



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00426/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
(remote hearing)
On 2 February 2021

Decision & Reasons Promulgated
On 23 February 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AMA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Badar, Counsel instructed by Barnes Harrild & Dyer

For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the

respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant entered the UK in February 2016 and claimed asylum. His application was refused in August 2016 and his subsequent appeal, which was heard by Judge of the First-tier Tribunal Raikes (“the previous judge”), was dismissed in March 2017.
2. In September 2017 the appellant made further submissions. These were refused. The appellant appealed to the First-tier Tribunal. His appeal (before Judge of the First-tier Tribunal Howard) was allowed, but this decision was set aside, with no findings preserved, and remitted to the First-tier Tribunal to be heard afresh. The appeal came before Judge of the First-tier Tribunal Moffatt (“the judge”). In a decision promulgated on 2 April 2020, the judge dismissed the appeal. The appellant is now appealing against that decision.

Background

3. The appellant is a citizen of Iraq born on 15 December 1978. He is a Sunni Muslim from Mosul, Ninewa Province in Iraq.
4. He claims to face a risk from ISIL (Daesh) and from family members who support Daesh. He claims that he was attacked after expressing negative opinions about Daesh. He also claims to be at risk from an army officer, to whom he rented accommodation, who threatened to kill him for revealing details about him to Daesh.
5. With respect to family and contacts in Iraq, the appellant claims that he has not had contact with anyone in Iraq since he left Mosul. He claims that his father left Iraq over 10 years ago and lives in the UAE, but that he has not had contact with his father for a long time. He claims to be in contact with his brother who also lives in the UAE and left Iraq over 10 years ago. He claims that his brother has not been in contact with family in Iraq for a long time.
6. The appellant claims that he does not have any identification or other Iraqi documentation (including his CSID) and that he is not able to obtain a replacement CSID. He claims that in January 2019 he attempted to obtain documentation from the Iraqi embassy in the UK but was told that they could not assist him without proof of his nationality.
7. The previous judge (in his decision promulgated in March 2017) found the appellant’s evidence to not be credible. At paragraph 19 of his decision, the previous judge described the appellant’s evidence as containing “inconsistencies, contradictions and implausible statements”. Amongst other

things, the previous judge did not find credible the appellant's evidence about the whereabouts and availability of his identity documents (paragraph 20) or his lack of contact with family (paragraph 21). The judge accepted that the appellant could not return to Mosul due to the indiscriminate violence in the area but found that he could relocate internally. The judge acknowledged that, at that time, returning the appellant was not feasible because of lack of documentation but observed that his protection claim could not succeed on this basis, as explained in *HF (Iraq) & Ors v Secretary of State for the Home Department* [2013] EWCA Civ 1276.

8. The respondent's decision refusing the appellant's protection and human rights claim is dated 6 December 2018. In this decision, the respondent rejected the appellant's claim, finding, inter alia, that he could return to Mosul or relocate to Baghdad. With respect to obtaining a CSID, the respondent stated:

"It is considered that you have not demonstrated that you do not have any family in Iraq who could assist you in obtaining a CSID. You have failed to demonstrate that you are unable to obtain a CSID therefore it is considered reasonable to expect you to obtain a CSID and return to Iraq..."

9. The respondent also rejected the appellant's claim that returning him to Iraq would be contrary to article 8 ECHR.

Decision of the First-tier Tribunal

10. The judge stated that the respondent did not argue that the appellant could be returned to Mosul and that the issue before him was relocation to Baghdad.
11. The judge directed himself to follow *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC).
12. The judge accepted that the appellant is not presently in possession of his CSID but found that with the assistance of family he could obtain a replacement. At paragraph 89 the judge stated that:

"[W]hilst the appellant does not have the physical documentation [a CSID] in his possession, he does have the means to obtain information such as the book number of his family records from either his brother or father..."

13. The judge did not find credible the appellant's claim that he would not have the assistance of his family to obtain the information necessary for a replacement CSID. At paragraph 84 he stated:

"[The previous judge] was very sceptical of the appellant's evidence about not being able to obtain his identity documents but took a pragmatic approach that, at the time of his determination, the documents were not in his

possession. I share [the previous judge's] scepticism. I found that the appellant's evidence about not being able to obtain the details of the family registration to be unconvincing. Even on his own evidence at the hearing before me, the appellant stated that he has been in touch with his brother in the United Arab Emirates albeit states that this has not been the case for the last 12 months. The appellant's father lives in the UAE and is in touch with the appellant's brother. I do not accept that the appellant is unable to contact his father and his brother. I take the view that the appellant is more unwilling than unable to do so as, to do so, would facilitate his return to Iraq given the narrative around his asylum claim has been found not to be credible. With the relevant details, the appellant would be able to obtain a CSID in the UK [paragraph 383 of SMO]"

