IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002887

First-tier Tribunal No: PA/00264/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Sepulveda for Hanson Law
For the Respondent: Mr Gazge, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 25 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Row ('the Judge'), promulgated on 16 March 2022, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is an Iraqi Kurd from the IKR who was born on 12 September 1990.

3. The Judge refers to the appellant having claimed asylum on arrival in the UK on 4 March 2016, which was refused on 31 August 2016, an appeal against the refusal dismissed on 10 April 2017, a further appeal dismissed by the Upper Tribunal on 27 February 2018, and the appellant becoming appeal rights exhausted on 11 May 2018. Further submissions on 20 September 2019 were refused on 25 November 2019; which was the subject of the appeal before the Judge.
4. The Judge's findings are set out from [19] of the decision under challenge. The Judge notes the core of the appellant's claim, that he is from Sulaimaniyah in the IKR, and that whilst there converted from Islam to Christianity and attended a local church, and that when his father found out he threatened to kill him, as a result of which he had to leave Sulaimaniyah and travel to Erbil, where he stayed with a friend until he left to travel to the UK through various other European countries.
5. At [27] the Judge refers to a previous determination promulgated on 10 April 2017 by First-tier Tribunal Judge Hawden-Beale, in which it was accepted the appellant is a Christian convert although it was not found he would face any real risk on return to Iraq because he is entitled to practice his Christian beliefs in the IKR which is, in particular, regarded as a place tolerant of religious minorities, meaning he would face no persecution there. Earlier it was found the appellant would not face any real risk from his father.
6. The Judge properly applied the Devaseelan principles, assessing the evidence to ascertain whether it may warrant being able to depart from the earlier findings. At [42] the Judge finds that the sum of the evidence provided in support of the appellant's contention that he could depart from the earlier findings was one incident of a person being killed, perhaps but not necessarily because of her religious beliefs, an incident involving a petrol bomb attack on a shop in southern Iraq which may or may not have been related to the shopkeepers Christianity, and evidence of military activity by Turkey against an area of northern Iraq which does not appear to have been a specific attack against Christians. The Judge therefore concluded there was nothing in the evidence that warranted a decision different from that of the earlier Judge, leading to a finding at [44] that the appellant was not at risk of persecution or harm in the IKR because of his Christian conversion.
7. The Judge then went on to consider the issue of documentation from [45]. The Judge finds that as a Kurd from the IKR, voluntary return would be to there not Baghdad, and that the country guidance case of SMO identified no difficulty for a Kurd returning to the IKR without a CSID, and that even if he did not have a CSID the appellant will be able to obtain a replacement in the IKR.
8. The Judge notes the submissions made on the appellant's behalf that he would not return voluntarily to Iraq and so would face enforced removal to Baghdad [48], but the Judge found there was no evidence from the appellant that he would not return voluntarily [49].
9. The Judge finds, in any event, that it was for the appellant to establish that he does not possess his CSID or could not obtain it by contacting his family and friends in Iraq [50]. Having further consider this aspect Judge writes at [56]:

    > 56. It is for the appellant to establish that he does not have or could not obtain possession of his CSID. Whether I find this is correct depends upon whether I believe what the appellant says. This depends upon his credibility. All the above matters damage his credibility. I do not find that he does not possess or could not obtain his CSID card. I find that he can do so.

10. Thereafter the Judge considered paragraph 276 ADE(1)(vi), incorrectly headed above [59] as 273 ADE(1)(vi), which is clearly a typographical error, and Article

8 ECHR, but concluded that on neither basis could the appellant succeed and dismissed the appeal.

11. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

> 2. The grounds assert that the Judge erred in:
>
> a. Considering section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (ground 1)
> b. Finding the Appellant would leave the UK voluntarily and consequently not making a full assessment under SMO (grounds 2 and 3)
> c. Giving weight to the failure of the Appellant to provide documents supporting his claim that he has no CSID and cannot obtain one and him raising this issue late (grounds 4 and 5)
> d. Misapplying 276ADE of the Immigration Rules (ground 6)
>
> 3. Grounds 2 and 3 disclose an arguable error of law. The Judge has assumed that as a Christian the Appellant would follow the instructions of Jesus and St Paul to obey the laws of the country in which he is, without him appearing to have an opportunity to comment on this.
> 4. Grounds 6 discloses an arguable error of law in that the Judge misquotes the paragraph number ("273ADE") and does not set out what it says. This raises a real difficulty in knowing if it was applied correctly. Nevertheless, the error appears immaterial because the reasoning is sound if 276ADE were being applied.
> 5. The other grounds are weaker but applying the relevant principles I grant permission on all grounds.

