Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09241/2019

THE IMMIGRATION ACTS

Remote Hearing by Skype	**Decision & Reasons Promulgated**
On 26th January 2021	**On 17th February 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

H K
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Islam, Fountain Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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

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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.

Introduction

1. The appellant is a national of Iraq and of Kurdish ethnicity. He appealed the respondent's decision dated 20th September 2019 to refuse his claim for international protection. The appeal to the First-tier Tribunal ("FtT") was dismissed by FtT Judge Rowlands for reasons set out in a decision promulgated on 7th January 2020.

2. Permission to appeal to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Shimmin on 4th February 2020. The matter comes before me to determine whether the decision of FtT Judge Rowlands is vitiated by a material error of law.

3. The parties were sent directions made by Upper Tribunal Judge Coker setting out her provisional view that in light of the need to take precautions against the spread of Covid-19, it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error on a point of law, without a hearing. Upper Tribunal Judge Coker made directions permitting the appellant to submit further submissions in support of the appeal and permitting the respondent to reply. Upper Tribunal Judge Coker also directed that despite her provisional view, if either party considers a hearing is necessary to consider whether the making of the First-tier Tribunal's decision involved the making of an error of law, they may submit reasons for that view.

4. In response to the directions made by the Upper Tribunal, the appellant filed and served further submissions that are undated but comprise of [23] paragraphs. The appellant submitted that if the respondent does not concede the 'error of law', the matter should be listed for an oral hearing. The respondent filed written submissions in reply dated 17th May 2020. The respondent expressed the view that it is not

necessary for there to be a further hearing to decide if the determination of the First-tier Tribunal contains material errors of law. The respondent confirmed the appeal is opposed and invited the Tribunal to dismiss the appeal. Having considered the written submissions received, on 7th September 2020 Upper Tribunal Judge Grubb directed that the error of law hearing can and should be held remotely on a date to be fixed.

5. The hearing before me on 26th January 2021 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre. The appellant did not join the remote hearing. Mr Islam told me the appellant did not have the required facilities but was happy for the hearing to proceed. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I was satisfied no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

6. In her decision of 20th September 2019, the respondent accepted the appellant is a national of Iraq and that he is of Kurdish ethnicity. The respondent concluded the reason given by the appellant for claiming international protection is not one that engages the Refugee Convention. Nevertheless, the respondent considered the claim

made by the appellant and concluded he would not be at risk on return to Iraq and does not qualify for humanitarian protection.

7. The background to the appellant's claim for international protection is summarised in the respondent's decision and at paragraph [4] of the decision of Judge Rowlands. The appellant gave evidence and relied upon the matters set out in his witness statement dated 7th November 2019. The evidence that he gave in cross examination, and when asked a question by Judge Rowlands, is recorded at paragraphs [5] to [9] of the decision. The judge's findings and conclusions are set out at paragraphs [21] to [32] of the decision.

The appeal before the Upper Tribunal

8. The appellant advances three grounds of appeal. First, Judge Rowlands erred in concluding, at paragraph [22], that the appellant cannot succeed in his claim for international protection under the Refugee Convention. The appellant claims that he would be at risk upon return both because of an imputed political opinion and because he is a member of a particular social group. It is said that he is a young adult male targeted by ISIL. Second, the appellant claims Judge Rowlands failed to reach any clear findings with regard to the appellant's claim, despite confirming that he had no reason to conclude that the appellant's claim lacks credibility. The appellant also claims that in reaching his decision, Judge Rowlands appears to have assessed the evidence adopting a higher standard of proof in reaching his finding at paragraph [27] of the decision that he was "absolutely sure", that the appellant is not and has never fled Iraq for fear of ISIL. Finally, the appellant claims Judge Rowlands misdirected himself by failing to consider the detailed guidance set out in the country guidance decision of SMO & Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), regarding the requirement for, and availability of A CSID, a document that is essential for an individual returning to Iraq.

9. I consider each of the grounds in turn. Both Mr Islam and Mrs Aboni adopted, and expanded upon the written submissions that have previously been sent to the Upper Tribunal. It is appropriate to consider the second and third grounds first. My decision in relation to those two grounds will inform my decision as to whether any error identified in ground one, is material to the outcome of the appeal.

