**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/02285/2020 (V)

**THE IMMIGRATION ACTS**

| | |
|---|---|
| **Heard at Cardiff Civil Justice Centre Remotely by Microsoft Teams On 8 July 2021** | **Decision & Reasons Promulgated** **On 11th of September 2024** |

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**KTM**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Anthony instructed by Braitch Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

**Introduction**

2. The appellant is a citizen of Iraq of Kurdish ethnicity who was born on 5 January 1989. He arrived in the United Kingdom on 15 May 2018 and claimed asylum. He claimed to be at risk on return to Iraq because both he and his father were supporters of the Goran Party and had been detained and ill-treated by the KDP.

3. On 25 February 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

## The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a decision sent on 11 January 2021, Judge Row dismissed the appellant's appeal on all grounds.

5. First, the judge made an adverse credibility finding and rejected the appellant's account that he and his father had been detained by the KDP because they were supporters of the Goran Party. Secondly, the judge found that the appellant would not face treatment contrary to Art 3 of the ECHR (or be entitled to humanitarian protection) as he would be able to obtain a CSID in order to safely travel within Iraq on return. Thirdly, the judge rejected the appellant's claim to humanitarian protection based upon Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC). Finally, the judge concluded that the appellant's return to Iraq would not breach Art 8 of the ECHR.

## The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on three grounds. First, the judge's adverse credibility finding was unsustainable in that the judge had wrongly relied on inconsistencies in the appellant's account given in his screening interview, asylum interview and witness statement. Secondly, the judge, in finding that the appellant had not lost contact with his family in Iraq, had failed to give adequate reasons. Finally, the judge had erred in law in concluding that the appellant would be able to obtain a CSID at the Iraqi Embassy in the UK prior to returning to Iraq.

7. Permission to appeal was granted by the First-tier Tribunal (Judge Scott-Baker) on 22 February 2021. Judge Scott-Baker considered it was arguable that the judge had failed to follow the country guidance in SMO & Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) in assessing whether the appellant could obtain a CSID at the Iraqi Embassy in London.

8. The appeal was listed for a remote hearing before me at the Cardiff Civil Justice Centre on 8 July 2021. I was present in court whilst Ms Anthony, who represented the appellant, and Ms Aboni, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

**Submissions**

9. On behalf of the appellant, Ms Anthony submitted that the judge had made a number of positive findings in relation to the appellant's credibility as set out in para 5(i)–(viii) of the grounds of appeal: including that, he had made a genuine effort to substantiate his claim, he had provided all material factors at his disposal, there were no inconsistencies in a number of aspects of his account; and there was no external inconsistency between the appellant's account that the KDP (whom he feared) operated in Nineveh province where he lived.

10. Ms Anthony submitted that the judge had erred in law in paras 43, 45 and 47 of his decision.

11. First, at para 43, Ms Anthony submitted that the judge had been wrong to rely upon an apparent inconsistency between the appellant's screening interview and his subsequent asylum interview and witness statement. The judge had been wrong to rely on the fact that the appellant had failed to mention that he had been arrested and detained by the KDP in his screening interview. The appellant had explained that he had understood the question to be referring to whether he had been detained elsewhere other than in Iraq. Ms Anthony relied upon the decision of the Court of Appeal in JA (Afghanistan) v SSHD [2014] EWCA Civ 450 where the Court of Appeal had cautioned reliance upon apparent inconsistencies in an interview when, as in the instant case, no recording of the interview was available to check the accuracy of the written record.

12. Secondly, Ms Anthony submitted that the judge had erred in para 45 of his determination when he stated that there were significant discrepancies in the appellant's answers in his asylum interview and witness statement as to the date when he was arrested, whether it was in 2010 or 2012. Some of the answers (for example, questions 108 and 109) related to the appellant joining the Goran Party rather than when he was arrested and question 119 related to when his father had been taken referring to "10th February" without reference to any year.

