



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06686/2019

THE IMMIGRATION ACTS

Heard at Birmingham
On 1st December 2020

Decision & Reasons Promulgated
On 11th December 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SOH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Forbes, Lifeline Options CIC

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal ("FtT"). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, SOH is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The hearing before me on 1st December 2020 took the form of a remote hearing using skype for business. Neither party objected. The appellant joined the hearing remotely from the offices of Lifeline Options CIC and throughout, he was able to see and hear me and the representatives. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in the same way as I would have been if the parties had attended the hearing together. I was satisfied: that the open justice principle has been secured; that 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.
2. At the conclusion of the hearing I reserved my decision. I informed the parties that my decision will follow in writing, with reasons. This I now do.

Background

3. The appellant is a national of Iraq. The appellant claims to have arrived in the United Kingdom on 27th February 2005. He made a claim for asylum that was refused by the respondent for reasons set out in a decision dated 8th March 2005. The appellant's appeal against that decision was dismissed by Immigration Judge Sanderson for reasons set out in a decision promulgated on 5th July 2005. The appellant subsequently made further submissions to the respondent on several occasions and on each occasion, the respondent refused to treat the further submissions as a fresh claim. On 1st May 2019 the appellant again made further

submissions to the respondent. The respondent refused the appellant's claim for reasons set out in a decision dated 18th June 2019 and concluded that the appellant would not be at risk upon return to Iraq. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Sills ("Judge Sills") for reasons set out in a decision promulgated on 22nd October 2019.

4. The background to the appellant's claim and the matters relied upon by the appellant are summarised at paragraphs [2] to [4] of the decision of Judge Sills. The appellant was assisted at the hearing of his appeal by Mr Forbes, who at the time, attended as a McKenzie Friend. Mr Forbes has since achieved OISC accreditation and represented the appellant at the hearing before me. At paragraph [8] of his decision, Judge Sills recorded that the respondent had been ordered to produce the original ID card that had previously been relied upon by the appellant. He records that the respondent wrote to the Tribunal on 27th August 2019 stating that the respondent could not find the original ID card and there was no note on the respondent's file of this having been retained, but copies would be provided at the hearing of the appeal. Judge Sills noted, at [8], that the Presenting Officer provided copies of the documents that had previously been relied upon by the appellant including a personal identification certificate and a certificate of Iraqi nationality, with translations. Judge Sills records at paragraph [9] of his decision that once the documents had been produced, he gave the appellant an opportunity to discuss the matter with Mr Forbes. The appellant was content to proceed, and there was no application for an adjournment.
5. At paragraph [15] of his decision, Judge Sills states that his starting point is the determination of Judge Sanderson. The findings and conclusions of Judge Sanderson are summarised by Judge Sills at paragraph [15] of his decision. For reasons set out at paragraphs [16] to [19] of his decision, Judge Sills concluded that the further submissions made by the appellant did not undermine the adverse credibility findings previously made against him, and he rejected the appellant's claim that he would be at risk upon return. At paragraph [22] of his decision Judge Sills said:

"... I have applied the lower standard of proof, with the burden upon the appellant. Having considered all the evidence, I am not persuaded that I should depart from the

findings of fact made by Judge Sanderson. I thus reject the appellant's claim in relation to his membership of the Ba'ath Party. I also reject the appellant's claims in relation to his relationship with Naim. I thus find that the appellant would not face a risk of persecution on return to Iraq relating to his claimed activities with the Ba'ath Party, or due to his claimed relationship with Naim."

6. Judge Sills also addressed the appellant's claim that he would be unable to get a CSID card. At paragraph [21], Judge Sills said:

"In relation to the issue of documentation, I note that the appellant has previously submitted to the respondent copies of a personal identification certificate with translation and a certificate of Iraqi nationality with translation. These documents were not rejected by the previous judge and were not considered to be material to the issues at that time. If these documents are genuine, they will assist the re-documentation process of the Iraqi authorities. If they are not genuine, then I considered that the appellant's evidence in relation to his documentation is unreliable...."

