



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09209/2019**

THE IMMIGRATION ACTS

**Heard at George House, Decision & Reasons Promulgated
Edinburgh on 3 November 2021 On 18 November 2021**

Before

UPPER TRIBUNAL JUDGE MACLEMAN
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N R S

Respondent

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Ms H Cosgrove, Latta & Co, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. This case came before FtT Judge Cox for redetermination in light of *SMO Iraq CG* [2019] UKUT 00400. By a decision promulgated on 31 March 2021 the appellant's appeal was dismissed "under the Asylum Convention and under the Qualification Directive" but allowed "under the Human Rights Convention".

3. The SSHD sought permission to appeal, saying:

... the appellant's wife has a CSID card and family who can assist. There has been no indication that she is not in contact with them.

... the FtT has failed to apply *SMO* correctly ... given that without documentation the appellant will not be able to travel safely within Iraq, access accommodation and vital services and has a pregnant wife.

... it would have been appropriate to allow this appeal under humanitarian protection in line with *SMO* as relocation to Baghdad is appropriate.

4. We find those grounds confused and unclear. However, the FtT granted permission on the view that:

The position of the appellant's wife and her family is an unusual feature which deserved closer scrutiny ... and it is arguable that ... situation would have permitted return

The Hearing

5. Mr Diwnycz moved the grounds of appeal. He told us that there had been discussions between parties' agents which left him with the impression that the documentation available to the appellant's wife might be a National Identity Card rather than a CSID card, and that, in any event, only a copy, rather than an original document exists.

6. Ms Cosgrove opposed the appeal. She said that the only identifiable ground of appeal was failure to give adequate reasons to support the outcome on article 8 ECHR grounds. She referred to the assessment of the evidence and to the reasoning in the decision. She suggested that, on the facts as the Judge found them to be (and as narrated, without dissent, in the SSHD's grounds) the Judge might have allowed the appeal also on article 3 ECHR grounds. She explained that having been advised on the point, and in view of the lengthy procedure in which he has been involved, the appellant had elected not to appeal to the UT.

Analysis

7. The grounds of appeal are, at best, a challenge to the adequacy of the Judge's reasoning. At [55] of his decision, the Judge finds that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the rules.

8. The appellant's earlier appeal against the refusal of his protection claim was determined in a decision promulgated on 25 July 2017. The Judge correctly takes the findings in that decision as his starting point. The Judge then takes guidance from SMO, KSP & IM (article 15(c); identity documents) CG Iraq [2019] UKUT 400, before finding that the appellant's asylum and humanitarian protection claims cannot succeed.

9. The Judge then considers Article 8 ECHR. At [47] the Judge finds that neither the appellant nor his wife has a CSID, nor any identity documents in the UK. At [48] the Judge finds that the appellant is unlikely to be able to obtain a replacement CSID in Iraq within a reasonable timescale.

10. Between [36] and [54] the Judge sets out adequate reasons for reaching his conclusion that there would be very significant obstacles to the appellant's integration in Iraq. For the reasons set out in those eighteen paragraphs, the Judge finds that the appellant meets the requirements of paragraph 276 ADE(1)(vi) of the immigration rules.

11. [TZ \(Pakistan\) and PG \(India\) v The Secretary of State for the Home Department \[2018\] EWCA Civ 1109](#) tells us that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1). As the appellant meets the requirements of paragraph 276ADE(1)(vi) of the rules, the respondent's decision must be a breach of his right to respect for private life.

12. In [Shizad \(sufficiency of reasons: set aside\)](#) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

13. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all the evidence. There is nothing unfair in the procedure adopted nor in the way the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The grounds show no error of law in this respect.

14. As to the appellant's wife having identification, the grounds do not arrive at any statement of legal error and appear to have gone wrong in saying that she has a CSID card. It was not argued in the FtT that the appeal failed for this reason. Mr Diwyncz did not seek to press it, and he helped to identify among the evidence which was before the FtT and before previous tribunals that she has only a copy nationality certificate and is not to any significant extent better placed than her husband. This aspect of the grounds, although it appears to have led to the grant of permission, leads us nowhere.

DECISION

15. The SSHD's appeal is dismissed. The decision of the First-tier Tribunal promulgated on 31 March 2021 stands.

16. The FtT made an anonymity direction. There is no very apparent need for one, but the matter was not addressed in the UT, so anonymity is maintained at this stage.

P Doyle

5 November 2021
DUT Judge Doyle

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.