



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004735

First-tier Tribunal No: PA/53391/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 September 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

FOMK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Johnrose of Counsel, instructed by Jackson Lees Group Ltd
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 25 July 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. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Dilks promulgated on 3 August 2022, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 7 June 2021 was dismissed.
3. The Appellant is a national of Iraq, born on 14 May 1990, who claims to have left Iraq around June 2019 and claims to have arrived in the United Kingdom on 30 August 2019. The Appellant claimed asylum on the basis that he was at risk of an honor crime in Iraq because he had a relationship with a married woman whose husband was a Peshmerga Captain in the PUK and had received death threats as a result.
4. The Respondent refused the application the basis that the factual basis of the Appellant's claim not being accepted, specifically due to his lack of knowledge about the person he claimed to be in a relationship with and inconsistencies in his account; such that he would not be at risk on return as claimed. In any event, the Respondent considered that the Appellant had the option of internally relocating elsewhere in Iraq as there was no evidence that the husband would be capable of finding the Appellant. The Appellant has parents and siblings in Iraq such that he would have family support on return and the option of support through the assisted voluntary returns scheme. The Respondent considered that the Appellant's CSID card was likely to be with his family and could be obtained from them such that return was feasible. There was no grant of humanitarian protection and no breach of Articles 2, 3 or 8 of the European Convention on Human Rights. The Appellant's medical conditions were considered but overall there were no exceptional circumstances for the grant of any discretionary leave to remain.
5. Judge Dilks dismissed the appeal in a decision promulgated on 3 August 2022 on all grounds. Although it was found that not all of the points made by the Respondent in the reasons for refusal letter had been made out, overall the Appellant was not found to have been credible or consistent in his claim, including as to whether he knew the girl's surname, about family, about whether he had checked what had happened after he left Iraq and why when visiting the girl, the Appellant saw no indication that she was married. The First-tier Tribunal did not accept that the Appellant had had no contact with his family since 2016 and found that he had had his CSID card at least in Kurdistan prior to leaving Iraq and so it was likely that it was still with family there who could provide him with it. Consequently it was found that there would be no risk on return to Iraq, including to Baghdad from where the Appellant could return to his home area and in any event he could internally relocate.

The appeal

6. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal erred in law in failing consider material evidence, specifically photographs submitted by the Appellant relied on demonstrate a relationship; with overall unclear and inadequate reasons as to why the Appellant's claimed relationship was not accepted. Secondly, that the First-tier Tribunal erred in law in applying the wrong standard of proof to the photographic evidence and required corroboration of the identity of the person in the photographs. Finally, that the First-tier Tribunal erred in law in failing to consider the Appellant's evidence as to why he had no contact with family since 2016 and as a matter of procedural fairness points about contact were not put to the Appellant to respond to.

