



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00626/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 6 October 2022**

**Decision & Reasons Promulgated
On the 24 October 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

KJN (IRAQ)
(ANONYMITY DIRECTION MADE

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms. S Anzani, Counsel, instructed by Barnes Harrild & Dyer
For the Respondent: Mr. T Lindsley, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Iraq and he seeks leave to remain on human rights (article 3 ECHR) grounds.
2. The appellant entered the United Kingdom in 2016 and claimed asylum. His application was refused by the respondent and his appeal was dismissed by the First-tier Tribunal in August 2018. He served further representations in December 2019 which were subsequently accepted by the respondent as constituting a fresh claim under paragraph 353 of the Immigration Rules, though leave to remain was refused.
3. On 23 February 2021 the appellant's appeal was dismissed by a panel of the First-tier Tribunal (Judges of the First-tier Tribunal Beach and Dyer). The appellant was granted permission to appeal to the Upper Tribunal and by a decision dated 30 June 2022 I set aside the decision of the First-tier Tribunal, preserving certain identified findings of fact.

Anonymity

4. The First-tier Tribunal issued an anonymity order. No request was made by either party to set aside the order. I confirm the order above.

Facts

5. The appellant is a national of Iraq who was born in 1985 and is presently aged 36. He entered the United Kingdom on 9 January 2016, seeking international protection. His application was refused by the respondent on 30 June 2016. The appellant appealed against this decision (PA/07291/2016) and Judge of the First-tier Tribunal Ghani dismissed the appeal by a determination sent to the parties on 19 May 2017. The decision was subsequently set aside by the Upper Tribunal, but with preserved findings of fact.
6. The resumed hearing took place before Judge of the First-tier Tribunal Parkes on 20 August 2018. He made adverse findings as to the appellant's claim for international protection, including the issue of internal relocation, finding that the appellant could reasonably and without undue harshness return to the Iraqi Kurdish Region ('IKR'). Judge Parkes proceeded to consider the issue as to whether the appellant would be at risk on return to any area of Iraq because he lacked necessary identification documentation, namely a Civil Status Identity Document ('CSID'), concluding at [21] of his decision:

'21. In seeking to obtain refugee status on a basis that was not justified which involved making claims that were rejected it is difficult to see on what basis it could be accepted that the Appellant is not in contact with family members or friends in Iraq does not actually have his CSID or is otherwise unable to obtain it or obtain a new one.'
7. Judge Parkes dismissed the appellant's appeal on all grounds.

8. The appellant submitted further human rights representations which were refused by the respondent on 20 December 2019, though they were accepted to constitute a fresh claim permitting the appellant to exercise a right of appeal. Judge of the First-tier Tribunal McIntosh allowed the appellant's appeal by a decision sent to the parties on 3 June 2020. That decision was subsequently set aside by a decision of the Upper Tribunal (Upper Tribunal Judge Grubb) dated 6 November 2020.
9. Upon remittal a panel of the First-tier Tribunal refused the appeal by means of a decision dated 23 February 2021. I subsequently set aside this decision on 30 June 2022 but preserved the following findings of fact:

'34. We accept the Appellant's evidence that he handed over his identification documents, namely his Iraqi passport, Iraqi National identity document and prison officer identity document to the smuggler when he left Turkey and did not retain control over them. We accept that he was given the prison ID back by the smuggler before entering the United Kingdom and that the prison ID has been retained by the Home Office. We accept he did not retain his passport or national identification card. We also accept that he did believe his passport and national ID had been returned to Iraq for safekeeping as he stated in his Screening Interview Record in answer to Q1.7 & 1.8.

35. He first made contact with the Red Cross in March 2019 providing them with information of the last known addresses of his brother and sister but since his last contact with the Red Cross in February 2020 there had been no progress in locating his siblings. In addition to his brother and sister, the Appellant has given evidence of several uncles and cousins forming part of his extended family, although he states he had also lost contact with them before leaving Iraq in 2015.

...

37. With regards to his efforts to redocument since 2018, the Appellant attended the Iraqi Embassy on 15th October 2019 but was unable to make any progress because he had no form of identification nor, he says, any contactable family members who could assist him to redocument.

...

46. The Appellant was born in Kirkuk and has lived there most of his life. His parents and siblings also resided there, and he has extended family there. He is a Kurdish Sunni who speaks the Sorani dialect and has some grasp of Arabic and Farsi. He describes himself as literate and has completed high school with certificates being issued. He worked from 2011 until 2015 for the Iraqi government as a prison officer. He was promoted during his tenure and was responsible for transporting prisoners to courts, hospitals and airports between Kirkuk and the IKR. He moved from Kirkuk to Chamchamal for a few months before leaving Iraq. Aside from his journey to Norway in 2008 and subsequent return

to Iraq from France with IOM assistance in 2010, he also relocated to work in Mosul at Badush prison for six months.

