Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000010
(PA/02781/2020)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 September 2022	**On 13 October 2022**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SANGAR SALH KHALED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr J Frost, counsel, instructed by Barnes, Harrild & Dyer Solicitors
For the respondent: Mr E Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal remakes the decision of Judge of the First-tier Tribunal Plumptre ("the judge") who, in a decision promulgated on 5 August 2021, dismissed the appeal of Mr Sangar Salh Khaled ("the appellant") against the decision of the Secretary of State for the Home Department ("the respondent") dated 4 March 2020 refusing his protection and human rights claims.

Background

2. The appellant is a national of Iraq born on 1 July 1987. He is an ethnic Kurd and hails from Raniya (also spelt Ranya), a village/town within the Iraqi Kurdish Region ("IKR") of Iraq. He entered the United Kingdom around 13 December 2018 and made a protection claim. He claimed to hold a well-founded fear from a military commander in the Patriotic Union of Kurdistan ("PUK"), a Kurdish nationalist political party based in the IKR, because he had an illicit relationship with the commander's daughter. According to the appellant the commander found out about their illicit relationship and sent members of the Asayish (the security services in the IKR) to attack him. The appellant claims that he was hospitalised and then, on his discharge, a maternal uncle arranged for him to leave Iraq on 1 November 2017. The appellant feared being removed to Iraq on the basis that he would become a victim of an honour killing because of his relationship with the commander's daughter.

3. The respondent did not accept the appellant gave a credible account of events that caused him to leave Iraq and refused his protection and human rights claim. The appellant appealed this decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The decision of the First-tier Tribunal

4. Having considered the documentary evidence before her and having heard the appellant give oral evidence the judge found that the appellant was not a credible witness. The judge found that the appellant's claimed fear of the military commander was a fabrication and that he had been untruthful in his claim that he had not been in contact with his father or family after an alleged attack [35]. At [36] and [47] the judge found that the appellant did have contact with his family in Iraq. The judge also rejected the appellant's claim that his family had disowned him.

5. At [47] the judge stated:

> "Given my findings that the appellant does have contact with his family in Iraq I find that it would be possible for him to obtain a CSID through the Iraqi embassy in London and give weight to paragraph 14 of his recent statement (page 4 AB) that he has not been to the Iraqi embassy to re-document himself - a point Mr Parkin properly acknowledged that the Home Office was entitled to make given that it is the respondent's case that he does have the ability to obtain identity documents with the assistance of his family. It follows that I do not accept that there are insurmountable obstacles to the appellant's return to Iraq and hence find that he does not meet 276 ADE (vi)."

6. At [48] the judge agreed with a submission of the Presenting Officer that the appellant had considerable family members in the IKR who

could continue to support him. The judge then set out an extract from section B of the headnote in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) "SMO-2019") relating to documentation and feasibility of return (excluding IKR).

7. At [50] the judge indicated her awareness of section C of SMO-2019 which set out Country Guidance relating to the Civil Status Identity Documentation ("CSID"). Although noting that the CSID was being phased out to be replaced by a new biometric Iraqi National Identity Card ("INID"), the judge found that the appellant would have no difficulties given his findings that he was in contact with his family and would have family support on return to Iraq. In this regard she gave weight to paragraph 13 of section 3 of SMO-2019. This read:

> *13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*

8. At [51] the judge stated, in material part:

> "I give weight to the respondent's reasoning at paragraph 73 that the appellant has previously held Iraqi identity documents in the form of a CSID card which he left behind in Iraq (Q 51 AIR). I find that the appellant is in a position to redocument himself but has failed to do so and that his family, including his extended family in Iraq can assist him on return to Iraq."

9. The judge dismissed the appeal on protection and human rights grounds.

The challenge to the judge's decision

10. There was no challenge to the judge's adverse credibility findings.

11. The grounds of appeal contended that the judge erred in law at [47] in concluding that the appellant could be redocumented from the Iraqi embassy in the UK on the basis that he was in contact with his family. With reference to paragraph 13 of the headnote of SMO-2019, it was argued that there had been no adequate consideration of whether the appellant knew or could obtain the volume and page reference of the entry in the relevant Family Book in Iraq, or whether his relatives were on his mother's or father's side, or what other documentation was available. The grounds further contended that the judge failed to engage with the evidence detailed in the Country Policy and Information Note ("CPIN") "Iraq: Internal relocation, civil documentation

and returns', version 11.0, June 2020. The CPIN indicated at 2.6.15 that since SMO-2019 was promulgated further information regarding the issuance of CSID's in the UK has been obtained by the Home Office which detailed the process for obtaining CSID cards in the UK. At 2.6.16 the CPIN indicated that it was highly unlikely that an individual would be able to obtain a CSID from the Iraqi embassy whilst in the UK, and that a person would instead need to apply for a 'Registration Document (1957)' and would then apply for an INID upon return to their local Civil Status Affairs ("CSA") office in Iraq. It was argued that this guidance strengthened the requirements for documentation and that the fact that the appellant may have contact with family members was unlikely to be adequate, and that even if the appellant could obtain a "Registration Document (1957)", he was required to travel within Iraq to the IKR for registration at his home government which may expose him to treatment given that former residents of the IKR who do not return voluntarily are returned to Baghdad. It was contended that it was highly improbable that the appellant would be willing to be voluntarily returned.

