gave evidence via a Kurdish Sorani interpreter. I checked that the appellant fully understood the process and the interpreter. He relied upon his witness statement explaining his journey out of Iraq overland to Turkey which was facilitated by an agent. The appellant was then cross-examined by Mr Tan. I address this evidence in more detail below.
5. In closing submissions Mr Tan reminded me that it is important to bear in mind the FTT's adverse findings of fact. He invited me to find the appellant's evidence was inconsistent in significant respects: how and why he left Iraq; the disposal of his CSID and; the nature and extent of family contact.

6. Ms Evans reminded me that the appellant's claim that he used his CSID to leave Iraq had been broadly internally consistent and was also entirely externally consistent with the country background evidence.
7. After hearing submissions from both representatives I reserved my decision, which I now provide with reasons.

Assessment

8. The respondent accepts that SMO together with the older CG cases support the proposition that the appellant faces serious harm in Iraq if he is unable to obtain his original CSID from family members in Iraq, and the appeal turns entirely on this is a very narrow issue.
9. I bear in mind that the FTT rejected much of the appellant's account and found him not to be credible. The FTT's primary findings of fact are preserved. In particular, the appellant: is of Kurdish ethnicity and fled Iraq with an agent in July 2018; lived in Shoraiee near Tuz Khurmatu, where he worked as a shepherd; had access to a large sum of money (£12,000), through his brother-in-law to pay for his journey out of Iraq; did not provide a truthful account of the reasons why he fled his home area; remained in contact with family members in Iraq; was not a credible witness and left Iraq for economic reasons; arrived in the UK on 29 August 2018, when he claimed asylum. It is to be noted that the FTT was prepared to accept the more basic aspects of the appellant's account, including his claimed nationality, ethnicity and home area. The FTT also accepted that the appellant fled Iraq with the assistance of an agent having paid him with funds given to him by his brother-in-law. It clearly goes against the appellant's general credibility that the FTT rejected the core of his asylum claim. However, I must nonetheless consider whether it is reasonably likely that, as claimed, the appellant left Iraq with his CSID but it was destroyed by the agent en route.
10. I accept that the appellant's evidence before me contained inconsistencies on significant issues, as submitted by Mr Tan. I accept his evidence regarding contact with his family after arriving in the UK was confused and contradictory. The appellant also stated during his oral evidence that the agent took his CSID away in Turkey, when his recent witness statement refers to Greece (albeit couched in uncertain terms). The appellant altered his position from stating that he left Iraq for the first time in May 2018 because he was in fear of his life to then stating that he wished to travel but had to return because his mother was ill. These reflect adversely upon the appellant's already damaged credibility.
11. I also note that the appellant's account of his use of an agent for his first departure from Iraq in May 2018 differed from his account for July 2018. The appellant claimed to pay much less in May 2018. This seems plausible because

the appellant did not make it beyond Greece. The agent did not take his CSID away in May 2018 but it is again plausible that the agent was different, as was his modus operandi.

12. Although the appellant's general credibility has been damaged in serious ways, there are significant matters in support of his relatively straightforward claim that he left Iraq in July 2018 with his CSID. First, the appellant was candid about his CSID in the asylum interview (which took place on 1 May 2019). He agreed that he had a CSID *and* could get a new one (Qs 16-19). At that time the appellant was not disputing his ability to obtain a replacement CSID and in the circumstances there was no obvious motivation or reason for him to lie at that time about taking the CSID with him when he left or the agent disposing of it.
13. Second, the appellant's claim to have taken his CSID when he left Iraq is also consistent with the FTT's finding that there was no pressing need for him to leave (the FTT rejected the sheep dispute and the claim that his father and brother were killed). In other words, the appellant had time to get his documents together.
14. Third and perhaps most significantly, it is well known that for many years in Iraq one requires the requisite identity documentation to travel without hindrance and to get through checkpoints. Mr Tan accepted this to be the case and there is no need to refer to the ample country guidance on the issue. I note that the appellant claimed to have left his home area with the agent in a car (Q 143 and 159). This is a lengthy driving distance that would include numerous checkpoint possibilities. The appellant claims he left his home area in the morning and arrived late at night – the journey required a full day of driving. Indeed, in his witness statement the appellant explained that he had to show his CSID at two checkpoints and then when he crossed the border. Mr Tan did not cross-examine on any of this.
15. I have considered all the evidence in the round, including the evidence available to the FTT and the findings of fact in relation to this, the appellant's recent witness statement and oral evidence, together with the country background evidence. Although much of the appellant's evidence has been found to be incredible and inconsistent, I am prepared to accept that the appellant left Iraq in July 2018 with his CSID given the matters I have identified above. The appellant has not been truthful before me and the FTT in important respects. However I bear in mind that does not mean that he has lied about every single issue and the utility of the 'Lucas' self-direction - see Uddin v SSHD [2020] EWCA Civ 338 (12 March 2020).
16. I accept that it is reasonably likely that the appellant left Iraq with his CSID. As Ms Evans submitted even assuming that the appellant is an economic migrant, he had to leave Iraq by some means and the most logical and

plausible way for him to have done that was by car. The country guidance is clear and not in dispute: in order to travel around Iraq one needs identity documents. This appellant did not have a passport and it is reasonably likely he used his CSID. Notwithstanding other discrepancies, I accept that he complied with the instruction of the agent and no longer has the CSID. It follows that he did not leave the CSID with anyone in Iraq, and his family cannot send his CSID to him.

Conclusion

17. Without the requisite CSID, the country guidance cases make it clear and Mr Tan accepted, that the appellant is at risk of serious harm in breach of Article 3, ECHR.
18. The appellant has not identified any Convention Reason for this harm. This case succeeds on the basis that the appellant will be unable to reside in Iraq without coming to a real risk of serious harm for reasons relating to an absence of identity documentation. It follows that to return him to Iraq would be a breach of Article 3, ECHR and Article 15(b) of Council Directive 2004/83/EC.

Notice of Decision

19. I remake the decision by allowing the appeal on humanitarian protection and Article 3, ECHR grounds.

Signed: *UTJ Melanie Plummer*
Judge of the Upper Tribunal

Dated: 17 September 2020