



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

Appeal Number: PA/09206/2019

THE IMMIGRATION ACTS

**Heard at Field House
On the 5 July 2022**

**Decision & Reasons Promulgated
On the 23 August 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**F M R (IRAQ)
[ANONYMITY ORDER MADE]**

Respondent

Representation:

For the appellant: Ms Susana Cunha, a Senior Home Office Presenting Officer
For the respondent: Mr Rory O’Ryan of Counsel, instructed by Barnes Harrild & Dyer solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal allowing the claimant’s appeal against her decision on 30 August 2019 to refuse him refugee status, humanitarian protection, or leave to remain in the UK on human rights grounds. The claimant is an Iraqi citizen and an ethnic Kurd.
2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity. No-one shall

publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant. **Failure to comply with this order could amount to a contempt of court.**

3. **Mode of hearing.** The hearing today was a hybrid hearing: it was principally face to face, with the exception of Mr Rashid, who appeared remotely from his workplace. The witness used his mobile phone to access the hearing, and was seated in his (parked) car, a quiet and private place.
4. **Vulnerable party.** The claimant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No specific adjustments were asked for on his behalf and he was able to give oral evidence at the hearing, although it was sometimes necessary for questions to be rephrased and/or simplified during cross-examination.
5. There were some minor technical difficulties: Mr Rashid's mobile phone screen did not show the whole of the hearing room but by adjusting the camera, he was able to see Counsel as necessary, and he confirmed that he could hear what was being asked, and also hear me as Judge.
6. I am satisfied overall that the hearing was completed fairly, with the help of both representatives.

Evidence before the Upper Tribunal

7. The Tribunal heard oral evidence from the claimant, from Mr Adel Alan who accompanied him to the Iraq Embassy in September 2020, and from Mr Karwan Sharif Rashid, who tried to find out whether the claimant's uncle was still in Kirkuk.
8. The Secretary of State indicated before the hearing that she did not wish to cross-examine Mr Aku Sabir Sharif, a Kurdish Sorani interpreter, or Ms Eliza Ciesielska, Mr Karwan Sharif's wife, both of whom also tried to help find the claimant's uncle when visiting Kirkuk. Their evidence therefore stands unchallenged.
9. There was no anonymity application in relation to any of the claimant's witnesses.
10. The Tribunal has a 331 page bundle of documents and also a skeleton argument from the Secretary of State, as well as oral submissions by both representatives, and a bundle of authorities.
11. I have had regard to all of the evidence, both oral and documentary, but in particular to the evidence to which I was specifically taken during the hearing.

Background

12. The claimant is a citizen of Iraq. It is not disputed that he is an Iraqi Kurd from Kirkuk and a Sunni Muslim. He does not speak Arabic and is not very educated: his language is Kurdish Sorani, but he also speaks some English.
13. The claimant came to the UK on 29 January 2005, on his account, and claimed asylum two days later based on the risk to him as a former Ba'ath Party member, and also on discrimination and abuse which he experienced as a disabled person in Iraq, following a grenade attack in which he was badly injured. He claimed to have no Iraqi identity documents and to have had no contact with his family in Iraq after his arrival here.

Crawford decision

14. The initial asylum claim was rejected and the claimant's protection and human rights appeal was dismissed by First-tier Judge Crawford (the Crawford decision) on 3 June 2005, the claimant becoming appeal rights exhausted on 28 June 2005.
15. In his decision, Immigration Judge Crawford did not accept as credible the claimant's core account of his connection to, and swift promotion within the Ba'ath Party before leaving Iraq. At [27], Judge Crawford found that 'if the claimant was injured by a grenade, and members of his family were killed, I do not accept that the claimant was attacked because he was active in the Ba'ath Party'.
16. He accepted that the claimant had suffered grievous and devastating injuries before coming to the UK, caused by burns, which must have had some psychological effect upon him. He was also satisfied that the claimant had received specialist care in Iraq, including the removal of muscle from his arm 'presumably for transplantation'.
17. The Judge held that the claimant came to the UK because of his adverse treatment as a disabled person in his country of origin. The claimant experienced ridicule, adverse attention, prejudice and abuse in Iraq because of his disability.
18. First-tier Judge Crawford considered that the claimant had not demonstrated a Refugee Convention reason for his treatment in his home area of Kirkuk. Being a disabled person was not a particular social group in the Refugee Convention sense and his treatment, though bad, did not amount to persecution.
19. The claimant was appeal rights exhausted in relation to the Crawford decision on 28 June 2005. That decision, and in particular, the negative credibility findings therein, forms the *Devaseelan* starting point for any future decision.

Further submissions

20. On 12 January 2011, over 5 years later, the claimant made further submissions. The Secretary of State refused them on 4 November 2011. The claimant did not embark for Iraq. On 27 February 2012, the claimant made further submissions which were refused on 17 December 2013. The claimant continued to remain in the UK without leave.
21. Finally, on 23 July 2019, the claimant made a third further submission, asserting a risk on return to him as a Sunni Muslim, and based on his lack of a CSID or other Iraqi identity document. It is that submission which is the subject of the present appeal.
22. The claimant asserted that he had attended the Iraqi Embassy in London on several occasions to try to obtain replacement documents, but had no success, and that he remained undocumented. He also claimed that his return to Iraq would breach his Article 3 ECHR rights.
23. On 30 August 2019 the Secretary of State rejected the 2019 further submission as not raising a paragraph 353 fresh claim. She accepted country evidence on Iraq as demonstrating that an individual would face considerable difficulty in attempting to make a journey between Baghdad and the IKR by land, if he did not possess a CSID card or valid passport.
24. She also accepted that the claimant had attended the Iraqi Embassy in London, but noted that he had not provided a letter from the Embassy confirming that he could not be re-documented there, or any evidence of attempts made to trace his family in Iraq, or that he had lost contact with them.
25. Accordingly, she treated the claimant as being capable of redocumenting himself, with the assistance of family and friends in Kirkuk who could also help him reintegrate there. She considered that it was no longer unsafe for him to return to Kirkuk.

