Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001448
PA/51957/2020; IA/01670/2020

THE IMMIGRATION ACTS

Heard at Bradford CJC (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 7 October 2022	**On 20 November 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SAG
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Thomas of Compass Immigration Law Ltd.
For the Respondent: Miss Young, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Bannerman ('the Judge') promulgated on 2 December 2021 which the Judge dismissed the appellant's appeal on all grounds.

2. The appellant is a citizen of Iraq born on 1 September 1993 whose application for leave to remain in the United Kingdom as a refugee, or

on any other basis, was rejected by the Secretary of State in a decision dated 7 October 2020.

3. Having considered the written and oral evidence and submissions the Judge sets out findings of fact from [92] of the decision under challenge. Those findings are in the following terms:

> 92. I have given very careful consideration to all of the evidence put before me in this case, both written and oral.
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> 93. I did not find the appellant and her husband to be credible. I acknowledge the fact that they were consistent with each other about their explanation of the two books of American dollars for example and again on the issue of being beaten up at the wedding. However this is a couple who are married and I consider that it is likely that they would be consistent on some aspects anyway. However what surprised me was that there were not consistent on all aspects. For example they were not consistent on the check point situation on leaving Iraq and were in fact quite divergent on that and with reference to how they kept in touch, one of them said that this was through the aunt's landline and the other said that it was through messaging. This was not consistent.
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> 94. The appellant herself I found lacked credibility in claiming that on the one hand she was abused by her husband thrown down stairs, subject to forced rape and put out of the house but then on the other hand left alone to live with her aunts for seven or eight months after a very quick divorce. I did not find that credible. I did not also accept her explanation with regard to the contraceptive pills. The explanation about the key going missing and the guess that it had been copied struck me as being inconsistent and lacking in credibility. I did not believe her position on that.
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> 95. Whilst they both described a relatively similar scenario at the wedding again the appellant's credibility was undermined by claiming to not know about her husband's work or his date of birth being aspects that I simply did not find credible and undermined her even against the lower standard.
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> 96. That is not to say of course that I don't accept that there are honour crimes in Iraq and in Kurdish Iraq indeed. Of course there are and there is background evidence to that effect. I acknowledge that there is domestic violence in Iraq and I acknowledge that a woman in this scenario could very well be injured by her husband. There are various photographs of the appellant showing what was said to be injuries or skin tone and the two witness statements to go into matters in detail. Indeed in the appellant's witness statement there are some disturbing scenarios that are said to have occurred for example that in paragraph 7. That is emphasised again in paragraph 8. She also told us for example, in paragraph 13, significant difficulties with her step mother.
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> 97. Despite the detailed witness statements which I have considered and do not accept the appellant's position even on the lower standard. I do not consider that she is at any risk from her ex-husband if indeed she had had an ex-husband. I appreciate that there is no documentation that has proved this (there was photographs of her skin condition and the witness statements, their oral evidence and various articles produce but with reference to the honour killing, I don't accept that she has been subject to any harassment from her first husband (indeed if he

existed) and I would consider there would not be harassment upon return to Iraq whether or not he existed, and there would certainly not be an honour crime committed towards her by him.

4. Thereafter the Judge went on to consider the issue of documentation, concluding that both the appellant and her husband could be re-documented with the assistance of family members in Iraq upon arrival or by obtaining information and being able to re-document themselves within the IKR. Those findings are set out between [98 – 104].

5. The appellant sought permission to appeal on three grounds, Ground 1 alleging the Judge erred in the assessment of the appellant's credibility by speculating and applying a higher standard of proof with specific reference to [93 – 94], notwithstanding the Judge referring to the correct standard of proof at [91]. Grounds 2 and 3 assert the Judge erred in making findings not supported by country evidence regarding redocumentation and erred in the application of the country guidance case of SMO.

