IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004114
First-tier Tribunal No: PA/53464/2021
IA/10220/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 June 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MHA (Iraq)
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel instructed by Hanson Law
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 8 June 2023

Anonymity:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

DECISION AND REASONS

1. The Appellant is a Kurdish national of Iraq born in 1990. He appeals with permission against the decision of the First-tier Tribunal (Judge C Mather) to dismiss his appeal on protection and human rights grounds.

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2. The Appellant has been in the UK since 2007. He has made several attempts to obtain protection and/or leave on human rights grounds, all unsuccessful. Two earlier appeals were dismissed by judges of the First-tier Tribunal who found his original account of fear of terrorists in Iraq to lack credibility. In this latest attempt the Appellant relied on his lack of identity documents, his *sur place* political activities protesting against the governments in both Erbil and Baghdad, and in respect of Article 8, his long residence in the UK.

3. His appeal was dismissed by Judge C Mather in a decision dated the 5th July 2022.

4. There are 11 grounds of appeal. In granting permission to appeal to this Tribunal, Upper Tribunal Judge Pickup observed that some have more merit than others. He did not however restrict the grant of permission. I therefore deal with all of them, save ground 11, which Mr Ahmed, I should say wisely, decided not to pursue.

Sur Place **Activity: Risk Assessment**

5. The strongest grounds, I am in agreement with Judge Pickup, are those concerning the risk that may arise upon the Appellant's return to Iraq because of his perceived political opinion. Successive Tribunals have rejected the credibility of the Appellant's original claim for protection, but there remains the question of whether his *sur place* activity – consisting in the main of attending demonstrations and posting political content online - could today give rise to a risk of ill-treatment by the authorities in Iraq.

6. Judge Mather's reasoning was as follows:

> 33. His *sur place* claims assume the overall credibility of the Appellant's claim that he has genuinely engaged in political activities in the UK that would put him at risk on return, I find that the timing of this aspect of his claim undermines his credibility. I note that the Appellant arrived in the UK in October 2007 and he has never mentioned that he was politically active in the UK even in his most recent submissions. The first mention of these activities appears in his recent witness statement dated 01.11.2021. I do not accept as credible his evidence that he did not appreciate the significance of these activities at the time. I find that the activities appear to have only commenced after the rejection of the most recent submissions in order to substantiate yet a further claim.
>
> 34. The Appellant's claimed attendance at demonstrations is addressed in only the briefest and vaguest terms. He stated that he did not belong to an organisation, but simply attended demonstrations along with a group of like-minded people. When asked why he wore a high-vis jacket, he said it was to make him look more professional.
>
> 35. The Appellant purports to rely on his Facebook evidence in support of his claim that he attended demonstrations and has expressed political views that put him at risk.

7. I am satisfied that several errors are revealed in these short paragraphs. Paragraph 33 is on its face somewhat contradictory. It begins by indicating that the Tribunal rejected as not credible that the Appellant has been engaging in *sur place* activity at all; it ends with an apparent acknowledgment that he has in fact attended demonstrations. Paragraph 34 appears to contain half an assessment: if the Tribunal intended to conclude this paragraph by finding that the IKR government would view the Appellant as an opportunistic hanger-on, rather than a genuine political opponent, it has not done so. Paragraph 35 reflects the Appellant's case, but contains no conclusions on it. The grounds cite the well known authority of Danian v SSHD [1999] EWCA Civ 3000 as authority for the proposition that political activity may well be motivated by a cynical attempt to gain protection, but that matters not if it still gives rise to a risk. The Tribunal was of course entitled to find that the Appellant's behaviour was indeed cynical, but it needed to go on to assess whether a risk arose regardless.

8. Mr Tan submitted that all of that would only be relevant if the country background material established that a risk arose for people who protest against the authorities in Iraq either abroad or online. Mr Ahmed in response took me to several passages in the bundle before the First-tier Tribunal which are indeed suggestive – I put it no higher than that – of such a risk. Reports from Amnesty International, Freedom House, the United States' State Department and others refer for instance to the IKR government using the internet to monitor dissent, and making arrests based on online content under provisions relating to the 'misuse of electronic devices'. The Respondent's own Country Policy and Information Note Iraq: *Opposition to the government in the Kurdistan Region of Iraq* (KRI) makes reference to the same provisions, and in fact sets them out in their entirety. Given that this assumed a central plank of the Appellant's case before the First-tier Tribunal this was all evidence which should have been considered.

