



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2021-001257
(PA/00081/2021)

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On : 21 November 2022**

**Decision & Reasons Promulgated
On: 29 January 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**HMA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, instructed by Legal Justice Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 7 October 2000, from Halabja in the IKR. He claims to have fled Iraq on 1 October 2018 and travelled through Turkey and France to the UK, arriving in the UK, clandestinely, on 21 January 2019. He was served with removal papers as an illegal entrant and claimed asylum on 22 January 2019. His claim was refused on 4 December 2020, and he appealed the refusal decision to the First-tier Tribunal.

2. The basis of the appellant's claim was that he was at risk on return to Iraq as a result of his sexuality. The respondent did not accept his claim to be bisexual or that he had encountered problems in Iraq as a result his sexuality and considered that he was not at any risk on return to Iraq.

3. In a decision promulgated on 7 November 2021, First-tier Tribunal Judge Atkinson dismissed the appellant's appeal against the respondent's decision, rejecting his account of his sexual orientation and finding him to be at no risk on that basis. In regard to the issue of documentation, the judge did not accept the appellant's claim to be unable to call on family support to obtain his existing CSID or in obtaining a new one, or an equivalent identity document. He concluded that the appellant would be able to access his original CSID and could travel from Baghdad to the IKR and would not be at risk of serious harm. He found that the appellant could return to his home area, and he dismissed the appeal on all grounds.

4. Permission to appeal to the Upper Tribunal was sought, and granted, on the grounds that the judge had arguably failed to resolve or engage with the appellant's case under SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 and had failed to have regard to the appellant's account of his CSID and passport having been taken from him by the agent on his journey to the UK. Permission was also sought on a third ground challenging the judge's conclusions on the appellant's sexuality.

5. The respondent conceded that the judge had erred in his approach to the issue of re-documentation but did not accept that the judge erred in other respects. The third ground was therefore the only ground addressed at an error of law hearing on 12 September 2022.

6. Following that hearing, in a decision promulgated on 3 October 2022, I concluded that the judge had made no errors of law in his decision rejecting the appellant's account of his sexuality and the risks arising from that. However, given the respondent's concession in relation to the issue of re-documentation, I set aside the judge's decision in that regard and directed that the decision be re-made in the light of the most recent country guidance and for consideration of the question of the appellant's ability to obtain the necessary identity documentation and to return to his home area or to relocate to the IKR or elsewhere in Iraq. The judge's adverse credibility findings were preserved. My decision is attached as Annex 1.

Hearing and Submissions

7. The matter then came before me at a resumed hearing for the relevant issue to be determined. The appellant had prepared an updated witness statement for the hearing, dated 2 November 2022, and he also gave oral evidence before me through an interpreter in the Kurdish Sorani language.

8. The appellant adopted his statement and was cross-examined by Mr Tan. He confirmed his evidence in his statement of 2 November 2022 that his passport and CSID were taken off him by the agent during his journey from Iraq and

were thrown into the sea. When referred to his evidence in his statement of 28 April 2021, where he stated that he had left his ID card in Iraq, the appellant said that that was a mistake and he had not said that. When asked why he had not corrected that account in his subsequent statements, the appellant said again that it was a mistake and he had stuck with his more recent account. When asked why he had said in his screening interview that the location of his passport was unknown, the appellant said that he had stated initially that all his paperwork and documents were taken by the agent and thrown away so that he did not know where his passport was. After he had said that it was taken off him by the agent he was not asked any further questions so he did not mention that it was thrown into the sea. There was no re-examination.

9. Both parties then made submissions.

10. Mr Tan submitted that the appellant's account in his latest statement, that the agent had thrown his documents into the sea, had never been said before, either at the screening or asylum interviews, or in any of his previous statements. He had said that the agent took "it" and was therefore referring to one document, but there were no references to the documents being thrown into the sea. At his screening interview he simply said that he did not know where the passport was. In his statement of 28 April 2021 the appellant had said that he left the ID card in Iraq and gave as his reason for being unable to obtain it the fact that he had lost contact with his family. When viewed in the context of the other negative credibility findings the only conclusion to be reached from the inconsistency in the appellant's evidence was that his account of his documentation was not to be believed. Mr Tan asked me to find that the appellant's ID card was in Iraq and that he had contact with his family members and could therefore access his documentation within a reasonable time either by his family sending it to him or by them meeting him on his return to Iraq and giving him the document.

