



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09490/2019 (P)**

Appeal Number:

THE IMMIGRATION ACTS

Decided under rule 34

On 10 June 2020

**Decision & Reasons
Promulgated**

On 26 June 2020

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr S Hussain, Khan Solicitors

DECISION AND REASONS

1. The Secretary of State is appealing against the decision of Judge of the First-tier Tribunal Smith (“the judge”) promulgated on 15 January 2020 allowing the appeal of the respondent (hereafter “the claimant”) on the basis that deporting him from the UK would breach articles 3 and 8 ECHR.

2. The claimant is a citizen of Iraq born on 27 September 1977 who has been in the UK since 2002. In 2017 he was convicted of conspiracy to handle stolen goods and sentenced to 18 months imprisonment. In May 2019 a deportation order was made against him.

Decision of the First-tier Tribunal

3. The judge allowed the appeal under both articles 3 and 8 ECHR.
4. With respect to the claimant's article 3 claim, the judge stated that the unchallenged evidence of the claimant, inter alia, was that he is from Kirkuk, does not have a passport or CSID, has not been in contact with his family in Iraq since coming to the UK in 2002, does not have any family or anyone he knows how to contact in Baghdad, and does not know the volume and page reference of the entry for his CSID in the "Family Book".
5. On the basis of this unchallenged evidence, the judge, applying *SMO, KSP & IM (Article 15(c); identity documents) Iraq* CG [2019] UKUT 00400 (IAC), found that the claimant faced a real risk of ill-treatment in Iraq breaching article 3 because he does not have a CSID and could not obtain one within a reasonable period of time.
6. In respect of article 8, the judge found that the unchallenged evidence established that the development of the claimant's children would be significantly impacted by separation from him and that the effect on the children would be unduly harsh.

Grounds of Appeal

7. The Secretary of State has advanced two grounds of appeal. The first ground, which concerns the claimant's case under article 3, submits that the judge failed to give adequate reasons for concluding that the claimant would be unable to obtain a CSID. The grounds cite *AAH (Iraqi Kurds - internal relocation) Iraq* CG UKUT 00212 (IAC) and state that the claimant has failed to demonstrate he has made attempts to contact his family or have his identity verified by the Iraqi embassy in London.
8. The second ground of appeal concerns the assessment of article 8. It is argued that the judge failed to apply the correct threshold for "undue harshness" and did not have adequate regard to the public interest in deportation of the claimant.

Written Submissions in Response to Directions

9. In the light of the present need to take precautions against the spread of Covid-19, I issued directions expressing my provisional

view that it would in this case be appropriate to determine without a hearing whether the making of the First-tier Tribunal's decision involved the making of an error of law. The parties were invited to submit further submissions on the error of law issue. They were also given the opportunity to express a view, supported by reasons, on whether, notwithstanding my provisional view, a hearing would be necessary.

10. Mr Melvin, on behalf of the Secretary of State, submitted written submissions dated 4 May 2020. In respect of the first ground of appeal (concerning article 3), Mr Melvin submitted that the judge failed to even consider the plausibility of the claimant's claim to have never attempted to contact his family and had failed to address the evidence relating to a couple that had seen his family in 2004 in Kirkuk.
11. Mr Melvin did not express any view on whether a hearing would be necessary.
12. The claimant has not responded to the Secretary of State's grounds of appeal or submissions. The claimant's solicitor did, however, submit objections to the remaking of the decision being undertaken without a hearing. The reasons given as to why a hearing is necessary are that the matter is of utmost importance to the claimant, he needs to be able to proactively respond to the Secretary of State's submissions, and the outcome would affect his partner and children. None of these reasons engage, in any way, with the grounds of appeal or the specific issues in this appeal. They are entirely generic, in the sense that they have nothing to do with this particular case and could be written for almost any appeal that comes before the Upper Tribunal. The reason I reached the preliminary view that this appeal could be dealt with on the papers is that the grounds of appeal raise clear and narrow issues that do not require elaborate or nuanced submissions. There is nothing in the submissions of the claimant that leads me to revise this view and therefore I will decide the appeal without a hearing.

Analysis

13. As correctly identified by the judge, the applicable country guidance case in this appeal is *SMO*. *SMO* replaced all existing country guidance on Iraq and therefore the reference in the grounds of appeal to *AAH* is misplaced.
14. *SMO* states the following in respect of the need for, and ability to obtain a replacement of, a CSID:
 - C. CIVIL STATUS IDENTITY DOCUMENTATION
 11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an*

individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.

12. *A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*
 13. *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. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*
 14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
 15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
 16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*
15. Having found that the claimant does not have a passport or CSID, does not know the volume and page reference of the entry for his CSID in the Family Book, has lost contact with his family, and does not have family or friends who would be able to assist him in

either Kirkuk or Baghdad, it was clearly consistent with *SMO* to find that (a) the claimant would not be able to obtain a CSID either prior to, or within a reasonable period of time after, arriving in Iraq; and that (b) consequently he would be at real risk of being unable to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR.

16. The judge was entitled to make the findings identified in paragraph 15 above for the reasons he gave in paragraphs 75 of the decision: that is, the claimant's evidence was not challenged, there were no significant credibility findings made against the claimant in the previous First-tier Tribunal decision concerning him (promulgated on 23 December 2003) and the claimant had given a broadly plausible account. Moreover, at paragraph 74 of the decision the judge explained why he accepted that the claimant did not know the volume and page reference of his entry in the Family Book (which is an important point given that, as found in *SMO*, most Iraqi citizens would know and recall this information). The judge stated that he found it plausible the claimant did not recall this information given the length of time he has been in the UK. This is not a perverse/irrational finding and is one that was open to the judge.
17. The judge therefore was entitled to find, for the reasons he gave, that deportation of the claimant would breach article 3 ECHR.
18. At paragraph 55 of the decision, the judge noted that it was agreed by the parties that if the claimant succeeded in his article 3 appeal it was not necessary to consider the appeal under article 8 ECHR. Article 8 was considered by the judge in the alternative, in case he erred in respect of article 3. As I have found that the judge did not err in respect of article 3, it is unnecessary to consider his findings in respect of article 8 as any error would be immaterial. I have therefore not considered the second ground of appeal.

Notice of Decision

19. The Secretary of State's appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

Direction Regarding Anonymity

20. Unless and until a Tribunal or court directs otherwise, the claimant 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 claimant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 10 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email