



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001633
First-tier Tribunal No:
PA/01224/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NARIMAN MUSTAFA MOHAMMAD
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain-Zader of United Immigration & Visa Service.

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

Heard at Phoenix House (Bradford) on 27 February 2023

DECISION AND REASONS

1. In a decision promulgated on 5 January 2023 the Upper Tribunal found an error of law in the decision of First-tier Tribunal Judge Prudham who dismissed the appellant's appeal.
2. The appellant is a citizen of Iraq born on the 15 June 1985.
3. An earlier determination of the First-tier Tribunal had found the appellant to lack credibility as a witness and that his account of persecution in Iraq and of having lost contact with his family was found not to be credible, and that if the appellant was from Kirkuk there was no reason he could not return to live there. Judge Prudham, at [16], found there was no evidence that warranted departing from those findings and specifically finds it follows that the appellant remains in contact with his family in Iraq.
4. The specific finding at [16] was preserved in the Error of Law decision in which it was stated that the limited issue requiring further consideration was the question of whether the appellant had access to the relevant documents to enable him to travel to his home area, or, alternatively, to relocate within the IKR for which documents would still be required.

5. It was noted at [9] of the error of law finding that the Secretary of State had changed her practice in that enforced returns to Iraq are now to any airport within Iraqi, including the IKR.
6. It was not shown that the appellant would not be able to obtain a laissez passer from the Iraqi Embassy in the UK. Although the appellant will be able to pass through the airport in the IKR without difficulty as in Iraqi Kurd his home area is in Kirkuk which is outside the Kurdish region. At the date of the error of law hearing the issue was therefore how he would be able to travel back to his home area.
7. Further changes have occurred. The first is that the original information provided to the immigration tribunals that only a very limited number of CSA offices in Iraq continue to issue the CSID has been shown to be incorrect. Updated information clearly shows that a considerable number of CSA offices continue to issue this older style of identity document including 16 in the Kirkuk region, including Kirkuk itself. The appellant has not established that his local CSA office does not to issue such documents.
8. The other development is that there are now regular flights directly to Kirkuk from Ankara via Iraqi Airways as well as from Baghdad. Insufficient evidence was provided before me to establish that it was unreasonable to expect the appellant to fly from the UK to Ankara and then from there to his home airport in Kirkuk.
9. I accept that on arrival the appellant may be questioned, especially in light of the fact that Kirkuk has seen examples of sectarian violence in the past and the authorities in that area would want to ensure that those returning have no connection with ISIS or threaten the interests of the Iraqi government.
10. The appellant's evidence is that he entered the UK on 10 August 2009 having left Iraq much earlier, as evidenced by the fact he was fingerprinted in Greece in June 2008. ISIS emerged as an offshoot from Al Qaeda in 2014 although by the end of 2017 they had lost much of their ground in Iraq and Syria as a result of military action being taken against them by a US led coalition. There is therefore no evidence, actual or imputed, that links the appellant with an Islamic terrorist group or any reason why he will be of concern to immigration authorities or security officials on return to Kirkuk.
11. In relation to documentation, in the refusal letter dated 15 October 2028 is written:

"You have not stated that you are not in possession of any Iraqi documents in the UK, nor have you stated that your family are not in possession of any documents in Iraq. Whilst you state you have no family in Iraq, it is considered that you have provided no evidence to support this claim. You have provided no information as to why you have no family in Iraq, nor have you provided any information as to why you are no longer in touch with them and what avenues you have pursued to re-establish contact with them, such as the Red Cross family tracing, to re-establish contact with your family members. Furthermore, it is noted that within your previous further submissions you stated that you had no family in the roundup however, you again provided no evidence to support this. It is therefore considered that you have failed to explore all avenues to re-establish contact with your family members in Iraq.
12. The earlier decision of First-tier Tribunal Judge Balloch, promulgated on 11 November 2009, dismissed the appellants protection appeal made following his arrival in the UK. An issue arose during that appeal relating to a signed witness statement from a Higher Scientific Officer in the UK Border Agency at Leeds who matched fingerprints taken from a person using a different name to the

appellant in Greece on 29 June 2008, via Eurodac, to those of the appellant taken in the UK. This was significant as the appellant had claimed that he left Iraq on 26 July 2009 as he had been threatened by terrorists the day before, which is clearly not true if he was at that time in Greece. This is the basis of Judge Balloch's finding that it was not accepted the appellant's account of facing a real risk in Iraq was credible

13. At [57] Judge Balloch found it not to be credible that the appellant would not have made arrangements to maintain contact with a family member and no real reason had been given as to why he would not as a priority be to arrange to maintain contact.
14. In his witness statement dated 20 January 2023 the appellant claims he does not have contact with anyone in Iraq, as the only contact he had was with his sister who has died, and that he does not have access to his CSI D card.
15. If the appellant has his documents with him then there is no reason why he cannot return and live a normal life as that term is understood within Iraq. If the documents were left at his family home, it was not made out he could not contact his family asking that they either forward his CSID to him or meet at the airport and hand it to him. The appellant's claim that the only contact he had was with his sister who has died is not a claim supported by sufficient evidence and has to be treated with caution in light of the fact everything else the appellant appears to have claimed in relation to his appeal has been found to lack credibility and be disingenuous, and the appellant's awareness that the existence of a family member in Iraq who can assist with providing him with his documentation would undermine his claim.
16. The burden is upon the appellant to prove his case. The submission made that the appellant was not in contact with family is contrary to the preserved finding that he is. The submission that the appellant will face hardship on return is not made out on the evidence. It was accepted this is not a submission that the appellant will face a situation sufficient to engage Article 3 ECHR on the basis of destitution. It is not made out the appellant would not be able to obtain employment or is enough of an outsider such that it is unreasonable to expect that he will be able to reintegrate into life within Iraq. There was insufficient evidence to support this claim.
17. I find the appellant has failed to discharge the burden of proof upon him to the required standard, in light of the fact he has failed to provide sufficient evidence upon which weight may be placed, to support his claim to be without the necessary documents required to live a normal life in Iraq, to be unable to properly reintegrate into his home country, or to face a real risk entitling him to a grant of international protection.

Notice of Decision

18. I substitute a decision to dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 March 2023