11. Mr Holmes submitted that the answer at 1.8 of the screening interview of "unknown" in relation to the appellant's passport was unlikely to have been the appellant's response, but an interpretation by the interviewer of what he had said. The relevant part of the evidence was the asylum interview at questions 27 to 29 where the appellant was asked about both his passport and his CSID and therefore his reference to "it" in reply clearly meant both documents, as he was not asked any further questions in that regard. It should therefore be taken from the interview that the appellant's account was that both documents had been taken by the smuggler. The anomaly only arose from the appellant's witness statement of 28 April 2021 but the appellant never adopted that statement as part of his evidence and it was clear from [16] of Judge Atkinson's decision that he amended his account, as he had amended it today. The appellant's account was entirely plausible, given that it was common place for those taking the refugee trail to either dispose of their documentation or have it taken off them, even if that was nefarious and was done in order to assist their claim. The appellant's account of having no documentation was therefore reasonably likely to be true and the appeal should be allowed.

Discussion and Findings

12. As Mr Tan accepted, the issue in this case was a very narrow one as it was not being said by the Secretary of State that the appellant could obtain a copy of his CSID but that he could obtain his original card from Iraq. The only issue, therefore, was whether the appellant had access to his original CSID. Mr Tan accepted that if I found the appellant's claim credible in that regard and in regard to the loss of his documentation, then the appeal should be allowed.

13. I start by setting out the appellant's evidence about his identity documents throughout the asylum process. The screening interview at paragraph 1.8 records his answer to the question "where is your passport" as "unknown". At his asylum interview on 21 February 2020 his response to question 27 "have you ever had a passport?" was "yes I had Iraqi passport yes"; to question 28 "have you ever had a CSID card" his response was "yes"; and to question 29 "where are both your CSID and passport now?" his response was "when I left Iraq the smuggler took it from me". For his appeal before the First-tier Tribunal the appellant produced two statements, the first in his main bundle dated 28 April 2021 and the second in a supplementary bundle dated 8 September 2021. In his statement of 28 April 2021 at [15] he stated that he did not have any Iraqi documents or his passport in his possession as they were taken from him by the agent during the journey. He stated further, in the same paragraph, that he had left his ID card in Iraq but could not request it from his family as he had lost contact with them. There was no reference in his second statement to his documents, but at the hearing before the First-tier Tribunal the appellant amended [15] of his first statement so as to read that the agent had confiscated his identity card. In his most recent statement dated 2 November 2022 produced for this hearing, the appellant's evidence was that he did not have his Iraqi passport or his CSID as they were taken off him during his journey by the agent who disposed of them in the sea. At the hearing before me the appellant said that his reference in his first statement to having left his ID card in Iraq was a mistake and further that he had not mentioned in his interviews that the agent had thrown his documents into the sea because he was not asked further questions on the matter.

14. Judge Atkinson, in dismissing the appellant's appeal, found him to be an unreliable witness who had presented a claim which was not credible. He rejected the appellant's claim to be homosexual or bisexual and to be at risk on the basis of his sexuality, he did not accept that the appellant had lost contact with his family in Iraq and he found that the appellant could obtain his existing CSID from his family in Iraq. The latter finding formed part of the error of law and is a matter to be re-decided, but the adverse credibility findings were otherwise preserved.