Discussion and analysis

12. Ground 1 assert the Judge erred in law at [55] where reference is made to section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 in which the Judge holds it against the appellant for not having claimed asylum in the many safe countries he passed through. This ground does not establish material legal error.
13. In JT (Cameroon) v Secretary of State the Home Department [2008] EWCA Civ 878 the Court of Appeal found that section 8 factors should be taken into account in assessing credibility and were capable of damaging it, but the section did not dictate that the relevant damage to section 8 inevitably results.
14. The Judge does not find that the appellant's failure to claim asylum is determinative, just that it did damage his credibility. The Judge noted the appellant had passed through Greece, Macedonia, Serbia, Hungary, Croatia, Austria, and France, yet did not claim asylum in any of these countries [21].
15. I note a further decision of the Court Appeal in KA (Afghanistan) v Secretary of State for the Home Department [2021] EWCA Civ 1014 in which it was held that failure to make an asylum claim in another country attracts less weight in the case of an unaccompanied minor than in other cases, but that there was nothing in principle wrong with taking account when assessing credibility of the failure to make an earlier claim for asylum but there needs, in reality, to have been a reasonable opportunity to do so, which cannot be inferred from mere presence in a nominally safe country.
16. The difficulty faced by the Judge was that the evidence did not adequately address this issue or establish that the appellant's failure to claim warranted anything other than the weight given to this factor than that recorded in the determination. Even if the Judge should have given less weight to the failure to

claim in light of the appellant's age when passing through these countries, that does not establish material legal error in the decision under challenge.

17. Ground 2 asserts the Judge erred in his assessment of the country guidance case of SMO, claiming that the requirement upon the Judge was to have made a rounded assessment in relation to enforced returns to Baghdad which the Judge failed to undertake.
18. Since the handing down of the judgement in SMO and KSP (civil status documentation, article 15 (c) Iraq (CG) [2022] UKUT 00110 (IAC) the Secretary of State's stated policy is now to return failed asylum seekers or enforced returns to any airport in Iraq. As the appellant is an Iraq Kurd from the IKR he will be returned to either Erbil, from where he flew when leaving Iraq, or Sulemaniyah airports, and not to Baghdad.
19. In relation to the Judge's finding that the appellant could return voluntarily, that stems from the fact that he claimed he could not stay in his home area, had to flee as a result of the fear of being persecuted as a result of his conversion to Christianity, which both the earlier judge and Judge Row found lacked credibility. As the reason he claimed he could not stay in Iraq has been shown to lack credibility, a finding within the range of findings available to the Judge on the evidence, there was no reason why the appellant could not voluntarily return, as many do. No legal error material to the decision is made out on this ground.
20. Ground 3 asserts the Judge erred in using the appellant's religion and belief to make a finding on return, but such claim is without merit. The reference by the Judge to the appellant's religion, and reference to that meaning he should follow Jesus and St Paul's instructions to follow the laws of the land, is not the reason why the Judge found the appellant could return to Iraq. The reason the Judge found accordingly was that the appellant's claim to be entitled to a grant of international protection or leave on any other basis was not made out. The Judge assessed the possibility of return as part of the holistic assessment. No material legal error is made out on this ground.
21. Ground 4 asserts the Judge erred in fact at [50] in stating the appellant had not provided supporting documentary evidence, claiming such allegation is wrong as the appellant claimed in his witness statement and his evidence that he does not have a CSID card. This grounds also assert the Judge refers to paragraph 339 L of the Immigration Rules but did not stipulate the outcome of the same.
22. The Judge does not err at [50] as alleged. The Judge was well aware of the appellant's case in relation to his CSID as a reading of the determination clearly shows. The Judges comment that the appellant's claim he did not have the document is not supported by documentary or other evidence is factually correct when one looks at the bundle of evidence that was provided for the Judge. The Judge at the end of that paragraph refers to taking into account the provisions of paragraph 339 L of the Immigration Rules and goes on thereafter to outline a number of matters of concern that led to the appeal being dismissed.
23. Paragraph 339L of the Immigration Rules reads:

> 339L. It is the duty of the person to substantiate the protection claim or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
>
> (i) the person has made a genuine effort to substantiate their protection claim or substantiate their human rights claim;
> (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;

(iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
(iv) the person has made a protection claim or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
(v) the general credibility of the person has been established.

