Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10796/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Remotely by Skype for Business On 3 December 2020	**Decision & Reasons Promulgated On 19 January 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

H M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes instructed by D&A Solicitors
For the Respondent: Mr C Howells, 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 prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 1 January 1996.

3. The appellant arrived in the United Kingdom clandestinely on 19 October 2017. He claimed asylum on 20 October 2017. The basis of his claim was that he had been employed by the head of the police "L" in the Ranya District of Sulaymaniyah Governorate in the IKR in Iraq. At the instigation of L's wife, he had a sexual relationship with L's wife. They were caught hugging and kissing by one of L's bodyguards. As a result, the appellant left the IKR because he feared L who was influential with the government and political authorities. With the assistance of a maternal uncle, he came to the UK.

4. On 25 October 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. The Secretary of State did not accept the appellant's account which he claimed would put him at risk on return to the IKR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a determination sent on 23 April 2020, Judge D A Thomas dismissed the appellant's appeal on all grounds.

6. The judge accepted the appellant's account of his sexual relationship with L's wife and accepted L's position in the police in Ranya District. The judge found that the appellant would be at real risk of serious harm in his home area. However, the judge found that the appellant could safely and reasonably internally relocate within the IKR. The judge did not accept that L had influence and power beyond the area of Ranya where he was head of the police and that he had the intention or ability to trace the appellant throughout the IKR.

7. Further, the judge found that the appellant was in contact with his parents and his maternal uncle who had assisted him to leave the country. In those circumstances, it was reasonably likely that the appellant could obtain his existing CSID, passport or ID card or, with their assistance, he could obtain a suitable replacement CSID from Iraq. Finally, the judge found that the appellant was likely to be returned directly to the IKR and given his circumstances, it would not be unduly harsh or unreasonable for him to relocate elsewhere in the IKR.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal to the Upper Tribunal on two grounds. First, the judge failed to give any reasons, having accepted the credibility of the appellant's account, why the appellant could safely internally relocate within the IKR as it had not been established that L had influence and power beyond the area where he was head of the police. Secondly, the judge failed to give adequate reasons for finding that the

appellant could obtain his passport and ID documents from his family in the IKR or that he could obtain a replacement CSID when his evidence was that his family could not assist him.

9. On 18 July 2020, the First-tier Tribunal (Judge Scott-Baker) granted the appellant permission to appeal on both grounds.

10. On 15 October 2020, the Secretary of State filed a rule 24 response seeking to uphold the judge's findings and decision.

11. In the light of the COVID-19 crisis, the appeal was listed before me at the Cardiff Civil Justice Centre on 3 December 2020 for a remote hearing by Skype for Business. I was based in court and Mr Vokes, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business.

Discussion

Ground 1

12. Ground 1 challenges the judge's finding in para 22 that

> "The appellant has not proved [L] has influence and power beyond the region of Ranya, or that he has the intention or ability to trace the appellant throughout the IKR."

13. Mr Vokes, relying upon the grounds of appeal, submitted that the judge had failed to give adequate reasons for this finding. He pointed out that the judge had accepted at paras 18 – 21 of his determination that the appellant 's account was genuine and that he was at risk on return to his home area from L as a result of the discovery of his sexual relationship with L's wife. It was further accepted by the judge that the appellant could not obtain a sufficiency of protection in that area. Mr Vokes submitted that the appellants' evidence was that L was a powerful and influential police officer who had links with the government. In order to reach the adverse conclusion in para 22, which was contrary to the appellant's evidence that he feared L beyond his home area, the judge erred by not considering A's evidence and giving reasons for rejecting his account. Mr Vokes also relied on the appellant's evidence, in his asylum interview, that the appellant's family had been visited in order to find the appellant after the incident and had been threatened. The appellant had explained in his interview that L would still be looking for him because it was a "moral issue and dignity".

14. Mr Howells submitted that just because the judge had accepted part of the appellant's evidence as being credible did not require him to accept all that the appellant said. There was limited evidence before the judge and no specific documentation was relied upon to persuade the judge that L had influence and power beyond the district of Ranya.

15. It is axiomatic that a judge, in reaching a finding, must give adequate reasons for that finding. There is a dual requirement: first, to give reasons sufficient to understand the basis of the finding and, if relevant, to resolve any conflicts in the evidence; and secondly, that any reasons given are, in themselves, adequate, in the sense of providing reasonable or rational support for, the finding reached.