Ground 2: *Failure to make clear findings and apply the correct standard of proof*

10. The appellant refers to paragraph [25] of the decision of Judge Rowlands in which he states:

> "The respondent does not find the appellant's claim as to what happened to him to be credible. I, on the other hand, find no reason to conclude that his claim lacks credibility. He says that ISIL were active in his area and that their neighbour was an active ISIL member who brought 4 other members to his house. There is no suggestion, by him, that he perceived any threat to him from either his neighbour or the 4 visitors. His father, the owner/tenant of the property was happy to let the authorities use his home and I am satisfied that, whether the area is disputed is *(sic)* not, the appellant and his family were happy to continue living there up to the 2016 incident and continued to live there for at least two years, even if off and on. I do not believe that there ever was an objective fear of ISIL in either of the two places he claims to have lived in.

11. Mr Islam also refers to what follows at paragraphs [26] and [27] of the decision and submits that having said that he has no reason to conclude that the appellant's claim lacks credibility, Judge Rowlands failed to make any clear findings as to the core of the appellant's claim and in particular, as to whether the appellant's house was used by the security forces for spying on ISIL, and whether, as a result, the appellant received threats as he claims. He submits that the appellant has discharged the burden on him, to the lower standard, but Judge Rowlands assessed the evidence requiring the appellant to establish his case at a higher standard of proof. Mr Islam submits that at paragraph [26] Judge Rowlands appears to accept the appellant's house was used for spying on ISIL. He submits that if ISIL were aware

or become aware of the use of the house to spy on ISIL, the appellant would be at risk. He submits no clear finding was made by Judge Rowlands as to why the family would not be at risk from ISIL if it is accepted that the appellant's home was used by security forces.

12. The assessment of the risk upon return and credibility of the claim advanced by an appellant is always a highly fact sensitive task. Judge Rowlands was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. The ingredients of the story, and the story as a whole, have to be considered by reference to the evidence available to the Tribunal. Judge Rowlands was required to resolve what had happened in the past, and whether the appellant would be at risk on return in the future.

13. Paragraphs [25] to [27] of the decision must be read together. It was undoubtedly open to Judge Rowlands to find, as he did at paragraph [25], that there is no reason to conclude that the appellant's claim lacks credibility. In reaching his decision, Judge Rowlands noted the core of the appellant's claim that ISIL were active in the area and their neighbour was an active ISIL member, who had brought four other members to his house. He noted, at paragraph [26], that the claim the authorities are active in action against ISIL is no surprise. The claim made by the appellant was consistent with background material and Judge Rowlands was undoubtedly entitled to find that there is nothing incredible about the authorities wanting to spy on the appellant's neighbour. It does not follow that Judge Rowlands was bound to accept the entirety of the claim advanced by the appellant.

14. Having found the appellant's claim that his home had been used by the security forces to spy on his neighbour to be credible, Judge Rowlands considered the appellant's claim that he has a specific fear

of ISIL because his family had allowed the authorities to use their house. The submission by Mr Islam that if ISIL were aware or become aware of the use of the house to spy on ISIL, the appellant would be at risk, is to ignore the evidence. The claim made by the appellant is summarised at paragraph [4] of the decision of Judge Rowlands. He noted that following the death of the appellant's neighbour, the appellant had travelled back and forth from his home in Darbandikhan and his home in the village of Homer Qala. No threats were issued directly to the appellant and although a note was thrown into the back garden, and there was a video shared on social media threatening those responsible for his neighbour's death, the appellant was never approached by his neighbour's family or ISIL in relation to that event or any other matter. In cross examination, the appellant had accepted that he himself had not witnessed the arrest of his neighbour in November 2016, and had not seen his neighbour's body following the death. He had heard about the incident from people in the town, and did not know who had killed his neighbour.

15. It was in my judgement open to Judge Rowlands to find, as he did at paragraph [26] of his decision, that it is not credible that the appellant had received any kind of threat towards him. The judge considered the appellant's claim that a brick was thrown, with a note, onto their land threatening anyone who might have been involved in notifying the authorities or assisting the authorities. Judge Rowlands noted that the note attached to the brick was never targeted at the appellant himself and neither was the alleged video. It was in the end open to Judge Rowlands to conclude that the appellant has not established that there is any personal threat towards him, for the reasons set out in paragraphs [25] to [27] of the decision.

