



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002755

First-tier Tribunal No:
PA/52437/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th September 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

AA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Elliott-Kelly, instructed by Fisher Jones Greenwood

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 30 August 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

1. The appellant, who was born on 19 August 2002 is a citizen of Iraq of Kurdish origin. His application for asylum was made in September 2019. He appeals against a decision of the Secretary of State made on 13 May 2021 to refuse his asylum and protection claim. His appeal against that decision was dismissed by First-tier Tribunal Judge S Dyer, for the reasons set out in her decision promulgated on 10 May 2022. For the reasons set out in my decision, in a decision of the Upper Tribunal dated 23 December 2022, that decision was part was set aside.

The Appellant's Case

2. The appellant's case is that he is at risk of persecution as he is the target of a family blood feud and faces a serious possibility of serious harm on return as a result. His case is that the feud arose as a retribution for actions taken by his father who died following a confrontation with some members of a powerful local political family. He stated the state cannot provide sufficiency of protection because of the endemic corruption which means that the local police are influenced by the other more powerful family; and, that he cannot safely relocate internally because of the family's internal links either within the Independent Kurdish Region ("IKR") or elsewhere. It is also his case that he had no passport or Iraqi identity documents as his identity card had been taken by the those who smuggled him from Iraq into the United Kingdom.

The Secretary of State's Case

3. The Secretary of State accepts that the appellant is an Iraqi Kurd but did not accept his account given the number of internal inconsistencies and in any event he could relocate elsewhere in Iraq it being her case in the refusal letter that he would be able to obtain documentation before he left the United Kingdom.
4. The judge heard evidence from the appellant, submissions from Ms Elliott-Kelly who appeared below as well as before me and from a Presenting Officer. The judge also had before her as part of the background material a report from a country expert, Dr Giustozzi. The judge found that:-
 - (i) the claim lacked detail in areas in which it would be reasonable to expect to see more evidence [37] and that his account with regards to the behaviour of the other family is inconsistent with the behaviour that might be expected in a genuine blood feud there being no evidence of threats aside from one drive by shooting by unidentified attackers;
 - (ii) the appellant's evidence with regards the lack of contact with his mother was not credible [37];
 - (iii) the appellant's account with regards either to the attack on him or his father was not truthful [38];

- (iv) in any event there was insufficient evidence to substantiate any risk to him from the Lala Sarhad family or evidence that the Sarhad sons or that they had influence outside the locality where the appellant lived and the lack of confirmation as to the status of rank of parts of the family or that they had influence outside the locality where the appellant lived and that he could therefore safely relocate to Suleimaniyah [40];
 - (v) that the appellant had not wished to be re-documented [42], and noted there was no risk to him obtaining an ID from within the IKR or by proxy [43];
 - (vi) notwithstanding the guidance in SMO and KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110] but on the basis of the evidence of Dr Giustozzi the appellant will be able to re-document himself in Baghdad.
5. The appellant sought permission to appeal on the grounds that the judge erred in preferring the evidence of Dr Giustozzi and therefore erred in departing from country guidance improperly.
 6. On 14 June 2022 Judge Galloway granted permission.
 7. Subsequent to that in her Rule 24 response dated 30 June 2022 the Secretary of State accepted that there was a material error of law at paragraph 47 of the determination in that the judge had departed from country guidance but failed to provide adequate reasons for doing so.
 8. It was on that basis that the appeal came before the Upper Tribunal on 30 September 2022, the panel consisting of UTJ Rintoul and DUTJ L Shepherd.
 9. At the outset of that hearing, it became clear that the respondent had, in her rule 24 letter, conceded that the decision of the First-tier Tribunal involved the making of an error of law. That error was, as averred in the grounds, that the judge erred in not following the Country Guidance set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)(see paragraph [47] of the FtT's determination).
 10. The panel was satisfied that this was a sensible concession and would have found that the judge did err in that manner. We therefore found that the decision of the First-tier Tribunal involved the making of an error of law and must be set aside for a fresh decision on that limited point, that is, whether the appellant can obtain (or has access to) the necessary documentation, be that an CSID or INID, in order to travel from Baghdad to the IKR where he would not be at risk.
 11. Following a transfer order, the matter came back before me sitting alone.
 12. Prior to the hearing on 30 August, there was correspondence between the parties which helped to narrow the issues. The appellant provided a short bundle for the hearings and a skeleton argument; the respondent

provided a witness statement relating to forced returns to the IKR and submissions from Mr Terrell.