16. In MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) the UT (McCloskey J, President and UTJ Perkins) set out the obligation in the judicial headnote as follows:

> "(1) It is axiomatic that a determination discloses clearly the reasons for a Tribunal's decision.
>
> (2) If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

17. In this appeal, the judge accepted the appellant's credibility and his account based upon his evidence at paras 18–21. The judge accepted that the appellant was at risk as a result of the discovery of the sexual relationship with L's wife. In addition, it was the appellant's evidence that L was a powerful man in the IKR with influence. He was the head of police, as the judge accepted, in the Ranya District. In his interview at Q29, the appellant was asked whether L was an influential person and he replied:

> "Yes he had big influence with authority and power and influence and wealth, he was quite wealthy (Can you can explain what influence he had over the authorities?) I am sorry I don't understand the question (Did he have any influence over the authorities other than the police?) In addition to his role and power as a police officer he had link with the government and the high-ranking political authority, he had friendship, influence and they used to influence him."

18. Further, in his asylum statement dated 17 September 2019, the appellant said he that L was "obviously very powerful and well-connected".

19. In his most recent statement dated 18 February 2020, at para 7 the appellant said this:

> "In Iraq, a person's seniority and influence is measured by his connections and [L] was a very well-connected man. It is only someone who plays an important role in the police force or politics who will have bodyguards and dealings with influential people. I think this is true of any country, not only Iraq. So I cannot comprehend why the Secretary of State thinks I am speculating that [L] was an influential man. I could clearly see his lifestyle, the fact that he had a stream of visitors on a daily basis who were people who had issues and grievances and who needed help to resolve them. Also normally only the influential people have big houses where they have a special room designated to receiving visitors. I could recognise the influential politicians and government officials who visited him so I was very aware of his important position."

20. In reaching his finding at para 21, the judge did not engage with this evidence which was, at least, capable of establishing that L was a person of power and influence whose connections, and therefore the risk to the appellant, could potentially extend beyond the area in which he was head of the police. That was not a necessary inference but it was a possible inference. That is true even in the absence of any background evidence directly supporting the appellant's contention of L's 'reach' in the IKR. In making his finding in para 21, the judge gave no reasons for rejecting the appellant's evidence which he had otherwise accepted. Had he given reasons, then the issue would be whether they were rationally and reasonably based. However, in fact, the judge gave no reasons at all for his finding in para 21. As I have said, it is not a finding that necessarily had to be reached on the evidence before the judge. In those circumstances, the judge's failure to give any adequate reason for that finding was a material error. The appellant would, in all probability, be unable to internally relocate if L's influence extended beyond his own area into other parts of the IKR.

21. Likewise, the judge's finding that it had not been established that it was L's intention to trace the appellant, was not adequately reasoned. The appellant had given evidence, which the judge's accepted, that after the incident the appellant's family were visited and threatened. Likewise, the appellant gave evidence in his asylum interview why he believed that L would be interested in him two years after the incident. At Q64 he said:

> "Yes they are still after me and that is because this is a moral issue and dignity".

22. That evidence, if accepted, was capable of sustaining a finding that there was a real risk that L would remain interested in the appellant because of his sexual relationship with L's wife if he returned to Iraq. Again, it was not an inevitable finding but it was a possible finding based on that evidence. The judge did not engage with that evidence and gave no reason for not accepting or making an inference that L would be interested in the appellant on return.

23. For these reasons, therefore, I accept in substance Mr Vokes' submissions on ground 1. There remains to be made a lawful finding on whether the appellant could safely internally relocate within the IKR because of his genuine fear arising from his sexual relationship with L's wife.

Ground 2

24. Turning now to ground 2, the judge dealt with the appellant's documentation and internal relocation at paras 22–24 as follows:

> "22. …. The appellant worked in the IKR so was clearly documented. I accept, as an illiterate person, he cannot recall the details and numbers of his card or family's registration. However, he has contact with his parents, who have not disowned, him and his maternal uncle who assisted him to leave the country. In these circumstances, it is reasonably likely that the appellant could obtain his existing CSID,

passport or ID card or suitable replacement ID documents whilst in the UK or through a proxy in Iraq, within a reasonable time.

23. If the appellant were returned to Baghdad, it would be a laissez passer. The appellant has a passport and other ID documentation with his family in Iraq. Whilst, it is not reasonable to expect him to remain in Baghdad; the appellant has close male relatives who can meet him in Baghdad and provide his ID documentation and to accompany him safely to the IKR.