6. Permission to appeal was granted by another judge of the First-tier Tribunal in a decision dated 24 January 2022, the operative part of the grant being the following terms:

> 6. It is arguable that the Judge did not make a clear finding as to whether or not the Appellant and her husband were in possession of their CSIDs in the UK. He clearly found that he did not accept that there were no family members who could assist them in Iraq [98] but, in relation to their current possession of a CSID, said "if, as they both claim, they no longer have their documents and gave them to their agents" [100]. The Judge's ultimate conclusion is that the Appellant and her husband "can redocument obtaining information by being able to redocument themselves or indeed have family members (if they were able to do this in Baghdad and family members could do it in the IKR) who can assist them in redocumenting themselves to enable them to return and then travel across Baghdad into the IKR" [102].
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> 7. It is arguable, in my view, that that conclusion failed to give adequate reasons for why the Judge felt the Appellant and her husband could redocument themselves from Baghdad within a reasonable period of time. It is arguable that those findings were not supported by country evidence because they did not address whether or not the Appellant had established that the CSA office to which she would have to return was one which had installed an INID terminal and thus would require the physical attendance of the Appellant in order for her to provide her biometric information. It is arguable that only after addressing that question can a finding be made as to the viability of instructing a family member, as a proxy, to assist with the process of obtaining a CSID. As the Upper Tribunal illustrated in headnote 16 of SMO, "the likelihood of [a returnee] obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system". It is arguable that the Judge did not adequately address this element of SMO when concluding that the Appellant could redocument from Baghdad (as set out in paragraph 12 of the determination).

8. Whilst it is perhaps unlikely that the arguable error of law had a bearing on the outcome of the asylum or humanitarian protection appeal (on the basis that the Appellant could avail herself of a reasonable opportunity to fly directly to Sulaymaniyah to avoid the risk of persecution/serious harm that might otherwise materialise if she was an enforced returnee to Baghdad), it is arguably material to the disposal on human rights grounds, with reference to Article 3 ECHR.

9. I offer no direct observations as to ground 1 given my view as to grounds 2 and 3.

7. The Secretary of State's representatives has filed a Rule 24 response dated 23 February 2022, the material part of which reads:

2. The respondent opposes the appellant's appeal in respect of ground one. The appellant asserts that the judge erred in finding the appellant and her husband not to be credible. This ground is a disagreement with the findings of the judge. The determination shows that the judge carefully considered the evidence and gave sound reasons for not accepting the appellant and her husband as credible.

3. The respondent does however accept that the judge has failed to make clear findings with respect to decree questions regarding the redocumentation of the appellant and that this part of the determination should be set aside.

8. The question for the Tribunal today is whether the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Discussion

9. The Judge clearly set out a correct legal self-direction in relation to the burden and standard of proof. I do not find having done so that it has been established that the Judge failed to apply it correctly when the decision is read as a whole.

10. The fact the Judge's adverse credibility findings run from [93 – 97] is very important. The grounds seeking permission to appeal refer only to [93 – 94] and avoid mention of some very important adverse credibility findings, including that the appellant did not know her husband's date of birth or job and other matters recorded by the Judge as properly giving rise to concern.

11. The suggestion at [4] of the grounds that the Judge had failed to demonstrate consideration of Chiver [1994] UKIAT 10758 in the assessment of the appellant and her husband's evidence is a claim without merit. The reference in the grounds to there being an "indication and expectations that the appellant and her husband has to be consistent on all aspects to be accepted to be credible" misrepresents the Judge's actual finding.

12. At [93] the Judge does not find witnesses need to be credible on all matters but is merely expressing surprise that as the witnesses are a married couple who claim to have identical knowledge of relevant occurrences, or who could reasonably be expected to have such knowledge even applying cultural and other issues relevant to Iraq, that they were not consistent on all aspects. The Judge gives

examples in [93] of lack of consistency on the checkpoint situation on leaving Iraq, divergency in the evidence with reference to how they kept in touch, and specific issues relating to the appellant herself at [94].

