



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: LP/00002/2019

THE IMMIGRATION ACTS

Heard at Manchester (Remote)
On 12 July 2021

Decision & Reasons Promulgated
On 18 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AMANJ ABUBAKI NADIR
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bednarek instructed by Broudie Jackson Canter (Manchester)

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Buckley ('the Judge') promulgated on 4 March 2020, in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant is a citizen of Iraq, born on 5 May 1998, who was encountered by the police in Kent on 18 September 2017 having arrived in the UK clandestinely.

3. It was not disputed the appellant is a national of Iraq of Kurdish ethnicity, but most other issues were at large before the Judge.
4. The Judge's main findings are set out between [28 – 53] of the decision under challenge. In relation to the appellant's claim of risk arising in relation to events in Iraq the Judge writes:
 35. However, when considering the evidence that the Appellant will be personally targeted by Hashd Alshabi and the authorities on return, I am not satisfied that the Appellant will come to the attention of the authorities and that he has a subjective fear of return. The Appellant, has been consistent throughout his claim that he wants to return to Iraq, and to be reunited with his mother and sister; this is repeated throughout the Appellant's initial witness statement; and is clearly stated at the conclusion of his asylum interview. The Appellant, when he communicated with his uncle in 2016, was primarily concerned about his mother and sister, and that he wanted to return home. In the asylum interview, when asked why the authorities would still be interested in him now, the responses from the Appellant rely on what he was told by his uncle in relation to the video, and the killings of Hashd Officers by members of the group he was in. The Appellant has failed to explain how, given his uncle's involvement in the incident, how his uncle has managed to remain safely in Iraq, despite reporting to be at risk also. In response to AIR Q130, the Appellant confirms that he is not aware if there is a warrant out for his arrest, and again is relying on the information his uncle has given him.
 36. Further, in relation to any general risk to the Appellant due to his father's associations with the Ba'ath party, the Appellant has been honest in his account that he was a child and did not know about his father's activity, and also until the events in June 2014, they had led a "good and normal" life.
 37. Therefore, although I accept the Appellant's account of events, to the lower standard, there is no reason to believe that Hashd Al Shabi have ever directly targeted the Appellant, or that they would do so upon the Appellant's return. I agree with the Respondent in its refusal letter that the Appellant is speculating regarding this; nor will Hashd Al-Shabi have the infrastructure to recognise the Appellant, or identify him on return, following a one-off incident when he was 16 and when he ran away from the conflict.
 38. I therefore, considering all the evidence in the round, do not find that the Appellant has a well-founded fear of persecution for a Convention reason."
5. The Judge went on to consider the issue of documentation accepting at [40] that the appellant no longer has his documents and will be unable to recall the volume and page reference of the relevant Family Book. The Judge finds the appellant will be reliant upon the support of a male family member to provide the necessary details to enable him to redocument himself in the UK; leading to it being concluded that the appellant had failed to provide a credible account in relation to the alleged loss of contact with his uncle, for the reasons set out at [43 – 47], and did not find it plausible the appellant would not be able to remember the name of the restaurant he worked in in Turkey or could not contact the

friend Dlovan for whom he worked for in the same restaurant for a year, who could make contact with his uncle for him.

6. At [49 - 50] the Judge writes:

“49. In light of the above findings, I am not satisfied that the Appellant has lost contact with his uncle as claimed, and therefore has not demonstrated, even to the lower standard, that he would be unable to communicate with his uncle and that he would not have the support of his uncle to provide the details to obtain a replacement CSID or have the support on return to Iraq.

50 I therefore find that it would be reasonable to expect the Appellant to obtain a replacement CSID within the UK, and within a reasonable timeframe, to enable him to have the relevant documents to return to Iraq, and travel internally across Iraq if required; and it is likely that he will have family support upon his return. The Appellant can return to his home area, or relocate internally with support.”