15. As Mr Tan submitted, the appellant's evidence in relation to his identity documents has not been consistent. His evidence in his statement of 28 April 2021 was that his ID card was in Iraq and the only reason he gave for not being able to obtain his ID was that he had lost contact with his family. There was no attempt by the appellant to amend or elaborate upon that evidence in his following statement of 8 September 2021 and it was not until the actual hearing before Judge Atkinson on 19 October 2021 that he then sought to amend his statement to the effect that the agent had confiscated the

document. At the hearing before me the appellant could not explain why his statement of 28 April 2021 had recorded his evidence as being that the ID card was in Iraq, but simply stated that it was a mistake. It seems to me that there is no reason to believe that that statement had been made in error. There was a declaration at the end of the statement to the effect that it had been read back to the appellant in his language and confirming that it was true and the appellant had signed the statement. Further, the statement was not inconsistent with the appellant's previous evidence at his screening interview, that the location of his passport was "unknown", or the evidence at his asylum interview which was not at all clear when referring to "it" having been taken from him by the smuggler, neither of which specified the location of his ID card. In addition, the appellant's evidence at the hearing before me, that the agent had thrown his documents into the sea, was not a matter he had ever mentioned previously and was inconsistent with his evidence in his statement of 28 April 2021 at [15] where his statement, that the agent had "probably destroyed them", suggested that he did not know what the agent had done with his documents.

16. Accordingly it seems to me that the appellant's evidence has simply evolved over time in order to support and adapt to a claim that he is unable to return to Iraq and I do not consider that the position as he now presents it is a genuine one. When viewed in the context of the other negative credibility findings made against him in regard to his main claim, I find the inconsistencies in his evidence to reflect the fact that he has simply not provided a truthful account of his documentation. I agree with Mr Tan that the appellant's evidence should be taken as first given in his statement of 28 April 2021, namely that he had left his identity document in Iraq. It has not been accepted that he has lost contact with his family in Iraq and, given that that was the only reason provided for his inability to obtain his original CSID, I conclude that he would be able to access his original CSID within a reasonable period of time, either by his family sending it to him here or by meeting him at the airport on his return to Iraq and handing it to him in person.

17. Accordingly, in line with the guidance in SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110, the appellant would be able to travel back to his home area in the IKR where he could then obtain a new INID card by presenting himself in person at the relevant Civil Status Affairs (CSA) office. His claim to be at risk on the basis of his sexuality has been rejected and there is no reason to consider that he would be at risk on any other basis in his home area. That being the only outstanding issue in determining this appeal, I find that the appellant's asylum and human rights claims cannot succeed and his appeal is accordingly dismissed on all grounds.

DECISION

18. The original Tribunal was found to have made an error of law and the decision was set aside to the extent stated. I re-make the decision by dismissing the appellant's appeal on all grounds.

Signed S Kebede
Upper Tribunal Judge Kebede
2022

Dated: 23 November

ANNEX 1



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2021-001257
(PA/00081/2021)

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On : 12 September 2022**

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**HMA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, instructed by Legal Justice Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed his appeal against the respondent's decision to refuse his asylum and human rights claim.
2. The appellant is a citizen of Iraq born on 7 October 2000, from Halabja in the IKR. He claims to have fled Iraq on 1 October 2018 and travelled through Turkey and France to the UK, arriving in the UK, clandestinely, on 21 January 2019. He was served with removal papers as an illegal entrant and claimed asylum on 22 January 2019. His claim was refused on 4 December 2020, and he appealed the refusal decision to the First-tier Tribunal.

3. The basis of the appellant's claim is as follows. He is an Iraqi Kurd who is at risk on return to Iraq as a result of his sexuality. The appellant claimed to be bi-sexual and realised in March or April 2018 that he was attracted to men as well as women. He began a relationship with B, a boy from his school, in July 2018. They were caught having sex by his little sister and he fled Iraq the same day with the assistance of his maternal uncle. His uncle informed him that there was an arrest warrant out against him, and he feared being killed by B's family or arrested by the authorities if he returned to Iraq.

