



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/02846/2019

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 25 October 2022**

**Decision & Reasons Promulgated
On the 06 December 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HM

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmad instructed by Hanson Law.

For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant is a national of Iraqi of Kurdish ethnicity born on 16 November 1987. The appellant is from Kirkuk Province in Iraq.
- 2.** The appellant's claim for international protection and/or leave to remain in the United Kingdom on any other basis was refused by the Secretary of State in the decision dated 14 March 2019.
- 3.** The appellant's appeal against that decision was heard by a judge of the First-tier Tribunal who rejected the core of the appellant's claim to face a real risk on return to Iraq on the basis it lacked credibility and was a false claim. It was found the appellant could be returned as relevant documentation can be obtained from family members in Iraq.

The First-tier Tribunal also dismissed the appeal on human rights grounds. That determination was promulgated on 11 June 2019.

4. Permission to appeal was granted against the decision on the basis it was said the First-tier Tribunal Judge had materially erred in misapprehending the appellant's home area as Kurdistan when it had been conceded by the Secretary of State the home area is Kirkuk which is outside the IKR.
5. The matter came before Dr H H Storey, a Judge of the Upper Tribunal, sitting in Birmingham on 6 January 2020 who in a decision promulgated on 17 January 2020 found the First-tier Tribunal Judge had fallen into error in basing the assessment of risk on return to the IKR when that, plainly, was not the appellant's home area. Dr Storey went on to consider whether the error was material.
6. It is noted at [8] of Dr Storey's decision that the First-tier Tribunal's finding that the appellant would not face a real risk of persecution or serious harm within the IKR was not challenged, that was no challenge to the adverse credibility findings in that respect, and that the background country evidence before the First-tier Tribunal did not indicate that a person of Kurdish ethnic origin from Kirkuk will be at risk per se of persecution or serious harm.
7. It was specifically found at [12] by Dr Storey that as there was no challenge to the adverse credibility findings they are to be preserved. The scope of the hearing on the next occasion was said to be confined to the following issues:
 - (1) Whether the appellant can now return safely to his home area (in light of the new country guidance) as regards Article 15 (c) risk merely on the basis of being a civilian (given the judges adverse credibility findings, he cannot benefit from any "sliding scale" assessment)); and
 - (2) If it is concluded that it would still be unsafe for him to return to his home area in Kirkuk Province as a mere civilian, whether he could relocate to the KRI reasonably/without undue hardship (given the judge's finding of fact, there can be no issue regarding whether it would be safer for him to relocate to the KRI; plainly it would be safe; the only issue would be reasonableness).
8. By the time the appeal came back for this hearing, the Upper Tribunal has issued updated country guidance relating to Iraq, which is now the only country guidance case concerning this country at this point in time, reported as SMO [2022] UKUT 00110.
9. A further development is that enforced returns are now to any airport in Iraq including within the IKR.
10. There is no evidence that as an Iraqi Kurd the appellant will not be able to obtain a laissez passer in the UK with which he can be flown to either Erbil or Sulamaniyah airports in the IKR. There is insufficient evidence to show he will not be able to pass through the airport safely into the Kurdish region.
11. It was not disputed, however, that as the appellant's home area is Daquq in Kirkuk Province, where his local CSA office is located, he will have to return there to obtain his INID as CSID's are no longer being issued there. That will require him to cross through checkpoints internally within Iraq which SMO [2022] has confirmed it is not feasible

unless a person has the required identity document. The INID was issued from January 2016, the appellant arrived in the United Kingdom on 17 November 2015, which was therefore before the issue of this document, meaning the only document he would have been issued with was his CSID.

