Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-000102**
(PA/03555/2019)

THE IMMIGRATION ACTS

Heard at Bradford (hybrid hearing)	**Decision & Reasons Promulgated**
On the 17 August 2022	**On the 06 October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HAJI ALI HAJI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hussain instructed by Turpin Miller Solicitors.
For the Respondent: Ms Young, a Senior Home Office presenting Officer.

DECISION AND REASONS

1. In a determination promulgated on 7 June 2021 First-tier Tribunal Judge Cox ('the Judge') dismissed the appeal of this appellant on protection grounds but allowed the appeal on human rights grounds.
2. The appellant is a citizen of Iraq born on 1 January 1990.
3. The appellant sought permission to appeal on one ground claiming it was arguable the Judge materially erred at [51] of his decision by

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making no findings upon whether the appellant had a CSID and, if not, whether he could obtain one in the UK and whether the Iraqi embassy would accept that the details on the card he had provided to the Finnish Immigration Authority are those of the appellant, such that he could obtain a replacement CSID in the UK. That application is dated 18 June 2021.

4. In a decision dated 8 July 2021 First-tier Tribunal Ford refused permission to appeal on the basis the grounds disclose no arguable error of law. Judge Ford noted it was accepted the appellant is from Mosul and the finding he had available to him a copy of his CSID with legible details (even if the photograph was not legible) which had been secured by the respondent with the appellant's cooperation. The Judge Ford was not satisfied the appellant was unable to redocument himself through the embassy in the UK because he had not tried to do so. It was found that the decision to dismiss the appeal was reasonably open to the Judge.

5. The appellant renewed the application to the Upper Tribunal on grounds dated 30 July 2021 arguing that Judge Ford had not engaged with the argument in the grounds as the June 2020 CPIN on which the Ground was based was clear that the UK embassy no longer issued CSID cards and only an INID was available after securing a Registration 1957 document.

6. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 9 March 2022 in the following terms:

> Permission is granted
>
> This application was not put before me until 9 March 2022. It is unclear why it was not put before a judge until now.
>
> It is arguable that the First-tier Tribunal erred in making no findings as to whether the appellant could obtain a CSID from the Iraqi Embassy, and it is of concern that the judge declined to make relevant findings - see paragraph 51.
>
> Directions
>
> The appeal was allowed on 4 June 2021 Article 8 grounds. The parties are therefore reminded of section 104 of the Nationality, Immigration and Asylum Act 2002, rule 17 A of the Tribunals Procedure (Upper Tribunal) Rules 2008 and rule 16 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 – see MSU (S.104(4b) notices) Bangladesh [2019] UKUT 412(IAC).
>
> Accordingly, the parties are directed to inform the Upper Tribunal in writing within 10 working days of the issue of this grant of permission if the appellant has been granted leave to remain and whether any application has been made pursuant to section 104 (4B) of the 2002 Act.

7. Paragraph [51] referred to in the grant of permission to appeal is in the following terms:

> 51. As was noted by the Presenting Officer, the Appellant has not attended the Iraqi embassy and I do not know the answers to

> these questions. I was troubled by the fact that the issues arising in the Appellant's protection appeal may be resolved simply by the Appellant attending the Iraqi embassy or perhaps his solicitor writing to the embassy to ascertain their position on the damaged CSID. However, upon reflection, I decided that this ultimately does not matter as I can decide the appeal on an alternative basis.

8. In response to Judge Rintoul's directions a notice pursuant to section 104(4B) and request to extend time for filing of the notice was received by email on 12 August 2021 from the appellant's solicitor. That notice confirmed that the appellant had been granted leave to remain, following the appeal being allowed on human rights grounds (Article 8), on 5 August 2021.

9. At the date of the first application for permission to appeal to the Upper Tribunal, the refusal of that application, and the lodging of the renewed application the appellant had not been granted leave and there was jurisdiction to consider that application by the First-tier Tribunal and for the application to be lodged with the Upper Tribunal. The grant of leave clearly occurred between the lodging of the renewed application and consideration of the papers by Upper Tribunal Judge Rintoul.

