



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07774/2019

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice Centre**      **Decision & Reasons Promulgated**  
**On: 8<sup>th</sup> June 2022**      **On 22<sup>nd</sup> June 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**HSA  
(anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms Mair, Counsel instructed by Barnes Harrild and  
Dyer Solicitors**  
**For the Respondent: Mr McVeety, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born in 1994. He seeks protection in the United Kingdom.

### **Background and Decision of the First-tier Tribunal**

2. The history of this matter is as follows.
3. The Appellant arrived in the UK on the 21<sup>st</sup> September 2015 and claimed asylum the next day. He claimed to be fleeing violence targeted at his family. The Respondent rejected the claim for a want of credibility and in a decision dated the 9<sup>th</sup> February 2018 the First-tier Tribunal (Judge Durance) agreed. Judge Durance was prepared to accept that the Appellant is an Iraqi national of Kurdish ethnicity, but not much else. In particular he could not be satisfied that the Appellant's family business had been blown up by a bomb. He could not make a finding about where the Appellant is from. He found that the Appellant had been in possession of a CSID and an Iraqi passport, at least at some point in the past, and that he was from a wealthy family who still reside in Iraq.
4. The Appellant made a fresh claim for protection on the 22<sup>nd</sup> May 2019. His submissions were grounded in the Respondent's concession, made before the Upper Tribunal in successive country guidance cases, that an Iraqi citizen returned to that country without the means of supporting himself (by either the assistance of family members and/or the possession of an identity document enabling him to work or access charitable/state support) would face a real risk of falling into destitution such that Article 15(b) of the Qualification Directive would be engaged. In such circumstances, the Respondent accepted, humanitarian protection would be granted. To that end the Appellant asserted the following matters: that he is from Jalawla in Diyala governate, he has lost contact with the uncle who helped him to leave Iraq, and he is presently undocumented. The Appellant put the case that upon arrival in Baghdad he would be unable to travel, since without an identity document he cannot pass through checkpoints; without family support he would be unable to access food or accommodation; the absence of family would also mean that he would be unable to arrange a proxy to obtain a CSID on his behalf and bring it to him at the airport.
5. The fresh claim was accepted on the 7<sup>th</sup> June 2019 but protection refused. Relying on the country guidance in AA (Article 15(c)) Iraq CG UKUT 544 (IAC) the Respondent concluded that the Appellant could simply redocument himself either at the Iraqi consulate in London or with the assistance of a proxy in Iraq. The benefit of the Article 15(b) concession could not therefore be extended to the Appellant.
6. The Appellant appealed against that decision and on the 27<sup>th</sup> November 2019 the Appellant's second protection appeal was dismissed by the First-tier Tribunal (Judge AJ Parker). The crux of the

Tribunal's findings on this occasion were that the Appellant could turn to family members in Iraq to help him get a new CSID.

7. The Appellant sought permission to appeal to the Upper Tribunal. Two matters have conspired to create the lengthy delay since then. The first was the pandemic. The matter was however eventually heard via Skype on the 17<sup>th</sup> June 2021 by Upper Tribunal Judge Plimmer who by her decision of the same date found the decision of Judge Parker to be flawed for material error of law. In making that finding Judge Plimmer recorded the Respondent's express consent to the decision being set aside: the Secretary of State accepted that the decision was flawed for unclear findings, a lack of anxious scrutiny and an absence of reasons.
8. The second reason for the delay was the uncertainty about the status of the country guidance on Iraq. That uncertainty has now been resolved with the handing down of the decision in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO II') and it is on the basis of that decision that I am now asked to remake the decision in the appeal.
9. A small further delay arose on the morning of the hearing before me: this appeal was due to be heard on Monday the 6<sup>th</sup> June 2022, but due to a security issue the building was closed to the public. I am most grateful to Ms Mair and Mr McVeety for re-arranging their diaries so that the hearing could be brought forward to Wednesday 8<sup>th</sup> June 2022, when I heard the submissions of the parties remotely.

### **Discussion and Findings**

10. Insofar as it is relevant the headnote to SMO II reads:
  1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
  - ...
  7. *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.*

8. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

9. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

10. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

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

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

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

14. 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.*

*15. 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.*

*16. 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.*

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

*18. 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.*

*19. 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.*

*20. 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.*

21. *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.*

22. *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.*

23. *Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.*

24. *Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under 6 suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior*

connection to, and a support structure within, the area in question.