47. The Appellant has worked in the harsh environment of a prison alongside Arabs as a Kurd. He is able to handle a firearm and has regularly transported prisoners serving sentences for murder, terrorism, rape and other violent offences, from prison to courts, hospitals and airports. This type of work would undoubtedly have been physically and mentally demanding given the potential risks inherent in that role.

...

50. The Appellant is an ethnic Kurd and has previously lived in Chamchamal in the IKR, he was also familiar with Sulaymaniyah in the IKR through his work. He was granted access to the IKR no doubt because he was in possession of his various identification documents including his Iraqi National ID and his prison ID. He now only has a prison ID issued by the Iraqi government which we accept would not be of assistance in the IKR.'

Decision

10. At the outset of the hearing the parties were in agreement as to the following:
- i) Judge Parkes had found as a fact that the appellant remained in contact with friends and family in Iraq.
 - ii) Judge Parkes had found as a fact that the appellant continued to possess his CSID.
 - iii) Having properly applied the guidance in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702, [2003] Imm AR 1 Judges Beach and Dyer found that the appellant had handed over his CSID identification document, as well as his national passport, to a human smuggler when he left Turkey, and they were not returned to him later.
11. Mr. Lindsley acknowledged that whilst the respondent's decision letter dated 20 December 2019 observed the possibility of returning the appellant to the IKR, it was accepted as at the date of hearing before me that return was only possible to Baghdad and so article 3 was to be considered through the prism of a return to the national capital. He further accepted that at the present time CSIDs are being issued only by the office in Mosul. He accepted consequent to the findings of fact made by Judges Beach and Dyer that the appellant was not in possession of his CSID and nor were his family. It was therefore not relevant to the consideration of article 3 for the present purposes that the appellant was in contact with his family because his they would be unable to provide him with his CSID if they were to travel and meet him in Baghdad. Mr. Lindsley accepted that the core of the consideration in this matter was whether or

not the applicant could secure a digital INID, which would require him to attend a CSA office in person to enrol biometrics as part of the required application. Mr. Lindsley accepted that there was no real possibility of the appellant travelling to the CSA office in Kirkuk to be able to undertake the required biometric enrolment. Consequently, on behalf of the respondent it was conceded that the appellant's appeal should be allowed on article 3 grounds.

12. Unsurprisingly, Ms. Anzani was in agreement with the approach adopted by the respondent.
13. In the circumstances, I agree with Mr. Lindsley that the only appropriate course of action to be undertaken by the respondent was to concede the article 3 appeal.
14. I note the following guidance provided by the country guidance decision in *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC)*, at [11]-[13]:

'11. The CSID is being replaced with a new biometric Iraqi National Identity Card - the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.

12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.'

15. I observe Judge Parkes's findings of fact that the appellant is in contact with his family and friends in Iraq, and the evidence presented before me is insufficient to undermine that conclusion. However, as the family are not in possession of the appellant's CSID his contact with them is, alone,

incapable of enabling him to travel from Baghdad to Kirkuk in order to enrol his biometrics and secure his INID. I accept to the required standard that without the required identification document he would not be able to travel beyond the roadblocks and other barriers preventing him from reaching Kirkuk. Consequently, he would be required to reside in Baghdad without the required identification documentation which would place him at real risk of breaches of his article 3 rights. In those circumstances, the only proper course of action is to allow the appeal.

16. Mr. Lindsley asked me not to make a finding that the appellant last resided in Kirkuk. As indicated at the hearing, the test to be applied is whether or not there was a real possibility, not a finding to a higher standard, and I note the findings of Judges Beach and Dyer that the appellant was born in Kirkuk and has lived there for most of his life. It is sufficient for the purposes of the respondent's concession and my allowing of the appeal that the relevant office to which he would have to return to secure his INID is that situated in Kirkuk.

Decisions and Reasons

17. By a decision dated 30 June 2022 the Upper Tribunal set aside the decision of the First-tier Tribunal dated 23 February 2021.
18. The decision is remade, and the appeal is allowed on human rights (article 3) grounds.
19. The anonymity order is confirmed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 14 October 2022

TO THE RESPONDENT **FEE AWARD**

No fee was paid and therefore no fee award is made.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 14 October 2022