Discussion

- 12.** The appellant has filed an up-to-date witness statement dated 14 October 2022 in support of his appeal. The appellant claims he cannot go back to Kirkuk and lead a normal life as a citizen as it is a dangerous place; claiming that ISIS, Militia, and checkpoints, pose danger together with the state of the buildings within the city.
- 13.** Current country guidance shows that Kirkuk is now under the control of the Iraqi government following the defeat of ISIS. Although there may be occasional incidents of violence as a result of the actions by extremists, insufficient evidence has been provided to show that a real risk sufficient to engage Article 15 (c) of the Qualification Directive exists if the appellant is returned to his home area and lives a normal life there as a civilian.
- 14.** The first of the two issues identified by Dr Storey as requiring consideration is therefore answered in the positive, that the appellant had not established he could not return safely to his home area. I find he can.
- 15.** The appellant, in his witness statement, claims that as he is not from the IKR he cannot go there as checks will be made against him; but his reason for claiming a real risk in that area are without merit. That is an issue specifically commented upon by Dr Storey at the error of law stage. The appellant has been in the UK since 2015, has no adverse profile with the authorities of the IKR, has evidence that he has been out of the country, and there is insufficient evidence to show that he will be of any adverse interest to anybody within the Kurdish area of Iraq solely as a result of his age, home area, or any internal problems the country has experienced.
- 16.** The appellate claimed he cannot go to Baghdad but there is no proposal for him to be returned to Baghdad in the light of the Secretary of State's current practices.
- 17.** The appellant claimed in his witness statement that he is not in contact with his family, the last time he was in contact with them was when he was in Turkey, that he has no means of contacting them, and that he had asked people who go to Iraq if they could see if his family in Kirkuk, but claimed they have not and that it would have been too dangerous for his family to continue to live there and that they have either left the area or the country.
- 18.** The appellant was cross-examined about this aspect of his case. He was asked by Mr Bates when he last spoke to his family in Iraq which he claimed was when he was there. When he was asked for clarification whether he was saying it was when he was living in Iraq replied "yes".
- 19.** The appellant was asked whether he spoke to them in Turkey on his way to the UK to which he replied "no".

- 20.** The appellant stated his family were living in Kirkuk and that when he left all his family lived there including his mother, sisters, etc.
- 21.** There is therefore at this stage a discrepancy between the appellant's evidence in his witness statement which stands as his evidence in chief, which contains a declaration of truth, and his oral evidence regarding contact with his family.
- 22.** In relation to documentation, the appellant claimed he did not have his CSID or passport with him, claiming he had said in his asylum interview that to get the documents he would have to go to his home province which would be too dangerous as ISIS left traps of explosives in Kirkuk and it would not be possible to go back there to live a normal life.
- 23.** Whilst it was accepted that during the period of conflict with ISIS there may have been a number of issues, including issues of security, it was not made out that they remain at the date of this hearing to the extent or with the consequences the appellant claims.
- 24.** The appellant was asked by Mr Bates about his CSID which he confirmed he possessed. The appellant stated that he had left it with the family in Iraq and when specifically asked whether he had spoke to his family other than when in Kirkuk City he replied "no".
- 25.** The appellant was also asked whether he had asked people in Iraq who he is in contact with if they could find his family to which he replied "no". When asked whether he had asked people going back to Iraq he replied "no". It was put to the appellant by Mr Bates that it was fair to say he had made no serious attempt to trace his family which he accepted was a fair statement.
- 26.** The appellant was asked in re-examination whether if he had contact with his family they could send his CSID to him, to which he replied "no". When asked why not, he claimed that his documents were left in the house and that no one was allowed to go there as ISIS had left mines around the house.
- 27.** I do not find the appellant's claim to face a real risk in Kirkuk, such that nobody can return there, is credible and do not accept there is sufficient evidence to support a claim that nobody could have access to the family home in that area due to ordinance left over by ISIS. What is more commonly referred to as the Battle of Kirkuk occurred in 2016. On 21 October 2016 ISIS militants and suicide bombers entered the city yet on 24th October the last of their fighters was killed and the city declared clear militants. There is insufficient evidence to show that whatever may have happened in the intervening period steps have not been taken in the six years since this date to make the environment safe.
- 28.** I do not find the appellant's claim in his oral evidence that the family could not gain access to their home to be substantiated on the evidence.
- 29.** The appellant's claim not to be able to make contact with his family has been shown to be affected by similar evidential issues, i.e. the appellant not telling the truth, also referred to by the First-tier Tribunal.
- 30.** It is a preserved finding that the appellant has a mother, younger brother, and brother-in-law, in Iraq. I find the appellant's claim to have

last contacted them in Turkey on his way to the UK not to be credible in light of the inconsistency in the appellant's evidence.