25. *Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212.*

26. *There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.*

27. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

28. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

29. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family*

*member and production of P's identity documents but 7 may also be achieved by calling upon "connections" higher up in the chain of command.*

11. Before me the parties agreed that the following matters could be deduced from SMO II. First, that even an individual such as the Appellant, in the UK with no documentation at all, could be returned to Iraq, since he would be provided with a *laissez-passer* by the Iraqi embassy in London. A citizen from an area controlled by the government of Iraq would be returned to Baghdad. Upon arrival in Baghdad such a citizen would need an identity document in order to continue his onward journey: this is because there are numerous checkpoints surrounding the airport and on all major roads in the country, and a valid identity document is required to pass through these. Such a returnee would therefore need to acquire an identity document in order to get to his final destination. Whether or not he is able to do so depends on two things. First whether he has existing documents somewhere in Iraq that could be brought to the airport by a friend or family member. Second whether the civil registry in his home area is still issuing the old style Civil Status Identity Card ('CSID') which would enable the friend or family member of the returnee to get a new card on his behalf. If the answer to both of those questions is no, then the appeal must be allowed: a civil registry no longer issuing CSIDs will now be issuing only the new style card, the 'INIDs' which require the subject's physical attendance so that biometric data can be provided.
12. The first question in this appeal is therefore where the Appellant is from. For his part he has never claimed to be from anywhere other than Jalalwa in Diyala governate. Some doubt appeared to have been case on this matter by Judge Durance, who heard the Appellant's first asylum appeal back in February 2018 and was so trenchant in his rejection of the Appellant's credibility as a witness that he felt unable to make a finding about that matter. In the absence of any preserved finding on this issue it is therefore for me to make my own.
13. I note that the Respondent had probed the Appellant's claimed origins at interview, and had accepted that he had provided some accurate information about the area; in her letter refusing the fresh claim in 2019 she proceeded on the basis that he was from Jalalwa. It is relevant to note that the fresh claim submissions included a letter purportedly from a *mukhtar* in the Appellant's home town who confirmed that he was formerly a resident; this letter is said to have been obtained by a friend who has sworn an affidavit explaining that he got it when he travelled to the area in 2018.
14. I have considered the evidence about the Appellant's origins in the round; I have taken into account the fact that his protection claim was originally rejected for a lack of credibility and that Judge Durance found the Appellant to be an economic migrant. Whilst that may be so



it does not mean that he was not from Jalalwa. I have also taken into account the fact that the Appellant has recently taken part in some protests in the UK aimed *inter alia* at the Kurdish authorities: as a Kurd this does not appear to be unusual, and as Ms Mair rightly points out the protests were also directed at the government of Iraq. I do not find this *sur place* activity indicative of the Appellant's origins one way or the other. The Appellant's consistent evidence is that his family home was in Jalawa; he was able to provide accurate information about the area at interview, and his claim on this matter receives some support, albeit modest, from the *mukhtar's* letter. There is no evidence to suggest that he is from anywhere else in Iraq. I am satisfied that the Appellant is from Jalalwa as claimed.

15. The next question is whether the Appellant still has a CSID in Iraq that could be brought on his behalf to the airport, enabling him to get through the various checkpoints to his family home.
16. In his original claim the Appellant asserted that he had no documentation at all, and this appears to have been accepted at that stage at least by the Respondent, who premised the refusal of protection on the assertion that the Appellant could simply get documented in London. It was not however accepted by Judge Durance, who having "noted the manner in which the appellant responded to questions" on the point concluded that he would have had a card in the past. Given what we now know about the importance of a CSID card to everyday life in Iraq, and given that the Appellant was approximately 21 years old when he left the country, I am satisfied that Judge Durance's conclusion on the matter is probably correct. I find that the Appellant had a CSID before he left Iraq.
17. As to what might have happened to such a card, that is another matter. There is no dispute about the extent of the violence and displacement that the people of Diyala have been subjected to in the past decade. The country background information produced in the Appellant's bundle, historical country guidance cases and CPINs consistently demonstrate that Diyala governate was at the centre of ISIL territory between 2013-2014 and by the time that they were defeated militarily in early 2015, hundreds of thousands of people had been displaced. Following its liberation the province remained subject to regular attack by ISIL sleeper cells, and ongoing instability as Kurdish forces, Shi'a militia, the government of Iraq and Sunni extremists vied for control: indeed the Appellant's bundle contains evidence of such violence occurring as recently as last month. It is an area of mixed Sunni, Shia, Kurdish and Turkman populations, and in SMO I the Tribunal accepted Dr Fatah's evidence that the "ethnically heterogenous nature of Diyala makes it more prone to instability". Jalawla itself suffered severe destruction before it was seized by *peshmerga* forces of the Patriotic Union of Kurdistan (PUK), after which many homes were "systematically looted". It is precisely the

