



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006015

First-tier Tribunal No: PA/01728/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 August 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AMO
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr G Lee, counsel instructed by Braitch Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 10 August 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

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge ID Boyes promulgated on 30 September 2022.

2. Permission to appeal was granted by Upper Tribunal Judge Kopieczek on 27 March 2023.

Anonymity

3. An anonymity direction was made previously and is reiterated because this is an appeal raising protection issues.

Factual Background

4. The appellant is a national of Iraq, of Kurdish ethnicity, born in 1985. He states that he left Iraq during July 2018, arriving in the United Kingdom clandestinely the following month. The basis of his claim is that his life was in danger because he had resigned, as a player and trainer, from a named football club before the end of the football season. The appellant stated that he was physically attacked during an incident orchestrated by his club and that when he sought the assistance of the authorities, he was detained and ill-treated. There were further threatening acts and an attempted shooting of the appellant, during which his brother was fatally wounded. The appellant went into hiding and left Iraq shortly afterwards.
5. The appellant's protection claim was refused by way of a decision dated 8 February 2019 and this is the decision under appeal. While the appellant's nationality and ethnicity were accepted, it was not accepted that his claim engaged a Refugee Convention reason nor that he was subject to adverse attention in Iraq. The respondent considered there to be internal inconsistencies in the account provided by the appellant along with a lack of supporting documentary evidence. In the alternative, the respondent concluded that the appellant could be expected to relocate internally, it being noted that the appellant's identity documents were with his family in Iraq which would enable him to return to the Iraqi Kurdish Region (IKR).
6. The appellant's appeal was previously heard by First-tier Tribunal Judge Solly who dismissed it by way of a decision promulgated on 18 March 2020, concluding that, owing to credibility issues, the appellant had not demonstrated a well-founded fear of persecution. Permission to appeal to the Upper Tribunal was granted. The outcome was that the appeal was remitted to the First-tier Tribunal solely for determination of the identity documents issue which had not been addressed and that all the previous findings were preserved.

The decision of the First-tier Tribunal Judge ID Boyes

7. At the hearing before the First-tier Tribunal, the appellant and a witness gave evidence; the witness stating that the appellant's family had moved from their address since the Upper Tribunal's consideration of his appeal in 2021. The appellant's account of his contact with his family and evidence regarding his identity documents was rejected as lacking credibility, with the judge concluding that the appellant either had his documents with him in the United Kingdom or could be assisted with obtaining his documents by his brother.

The grounds of appeal

8. The grounds of appeal can be summarised as follows. Firstly, the judge erred in dismissing the human rights appeal on the basis that the appellant could take voluntary steps to mitigate any risk to his human rights, applying SA (Removal

destination; Iraq; undertakings) Iraq [2022] UKUT 00037. Secondly, the judge made findings which were inconsistent with those in *SMO and KSP* (Civil status documentation, article 15) (CG) [2022] UKUT 00110, in that he found that the appellant's brother could meet him in Baghdad and 'vouch for him' while they travelled across Iraq to obtain replacement identity documents.

9. Permission to appeal was granted on the basis sought with the judge granting permission making the following comments.

Also with "little enthusiasm" (paras 16 and 58 of SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37 (IAC)), I consider it arguable that First-tier Tribunal Judge Boyes erred in law in his consideration of the "hypotheses" put to him in terms of the appellant's willingness to cooperate with the production/obtaining of relevant documents necessary for a safe return to Iraq.

The ground in relation to the appellant's brother 'vouching' for him in any journey across Iraq to obtain a new identity document also has arguable merit, but may very well depend on the success or otherwise of the other ground referred to in para 1 of this decision.

10. The respondent filed a Rule 24 response dated 15 May 2023, in which the appeal was opposed.

The error of law hearing

11. When this matter came before me, I heard succinct submissions from the representatives which replicated the points made in their respective written arguments. At the end of the hearing, I reserved my decision.

Decision on error of law

12. The grounds focus on hypotheses which were put to the First-tier Tribunal as to the steps the appellant could take, albeit that he was unlikely to take, in order to assist the respondent with his removal to Iraq. They include that the appellant could refuse to produce the documents he has with him in the United Kingdom or decline to ask his family to send them. The judge finds at [16G] that these hypotheses are irrelevant. The judge made no error in doing so.
13. The appellant has been found to be a witness of untruth by two judges. The basis of his claim involving his football career was found to be an invention and Judge Boyes rejected the remainder of the appellant's account, concerning his family contacts and the whereabouts of his identity documents. At [16] the judge clearly states that he did not accept that the appellant does not have relevant documents and provides a series of detailed reasons for reaching that conclusion. Those reasons include that the appellant had been found not credible previously, that he was educated, he was well aware of the relevance of the issue of documents as far back as 2019 and could have obtained them from his family (it was only in 2021, when his case was before the Upper Tribunal, that the appellant claimed to have lost contact with his family), his witness evidence was discredited for numerous reasons and the judge did not accept that the appellant did not know the page and family book numbers.
14. None of those findings are challenged in the grounds of appeal. The judge arrived at these firm findings prior to considering the hypotheses put forward by Mr Lee and the judge's findings are relevant to the issue, which was before the

judge, of whether the appellant could obtain a replacement CSID in the United Kingdom, applying *SMO*. Headnote 14 of *SMO* states as follows.

‘Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence...’.

15. The judge made findings in line with *SMO* based on the evidence before him. Indeed, Mr Lee did not argue otherwise.
16. The judge’s remarks at [16G], [17] and [19] were unnecessary given his hitherto sound findings and amounted to no more than commentary on the sophisticated submissions he had heard on the appellant’s behalf. Had the judge not made those remarks, the outcome of the appeal would be the same. If I am mistaken on the foregoing conclusions, it follows that even had the judge erred in falling into the trap set for him, by unnecessarily speculating on the hypotheses, it was not a material error.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.