7. In a rule 24 notice, the Respondent opposed the appeal on the basis that there was no error of law in the decision. In brief, the First-tier Tribunal had given clear and cogent reasons for the adverse credibility findings having considered all of the evidence in the round and without any requirement for corroboration.
8. At the oral hearing, Mrs Johnrose relied on the grounds of appeal but dealt with them in a different order in oral submissions, noting that the first and last grounds of appeal were linked. In relation to the last ground of appeal about the Appellant's CSID card, Mrs Johnrose submitted that the First-tier Tribunal had failed to make any assessment of whether the Appellant would in fact need his CSID on a regular basis, in circumstances where the country guidance describes its necessity for travel, buying and selling property, but this Appellant was living locally and working for/living with a friend since 2013 such that it would not be needed and he would be more unlikely to remember his CSID details for the same reasons. There was a failure to consider the Appellant's profile in this regard. Mrs Johnrose confirmed that it was not disputed that the Appellant's CSID card was with his father, the issue was why and for how long to determine whether he could obtain it from him.
9. In relation to whether the Appellant had a passport, it was submitted that again the First-tier Tribunal failed to have regard to the Appellant's profile and whether he would have been likely to have a passport, for example he is a person who did not even know which countries surrounded Iraq. There was some acceptance of corrections to the Appellant's asylum interview record, but no reasons were given why the correction in relation to his passport was not accepted. As to the Appellant's relationship with his family, he claimed that he was separated from them after being sent out to work and faced with increasing demands for money from his father. There was a failure to consider the patriarchal nature of society in Iraq and whether the Appellant could maintain any relationship with other family members against his father's wishes.
10. As to the first ground of appeal, Mrs Johnrose submitted that the First-tier Tribunal's reasoning in particular in paragraphs 33 and 36 was difficult to follow and unclear in relation to the documentary evidence. Further, if the issue of family contact was so pertinent to the decision, the Appellant should, as a matter of procedural fairness, have been asked a question on this directly during the hearing. The Appellant gave consistent evidence that his family relationship had broken down from a young age and referred to this separately from his claim of fleeing Iraq. The Appellant had confirmed that he had had no contact with his family since 2016 but was not asked if this included his mother and siblings and if not, why not. Mrs Johnrose suggested that the Appellant's answer in his asylum interview that he was disowned by his family in 2016 was incorrect, that in fact he had stopped contact with them as the demands were too much, but this wasn't pursued in light of the corrections he made through his solicitors to the interview record which referred to him having been disowned. Although the Appellant had also said that he could not contact family because of the problems relating directly to his asylum claim, Mrs Johnrose emphasised that the important point was that the Appellant's consistent evidence was that he had no contact with his family since 2016.
11. Finally, as to the second ground of appeal, it was submitted that the First-tier Tribunal had wrongly required evidence of corroboration of the Appellant's relationship, including as to the identity of the woman in the photographs and the date on which they were taken. In doing so, the Judge had failed to consider

material evidence which was photographs of an (at least partially) naked lady which were disclosed at the first opportunity with his claim. Given they were submitted so early, it would be reasonable to conclude they were taken prior to the Appellant's arrival in the United Kingdom in 2019. The Appellant is unable to prove his own identity, so it is even more unreasonable to expect him to be able to prove the identity of the person he was in a relationship with. Mrs Johnrose submitted that the photographs themselves contained strong evidence supporting the Appellant's claim as they show the Appellant talking to a naked or scantily clad woman but the Judge appears to have placed no weight on them. It was submitted that there was no proper assessment of the weight to be attached to the photographs and the Judge applied too high a standard of proof in relation to them.

12. On behalf of the Respondent, Mr Bates dealt first with the second ground of appeal. In paragraphs 40 and 41 of the First-tier Tribunal decision, there is an express statement that all of the evidence had been looked at in the round to the lower standard of proof and there is nothing else on the face of the decision to suggest that that was not the case. Paragraph 40 did not require anything, specifically not any corroboration, it simply addressed the issue of what weight could be attached to the photographs which was rationally little weight in circumstances where the photographs do not show whether either person was in Iraq at the time they were taken, whether or not the two people had ever met in person (they were not, for example, photographs of a couple together) and were expressly referred to as being undated with an unidentified woman. Undoubtedly if more information was available, the photographs would've carried more weight.
13. The first and third grounds of appeal in relation to the Appellant's identity documents also disclosed no error of law. The Appellant gave evidence that he had never had a passport, but when asked about this initially by the Respondent, he stated that it is in Kurdistan, having used it to travel to Turkey, he sent it back to Kurdistan. The Appellant sought to clarify this by claiming that the answer was about his CSID not his passport, but that in itself undermines the Appellant's claim that he did not have his CSID card and could not contact his family to obtain it. The Judge was entitled to find the Appellant's evidence was not consistent.
14. The country guidance in relation to Iraq emphasised the importance of a CSID to a person in Iraq. The Appellant lived in an urban area and would need one to permit work, as well as periodically for goods and services or passing through checkpoints. It is not that he would need it regularly, but it is contrary to the country guidance to claim that he was able to function in Iraq for years without a CSID at all. The First-tier Tribunal was entitled to find that was not credible and was clearly aware of the Appellant's background and claim. In relation to family contact, the First-tier Tribunal had already separately considered the contradictory evidence about this and it did not need to be repeated twice within the decision. In any event, the burden is on the Appellant to establish that he does not have and could not obtain a CSID card and he failed to do so in this appeal. A credibility assessment is lawful without the Judge being required to 'fish' for further information on the Appellant's claim about his family or lack of contact with his mother and siblings and to decide on the contradictory evidence that was presented. It can not be said that the conclusions on these points were irrational, perverse or lacked sufficient reasons.

