Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02841/2020 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Microsoft Teams
On 29 July 2021

Decision & Reasons Promulgated
On 26 August 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

NF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle, Elder Rahimi Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

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Introduction

2. The appellant claims to be a citizen of Iran. He was born on 16 May 1994.

3. The appellant arrived in the United Kingdom on 27 February 2019 clandestinely and claimed asylum. He claimed that he and his family lived in the IKR (the Iraqi Kurdish Region) in Iraq and that both his and his father's involvement with the KDPI put him at risk from the Iranian authorities, in particular the Etelaa't in the IKR.

4. On 8 March 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. In particular, the Secretary of State did not accept that the appellant was an Iranian citizen but rather concluded that he was an Iraqi citizen.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a decision sent on 5 February 2021, Judge L Murray dismissed the appellant's appeal on all grounds. The judge also did not accept the appellant's claim that he was an Iranian national but found, instead, that he was a citizen of Iraq and did not accept that it was credible that he would be at risk in Iraq from the Etelaa't.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's finding that he is not a national of Iran but rather that he is a citizen of Iraq.

7. Initially, permission to appeal was refused by the First-tier Tribunal (Judge Beach) on 17 March 2020.

8. On a renewed application to the Upper Tribunal, on 18 May 2021 UTJ Allen granted the appellant permission to appeal.

9. On 16 June 2021, the Secretary of State filed a rule 24 notice seeking to uphold the judge's findings and decision.

10. The appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 29 July 2021. I was based in court and Mr Gayle, who represented the appellant, and Mr Avery, who represented the respondent, joined the hearing remotely by Microsoft Teams.

The Judge's Decision

11. The judge's reasoning is set out, including evidence relevant to her finding, principally at paras 31–36 as follows:

> "31. It is the appellant's case that the respondent has erred in concluding there is sufficient evidence to conclude he is a national of Iraq. I have assessed the credibility of his claim to be an Iranian national against all of the evidence before me. In relation to the answers which he supplied in relation to his nationality I

accept that the appellant asserted in his screening questionnaire at question 1.5 that he was Iranian and that he had no other nationalities. He also said he never had a passport. At question 3.3 he said he departed Iran when he was 4 years old and that his family moved to Sulaimanyah. He said at question 4.1 that his father was a member of the KDPI and that was the reason he left Iran and brought his family to the Kurdish part of Iraq. He says that he was afraid of returning to Iran.

32. His asylum interview was conducted in the absence of a legal representative in Kurdish-Sorani. According to page 2 of the interview it was recorded and he was given a copy of the recording. He confirmed that he understood the interpreter. At question 31 he said that he feared the Iranian Etelaat in Iraq and at question 33 the Iranian government in Iran. In answer to question 38 he said that they had status in Iraq. He was asked at question 39 if he had citizenship and he asked whether when the interpreter said citizenship he meant status. He then said he had status. He was asked at question 42 if he had a CSID and he asked 'like a passport' and it was explained to him that it was an Iraqi document needed to access services, sometimes called a tasker. He answered that he only had a passport. In answer to question 45 he said he had an Iraqi passport. In answer to question 54 he said that they went to renew their status. At question 72 he said that he was not an Iraqi citizen so Iraq would not accept him back. He was asked what documents he had in Iraq at question 111. He said that he had a national ID card and that for school it was a civil status ID. He was then asked what he did with his CSID and he said that they left it in Kurdistan when they fled. He said that his parents got his CSID for him when he was a child (question 116).

33. The appellant states at paragraph 19 of his statement at p4 of the appellant's bundle dated 3 December 2020 that he is dismayed that the respondent maintains that he is a citizen of Iraq. He never had Iraqi citizenship and had temporary residence there which was renewed annually. He sets out the answers in his interview and says he was confused when he was asked about his status as opposed to citizenship. Throughout his interview he made clear that he was not a citizen of Iraq. If they had citizenship they would not have needed to renew their status. He says that he was not entitled to a CSID card. The appellant has produced photographs on his Facebook account of taking part in a demonstration against the Iranian regime. The appellant also deals with the individual points taken against him in the RFRL. I have taken all of these answers into account.