4. In refusing the appellant's application, the respondent did not accept that he was bi-sexual or that he had encountered problems in Iraq as a result his sexuality. The respondent considered that the appellant could safely return to Iraq, that he was not at any risk on return and that his removal to Iraq would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Atkinson. In support of his appeal, he produced an appeal bundle and a supplementary bundle. In the main bundle he made a statement, dated 28 April 2021, in which he claimed to have lost contact with his family in Iraq, that his documents were taken from him by the agent during his journey to the UK and that he had left his ID card in Iraq and could not request it from his family because he had no contact with them. In his supplementary bundle the appellant enclosed a newspaper article from Shar Press and a photograph of him with his partner in the UK. He also enclosed a further statement, dated 8 September 2021, in which he stated that he had spoken by video chat to a friend in Iraq who had told him that he had read in the newspaper that B had been killed by his father and that his (the appellant's) name had been mentioned in the article. His friend had sent him the link for the article but told him not to call again because his actions had been very shameful and had resulted in B being killed. He had printed the newspaper article off from the link. The appellant also referred to a new relationship with a man S and said that he hoped to join LGBTI groups in the UK.

6. Judge Atkinson referred, in his decision, to a previous adjournment of the appeal in order for the respondent to carry out enquiries in relation to the newspaper article produced by the appellant but noted that neither party before him had any knowledge of the adjournment and no enquiries had been made in relation to the document. The judge heard from the appellant. He found the appellant's account of his sexual orientation to be inconsistent, varying from him being attracted to both males and females and to have had a relationship with a woman, to being attracted only to men. He attached little weight to the Shar Press article as it was a simple printout from the internet with no supporting evidence showing its provenance. He also attached little weight to the appellant's evidence regarding his relationship with a man known as S in the UK. The judge did not find the appellant's account credible and did not accept his account of his sexual orientation. He did not accept that the appellant was unable to call on family support to obtain his existing CSID or in obtaining a new one, or an equivalent identity document. He concluded that the appellant would be able to access his original CSID and could travel from Baghdad to the IKR and would not, therefore, be at risk of serious harm. He found that the appellant could return to his home area, and he dismissed the appeal on all grounds.

7. Permission to appeal to the Upper Tribunal was sought on three grounds: that the judge had failed to resolve or engage with the appellant's case under SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400; that the judge had failed to have regard to the appellant's account of his CSID and passport being taken from him by the agent; and that the judge had made mistakes of fact when finding there to

be no evidence of the provenance of the newspaper article, when considering the circumstances in which the appellant claimed to have been discovered by his sister, and when suggesting that the appellant had been confused by the respondent's terminology in relation to his sexuality.

8. Permission to appeal was granted in the First-tier Tribunal on the first two grounds only but was subsequently granted by the Upper Tribunal on all grounds. The matter then came before me for an oral hearing.

9. In a rule 24 response dated 23 February 2022, the respondent conceded that the judge had erred in his approach to the issue of re-documentation but did not accept that the judge erred in other respects.

10. Both parties made submissions on the remaining, third ground (the first two grounds being considered together as one ground relating to re-documentation).

11. Mr Holmes submitted that the judge was wrong to find that there was no evidence of the provenance of the newspaper article when there were at least two sources for its provenance, namely the appellant's own oral evidence about his friend sending the link to him, and the article itself. As for the third mistake of fact referred to in the grounds, the judge had erred in his findings as to there being confusion about the terminology of sexuality, as it was clear from the interview record at question 12 that the appellant was simply not sure what was being asked of him.

12. Mr Tan submitted that the judge had considered the weight to be given to the newspaper article in accordance with the principles in Tanveer Ahmed and had been concerned as to the provenance of the information in the article rather than the author of the article. There was no mistake of fact by the judge. The second mistake of fact mentioned in the grounds was not addressed by Mr Holmes, but the judge was entitled to have concerns about the appellant's lack of attempts at privacy given the risks involved of being caught. As for the third mistake of fact, the judge properly found that the appellant had given inconsistent evidence as to which sex he was attracted to.

