



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003638

First-tier Tribunal No: PA/54707/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd November 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MASH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford, of Counsel, instructed by Logan Kingsley Solicitors

For the Respondent: Ms LeCointe Senior Home Office Presenting Officer

Heard at Field House on 24 October 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 is a citizen of Iraq of Kurdish ethnicity born in 1981. He arrived in the UK on 23rd October 2019, and claimed asylum the next day. His claim was refused by the respondent on 10th October 2022. His appeal against the decision was dismissed by First-tier Tribunal Judge J K Thapar after a hearing on the 12th July 2023.
2. Permission to appeal was granted by Judge of the First-tier Tribunal SPJ Buchanan on 30th August 2023 on the basis that it was arguable that the First-tier judge had erred in law in making credibility findings; that there were arguable errors in determining the appeal in relation to the appellant's lack of a CSID; and there was a failure to consider the country of origin materials.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to determine if any such error was material and whether the decision needed to be remade.

Submissions-Error of Law

4. It is argued in the grounds of appeal for the appellant, in summary, as follows.
5. Firstly, it is argued that the First-tier Tribunal erred in law by making flawed credibility findings. This is because it is contended that the First-tier Tribunal does not take as a starting point all the facts accepted in the refusal letter by the respondent. The respondent accepted that the appellant owned a printing shop and had been threatened with serious harm by a group called Hashd Al-Shaabi, but not that he was at real risk of serious harm as a result because it was said that he could relocate within the KRI and/or obtain sufficiency of protection from the Popular Mobilisation Forces. The First-tier Tribunal only accepted that the appellant owned a printing shop, and not that he had been threatened with serious harm by Hashd Al-Shaabi. This approach was therefore procedurally unfair as it ignored the respondent's concession in the reasons for refusal letter. It is argued that the First-tier Tribunal also failed to set out the issues in dispute as per the appellant's skeleton argument and the respondent's review in the decision.
6. Secondly, it is argued, that the First-tier Tribunal erred in law by simply relying upon a claimed lack of credibility to dismiss the appeal and failing to look at the issue of the appellant not having a CSID. The appellant ought to have been found to be credible as his history was accepted by the respondent, and thus he ought to have been believed when he said he could not contact his family members to assist him with replacing his CSID.
7. Thirdly, it is argued, that the First-tier Tribunal erred in law in failing to consider the country of origin materials regarding Hashd Al-Shaabi and

the Popular Mobilisation Forces which supported the appellant having a well founded fear and not having sufficiency of protection.

8. In a Rule 24 response it was argued for the respondent in reply to the first ground that that the credibility assessment by the First-tier Tribunal does not err in law because the evidence was looked at coherently and the weight to be given to issues was a matter for the First-tier Tribunal. In relation to the second ground it argued that the credibility assessment with respect to the CSID was open to the First-tier Tribunal. In relation to the third ground it is argued that the First-tier Tribunal sets out at paragraph 5 of the decision that the documentary evidence was considered, and there was a failure to identify in the grounds the documentary evidence which should have been specifically identified in the decision.
9. At the hearing we provided both parties with a note from Mr Chris Howells, Specialist Appeals Team of the Home Office, dated 5th September 2023 relating to requests made under paragraph 144(13) of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 which states that that in response to an update with respect to the roll out of the INID system in Iraq the Iraqi Embassy had “informed us that all CSA offices are now issuing the Iraqi National Identity Card [INID) and none are issuing the CSID.”
10. Ms LeCointe had difficulties as she had problems accessing the papers relating to this appeal. Ms Radford had emailed her the bundle so we allowed a half an hour adjournment for Ms LeCointe to read the papers. When we reconvened it transpired that it had not been possible for the bundle to be emailed as it was too large. Judge Lindsley therefore provided Ms LeCointe with her laptop so she could look at any documents she wished to peruse in relation to this appeal, and in particular the reasons for refusal letter and the grounds of appeal. She was given time to consider these documents. On consideration of the grounds of appeal Ms LeCointe conceded that the decision of the First-tier Tribunal was materially flawed as the approach of the judge had been procedurally unfair both in relation to the asylum appeal and the appeal relating to documentation/ CSID.
11. We then discussed how the matter should proceed to a remaking. It was suggested to the parties that it might, in view of the note of 5th September 2023, be possible for the matter to be remade immediately in the Upper Tribunal if the appellant was prepared to withdraw his asylum appeal and simply pursue the Article 3 ECHR appeal relating to documentation as this would be a straight forward issue requiring no extensive review of evidence. Ms LeCointe was asked to consider if she conceded the Article 3 ECHR documentation appeal and Ms Radford was asked to take instructions as to whether the appellant wished to withdraw his asylum appeal. We made it clear that the alternative option was the remittal of the complete appeal to be heard de novo by the First-tier Tribunal.

12. Ms LeCointe informed us that she conceded the Article 3 ECHR documentation appeal and Ms Radford informed us that she was instructed to withdraw the asylum appeal in those circumstances.

Conclusions - Error of Law

13. An error of law is found by consent so we only give brief reasons to explain why this is done.
14. It is clearly accepted by the respondent in the reasons for refusal letter at paragraphs 8-15 that the appellant is an Iraqi Kurd from Makhmur and that he was threatened by Hashd Al-Shabi who entered his shop. It is clear from the respondent's review that she did not resile from this position as the schedule of issues does not include any issue of the credibility of the history but instead included whether Hashd Al-Shabi would show an interest in the appellant on return to the KRI and whether there was sufficiency of protection from them if so, and whether any persecution was for a Convention reason. It is also accepted by the respondent, at paragraphs 35 -43 of the decision letter, that the appellant discarded his CSID on route to the UK but it is found that he could "reobtain a CSID card" as he was in touch with his family and they could provide him with the necessary numbers of the Family Book. Neither the respondent's review nor the appellant skeleton argument take a different position on the CSID issue.
15. At paragraphs 8 to 10 of the decision the First-tier Tribunal clearly goes behind the concession of the respondent that the appellant had been threatened in the way he claimed with no indication to the appellant that this was going to happen and thus in a way we find was procedurally unfair. This approach then means that the way in which the CSID issues is dealt with at paragraph 11 of the decision is also procedurally unfair, as the starting point ought to have been it was accepted the old document was lost on route to the UK, as this is what was accepted in the reasons for refusal letter, but instead, as it has been found that the appellant was not a credible witness with respect to his history of persecution, it is found that he has not shown he does not have this document or could not get it from relatives. We find the approach of the First-tier Tribunal in not simply determining the issues identified in the reasons for refusal letter, review and skeleton argument without putting the parties on notice that additional issues were at stake was procedurally unfair.

Conclusions -Remaking

16. In accordance with SMO an individual needs to have civil status identity documentation to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. The appellant has no CSID as it was discarded on route to the UK as is accepted by the respondent in the reasons for refusal letter. He cannot acquire a replacement INID without personally travelling to his home

town of Makhmur in the governate of Nineveh. We find, in accordance with Ms LeCointe's concession, that the appellant is at Article 3 ECHR real risk of serious harm if returned to Iraq, particularly when in Iraq travelling to obtain a replacement INID, due to his lack of civil status documentation.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal dismissing the appeal
3. The asylum appeal was withdrawn by the appellant for the remaking hearing in light of Ms LeCointe's concession on the Article 3 ECHR documentation appeal.
4. We re-make the appeal by allowing it on Article 3 ECHR grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th October 2023