Dearden decision

26. The claimant appealed to the First-tier Tribunal. His appeal was allowed by First-tier Judge Dearden ('the Dearden decision'). Judge Dearden set out the matters which he accepted: the claimant had injuries to his face and body, incurred on his account 15 years ago in a grenade explosion, which were the subject of substantial medical assistance and surgery both in Iraq and in the UK.
27. Since coming to the UK, the claimant had undergone 'numerous surgeries'. Medical evidence from Mr David R Ralston FRCS (Plast), FRCS (Eng), MD, MBChB, BSc, a Consultant Plastic Surgeon at the Royal Hallamshire Hospital, Sheffield, and a member of the British Association of Plastic, Reconstructive and Aesthetic Surgeons (BAPRAS), confirmed that the claimant received 'highly complex reconstructive surgery to reconstruct his right eyebrow, right lower eyelid and nose'.

28. The judge noted that there were said to be ‘significant psychological concerns which would be largely resolved were his asylum status to be finalised’ but noted that the report did not say what additional treatment might be required in future. There was no documentary support for the claimant’s contention that further surgery could not be carried out until his immigration status was regularised. The judge said this:
- “... The [claimant] is clearly not at risk of a reduced life expectancy if returned to Iraq, and whilst he has been given extensive medical treatment whilst in the United Kingdom, it is correct to say that the United Kingdom has not assumed responsibility for any further medical treatment which may be required. The [claimant] does not succeed as a result of medical matters.”
29. The Dearden decision turned on the Judge’s finding that the claimant possessed no Iraqi identity documentation, and would be unable to access documentation ‘to persuade the Iraqi embassy to issue a CSID’, at least not in the foreseeable future; that both Baghdad and Kirkuk remained Contested Areas where there was an Article 15(c) risk; and that without a CSID, the claimant could not reach the Kurdish Autonomous Zone (KAZ), where he would be safe. He concluded that ‘requiring [the claimant] to return to Iraq would put the United Kingdom in breach of its obligations under the various international Conventions’.
30. Judge Dearden allowed the appeal on refugee protection grounds and under Article 3 ECHR. He made no humanitarian protection or Article 8 findings.
31. The Secretary of State appealed to the Upper Tribunal.

Error of law decision

32. Permission to appeal was granted by First-tier Judge Feeney on 13 April 2020. By a decision dated 19 August 2020, UTJ Kekić set aside the Dearden decision for error of law. She did so on the papers, during the Covid-19 pandemic period. Judge Kekić found that there was no live international protection or Article 3 ECHR issue to be determined when remaking the decision.
33. Judge Kekić expressly preserved the Dearden decision’s findings about the claimant’s medical history, set out above, which were not the subject of any challenge in the Secretary of State’s grounds of appeal or in the claimant’s Rule 24 Reply thereto. She directed that the decision in this appeal be remade in the Upper Tribunal.
34. Judge’s Kekić’s decision was one of many considered by an Upper Tribunal panel (Mr Justice Swift and Upper Tribunal Judge Blundell) in *EP (Albania) and others* (rule 34 decisions; setting aside) [2021] UKUT 233 (IAC). For the purpose of the present remaking proceedings, all that need be said is that the *EP (Albania)* panel upheld the Kekić decision and refused to set it

aside pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).

35. The Dearden decision remains (mostly) overturned and the decision in this appeal now needs to be remade afresh in the Upper Tribunal.
36. The remaking of the decision in this appeal was further delayed, partly by the Covid-19 pandemic, and partly to await further country guidance on the availability of CSID documents in Iraq.
37. Following a hearing on 19 May 2022, and by agreement, I directed as follows:

“ (1) The hearing of this appeal is adjourned to allow the [Secretary of State] to make enquiries as to whether INID machines are now in place for the whole of Kirkuk, or whether there are still some areas where CSIDs can be issued;

(2) Not later than 28 days from the sending out of this decision, the [Secretary of State] shall notify the [claimant] and the Tribunal of the outcome of such enquiries; ...”

38. Ms Cunha for the Secretary of State informed the Upper Tribunal on 4 July 2022 that the Secretary of State had not been able to obtain a response from the Iraqi authorities as to whether there were still any areas of Kirkuk where CSIDs can be issued. I asked Ms Cunha to obtain an explanation after the hearing as to why, despite the adjournment granted for the purpose, the Secretary of State had not complied with her undertaking given in *SMO and KSP* to provide that evidence where relevant in appeals which turn on the availability of CSID evidence.
39. Mr O’Ryan for the claimant had obtained an expert report, to which I will return, with evidence that in Kirkuk there were no longer any places where a CSID could be issued. Ms Cunha accepted that absent any evidence, the Upper Tribunal was entitled to approach the appeal on that basis. A letter received on 13 July 2022 from Mr Chris Howells, Senior Caseworker with the Specialist Appeals Team of the Home Office, and copied to the claimant’s representatives, was as follows:

“I write in response to the oral direction you gave to my colleague Susana Cunha at the hearing on 5 July. I understand that you directed that the Respondent explain in writing – within seven days – her actions in relation to the undertaking by Counsel as set out at [144(13)] of *SMO & KSP* (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). I am sorry that this reply is two days outside your direction.

