



Upper Tribunal  
(Immigration and Asylum Chamber)

PA/05141/2019 (V)

THE IMMIGRATION ACTS

Heard by “Microsoft Teams”  
from George House  
on 4 August 2021

Determination and reason promulgated on:

08 September 2021

Before

UT JUDGE MACLEMAN

Between

**AHMED RAWAND**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Iraq and gives his date of birth as 1 January 1992. His appeal to the FtT was dismissed by Judge Debra C Clapham by a decision promulgated on 5 November 2019.
2. The decision of Judge Clapham was set aside by the decision of UT Judge Lindsley, dated 3 and issued on 7 July 2020, which should be read as if incorporated herein.

3. The decision of Judge Lindsley states at [13]:

I set aside the findings at [102] of the decision but preserve the other findings of the FtT ... The article 3 ECHR appeal based on real risk ... resulting from ... not being able to access a CSID (or INID) on return ... will therefore be remade on the basis ... that he is found generally not to be a credible witness and that he has family, including his father, in Diyala with whom he has some contact.

4. The decision of UT Judge Lindsley also gave directions, including directions for skeleton arguments, and for the appellant to provide a consolidated bundle of documents.
5. On 19 July 2021, the UT made a transfer order to enable the determination of the appeal to be completed by a differently constituted tribunal.
6. The SSHD's position is set out in a skeleton argument dated 23 July 2020. The appellant's position is set out in an amended written submission filed on 3 August 2021. Representatives adopted those items, and made further oral submissions, having heard which, I reserved my decision. I am obliged to both sides for their assistance.
7. Ms Everett accepted that there is general difficulty in resolving the practicalities of obtaining identification, whether a CSID, an INID, or a passport. She submitted, however, that the first source of difficulty is the appellant's intransigence over his true circumstances, and it was for him to establish his case, not for the respondent to map out his route.
8. The appellant's submissions are weighty and detailed on those general difficulties over documentation, but they gloss over the primary facts of the case.
9. At [7] of his written submission, the appellant says, "From the outset in this appeal the appellant has no documentation ... This is not disputed, it would appear, by the respondent. The respondent's position is that it would be possible for the appellant to re-document himself either in the UK or in Iraq. However, with regard to country guidance, it can be shown this is not possible."
10. The appellant goes on to argue at [8] that he would be returned to Baghdad as "the only way he would be able to return to the IKR would be if he were to return voluntarily, which would not be the case". On the hypothesis of return to Baghdad, he submits at [18] that the "sticking point in the appeal" is that he would be unable to travel from Baghdad to Jalawla in Diyala province, and is therefore entitled to protection.
11. The respondent refers in her skeleton argument to the appellant's interview:

Q25: What identity documents did you have in Iraq?

A: Passport, *taskera* and nationality ID.

12. The respondent has recorded that the appellant produced no documents and that he denied having any in the UK. I have not been referred to any acceptance of his position going further than that.
13. The appellant has been found generally to be not credible, but there is no reason not to accept his evidence about documents he had in Iraq.
14. The appellant has been found to have contact with family in Iraq including his father and brother.
15. There is no reason to think that the appellant does not have available to him, or is unable to obtain, the originals, or at least copies, of the above documents, which would be more than enough to enable his travel to anywhere in Iraq where transport is available, including the IKR.
16. In the alternative, there is no reason to think that the appellant would be unable to obtain copies of family members' documentation, and details of his record in the family register, to enable him to obtain up-to-date documents with ease.
17. Thus, with all respect to his representative's detailed arguments on obstacles in his way, the appellant fails to show, even to the lower standard, that there are any, other than his own recalcitrance.
18. There is an alternative strand to the appellant's case, although not so developed, which is that even if the difficulty is his non-cooperation, as in refusal to return voluntarily, he is entitled to protection.
19. A person who can return voluntarily in safety is not a refugee, a point settled in *AA & Another v SSHD* [2006] EWCA Civ 401, where Brooke LJ gave the judgment of the Court:

[99] ... a person who can voluntarily return in safety to the country of his nationality is not a refugee, notwithstanding that on a forced return he would be at risk. Such a person is not outside his home State owing to a well-founded fear of persecution. Neither [s 84\(1\)\(g\)](#) of the Act of 2002 nor Article 3 of the Convention can begin to demonstrate the contrary, since neither enlarges the "refugee" definition; and a safe voluntary returnee is outside the definition.
20. The question in respect of article 3 was left unanswered, see [107] - [108], and, perhaps surprisingly, does not appear to be the subject of further authority.
21. In so far as it is necessary to answer it for purposes of this case, I find that it would be contrary to principle to find protection to be available on grounds of refusal to return voluntarily.
22. All forms of protection are conditioned on the person being unable or, owing to some risk against which they are entitled to protection, unwilling to avail him or herself of the protection of the country of return. Absent such risk, protection is not available by refusing to make arrangements for return, or by refusing to cooperate in schemes for assisted and voluntary return operated by the respondent.

23. For the above reasons, the appellant fails to establish his primary case of inability to obtain documents to return to Iraq (and to relocate, if necessary); and his alternative, less developed case, that he is entitled to protection by refusing to cooperate in his return, also fails.
24. The appellant's appeal, as originally brought to the FtT, is dismissed.
25. No anonymity direction has been requested or made.

*Hugh Macleman*

5 August 2021  
UT Judge Macleman

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.