Findings on the error of law

13. The first alleged mistake of fact relied upon by Mr Holmes in his grounds of challenge relates to the news article produced by the appellant and asserts that the judge erred by finding there to be no evidence of the provenance of the article. His submission was that there were at least two sources of the provenance of the article, namely the appellant's own evidence in his supplementary witness statement and the article itself which included the URL. However, it seems to me that that challenge is little more than a disagreement with the weight the judge accorded to the document and that the judge had full regard to all the evidence related to the article. The judge referred to the article at various points in his decision: at [13] where he had regard to the supplementary bundle containing the document and the appellant's statement explaining how he accessed and obtained it; at [24] where he specifically referred to the appellant's explanation about the article; at [33] where he considered Mr Holmes's submissions; and then at [48] where he considered the news article in the light of the evidence as a whole in line with the principles in Tanveer Ahmed. As to his reference at [48] about the provenance of the article, it is clear that the judge was concerned by the lack of evidence as to the source of the information in the article and about the publisher and was, it seems to me, perfectly entitled to have such concerns, particularly when considered in light of the evidence as a whole. Clearly the judge had

full regard to all the evidence relating to the article and it was a matter for him, having assessed the evidence as a whole, to decide what weight was to be accorded to it. I fail to see any basis for concluding that he made any factual or legal error in that respect, and I find no merit in the grounds in that regard.

14. Mr Holmes did not address the second alleged mistake of fact relied upon in the grounds of challenge. That ground asserts that the judge made a mistake of fact when considering the circumstances in which the appellant's sister observed him together with B. However, again I fail to see any mistake of fact by the judge. Whether or not it was the bedroom door being left open or the appellant's sister returning home earlier than anticipated which was the operative factor in the relationship being discovered, I agree with Mr Tan that the point being made by the judge at [39] to [41] was that it was remarkable that the appellant had not taken appropriate measures for privacy given the level of risk in being caught in such activity. That was clearly a matter which the judge was entitled to take into account. In any event, that was simply one amongst many other reasons the judge gave for finding the appellant's account of his relationship with B to be lacking in credibility and, as Mr Tan submitted, the grounds do not seek to challenge the further adverse points taken at [42] and [43].

15. The third mistake of fact referred to by Mr Holmes related to the appellant's sexuality and the asserted inconsistency in his evidence at his interviews as to whether he was bisexual or homosexual. The ground of challenge asserts that the judge misconstrued his submission as being that the respondent had caused confusion in the use of terminology, when his more nuanced submission had in fact focussed on the appellant's own sexual identification and changing sexual desires. However, I do not consider that the judge misunderstood or misconstrued the case being made before him. The judge noted that, whilst in his asylum interview the appellant had stated that he was attracted to both males and females (questions 13 to 18), that he had previously only been attracted to women and had had a relationship with a woman (question 62) before finding himself attracted to B, his oral evidence at the hearing was that it was not correct that he was attracted to both men and women and that he was only attracted to men. That was a clear inconsistency in the evidence and it was that inconsistency which the judge noted and considered to undermine the credibility of the appellant's claim. I agree entirely with Mr Tan that that was a clear basis for the judge to make the adverse finding that he did.

16. Accordingly, it seems to me that the judge gave full and cogent reasons for rejecting the appellant's account of his relationship with B and his claim in regard to his sexuality. He reached his conclusions upon a full and careful assessment of all the evidence taken as a whole and was perfectly entitled to accord the weight that he did to the evidence. I find no errors of fact or law in the judge's decision in that regard.

17. However, given the respondent's concession in the rule 24 response, I set aside the judge's decision in relation to the assessment of risk on return. That decision must be re-made in the light of the most recent country guidance. The case will therefore be listed for a resumed hearing in the Upper Tribunal for consideration of the question of the appellant's ability to obtain the necessary identity documentation and to return to his home area or to relocate to the IKR or elsewhere in Iraq. The judge's adverse credibility findings are preserved.

Anonymity

The First-tier Tribunal made an anonymity order and I maintain that order.

Directions

1. No later than 7 days before the date of the resumed hearing, both parties are to file with the Upper Tribunal, and serve on the other party:
 - a skeleton argument addressing the appellant's ability to obtain the necessary identity documentation and to return to his home area or to relocate to the IKR or elsewhere in Iraq in light of the most recent country guidance
 - any further evidence upon which they intend to rely at the hearing
2. It is assumed that the hearing will proceed on the basis of submissions only and therefore no interpreter will be booked unless a specific request is made.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 19 September 2022