To implement this undertaking, the Respondent decided to ask the Iraqi Embassy in London every three months for an updated list of CSA offices still issuing CSIDs in both Government-controlled Iraq and the IKR; check requests and directions made under [144(13)] against the current list; and then respond to each request/direction, enclosing a copy of the current list.

On 25 April, three days after the publication of *SMO*, the Respondent asked the Iraq Embassy for an updated list of CSID-issuing CSA offices. Despite

several reminders about the urgency of the request, the Respondent did not receive the list from the Embassy until last Thursday, 7 July.

The Respondent apologies [sic] for the inconvenience caused by the ten week delay. However, the Respondent has acted in good faith and did not anticipate such a long delay in receiving the updated list. Indeed, as evidence in *SMO*, the Respondent asked the Embassy on 7 July 2021 for a list of CSID-issuing CSA offices, and received the list by email five days later. [This email is set out at [64] of *SMO*.]

I enclose a copy of the list against which the Respondent is now able to check requests and directions made under [144(13)] of *SMO*."

40. The response attached from the Iraq Embassy is dated 7 July 2022 and is partially redacted. It is as follows:

"Good morning

I sent the inquiry to my colleagues in the Ministry of Interior and they confirmed that the below departments in Mosul and the surrounding areas of Nineveh Governorate are still issue the CSID, and the rest of Iraq's departments are issue the Iraqi National Card.

The offices which is still issued the CSID as follows:- الشيخان ، سنجار،الشمال ، الفحطانية ، زيلكان، البعاج، وانه، الشورة

Sheikhan, Sinjar, North, Qahtaniyah, Zelkan, Al-Baaj, Wanh, Shura

Hope this information will help.

Kind regards

Counsellor

[redacted]

Minister Office / MOFA

Email:@mofa.gov.iq"

41. No response has been received from the claimant's representatives. I have not recalled the hearing for further submissions because what the Iraqi Embassy says confirms the expert evidence of Ms Amin. The only remaining CSID offices are in Mosul and the surrounding areas in Nineveh.
42. I approach this appeal on the basis that there are no CSID offices in Kirkuk.

Upper Tribunal hearing

Claimant's evidence

43. The claimant gave oral evidence with the assistance of a Kurdish Sorani interpreter. However, on occasion during his evidence, he reverted to using English. His English seemed reasonably good, which is not surprising as he has spent over 15 years in the UK. Mr O'Ryan asked him to keep to just one language, which the claimant mostly did thereafter.

44. The claimant adopted his four witness statements, confirming his address and that their contents were true to the best of his knowledge and belief.

Witness statement 15 July 2019.

45. This statement accompanied the fresh claim application. The claimant said he was living in Sheffield, with a friend who was helping him financially. He had not been in any relationships in the UK and had no medical condition. Later in his statement, the claimant explained that he had been under the care of the Burns Service in Sheffield since his arrival in 2005, and had undergone highly complex reconstructive surgery to restore his right eyebrow, right lower eyelid and nose. His doctor had been very supportive, but there were significant psychological concerns and his asylum limbo was compounding them.
46. The claimant was born in Kirkuk but came to the UK on 29 January 2005 and claimed asylum on arrival. He asserted a fear of persecution as a Ba'ath Party member after the fall of Saddam Hussain's regime. The Secretary of State refused his application and his appeal failed. The claimant said that he was unable to go to live in Baghdad, where he would have no support. There were many Shi'a militia there and as a Sunni Muslim, he feared for his life in Baghdad. The Iraqi authorities were linked to the Shi'a militias and he did not think they would protect him.
47. The claimant also could not go to live in the Kurdish Autonomous Zone. He did not know anyone there and had neither friends nor relatives in the KAZ. Without assistance from one of the major parties in Kurdistan, he did not consider that he would be allowed to stay in the KAZ.
48. The claimant had lost touch with his family in Iraq a long time ago, when he left in 2005. He hoped they were safe but he did not know what had happened to them.
49. The claimant had tried to obtain either an ID or a passport from the Iraqi Embassy but they rejected his application as he had no proof of his citizenship. He had been allowed into the building to speak to an Embassy official but as soon as he said he had no original Iraqi identity documents, he was asked to leave. On return to Iraq, with no documents and without support from family or friends, he would be unable to access financial assistance, employment, housing or health and would be likely to face destitution.

Witness statement 24 October 2019.

50. In his October 2019 statement, the claimant maintained that he was an undocumented Iraqi with neither a passport nor a CSID card. His first visit to the Iraqi Embassy on 15 July 2019 had been with Mr Soran Khider, a witness appointed by his legal representatives to accompany him and document what happened. Because he had no contact with family or

friends in Iraq, the claimant had not been able to obtain any documents from there to help him re-document himself in the UK.

51. The claimant's last contact with family had been in 2010, when his paternal uncle was moving from Kirkuk to Mosul, from whence the uncle's wife came. His uncle's mobile phone number was no longer working. The claimant had asked friends and people from the Kurdish community in the UK who were travelling back to Iraq, and two of them had travelled to Kirkuk and tried to trace the claimant's uncle. They told the claimant that his uncle was no longer living in his old house in Kirkuk, which the claimant knew already. They did not go to Mosul, both for security reasons and because the claimant had no address for his uncle there.
52. The claimant had approached the Sheffield Red Cross in September 2019 and was waiting for an appointment. He had still been unable to contact his family. There would be very significant obstacles to his reintegration in Iraq, either in Baghdad or in the KAZ.