14. The judge also did not accept that the appellant's removal would be contrary to article 8 ECHR.

Grounds of Appeal and Submissions

15. The appellant's grounds of appeal relate solely to the judge's assessment of the appellant's lack of identity documentation.
16. The first ground of appeal argues that the judge's finding at paragraph 84 of the decision was inadequately reasoned. It is submitted that the judge failed to explain what he meant by "relevant details" in the last sentence of paragraph 84 and how this would enable the appellant to obtain a CSID in the UK.
17. This ground also argue that the country guidance case law does not indicate that an Iraqi will be successful in obtaining a CSID in the UK but only that they might be and that *if* they are reissued with a CSID it would be accepted in Iraq.
18. It is also argued that it is not "self-evident" that the appellant's father, who is in a third country, would be able to provide the necessary information for documentation from abroad.
19. The second ground of appeal argues that the relevant date for assessing risk is the date of the hearing, and therefore that because at that date of the hearing the appellant did not have a CSID, he would be at risk in Iraq even if theoretically he could obtain a new one in the future.
20. It is also argued that that the judge erred by assuming that the claimant ought to take action to avoid a risk (in this case, the action is to obtain a CSID and the risk is treatment contrary to Article 3 ECHR for those without a CSID). The grounds argue that expecting the appellant to take steps to avoid risk is contrary to the principles in *RT (Zimbabwe) & Ors v Secretary of State for the Home Department* [2012] UKSC 38. The grounds state that there is no "self

help” or “avoiding” principle in refugee law and rely on paragraph 74 of *RT and Secretary of State for the Home Department v MSM (Somalia) & Anor* [2016] EWCA Civ 715. It is argued that if the appellant chooses not to take “avoiding action” even where such action is available to him, he is entitled to international protection because there is no self-help duty. The grounds also maintain that if the appellant’s reasons for taking avoiding action would be in part out of fear of persecution then he is entitled to international protection.

21. Mr Badar relied upon, and reiterated, the arguments made in the grounds of appeal. He highlighted the submission that the judge’s finding in paragraph 84 of the decision that the appellant would be able to obtain “relevant details” to obtain a replacement CSID was not supported by reasons. He submitted that the judge had not explained what these “relevant details” consist of or how they could be obtained.
22. Ms Cunha argued that although the reasoning in paragraph 84 is brief (and might even be problematic) the judge took, and was entitled to take, as his starting point the findings of the previous judge about the appellant’s contact with family. She also argued that it was necessary to consider the decision as a whole, from which it becomes clear that the judge made sustainable findings about the appellant’s credibility. She argued that given the finding that the appellant is (or could be) in contact with his father, it follows that he was in a position to obtain a replacement CSID as his father could provide him with necessary details. She also argued that the improving security situation in Mosul means that it is realistic that the appellant could travel there from Baghdad to obtain his CSID.

Analysis

23. It was common ground before the First-tier Tribunal that the appellant does not have a CSID or an INID (the new biometric card replacing CSIDs) and that without one of these documents there is a real risk that he will encounter treatment or conditions which are contrary to Article 3 ECHR.
24. The issue for the judge to resolve was whether the appellant will be able to obtain a replacement CSID (or, alternatively, an INID) either whilst still in the UK or shortly after arriving in Baghdad (which is the city to which he would be transported by the respondent when returned to Iraq).
25. There are four ways a person in the appellant’s position could potentially obtain a replacement CSID (or INID).
26. The first is that the appellant could travel himself from Baghdad (which is the city to which he would be returned by the respondent) to Mosul and apply for an INID or CSID at the civil status affairs office in the locality where his family is registered. The view expressed in *SMO*, however, is that a returnee

will not be able to travel internally without a CSID or INID: see paras. 378-381. Ms Cunha argued that because of the improving security situation in Mosul and strong transport links between Mosul and Baghdad (as recognised in para. 51 of *SMO*) the appellant could travel to Mosul from Baghdad to obtain a CSID or INID. That may or may not be the case, but it is not an argument that supports the conclusion reached by the judge because the judge did not find that the appellant would be able to obtain a CSID or INID himself in Mosul.

27. The second alternative is that the appellant could obtain a CSID or INID in Baghdad. However, *SMO* makes plain at paras. 386 – 387 that this is not viable. The judge, correctly, did not suggest that this was an option.
28. The third alternative is that a proxy could obtain a CSID on the appellant's behalf in Mosul. The viability of this option depends, inter alia, on CSIDs not having been entirely replaced by INIDs in the appellant's local registry (an INID cannot be obtained by proxy), knowledge of the family's volume and page reference in the civil register, whether the local registry office has been destroyed in the conflict with Daesh, and the availability of certain documents (the extent of which might be reduced where the volume and page reference in the family volume is known). See para. 390 of *SMO*, relying upon and following para 25 of *AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC)*. Para. 25 of *AAH* states the following in respect of documents:-

Dr Fatah states to his knowledge the documents that must be produced in order to apply for a CSID within Iraq are:

- i) Application form
- ii) Birth certificate
- iii) A 'housing card' or a letter from the local council confirming the applicant's residence
- iv) (In the IKR) a recommendation from the *mukhtar*
- v) PDS card
- vi) Two photographs of the applicant (or in the IKR, four)

29. The judge did not make a finding on whether the appellant could obtain a CSID through a proxy in Mosul and the decision does not address all of the considerations material to the assessment that would be necessary to reach a conclusion on this. The decision therefore cannot be defended on the basis that the appellant could obtain a CSID by proxy.
30. The fourth way in which a CSID could potentially be obtained by the appellant – and the only one that was addressed by the judge (see the last sentence of paragraph 84 of the decision) is that the appellant could obtain a CSID from within the UK.

