



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10302/2019**

THE IMMIGRATION ACTS

**Heard at Bradford
On 21 October 2022**

**Decision & Reasons
Promulgated
On 17 July 2023**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

Between

**R H A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is an Iraqi citizen of Kurdish ethnicity. The Appellant's brother arranged for him to leave Iraq on 14 July 2018 and he arrived in the United Kingdom clandestinely on 9 December 2018 having travelled through Turkey, Greece, France and other European countries.

2. The Appellant claimed asylum but the respondent refused his application for asylum and ancillary protection on 11 October 2019. The Appellant appealed this decision to the First-tier Tribunal.
3. Judge of the First-tier Tribunal Forster (hereinafter called the FTTJ) dismissed his appeal and made the following findings of fact:
 - (a) His account of how he met YM was plausible. The FTTJ accepted they met in the shop where he worked, exchanged numbers and thereafter communicated by texts.
 - (b) His account of a marriage proposal was credible and the FTTJ accepted that first and second proposals of marriage were rejected and the relationship continued.
 - (c) YM's brothers threatened to kill the Appellant after the rejected offers of marriage because he had dishonoured their family. It was this reason the Appellant left.
 - (d) Whilst the Appellant's father had been a member of the PUK the FTTJ was unable to make any further findings about problems the Appellant may face.
4. The FTTJ went on to consider whether internal relocation would be feasible within the IKR and found that as he was born in Dahuk his birth would have been registered there and so his entry to the IKR would be facilitated and it was not unreasonable for him to relocate to either Erbil or Sulaymaniyah in the IKR. Grounds of appeal against this decision were lodged and permission to appeal was given on 18 November 2020.
5. On 30 November 2021 Upper Tribunal Judge Lane found there had been an error in law. In doing so he found as follows:
 - (a) The FTTJ's treatment of his ability (or lack of ability) to re-document himself so as to avoid ill treatment as an Iraqi Kurd travelling from Baghdad to his home area of Iraq from Baghdad was flawed.
 - (b) The FTTJ's finding the Appellant was still in touch with his family was sound and was preserved.
 - (c) The FTTJ did not make clear findings that his family members would be able to send his existing CSID documents to him before he departs to Baghdad and there was little discussion of the relative availability of CSIDs or the new INID in the Appellant's home area or how the Appellant might supply biometric data for the latter by proxy and the Appellant's ability to recall details from entries in the Family Book.
 - (d) The FTTJ's findings of fact were preserved.
6. On 21 September 2022 Upper Tribunal Blum made a Transfer Order

enabling this appeal to be dealt with by ourselves as a panel.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

PRELIMINARY ISSUES

7. Mr Diwnyez appeared in person at the Hearing Centre and, by agreement of the Tribunal, Ms Cleghorn appeared remotely over a video connection.
8. Ms Cleghorn confirmed she did not intend to call any oral evidence, but would be submitting the appeal should be allowed on article 3 ECHR grounds on the basis the Appellant was unable to return to his home area and he would be unable re-document himself without facing a severe grilling at the various checkpoints he would have to pass through.
9. The Appellant was not present for the formal part of the hearing as the Tribunal were unaware he had attended. Having been made aware of his attendance the Tribunal attempted to explain to him what had happened and assured him that Ms Cleghorn had not intended to call him to give evidence.

SUBMISSIONS

10. Ms Cleghorn adopted her skeleton argument and submitted that the Appellant had been born in Dahuk which was in the Dahuk Governate of the IKR but any new documents would have to be obtained from Tuz Khumatu which was in the Saladin Governate which is outside the IKR. She stated this was because his family had relocated there.
11. Ms Cleghorn submitted the Appellant's evidence was that his family were no longer living in Tuz Khumatu, but more importantly the FTTJ accepted the Appellant did not have access to his CSID and he would have to re-document himself to obtain either a CSID or the new INID.
12. The country evidence and the Tribunal in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) confirmed that only limited areas, which did not include the Appellant's home area, were still issuing CSIDs so it would be necessary for the Appellant, in person, to go to his home area and re-document himself.
13. Ms Cleghorn stated that, if the appellant were to be returned to Erbil or Sulaymaniyah, he would be unable to travel to Dahuk to try and document there as he would be certain to pass through checkpoints and leaving one Governate and attempting to enter another Governate without documentation would lead to him facing harsh interrogation ('a grilling')

which would breach his article 3 ECHR rights.