7. At paragraph [25], Judge Sills said:

"I also consider the issue of documentation. I have considered the appellant's document entitled 'Personal Identification' alongside the Respondent's policy document Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns at 5.4, referred to in the refusal letter. The document appears to contain all the information that should be on a CSID. The report states that the CSID is governed under the Civil Status Law 65 of 1972. The appellant's document states that it was issued under a law of the same name save that the word 'circumstance' is used instead of 'status'. In my view, status and circumstance are likely to be different translations of the same word from what I assume is the Arabic original. The suggestion that this document is his CSID is consistent with his statement at his screening interview at Q7.36, that the appellant left his National ID card in Iraq. The Appellant's evidence is that his brother subsequently sent documents to him in the UK. I find that this is a copy of the Appellant's CSID card. The information on the Appellant's Certificate of Iraqi Nationality is also in line with the information contained at 5.5 of the CPIN referred to above."

8. Judge Sills found, at [27], that the appellant has the information required to obtain a replacement passport outside Iraq. At paragraphs [29] and [30] he said:

"29. I am satisfied that the appellant can obtain a new CSID should he require one before returning to Iraq based on these two ID documents. His brother or brothers could also assist him by providing him with copies of their CSID cards. It follows that the appellant will be able to safely travel to the KRI by air and enter the KRI without difficulties.

30. In the alternative, if the documents are not reliable, it follows in this regard that the appellant's evidence in relation to documentation is unreliable. On this basis, the appellant could not establish that he is unable to obtain the necessary documentation

to be able to safely travel to and enter the KRI. Finally, I find that if the appellant is returned to Iraq, it will be on documentation that makes it clear he is from the KRI. I find that if the appellant is returned to Iraq, he will also be able to fly to the KRI either direct or via Baghdad so he can safely reach the KRI. The appellant can return to the KRI and live a relatively normal life with the support of his brother or brothers in circumstances that would not breach his Article 3 rights. I dismiss his protection appeal.”

The appeal before me

9. The appellant advanced two grounds of appeal. First, Judge Sills admitted four documents, copies of which were provided on the day of the hearing without offering the appellant, who was unrepresented, the opportunity of an adjournment. It is said that the appellant was not made aware of the opportunity for an adjournment. Second, having erroneously admitted the copies of the four documents, Judge Sills gave unclear reasons as to the authenticity of the documents and found that one of the documents is a genuine copy of the appellant’s CSID. It is said that Judge Sills disregarded the implied findings of Judge Sanderson previously, who made adverse credibility findings against the appellant and rejected the documents that had been relied upon by the appellant.
10. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 31st January 2020.
11. At the outset of the hearing before me, Mr Forbes confirmed that the two grounds of appeal are linked. The appellant claims Judge Sills erroneously admitted the copies of the documents that were provided by the respondent on the day of the hearing of the appeal. Having admitted the documents, the appellant claims Judge Sills made a decision on the documents without regard to the Devaseelan guidance and the findings previously made by Judge Sanderson that the documents relied upon by the appellant are unreliable.
12. Mr Forbes adopted the appellant’s written submissions dated 29th June 2020. The appellant submits that the error in the decision of Judge Sills lies in his presumption that it was open to him to make positive findings as to the authenticity of documents that were not found to be authentic in the earlier decision of Judge Sanderson

promulgated in 2005. Having said that the documents were not found to be authentic by Judge Sanderson, in the written submissions the appellant also accepts that Judge Sanderson made no explicit findings on the particular documents (i.e. the person identification certificate and certificate of Iraqi nationality). The appellant submits the absence of any finding that they were authentic is insufficient to properly conclude that “they were not rejected”. Although the written submissions adopted by Mr Forbes, concedes that “Judge Sanderson made no explicit findings on these particular documents”, Mr Forbes submits that at paragraphs [14(d)] of his decision, Judge Sanderson had in fact found that the arrest order and membership card were forgeries and the rest of the documents were unreliable. He submits Judge Sanderson did not positively reject the personal identification certificate and certificate of Iraqi nationality, but equally, did not find them to be valid documents. He submits Judge Sills entered into an examination of those documents for himself without proper reference to the findings and conclusions reached by Judge Sanderson previously.