34. Whilst I accept that the appellant may have been confused by some of the questions in interview and that when asked for his nationality in his screening interview, he asserted it was Iranian, he expressly confirmed in his asylum [interview] that he had an Iraqi passport and CSID. The appellant's answers in interview were recorded and he was given a copy of the recording. He has not produced a transcript of the interview by an independent translator showing the interpretation was wrong. He also did not address the fact that the interview contained the alleged errors until he filed his witness statement in December 2020.

35. I find that there is force in the respondent's points made in the Response in relation to the appellant's answers with regard to the documentation and that, contrary to indicating that there was confusion, he had a good understanding of what was being asked. He expressly confirmed in his own words in answer to question 43 that he had a passport and when asked at question 45 whether his passport was Iraqi or Iranian said that it was Iraqi. At 111 the appellant confirmed that other than a passport 'I had a national ID card, and as they call it, intelligence card (Asaysh)'. At q112 he confirmed that in order to access school (which he said he attended until year 6 of Primary) he had a Civil status ID is required. He then confirmed at q113 that the CSID was left in Iraq. At questions 113–120 he continued to provide answers in relation to the CSID he claimed to have. I agree with the point made in the Response, that, given the appellant had confirmed what

a CSID was only a few seconds earlier, it cannot be said that he was simply confused and was instead simply referring to the Status document which had to be renewed yearly. I find that the answers at interview, clearly expressed in his own words and not just as yes or no answers, indicate that the appellant, when living in Iraq was in possession of a passport, a CSID and an intelligence card (q110–120). These answers, I find, indicate that he is in fact an Iraqi national.

36. I have considered the evidence in relation to his Iranian nationality. I accept that the appellant consistently maintained in his screening interview that he was Iranian and, in his asylum interview, that he left Iran at the age of 4. I also accept that the appellant has given a consistent account of his father's activities in the mountains in the IKR as a KDPI Peshmerga fighting (*sic*). He gave answers consistent with the background evidence about his claimed home area, the Iranian currency, towns and cities and the Iranian flag. I also accept that had he left Iran at the age of 4 he would have limited if any memory of Iran and what he knew would be second hand".

12. The judge then went on to consider background evidence concerning the influence of Iran in the IKR and concluded that the appellant's answers were not consistent with the background evidence (see paras 37–41). In particular, the judge did not accept that the appellant's answer given at Q53 of his asylum interview that "Iraq is completely under the control of the PMF and Iranian government" was plausible as it was clearly not the case.

13. Thereafter, the judge identified inconsistencies in the appellant's account about his family hiding from the Etelaa't in the IKR (para 42) and that it was implausible that the appellant and his family would leave because a person in the passport office informed him that Iraq was under the control of the PMF and the Iranian authorities (para 43). The judge also dealt with the appellant's attendance at anti-Iranian demonstrations in London and Facebook posts (at paras 44–46).

14. At para 48, to which I shall return shortly under ground 3, the judge observed that the appellant had not taken reasonable steps by approaching the Iraqi Embassy as to his nationality.

15. Then at para 49 the judge reached the following conclusion:

"49. Having taken all of the evidence into account I find that the appellant's account is not a credible one. I do not accept that the appellant is a national of Iran. I find, on the evidence before me, that, as clearly asserted by him in the interview, he had an Iraqi passport and CSID. I find that his claim that he would be at risk in Iraq from the Etelaat is not credible for the reasons set out above. He claims that he was never threatened or targeted by Etelaat and he left because of what was said to him by a passport officer. I do not accept that this is plausible, in the view of [ ] both the background evidence and inconsistencies in the appellant's evidence. I also find, given the contradictions between his oral evidence and evidence in interview, that he has aunts and uncles in the KRI. The appellant has not argued he would not be able to obtain a CSID or redocumentation within a reasonable time and find that he has relatives in the KRI who would be able to assist him".

16. As a consequence, the judge dismissed the appellant's appeal on international protection grounds.

The Appellant's Grounds

17. The appellant relies upon the grounds upon which permission was sought and which Mr Gayle developed in his oral submissions. Although unenumerated, there are essentially three grounds which I shall, for convenience, refer to as Grounds 1, 2 and 3.