13. Although the respondent's documents have been submitted late, Ms Elliott-Kelly made no objection to these.

14. It was agreed in submissions that the issue before me is a narrow one:

Does the appellant have access to his CSID document?

15. It was conceded by Ms Elliott-Kelly that if the answer to that question was yes then the appeal would fail. Mr Terrell equally helpfully agreed that if the answer to the question is no, then the appellant would be at risk of an article 3 breach and thus be entitled to humanitarian protection in accordance with current policy.

The Appellant's Evidence

16. The appellant adopted his witness statement and was cross-examined. He said that he understood what a CSID is, accepting that it was a valuable and important document but in the IKR they did not carry them on a daily basis. He said his mother had handed it over to him when he left but that it had been taken from him by the agent whilst he was travelling. He did not know why his mother had given it to him.

17. The appellant said that he did not ask the agent for it back nor had he asked the other people who brought him to the United Kingdom as he was concerned about his safety. He said the agent had asked him to hand over not just the ID card but all other items including mobile phones. He did not ask why. He denied saying that this was untrue.

18. In re-examination the appellant said that prior to his journey his mother had given him his CSID, his mobile phone and some money which he later found out was euros. That had been hidden in his belt which is how he was able to obtain it when he came to the United Kingdom. He had not been able to do the same with his phone or ID card.

Submissions

19. Mr Terrell submitted that in the light of Judge Dyer's sustained findings it was the greater part of the appellant's claim that had been rejected. There was no basis on which he should now be believed that he had not retained his CSID or had access to it. He had given no proper reason as to why if it was so important, and it had no obvious purpose outside Iraq, it would have been given to him by his mother. He submitted that the appellant did have access to the document and if it was with family they could deliver it to him or meet him at any relevant airport and thus he would not be at risk on return.

20. Ms Elliott-Kelly submitted that the appellant's evidence should be believed given that he had been consistent as shown by what he had said

in his screening interview and in his substantive asylum interview. She submitted the account of it being taken by the agent was credible as was the fact that he had not questioned it bearing in mind his evidence that they were a gang armed with knives. She submitted that the respondent had not taken any credibility point pursuant to section 8 of the 2004 Act with respect to his travel to the United Kingdom on this issue. She submitted further that the importance of the document worked both ways: it was important that it would have been given to him by his mother as evidence of his identity.

Findings

21. It is for the appellant to demonstrate he has a well-founded fear of persecution, or that he is at risk of serious ill-harm to the lower standard.
22. The agreed issue in this case is narrow: did the appellant leave his CSID card in Iraq or was it taken from him by an agent on the journey?
23. In summary, the appellant's case is that despite the preserved findings of Judge Dyer that the appellant had not been truthful in his core account, I should accept what he says in respect of his CSID card.
24. I bear in mind that it is possible that somebody who has not told the truth in one aspect of their claim may have told the truth in other parts of their claim.
25. I remind myself of what was held by the Supreme Court in MA (Somali) v SSHD [2010] UKSC 49 at 32 to 33:

32. Where the appellant has given a totally incredible account of the relevant facts, the tribunal must decide what weight to give to the lie, as well as to all the other evidence in the case, including the general evidence. Suppose, for example, that at the interview stage the appellant made an admission which, if true, would destroy his claim; and at the hearing before the AIT he withdraws the admission, saying that his answer at interview was wrongly recorded or that he misunderstood what he was being asked. If the AIT concludes that his evidence at the hearing on this point is dishonest, it is likely that his lies will assume great importance. They will almost certainly lead the tribunal to find that his original answers were true and dismiss his appeal. In other cases, the significance of an appellant's dishonest testimony may be less clear-cut. The AIT in the present case was rightly alive to the danger of falling into the trap of dismissing an appeal merely because the appellant had told lies. The dangers of that trap are well understood by judges who preside over criminal trials before juries. People lie for many reasons. In *R v Lucas* [1981] QB 720, the Court of Appeal had to consider whether a statement containing a lie was capable of amounting to corroboration. At p 724F, Lord Lane CJ said:

"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and fear of the truth. The jury should in appropriate cases be reminded that

people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family...."