16. I also reject the claim that in reaching his decision, Judge Rowlands applied too high a standard of proof. At paragraph [14], he correctly directed himself that the onus of showing that the appellant is entitled to asylum lies with the appellant and the appellant has to

demonstrate that there is a reasonable likelihood, that is a serious possibility, that should he be returned to his own country he would be persecuted. Judge Rowlands refers in that paragraph to the lower standard that applies in such an appeal. There is nothing in paragraphs [25] and [26] of the decision that even begin to suggest that Judge Rowlands did not apply the correct standard of proof when considering the core of the appellant's account. In the closing sentence of paragraph [26], Judge Rowlands confirms that "*The Appellant has not proven to the required standard that there is any personal threat towards him.".*

17. The sentence in paragraph [27] of the decision in which Judge Rowlands states that he is *"absolutely sure that the appellant is not and has never fled Iraq for fear of ISIL and that that is not the reason he came here"*, must be read in context. Judge Rowlands had already made his findings regarding the core of the appellant's claim, applying the correct standard of proof. He did not require the appellant to establish his claim upon anything other than the lower standard but in the end, was "absolutely sure" that the appellant had not fled Iraq for fear of ISIL. That is not to say that he required the appellant to satisfy him so that he could be "absolutely sure" that all aspects of the appellant's account are credible. I reject the claim made by the appellant that Judge Rowlands applied a "higher standard of proof". That is simply not demonstrated by a careful reading of the findings made regarding the core of the appellant's account. It is clear in my judgment that Judge Rowlands properly considered the evidence in the round before he reached his findings of fact, applying the correct stand of proof. There is therefore no merit in the second ground of appeal.

Ground 3: *Material misdirection in law*

18. The appellant refers to the judge's analysis of the evidence regarding the documentation required to enable the appellant to return to Iraq.

The appellant claims the judge failed to consider the country guidance set out in SMO & Others which reiterates that a CSID is an essential document for individuals returning to Iraq. The appellant claims Judge Rowlands erred in reaching the conclusion that the lack of any CSID available to the appellant now, makes no difference whatsoever, and it is perfectly safe for the appellant to return to Iraq. Mr Islam submits Judge Rowlands failed to consider how the appellant would get the relevant documents. The appellant's evidence set out in paragraph [23] of his witness statement was that he does not have access to his CSID card. He claims it was left in Iraq and he cannot have it sent to him. Mr Islam submits the family had moved out of the family home in Darbandikhan and there is a lack of any proper consideration as to whether the documents required by the appellant will be available to him, to enable him to safely make the journey to his home area or the IKR.

19. There is no merit in the third ground of appeal. In my judgement, the difficulty with the claim made by the appellant and the submissions made by Mr Islam is that they disregard the evidence that was before the Tribunal, and the criticisms made do not reflect the facts. During the course of the hearing before me, I asked Mr Islam to identify where the appellant's home area, Darbandikhan, is, in Iraq. He was unable to say precisely but believed it to be on the outskirts of Kirkuk, a former contested area. I note that at paragraph [31] of his decision, Judge Rowlands states; "*.. The appellant has addressed me concerning him removing (sic) to the Kurdish controlled region but of course he has never lived in the Kurdish controlled region and would not be expected to go there..*".

20. In fact, at paragraph [27] of the respondent's decision, the respondent identifies that Darbandikhan is in a Kurdish region of Iraq. It is a town in the governorate of Sulaymaniyah. In paragraph [10] of the appellant's witness statement dated 7th November 2019, the appellant confirms that paragraphs [27] and [28] of the respondent's

decision are correct. The respondent also noted in her decision, at paragraph [66], that the appellant claimed that he had also previously lived in Sulaymaniyah. The respondent confirmed at paragraph [67], that as a Kurd from the IKR, the appellant's return to Iraq will be to the IKR. The respondent also noted, at paragraph [75] of her decision, the appellant has a sister who lives in Zarayan and that his parents have permanently moved to Homar Qala *(which is also in Sulaymaniyah),* where they have not experienced any problems. As Mr Islam accepted, the appellant had not claimed, even in his witness statement, that he was no longer in contact with his family.

21. In section C of the headnotes in the country guidance decision in SMO & Others, the Upper Tribunal considered the need for a CSID or INID to enable an individual to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. The Tribunal noted that notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK 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.