Witness statement 2 October 2020

53. The claimant stated that he had no contact with family members in Iraq and could not document himself. Only his paternal uncle was still alive when the claimant left Iraq in 2005, but he had not had contact with him since 2010, when that uncle told the claimant he was moving to Mosul. The claimant had made efforts to locate his uncle, and a letter from the Red Cross dated 3 December 2019 confirmed acceptance of his registration. His face was now on the 'Trace the Face' Red Cross website.
54. The claimant believed his uncle might have died during the ISIS/Daesh occupation. He had asked two friends, AS and KR, who travelled to Kirkuk, to see whether his uncle had moved back there because of what was happening in Mosul. They had asked around, including asking neighbours, but had not been able to find any information about the claimant's uncle. AS was in Iraq when the statement was written.
55. The claimant considered that he no longer had any family in Iraq.
56. The claimant gave details of his attempts to re-document himself. He had been twice to the Iraqi Embassy in London, and once to the Iraqi Consulate in Manchester. Each time, he was told that without any Iraqi nationality documents he could not be re-documented there.
57. The claimant gave details of his latest attempt on 29 September 2020 to obtain documents at the Iraqi Embassy in London. With the help of Mr Adel Alan, engaged by his solicitors to assist him, he had completed and printed an online passport application: this was the first time he had been told that it was important to do that before going to the Embassy.

58. The claimant and Mr Alan attended the Embassy together at about 10 am. They both entered the building and the claimant showed the receptionist his online application, which he had printed out. The receptionist said that he could have an appointment with an official inside the Embassy unless he had some Iraqi nationality document. The claimant explained that he had nothing else. They were asked to wait, while the receptionist checked whether they could be seen. Finally, they were told to leave, as they could not be seen. They left the Embassy at about 11.30 am. Mr Alan took photographs of the claimant outside the Embassy as they were not permitted to take photographs inside the building.
59. The claimant did have a CSID when he was in Iraq but left it there in 2005 when he came to the UK. He had never held an Iraqi passport. He did not remember any of his family registration details and when his solicitors asked him about this during the preparation of this witness statement, he did not know what they were talking about. He did not even know them when he was in Iraq, and had now been in the UK for nearly 16 years.
60. The claimant felt settled in the UK. He would be unable to re-establish himself in Iraq if returned: in fact, he would rather commit suicide than return. He could not speak Arabic, had no support network, and given his disability, he would not be able to work in Iraq.

Witness statement 10 May 2022

61. The final witness statement was prepared for the present hearing. The claimant adopted all three of his previous witness statements. He still had no contact with family members in Iraq and could not document himself, for the reasons already given.
62. The claimant had heard nothing from the Red Cross. He had telephoned their Sheffield office on 9 May 2022, but the person he spoke to said that the offices were closed and he should text his contact details, and they would get back to him.
63. The claimant had now lived in the UK for over 17 years. He asked the Tribunal to allow the appeal.

Oral evidence

64. In oral evidence, the claimant adopted all four of the witness statements summarised above and was tendered for cross-examination. He gave his evidence through a Kurdish Sorani interpreter but appeared to find it difficult to follow any but very concise questions.
65. The claimant confirmed that he had given the Red Cross details of his paternal uncle, on a big form for family tracing. He had no photograph of his uncle to give them. He did not know his uncle's date of birth, just his approximate age, which might be between 70-75 years old, or even older. He had given details of his paternal grandfather and grandmother, whom he had never met. He was not asked for any details of the maternal side

of his family. His own photographs were on the Red Cross' Trace the Face website.

66. There followed a long series of questions about how the claimant had arranged his visit to the Embassy, whether the online form, which the claimant had printed out for his visit to the Iraqi Embassy, should have been signed with thumbprints where indicated on the form, or not, and the date on which the claimant printed out the form (he thought it was the day before he went to the Embassy). The claimant did not know the answer about the thumbprints. The Iraqi Embassy had given him a piece of paper with his queue number, which was in the bundle.
67. In re-examination, the claimant confirmed that when he went to the Iraqi Embassy on 29 September 2020, they turned him away, because he had no Iraqi nationality documents. They had not mentioned the signature thumbprints: they just looked very quickly at the form and said 'this is not working'. He really did not know when the form had been printed out.

Adel Alan's evidence

68. Mr Alan had provided a witness statement dated 5 October 2020, made just a few days after their abortive visit to the Embassy. He is a British citizen and a Kurdish Sorani interpreter, who went with the claimant to the Embassy. He is employed by SK-UK Management Ltd.
69. Mr Alan confirmed that he had helped the claimant complete and print the online passport application form. On other occasions when he had acted as an interpreter and witness for clients of the solicitors who were attending the Iraqi Embassy, they had been refused entry if they could not show that they had completed an online application before coming and 'could demonstrate a solid reason for being there'.
70. The claimant met Mr Alan outside the Embassy at 10 am. The claimant had with him the printout and the passport photographs which were required. Mr Alan's account of what then happened is the same as that given by the claimant in his evidence. Mr Alan confirmed that the Iraqi Embassy was not able to document the claimant.
71. Mr Alan adopted his witness statement and was tendered for cross-examination.
72. Much of the cross-examination simply revisited the witness statement. Mr Alan said that one could not simply telephone the Embassy and make an appointment. In addition, Mr Alan said that he had attended with more than 20 people from the solicitors, some of whom were re-documented. Those who succeeded had Iraqi passports.

