



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/03657/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 13 April 2021

On 15 April 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

ABS

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms S Khan, instructed by Parker Rhodes Hickmotts Solicitors

For the Respondent: Ms R Pettersen, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. 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. At the conclusion of the hearing, I indicated my decision and reasons in brief, reserving my full reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is Iraqi national of Kurdish ethnicity from Kirkuk, with date of birth given as 1.1.90, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 20.11.19 (Judge Mensah), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 22.3.19, to refuse his claim for international protection, first made in 2008.
2. A previous First-tier Tribunal decision from 2009 (Judge Lever) dismissed the appeal, rejecting the factual basis of the appellant's claim. The appellant subsequently made several further applications and submissions. The most recent refusal decision arises from further submissions accepted as a new claim within paragraph 353 of the Immigration Rules. A further right of appeal arose from the respondent's refusal of the new claim.
3. At the First-tier Tribunal appeal hearing, the appellant did not seek to go behind Judge Lever's 2009 findings but relied on Kirkuk as a 'contested area' and the absence of CSID documentation to enable the appellant to return to his home area. First-tier Tribunal Judge Mensah followed the then extant Country Guidance, declining the respondent's invitation to depart from AA, and concluded that the appellant could not return to Kirkuk. Although the appellant had filed copies of his CSID and INC, the judge appeared to have accepted at [25] of the decision that he did not have access to the originals. However, at [26] of the decision, the judge found that the appellant had failed to demonstrate that he could not produce documentation needed to obtain replacement documents from the Embassy or Consulate in the UK or with the assistance of his family in Iraq (Judge Lever found that he had family in both Kirkuk and Erbil). At [26], Judge Mensah stated, "He has failed to prove where his original documents are and that they are not in fact already in his possession." In the premises, the judge concluded that whilst he could not return to Kirkuk, the appellant could relocate to the IKR and there receive family assistance, and so dismissed the appeal.
4. Permission to appeal was refused by the First-tier Tribunal on 13.2.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Blundell granted permission on 5.11.20, considering it arguable that the First-tier Tribunal failed to take into account (not mentioned in the decision) the appellant's evidence as to unsuccessful attempts to redocument himself from the Iraqi authorities in the UK. It was also considered arguable that the judge failed to resolve the conflict between the appellant's assertion that he had given the Home Office his original documents and the respondent's denial. Judge Blundell also considered arguable that the claimed insistence by the Iraqi authorities that the appellant should produce an original CSID before a replacement could be issued was material to the ability of the appellant's family to assist him to redocument himself. Finally, Judge Blundell pointed to potential tension between findings made by the judge at [17], [24] and [25] of the decision regarding contact with his family.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions made to me and the grounds of application for permission to appeal to the Upper Tribunal.
6. At [12] of the decision the judge observed that the evidence had been recorded in the record of proceedings and had been carefully considered before coming to a decision. It is not necessary for the judge to recite or even summarise the evidence, provided it is clear that it has been taken into account and that cogent reasons justify the findings made.
7. However, at [26], in finding that the appellant “failed to show he cannot produce the documents needed to obtain replacement documents from the Embassy or Consulate or from his family abroad,” the judge did not mention the Consulate letter of 5.8.19 which states the requirement to produce the original Iraqi documents before a passport could be issued. This was supported by the appellant’s supplementary statement. No mention was made of the appellant’s alleged unsuccessful attempts to redocument himself. I am satisfied that this was an error of law undermining the reliability of the finding that he could redocument himself.
8. With regards to the related issue of the location of the original documents, at [25] the judge rejected the claim that the appellant is undocumented. At [26] the judge added, “He has failed to prove where his original documents are and that they are not in fact already in his possession.” In reaching this finding, the judge did not resolve the conflict between the claim that the appellant had given his original identity documents to the respondent during interview and the respondent’s assertion in the letter of 23.5.19 confirming that whilst there were on file photocopies of what appeared to be a CSID and ID booklet, there were no original ID documents on file. In the premises, the finding that the appellant failed to demonstrate he did not in fact have the originals is unsupported by cogent reasoning and entirely fails to resolve the clear conflict of evidence as to this issue. Again, I am satisfied that this was an error of law undermining the reliability of the finding.
9. At [17] the judge rejected the appellant’s claim to have maintained contact with his family up until October 2017 but thereafter lost contact. The justification for that finding is set out in the preceding paragraphs between [14] and [16]. Possible confusion arises from the finding at [24] that as a result of destruction and displacement it was reasonably likely that the appellant was unable to contact his family in Kirkuk in October 2017. However, at [25] the judge repeated the rejection of the claim that contact was maintained only up until October 2017, noted Judge Lever’s unchallenged finding that the appellant has family in other places in Iraq, including Erbil within the IKR, so that the judge rejected “the submission he now has no contact with any family in Iraq, or that he is undocumented.” Reading the decision as a whole, I do not accept that there is any ‘tension’ between these findings. The judge accepted that the appellant would have been unable to contact his family in the month of October 2017 but rejected the claim that all contact thereafter had been lost. In any event, this was not a pleaded ground and given the unchallenged

finding that the appellant has family in Erbil, any alleged error is immaterial to the finding that the appellant would have family assistance in relocating to the IKR.

10. In the circumstances and for the reasons set out above, I find material error of law in the decision of the First-tier Tribunal so that it must be set aside to be remade. Given that there was no attempt to go behind Judge Lever's findings, the remitted appeal can properly be limited to the issues of the location of the appellant's return to Iraq and the identity documentation necessary to enable him to do so. Clearly, the Country Guidance of AA has been overtaken by SMO but there is also the June 2020 CPIN indicating that as Kirkuk has installed the new terminals, no CSID can be issued as attendance in person for biometric information to be recorded is necessary. These are all issues which will need to be grappled with.
11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiate the findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
12. In all the circumstances, I relist this appeal for a fresh hearing in the First-tier Tribunal on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

### **Decision**

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The decision in the appeal is remitted to the First-tier Tribunal to be remade afresh on the limited issues of location of return and identity documentation only.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 April 2021

### **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance

with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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.”*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 April 2021