The error of law decision

12. At the 'error of law' hearing on 7 July 2022 Mr Walker, representing the respondent, conceded that the judge failed to consider the CPIN document of June 2020 and that this constituted a material legal error. I indicated at the hearing that I was satisfied that the concession was properly made and that the judge failed to take into account relevant evidence in reaching her decision.

13. In my 'error of law' decision written on 8 July 2022 (but not promulgated until 1 August 2022) I explained that there was evidence before the judge in the form of the June 2020 CPIN that the process for obtaining the relevant identity document in the UK was now different from the time this was considered in SMO-19. It was incumbent on the judge to have at least engaged with this evidence and to give a reason, one way or another, why she concluded that the appellant was still able to obtain the relevant identity document in the UK.

14. It was agreed by both parties that a further hearing would be required at which the appellant may give further oral evidence relating to the issues of documentation, CSID, and feasibility of return. The decision of the First-tier Tribunal was consequently set aside on a limited basis (the factual findings in respect of the appellant's account of events in Iraq that caused him to flee were ringfenced, as were the judge's findings that the appellant was in contact with his family members in the IKR).

The remaking hearing

15. Both parties were in agreement that the issues I had to determine were relatively narrow: they essentially related to whether the appellant would face a real risk of serious ill-treatment if removed to Iraq on

account of a lack of relevant ID documentation. Mr Frost provided a skeleton argument and a copy of the Country Policy and Information Note ("CPIN") 'Iraq: Internal relocation, civil documentation and returns', version 13.0, July 2022. Also before me were the bundles of documents prepared for the First-tier Tribunal hearing including, inter alia, the appellant's statements dated 14 June 2019 and 31 March 2021, copies of his screening and substantive asylum interviews, the Reasons For Refusal Letter, background evidence relating to honour crimes, and a copy of SMO-2019. Both parties relied on SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO-2022').

16. The appellant adopted his statement dated 31 March 2021 (although much of this statement, particularly relating to the appellant's claimed fear from a PUK commander and his alleged non-contact with family in the IKR had been disbelieved) and gave further oral evidence via the Kurdish Sorani interpreter. At my request Mr Frost asked the appellant some questions concerning his family in the IKR (who raised him, when he last had contact with his family etc.) He was briefly cross-examined. I maintained a record of the appellant's oral evidence and the legal submissions made by Mr Frost and by Mr Kotas. I have read and considered with care all the documents before me even if they are not specifically identified later in this decision. Both parties are aware of the evidence, both written and oral, that was before the Tribunal. This evidence is, in any event, a matter of record. I shall refer to this evidence only in so far as it is necessary for me to lawfully determine the appellant's appeal.

Discussion

17. I remind myself that the burden of proof in a protection claim rests on the appellant, but that he can discharged this burden by reference to the lower standard of proof, i.e. by demonstrating that there is a real risk that he would be subjected to persecution or to torture or inhuman degrading treatment or punishment.

18. The remaking of the appellant's protection claim is heavily circumscribed by the retained (and now unchallenged) factual findings made by the First-tier Tribunal judge. These are set out with care in the First-tier Tribunal's decision, particularly at [35], [36], [47], [48], and [50]. Of particular relevance are the findings that the appellant has retained contact with his family in the IKR, and that he has a considerable number of family members in the IKR who could continue to support him, including his maternal grandparents and his maternal uncle. I additionally note that in his substantive asylum interview dated 8 January 2020 the appellant stated, at questions 50 and 51, that he had been issued with a passport in Iraq and with an ID card and a 'national ID card', but that he left these behind in Iraq. The appellant confirmed that this was the case in cross-examination at the hearing to remake the First-tier Tribunal's decision. In his statement dated 31

March 2021 the appellant confirmed, at [14], that he had a passport and a 'CSID' card in Iraq.