13. Thirdly, Ms Anthony submitted that in para 47 the judge had been wrong to rely upon answers in the appellant's asylum interview that led him to conclude that the appellant had inconsistently said that he had been arrested when he was 15 or 17 years old when, if it was in 2010 he would have been 21 years old.

14. Finally, the judge erred by failing to have regard to the expert report which supported, as plausible, his account of the KDP's treatment of supporters of the Goran Party.

15. In response, Ms Aboni, on behalf of the Secretary of State, accepted that the judge had misunderstood the appellant's asylum interview in para 47 of his decision because at question 142, Ms Aboni accepted, the appellant

was talking about how old he was when his father had talked to him about the Goran Party rather than when he had been arrested.

16. However, Ms Aboni submitted that the judge's remaining reasons based upon inconsistencies in the appellant's evidence were sustainable and sufficient to support the judge's adverse credibility finding. She submitted that the judge had properly considered the appellant's explanation as to why he had not mentioned that he had been arrested and detained in his screening interview. Further, read as a whole, it was clear that in his asylum interview the appellant was saying that he had joined the Goran Party in 2010 and had supported it for 15–20 days (see questions 72 and 75) and that, therefore, all the references to the dates for the arrest of both himself and his father were in 2010. Yet, in his screening interview he had said that he had joined the party in 2012 for four months. Likewise, in his witness statement the appellant had said that he had joined in 2010 but that his problems occurred in 2012 (see para 17). Those were inconsistencies which the judge was entitled to rely upon and sustained his adverse credibility finding.

17. Further, as regards Ms Anthony's submission that the judge failed to take into account the expert report which identified examples of Goran Party supporters being mistreated, the judge had referred to this report at para 30. But, Ms Aboni submitted, simply because there were examples of Goran Party supporters being mistreated did not mean that the appellant and his father had been mistreated. The judge had given adequate reasons why that was not so.

18. Finally, as regards the challenge to the judge's finding in relation to the appellant obtaining a CSID to return to Iraq, Ms Aboni accepted that this aspect of the judge's decision was legally flawed and could not be sustained in the light of the CPIN, "Iraq: Internal Relocation, Civil Documentation and Returns" (June 2020) which stated at para 2.6.16 that it was "highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK". Ms Aboni accepted that the decision in relation to redocumentation had to be remade in respect of Art 3 and humanitarian protection and that the findings relating to that in paras 53 and 54 of the determination, including that the appellant was in contact with his family in Iraq could not stand.

## Discussion

19. It is accepted that the judge's reasoning in para 47, which was part of his reasoning leading to his adverse credibility finding, is unsustainable. There, the judge relied upon an inconsistency between the appellant's asylum interview where, the judge considered that the appellant had said at question 142 that he was 15 or 17 years old, when he was involved with the Goran Party and was arrested and that this was in 2010 when in fact he would have been 21 years old. As Ms Aboni conceded, it is plain that at question 142 the appellant was not talking about the time he joined the

Goran Party and when he was arrested but rather when his father (self-evidently earlier in his life) had talked to him about politics.

20. Ms Anthony submitted that that error in itself was material and sufficient to undermine the judge's adverse credibility finding even if her remaining arguments in relation to paras 43 and 45 were not made good.

21. I do not accept that submission and for the following reasons I reject Ms Anthony's submission that the judge was not entitled to rely upon the inconsistencies that he identified at paras 43–46.

22. I will deal first with para 43. There, the judge said this:

> "43. The appellant did not mention in the screening interview having been arrested or detained by the KDP. His explanation is that he thought that the question referred to his having been detained elsewhere than Iraq. The context of the question would indicate otherwise. The appellant had volunteered that he had been a supporter of the Goran Party and that his father was against this. I accept that the screening interview is not meant to be a complete statement of the appellant's case. However the fact that his father was arrested, the appellant was arrested, and that he was detained and mistreated is something which might have been expected to have been mentioned as a reason for his fear of return, even in a screening interview".