10. The notice acknowledges that the application served on 12 August 2021 is significantly out of time and relies on the statement from the solicitor with conduct of the case as an explanation. In the statement, dated 10 March 2022, the solicitor writes:

> 4. It would be slightly less humiliating for me to have 'forgotten' to lodge the s.104(4B) notice at that point, but I fear that the reality is that I did not actually realise that a s.104(4B) notice was required and somehow conflated the fact of having applied for permission to appeal against the protection decision to be the 'we were not satisfied with the Article 8 grant of leave. I have not previously had a situation where a client has been granted leave during the permission to appeal process.
>
> …
>
> 7. I am really devastated at having missed this procedural step and felt physically sick when I read the directions yesterday. We have represented this Appellant since March 2016 when he was involved in a Dublin removal and it has been a hard journey to get to this point. We believe that he has a strong underlying case for protection and there is an important issue to be explored about his CSID. On the particular facts of his case, including his desperate desire to travel to Turkey to try and locate his mother, on the grant of leave for 2.5 years on a 10 year route to settlement, is extremely difficult for him.
>
> 8. It goes without saying that the fault lies only with me and not the Appellant.

11. In a Rule 24 response dated 4 April 2022 the Secretary of State's representative confirms that the appellant was granted Leave To Remain (LTR) on 11 August 2021 valid until 24 February 2024 (incorrectly stated as being 2021) with a Biometric Resident Permit being issued on 10 September 2021. The response refers to no section

104(4B) application having been made and submits that the appeal should therefore be treated as having been abandoned.

The law

12. Section 104 of the Nationality, Immigration and Asylum Act 2002 relates to the issue of a pending appeal and is in the following terms:

> **104 Pending appeal**
>
> (1) An appeal under section 82(1) is pending during the period—
>
> (a) beginning when it is instituted, and
>
> (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
>
> (2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—
>
> (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
>
> (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
>
> (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.
>
> …
>
> (4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsection (4B)).
>
> (4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on **[F6**a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection)**]** where the appellant—
>
> (a) . . .
>
> (b) gives notice, in accordance with Tribunal Procedure Rules, that he wishes to pursue the appeal in so far as it is brought on that ground.

13. Rule 17 A of The Tribunal Procedure (Upper Tribunal) Rules 2008 reads:

> **Appeal treated as abandoned or finally determined in an asylum case or an immigration case**
>
> **17A.**—(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the **[F2**Upper**]** Tribunal if they are aware that—

(a) the appellant has left the United Kingdom;

(b) the appellant has been granted leave to enter or remain in the United Kingdom; or

(c) a deportation order has been made against the appellant; .

(d) . . .

(1A) A party to an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the 2020 Regulations") before the Upper Tribunal must also notify the Upper Tribunal if they are aware that the appeal is to be treated as abandoned under regulation 13 of those Regulations.

(2) Where an appeal is treated as abandoned pursuant to section 92(8), 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 or regulation 13(3) of the 2020 Regulations, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.

(3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002 or regulation 13(3) of the 2020 Regulations, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

(4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty eight days.

(5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4).

14. A first reading of the above provisions would suggest that there is a clearly defined period in which any section 104 (4B) notice should be filed with no power being provided to the Upper Tribunal under its own procedure rules to extend the time limits.

15. This issue was considered by the Upper Tribunal in the case of MSU (s104(4b) notices) Bangladesh [2019] UKUT 412 (IAC) the head noted which reads:

> 1. *Where s.104(4A) applies to an appeal, neither the First-tier Tribunal nor the Upper Tribunal has any jurisdiction unless and until a notice is given in accordance with s.104(4B).*
> 2. *If such a notice is given, it has the effect of retrospectively causing the appeal to have been pending throughout, and validating any act by either Tribunal that was done without jurisdiction for the reason in (1) above.*
> 3. *As the matter stands at present, there are no 'relevant practice directions' governing the s.104(4B) notice in either Tribunal.*
> 4. *The Upper Tribunal has power to extend time for a s.104(4B) notice. Despite the provisions of Upper Tribunal rule 17A(4), such a power can be derived from s.25 of the Tribunals, Courts and Enforcement Act 2007.*