19. In his oral evidence the appellant maintained that he had not had any contact with his family since he left the IKR. This assertion was comprehensively disbelieved by the First-tier Tribunal. Nor is it credible that the appellant would travel to the UK without retaining the means to contact his family given the closeness he described between him and his maternal family. The only explanation proffered by the appellant at the remaking hearing as to why he was not in contact with his family drew upon his discredited claim to fear a PUK commander and his family's alleged concerns for their safety. As this aspect of the appellant's claim has been comprehensively rejected I find the appellant could not offer any reasonable explanation for his continued claim to have no contact with, at the very least, his maternal family with whom he lived in the IKR.

20. Although Mr Frost's skeleton argument relied on the June 2020 CPIN 'Iraq: Internal relocation, civil documentation and returns' which stated, at 2.6.29, that former residents of the KRI who do not return voluntarily are returned to Baghdad, Mr Kotas submitted that this was no longer the case. The most recent iteration of the same CPIN, dated July 2022, did not contain any assertion that involuntary returns could only be made to Baghdad. The July 2022 CPIN indicated, at 2.6.3, that, "failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the KRI" (similar wording appears at 3.1.1). This was also consistent with the information contained in SMO-2022. This indicated, at headnote B7, that:

> *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*

21. There is nothing in SMO-2022 suggesting that involuntary returnees could only be removed to Baghdad. Mr Kotas further referred to the Reasons For Refusal Letter which indicated, at [74] to [76], that the appellant could be returned to the IKR and that this was anticipated by the respondent. Mr Frost did not demur from the position as outlined by Mr Kotas. I am consequently satisfied that even if the appellant does not voluntarily return to Iraq, he can, in theory, be involuntarily removed to the IKR.

22. According to headnote B7 in SMO-2022, as set out above, the Iraqi authorities will only allow an Iraqi national in the UK to enter Iraq if that person is in possession of a current or expired Iraqi passport or a Laissez Passer. The appellant has acknowledged that he has an Iraqi passport, albeit in Iraq. The First-tier Tribunal rejected his claim not to be in contact with his family in the IKR and this finding was ringfenced for the remaking hearing. Nor has the appellant given any new

evidence capable of undermining the First-tier Tribunal's findings. I am consequently satisfied that the appellant could contact his family in the IKR and ask them to send him his Iraqi passport which could then allow him to enter Iraq.

23. Alternatively, the appellant would also be allowed to board a plane and enter Iraq if he is in possession of a Laissez Passer. According to the CPIN of July 2022 (at 2.5.6) a Laissez Passer can be issued by the Iraqi Embassy in London without a requirement for an interview provided the person holds at least one of several documents, including a passport or a CSID (see also Annex C of the July 2022 CPIN). On the basis of his own evidence the appellant has these documents in Iraq. It would be open to him to ask his family in the IKR (regardless of whether its his paternal or maternal family) to send him one or both of these documents. No issue arises in this case either as to the appellant's knowledge of the volume and page reference of the entry in the Family book in Iraq, or as to whether he is in contact with his father or his father's side of the family (with respect to whether they could provide the Family book details) because the appellant has a CSID. There is nothing in the evidence provided by the appellant, or arising from the First-tier Tribunal's factual findings, to suggest that his CSID has been lost or destroyed, or that his maternal family with whom he lived would be unable to send this to him. There is therefore no need for him to obtain a replacement CSID, or to obtain an INID. The appellant has a CSID which he can use to travel within Iraq, including the IKR and Baghdad (see headnote C11 of SMO-2022).

24. Headnotes E26 and E27 of SMO-2022 make clear that there are regular flights from the UK to the IKR, and that for an Iraqi national returnee of Kurdish origin in possession of a valid CSID, the journey from Baghdad to the IKR is affordable and practical and can be made without a real risk of the person suffering persecution or serious harm. There is no need however for the appellant to be returned to Baghdad as he could be returned to the IKR, where he has extensive family support. There is nothing in the July 2022 CPIN or SMO-2022 to suggest that the appellant's CSID would expire or that he would be unable to use it to travel within the IKR, and Mr Frost acknowledged that he was in some difficulties in seeking to undermine the submissions of Mr Kotas relating to the appellant's ability to obtain his CSID (given the preserved factual findings) and to use his CSID to travel within Iraq. The appellant does not have anything to fear from any individual or group or organisation in the IKR, and, as stated in SMO-2022 (B10), if he is returned to Iraq on a Laissez Passer or expired passport, he will be at no risk of serious harm at the point of return by reason of not having a current passport. The appellant was born and lived in the IKR, he has all his family there, and he would face no difficulties in entering the IKR. In these circumstances, the appellant cannot succeed in his protection claim.

Notice of Decision

The appellant's protection appeal is dismissed

D.Blum Date 9 September 2022

Signed **Upper Tribunal Judge Blum**