



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11516/2019

THE IMMIGRATION ACTS

Heard on 7th September 2020
At Civil Justice Centre (remote hearing)

Decision & Reasons Promulgated
On 10th September 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

DAR
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Thomas, Counsel instructed by Compass Immigration Law Ltd
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1983. He appeals with permission against the decision of the First-tier Tribunal (Designated Judge McClure) to dismiss his appeal on protection and human rights grounds.
2. The Appellant's case was that he faced a real risk of persecution/serious harm in Iraq for reasons of his imputed political opinion (anti-ISIS), and/or ethnicity (Kurdish) and or religious identity (Sunni). He submitted that his home town of

Makhmour was in contested territory and that having regard to his personal characteristics it would not be reasonable to expect him to relocate within Iraq to avoid the fighting and/or risk of harm pertaining there.

3. The First-tier Tribunal did not accept the Appellant's account of why he had left Iraq. The Tribunal made significant adverse credibility findings, in particular rejecting the Appellant's claim to have faced a threat from ISIS and/or the Shi'ia militias who drove them out. The Appellant has not sought to challenge those findings and in granting permission to appeal to this Tribunal, Designated Judge of the First-tier Tribunal Shaerf described those findings as both far reaching and sustainable. That is a description that I respectfully adopt. The credibility findings made by Judge McClure are preserved. The Appellant is not entitled to protection under the Refugee Convention.
4. This appeal is concerned with whether the Appellant is nevertheless entitled to subsidiary or humanitarian protection under Article 15(b) of the Qualification Directive¹. The Appellant relies upon the Upper Tribunal's decision in SMO and Others (Article 15(c): identity documents) Iraq CG [2019] UKUT 400 (IAC) to submit that there is a real risk that as an undocumented returnee he would fall into destitution such that would place the United Kingdom in violation of its obligations under Article 3 ECHR / Article 15(b) QD. He submits that in its evaluation of that submission the First-tier Tribunal erred in law. He asks this Tribunal to set the decision of the First-tier Tribunal on that matter aside, and replace its decision with one allowing the appeal on protection (humanitarian protection) grounds.

Error of Law: Discussion and Findings

5. The pertinent findings of the First-tier Tribunal were as follows:
 - i) Since the Appellant re-entered Iraq (from Norway in 2008) without difficulty it could be assumed that he could do so again. He will know the details necessary to obtain new documentation from the embassy here [FTT §46];
 - ii) He has previously said that his documentation was left at home. There is no reason why he could not contact a family member to retrieve it for him [§47].
6. The Appellant submits that in respect of finding (i) above the First-tier Tribunal has failed to have regard to the actual evidence about how CSID cards might be obtained from the embassy in London. Across at least three country guidance cases² Dr Fatah has given detailed evidence that although it remains *possible* to

¹ COUNCIL DIRECTIVE 2004/83/Entry Clearance Officer of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

² SMO, AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) and AAH (Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC)

obtain documentation from the embassy here, the reasonable likelihood of someone being unable to do so must be evaluated in light of the multiple obstructions to the operation of good administration on the part of the Iraqi authorities: the de-Ba'athification of the civil service, corruption, inefficiency and that in the context of many millions of undocumented Iraqis the problems of individual returnees are seen as "trivial".

7. In respect of the Appellant's return to Iraq in 2008 the Appellant questions how relevant that is – the Respondent produced no evidence one way or another as to how his return was facilitated.
8. Finally, it is submitted that the First-tier Tribunal appears to have overlooked the fact that the Appellant has epilepsy, which he claims interferes with his ability to recall information accurately. Although the Tribunal in SMO found that most Iraqis will be able to recall the details in the 'family book' the ability of the Appellant had to be assessed in light of this illness.
9. As I suggested to Ms Thomas during the hearing, all of these points might be arguable were the Appellant being returned to Baghdad. That is not however the position. It does not appear to have ever been in issue that the Appellant is from a village near Makhmour. Makhmour is in the Erbil governate. It is about one hour's drive south-west of the Kurdish capital, which is where the Appellant will be returned to: see FTT §44. That being the case, the findings in SMO about for instance subsisting in Baghdad, or travel from Baghdad airport to the north, are wholly irrelevant. This Appellant will be flying back direct into the IKR from where he can take a bus or taxi back to his home town through territory that remains "virtually violence free", unmolested by Sh'ia militiamen. Once there he can attend the civil registry in person where his biometrics and/or family connections will enable him to obtain new documentation without difficulty.
10. In response to my suggestion Ms Thomas indicated that she had not been prepared to argue this point. She had been working on the premise that in order to be returned to Iraq the Appellant would need to be in possession of a CSID, and her submissions largely went to the likelihood of the same being issued in London. I therefore shortly set the matter back in the list in order that Ms Thomas could see if there was any other finding in SMO that might assist her.
11. Upon resumption Ms Thomas was able to point me to paras 192 and 193 of SMO. I am afraid these do not assist, concerned as they are with the documentation returnees require for onward travel once they have departed Baghdad airport. As I have said, that is not the position here.
12. Whilst Ms Thomas may be forgiven for her misapprehension in light of paragraph 44 of the First-tier Tribunal decision, it remains the case that applying SMO, what the Appellant needs to get on a plane to Iraq is a passport, or a laissez-passer. What information might be needed to secure the latter is not

a matter that concerns me. It is a matter that must be resolved between the Appellant, the Iraqi authorities and the Respondent. If the document cannot be obtained then that is a “technical obstacle to return” of the sort considered by the Court of Appeal in HH (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426 [at §84] to fall outwith the scope of my protection enquiry. It follows that no material error of law can be established in the decision of the First-tier Tribunal and the decision must stand.

Anonymity Order

13. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decision and Directions

14. The decision of the First-tier Tribunal is upheld and the appeal is dismissed.
15. There is an order for anonymity.

Upper Tribunal Judge Bruce
7th September 2020