7. Permission to appeal was granted by a Resident Judge of the First-tier Tribunal the operative part of the grant being in the following terms:

“2. The grounds assert that the Judge erred by failing to address the background evidence accepted in SMO and others to the Appellant’s circumstances, failing to provide any evidential basis for the finding that the group Hashd Al-Shabi would have the infrastructure to identify the Appellant, failing to consider other material evidence, failing to properly address the evidence relates relating to obtaining a CSID and failing to properly consider internal relocation.

3. Given the finding that the Appellant is able to return to his home area or internally relocate the last assertion cannot in isolation, be a material error of law. The other grounds do however have arguable weight. The Judge makes clear in recent positive credibility findings, but then finds against the subjective fear of Hashd Al-Shabi, because the Appellant failed to explain why his uncle has remained safely. It is arguable that requiring the Appellant to explain something beyond his own knowledge imposes too high a burden. Equally, the finding that the group does not have the infrastructure to identify the Appellant is made without any reference to objective material and is arguably speculative.

4. In dealing with risk on return. It is arguable that the Judge is only considered the headnote of SMO and Others without addressing the detail to the Appellant’s circumstances.”

Error of law

8. It is important to consider the merits of the challenge against the factual matrix relied upon by the appellant recorded by the Judge at [14(d) - (l)] of the decision under challenge in which the Judge writes:

“(d) On 14 June 2014, the Appellant returned home from the farm to discover his maternal uncle and his family fleeing an ISIS attack on Mosul.

(e) On 15 June 2014 the entire family fled the village after hearing ISIS had taken control of Mosul. They and the rest of the village fled to Tal Afar.

They spent the majority of the day with others at a checkpoint outside Tal Afar waiting to be allowed into the town.

- (f) They were searched individually at the checkpoint, had their personal details recorded and ID cards taken. They were filmed by the authorities throughout this process. They eventually had their ID cards returned individually, filmed whilst doing so, were allowed into Tal Afar and directed towards "Old Tal Afar". The family parked the uncle's vehicle in a street with others and remained there.
 - (g) That night the Appellant heard heavy gunfire close to the town. A number of hours later, Iraqi troops and militia came into town. Many males went to see what was happening. This included the Appellant, who went with his father, brother, uncle and friends of his father and uncle. The soldiers and militia wanted all males, particularly young males, to join the fight against ISIS. The Appellant's family and others were asked by Hashd Alshabi to help fight and defend the town. The Appellant's father refused. A neighbour, Rahman, accuse the Appellant's father being a former member of the Ba'ath Party and refusing to fight because he supported ISIS. An argument ensued between the Appellant's father and uncle, and the authorities before someone shouted "run". The Appellant ran back towards the vehicle with others. A gunfight ensued. The Appellant saw people falling, after being shot. The Appellant's father was shot and the Appellant also saw his brother fall. The Appellant was grabbed by his uncle and told to continue running. At the vehicle, with the women already having fled, the Appellant was given a bag and a mobile phone by his uncle, and told to go in search of the females in the family and told to call his uncle when he found them. The Appellant went with his uncle's friend, Ahmad
 - (h) The Appellant was never able to find his mother and sister, nor his uncle's family.
 - (i) On the 15th or 16 June 2014, the Appellant left Iraq. The Appellant was taken by Ahmad through Sinjar/Shingal and then into Turkey."
9. The appellant told the Judge that in Turkey he was taken to a refugee camp for about six months but then transferred to a second camp where he remained for between 16 to 18 months before being able to speak to his uncle in 2016. The appellant claimed his uncle told him it was not safe for him to return to Iraq as a result of the photographs taken of the appellant at the checkpoint outside Tal Afar, claiming the appellant will be identified and killed if he returned.
10. The appellant told the Judge that after this he was met by a man named Dlovan and taken to Istanbul where he remained for a year working in this man's café and where the appellant was advised that his uncle give instructions for the appellant to be taken to safety, indicating the appellant having spent a considerable time with Dlovan in his café in Istanbul and a line of contact between this person and the appellant's uncle. The finding of the Judge that the appellant will be able to recall the name of this individual or the name of the café in Istanbul as a factor enabling him to make contact with relatives in Iraq has not been shown to be finding outside the range of those available to the Judge on the evidence.