16. Section 25 of the Tribunal's, Courts and the Enforcement Act 2007 reads:

> **<u>25 Supplementary powers of Upper Tribunal</u>**
>
> (1) In relation to the matters mentioned in subsection (2), the Upper Tribunal—
>
> (a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court, and
>
> (b) has, in Scotland, the same powers, rights, privileges and authority as the Court of Session.
>
> (2) The matters are—
>
> (a) the attendance and examination of witnesses,
>
> (b) the production and inspection of documents, and
>
> (c) all other matters incidental to the Upper Tribunal's functions.
>
> (3) Subsection (1) shall not be taken—
>
> (a) to limit any power to make Tribunal Procedure Rules;
>
> (b) to be limited by anything in Tribunal Procedure Rules other than an express limitation.
>
> (4) A power, right, privilege or authority conferred in a territory by subsection (1) is available for purposes of proceedings in the Upper Tribunal that take place outside that territory (as well as for purposes of proceedings in the tribunal that take place within that territory).

17. The question of whether a valid section 104(4B) notice has been filed and consideration of whether to extend time in relation to the same

was found in MSU to fall within the heading of "all other matters incidental to the Upper Tribunal's functions".

18. Although subsection 25(3) indicates that the powers in subsection (1) conferring the same powers upon the Upper Tribunal as the High Court shall not be taken to be limited by anything in the Tribunal Procedure rules other than an express limitation, it does not appear from MSU, or based upon any submissions made before me, that the provision within the rules that the Upper Tribunal has no power to override or extend the limitation period, is to be treated as an express limitation preventing the exercise of section 25(1) when considering whether time should be extended in relation to an application made outside the stated period.

The written submissions

19. The appellant's skeleton argument in relation to the preliminary issue of whether time should be extended, dated 9 August 2022, is in the following terms:

APPELLANT'S SKELETON ARGUMENT RE ABANDONMENT ISSUE

The preliminary issue in this matter is whether the Appellant (A's) appeal should be treated as 'abandoned' pursuant to the Nationality, Immigration and Asylum Act 2002 s 104.

We refer to, and attach, the s 104 (4B) notice filed in response to the grant of permission to appeal dated 9 March 2022, together with the statement of the solicitor with conduct of this matter (including the relevant chronology of events).

We submit that the appeal should not be treated as abandoned and we ask that the Upper Tribunal exercise it's discretion to extend time for the filing of the s 104 (4B) notice.

We rely on the case of MSU (s 104(4b) notices (Bangladesh) [2019] UKUT 00412 (IAC).

Background

This matter commenced on 7 March 2018 when we lodged Further Submissions on asylum and article 8 grounds. On 8 April 2019, the Further Submissions were refused with a right of appeal and an appeal was lodged on behalf of A on 11 April 2019. The appeal has remained ongoing since that date, being initially allowed on protection grounds on 20 November 2019, but then continuing through to the Upper Tribunal after the Respondent was granted permission to appeal. On 7 June 2021, the appeal was once again allowed after remittal to the First-tier Tribunal but on human rights grounds only (on the basis of A's relationship with his British son Lawan). An application for permission to appeal on protection grounds was made to the Upper Tribunal on 18 June 2021. While that application for permission to appeal was pending, A was invited to have his biometrics taken to implement the human rights decision. Permission to appeal was refused by the First-tier Tribunal and renewed to the Upper Tribunal on 5 August 2021. A week later, A received his grant of leave on human rights grounds (2.5 years).

At this point, a s 104 (4B) notice should have been served on the Upper Tribunal but, due to solicitor error, was not. The application for permission to appeal was pending with the Upper Tribunal until 9 March 2022 when it was granted, subject to the issue regarding the s 104 (1B) notice being resolved in A’s favour.

A's solicitor immediately served the s 104 (4B) notice and confirmed in her statement dated 10 March 2022, that she had not realised that a s 104 (4B) notice was required when an application for permission to appeal challenging the protection refusal had been lodged. She confirmed it was fully her error and apologised for not having served a notice within the required timeframe.

Jurisdiction

The Upper Tribunal has confirmed in MSU (Bangladesh) that it has power, derived from the Tribunals, Courts and Enforcement Act 2007 s 25, to extend time for service of a s 104(4B) notice.

