



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number PA/07092/2019

THE IMMIGRATION ACTS

Heard at George House, Edinburgh  
On the 10 November 2021

Decision & Reasons Promulgated  
On The 23 November 2021

Before

UT JUDGE MACLEMAN

Between

M K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a decision dated 2 July 2019, the respondent considered the appellant's further submissions but declined to find that he was entitled to any form of protection or leave to remain.
2. The respondent did not accept that the appellant had a claim based on difficulties over personal documentation, which is the only remaining issue.
3. FtT Judge Gillespie dismissed the appellant's appeal by a decision promulgated on 10 December 2019 because the appellant, after a series of earlier adverse decisions, was "very much compromised as a witness and ... has not proved he is without family assistance to obtain a replacement CSID".

4. In a decision promulgated on 17 June 2021, the UT set aside the decision of the FtT because it was “not satisfied” that the foregoing “obviates the necessity for the judge to make findings and provide reasons for those findings. There is an absence of findings on material matters”.
5. A transfer order has been made to enable the decision-making of the UT to be completed by another UT Judge.
6. The case accordingly came before me for remaking of the decision of the FtT.
7. Representatives agreed that the general framework for remaking the decision is to be found in *SMO Iraq CG [2019] UKUT 400*, along with the respondent’s Country Policy and Information Note (CPIN) “Iraq: Internal relocation, civil documentation and returns” version 11.0, June 2020. This decision should be read in that context.
8. The findings preserved by the UT at [39] of its above decision are:
  - a) the appellant is a Sunni Muslim of Kurdish ethnic origin;
  - b) the appellant is from Mosul; and
  - c) the appellant is not at risk of serious harm for a Refugee Convention reason in the KRI.
9. The appellant adopted as evidence his statement at item 1 of his bundle. He says that to show inability to document himself in the UK, he went to the Iraqi Embassy in London on 28 June 2021:
  5. ... I explained that I was present to get my ID documents. The man asked for my name, date of birth, where I was from *etc* ... [and] if I had any copies of documents either valid or expired and ... whether I was able to provide a close family relative, *e.g.*, father or brother, who could vouch for me. I explained that I was not able to provide anything that he asked for.
  6. This man then told me that there was nothing further that could be done, and I was asked to leave ...
  7. I have tried on many occasions to ... locate my family in Iraq ... I have not been able to find out anything ... I no longer have any contact with anyone in Iraq.
10. Mr Heeps provided a helpful “skeleton argument / position statement”, upon which he relied and expanded in his oral submissions. He invited the UT to “give weight” to the appellant’s account of his attempt to re-document himself. He submitted that it was credible that the Iraqi authorities would have to be satisfied the appellant is an Iraqi national before they could assist him.
11. Mr Diwyncz accepted that the appellant’s description was typical of what is known to happen at many such interviews.
12. The appellant supports his evidence of his visit with a train ticket and photographs.

13. I see no reason not to accept that the appellant visited the Embassy and that the response he received was along the lines he describes.
14. I have no difficulty with the proposition that the Iraqi authorities would have to be satisfied the appellant is an Iraqi national before they could assist him. No doubt that would apply to any national authority. In that light, the outcome of the visit is hardly surprising.
15. The amount of weight to be given to the rest of the appellant's account of his visit to the Embassy needs to be placed in context of his dealings with the immigration authorities of the UK and of Sweden (as summarised at [1] of the respondent's decision).
16. The appellant's first claim in the UK was made using a name and date of birth which he now says were false. He pressed that claim to the extent of giving untrue evidence at a tribunal hearing in 2005.
17. In further proceedings in 2013 - 2104 the appellant used another identity (which appears to be the one currently used). He was again found to be an unreliable witness. The substance of his second claim was also rejected.
18. The respondent's decision at [30] states that the respondent holds "two untranslated Iraqi identity documents" provided by the appellant. He has not said why these might not assist him.
19. If those documents are genuine, then they should be of some help in updating the appellant with the Iraqi authorities, or he needs to explain why not. If they are fraudulent, that makes his case worse.
20. It has been accepted as a reasonable likelihood that the appellant is a Sunni Muslim and a Kurd. He has Kurdish Bardini as his first language, with which those aspects of identity are highly consistent. Beyond that, it is established that he is a dishonest witness prepared to say whatever he perceives as likely to advance his interests from time to time. No good reason is apparent for taking anything else he has said as reasonably likely to be true.
21. Accordingly, while it is highly probable that the appellant was asked at the Embassy about his name, date of birth, place of origin, possession of any documents either valid or expired, and whether he could identify a close relative, there is no basis on which to find that he answered *any* of those questions truthfully.
22. The appellant's evidence that he has tried to locate his family in Iraq and has been unable to find out anything is vacuous. He provides no meaningful detail of his alleged efforts. He previously contradicted himself on such a basic matter as

whether his father was alive. I am unable to accept that his assertions about unsuccessful attempts to locate family in Iraq are reasonably likely to be true.

23. Mr Heeps in submissions skilfully explored the intricacies of guidance and evidence about difficulties in obtaining documentation in the UK and in Iraq. However, it is for the appellant to establish, to the lower standard, that the basic facts from which such difficulties might arise are as he alleges. That applies even if some of those facts are “negatives” such as absence of documentation and of information from and contacts in Iraq. It is not for the respondent or the tribunal to conjecture out of nothing what the true situation might be.
24. I note in passing that Mr Heeps sought to put the case partly on enforced return to Baghdad, because the appellant would refuse to return voluntarily to the KRI, a course which Mr Heeps accepted was open to him. In principle, I consider that no case for protection can be built on refusal to co-operate in return. However, that issue is not the crux of this decision, which is in the preceding paragraph.
25. Mr Heeps made an alternative case on difficulties of internal travel to the relevant documentation office, but again that depends on proof of the facts.
26. In view of the importance of the case I have reviewed in full all evidence to which I was referred, but I have found that it does not establish the basic facts contended. No further gloss on that could assist the appellant. His evidence simply falls short of probation.
27. (If the respondent remains in difficulty over enforcing the removal of the appellant, that is due to his recalcitrance. It is not a matter which makes out any ground of appeal.)
28. The appeal, as originally brought to the FtT, is dismissed.
29. There may not be any real need for an ongoing anonymity direction, but as the matter was not addressed before me, anonymity is maintained at this stage.



19 November 2021  
UT Judge Macleman

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.