11. In relation to the real risk on return, the appellant claimed that he feared a real risk as a result of what his uncle told him, but nothing else, of returning to his home area. The Judge finds the appellant could do so as there is no credible evidence he will be targeted on return.
12. In relation to Hash Al-Shabbi, The Peoples Mobilization in English or Popular Mobilisation Force (PMF), this was formed for deployment against the ISIS and Syria by uniting existing forces of the Iraqi Ministry of Interior on 15 June 2014. Their creation followed a call to defend Baghdad and to participate in the counteroffensive against ISIS following the fall of Mosul on 10 June 2014.
13. The Popular Mobilisation Units (PMU) still exist although 28 July 2016 the Iraqi government said that Hashd al-Shaabi forces were to be placed on par with Iraq's army units and subject to military law.
14. ISIS captured Tal Afar on 16 June 2014, after a two-day battle, as recorded in an article in the Guardian newspaper of 17 June 2014 and it was not until 20 August 2017 that the Iraqi Army launched a new offensive to retake Tal Afar from the Jihadist forces. The city itself was recaptured by Iraqi forces on 27 August 2017 and the remaining ISIS-held areas in Tal Afar district were then fully recaptured on 31 August 2017.
15. Whilst it is credible that those seeking to enter this district following the fall of Mosul would have had their details taken at a roadblock to ensure they were not ISIS fighters, the appellant and his family were clearly allowed to enter Tal Afar indicating there were no concerns as of 15 June 2014 that they had an interest adverse to that of the authorities in Iraq.
16. The night the appellant claims he heard heavy gunfire close to the town must, on the chronology recorded by the Judge, be on the night of the 15th /morning of 16th June, which would have been the advancing forces of ISIS who captured the city on 16 June 2014. Even though there may have been a call to arms to defend the city, which was eventually lost until 2017, it is not made out the appellant or any member of his family will be held to be culpable or suspected of being ISIS sympathisers. There is merit in the Judge's finding that whilst the appellant may have a subjective fear, such fear was not objectively well-founded on the basis of the evidence. The appellant at the time was only 16 years of age. It is not made out that even if a photographic record was taken at the time of those who entered Tal Afar this creates a real risk for any such individual returning to that area, or that even if the appellant's father was a member of the Ba'ath in the past this would create a real risk on return for the appellant. There was also nothing before the Judge to indicate that combination of the appellant circumstances would have the effect of enhancing his risk profile without more. The movement of people fleeing ahead of ISIS is well documented involving tens of thousands of people and more than being a member of this group was required to establish objectively verifiable real risk before the Judge. The Judge's finding that there was no evidence the appellant's uncle faced any risk is also relevant as he would have crossed into the town, having had his details checked and photograph taken at the same time as the appellant.
17. I find the appellant had failed to establish that either he could not trace family members or that he would face a real risk on return to Iraq in his home area.

