IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001836

First-tier Tribunal No: HU/56858/2023
LH/03951/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 June 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FERYAD ALI KARIM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Lee instructed by Arndale Solicitors Ltd.
For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 21 June 2024

DECISION AND REASONS

1. The Appellant, a citizen of Iraq born on 17 December 1982, appeals with permission a decision of First-tier Tribunal Judge Fisher ('the Judge'), promulgated following a hearing at Newcastle on 14 February 2024, in which the Judge dismissed his appeal against the refusal of further submissions seeking permission to remain in the United Kingdom on the basis of his private life. The application was made on 22 April 2023 and refused on 16 May 2023.
2. The Judge's findings are set out from [9] the decision under challenge. The Judge refers to an earlier determination of First-tier Tribunal Judge Sacks which formed the Judge's starting point for his deliberations.
3. The Judge was satisfied the Appellant had retained social and cultural ties to Iraq which would assist in the process of reintegration. In relation to documentation the Judge writes at [20]:

> 20. On the issue of documentation, Ms Yoxall directed me to paragraph 5.1.3 of the October 2023 CPIN on internal relocation, civil documentation and returns. The

> Respondent relied, therein, on evidence from Dr Fatah who indicated that, if a failed asylum seeker is returned to Iraq without an ID document, he or she will be detained at the airport and will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). The officer will be able to tell, from the returnee's Kurdish or Arabic dialect, whether the individual is from Iraq or not. At this time, the returnee's claimed name and address will also be cross referenced against suspect names in possession of the security services. Next, the returnee will be asked to phone their immediate family to bring their ID. Obviously, the Appellant would be at some advantage in proving his nationality as he would be able to provide the copy of his now expired CSID card. If the returnee claims to have no immediate family, he or she will be asked to contact a paternal uncle or cousin for their ID. If that were to be negative too, another relative can attend the airport with their own IDs to act as a guarantor for the returnee. I am not persuaded that the Appellant's parents are deceased as he claimed, given Judge Sacks' findings and my own conclusions on his responses in cross examination. I am similarly not satisfied that he is not in contact with his family in Iraq. I conclude that he could contact his family if necessary. This would allow him a seven-day residency permit pending proof of identity. I am satisfied that he could use that to travel to Kirkuk. During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID – such as a letter from the nationality department to show that their ID is pending via the usual procedure. If the returnee has no such luck, they must find a local Mukhtar by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID. If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence of their identity. The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the witnesses will need to give evidence under oath, stating how they know the returnee. Once the chief has been convinced, the process of obtaining the ID will start. Once these steps have been completed, the returnee needs to communicate back to the security services at the airport, or their guarantor will face legal consequences. Therefore, in my judgement, the Appellant would be able to return to Kirkuk on the residency permit and apply for an INID.

4. The Judge did not find the apparent lack of original ID documents to amount very significant obstacles to the Appellant's reintegration into Iraq [21].
5. Having found the Appellant cannot succeed under the Immigration Rules the Judge considers matters outside the Rules, before concluding at [26] that any interference in a protected right is proportionate.
6. The Appellant sought permission to appeal on a single ground challenging the Judge's findings in relation to documentation.
7. Permission to appeal was granted by another judge of the First-tier Tribunal on 22 April 2024, the operative part which reads:

> 2. The grounds of appeal rely solely on one ground which is that the Judge failed to take into account the full context of the country background information before concluding that the appellant could pass through checkpoints en route from whichever airport he was returned to without a valid identity document, and should have explicitly stated whether the evidence met the test for departing from SMO, KSP & IM (Article 15(c); identity documents Iraq CG [2019] UKUT 00400 (IAC)('SMO I') and SMO and KSP (Civil status documentation, Article 15)(CG) Iraq [2022] UKUT 110 (IAC) ("SMO II").
> 3. I find that the ground is made out and identifies an arguable error of law.

