



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13751/2017**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 21 February 2020**

**Decision & Reasons Promulgated
On 12 March 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**RS
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Willkins, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant in this decision identified as HMM.

Introduction

1. In a decision promulgated on 28 March 2019, I found that the First-tier Tribunal ('FTT') made an error of law in dismissing the appellant's appeal on international protection grounds, and that the decision should be remade by the Upper Tribunal ('UT') at a resumed hearing. I now re-make the decision.

Background facts

2. The appellant is a citizen of Iraq, of Kurdish ethnicity. He claims that he left Erbil when he was 2 years old with his immediate family and this was because of a family feud with a maternal uncle there. In 1997 the family became resident in Ali Rash, in Ninewa Governorate.
3. The appellant claims that his maternal uncle travelled to Ali Rash in order to threaten the family in 2012 and in addition his cousin tried to recruit him to ISIL. In October 2014 the appellant left Ali Rash because he was in fear of ISIL. After making his way illegally out of Iraq and across Europe he applied for asylum on 15 December 2015.

Issues and evidence

4. According to the recent country guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ('SMO'), the appellant's home area is no longer a contested area.
5. At the beginning of the hearing, the representatives agreed that a proper application of SMO narrows the disputed issues in this case as follows:
 - (i) Although the appellant was born in Erbil in 1994, when he was 2 he left with his family to reside in Ali Rash, where he remained until his departure. In the decision letter the SSHD accepted at [19] that the appellant was a resident of Ali Nash. In the circumstances, the appellant cannot properly be considered 'a former resident of the Iraqi Kurdish Region' ('IKR'). He will therefore be returned to Baghdad and not to the IKR - headnote 7 of SMO.
 - (ii) The appellant is unlikely to be able to pass the relevant checkpoints leaving Baghdad airport and when travelling around the city without a Civil Status Identity Document ('CSID') or Iraqi National Identity Card ('INID') - headnote 11 of SMO.
 - (iii) The appellant does not have and will not be able to obtain an INID within Iraq because he would have to travel to his home

area to obtain one in person, which he cannot do without the requisite identification – headnote 16 of SMO.

- (iv) I must determine whether the appellant will be able to obtain a replacement CSID through the use of a proxy. As he is not from Baghdad, he is unlikely to be able to obtain a replacement CSID there – headnote 15 of SMO.
 - (v) According to a press release dated 31 October 2019 from the UNHCR, Ninewa Governorate inaugurated the first NIDC centre in East Mosul “*which will provide Iraqi citizens with a national ID card*”. This implies that the requisite INID terminal has been installed and the office will therefore not be issuing CSIDs. The appellant’s home area of Ali Rash is located near to East Mosul and this is likely to be his ‘local office’, although Mr McVeety queried whether this might be his father’s place of birth office in Erbil.
6. Mr McVeety indicated that he continued to dispute the appellant’s claim that he did not have any family contact whatsoever and could not enlist their support to obtain identity documentation. He however agreed that if I accepted the appellant’s evidence that he was unable to contact his family and could not obtain a CSID, then in accordance with the country guidance he was at risk of serious harm in Iraq.
7. Having agreed the ambit of the appeal, Ms Wilkins called the appellant to give evidence. He relied upon a recent witness statement and was briefly cross-examined.

Submissions and findings

8. Mr McVeety invited me to find the appellant’s claim to have fled his home area without knowing where his family went and without taking his CSID from his home to be implausible. He submitted that the appellant’s claim was not credible and he should be disbelieved. Mr McVeety conceded that if I accepted the appellant’s claim to have no contact and no means of contact family members in Iraq to assist in obtaining a CSID then in accordance with SMO he faces serious harm upon return to Iraq.
9. Having had the opportunity to consider the detailed papers in advance of the hearing I indicated that I did not need to hear from Ms Wilkins on the issue of credibility. This is because notwithstanding the doubts that arose from the appellant’s evidence, as highlighted by Mr McVeety and the decision letter dated 14 October 2017, I was prepared to accept the core of the appellant’s account to be reasonably likely. This was consistent with the country background evidence relevant to the appellant’s home

area. ISIL's domination of Mosul from 2014 to July 2017 is summarised in SMO at [258]. The majority of the population fled in very difficult circumstances. I accept that the appellant's cousin was involved in ISIL at a low level and the appellant fled at a time of widespread confusion and comprehensive conflict. I accept that the appellant was able alongside many others, to flee the grasp of ISIL as this time of widespread confusion. This explains his failure to maintain viable contact with his family members. Whilst I have doubts that the maternal uncle tracked the family down I accept that there was some sort of family feud which meant that the appellant has not had contact with his uncle in Erbil for a very lengthy period.

10. I therefore reject Mr McVeety's submission that the appellant's evidence regarding family contact was implausible. I am prepared to accept his evidence, given the lower standard of proof. It follows that as the appellant has no meaningful means of contact family members, he is unable to enlist their support to obtain identity documentation. As Mr McVeety accepted, it follows from those findings that the appellant would be unable to obtain a CSID, and in accordance with the country guidance he is at risk of serious harm in Iraq.
11. In any event, the evidence from the UNHCR I have summarised above tends to suggest that the appellant's home office in East Mosul no longer issues CSIDs. Although it is possible that the appellant's 'local office' might be his father's place of birth office in Erbil, I do not consider that to be reasonably likely given the family's circumstances and history. The appellant was formerly resident outside of the KRI and would therefore be returned to Baghdad. Absent the requisite identification he would not be able to safely travel to the KRI.
12. I also heard from Ms Wilkins on whether the reason for the appellant's prospective future harm relates to a Convention reason. She took me to passages in SMO to support the proposition that there is a reasonable degree of likelihood that the appellant will have a pro-ISIL political opinion imputed to him.

Re-making the decision

13. For the reasons I have already set out above, I accept the core of the appellant's account. I therefore accept he has no contact with and no means of contacting family members in Iraq. I also accept that he has no means of obtaining a CSID. In any event it is likely that the appellant's nearest office is unlikely to issue a CSID at all (far less by proxy) as a result of the phased replacement of the CSID system, and the fact that it has begun the INID system - headnote 16.

14. As the appellant will not be able to obtain a replacement CSID or INID, upon return to Iraq he faces a real risk of serious harm in Baghdad, and will be unable to relocate to his home area or the KRI.
15. I must also consider whether that serious harm will be is reasonably likely to be inflicted for reasons relating to a Convention reason. In this particular case it is particularly important to consider whether a pro-ISIL political opinion is reasonably likely to be imputed to the appellant – see paras 292-298, 313 and 411 of SMO. If yes, that is the end of the matter and the appellant faces a real risk of serious harm for a Convention Reason.
16. The appellant is reasonably likely to have a pro-ISIL political opinion imputed to him in light of the following: he is a young Kurdish Sunni man of ‘fighting age’ and he comes from an area with a known significant ISIS presence / link. Although he has been in the UK since 2014, he has no viable means of proving this (in the context of the Iraqi collectivist society) and no one to vouch for him in Baghdad as he has no family or contacts there, in the context of country background evidence that suggests individuals are not trusted without having complied with comprehensive security requirements – see para 412 of SMO.

Decision

17. I remake the decision by allowing the appellant’s appeal and find that his removal would breach the Refugee Convention and Article 3 of the ECHR.

Signed: *UTJ Plimmer*

Ms M. Plimmer

Judge of

the

Upper

Tribunal

Date: **5 March 2020**