24. Following the case of SMO, the appellant is likely to be returned direct to the IKR, where as a Kurd, he would not need sponsorship. He would however need to have a CSID to survive long-term, which he could obtain on arrival or soon after, with the assistance of his family. He has work experience and is in good health, so would be able to secure employment to enable him to access accommodation and to forge a meaningful private life. For these reasons, it would not be unduly harsh or unreasonable for this appellant to relocate elsewhere in the IKR."

25. It is not suggested that the appellant would be returned to Baghdad. It is accepted that he would be returned to the IKR and the issue is whether, when in the IKR, he could internally relocate safely and reasonably and, following SMO and others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), would possess a CSID in order to be able to live and work without falling into destitution which would likely result in a breach of Art 3 of the ECHR and make internal relocation unduly harsh or unreasonable.

26. Mr Vokes submitted that the judge had erred in law in concluding that the appellant would be able to obtain a CSID from his family in Iraq. He submitted that there was some doubt whether a CSID would be handed to anyone other than the individual in person and the most that could be obtained was a 'Registration Document (1957)' which could be obtained appropriate documentation via the embassy in the UK. He referred me to the relevant Home Office *CPIN*, "Iraq: Internal Relocation, civil documentation and returns" (June 2020) ("*CPIN* (June 2020)") that the appellant would not be able to obtain a CSID or the new INID from the embassy in the UK. Mr Vokes submitted that the judge's finding that the appellant could obtain documentation from his family failed to take into account the appellant's evidence in para 11 of his statement dated 18 February 2020 that his family would not be able to help him and he had brought shame on the family.

27. It is undoubtedly the case that the appellant would need to have a CSID or an INID in order to live and work in the IKR. Without it, following SMO and others, there would likely be a breach of Art 3 or, in any event, internal relocation would likely be unduly harsh or unreasonable.

28. In this appeal, the judge made two findings. First, in para 22 the judge found that it was "reasonably likely the appellant could obtain his existing CSID, passport or ID card". Secondly, in the same paragraph he also found that the appellant could obtain "suitable replacement ID documents whilst in the UK or for a proxy in Iraq". At para 23, albeit in the context of return

to Baghdad, the judge found that the appellant "has a passport and other ID documentation with his family in Iraq". In the grounds, it is suggested that that was not part of the appellant's evidence.

29. As regards the first of those findings, the judge noted, correctly, that in para 1.8 of the screening interview the appellant said he did not know what had happened to his passport. However, in his asylum interview at Q16, the appellant was asked whether he had any "official Iraq ID" and he replied: "Yes (What do you have?) I have got Hawiya (Where is it now?) It's in Kurdistan." The appellant's reference to his "Hawiya" is a reference to his CSID which is also referred to as "Bataqa Hawwiya" (see para 5.4.1 of the *CPIN* (June 2020). In other words, the appellant's own evidence was that he had a *CPIN* in the IKR. The difficulty with the judge finding that the appellant's family could obtain his existing CSID is not, as Mr Vokes submitted, because he is estranged from his family, but because there is no evidence where his CSID is. He did not, of course, live with his family. His evidence was that he worked for L and lived in his house, specifically in "separate quarters in his house" (see para 6 of the appellant's witness statement dated 17 September 2019). If the judge was contemplating that, the appellant's CSID being in L's house, it could be obtained by the appellant's family then the judge would, at least, need to give reasons why he thought that, despite L's attitude towards the appellant, his family could approach L to obtain the appellant's CSID. That seems a most unlikely scenario in reality. If, however, the judge considered that the appellant's CSID was within the possession of his family, there does not appear to be any evidence (and the judge offers no reasoning for such a finding) that the CSID was in the possession of his family. It has to be remembered that the appellant's evidence-in relation to his passport was that he did not know where that was. The finding, upon which Mr Howells placed reliance, namely that the appellant's family could provide him with his existing CSID is, in those circumstances, unsustainable.

30. The grounds also challenges the judge's alternative finding that the appellant's family could obtain a replacement CSID for him.