13. The appellant submits that the proper course is for the decision of Judge Sills to be set aside and for the appeal to now be determined in accordance with Country Guidance set out in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) (“SMO & Others”), which post-dates the decision of Judge Sills.
14. In reply, Mrs Aboni adopted the respondent’s written submissions settled by Rhona Pettersen, a Senior Presenting officer, dated 30th June 2020. She submits the appellant had been made aware that a copy of the ID Card would be provided at the hearing. Mr Forbes was at the hearing as a McKenzie friend. At paragraph [9] of his decision, Judge Sills records that he gave the appellant the opportunity to discuss matters with Mr Forbes and that no application to adjourn was made. In any event, the documents were in fact copies of the documents that the appellant himself had relied upon at the hearing of his appeal in 2005 and he was therefore aware of the documents. Mrs Aboni submits Judge Sills clearly noted, at [15], that his starting point is the decision of Judge Sanderson. Matters have moved on since 2005 and the issue before Judge Sills was whether the appellant could get the documents that he

requires to return to the IKR. She submits Judge Sanderson did not address or specifically consider the ID documents because they were not material to the issue before the Tribunal in 2005. Judge Sanderson focussed upon the arrest order and membership card because they were relevant to the issues before the Tribunal in 2005. Mrs Aboni submits Judge Sills was entitled to note, at [21], that the personal identification certificate and certificate of Iraqi nationality were not rejected previously and it was open to Judge Sills to make his own assessment of those documents.

Discussion

15. In my judgement the decision of First-tier Tribunal Judge Sills was one that was open to him on the evidence and there is no material error of law in his decision.

16. I reject the claim that Judge Sills erroneously admitted the copies of the documents that were provided by the respondent on the day of the hearing of the appeal. At the request of the appellant, in advance of the hearing of the appeal, the respondent had been directed to produce the original of the ID Card. The respondent wrote to the Tribunal on 27th August 2019 (*the appeal was listed for hearing on 16th September 2019*) stating that the respondent could not find the original ID card, but copies would be provided at the hearing. Although not represented, the appellant was assisted at the hearing of his appeal by Mr Forbes in his capacity as a McKenzie Friend. Judge Sills clearly records at paragraph [9] of his decision that once the documents had been produced, he gave the appellant the opportunity to discuss the matter with Mr Forbes. The appellant was content to proceed and there was no application for an adjournment. The documents were copies of documents that have previously been relied upon appellant, and the documents could not have taken the appellant by surprise. It was in my judgement plainly open to Judge Sills to admit the documents and have regard to them in reaching his decision. On any view, documents relating to the appellant's identity and nationality were relevant to the issues to be considered by the Tribunal. That much must have been obvious to the appellant because it was the appellant that had requested that the respondent provide the original of the ID card.

17. Because of its relevance to the second ground of appeal, it is appropriate for me to refer to the decision of Judge Sanderson promulgated on 5th July 2005. Judge Sanderson did not find the appellant to be a credible witness. Dealing with the documents that were relied upon by the appellant in support of his appeal, at paragraph [14(d)] of his decision, Judge Sanderson stated:

“In support of his claim the appellant has produced various documents. I confirm that I have considered these documents in accordance with the Tribunal’s guidance as laid down in the started determination of Tanveer Ahmed.... The crucial documents appear to be what purport to be an arrest order and a membership card of the Ba’ath Party; the Appellant’s personal identification and his certificate of Iraqi nationality do not have a direct bearing on his claim to be a member of the Ba’ath party. Both the arrest order and the Ba’ath Party membership card refer to the Appellant’s rank in the party as that of “comrade”. As indicated above, when interviewed, at Q8, the appellant was specifically asked “what rank did you attain before leaving Iraq?”. The appellant replied, “senior supporter/member”. In his explanation of the ranks at Q7 of the interview the appellant recognises the rank of comrade, but that that rank is one above that held by him. The documents do not corroborate the appellant’s claim to have been a senior supporter/member of the Ba’ath Party. They refer to a completely different rank and I find that it is reasonably likely that a membership party (*sic*), issued in 2002, would reflect the appellant’s correct rank as he states it to be. I come to the conclusion, after looking at all the evidence in the round, that these documents are forgeries and therefore unreliable.”