Where that power is exercised, the effect of the s 104 (4B) notice is to retrospectively cause the appeal to have been pending throughout, validating any act that may have been done without jurisdiction prior to service of the notice.

As the grant of leave to remain in this matter was served after the application for permission to appeal to the Upper Tribunal was lodged, in accordance with MSU (Bangladesh) the matter of whether to extend time is for the Upper Tribunal not the First-tier Tribunal.

Should time be extended?

The Upper Tribunal in MSU (Bangladesh) at paras 40-44 set out some useful guidance on when it may be appropriate to extend time. We address each criterion in turn:

1. The extent of the default.

The s 104 (4B) notice should have been served within 28 days of the grant of leave (ie by 10 September 2021). It is acknowledged that it was not served until 10 March 2022. However, it should be noted that the application for permission to appeal (lodged on 5 August 2021) was pending until 9 March 2022 (when it was granted). On 7 October 2021, we received an acknowledgement of receipt for the application for permission to appeal from the Upper Tribunal informing us that we would be informed of the result in writing. The next communication was on 1 March 2022 when we called the Tribunal to chase up the application (having decided that even with covid delays and backlogs, it was odd that we had not heard anything). We were informed initially that the file was in storage and were told to email the Tribunal which we did immediately (email exchange attached). On 2 March 2022, we were told the ‘file is in a queue waiting to be allocated to an Upper Tribunal Judge shortly’. The grant of permission confirmed that the application was not put before the Judge until 9 March 2022 the Judge observing that ‘it is unclear why it was not put before a Judge until now’.

Although the extent of the default in terms of actual time elapsed is lengthy, we submit that given the application for permission to appeal appeared to have become inadvertently dormant during that entire period (perhaps with regard to the file being incorrectly put into storage or may be through covid delays or human error), the default should be seen in that context. It should

be noted that as soon as the issue regarding the need for a s 104(4B) notice was raised (on 9 March 2022), the notice was served the next day.

2. The reason for the default The fault was entirely attributable to A's solicitors and a full account has been given and is attached to this Skeleton for ease of reference.

3. All the circumstances of the case A is an Iraqi national and the central issue in his protection case is whether he would be able to obtain a CSID card from the Iraqi Embassy. A copy of his severely water damaged CSID was obtained by A from the Finnish immigration authorities and expert evidence obtained in relation to this card. The grounds seeking permission to appeal allege that the Tribunal erred in failing to make a clear finding on this key issue.

Although A has 2.5 years leave to remain on human rights grounds, he is currently on a 10 year route to settlement and, as he is no longer in a relationship with the mother of his son, his ability to maintain contact and obtain her co-operation with future applications for leave is not straightforward. More importantly, he remains unable to obtain an Iraqi passport (due to the lack of ID outlined above) and is not eligible to apply for a Certificate of Travel as he has leave to remain on human rights grounds only. He is therefore unable to travel outside the UK and will remain unable to travel unless and until he is granted British citizenship (which will be at least 11 years from now). This is devastating for him as he wishes to search for his mother in the refugee camps of Turkey.

Aside from all the practicalities, as someone seeking protection and with an arguable case (as recognised by the grant of permission), we submit that it would be disproportionate to bring the appeal to an end in these circumstances.

We submit that the Respondent has not been in any way inconvenienced or suffered any detriment. She was aware at the time when leave was granted that A was challenging the decision on protection grounds. We also note that while A failed to notify the Tribunal of the grant of leave pursuant to the Upper Tribunal Procedure Rules r 17A (1), the obligation is on both parties to so notify the Tribunal and we are not clear at this stage whether the Respondent did do so. The letter granting leave to remain states in relation to this that:

If you have already appealed against a previous decision of the Home Office and that appeal has not been concluded, we will tell the Tribunal that you have been granted permission to stay. You should assume the appeal will proceed unless the Tribunal tells you that it will not.

<u>Summary</u>

Although *MSU* (Bangladesh) is clear that each case is fact specific, we note that time in that case was extended on the basis that 'although the default was considerable it was in context perhaps not enormous and there is a clear decision that the grounds are arguable'.