9. I am accordingly satisfied that grounds 1, 2, and 3 are all made out.

Documentation

10. The Appellant is from Kirkuk. It is not in issue that he has been in this country since 2007, and that since at least 2011 his CSID has been held somewhere in a Home Office file. He does not have a passport, and so would be returned to Iraq using a *laissez passer*. Before the First-tier Tribunal the Appellant accepted that he had submitted a CSID to the Home Office a long time ago, but pointed out that it had now expired. If returned to Iraq he would need to be able to get to Kirkuk to get a new Iraqi National Identity Document (an 'INID'). Without a valid document he would not be able to get through the checkpoints to get there. He would be stuck in Baghdad, and exposed to a real risk of destitution. In accordance with Home Office policy, this risk entitled him to a grant of humanitarian leave.

11. This was the straightforward and familiar case advanced by the Appellant. The Tribunal dealt with it as follows:

> 37. There is no reason why the Appellant could not obtain a Laissez Passer. The Respondent holds the Appellant's CSID which shows the page number of the family book. I accept that failed asylum seekers can now be returned to any airport in Federal Iraq

and the KRI. I am satisfied the Appellant will be able to access the relevant documentation to enable him to enter Iraq and undertake onward travel safely.

12. The grounds submit that this short paragraph does not engage with the relevant country background material on Iraq set out the Upper Tribunal decision in SMO and KSP (civil status documentation, article 15) CG [2022] UKUT 00110 (IAC) (‘SMO II’), namely that virtually all civil registries in Iraq are now issuing only the biometric INIDs.

13. I agree. In its reference to the “page number of the family book” Tribunal appears to accept that the CSID may now be expired, but does not grapple with the Appellant’s case that this would make it impossible for him to get through the many checkpoints between him and an INID terminal. If the Tribunal meant that a *laissez passer* amounted to the “relevant documentation” for onward travel, it failed to have regard to the clear country guidance that these document are destroyed by the Iraqi authorities on arrival. Nor does the reference to “any airport in federal Iraq” make a sufficiently clear finding about where this man is to be sent. If, for instance, his enforced removal were directly into Kirkuk (Mr Tan tells me that an international airport has now been opened there), that would plainly be a very different factual scenario from him being sent to Baghdad. The Tribunal does not make a finding about that either way, and in the absence of a clear indication that there would be *enforced* removal to Kirkuk that was inadequate reasoning on this key issue in the appeal.

14. I find ground 5 to be made out.

Internal Flight

15. Ground 8 addresses the Tribunal’s conclusion that this Kurd, who speaks no Arabic, could reasonably be expected to relocate to Baghdad. As the parties agreed, this ground stands and falls with the risk assessment and so I need deal with it no further, other than saying that the internal flight analysis will need to be undertaken afresh once the risk or otherwise to this Appellant is re-assessed.

Private Life

16. So too the grounds relating to the Appellant’s private life in the UK. The essence of the Appellant’s complaint in grounds 4, 6, and 9 is that the Tribunal failed to conduct an assessment under 276ADE(1)(vi) (the relevant rule for the purpose of this decision) and/or Article 8 outside of the rules. These grounds are made out, but again the ultimate success of the Appellant’s Article 8 case depends very largely on what findings might be made about his protection needs.

Notice of Decision

17. The decision of the First-tier Tribunal is set aside in its entirety.

18. The decision in the appeal will need to be remade afresh by a judge other than Judge C Mather. Given the nature of errors and the extent of the fact finding required, I am satisfied that this should be undertaken in the First-tier Tribunal.

19. The Respondent is directed to file and serve a position statement, supported by evidence if possible, as to where she intends to effect the enforced removal of the Appellant. It would seem that her position has shifted since the refusal letter was served, and the Appellant is entitled to understand the case that he must meet.

20. There is presently an order for anonymity in this ongoing claim for protection.

Upper Tribunal Judge Bruce
13th June 2023