18. As it was not found the appellant had established a credible risk in his home area the findings of the Judge concerning internal relocation are obiter as internal relocation is not relevant if a person can safely return to their home area.
19. In relation to documentation and ability to return, the Judge was required to consider the whole of SMO that is relevant to this appellant and address the appellant's reasonable circumstances.
20. In addition to the country guidance case of SMO, elements of which are being reconsidered by the Upper Tribunal together with a review of relevant documentation in September 2021, there is available a CPIN of June 2020 which also considers documentation. In SMO it was found by the Upper Tribunal that a person could obtain a replacement CSID from the Iraqi Embassy in the UK if they had the required information, which could be obtained from a male relative in Iraq if the individual did not have the same themselves.
21. It is accepted by the Secretary of State, however, that since the publication of SMO there have been further developments. At [2.6.16] it is written that based on the current available information it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead, a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.
22. The finding of the Judge at [50] that it would be reasonable to expect the appellant obtain a replacement CSID within the UK and within a reasonable timeframe to enable him to have the relevant document to return to Iraq and travel across Iraq if required, is therefore infected by legal error on the basis of an error of fact. It is accepted, the Judges decision is dated 10 February 2020, and therefore prior to the publication of the June 2020 CPIN. Although it could be said the Judge has not erred in law on the basis of the evidence made available at the date of hearing, the Iraqi Nationality Document (IND) was in force at the date of decision before the Judge when the phasing out of the issuing of the CPIN and need for an individual travel to their home area to obtain the new document was known. I will therefore consider the matter further on this basis.
23. Information within the CPIN includes the following:

'Civil Status Identity Cards (CSIDs)

1) Please can you describe the process of obtaining a Civil Status Identity Card for a failed asylum seeker from the Iraqi Embassy in London in as much detail as possible (please include details of what documents or information are required, timescales etc).

CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document (see above list Q1, FAS) and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued

application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.

Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

24. Even if the appellant cannot obtain a replacement CSID it was not made out before the Judge that he will not be able to obtain a registration document (1957), which is an official identity document within Iraq and different from a Laissez Passer, which is a "one-off use" document to enable an Iraqi national to return to their home state.
25. The comment in the final paragraph of the relevant section of the CPIN is of interest as it suggests that although the Home Office cannot apply for anything other than travel document, the Iraqi Embassy is willing to check to see if the individual already holds documents and to provide copies if necessary. The appellant claims to hold a CPIN.
26. The CPIN sets out the documentation required to obtain a registration document (1957) which shows that document must be applied for on the appellant's behalf by a nominated representative in Iraq which is where the Judge's finding at [49], set out at [6] above, is of importance, which has not been shown to be infected by material legal error.
27. The Judge finds that the appellant will have the support of his uncle who will be able to provide the details to obtain a replacement CSID which must now be read as registration document (1957). It was not made out the appellant cannot approach the Iraqi Embassy in the United Kingdom to complete a power of attorney to nominate his uncle as his representative in Iraq, although as he says he has no identity documents he can complete a British power of attorney validated by the FCO, providing parents names, place and date of birth, and send it to his nominated representative in Iraq to allow the necessary applications to be made and checks undertaken.
28. It is not made out the appellant will therefore not be able to obtain the necessary identity documents as found by the Judge.
29. The point of return will be to Baghdad. It was not made out before the Judge that the appellant will not have the means to travel to his home area to enable him to provide the necessary biometrics required to obtain an IND and therefore have the necessary information to be able to fully function within Iraq. It is also an important finding by the Judge, that the appellant will have the support of a male family member, namely his uncle, on return to Iraq.
30. The appellant's home area is in Nineveh Province, Iraq's third largest province, located in the northwest of Iraq. The appellant did not establish that he could not return home. The appellant is Kurdish but not from the IKR, and the burden of proving an entitlement to international protection exists falls upon the appellant. It was not made out on the evidence the Judge found credible that the

appellant could not safely return to his home area, meaning he will not have to internally relocate to the IKR or elsewhere.

31. I do not accept the appellant has established that the findings of the Judge are outside the range of those reasonably available to the First-tier Tribunal sufficient to warrant the Upper Tribunal interfering any further in this matter, especially in light of the recent guidance provided by the Court of Appeal making it clear that appellate judges should not interfere in a decision of a court below unless a clear legal error material to the decision under challenge has been established.
32. When applying SMO and the latest developments set out in the CPIN to the appellant's circumstances it is not established the Judge's conclusion the appellant had not established he was entitled to a grant of international protection or for leave to remain in the United Kingdom on human rights grounds, or on any basis, is a finding infected by material legal error.

Decision

33. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

34. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 26 July 2021