Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02940/2020**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On the 12 August 2022	**On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SAA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Rogers of Immigration Advice Centre Ltd (Middlesbrough).
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. In a decision promulgated on 2 November 2021 the Upper Tribunal found error of law in the decision of the First-tier Tribunal in relation to the issue of documentation only which it set aside.
2. The appellant is a citizen of Iraq who was born on the 1 July 1969.
3. The First-tier Tribunal recorded the appellant's immigration history showing that he first entered the United Kingdom on 1 May 2001 and

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claimed asylum which was refused; but he was granted exceptional leave to remain until 23 April 2006 in accordance with the Secretary of State's policy at that time for Kurds originating from the government-controlled area of Iraq. The appellant's home area is Kirkuk.

4. However, the appellant left the United Kingdom on 16 September 2005 and claims he attempted to enter Iraq from Iran to visit his family but was detained by the Iranian authorities before being deported to Iraq in October 2006.

5. The appellant told the First-tier Tribunal judge that he was able to re-enter Iraq as he satisfied the border officials he was a Kurd from Iraq. The appellant returned to Kirkuk and was reunited with his wife and children. The appellant described the situation in Kirkuk as "good" until Hashd Al Shabi (HAS) entered the area in October 2017 when he claims Kurds were harassed and attacked by them and property destroyed as a result of which the appellant and his family left the area and went to Cheman a small town that remained under the control of the Kurdish forces.

6. Later the appellant told the First-tier judge he returned to Kirkuk with his family. The appellant owned a brick factory that he decided to sell along with his house after which he moved the family back to Cheman where his family now live with his parents in law.

7. The appellant was of the view that although Cheman was safer than Kirkuk it was still under the control of the Kurdish forces, he was concerned about security in the area, and decided to leave Iraq again. The appellant stated he could not afford to take his whole family with him and so he decided to take his daughter with him to Turkey. The appellant and his daughter were separated with the appellant being put in a lorry travelling through Europe to France where he remained for 23 days before being put in a lorry which entered the United Kingdom. The appellant's daughter was not successful in her journey and was returned to Turkey from where she travelled back to Iraq and to her mother, brothers and grandparents.

8. At [20] of the decision of the First-tier Tribunal it is written:

> 20. The Appellant is in touch with his family and they still have his citizenship certificate. They also have a copy of his CSID card. He has not tried to renew his documents in the United Kingdom as he does not have ID here with him.

9. Although the decision of the First-tier Tribunal has been set aside in part, the rejection of the appellant's protection claim being a preserved finding, the record of the evidence given by the appellant on that occasion stands.

10. A number of discrepancies arise when that evidence is considered, it being recorded at [43] that the appellant told the First-tier Tribunal Judge the brick factory which he operated was in Tuz Khurmato, and that he was living there with his family for seven years in his final statement, and that the family were living in Tuz Khurmato when HAS first approached him to enable his daughter to marry a named individual, A. The appellant stated that was February 2018 which was found to be at odds with the appellant's statement of 2 May 2019 in

which he stated his family moved to Cheman in October 2017, moved to Kirkuk in January 2018 for three months and that they were living there when they were approached by HAS in relation to his daughter's marriage. It is also recorded that in his interview the appellant had stated that after HAS gained control of the area he and his family left Tuz Khurmato and went to Cheman where they stayed until March 2018.

11. This aspect of the appellant's evidence was not clarified to any degree in any later documents or oral evidence and I agree with the conclusion of the First-tier Tribunal that the varied accounts of the movement of the family and where they were living and the approaches made by HAS did not make for a clear and consistent picture, especially as the appellant had given three different locations for the family and where the first proposal was made. I also note that the appellant claimed that the family were in hiding in Cheman, an area under the control of the Kurdish authorities, yet the appellant claimed the final proposal took place at that time when there is no logical explanation for why the family location would have been known to HAS if they were genuinely living in hiding as claimed.

12. The appellant's evidence was also that his father-in-law owned a farm in Chemin which was run as an ongoing concern which contradicts the claim to have been in hiding. The First-tier Tribunal also recorded the appellant claiming that Cheman was like a camp outside Kirkuk which contradicts the claim that the father-in-law is a farmer in that area with an agricultural business.