73. Mr Alan had also given evidence in court on many occasions. He had never worked or interpreted for the Iraqi Embassy. He was unable to say whether anyone he helped had been lying: he was just a witness to what happened at the Embassy.
74. Mr Alan said that the Embassy required applicants to prove Iraqi nationality by showing a CSID, an expired passport or an Iraqi identity card. The Embassy would take the form and keep it. The thumbprint boxes were never completed, in his experience: there was no need to sign the form, as the online form had an application number, which was sufficient.
75. In re-examination, Mr Alan said that at the Embassy there was a list on the wall of the documents which would be required as evidence of Iraqi nationality: a CSID or national identity card, or an expired Iraqi passport. At least one was required and it had to be an original document. There had been no comment about the presence or absence of thumbprint signatures on the form. He was telling the truth.

Karwan Sharif Rashid's evidence

76. Mr Rashid gave evidence remotely, using his parked car for privacy. He adopted his witness statement of 6 October 202. He is an Iraqi citizen who has leave to remain in the UK as the EU partner of his wife, Ms Ciesielska, a Polish citizen.
77. Mr Rashid met the claimant through the Kurdish community in Sheffield. During a trip to Iraq in 2019, he and his wife travelled to Kirkuk to visit the address where his uncle had lived before relocating to Mosul, in the Shuaqay Hay Saddam ('Saddam's Flats') complex. It was not a secure time to visit Iraq and the local people who Mr Rashid and Ms Ciesielska approached were unwilling to talk to strangers. There had been many deaths in the area due to the security situation there. They had been unable to find out anything about the claimant's uncle.
78. Mr Rashid was tendered for cross-examination. He said his mother was in hospital, so he had to make the journey even though it was dangerous. He travelled on an emergency travel document (which he called a 'one-way passport') after proving he was an Iraqi national by producing documents sent to the UK by his family in Iraq.
79. Mr Rashid was from Sulaimaniyah. After landing, he was able to keep his emergency travel document, because his solicitors had advised him that it would be needed for evidence, but he travelled on his Iraqi identity document, which was a two-part document issued to him in 2019. He showed it on camera. The newer version was a single document. Once in Iraq, he had been able to get an Iraqi passport after a couple of weeks and he travelled home on that document.

80. Mr Rashid did not know the claimant's family: they came from a different area. He went to the place in Kirkuk where the claimant had asked him to go, to look for 'the old people' and he spoke to the people 'responsible for all areas' who had all the information on things there. He asked about the claimant's uncle, and his other relatives, but nobody knew who he was talking about. There had been so many people coming and going. He asked in a couple of shops, but not the police, the hospital, or the registration office. It was not safe to stay long in Kirkuk if you did not live there: if someone saw you and you were not from the area, you might get in trouble.
81. There was no re-examination.

Other witness statements

Eliza Ciesielska

82. Ms Ciesielska is Mr Rashid's wife. She is Polish. Her unchallenged evidence is that she and her husband met through the small Kurdish community in Sheffield. Her husband and the claimant both came from the Kirkuk area. The claimant had been a frequent visitor at their home and they would go out to celebrate Kurdish New Year together.
83. The claimant asked her husband for help, and Ms Ciesielska also wanted to help if she could. She travelled to Iraq with her husband, because she did not want him to go alone. Iraq could be dangerous. They took a taxi from Sulaimaniyah to Kirkuk, passing through a lot of checkpoints. There were a lot of armed forces everywhere.
84. Once in Kirkuk, they went to the claimant's old address, but there was nobody there. Her husband asked people about the claimant's family, but they were unfriendly and suspicious of the couple. She felt scared and uncomfortable.

Aku Sabir Sharif

85. Mr Sharif came to the UK as an asylum seeker in 1999. He was naturalised as a British citizen in 2012. He lives in the Chesterfield area, where he has his own business. Previously, he was a professional interpreter in the Kurdish Sorani and Arabic languages, and worked from time to time as an interpreter for the Home Office. Mr Sharif made two witness statements.
86. **Witness statement 16 November 2020.** Mr Sharif met the claimant in 2005 when he interpreted for him at the hospital in Sheffield where he was being treated. During those conversations, he found out that the claimant, like Mr Sharif, came from Kirkuk. They kept in touch 'every now and then' after that.
87. In 2020, when Mr Sharif was just about to travel to Kirkuk to visit family still based there, he met the claimant in Sheffield town centre and asked, as a courtesy, if he could do anything for the claimant when he went back.

The claimant asked him to try to find his family and said they lived in the Saddam's Flats area.

88. Mr Sharif travelled through Sulaimaniyah airport. At the claimant's home address, just like Mr Rashid and Ms Ciesielska in 2019, Mr Sharif found the house was empty. He asked the neighbours: they knew nothing of the family who had lived there previously. The Kurdish families in that compound had no option but to leave after ISIS/Daesh took control of the area. The flats had mostly been rented to displaced families in recent years. Most people now living in the area had moved in after 16 October 2017, when Shi'a militias and government forces retook Kirkuk from ISIS/Daesh. Mr Sharif took photographs to prove to the claimant that he had been there, but he was unable to bring him any news of his family.
89. In his second witness statement made on 21 June 2022, Mr Sharif said that he had returned to Iraq in February 2022 to visit family members there. He visited the Saddam's Flats area again, to see if he could locate the claimant's family or at least find out some information about them. The claimant's old family home remained unoccupied. Mr Sharif asked some locals about the claimant's family, but nobody knew anything. He asked in the local supermarket, but again, nobody knew anything.
90. He remained willing to give evidence, but the Secretary of State did not wish to cross-examine him. Mr Sharif's evidence therefore stands uncontested.