15. Mr Bates submitted that the First-tier Tribunal had given clear and consistent reasons for the adverse credibility findings made, with specific examples of inconsistencies given, for example not knowing whether he knew the person's surname he claimed to be in a relationship and visits to her home (about why he was not aware of her living with a husband). The evidence was considered in the round and multiple concerns were identified with the claim. The Judge was entitled to attach the weight given to the various evidence. The claim of consistency in the Appellant's claim over time is not necessarily a reason for a positive credibility finding.
16. In reply, a point made in the written grounds that the First-tier Tribunal had simply adopted the Respondent's reasons for refusal letter was repeated by Mrs Johnrose who also submitted that there were no real inconsistencies in the Appellant's claim and the only one as to a passport was corrected.

Findings and reasons

17. I deal first with the first and third grounds of appeal given that they are somewhat linked in that they are both directed at the adverse credibility assessment made, specifically about the relationship and about identity documents/family contact; albeit with additional issues of reasoning and procedural fairness.
18. It seems to not be in dispute between the parties that the Appellant's CSID is with family in Iraq, the issue was for how long that had been the case and whether he would be able to obtain it from them. The Appellant's claim was that his relationship with his family had broken down such that he had no contact with them since 2016, albeit the detail of his claim on that point was inconsistent as to why it had broken down (whether he was disowned by his father or whether he broke off contact due to unreasonable financial demands) and at a number of points he had stated that the reason he could not contact them now was not because of this historic breakdown in the relationship, but because of his relationship with a married woman in Iraq. The First-tier Tribunal considered the issue of identity documents and family contact, after identifying a number of other inconsistencies in the core of the Appellant's claim in paragraphs 32 to 35 (which are not specifically challenged beyond a rather generic assertion that they are difficult to follow and inconsistent, which on their face they are not), with findings as follows:

"36. I also consider that the appellant has not been credible or consistent in the account of the broken relationship with his family. In the asylum interview the appellant spoke of problems with his family from age 11 and that was why he had disconnected from them (AIR 26) but also that his family had disowned him after the incident with [the lady] (AIR 37, 38). I note that in his solicitors amendments to the asylum interview the appellant sought to clarify that in 2013 his father kicked him out and said that the appellant should look for work so the appellant moved to Raparin district also in Sulaymaniah and that between 2013 to 2016 his father was always coming to where he worked in the shop asking for contributions to the family and the appellant was giving him money but by 2016 they fell out as his father kept on increasing what he wanted and the appellant could not cope anymore. The email from the solicitors states that the appellant fell out with his father about this and so his father disowned him and he has had no contact with his family since 2016.

37. *The appellant confirmed his evidence at the hearing that he has had no contact with his family since 2016 but, as submitted by Ms Day, I consider that it is not clear why the appellant would have no contact at all with his mother or 11 siblings (five brothers and six sisters) since 2016 because of financial issues with his father. I note from the appellant's oral evidence that Raparin is only a 15 minutes' drive from Bazyian where the family home is and I reject that the appellant has had no contact with any of his family since 2016.*

38. *I consider that the appellant has been inconsistent with regard to whether he held a passport. In his asylum interview in April 2021 he claimed never to have held a passport (AIR 17) but during his initial encounter with Immigration Officers in the ISE Case History Form dated 31 August 2019 the appellant said that he had travelled on his passport from Iraq to Turkey and that his passport was sent back to Kurdistan (HB 526). I note the appellant states in his witness statement that at his screening interview he was telling them about his CSID and nationality certificate (para 70) but I consider that the specificity of the information that he travelled to Turkey on his passport but it was then sent back to Kurdistan makes it reasonably likely that the appellant has been inconsistent.*