13. The credibility of the appellant's claim to face a real risk was also found to be undermined by the fact the appellant did not leave the area with his daughter as a result of alleged fears for her safety until nine months after the second threat of forced marriage was allegedly made and that the appellant travelled through the IKR where there would have been a valid internal relocation option for the appellant and his family. It was also recorded in the determination promulgated on 22 February 2021 that the appellants evidence was that there were no reports of incidents of threats of harm reported by the appellant was in regular contact with his family.

14. The appellant entered the United Kingdom on 19 January 2019 at which point he claimed asylum. That application was refused by the Secretary of State and it is the appeal against that decision which is the subject of these proceedings.

15. The judge the First-tier Tribunal rejected the appellant's claim to face a real risk on return to Iraq. There was no challenge to that decision which means all aspects of the same are preserved.

16. The scope of this hearing is that set out in the error of law finding namely relating to the question of the appellant having the correct documentation, or access to the same, to enable him to return to Iraq.

17. There have been a number of changes since the case was originally heard including the handing down by the Upper Tribunal of the recent country guidance case for Iraq of SMO & KSP [2022] UKUT 000110 (IAC), and the publication of the Secretary of State's up-to-date CIPU

dated July 2022 in which it is confirmed that enforced returns now occur to any airport in Iraq.

18. Although there is an international airport in Kirkuk the evidence made available in previous cases indicates there are no direct flights to the same and Ms Young was unable to provide evidence that the situation had changed. This means it is likely the appellant will be returned to either Irbil or Sulamaniyah in the IKR.

19. I find as a Kurd the appellant is likely to be able to be flown directly to either of these airport with a laissez passer issued by the authorities in the United Kingdom and be able to pass through the airport without experiencing any real risk to his personal safety from any quarter.

20. It is accepted that to be able to travel to his home area the appellant will have to cross the boundaries of the IKR for which he will require evidence of his identity such as his CSID. If he had to remain in the IKR he would still need a similar sources of identification to enable him to access services, employment, and to be able to live a normal life.

Preliminary issue – admissibility of the appellants Further Submissions interview

21. Ms Rodgers provided a copy of the respondent's guidance for conducting interviews. That document is version 9 dated 28 June 2022 which clearly post dated the date of the appellants asylum interview which was on the 28 February 2020.

22. At page 7 is a section entitled "changes from last version of this guidance" which reads:

- Updated in line with current drafting requirements
- changes made in light of the Nationality and Borders Act 2022, including highlighting the importance of checking the date of the asylum claim so that the interview enables the claim to be considered under the relevant Immigration Rules, including the required standard of proof and differential treatment of refugees
- minor restructuring of sections and text to assist the flow of the guidance.
- Updated in line with changes made to Assessing Credibility and Refugee Status guidance for consistency
- updated throughout to reflect existing operational practices, and audio recordings which has changed since v8.0 of the guidance was published

23. Ms Rogers indicated that she was unable to obtain a copy of the previous guidance, but Ms Young did not submit that the guidance as a whole should be disregarded and, although there is a mention of interview transcripts and audio recordings in the guidance, it is not disputed that a copy of the written interview record was provided to the appellant.

24. The reason this issue arose is because there is no recording of the interview. Ms Young confirmed that no recording was made on the basis of an email to Ms Young of 8 July 2022 in which the interviewing team had responded to her request for details and said it would not have been routine for the interview to have been recorded.

25. In the section of the current guidance relating to interviews it is stated:

> Audio recording of interviews
>
> Paragraph 339 N E of the Immigration Rules sets out when you must make an audio recording of the personal interview and applies to all interviews conducted on or after 24th of November 2016.
>
> Where the appropriate digital interviewing software or other recording equipment is installed (and an exemption does not apply), as a matter of policy, you must ensure that the substantive asylum interview is audio recorded.

26. 339NE of the Immigration Rule states "*The Secretary of State may require an audio recording to be made of the personal interview referred to in paragraph 339NA. Where an audio recording is considered necessary for the processing of an application for asylum, the Secretary of State shall inform the applicant in advance that the interview will be recorded*".

27. The rule does not impose a mandatory requirement to record all interviews and clearly states that the Secretary of State may (my emphasis) require an audio recording to be made.