13. The fact the appellant and her husband may have been credible in relation to some aspects does not mean they should have been found credible in relation to all aspects, just as the fact they lack credibility in some aspects does not mean they lack credibility in all aspects, which is the decision in Chiver.

14. The Judge clearly considered the evidence with the required degree of anxious scrutiny and applied the correct burden and standard of proof, resulting in the adverse credibility findings which have not been shown to be outside the range of those reasonably available to the Judge on the evidence and which are supported by adequate reasons.

15. In relation to documentation, there is now only one country guidance case relating to Iraq which is SMO [2022] UKUT 00110. There have also been other fundamental changes in relation to returns to Iraq since the matter was considered by the Judge, including that enforced returns are now to any airport within Iraq including to the IKR.

16. The relevance of this issue is that the Judge was considering the question of documentation and resultant risk on the basis the appellant will be returned to Baghdad.

17. Miss Young did not seek to resile from the position in the Rule 24 response and accepted the Judge had erred in law for the reasons set out in the grounds seeking permission to appeal, the grant permission to appeal, and the Rule 24 reply in relation to the documentation issue. The question for me today therefore is whether in light of the circumstances prevailing on 7 October 2022 that error is material, i.e. whether it would make any difference to the decision to dismiss the appeal if considered on the basis of situation currently appertaining.

18. The Tribunal is grateful to Miss Thomas for the pragmatic and focused approach she took to her submissions in relation to this issue in recognising that if the adverse credibility findings made by the Judge stood she will be in some difficulty arguing material legal error in light of the current arrangements.

19. The appellant, and her husband, both originate from Sulamaniyah in the IKR. At [102] of Judge Bannerman's decision it is written:

> 102. I appreciate that the issue of family documentation will be needed for both of them and will need to be resolved but I am satisfied, on the relevant standard, that they can both redocument through the assistance of family members in Iraq upon arrival there. They can redocument obtaining information by being able to re-document themselves or indeed have family members (if they were able to do this in Baghdad and family members could do it in the IKR) who can assist seminary documenting themselves to enable them to return and then travel across Baghdad into the IKR.

20. As noted, it is no longer necessary to consider return to Baghdad or the ability to travel from there to the IKR for which a CSID or INID would be required.

21. The finding the appellant has family in the IKR is a preserved finding. There will be no need for any family member to send documents to the appellant in the UK or Baghdad as it was not made out the appellant or her husband will not be able to obtain a laissez passer with which, as Iraq Kurds, they would not be able to fly directly to Sulamaniyah in the IKR. It is not made out they will face any difficulties at the airport which they will be able to leave without difficulty. The finding there is family within that area means they will not be homeless or destitute or without support.

22. It is not made out that their local CSA office is anything other than in Sulaymaniyah and it was not made out that they will not be able to make an appointment to enable them to attend the same on return to obtain any documents that they may not already have access to.

23. The INID required biometrics to be registered. The appellant left Iraq on 10 September 2018 after this new form of identification was introduced to replace the CSID in January 2016. If either she or her husband had obtained a new form of identification there will be a registration of their biometric details. If not it is not made out that they do not have relevant family members in the IKR able to provide the necessary details of the pages of the family book to enable them to be properly redocumented. As the appellant will be not be required to cross any checkpoints or other potential pinch points on return, which may give rise to a real risk pursuant to article 3 if she is undocumented, I do not find it has been established that the Judge's finding that the appellant can be re-documented on return to Iraq, even if infected by legal error at the time it was made, is material to the decision to dismiss the appeal in relation to the situation prevailing at the date of this hearing.

Decision

24. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

25. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……
Upper Tribunal Judge Hanson

Dated 7 October 2022

NOTE: As an aside, which is not relevant to the decision above, it is a security feature of a determination that the author of a determination completes details of the appeal number in the header. This has not occurred in the decision under challenge, and it is hoped the Judge will ensure this is done in future decisions.