8. In a Rule 24 reply dated 21 May 2024 the Secretary of State writes:

1. The respondent does not oppose the appellant's appeal. Having considered the detailed grounds, the SSHD accepts that the determination of Judge Fisher (FTTJ) dated 05/03/2024 contains a material error of law.

2. It is accepted that between paragraphs 20-21 FTTJ did not have regard for *SG (Iraq) v Secretary of State for the Home Department* **[2012] EWCA Civ 940** [para 47]; namely failing to *'take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so'.*

3. Consequently, FTTJ was erroneous in departing from *SMO, KSP & IM (Article 15(c); identity documents)* Iraq CG **[2019] UKUT 00400** ('SMO I') and in *SMO and KSP (Civil status documentation, article 15) (CG) Iraq* **[2022] UKUT 110** (IAC) ('SMO II') in so far as they related to internal travel without a relevant document to Kirkuk.

4. The SSHD note that as per the Appellant's previous asylum appeal [AA/00819/2010] before FTTJ Sacks dated 22/02/2024 the following observations were made.

    i. Though unrepresented, the Appellant *'confirms that he is an Iraqi national from Hawler (Erbil) Kurdistan Iraq'* [para 12]

    ii. *'The Appellant is Kurdish and a resident until leaving Iraq of Hawler in Erbil in Kurdish region of Iraq'* [para 30 l]

5. FTTJ Fisher failed to adequately engage with this element of the Appellant's immigration history when assessing where he would be returning to in Iraq considering FTTJ Sacks' findings [para 10]. The Secretary of State raises by way of this R24 response, a cross-appeal as the FTTJ has failed to consider and apply the principles of Devaseelan and the previous findings as referred to at paragraph 4 above. This is arguably a Robinson obvious point as the appellant has materially changed his account and the FTTJ needed to engage with that evidence and make a finding of fact of where the appellant is from as that is crucial in order to assess the issue of return. It is further relevant in order to correctly apply ***SMO and KSP (Civil status documentation, article 15) (CG) Iraq* [2022] UKUT 110.** Moreover, no justification has been provided to justify FTTJ Fisher's conclusion that Kirkuk [para 20] was the correct location of the Appellant's INID registry office as opposed to Erbil.

6. As per the observations above, the SSHD invite the Tribunal to set aside the decision of FTTJ Fisher dated 19/03/2024 de novo and remit to the First Tier Tribunal for a new hearing.

Discussion and analysis

9. In addition to the point conceded by the Secretary of State Mr Lee accepted there was merit in the point raised in the Rule 24 response in relation to the Devaseelan principle and Applicants home area.
10. The problem with the determination is that in addition to the Judge failing to apply country guidance it appears he proceeded on the basis of what may be an incorrect factual matrix in relation to the Appellant's home area and/or failed to

resolve a point of conflict within the evidence in relation to that question, which was not resolved by the provision of adequate reasons.

11. On the next occasion, there will need to be a comprehensive fact-finding exercise undertaken in relation to the Appellant's home area and the issue of whether he can return in light of any findings made in relation to the issue of documentation.
12. It was agreed that the matter will need to be heard de novo.
13. I have considered the guidance provided by the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC): under the Practice Direction and the Practice Statement, the general principle is that the UT will retain the case for the decision to be remade, subject to the exceptions in the practice direction. Not every finding concerning unfairness will require a remittal.
14. I find on the particular facts of this appeal it is appropriate to remit the First-Tier Tribunal sitting at Newcastle to be heard de novo by a judge other than Judge Fisher. The Appellant is entitled to a fair hearing at which the correct facts of the appeal are considered, and adequate findings made, by reference to published country guidance if necessary. I find this is a case at which fairness does require a remittal.

Notice of Decision

15. The First-Tier Tribunal materially erred in law. I sat that decision aside.
16. I remit the appeal to the First-tier Tribunal sitting at Newcastle to be heard afresh by Judge other than Judge Fisher, de novo.
17. A Kurdish (Sorani) interpreter shall be provided by the First-Tier Tribunal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024