22. At paragraph [31], Judge Rowlands noted the appellant's claim that he does not have the required documentation to move around internally in Iraq. He noted however that the appellant's parents still live at their home address, and there is absolutely no reason why the CSID could not be obtained from them. The appellant's evidence in his witness statement was that he left his CSID card in Iraq. He does not claim that he has never held a CSID or that it has been lost. He simply claimed, without any explanation or elaboration, that he cannot have it sent to him. On the evidence that was before the Tribunal, it was undoubtedly open to Judge Rowlands to conclude that

the appellant's CSID is in Iraq, and he has the ability to contact his parents in order to arrange for it to be provided to him.

23. As I have noted, Judge Rowlands appeared to proceed upon the premise that the appellant has never lived in the Kurdish controlled region and would not be expected to go there. He proceeds upon the premise that the appellant can return to his home area. As I have said, the appellant's home area is in fact in the Sulaymaniyah area in the IKR. In SMO & Others, the Tribunal noted there are regular direct flights from the UK to the Iraqi Kurdish Region and it is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah. Here, the respondent confirms in her decision that as a Kurd from the IKR, the appellant's return to Iraq will be to the IKR. The country guidance confirms that once at the IKR border (by land or air) an individual would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, the individual would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds. Importantly, it also confirms that if an individual has family members living in the IKR, cultural norms would require that family to accommodate the individual and in such circumstances the individual would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. The appellant's parents and sister remain in the Sulaymaniyah area, and there was no evidence before the Tribunal that the appellant could not return to his home area and turn to his family for assistance.

Ground 1; *The Convention reason*

24. The appellant claims Judge Rowlands erred in reaching his conclusion, at paragraph [22], that the appellant cannot succeed under the Refugee Convention, because he has not established that he is a

member of a particular social group. Judge Rowlands noted the appellant fears ISIL or the family of his neighbour because his father had permitted observations of the neighbour's house, but concluded that even if that is true, that does not place the appellant in a particular social group as he claims. He noted the appellant failed to identify what the particular social group is. In the grounds of appeal the appellant claims the conclusion reached by the judge is "absolutely absurd", as the appellant fears ISIL as a young Iraqi Kurdish male. It is said that his *"claim would come under political opinion and arguable PSG grounds as an ISIL target as a young adult".* The appellant claims it is expected from an experienced judge to identify the relevant convention ground, regardless of the submissions made by an appellant or his representatives, and even where no submissions are made at all. Mr Islam submits the appellant had claimed that he was a member of a particular social group as an ethnic Kurd, and he is at risk from ISIL. The appellant would also be considered to have an imputed political opinion as someone who opposes ISIL.

25. In their written and oral submissions, neither party addressed in any detail whether the appellant is a member of a particular social group. In order to establish that he is a member of a particular social group, the appellant must establish that the social group exists independently of and is not defined by the persecution. The 'group' must share a common characteristic, which will often be one which is innate, unchangeable, or which is otherwise fundamental to his identity, conscience or the exercise of his human rights. The appellant does not claim to be at risk upon return from the Iraqi authorities, or indeed the authorities in the IKR because of his Kurdish ethnicity. As noted by Judge Rowlands in paragraph [22] of his decision, at its highest, the appellant fears his neighbour in Darbandikhan or ISIL. The appellant had failed to identify the 'particular social group' and it was open to Judge Rowlands to conclude that the appellant has not established that he is a member of a particular social group for the

reasons set out. In any event, Judge Rowlands addressed the appellant's claim that he is entitled to international protection under the Refugee Convention, and in the alternative, under Article 15(c) of the Qualification Directive. On the findings made by Judge Rowlands and the conclusions he reached, any error as to whether the appellant is a member of a particular social group or would be perceived to have an imputed political opinion, is immaterial to the outcome of the appeal.

26. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when the judge was making material findings. In my judgement, Judge Rowlands identified the issues and gave a proper and adequate explanation for his conclusions on the central issues on which the appeal was determined. The findings made by the judge were findings that were properly open to the judge on the evidence before the Tribunal. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. Having carefully considered the decision of Judge Rowlands I am quite satisfied that the appeal was dismissed after the judge had carefully considered the facts and circumstances of the claim, and all the evidence before him.

27. It follows that in my judgement the decision of First-tier Tribunal Rowlands is not vitiated by a material error of law and the appeal is dismissed.

Notice of Decision

28. The appeal is dismissed, and the decision of the First-tier Tribunal stands

29. I make an anonymity direction.

Signed **V. Mandalia** Date: 27th January 2021

Upper Tribunal Judge Mandalia