kind of place that was subject to the mass de-documentation of the internally displaced population discussed in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) [at ]:

“First, it must be recognised that the Iraqi civil registration system is in disarray. Between 2014 and 2017 ISIL closed down all of the relevant offices in areas under its control, damaging or destroying many of them. No marriages, births or deaths were recorded in these offices during that period and officials are today preoccupied with trying to register and re-document the many hundreds of thousands men, women and children currently in need of assistance in Iraq....”

18. It is against that background that I must assess whether the Appellant still has a CSID card somewhere in Jalawa which could be retrieved by a friend or family member and delivered to him at the airport. Given the extent of the destruction in that area, and the numbers of people displaced, I accept that there is at least a reasonable likelihood that the card no longer exists, or is not retrievable. Even if, as the Respondent submits, the Appellant still has an uncle living in Diyala governate, I am satisfied that it is reasonably likely that he would not be able to get the Appellant’s card for him. In reaching that finding I have had regard to Mr McVeety’s submission that since CSID cards are valuable and important to life in Iraq, the Appellant’s family would have taken care to preserve it. That is at first blush an attractive submission but upon closer inspection not one borne out by the evidence, which is to the effect that hundreds of thousands of people left their *own* cards behind fleeing ISIL and other violence (see AAR above). The Appellant had left and gone to Europe and was no longer in need of his at all: in those circumstances the significance of the card fell away altogether.
19. The next matter in issue is whether a new card could be obtained on the Appellant’s behalf. As Mr McVeety fairly accepted, applying the findings in SMO II the answer is squarely determined with reference to an expert report obtained by those representing the Appellant. Ms Sino Amin, a doctoral candidate at the University of Kingston, and writer on Kurdish and middle eastern issues, prepared a short report dealing with one matter: has the civil registry in Jalawla been replaced by a new office with an INID terminal. Her unequivocal answer, supported by photographs of the new building and new signage, is yes. Ms Amin supplemented her own written and photographic evidence with links to online sites reporting on the new opening, and an interview she conducted in May 2022 with the cultural attaché to London, a Mr Muhammad Hamza al-Hashimi who confirmed it to be the case (Mr al-Hashimi in fact asserts that *all* of the old CSID offices are now closed and have been replaced with INID terminals). I am satisfied, in light of this evidence, that the only option for the Appellant is to travel to Jalawla himself and register his biometrics in order to get a card. This of course he cannot do while he is stuck in Baghdad.

20. Those being my findings, it is not necessary to dwell on the final question to be determined: whether the Appellant has lost touch with his family as he claims. If there is no old CSID to retrieve, and no new CSID to obtain, the relevance of family is of no consequence since the outcome would be that the Appellant would be stuck in Baghdad airport, where, the Respondent accepts, he would be subject to conditions in breach of Article 15(b).

### **Anonymity**

21. Having had regard to paragraph 28 of the *Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private*<sup>1</sup> I am satisfied that it would be appropriate to make an order for anonymity and do so in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions**

22. The determination of the First-tier Tribunal contains material error of law and it has been set aside.
23. The decision in the appeal is remade as follows: the appeal is allowed on humanitarian protection and human rights grounds.
24. There is an order for anonymity.



Upper Tribunal Judge  
Bruce  
8<sup>th</sup> June 2022

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<sup>1</sup> Paragraph 28 of the *Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private* reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight. Feared harm to an applicant or third parties and "harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy" are factors which militate against disclosure. See *R v G* [2019] EWHC Fam 3147 as approved by the Court of Appeal in *SSHD & G v R & Anor* [2020] EWCA Civ 1001.