23. Ms Anthony placed reliance upon what was said in JA (Afghanistan) concerning the need for caution in relying upon what is said in a screening interview. In that case, the Court of Appeal concluded that simply because no recording of an interview was available, did not render that interview inadmissible or one which could not be accorded significant weight. However, at [24] Moore-Bick LJ (with whom Gloster and Vos LJJ agreed) said this:

> "[The Tribunal] does, however, have an obligation to consider with care how much weight is to be attached to it, having regard to the circumstances in which it came into existence. That is particularly important when considering the significance to be attached to answers given in the course of an interview and recorded only by the person asking questions on behalf of the Secretary of State. Such evidence may be entirely reliable, but there is obviously room for mistakes and misunderstandings, even when the person being questioned speaks English fluently. The possibility of error becomes greater when the person being interviewed requires the services of an interpreter, particularly if the interpreter is not physically present. It becomes greater still if the person being interviewed is vulnerable by reason of age or infirmity. The written word acquires a degree of certainty which the spoken word may not command. The "anxious scrutiny" which all claimants for asylum are entitled to expect begins with a careful consideration of the weight that should properly be attached to answers given in their interviews. In the present case the decision-maker would need to bear in mind the age and background of the applicant, his limited command of English and the circumstances under which the initial interview and screening interview took place."

24. Of course, here the appellant did not contend that the screening interview misrecorded what he had said.

25. So far as relevant at para 5.5 the appellant had said that he "was a supporter of Goran Party (The Change) political party" and "from 2012 for 4 months, my father was against it". At para 4.1, the appellant was asked to state "briefly" "all the reasons why you cannot return to your home". In response to that the appellant said this:

> " I cannot return back to Iraq as I left because of the fighting. I cannot go back due to the fighting.
>
> Q. Can you not return to a different area?
>
> A. When this happened I went to Turkey, because of the threat of ISIS in Kurdistan.
>
> Q. Why were you affected by the fighting in particular?
>
> A. Our area Shingar was under the control of ISIS, who ran away towards the mountains, then I phoned my brother and uncle, we came down and was arrested by ISIS.
>
> Q. For how long?
>
> A. 1 to 2 hours. We were 12 cars, taken to a mosque to try and get us to convert to become Muslims. After that the area was bombarded by planes and the ISIS ran away so we ran away as well".

26. Of course, in his asylum interview, the appellant's claim was that his father was an active supporter of the Goran Party and that he (the appellant) had been arrested by the KDP and tortured because he was also a supporter of the Goran Party in 2010 for 15 to 20 days. This was not a case, therefore, where the appellant claimed that what he had said in his screening interview was misrecorded. The caution envisaged in JA (Afghanistan), based upon there being no recording and therefore verifiable transcript of his screening interview, was not engaged.

27. However, I accept that in taking into account an omission to mention something relevant to his claim, it was incumbent upon the judge nevertheless to exercise caution as a screening interview is not intended to be an opportunity for an individual to give all the details of his claim. In YL (Rely on SEF) China [2004] UKIAT 00145, the IAT set out (at [19]) the purpose of a screening interview and the need for caution when relying upon omissions or inconsistencies arising from it:

> "19. When a person seeks asylum in the United Kingdom he is usually made the subject of a 'screening interview' (called, perhaps rather confusingly a "Statement of Evidence Form – SEF Screening–). The purpose of that is to establish the general nature of the claimant's case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to

> ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated."

28. Ms Anthony pointed out the entire screening interview lasted for only 25 minutes. However, the judge was clearly alive to the need for caution and specifically noted, in para 43 of his decision, that it was not "meant to be a complete statement of the appellant's case". However, equally, the core of the appellant's claim was that both he and his father, as Goran Party supporters, had been arrested and detained (probably in 2010) and yet when asked to give reasons, albeit briefly, why he could not return to his home country at para 4.1, the appellant made no reference to this but rather referred to threats from ISIS. He did, of course, in para 5.5 state that he had been a supporter of the Goran Party but still he did not refer to the core element of his claim concerned with his and his father's arrest and detention because of their support for the Goran Party. In my judgment, the judge was reasonably and rationally entitled to take into account that the appellant had made no mention of that in his screening interview and that that was something which he might have been expected to have mentioned even in a screening interview if, indeed, he had a genuine fear because of that involvement with the Goran Party.