We ask that time be extended for the same reasons in the current appeal and that the s 104(4B) notice be treated as 'in time' allowing the appeal to proceed.

Turpin & Miller LLP

9 August 2022

20. On behalf of the Secretary of State it is written:

**SECRETARY OF STATE'S SKELETON ARGUMENT-
ABANDONMENT ISSUE**

For hearing on 17 August 2022

1. In response to the directions dated 1 June 2022, the respondent received the appellant's skeleton argument on 9 August 2022. Unfortunately, I only had sight of the skeleton argument on the afternoon of the 12 August 2022 which is why the response on behalf of the SSHD is only been filed today. Sincere apologises for any inconvenience caused by the late service of the SSHD's skeleton argument.
2. As set out in the appellant's skeleton argument, the preliminary issue in this appeal is whether the appellant's appeal should be treated as abandoned pursuant to the Nationality, Immigration and Asylum Act 2002 s.104.
3. The SSHD did file a response dated 4 April 2022 in reply to directions dated 9 March 2022. The response is re-attached to this skeleton to assist all parties.
4. ***MSU (S.104(4B) notices) Bangladesh [2019] UKTU 00412 (IAC)*** provides authority for the Upper Tribunal to extend such a time limit, such that if granted, the appeal is considered to have been pending throughout. As per paragraphs 40-43 of ***MSU*** and reference to other relevant Court of Appeal authorities, the Tribunal is required to conduct a three-stage assessment as to whether the time limit should be extended. The three-stage test is:

   a. Extent of the default

   b. The reason for the default

   c. All circumstances of the case
5. If the Tribunal decides not to extend time, the appellant's appeal falls to be abandoned.
6. The SSHD's position regarding the preliminary issue is that it is not directly opposed, and it is matter for the Upper Tribunal.

Zoe Young

Specialist Appeals Team

15.8.2022

Discussion

21. In relation to the three issues identified by the parties as requiring consideration by the Upper Tribunal, I find as follows:

22. In relation to the extent of the default it is not disputed that the section 104(4B) notice should have been served no later than 10

September 2021 but was not served until 10 March 2022 a delay of five calendar months. That is considerable delay.

23. The fact the application for permission to appeal was not referred to a Judge of the Upper Tribunal until 9 March 2022 is irrelevant to the period of delay caused by the failure of the appellant's representative to do what was legally expected of them. What appear to be administrative delays referred to in the appellant's skeleton argument relate directly to the administrative staff within the Tribunal and are totally unrelated to the appellant's representative's failure.

24. The second aspect is the reasons for the default. The appellant's solicitor has displayed honesty in the section 104(4B) notice in providing the explanation for why this occurred as a result of the representative's failure to understand the legal obligation to act as they should have done within the relevant timescale. I accept that the appellant is not responsible for what occurred, and that responsibility must lie at the feet of the named representative.

25. The third aspect is the need to consider all the circumstances of the case.

26. It is not disputed that the appellant is an Iraqi national or that the issues before the First-tier Tribunal included the question of whether the appellant will be able to obtain a CSID card from the Iraqi embassy.

27. A unique factor in this case is that the appellant has a CSID which he provided to the Finnish Immigration Authorities when he claimed asylum there albeit that the card has suffered water damage to the photograph.

28. A copy of the CSID, currently held by the Secretary of State, together with a translation, is within the bundle of documents that I have seen. Although the photograph has been disfigured and is not clear the translation of the document clearly shows the renewal identity number, the Department, file and page number of the entry in the family book, the appellant's name, name of father and grandfather, name of mother, date of birth and place of birth, and other personal details.

29. It is also important to note that the appellant's home area is Mosul.

30. Since the original hearing the Upper Tribunal has handed down what is now the only country guidance case relating to Iraq of <u>SMO & KSP</u> [2022] UKUT 00110 (IAC). The Upper Tribunal considered not only the reason the appeal was remitted from the Court of Appeal but also a number of issues that were troubling decision-makers and representatives arising from the original version of SMO promulgated in 2019.