28. It is not made out any specific exemptions applied. How this may come about is again set out in the guidance in the following terms:

> Exemptions to audio recording interviews
>
> Wherever possible you must make an audio recording of the substantive asylum interview. However, in some cases, claimants may request that the interview is not audio recorded. Claimants must notify the Home Office such a request before the scheduled date of the interview, stating their reasons why the interview should not be audio recorded. Acceptable reasons may include, for example, where a claimant has been subject to torture that involve the recording of their abuse, but other reasons must also be considered. In most cases, a letter from a GP, consultant or another clinician registered with the GMC and involved in the current care or treatment of the claimant should be provided, setting out the reasons why it would be appropriate to record the interview.

29. Of note in the above text is a reference to "*wherever possible you must make an audio recording*" clearly envisaging that this may not be possible in every case.

30. The appeal before the First-tier Tribunal was considered at a case management review hearing conducted remotely on the 8 January 2021. That hearing was attended by Ms Rogers and there is no indication from the written directions that any issue was raised concerning the admissibility of the interview record.

31. An appeal bundle was filed in accordance with those directions and it is not made out that any issue was raised before the First-tier Tribunal Judge concerning the admissibility of this evidence.

32. It appears that concerns only arose in the current form following the publication of the Upper Tribunal's error of law hearing on the 2 November 2021 which contained the following paragraph:

11. In the reasons for refusal letter at [31] it is written, "It is noted from your AIR 2020 that you claim to have left your own CSID in Cheman as you did not wish to bring this to the UK". This comment arises from replies given by the appellant during the course of his asylum interview between questions 56 – 63 which are recorded in that document in the following terms:

Question number	Question asked	Reply
56	Do you have any ID documents?	No
57.	Do you have any in Iraq with your family?	My documents, I don't have anything left
58	What happened to them?	The place where I sold and then we came to Cheman. It was with me in Cheman, but I did not bring anything with me, because we left illegally.
59	So you did have documents, you just didn't bring them?	What do you mean the documents
60	Any form of Iraqi ID? Like a national ID card or a CSID?	No
61	So what did you have with you in Cheman, you said you had something with you, but did not bring it?	I had my own and my children's CSID.
62	Where did you leave them?	In Cheman when I left.
63	Why did you leave them?	I didn't want to lose them.

33. Reference was made passage and further questions in the submissions made by the advocates.

34. Suggesting that because the interview was not recorded it is inadmissible, where there is insufficient evidence of policy or law that would support such a contention, creates a difficulty for the appellant.

35. There is also relevant guidance provided in case law and in the Upper Tribunal procedure rules.

36. In MB (admissible evidence; interview records) Iran[2012] UKUT 00019(IAC) the Tribunal held that:

(i) R (Dirshe) v SSHD [2005] EWCA Civ 421, [2005] 1WLR 2685, is not authority for the proposition that where a claimant requests tape-recording of an interview, but that is not carried out, the record is inadmissible;

(ii) Cadder v Her Majesty's Advocate [2010] UKSC 43 has no application to the admissibility of asylum interview records, immigration proceedings being of a distinct nature to criminal proceedings. Admission of interview records does not breach a claimant's right to a fair trial;

(iii) Tribunals do not have a general discretion to refuse to receive relevant evidence on the basis of procedural defects as to how it was obtained. Rule 51(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 is not to that effect. Apart from circumstances where lateness of the evidence means it is unfair to receive it, issues of fairness go to the weight to be attached to evidence, not admissibility.

37. The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 15(2), permits the Upper Tribunal to admit evidence whether or not the evidence shall be admissible in a civil trial in United Kingdom or the evidence was available to a previous decision maker or to exclude evidence that would otherwise be admissible, although that that later power is not relevant to this appeal.

38. In relation to the specific point raised concerning admissibility of the interview record, I find it has not been established that the fact there is no audio recording of the interview makes the same inadmissible on the basis Ms Rodgers has not been able to refer me to a specific power or authority supporting her claim it should be excluded in all the circumstances. The authorities and rules showing in the alternative that the evidence is admissible. The issue is the weight which I give to that evidence which I find is not reduced on the basis of the evidence considered as a whole.