24. Even though the Judge may not have set out the matters in the manner the writing of the grounds seeking permission to appeal may have preferred, a reader of the determination is able to understand that, particularly in relation to the general credibility of the appellant, the Judge was not satisfied the appellant had substantiated his protection or human rights claim such that the appeal should have been allowed. No material legal error is made out.
25. Ground 5 asserts the Judge made assumptions at [53] when stating that the appellant's CSID card issue was raised late, whilst noting that it was raised in the reasons for refusal letter on 25 November 2019. The grounds assert the Judge should have accepted that this is evidence that it was raised earlier which the Judge should have taken as being decided. No material legal error is made out for even if the Judge's assessment on this point is based on an unsupported assumption, the Judge did not dismiss the appeal solely for this reason. If the determination is read as a whole it is quite clear that it was as a result of the holistic assessment of all relevant issues that the Judge concluded as set out in the determination.
26. Ground 6 claims inadequate reasons were given in relation to the assessment of paragraph 276 ADE and that the Judge refers to the wrong rule. The reference to paragraph 273 as opposed to 276 is clearly a typographical error in this respect and the ground is a challenge of error of form over substance. At [62] Judge finds the appellant has not met the requirements under the Immigration Rules and gives adequate reasons for why the appellant could not succeed under what is clearly an assessment in relation to paragraph 276 ADE (1) (vi) at [59] of the decision. The fact reference to paragraph 273 is clearly a typographical error is demonstrated by the fact that this provision, now deleted, related to the refusal of leave to enter as the partner of a person with limited leave to enter or remain in the United Kingdom as a retired person of independent means. Further paragraphs of 273 (A – F) dealt with other requirements which all related to status of a retired person of independent means; which bears no relation to the facts of the appeal being considered by the Judge. No material legal error is made out.
27. Ms Sepulveda suggested in her submissions that it had been found by the earlier judge that the appellant did not have his CSID and that the Judge in the current appeal should have been bound by that decision. It was also suggested that the Judge's findings that the appellant faced no risk as he could relocate was wrong, and it questioned whether there were sufficient findings by the Judge in relation to this issue.
28. The Judge noted the appellant is an Iraq Kurd who will be returned to the IKR. The Judge's specific finding is that the appellant had not established that he did not currently possess his CSID or could not obtain it by contacting his family and friends in Iraq, if required. If he possesses the document as found by the Judge at [56] he will have the documentation to enable him to live a normal life in Iraq.
29. In relation to the earlier decision and the point raised by Miss Sepulveda, Judge Hawden-Beale in her 2017 determination went on to consider the issue of documentation but does not make a specific finding that the appellant does not have the required identity documents. At [41] Judge Hawden-Beale writes:

41. Given that the background information makes it clear that those from the IKR can be returned there if 'pre-cleared' by the authorities who do not require documentation and, given that the appellant came from Sulamaniyah in the first place and did have Iraqi documents, I am satisfied that the appellant will be able to be returned to Erbil even if he does have to go to the Iraqi embassy to obtain the necessary documentation.

30. That decision was determined prior to the current country guidance of SMO. The foundation of the findings made in the early determination are reflected in that of the Judge, as recorded in the determination. If the appellant's CSA office is no longer in issuing CSID's it was not made out that he could not apply for and obtain a biometric IND on the basis of the findings made by the First-tier Tribunal. The key finding of the Judge, however, which has not been shown to be infected by material legal error, is that the appellant had not proved he was not still in possession of his CSID.
31. I conclude the appellant has failed to establish arguable error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

Notice of Decision

32. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 May 2023