29. Turning now to the other points made by Ms Anthony in relation to inconsistencies taken into account by the judge, it is helpful to read paras 44, 45 and 46 together. They are as follows:

> "44. There are significant differences about when the appellant became a supporter of the Goran Party. In the screening interview he said he joined in 2012 and was a member for four months. In the asylum interview he said that he joined in January 2010 and was involved for 15 to 20 days, questions 73, 78, 109, in his witness statement he said he was involved between 2010 and 2012, paragraph 17.
>
> 45. There are significant differences in the date when he was arrested. In the screening interview he said that he had not been arrested. In the asylum interview he said that this occurred on 10th February 2010, questions 72, 73, 83, 108, 109, and 119. His witness statement says that this was in 2012.
>
> 46. The appellant's explanation is that the interpreter must have misinterpreted in the asylum interview. I do not accept that. The appellant had indicated in the asylum interview that he and the interpreter had understood each other, question 382. The appellant was clear about the dates given because he challenged the date given in the screening interview of when he joined the Goran Party, questions 72 and 73. The dates he was arrested and detention were referred to at a number of places in the asylum interview".

30. Ms Anthony's submission was that the judge had overread the appellant's asylum interview when some of the questions had not in fact related to the date when he was, for example, arrested. Whilst that may be literally

true, the questions to which the appellant gave answers in his asylum interview relate to an account that he was first involved with the Goran Party in 2010 (question 72) and that he had been a supporter for 15–20 days (question 75). During that time both he and his father had been arrested and detained. He says that his father was arrested, and put in prison "about 10th February" (questions 118 and 119). In the context of his account, that must mean 10 February *2010*. Likewise, when the appellant describes attendance at meetings of the Goran Party (question 101 onwards), he says that this happened in "2010" (question 108) and that it was "15th January" (question 109). The whole of his account relates to 2010 as regards involvement with the Goran Party and his and his father's claimed arrest and detention. By contrast, in his screening interview he said that he was involved with the Goran Party "from 2012 for 4 months". That is inconsistent with what he said in his asylum interview. His asylum interview is also inconsistent with what he said in his witness statement at para 17 in relation to his arrest and detention when he stated:

> "I always stated I joined in 2010 and that my problems happened in 2012".

31. In paras 44 and 45, the judge was reasonably and rationally entitled to identify inconsistencies between the appellant's account, in particular, in his asylum interview and in his witness statement as well as, between what he had said there and what he had previously said in his screening interview. The appellant was both saying that he joined in 2010 (asylum interview and witness statement) or he joined in 2012 (screening interview); and that the problems arose in 2010 (his asylum interview) or in 2012 (his witness statement and screening interview). The appellant's explanation was that there must have been a misinterpretation at the asylum interview. The judge rejected that, in para 46 of his decision, on the basis that the appellant had indicated at question 382 that the interpreter and he had understood each other but also because when the inconsistency between what he appeared to be saying in his asylum interview about 2010 with what he had said in his screening interview - namely that he had joined the Goran Party in 2012 - was drawn to his attention, the appellant had said that his screening interview was wrong and not his asylum interview (see questions 72 and 73).

32. In my judgment, the judge was entitled to rely upon inconsistencies in the appellant's evidence as set out in paras 43–46 to conclude that he did not accept that the appellant's account was credible.

33. As regards Ms Anthony further submission, I do not accept that the judge failed to take into account the expert report which identified that there were instances of Goran Party supporters being mistreated. The judge referred to that at para 30 even if he did not specifically refer to it later in his decision. It, nevertheless, appears in a section of the decision concerned with "issues of credibility" and, as Ms Aboni submitted, merely because mistreatment of Goran Party supporters was plausible, did not

mean that the appellant had established that he and his father were Goran Party supporters who had been mistreated.