Discussion

39. Although in the error of law decision reference was made to questions 56 to 63 of the asylum interview, specific reference was made in the course of her submissions by Ms Young to questions 61 to 68 which are in the following terms:

61	So what did you have with you in Cheman, you said you had something with you but did not bring it?	I had my own and my children's CSID.
62	Where did you leave them?	In Cheman when I left.
63	Why did you leave them?	Because we were coming through illegal routes. I

		didn't want to lose them.
64	But only you and your daughter were fleeing Iraq, if you had your children's documents, would they not need them?	What do you mean they didn't need documents?
65	You stated Q.61 you had yours and your children's CSID's. Only you and your daughter were fleeing to Turkey. Would your other children not to need their CSID's as they remained in Iraq?	Because those people who were replaced, if they get any help from charities they should provide their documents.
66	To clarify, your family in Iraq, do they have their CSID's?	Yes
67	Your daughter who tried to flee with you and was returned, does she have hers?	Yes
68	So who doesn't have a CSID is due?	Yes

40. The parties were directed to file positional statements following the handing down of SMO [2022]. That of the Secretary of State, relied upon by Ms Young, dated 7 June 2022, is in the following terms:

> The Respondent's primary position is that the Appellant, as confirmed in his asylum interview at questions 60-63, is that his original CSID card remains in Iraq as it was left behind, presumably with his family as he did not wish to lose it. The Appellant's subsequent claim to have lost the original is not credible and is clearly a cynical attempt to claim he would be required to re-document on return to Iraq.
>
> The Respondent will submit that as the Appellant's daughter was able to return to Cheman to reside with her mother and grandparents with no difficulty she would clearly have had access to a CSID card in order for her to travel and to live in Cheman safely with her family. The Respondent does not accept the Appellant's claim that the document she obtained was a forgery, and it clearly does not explain how she was able to obtain such a document prior to her return from Turkey as such a document would have been required prior to her travel to enable her to travel through check points.
>
> The Respondent submits that it is clear that the Appellant's daughter was able to travel as she had access to her original CSID.
>
> The Respondent submits that the Appellant's original CSID card is still with his family in Iraq, and he could either be sent that document before he travels or be met at the airport on return with the card. The Respondent will submit that the Appellant can be returned to Kirkuk airport.
>
> The Respondent will rely on the CPIN Iraq: Internal relocation, civil documentation and returns Version 12.0 May 2022 which states at paragraph 3.1.1,
>
> "3.1.1 Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region.
>
> The Respondent has not received any further correspondence from those representing the Appellant regarding the location of the Appellant's local CSID office and therefore is unable to undertake any check at this time. As such the Respondent is not able in this response to set out her position in respect of any alternative arguments if the Appellant is unable to obtain his original CSID card.

41. Cheman is accepted as being a village outside Kirkuk and it was not disputed before me that the appellant's local CSA office is in Kirkuk. Evidence provided by the Secretary of State shows that this office no longer issues CSID's and only the INID.

42. Although reference is made to the CSID is important that these were phased out and replaced by an INID which requires the individual to enrol their biometrics. The new form of identification came into force in 2016. The appellant left Iraq again on 7 December 2018 although the focus on this appeal by both parties has been upon the original document.

43. The respondent's position is set out in the skeleton argument attached to the appeal bundle which, in summary, is that the appellant will be required to have his original CSID and not a copy to enable him to travel through the checkpoints to return to his home area and that without the same he will face a real risk on return to Iraq.

44. I find a credibility issue arises in relation to the appellant's evidence concerning his CSID. The appellant's case is that he left his CSID at home when he left. His daughter who left with him but returned to Iraq renewed her ID documents although this does not fully address the point made in the Secretary of States positional statement concerning her ability to travel to Cheman if she did not already have access to that document.

45. It was submitted that if it was accepted the appellant did not have the documents that he must succeed. It is also submitted that even if he left the documents behind the family no longer have the same and that he could not trace the document.

46. I do not accept the submission made that the appellant had no opportunity to correct the interview transcript. Although the interview was not recorded orally it is clear that it was recorded in writing, that a copy of the transcript was provided to the appellant, and that it is clearly recorded on the interview document that the appellant had been advised that he had five working days from the date of the interview to provide any clarifications.