33. Although the analogy is not exact, it is close enough for these words to be of relevance in the present context. So the significance of lies will vary from case to case. In some cases, the AIT may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the AIT may conclude that they are of great significance. MA's appeal was such a case. The central issue was whether MA had close connections with powerful actors in Mogadishu. The AIT found that he had not told the truth about his links with Mogadishu. It is in such a case that the general evidence about the country may become particularly important. It will be a matter for the AIT to decide whether the general evidence is sufficiently strong to counteract what we have called the negative pull of the appellant's lies.
26. I turn to the preserved findings of Judge Dyer. As Mr Terrell submitted, there are several negative findings against the appellant. There is, however, no express finding about what had happened to the CSID card. That, in the context of the then extant Country Guidance is understandable. Although CSID cards were essential, replacements could be obtained with the assistance of family whereas as is now understood, CSID cards have largely been replaced by INID cards which, as they are biometric, required the personal attendance of an applicant at an issuing office.
27. It is in that context that one of the issues identified in the appellant's skeleton argument produced for the FtT is the appellant's ability to "re-document" himself.
28. That, in turn, appears to flow from the refusal letter on which the respondent relies and which states "you have your mother and sister, your aunts and your grandmother, who are residing in Darbandikhan, whom you are still in contact with (AIR Q6) and you will be able to rely on for support to assist you for a replacement document to be processed. As such it is considered this information is readily available to you", the information referred to is information which would allow him to obtain a replacement CSID.
29. In the respondent's review the Secretary of State observes [11] the appellant has not attended the Iraqi Embassy or sought assistance from family to obtain documents such as a CSID card or passport for his effective return. But there is no unequivocal statement regarding whether or not the appellant has a CSID or has access to one.
30. That said, although there is no express finding by the judge such focus as there is on a CSID is that the appellant will be able to obtain a replacement.
31. There is only the appellant's testimony as to whether his CSID document was taken from him, and I accept that his statement to that effect must be evaluated in the light of the negative findings made by Judge Dyer.

32. I accept the submission that the importance of the CSID cuts both ways. It is important that it is kept in a safe place given how necessary it is in Iraq but equally one might understand that an individual sees it as important to have a form of identity if leaving the country to seek asylum. Implicit in doing so is that somebody will not return in which case it continuing to be available in Iraq is of less importance. That may well be the case if such a person has a genuine fear, but not if there leaving Iraq is opportunistic. In those circumstances, retaining access to such an important document may well be seen as sensible, should he be returned.
33. It is difficult to assess how people smugglers act. It may well be that they would not wish anybody under their control to have anything on them to identify them; depriving those being smuggled of the means to identify themselves would give more power to the smugglers. Equally there is no reason to disbelieve the idea of smugglers being armed with knives or that they would seek to intimidate those in their charge. It would not therefore be surprising that a young man of 17 who had never left his country before would obey their instructions as he would have had little choice. In that context I consider little weight can be placed on whether or not the appellant asked for the documents back.
34. Stepping back to consider the factors set out above, I am not satisfied that the appellant has told the truth about his CSID card. He has been found not to have told the truth about the core of his claim, and has a significant incentive to make it difficult to return him.
35. In reaching that conclusion, I attach significant weight to the finding that the appellant had also not told the truth about being in contact with his family which, at the time, was relevant to the issues to whether he could be re-documented, if that was necessary.
36. Taking all of these factors into account, and viewing the evidence as a whole, I am not satisfied even on the lower standard of proof that the appellant did not leave his CSID card at home with his family, and that he therefore has access to it. Accordingly, I am not satisfied that the appellant would, given the narrowness of the issues, be at risk on return to Iraq and I dismiss the appeal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the appeal by dismissing it on all grounds.

Signed

Date: 6 September 2023

Jeremy K H Rintoul
Judge of the Upper Tribunal