Documentary evidence

91. The consolidated bundle included a copy of the passport application form which the claimant printed for his visit to the Iraqi Embassy, a copy of the wait ticket (confusingly headed 'Accountant') which he was given at 10:27 am on 29 September 2020 at the Embassy; and a photograph of the claimant outside the Embassy.
92. The bundle also contained a manuscript note on British Red Cross headed paper from Nicola Smith, Service Coordinator – South Yorkshire, Red Cross International Family Tracing, asking the claimant to sign and return a form, and providing a prepaid envelope in which to return it; and a letter dated 3 December 2019 from her, confirming registration of his details on its Trace the Face website, and the upload of a photograph of the claimant.
93. Ms Smith's letter set out how Trace the Face works:

"... As discussed, we have no active, open file looking for your family as Trace the Face is a passive tool. This means that we will not contact you unless we have any information to give you. Please inform us if you change your address or telephone number to enable us to contact you if we are notified that someone has recognised your photo on the website. ...

Your personal data will remain on the database until you contact us to have it removed. Your information can only be seen by personnel of the Tracing Services of European National Red Cross Societies. Your relative would have

to make a tracing enquiry with a European Red Cross National Society for a match to be possible. ...

Your photo will remain on the website unless you request for your photo to be removed. No one will be able to contact you directly when they see your picture as your personal information is not public. ”

94. Ms Smith encouraged the claimant to look through the Trace the Face photographs and see whether any of them are his relatives. If so, he is to write down the picture reference and contact the local British Red Cross tracing office. New photographs are uploaded daily.

Ms Amin’s report

95. The additional evidence admitted under rule 15(2A) included a report dated 21 June 2022 from Ms Sino Amin, a British-Kurdish writer who publishes under the pen name Ruwayda Mustafah.
96. Ms Amin is a doctoral candidate at Kingston University London, where she is researching the political situation in the Iraqi Kurdistan Region. She has a Masters Degree in Political Communication, Advocacy and Campaigning, and a BA in Law. She visited the region as recently as February 2022, as part of a campaign to end discrimination against children with learning disabilities in the classroom, and she then met Dr Rewaz Faik, the Iraqi Kurdistan Region’s Speaker of Parliament. She cites an impressively long list of fiction and non-fiction publications, many on gender and children’s discrimination issues in the region.
97. Ms Amin was asked to prepare a report on whether there was still a CSA office in Atlas Road in Kirkuk, whether it issues replacement CSIDs as well as the INID, or just the new INID. If Atlas Road office was no longer open, Ms Amin was asked to find out where the records from that office would now be held. She was asked to verify the Iraqi Embassy evidence in *SMO* that offices in Hawija, Reyad, Alzaab, Al Abassy and Shoaan still issued CSIDs.
98. Ms Amin went to see Colonel Khalid Ahmed Ibrahim, the CSA head in Hawija. He told her that CSIDs were no longer being issued in Hawija, Reyad, Alzaab, Al Abassy or Shoaan. He said that they were not being issued anywhere in Iraq now.
99. Ms Amin then spoke to Brigadier-General Ata Fadhil al-Deree, the head of the General Directorate of Nationality in Kirkuk city. It was a telephone conversation. He confirmed that CSIDs were not being issued in Kirkuk city and that only the new INIDs were now being issued. The Atlas Road records had been archived to the new office in the Askari neighbourhood of Kirkuk city.
100. Ms Amin also spoke to the Iraqi Kurdistan Regional Government’s representative in the UK, Mr Karwan Jamal Tahir, who confirmed that CSIDs

are no longer being issued in Kirkuk, and only the new INIDs were being issued.

Secretary of State's submissions

101. For the Secretary of State, Ms Cunha relied on the Secretary of State's skeleton argument dated 11 May 2022 and on the refusal letter. In the skeleton argument, settled by Mr Lindsay, the Secretary of State noted the claimant's key contention that he did not have and could not obtain a CSID or equivalent documentation, and that he was unable to trace or contact any family members in Iraq. Both claims rested on the credibility of the claimant.
102. The Secretary of State contended that the claimant's evidence should not be treated as credible. As long ago as 2005, the Crawford decision, which is the *Devaseelan* starting point, found his core account to lack credibility. The claimant had been prepared to give false and misleading evidence in order to avoid removal from the UK.
103. The claimant's evidence should be accepted only where supported by reliable independent evidence: no such evidence had been produced. In particular, he should not be believed as to his inability to remember or to find out the volume and page reference of his entry in the Family Book in Iraq. Kirkuk was no longer a contested area and his particular personal characteristics and circumstances disclosed no sufficient basis for his appeal to be allowed on the *SMO* fact-sensitive 'sliding scale' reasonableness assessment.
104. In oral submissions, Ms Cunha accepted that the evidence that the whole of Kirkuk was now covered by the new INID machines could not be rebutted by the Secretary of State, as she had not been able to obtain evidence from the Iraqi authorities to show that CSIDs were still being issued, or where, despite an adjournment being given for that evidence to be obtained.
105. The claimant had not done everything he could to trace his uncle. He had an interest in demonstrating that his family no longer existed; he might have given the Red Cross or his friends wrong, or insufficient, information and they had never met the claimant's uncle or other relatives. That point was not put in cross-examination.
106. Mr Alan was not in a position to say whether the claimant was withholding a CSID or lying about anything else. The Tribunal should find that he was hiding information. The claimant's witness statement said that he did not remember his CSID page and volume number.
107. The Iraqi Embassy passport application was printed the same day the claimant went there, not the day before, and was not signed with a thumbprint. The claimant had given details only of his mother and father

on it and his inability to find his uncle lacked credibility. The claimant was not a truthful witness.