14. Mr Diwnycz submitted that there were, in theory, enforced returns to airports in the IKR as the UK Government had secured an agreement with the Iraqi authorities for failed asylum seekers to be returned to any airport in the IKR. However, Mr Diwnycz stated an airport in Dahuk did not currently exist so any return to the IKR was likely to be either via Erbil or Sulaymaniyah and neither of those places were in the same Governate as Dahuk. Mr Diwnycz therefore conceded that even if he was registered in Dahuk the Appellant would be unable to be returned directly to Dahuk and, in order to return to Dahuk, the Appellant would be required to pass through different checkpoints in different Governates and Mr Diwnycz accepted that, if this happened he could not say that the Appellant would not be 'grilled' by the authorities to establish his identity.
15. Mr Diwnycz also did not disagree with Ms Cleghorn about the difficulties of re-documenting in Tuz Khumatu.
16. Whilst not formally conceding the issue he acknowledged the Tribunal could conclude returning him to Iraq would breach his article 3 ECHR rights.

FINDINGS

17. At an earlier error of law hearing the FTTJ's findings were preserved and our decision today centred on the issue of whether returning the Appellant would breach this Appellant's article 3 ECHR rights.
18. Since this appeal was heard by the First-tier Tribunal, the Upper Tribunal have provided fresh country guidance (SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) on returnability to Iraq and the Respondent has issued fresh guidance (CPIN: internal relocation, civil documentation and returns July 2022) which includes confirmation from the Iraqi authorities (Annex A) that residents from the Kurdistan Region can now be flown direct to airports in the IKR.
19. The starting point for us is that the FTTJ accepted the Appellant did not have access to his original CSID and he would have to re-document himself.
20. Mr Diwnycz accepted the Appellant could only travel within Iraq, be that mainland Iraq or the different Governates in the IKR, with the correct documentation. As he did have documents, we considered whether documents would be issued in Dahuk or Tuz Khumatu.
21. If re-documentation took place in Dahuk we were told there was no airport in Dahuk and the Appellant would have to be flown to an airport which was in a different Governate to Dahuk. Mr Diwnycz also accepted that to travel to Dahuk Governate from Erbil Governate the Appellant would have to pass through various checkpoints.

22. The Appellant could not simply remain in Erbil or Sulaymaniyah because it had been accepted by the FTTJ that he had no family support in the IKR. Mr Diwnycz conceded these circumstances would place an undocumented person at risk and would breach his article 3 ECHR rights.
23. The second option was if the re-documentation process was to take place in Tuz Khumatu. Regardless of where he was returned to (IKR or Baghdad) he would face similar issues to those that would be encountered when traveling between Governates within the IKR.
24. Mr Diwnycz acknowledged that whilst travel within a single Governate was possible, travel between two or more Governates would not be possible without the correct documentation. Again there would be a breach of Article 3 ECHR.
25. In the circumstances, we allowed the appeal on article 3 ECHR grounds.

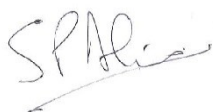
NOTICE OF DECISION

26. We have remade the decision.
27. The Appellant's appeal against the decision of the Secretary of State dated 11 December 2019 is allowed on article 3 ECHR grounds only.

Signed

Dated

9 August y



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

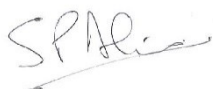
FEE AWARD

No fee award made as no fee was paid.

Signed

Dated

9 August y



Deputy Upper Tribunal Judge Alis