31. In relation to the Civil Status Identity Document (CSID) the headnote, which accurately reflects the finding within the body of the determination, reads:

> ***C. CIVIL STATUS IDENTITY DOCUMENTATION***
>
> *1. 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.

2. *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.*

3. *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.*

4. *Whether an individual will be able to obtain a replacement CSID whilst in the UK also 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, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.*

5. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

6. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to*

render documentation assistance to an undocumented returnee.

7. *A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.*

8. *Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.*

9. *There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.*

10. *The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.*

11. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*

12. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.*

32. Headnote [13] refers to the availability of CSID's through the Iraqi Consulate facilities in the UK but only for those Iraqi nationals who are

registered at a CSA office which has not transferred to the digital INID system.

33. The appellant's CSA office is in Mosul. There is now available an email from the Home Office confirming that a limited number of CSA offices within Iraq have not transferred to the INID system which are those within and surrounding Mosul. There is also reference by the Upper Tribunal in [64] of SMO [2022] of the information they had from the Iraqi authorities confirming where the CSA system was still in place, which included Mosul.

34. I therefore find on the basis of the current country guidance that the appellant is one of those who will be able to obtain a replacement CSID in the UK if a proper approach and request for the same is made. The significance of the comment by the First-tier Tribunal Judge that the appellant had not made such an approach undermines any claim that he may make that he would not be issued with a replacement CSID.

35. Headnote [14] records that whether an individual be able to obtain the replacement document depends upon the information available with specific reference to the volume and page reference of the entry in the family book in Iraq, but those details are clearly stated on the CSID that the appellant gave to the Finnish Authorities which have now been recovered by the Home Office. I do not find it made out that the appellant does not have the necessary information to facilitate the grant of a replacement CSID from the Iraqi authorities in the UK.

36. The submission by Mr Hussain that the opposite is the case and that whatever may have been said elsewhere the Iraqi authorities are not willing to issue CSID cards has not been shown to be based upon any material that was not considered by the Upper Tribunal in SMO [2022] or warrants departure from the country guidance case.

37. I find it has not been made out that it is not reasonable to expect the appellant to approach the Iraqi authorities in the United Kingdom to obtain the replacement CSID. No credible reason why this should not occur has been made out. Although the appellant claims he cannot get a replacement card it is clear he has not tried.

38. There is reference in the pleadings to the 2020 CIPU but this has now being superseded by the July 2022 document to which Ms Young made specific reference. In paragraph 2.7.7 are quotes from SMO [2022] in relation to the ability of a qualifying individual, such as this appellant, to obtain a CSID in the United Kingdom.

39. Considering all the competing arguments holistically in this appeal, although the First-tier Tribunal Judge did not make specific findings upon the ability of the appellant to obtain a CSID, when this was a matter which the First-tier Tribunal was required to make specific findings upon, I find that such error is not material, for the position pertaining in the current country guidance case which reflected the position in Iraq as it was before the Judge shows the appellant is able to obtain a replacement CSID in the United Kingdom and therefore the appeal would have been dismissed on protection grounds in any event.

40. I find the appeal is one that is bound to fail and I do not find it is appropriate in all the circumstances to extend time for the filing of the section 104(4B) notice. There is therefore no adverse consequence for the appellant's representative for even had the application been filed in time the outcome would have been the same; namely that any error made by the Judge would not have been found to be material.

41. The appellant refers to the desire to travel to Turkey to see his mother but that is not a matter for this Tribunal to determine. It is not known whether the appellant has applied to the Home Office for a travel document to enable him to visit Turkey and return on the basis he has permission to stay, if he is able to prove that he cannot get a passport or travel document from the authorities in Iraq.

42. As I have not extended time the appeal is abandoned by operation of statute, from the date of the grant of LTR to the appellant, meaning the Upper Tribunal has no jurisdiction to consider this matter further and had no jurisdiction at the date of the granting of permission to appeal by Judge Rintoul which, therefore, has no legal effect.

Decision

43. I dismiss the application for leave to extend time pursuant to section 104(4B) Nationality, Immigration and Asylum Act 2002. The Upper Tribunal has no jurisdiction to consider this matter further.

Anonymity.

44. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

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

Dated 19 August 2022