18. First, the judge erred in law in finding that the appellant was not an Iranian national but was a citizen of Iraq by failing to fully take into account the appellant's answers in his asylum interview relevant to his nationality. In particular, the judge failed to resolve what she herself recognised was "confused" evidence in his answers at interview. (Ground 1)

19. Secondly, the judge erred in finding it was implausible that he appellant and his family fled Iraq after being warned by an official of Iranian influence in the IKR when that was consistent with the background evidence. (Ground 2)

20. Thirdly, the judge erred in law in finding that the appellant was a national of Iraq rather than Iran by taking into account that the appellant had failed to take steps to approach the Iraqi Embassy in order to establish that he was not a national of that country. (Ground 3)

Discussion

21. I will deal with each ground in turn.

Ground 1

22. Under ground 1, the appellant relies upon a number of answers given by him in his asylum interview which it is said demonstrate that he was an Iranian national rather than an Iraqi national.

23. Mr Gayle took me to a number of answers in the appellant's asylum interview, for example Qs 11, 13, 18, 31, 37, 39, 42–46, 54, 64–67, 71–72, 110–113, 115, 117. In these answers, Mr Gayle submitted that the appellant had repeatedly identified that he was an Iranian citizen rather than an Iraqi citizen. He submitted that the judge had been wrong to find, and rely upon in reaching her findings, that the appellant had said that he was in possession of an Iraqi passport and a CSID. Both of those documents, of course, are documents issued only to Iraqi nationals. Mr Gayle submitted that the appellant had said that the answers he had given were mistranslated. He had not said that he had a passport but rather that he had a "temporary residence card". That was a document which he required as a non-Iraqi national. Mr Gayle submitted that the appellant had, at a number of points in his interview, referred to his status and seeking to renew it which was only relevant if he was not an Iraqi national. Mr Gayle accepted, however, that there was no evidence before the judge (or indeed before me) as to the nature of any temporary residence cards that a non-Iraqi national would require or as to when they would be renewed. There was also no evidence concerning when a CSID would need to be renewed. Mr

Gayle submitted that, as the judge recognised, the appellant was plainly confused and she, in reaching her adverse finding, failed properly to engage with the confusion and resolve it in reaching her findings.

24. On behalf of the respondent, Mr Avery submitted that the judge's finding was properly open to her. He submitted that there was obviously conflicting evidence which the judge had to weigh up and consider. He submitted that the fact was that the appellant gave inconsistent evidence that he was an Iraqi citizen and was an Iranian citizen. He relied on what the judge had said at para 34 of her determination that the appellant had clearly said that he had an Iraqi passport and CSID. Mr Avery submitted that at paras 31–36 the judge had adequately dealt with the evidence and reached a sustainable finding.

25. There is no doubt, as the judge accepted, the appellant has given inconsistent evidence as to his nationality. He has said that he is both Iranian and Iraqi. He says that he had an Iraqi passport and CSID which would only be consistent with his being an Iraqi national. He has also said that he had a temporary status document – which would be consistent with him being a non-Iraqi national – and that it was that document which he was referring to, and which was mistranslated, as being his passport.

26. Faced with this conflicting evidence, the judge had to decide whether the appellant had discharged the burden of proof, albeit to the lower standard of real risk or reasonable likelihood, that he was as he claimed an Iranian national.

27. The judge dealt with the appellant's claim that he had not said that he had an Iraqi passport and his claim that there was a mistranslation. The judge pointed out that this was not raised after the interview and before his witness statement prepared for the hearing despite the fact that he was given a copy of the recording of that interview. The judge also pointed out that the appellant had referred to a CSID on a number of occasions and that, given the context and content of his answers, he could only have been referring to a CSID. It is not, so far as I am aware, suggested that the reference to a civil status ID was a mistranslation. Mr Gayle's point in relation to these documents is that if the appellant were seeking a renewal of his status, as he claimed he was on a number of occasions in the interview, he could only have been talking about a document which a non-Iraqi national would require.

