



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000496

First-tier Tribunal No: HU/50994/2020
IA/01620/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 21 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SHI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sobowale, instructed by Axis Solicitors Limited.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 12 January 2023

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 appeals with permission a decision of First-tier Tribunal Judge Ford ('the Judge') promulgated following a hearing at Birmingham on the 26 July 2021, in which the Judge dismissed the appellant's appeal, made on human rights grounds only, against the refusal of both his protection and human rights claim by the Secretary of State on the 6 November 2020.
2. The Judge's findings are set out from [30] of the decision under challenge. The main paragraphs relevant to the challenge before us are those at [35 - 36] in which the Judge writes:

35. I do not accept that the Appellant is unable to contact his mother or his sister and secure ID documents from Iraq, including his CSID. I find that it is more probable than not that he had a CSID and left it in Iraq in the home he shared with his mother and his sister. He has given no account of taking it with him when he left Mosul or losing it at any point. He could not have operated in Iraq without a CSID and I find that he was issued with one. Even if he cannot secure his original CSID through his mother or his sister, I note that the Appellant has made no attempt to approach the Iraqi embassy in London with his nationality certificate to get a replacement CSID.

36. The Appellant does not have the new INID That is not in dispute. In order to get one he would have to present himself to the relevant registration office in Ninewa province. The point of return will be Baghdad airport. I am not satisfied that the Appellant is unable to access either his original or a replacement CSID to enable him to travel on to Mosul. I do not accept that he will face any difficulty travelling through checkpoints from Baghdad to Mosul.

3. Having heard submissions from the advocates in relation to whether the Judge erred in law in a manner material to the decision to dismiss the appeal, we indicated orally that our finding would be that the Judge, although erring in law in places, had not erred in a material manner and, accordingly, that the appeal will be dismissed. We now give our reasons.

Reasons

4. Notwithstanding developments since the promulgation of the determination, in that the Secretary of State now enforces returns to any airport within Iraq including the IKR, Kirkuk, and elsewhere, the issue remains as it always has been in this case, concerning the question of whether the appellant has or can obtain access to relevant documents to enable him to live in Iraq safely. It is not disputed that a person without the appropriate documentation, i.e. a CSID or INID is entitled to a grant of humanitarian protection.
5. As the appellant left Iraqi 2004, prior to the introduction of the INID, the question only relates to the availability of his CSID.
6. We accept in finding that the appellant could approach the staff of the Iraqi embassy in London with his nationality certificate, and use the same to get a replacement CSID, the Judge erred in law, which is not disputed by Mr Williams.

7. We find, however, that the argument set out in the ground seeking permission to appeal relating to the process by which an individual can obtain relevant documents is irrelevant in light of the specific finding by the Judge that the appellant is in touch with his mother and sister who remain in Iraq who will be able to either send his original CSID to him or meet him at the airport on his return.
8. The grounds of challenge as pleaded, claim the Judge erred by going behind country guidance which established that return without documentation to prove identity will be a breach of Article 3, asserting the Judge gave inadequate reasons for the finding at [21] of the determination. Ground 2 asserts a failure to give adequate reasons for the absence of risk for a breach of Article 3 in light of the inability to obtain a CSID, challenging the Judges decision at [22] of the determination under challenge.
9. Paragraphs [21] and [22] are not within the section of the determination in which the Judge sets out her findings. They are within that section of the document where the Judge is recording what happened during the appeal hearing.
10. The Judge does not take issue with the appellant's claim that his mother and sister were displaced from Mosul between 2014 and 2017 but noted the reference in the earlier decision letter of 21 January 2011 and the previous determination of Immigration Judge Hands, which dismiss the appellant's appeal against that decision, that the appellant's mother and sister had returned to live in Mosul after the war had ended. In relation to male family members the Judge noted at [20] *"The Appellant has stated that his father and his paternal uncle had passed away. I note that he previously produced a death certificate for his father that was considered unreliable due to inconsistencies in the Appellant's account as to why his father died and what was said to be the cause of death on the death certificate"*.
11. At the hearing before us Mr Sobowale sought to run another argument claiming that as the appellant's home area would have been decimated in Iraq it was questionable that his mother will be in the same area, or the documents would still be available. This is clearly not an argument that was pleaded in the application for permission to appeal on which permission to appeal was granted.
12. The skeleton argument before the Judge, dated 4 May 2021, only contained the following submissions:

SUBMISSIONS

11. The Appellant makes the following submissions in support of his appeal. All page references within these submissions refer to the Appellant's Bundle of Documents, unless specified otherwise.
12. The Respondent refused the application on 11 November 2020. The basis of the Respondent's refusal was that they were not satisfied that the Appellant has a well-established fear of prosecution (sic).
13. The Appellant confirms that he left his war-torn and dangerous home country in 2004 and has been struggling to legalise his status in the UK.

14. The Appellant has explained that he is of a part Jewish heritage which is always caused problems for him and his family in Iraq, this included his grandfather being forced to accept and follow the Islamic faith by fundamentalist extremists that he always has and continues to fear.
 15. His father was accused of being a Jewish spy further endangering the Appellant as his other family members.
 16. When the Appellant left Iraq his sister and mother were alive however he now has no knowledge of their whereabouts and is convinced that all his family has been killed by the same fundamentalist groups.
 17. The Appellant since his entry to the UK and dupe the constant stress of not being able to legalise his status now developed mental health conditions [see bundle page 10 - 11].
 18. The Appellant suffers from depression and is receiving ongoing medical care which he believes is not accessible at this standard in Iraq. He is also diabetic and receives treatment and support for this.
 19. The Appellant reiterates that the dangers he faced when he left in 2004 still present in Iraq and he will be killed whenever he returns.
 20. Iraq is not somewhere he can call home, the Respondent questions why the Appellant did not attempt to leave for a country where he would be welcomed as someone of Jewish faith. The Appellant confirms that he left all his identity documents in Iraq when fleeing for fear of his life and is therefore not left with much choice in terms of where he can and cannot go.
 21. The Appellant finds the decision of the Respondent unfair and harsh and wishes to be given permission to remain in the UK.
 22. Appellant further confirms that the UK is now his home he has been resident here for around 17 years and has nowhere else to go.
 23. Although he has no fixed abode in the UK and is living with his friends, he feels safer within the UK in comparison to Iraq.
13. There is no indication in any of the documentation or evidence that the additional point relied upon, on the appellant's behalf before us, has ever been raised previously in this appeal. The appellant's account is that when he fled he left his documents at home. The Judge considered the evidence regarding the position of family members having left the property and subsequently returning indicating that it was an existing habitable structure and not one as suggested by Mr Sobowale that would have been "devastated". We find it reasonable for the Judge to have concluded on the evidence that the documents left behind by the appellant will be available to his mother and sister, as there was insufficient evidence before the Judge to suggest otherwise.
14. It is settled procedure within the jurisprudence of the Upper Tribunal that a Tribunal/Court should restrict the parties arguments to those upon which permission to appeal was granted - see [Latayan v Secretary of State for the Home Department \[2020\] EWCA Civ 191](#) at [32] ([Talpada](#) applied). No

application to amend the ground seeking permission to appeal to rely on any differing argument was made or granted.

15. It was not made out before the Judge that the appellant would not be able to obtain a laissez-passer from the Iraqi Embassy in the UK with which he could be flown to an airport within Iraq. In light of the Judge's findings it was not made out his CSID could not easily be sent to him or that a family member could not meet him at the airport to hand it to him. Accordingly, it was not made out that the appellant would be undocumented sufficient to warrant a grant of international protection on this basis.

16. Having considered the determination, material before the Judge, and submissions made, we do not find the appellant has established legal error material to the decision to dismiss the appeal.

Notice of Decision

17. There is no material error of law in the decision of the Judge. The determination shall stand.

Mr C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 January 2023