47. The submission the appellant should have been asked clarification questions, but such were not asked, hence suggesting little weight should be placed upon the interview record I find has no merit. The questions asked at the interview were clear, answers were given to those questions, and it is not made out there was any need for further questioning to the extent that weight could not be given to the answers provided. I do not find it made out that relying on the same is unfair to the appellant. That interview was conducted a number of years ago and the appellant has been well aware of what he said to the interviewing officer throughout.

48. The appellant has provided fresh evidence in support of his appeal described as "messages and translations". These appear to relate to an EE Wi-Fi call commenced on 9 July 2022 indicating a number of outgoing calls were made following by a message from the appellant to the intended recipient asking why they were not answering. The messages include a request by the appellant that he needs his wife to

answer him and that he needs a copy of his ID card to which a response was allegedly received, the translated text of which reads "*why don't you believe me. I don't have anything of yours. I have moved house to house so nothing is left. Those we had before you have taken them to Turkey. So what are you asking about? Please don't call and text me. My relations with you is done*".

49. The translations do not contain evidence of the number from which the calls were made, to which number they were made to, or tie them in specifically with the appellant's wife or any other family member. I was invited to place little weight on the same by Ms Young as a result.

50. The need for caution in assessing the appellant's evidence was highlighted by Ms Young in her submissions in which she noted that the appellant was now claiming the CSID he was referring to was a copy, which is not credible as his claim in the interview record is that he left his original CSID not a copy. I find this in an attempt to make it appear the case is stronger than it may be, as a copy is not sufficient even if the appellant had the same in his possession.

51. My concern is that insufficient evidence has been provided to support the appellant's claims in this respect. The original source of those messages has not been disclosed, there is very little information in the copies provided based upon the translation. This includes lack of evidence of the device on which the messages were made or identity of the recipient.

52. It is important when considering the weight to be given to the appellant's claims that he has already been shown to have given contradictory accounts in relation to where his family lived, where the alleged approach by HAS occurred, and in relation to his documentation. The impression given by the appellant when considering the evidence as a whole is of the person who is either learnt an account he was to give if challenge by the authorities, which he has subsequently forgotten, or of a person who is making up what occurred but forgetting what had been said earlier.

53. The appellant clearly has the ability to contact his family although in answer to cross examination also claimed he had not contacted them for some time. The frequency of regular contact with family was also recognised by the First-tier Tribunal based upon the appellant's own evidence.

54. I also note the content of one of the messages, if credible, undermines the appellants claim to have left his CSID at home where it is "*I done have anything of yours. Those we had before you have taken them to Turkey*" clearly indicating his claim to have left the ID documents at home is not true. I do not find weight can be placed upon this evidence for the claim to have moved house "so nothing is left" is undermined by the appellants claim that the family are in Cheman with the maternal parents on the farm where they are safe and well. There is no evidence of a move from this place.

55. The reality is that the appellant either has his identity documents with him or they are at home with his family with whom he is in contact. I

do not find he has discharged the burden of proof upon him to the required standard to establish that any other scenario is credible.

56. I do not find that the "messages translations" document is sufficient to enable the appellant to discharge the burden of him to the required standard, the lower standard applicable in this appeal, to show that he does not have access to his original CSID which family members can send to him in the UK or arrangements be made for them to meet him at the airport on return to hand it to him, with which he will be able to travel from the IKR to Kirkuk to obtain a INID by providing the necessary biometric information. The appellant's earlier evidence was that his brother, sister and adult son and his wife all live in Iraq with whom he was in contact with.

57. The appellant in his asylum interview was clearly stating that the original CSID had been left at home I do not accept his more recent claim that what he had left was only a copy.

58. I do not find it made out the appellant faces any real risk in Cheman or that if he chose to internally relocate that it would be unreasonable to expect him to do so in light of his clear knowledge of life within Iraq, his economic position evidenced by the statements made concerning the available resources following the sale of the brickwork etc, and other economic advantages reviewed in the statements. I find insufficient credible evidence has been provided to show that internal relocation will be unreasonable for him.

Decision

59. I dismiss the appeal.

Anonymity.

60. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated 18 August 2022