28. The difficulty with this argument, as I pointed to Mr Gayle during his submissions, is that there was no evidence before the judge, and there is still no evidence in this appeal, as to the nature of any temporary residence document that a non-Iraqi national would require or that it would be renewed at a certain interval. Likewise, there was no evidence as to whether the CSID which the appellant referred to as possessing, would itself require renewal and so the renewal exercise, to which the appellant referred, would not necessarily be inconsistent with his referring to a CSID.

29. The plain fact is, as Mr Avery submitted, the appellant gave conflicting evidence which the judge had to resolve and, in effect, concluded that the detail was

problematic and consistent with an individual not telling a truthful account. Having taken into account all the evidence that was available at the hearing in both interviews and for the purposes of the appeal, and having considered the specific points raised in the appellant's favour in particular as to the mistranslation of what he had said at his asylum interview, the judge gave detailed and cogent reasons for concluding that she should give weight to the appellant's answer that he had possessed an Iraqi passport and CSID and was, therefore, an Iraqi national. Those reasons can only be challenged now if no reasonable judge properly directing herself could reasonably and rationally reach the finding that she did. I am wholly unpersuaded that the judge's finding, having taken into account all the evidence and submissions made on behalf of the appellant, was outside the range of reasonable findings that the judge was entitled to make on that evidence.

30. For those reasons, I reject ground 1.

Ground 2

31. Mr Gayle submitted that the judge had been wrong to find in para 43 that it was implausible that the appellant and his family would have been advised by a person in the passport office to leave because of the influence of the Iranian government in the IKR. Mr Gayle submitted that what was said was not inconsistent with the background evidence.

32. The judge set the background evidence out at paras 37–41 and accepted that there was evidence of Iran's influence in the IKR and of armed attacks and assassinations (see para 41). However, the appellant's case was that he and his family had been advised to leave Iraq by a person in the passport office because Iraq was "completely under the control of the PMF and Iranian government". It was that aspect of the appellant's evidence which the judge found was implausible because it is clearly not the case that the Iranian government and PMF (an Iranian backed militia) are completely in control of Iraq, including the IKR. It was what the appellant claimed the passport officer had told them that was implausible – and undoubtedly that was a finding that was reasonably open to the judge – rather than the entirety of the account that he had been advised to leave the IKR by an official in the passport office. The basis on which he was said to have been advised undercut the veracity of that aspect of his account. There is no proper basis for concluding that the judge was not reasonably and rationally entitled to reach that finding even taking into account the background evidence that the Iranian authorities had *some* influence in the IKR.

33. For these reasons I reject ground 2.

Ground 3

34. The appellant's third ground contends that the judge was wrong in para 48 of her determination to take into account, as relevant to whether the appellant had established he was a national of Iran rather than a national of Iraq, he had not taken reasonable steps by approaching the Iraqi Embassy.

35. At para 48, the judge said this:

> "48. The appellant's answers in interview provide sufficient evidence to show that he could assert citizenship of Iraq. I find that according to the principles set out in MW (Nationality; Art 4 QD; duty to substantiate) Eritrea the appellant has failed to substantiate his nationality as he has not taken reasonable steps to establish that he is not a national of Iraq. He has not approached the Iraqi Embassy. He has also made no attempts to contact his remaining relatives in Iraq which he said he had in interview".

36. Mr Gayle did not seek to contend that the legal approach adopted by the judge was necessarily wrong. In a number of cases to which the judge refers at paras 28–30, the Court of Appeal and the Upper Tribunal has held that, in determining whether an individual is of a particular nationality, a claimant should act bona fide and take all reasonable practical steps. Instead, Mr Gayle submitted that it was not a "reasonable step" to require the appellant to approach the Iraqi Embassy as there was no evidence that the Iraqi Embassy would respond to an approach in which an individual sought to assert they were not an Iraqi national.