18. In my judgement, the appellant was right to acknowledge in the written submissions dated 29th June 2020 that Judge Sanderson made no explicit findings as to the personal identification certificate and certificate of Iraqi nationality. On a careful reading of paragraph [14(d)] of the decision of Judge Sanderson it is clear that he focused upon the documents that were crucial to the issues he was considering. They were the arrest order and the membership card of the Ba’ath Party. Judge Sanderson carefully considered the extent to which those two documents supported or undermined the claim made by the appellant. Judge Sanderson noted the appellant’s personal identification certificate and his certificate of Iraqi nationality do not have a direct bearing on his claim to be a member of the Ba’ath party.
19. Judge Sills properly noted at paragraph [21] of his decision that the appellant has previously submitted copies of a personal identification certificate with translation and a certificate of Iraqi nationality with translation. He correctly noted that those

documents were not rejected by Judge Sanderson, noting that they “.. *were not considered to be material to the issues at that time.*”.

20. The personal identification certificate and certificate of Iraqi nationality are documents of a different nature to the arrest order and the membership card of the Ba’ath Party that had been considered by Judge Sanderson previously. They were not documents relied upon by the appellant to support his claim that he would be at risk upon return because of his association with the Ba’ath Party. They were documents relied upon by the appellant to support his claim to be an Iraqi national. It is, as often occurs, entirely open to the respondent and on appeal, open to the Tribunal to accept an individual’s nationality and identity, but to reject the credibility of the account relied upon to establish a risk upon return. It did not follow from the finding by Judge Sanderson that the arrest order and membership card of the Ba’ath Party are forgeries and therefore unreliable, that the personal identification certificate and certificate of nationality are also unreliable.
21. It was in my judgement open to Judge Sills to find that the personal identification certificate and certificate of Iraqi nationality are reliable documents and the appellant therefore has the information required to obtain a replacement passport. Judge Sills carefully considered whether the documents are consistent with information set out in the background material.
22. It was in my judgement open to Judge Sills to find that the appellant’s brother(s), at least one of whom the appellant is in contact with, would be in a position to support him on return to Erbil by providing him with accommodation and his essential needs. Judge Sills found, at [29], that the appellant can obtain a new CSID should he require one, before returning to Iraq based upon the two ID documents available. The findings and conclusions reached by the FtT judge were neither irrational nor unreasonable in the *Wednesbury* sense.
23. Having found that the documents are reliable, the question as to what the position would be if the documents are not reliable, did not arise. Anything that is said in paragraph [30] of the decision of Judge Sills is not material to the outcome of the

appeal. In that paragraph Judge Sills simply observes that if the documents are not reliable, that undermines the appellant's evidence in relation to the availability of the documentation required, and, the appellant cannot establish that he is unable to obtain the necessary documentation to be able to safely travel to and enter the KRI.

24. It was in the end, open to Judge Sills to find that if the appellant is returned to Iraq, it will be on documentation that makes clear he is from the KRI and he can return to the KRI safely and live a relatively normal life with the support of his brother(s) for the reasons set out in the decision. As the Court of Appeal said in Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.
25. It follows that in my judgement there is no error of law in the decision of Judge Sills and the appeal is dismissed.

DECISION

26. I dismiss the appeal and the decision of First-tier Tribunal Judge Sills promulgated on 22nd October 2019 stands.

V. Mandalia

Date 3rd December 2020

Upper Tribunal Judge Mandalia