39. *I also find that it is not credible that the appellant did not have his CSID in Iraq as submitted by Ms Day. The appellant says that his father kept his CSID and would not let him have it and with regard to how he navigated life in Iraq without any documentation the appellant said at the asylum interview that he "was working with a friend" (AIR 29). In his witness statement the Appellant simply agrees that the CSID is a key document to work and access services in Iraq (para 68). As stated in the refusal letter, given the prevalence of checkpoints and the importance of the CSID card for internal movement and employment and that the appellant says that he worked from the age of 11 until he left Iraq (PIQ 4), I find that it is reasonable likely that the appellant was in possession of his CSID prior to leaving Iraq and as it is still in Kurdistan, it is reasonably likely to be with family."*

19. Contrary to the submissions on behalf of the Appellant, the reasons given by the Judge both generally as to credibility and specifically as above in relation to documentation and family contact are clear and easy to follow, with no contradictions and nothing material left out of consideration (see also the express consideration of the photographs in relation to ground two below). Also contrary to the submissions on behalf of the Appellant, there was a specific and express consideration of the Appellant's profile and background as to whether it was likely, in accordance with the current country guidance, that he would have been able to work and function in Iraq from the age of 11 without it (for a period of six years prior to his departure from the country). It was rationally and lawfully open to the First-tier Tribunal to conclude that considering all of this, it was reasonably likely that the Appellant was in possession of his CSID prior to leaving Iraq. There is also force in the Respondent's submission that the Appellant's response to the suggestion he had a passport was that he was talking about having his CSID card which he sent back to Kurdistan. A claim which is on its face inconsistent with his claim of not having access to this document since at least 2016, if not 2013. In addition, clear reasons are given for the finding that the Appellant had been inconsistent that he had a passport and no further consideration as to whether it would be likely that he would have had one or not was needed. There was no

specific finding that the Appellant did have a passport, only that his claim on this was inconsistent.

20. The First-tier Tribunal gave express consideration as to the Appellant's claim to have been disowned and/or lost contact with his family in Iraq in the sections above. I do not find that there was any procedural unfairness in relation to possible contact with the Appellant's mother or siblings. The burden is on the Appellant to establish his claim and he had not established any reason why he had not had contact with family other than his father and the secondary reason why he said he had been disowned by family due to the asylum claim was implicitly rejected when the core of that part of the claim was dismissed.
21. There is a separate section in the decision specifically as to documentation and in paragraph 43 it was found, as above, that the Appellant was in possession of his CSID in Iraq and it is likely to be with family in Kurdistan. The decision goes on to find that even if there has been no family contact since the Appellant left Iraq in 2019, there is no suggestion that family members have moved home and therefore reasonably likely the Appellant could obtain his CSID from family in Iraq whilst in the United Kingdom. This takes the Appellant's claim at its highest and provides a further reason why there was no procedural unfairness in failing to ask the Appellant about other family contact, it was in essence not a material issue in any event. This separate finding has not been specifically challenged, but it was clearly open to the Judge to make this finding on the basis of all of the evidence in the round. The Appellant has simply failed to establish that he is unable to contact family in Iraq for his CSID card.
22. For these reasons, there are no material errors of law in the decision of the First-tier Tribunal on the first or third grounds of appeal. They in essence amount to no more than disagreement with the decision which includes clear and cogent reasons with rational conclusions lawfully open to the Judge on the evidence.
23. The second ground of appeal also fails to establish any error of law in the First-tier Tribunal's decision. The decision itself contains express confirmation that all of the evidence had been considered in the round to the lower standard of proof and there is nothing on the fact of the decision to contradict or undermine that. The relevant parts of paragraph 40 dealing with the photographs are as follows:

"I find that I can put little weight on the photographs submitted by the appellant. ... With regard to the photographs of the woman which it states in the refusal letter are screenshots from a Viber App video chat (rfrl 59), these are undated and the identity of the woman is not confirmed on the screen shots and I find that little weight can be put on these photographs as evidence of a relationship between the appellant and a lady ... between March 2019 and June 2019."
24. In this paragraph, there is nothing to suggest that the Appellant was required to provide any corroboration of the relationship or in relation to the photographs at all. It was simply, and expressly, a statement of what weight could be attached to the evidence and a rational conclusion that only little weight could be attached to them in support of the Appellant's claim to have been in a relationship with a particular person in 2019. The mere fact that there is a screenshot of a video chat with a scantily clad or naked woman does not objectively offer any substantial support for the Appellant's claim without more.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th August 2023