108. Ms Cunha accepted that in cross-examination she had not put any of these points to the claimant.
109. The claimant's consistent repetition of the same account did not make it plausible. Ms Cunha accepted that this had not been put to the claimant.
110. It was for the claimant to make his case: see *TK (Burundi)* [2009] EWCA Civ 40, which is authority for the proposition that the absence of independent supporting evidence, which is readily available, can play a part in determining overall credibility where no credible explanation is provided for its absence.
111. The Secretary of State would rely on the guidance given by the Upper Tribunal in *KB and AH (credibility - structured approach) Pakistan* [2017] UKUT 491 (IAC) as to the proper approach to credibility assessment.
112. As regards Article 8 ECHR, the claimant had been in the UK for 17 years, not 20 years: that was a weighty factor, but not sufficient to undermine the public interest in maintaining immigration control. The appeal should be dismissed.

Claimant's submissions

113. For the claimant, Mr O'Ryan relied on his skeleton argument of 19 May 2022. After setting out succinctly the procedural history of this appeal, Mr O'Ryan summarised the findings in the Crawford decision, which was the *Devaseelan* starting point for any further consideration of his circumstances now. Judge Crawford had not made a blanket negative credibility finding: he had accepted that the claimant was a Kurd from Kirkuk, an Iraqi citizen, and a person who had been seriously injured in Iraq. He had not rejected the account of the claimant being injured in a grenade blast (though he did not expressly accept it either).
114. Judge Crawford's conclusion that the claimant had not previously mentioned his connection with the Ba'ath Party was based on a misreading of his SEF interview and was erroneous. The judge did not reject the claimant's evidence that his father had died of natural causes, his brother disappeared in 1991 and his mother and sisters been killed. As *AA (Iraq)* had found there was an internal armed conflict in Kirkuk and a serious conflict in Mosul at the time, there was ample reason to believe that persons who previously lived in Kirkuk might have been displaced and/or killed.
115. Mr O'Ryan asked the Upper Tribunal to have regard to the evidence given by the claimant to the Dearden Tribunal, which although the findings of fact had been set aside, was relevant to these proceedings and admissible.

116. The claimant's oral evidence to Judge Dearden was that he could not work because of the injuries sustained in the grenade attack: the right side of his body took the force of the blast. He is right-handed and is unable to write or carry out any manual labour as a result. Both the Crawford and Dearden Tribunals accepted that the claimant had suffered ridicule, abuse and prejudice by reason of his disability.
117. Mr O'Ryan relied on the country guidance of the Upper Tribunal in *SMO and KSP (Civil status documentation, Article 15) Iraq CG* [2022] UKUT 110 (IAC) and for the historic circumstances in Iraq during the conflict, on *AA (Article 15(c)) Iraq CG* [2015] UKUT 544 (IAC). Which held that in 2005 'as a general matter, there are substantial grounds for believing that any civilian returned [to the contested areas, which included Kirkuk], solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive'.
118. The claimant met the requirements of paragraph 276ADE(1)(vi) in that he was over 18, had lived continuously in the UK for less than 20 years, but there would be very significant obstacles to his integration into the country into which he would have to go if required to leave the UK. The question of integration called for a 'broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society, and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life': see *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813 at [14].
119. Mr O'Ryan invited the Upper Tribunal to depart from Judge Kekić's finding that there was no longer any live Article 3 ECHR issue in the appeal. No such concession had been made on the claimant's behalf. The claimant contended that on return to Iraq he would be destitute because he would not be able to obtain a CSID or an INID. There were many checkpoints in the country manned by Shi'a militia who were unlikely to allow him to pass without one or the other: see *SMO and KSP*, at [11] in the judicial headnote. He requested that the claimant's case be considered under Articles 3 and 8 ECHR.
120. In relation to Article 3 ECHR, it was no longer in dispute that the claimant was a Sunni Kurd from Kirkuk, who had injuries which resulted in his not being able to work, and that to avoid destitution on return, the claimant would need to have a CSID or INID. It remained his case that he did not have a CSID with him in the UK. The claimant's account was that the original CSID had been left in Iraq with family, and he had no contact with family or friends in Iraq. He left Iraq when relatively young and did not know the page number or volume of his family book: he was unmarried

and childless then and did not need to know it to register new family members of his own.

121. *SMO and KSP* at [13] in the judicial headnote found that a replacement CSID could be obtained in the UK *only* if the CSA office where the claimant was registered had not yet converted to INID cards, which required personal attendance, and only with assistance from family and friends, which the claimant said he did not have. An INID card could not be obtained by a proxy: a person had to attend themselves.
122. The evidence before *SMO and KSP* was that there were still CSID issuing offices in 5 places in Kirkuk: Hawija, Reyad, Alzaab, Al Abassy and Shoaan, as well as one office in Basra and most departments in Mosul. The evidence relied upon in the country guidance case was provided in July 2021 for a hearing in October 2021 and might no longer be accurate. The Secretary of State had not adduced any up to date evidence about the specific locations in the IKR which were still issuing CSID cards. Mr Thomann for the Secretary of State had stated in the *SMO and KSP* hearing that the Secretary of State would be prepared to make enquiries with the Iraqi authorities when the question arose in an appeal, as it was she who would be more likely to be able to ascertain whether a given CSA office still issued the CSID.
123. On the evidence before the Tribunal, the claimant invited the Tribunal to find that there is a reasonable degree of likelihood that the CSA office in Kirkuk where he is registered had converted to issuing INID cards and therefore he would be unable to get one.
124. The claimant's evidence about having lost contact with his family had been consistent since his witness statement in July 2019. His uncle had left Kirkuk for Mosul in 2010 and then disappeared. His uncle was very old and the claimant thought he was unlikely to have social media presence, although he had looked for him online. There was still no contact with any family member. The claimant had used the Red Cross Trace the Face process, without success, but was still registered thereon. He had also asked his friends Mr Sharif and Mr Rashid to look for his family in Kirkuk when they visited. Mr Rashid and his wife had visited and looked on one occasion, and Mr Sharif on two, one this year. No trace of the claimant's family was to be found in the Saddam's Flats area where they used to live.
125. The Tribunal should find that on return to Iraq the claimant would be undocumented and destitute, which would engage Article 3 ECHR.
126. In the alternative, the claimant had no family or friends in Iraq, no means of obtaining accommodation or employment, and these were 'very significant obstacles' to his integration. He remained disabled by a serious injury and was entitled to leave to remain under paragraph 276ADE(vi).
127. In oral submissions, Mr O'Ryan repeated much of what was set out in his skeleton argument. To the extent that the oral evidence given at the