37. In MA (Ethiopia) v SSHD [2009] EWCA Civ 289, Elias LJ at [50]–[53] identified the requirement that an applicant act *bona fide* and take "all reasonable practical steps" to obtain documents to enable her to return. Elias LJ referred to the so-called Bradshaw principle ([1994] Imm AR 359) and that this may include obtaining evidence concerning enquiries made to an embassy. He said this:

> "50. In my judgment, where the essential issue before the AIT is whether someone will or will not be returned, the Tribunal should in the normal case require the applicant to act *bona fide* and take all reasonably practicable steps to seek to obtain the requisite documents to enable her to return. There may be cases where it would be unreasonable to require this, such as if disclosure of identity might put the applicant at risk, or perhaps third parties, such as relatives of the applicant who may be at risk in the home state if it is known that the applicant has claimed asylum. That is not this case, however. There is no reason why the appellant should not herself visit the embassy to seek to obtain the relevant papers. Indeed, as I have said, she did so but wrongly told the staff there that she was Eritrean.
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> 51. I am satisfied that there is no injustice to the appellant in this approach: it does not put her at risk. The real risk test is adopted in asylum cases because of the difficulty of predicting what will happen in the future in another country, and because the consequences of reaching the wrong decision will often be so serious for the applicant. That is not the case here. As Ms Giovannetti pointed out, there is no risk of ill treatment if an application to the embassy is made from the United Kingdom, even if it is refused.
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> 52. Furthermore, this approach to the issue of return is entirely consistent with the well-established principle that, before an applicant for asylum can claim the protection of a surrogate state, he or she must first take all steps to secure protection from the home state. That was the approach adopted in *Bradshaw*, to which I have made reference. It can be seen as an aspect of the duty placed on an applicant to co-operate in the asylum process. Paragraph 205 of the UNHCR handbook expressly states that an applicant for asylum must, if necessary, make an effort to procure additional evidence to assist the decision maker. *Bradshaw* is an example of such a case. The issue was whether the applicant was stateless. Lord MacLean held that before a person could be regarded as stateless, she should make an application for citizenship of the countries with which she was most closely connected.

> 53. Any other approach leads, in my view, to absurd results. To vary an example given by my Lord, Lord Justice Stanley Burnton in argument: the expert evidence might show that three out of ten in the appellant's position were not allowed to return. If that evidence were accepted it would plainly be enough to constitute a real risk that the appellant would not be successful in seeking authorisation to return. But it would be strange if by the appellant's wilful inaction she could prevent the Tribunal from having the best evidence there is of the state's attitude to her return. She could refuse to put to the test whether she might be one of the seven who would be successful. It would in my view be little short of absurd if she could succeed in her claim by requiring the court to speculate on a question which she was in a position actually to have resolved."

38. The need for a claimant to take "all reasonable and practical steps" in relation to nationality issues identified in MA(Ethiopia) applies also where the individual claims to be stateless (see AS(Guinea) v SSHD [2019] EWCA Civ 2234 at [57] per Lord Kitchen).

39. In MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC), the UT applied the approach in MA (Ethiopia) in the case of an individual whose nationality was in issue and whom it was said should have approached the Ethiopian Embassy. The UT accepted that a judge had not erred in law when he had taken into account that the individual had not taken "all reasonable steps" when engaging with the Ethiopian Embassy by the provision only of partial information.

40. In this appeal, the appellant made no attempt to contact the Iraqi Embassy to establish that he was not, in fact, an Iraqi national. It is not suggested that the appellant, given his fear, should approach the Iranian Embassy given the appellant's claimed fear (see e.g. MA(Ethiopia) at [50] per Elias LJ and [79] per Stanley Burnton LJ). Mr Gayle submitted that there was no evidence that the appellant would have received a response from the Iraqi Embassy. But, of course, even if that was the case – and there was no evidence before the judge (or before me) as to how the Iraqi Embassy might or might not respond to such an approach – there would at least have been evidence of that approach and, if it be the case, a lack of response from the Iraqi Embassy. Of course, there might have been a response but without an approach the judge could not know what the Iraqi Embassy would have done or said.

41. In my judgment, the judge was properly entitled to take that into account as relevant to establishing the *bona fides* of the appellant's claim to be an Iranian (rather than an Iraqi) national. It was, of course, only one of a number of reasons that led the judge to reach her finding as to the appellant's nationality. In doing so, the judge did not err in law and her approach was consistent with the case law both in the Court of Appeal and the Upper Tribunal.

42. For these reasons, I reject ground 3.

Decision

43. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.

44. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
6 August 2021

TO THE RESPONDENT
FEE AWARD

Judge Murray, having dismissed the appeal, made no fee award. That decision also stands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
6 August 2021