31. Not only is the appellant not being truthful about when he last had contact with his family he also accepted that he has done nothing to try and contact them in the meantime, when avenues for facilitating such contact would have been reasonably available to him.
32. Mr Bates submitted the reason the appellant may not be attempting to contact his family is because he is already in contact with them. That is a reasonable submission on the fact.
33. I find that the appellant has failed to establish that he is not in contact with his family. This is not asking him to prove a negative but recognition of the fact the evidence does not substantiate his claim. The lack of credibility in his account leads me to find he has maintained contact with his family members.
34. It was not made out the family have not remained in their home area where the appellant claimed his original CSID was left. It is not made out that the appellant cannot either request the family to send him his CSID in the UK or alternatively meet him at the airport on return to the IKR, which he can then use to travel through any checkpoints back to his home area.
35. There is no evidence of direct flight to Kirkuk International Airport at this time to which I have been referred.
36. I do not find the appellant has established he will face a real risk from the Popular Mobilisation Force (PMF) in his home area as he has no credible adverse profile, will have his original CSID until he obtains an INID, and the support of his family. It is not made out the appellant will not be able to re-establish himself in his home area, especially with the assistance of family members, or that he could not live with family in the IKR if they wished to relocate there themselves. There is insufficient evidence to show this would be an unreasonable alternative proposition.
37. I have considered carefully Mr Ahmad's skeleton argument which argues that the appellant's evidence is credible, but that claim is undermined by the appellant's own oral evidence, the adverse credibility findings made against him in the First-Tier Tribunal, and in his oral evidence before the Upper Tribunal as noted above.
38. The submission the appellant claimed he had no contact with his family and that they could not send him his documents as they live in a contested area has been shown to have no merit on the evidence and in light of SMO [2022].
39. I find insufficient evidence has been provided to show any booby-traps left by ISIS will prevent the appellant returning home or in accessing his documents as noted above.
40. The claim there is a plausible explanation for why the appellant cannot get his CSID is undermined by the implausibility of his evidence/claims.
41. The argument the appellant faces a risk from the PMF is not supported by sufficient evidence.
42. I have considered all aspects of this case very carefully but find it is clear, both in relation to the core of the appellant's account on which he claimed international protection and in relation to contact with

family members and documentation, that the appellant is not a credible witness. The appellant has made a false claim for international protection and given conflicting evidence before the Upper Tribunal in relation to contact with family. His claims regarding the country situation are not supported by sufficient objective material.

- 43.** The appellant’s claim to face a real risk on return as he has political views opposed to the governing parties within the IKR is mentioned in his witness statement, but his home area is not within the IKR. It was not made out in the evidence that the appellant has credible, genuine, adverse political views that could lead to a real risk of harm on return to Iraq or that if he suppressed the same due to a fear of persecution that would infringe the HJ (Iran) principle.
- 44.** The burden of establishing entitlement to international protection lies upon the person making such a claim in an appeal of this nature, to the lower standard. Applying that standard and considering the evidence with the required degree of anxious scrutiny I find the appellant has failed to discharge the burden of proof upon him to the required standard to show that he cannot obtain the required documentation to enable him to travel safely from the airport to his home area with the assistance of his family, to whom he can return.
- 45.** In relation to his human rights claim, I find it is not made out the appellant can succeed under either the Immigration Rules or any provision of the ECHR on the facts. Articles 2 and 3 ECHR fall with the protection claim, any claim to have found a family or private life in the UK was not subject to detailed submissions and, in any event, any interference with the same has been shown to be proportionate for the reasons set out in the refusal notice.

Decision

46. I dismiss the appeal.

Anonymity.

- 47.** 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 14 November 2022