remaking hearing was said to damage the claimant's credibility, Mr O'Ryan said that Mr Rashid had been a credible witness in his oral evidence, and reminded the Tribunal that the Secretary of State had not asked to cross-examine his wife, Mrs Ciesielska, or Mr Sharif, and that their evidence therefore stood unchallenged. Mr O'Ryan relied on the unreported decision in *Ghafoor*, as support for the proposition that even where credibility had been previously rejected, it would be an error of law to fail to take into account efforts made to trace relatives. The civil conflict in the claimant's home area had arisen after the 2005 Crawford decision which was not, therefore, determinative of facts arising out of that conflict.

128. Mr O'Ryan asked me to allow the appeal. I reserved my decision, which I now give.

SMO and KSP - the 2022 Iraq country guidance

129. The Upper Tribunal's country guidance in *SMO and KSP* (civil status documentation; Article 15) Iraq CG [2022] UKUT 00110 (IAC) was handed down on 16 March 2022 and replaces all existing country guidance on Iraq. In relation to the documentation issue, and so far as relevant in this appeal, the Upper Tribunal's guidance is that:

"C. CIVIL STATUS IDENTITY DOCUMENTATION

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. ..."

Analysis

130. I remind myself of what is not disputed in this appeal: the claimant is a Sunni Muslim, a Kurd from Kirkuk, and was injured in a grenade attack about 18 years ago during the conflict in his home area of Kirkuk. He suffered serious injuries which have required many surgeries to rebuild his facial muscles. He is a vulnerable witness.
131. There is clear and compelling evidence from the Iraqi Embassy in London (albeit received after the hearing) which corroborates the expert evidence of Ms Amin that there are no CSID offices in the Kirkuk area now. Unless the appellant has a CSID and is concealing it, or he is lying about his inability to contact his surviving uncle and his family in Mosul, he is entitled, applying *SMO and KSP*, to succeed in this appeal.
132. I have considered the totality of the evidence before me. The *Devaseelan* starting point as to credibility is the Crawford decision in 2005, where the Judge found the claimant's evidence on his relations with the Ba'ath Party to lack credibility, and also did not accept his account of the attacks on his family members in Iraq. However, he accepted the claimant's religion, nationality and ethnic origin, and that he came from Kirkuk. He also accepted that the claimant had been injured badly in a grenade attack in 2004.
133. As noted above, many of the points on which Ms Cunha asked me to reject the claimant's oral evidence at the hearing before me were ones which she failed to put to him in cross-examination. The purpose of cross-examination is to enable a person to respond to, and if possible, meet any negative points which will later be relied upon in submissions.
134. The claimant's evidence was that his attempts to get a CSID in the Iraqi Embassy did not work because he had no evidence at all that he is an Iraqi citizen, and that the Embassy officials refused to engage with him without at least some identity evidence. That is not relevant on the factual matrix as it now is: there are no CSID offices in Kirkuk.
135. The claimant's application was not accepted because he could produce none of the original documents which were listed on the wall of the Embassy. Mr Alan had accompanied many people to the Iraqi Embassy for redocumentation and others had succeeded, but they all had Iraqi passports.
136. I am satisfied, on the oral and documentary evidence, and applying the lower standard of proof applicable in asylum appeals, that the claimant

does not have a CSID or passport and does not remember the page and volume number of his family record. I accept the account he and Mr Alan gave of their visit to the Embassy in London.

137. As to the surviving family, there is overwhelming evidence from witnesses whose evidence on this point was not challenged, or whom the Secretary of State did not wish to cross-examine, that the claimant's old address in the Saddam's Flats area is unoccupied and that the area is full of displaced persons who have relocated there after the end of the war and have never heard of the claimant's family, and in particular, his uncle.
138. The claimant's account, which to the lower standard of proof I accept, is that his uncle moved to Mosul in 2010 and he has not heard from him since then. There is evidence that the claimant has contacted the Red Cross and used its Trace the Face service to try to find members of his family, but without success. I accept his evidence that he is no longer in contact with any family members in Iraq.
139. The principal issue in this appeal is whether the claimant has a CSID or could get one. On the evidence, given the lack of family connections in his home area and the completion of the INID changeover in Kirkuk, it is clear to me that he does not have such a document and cannot obtain one before returning to Iraq, as he would need to do.
140. The claimant's appeal is therefore allowed.

DECISION

141. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the claimant's appeal.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 26 July 2022