34. In seeking to sustain the adverse credibility finding despite the judge's error in para 47, Ms Aboni also placed reliance upon the judge's reasoning at paras 48–52, where he took into account inconsistencies about when the appellant had said he had last been in contact with his family and also his failure to claim asylum in safe European countries.

35. In para 48, the appellant gave different accounts of when he had last spoken to his parents. In his asylum interview, which took place on 16 July 2019, he said that he had last spoken to them about four months before which would have been at the beginning of 2019 or the end of 2018 when he was in the UK. In cross-examination, however, the appellant said that he had last spoken to them when he was in Turkey which he left in October 2016. The judge said this:

> "Some inconsistency in dates is to be expected in someone recalling events. It would be expected the appellant could remember when it was that he last spoke to his parents and whether it was from the United Kingdom or when he was in a camp in Turkey".

36. Then, at para 49, the judge also noted that the appellant had said that he had not contacted them since because he had lost their telephone number when his mobile phone was stolen when he was in Greece. The judge noted:

> "This is inconsistent with his account in the asylum interview which is that he was able to speak to them from the United Kingdom".

37. At paras 50–51, applying s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the judge took into account as damaging of his credibility that the appellant failed to claim asylum in a number of countries in Europe whilst travelling to the UK.

38. At para 52 the judge concluded as follows:

> "52. I take into account all these matters. I take into account that the standard of proof in an asylum case is a low one. Even taking these matters into account I do not believe what the appellant says about the areas in dispute. The significant inconsistencies in key parts of his account, the inconsistencies with background information, and his failure to claim asylum in safe European countries over an extended period of time, all damages his credibility. I find him to be an unreliable witness as to fact".

39. Whilst Ms Anthony relies upon a number of findings by the judge that there were "no inconsistencies" in aspects of the appellant's account, the absence of these inconsistencies did not itself add positively to reasons to believe the appellant. The judge took into account the consistency between the appellant's account that as a Goran Party supporter he and his father were mistreated and the expert evidence. However, the judge gave a number of reasons why, based upon inconsistencies in the

appellant's evidence, his account was not to be believed. In my judgment, even discounting the discrepancy identified in para 47 of the judge's decision, these inconsistencies set out in paras 43–46 and 48–49, together with the application of s.8 of the 2004 Act, were sufficient to sustain the judge's adverse credibility finding even if his reasons in para 47 are unsustainable.

40. For these reasons, therefore, I reject Ms Anthony's submission that the judge's adverse credibility finding and, therefore, his dismissal of the appellant's asylum claim involved the making of a material error of law. That decision and the findings leading to it, stand.

41. However, as was accepted by Ms Aboni, the judge's decision concerning Art 3 and humanitarian protection based upon any risk to the appellant of returning to Iraq without the appropriate documentation is legally unsustainable, should be set aside and the decision remade to that extent.

42. In that regard, both representatives agreed that a face-to-face hearing was necessary as the appellant would wish to give evidence and does not have the facility to take part in a remote hearing. It was agreed that the proper disposal, therefore, was to remit the appeal to the First-tier Tribunal in Birmingham where a face-to-face hearing could be listed in order to remake the decision in respect of Art 3 and humanitarian protection in relation to the issue of documentation.

## Decision

43. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law in respect of the decision to dismiss the appeal under Art 3 and on humanitarian protection grounds.

44. The findings and decision to dismiss the appellant's asylum appeal did not involve any material error of law and those findings stand and are preserved.

45. As the parties agreed, the appeal is appropriately remitted to the First-tier Tribunal for a face-to-face hearing in order to remake the decision limited to Art 3 and humanitarian protection and the issue of whether the appellant would have the necessary documentation to safely return to Iraq (including what, if any, contact or ability to contact the appellant has with his family in Iraq).

Signed

**Andrew Grubb**

Judge of the Upper Tribunal
13 July 2021