31. Following SMO and others, and in the light of the more recent evidence set out in the *CPIN* (June 2020) (at 2.6.15), it is clear that the Iraqi Embassy in London does not issue CSIDs or, since their introduction, the new INID documents. The *CPIN* demonstrates that the position has changed since SMO and others in relation to whether the Iraqi Embassy issues CSIDs. As a result, these documents could only be obtained at the local CSA office in the appellant's home area – depending upon whether a particular local office has moved to issuing INIDs when it will no longer issue CSIDs. An INID card can only be obtained in person at a relevant CSA Office and not through a proxy. Even if the appellant were in Iraq, there can be no question that the appellant could be required personally to attend the CSA office in his home area given the risk from L in his home area.

32. In his oral submissions, Mr Howells did not place any reliance on the appellant obtaining from the Iraqi Embassy in the UK a "Registration

Document (1957)" (see *CPIN* (June 2020) at 2.6.15). As a result, I need say no more about that in this appeal other than to note that it appears to be a document which, if obtained via the Iraqi Embassy, would assist an individual to obtain an INID in Iraq but that would require that individual to travel to his local CSA Office to do so. Paragraph 2.6.15 provides no direct evidence that he 'Registration Document (1957)' is, in itself, a document which operates to allow safe travel and permits an individual to live safely and reasonably within Iraq.

33. Therefore, the only possibility would be that, if his local CSA office is still issuing CSIDs rather than having moved to the new computerised system issuing biometric INIDs, armed with the appropriate information a proxy (such as a family member) could obtain that document. Even if the appellant does not know the details of the page etc in his family book, it is likely that his family would do so (see SMO and other at [391]).

34. There are, however, two difficulties not properly resolved by the judge.

35. First, the option of his family obtaining a CSID for him will not avail the appellant if only INIDs are being issued by his local office – he would need to apply in person. It is unclear, to what extent, this issue was explored before Judge Thomas. It was, however, a live issue following SMO and others (see [389]) The INID system was, to some extent, rolled out in the IKR as is made clear in the November 2018 Danish Immigration Service and Landinfo Joint Report referred to at para 5.6.2 of the *CPIN* (June 2020). If that were the situation in the appellant's local CSA Office then the CSID option is not available.

36. Secondly, although the judge's finding that the appellant's parents, with whom he remains in contact, have "not disowned him" is consistent with his oral evidence at the hearing (see para 6 of the determination), it does not take into account what he said at para 11 of his most recent statement that: "I do not have any ID documents and my family will not help me to get these". In reaching the finding that the appellant's family would assist him, the judge did not seek to resolve the apparent conflict in the appellant's evidence that on the one hand his family had not "disowned" him but on the other, they would "not help" him to obtain the documents.

37. Given that the judge's finding that the appellant can internally relocate within the IKR cannot be sustained, and given the problems with the judge's reasoning that I have identified in relation to whether the appellant would return with his existing CSID or an alternative replacement obtained for him, I am satisfied that it would be proper that the judge remaking the decision should consider afresh the issue of internal relocation in respect of:

    (1) any risk to the appellant elsewhere in the IKR;

    (2) whether he would have necessary documentation to live and survive in the IKR; and

(3) taking all those matters into account, together with his circumstances more generally, whether it would be reasonable and not unduly harsh to expect him to live elsewhere in the IKR.

I am satisfied that the judge's findings in paras 22 - 25 are not legally sustainable and should be set aside.

38. For these reasons, the judge materially erred in law in dismissing the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR.

Decision

39. Consequently, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision cannot stand and is set aside.

40. It was accepted by both representatives that if the judge's finding in relation to internal relocation could not stand, subject to some preserved findings of fact, the appeal should be remitted to the First-tier Tribunal in order to remake the decision in relation to internal relocation.

41. I agree. The appeal will, consequently, be remitted to the First-tier Tribunal for the decision to be remade in relation to the appellant's humanitarian protection claim and under Art 3 of the ECHR. The appeal to be heard at the Birmingham Civil Justice Centre by a judge other than Judge Thomas.

42. The judge's findings in paras 18–21, that the appellant would be at real risk in his home area where he would not be able to obtain state protection, stand and are preserved. The issue, in remaking the decision, will be whether the appellant can safely and reasonably (including the issue of documentation) internally relocate within the IKR.

43. It is not disputed that the appellant's established fear of persecution/serious harm on return was not for a Refugee Convention reason. Therefore, regardless of the issue of internal relocation, the appellant cannot succeed under the Refugee Convention.

44. The judge also dismissed the appellant's appeal under Art 8 of the ECHR and that decision stands unchallenged.

Signed

Andrew Grubb

Judge of the Upper Tribunal
21 December 2020