31. This is clearly a viable option in some circumstances, as set out in *SMO* and earlier country guidance cases. The relevant guidance in *SMO* is as follows:

32. Para. 11 of the headnote to *SMO* states:

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.

33. Para. 383 of *SMO* states:

We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent's CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq.

34. Paras. 173 - 177 of *AA* state:

Obtaining a CSID whilst in the UK

173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application.

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family

registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act “as a proxy” is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a “health card” in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah’s evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID’s from abroad.

“In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality.”

177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring.

35. Para. 26 of *AAH* states:

If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant’s family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant’s family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his

family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.

36. In paragraph 84 of the decision, the judge referred to paragraph 383 of *SMO* and stated that "with the relevant details" the appellant will be able to obtain a CSID in the UK. The appellant argues that it is unclear what is meant by "relevant details" and how this will enable the appellant to obtain a CSID in the UK. I disagree. Although the judge's reasoning is very brief, it is plain from the reference to paragraph 383 of *SMO* that the "relevant details" referred to by the judge are the volume and page reference of the entry in the Family Book in Iraq. The point made by the judge in para. 84 (and para. 89) is that the appellant could obtain from his father (or brother) in the UAE the volume and page reference of the entry in the Family Book in Iraq. It was entirely consistent with *SMO* (and the analysis in *AA* and *AAH* referred to therein) to find that, with the assistance of his father (who in addition to providing the volume and page reference for the Family Book could supply his identity documents in order to verify the appellant's identity), the appellant would be able to provide the Iraqi embassy in the UK with the information needed to obtain a replacement CSID. The appellant therefore cannot succeed under the first ground of appeal.
37. I now turn to the second ground of appeal. It is well established that a returnee should not be put in a position where he would have to hide, change, or renounce his belief, identity or way of life. Indeed, he should not even be put in a position where he would need to pretend to hold a belief he does not have (*RT (Zimbabwe) & Ors v Secretary of State for the Home Department* [2012] UKSC 38) or change profession to avoid persecution (*Secretary of State for the Home Department v MSM (Somalia) & Anor* [2016] EWCA Civ 715). See also *WA (Pakistan) v The Secretary of State for the Home Department* [2019] EWCA Civ 302.
38. There is no merit to the appellant's argument that these principles apply to his choice to not take steps necessary to obtain a replacement CSID. It was never part of the appellant's case that not having a CSID is an integral part of his identity or that taking steps to obtain a CSID conflicts with his beliefs. His case was simply that he is unable to obtain a replacement CSID. Therefore, *RT* and the other cases referred to in para. 37 above have no relevance to his circumstances. What is relevant to the appellant choosing to not obtain a replacement CSID is what was said by Elias LJ in paras. 103 -104 of *HF (Iraq) & Ors v Secretary of State for the Home Department* [2013] EWCA Civ 1276 about such conduct subverting the true purpose of asylum law:

[The Secretary of State's representative] contends that as a general proposition an asylum claim ought not to succeed where the risk on return arises only because of the refusal by the asylum seeker to co-operate. He should not be able to secure the benefit of humanitarian protection where he could be returned safely and is at risk of serious ill treatment solely because of his own conduct - *a fortiori* where, as with the refusal to co-operate, that conduct is criminal - and where he can up to the very moment of return eliminate the risk by co-operation.

I accept that submission. The claim for humanitarian relief in such circumstances is wholly unprincipled and subverts the true purpose of asylum law. Whether in those circumstances the appellants could properly be sent back to Iraq (assuming that Iraq would take an undocumented person) is no doubt problematic; but even if that would infringe their human rights, it does not follow in my view that they should then be entitled to claim humanitarian status with all the benefits which that confers.

39. The appellant also argues, as part of the second ground of appeal, that the judge erred by not assessing the risk he would face in Iraq based on the facts at the date of the hearing. It is submitted that because at the date of the hearing the appellant did not have a CSID it follows that he would be at risk. This argument is misconceived because a person who is able to obtain a replacement CSID within a reasonable period of time and without the process of doing so exposing him to conditions breaching article 3 is in essentially the same position as a person in possession of a CSID.

Notice of decision

40. The grounds of appeal do not identify an error of law.

41. The decision of the First-tier Tribunal stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 5 February 2021