**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: UI-2021-001821
PA/00013/2021

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 6th February 2023** | **On 10th March 2023** |

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**
**DEPURTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**ABDULSALAM AHMED**
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms A M Sepulveda for Fountain Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of Abdulsalam Ahmed (born 22 December 1985), an asylum seeker of disputed nationality, against the decision of the First-tier Tribunal of 1 December 2021.

2. The Appellant arrived in the UK on 7 September 2015 and claimed asylum; that claim was refused on 15 January 2016. He appealed to the First-tier Tribunal, Judge Suffield-Thompson dismissing his appeal on 6 September

2016. The Appellant's claim was essentially that he was a Syrian Kurd who left Syria in 2008/2009 due to a family feud arising in the aftermath of his involvement with a woman; on a return to Syria, he would be in danger of serious harm. If removed to Iraq, a country with which he denied any connection, he would be unable to obtain the essential identity card to access the means to meet his basic living needs.

3. Prior to arriving in the UK, the Appellant pursued an unsuccessful asylum claim in the Netherlands, contending that he was an Iraqi national, which he explained was due to misguided advice from his uncle who said that Syrian nationals were always returned back to their country of origin; after its failure he made a voluntary departure to Iraq funded by the Netherlands authorities. He said he had taken the option of going to Iraq because at the time he had problems in Syria.

4. It should be appreciated that were the Appellant to establish himself as a Syrian national he would have an indefeasibly strong asylum claim, as neither party suggests that circumstances in Syria have changed since the decision in *KB Syria CG* [2012] UKUT 426 (IAC) effectively holding that any returnee (save for an avowed Assad regime supporter) would face persecution for reasons of attributed political opinion. Judge Suffield-Thompson dismissed the Appellant’s appeal which sought to establish that fact, rejecting his assertion to be from Syria, because

   (a) Whilst he had correctly answered some questions about Syria at interview, he had not been able to state how far his asserted home area (Tal Habbash) was from Damascus or details of the surrounding governorates, nor state how long it would take to travel from Tal Habbash to Damascus, and could not identify whether Amouda had any facilities which promoted Kurdish culture nor name recent events of significance there;

   (b) An expert report from Alison Pargeter, which the Judge accepted displayed sufficient expertise to warrant treatment as such, stated that he showed notable gaps in his knowledge of his asserted local area, and could not explain why he had not attended school or speak Arabic (surprisingly in the light of primary schooling being mandatory under the Al-Assad regime and given the Arabisation policy which insisted on the language as the state’s official one), all of which left her unable to positively support his assertion of Syrian origin;

   (c) A language analysis report placed the Appellant as from a Kurmanji linguistic community from Iraq;

   (d) The Civil Registry document purportedly from the authorities in Al-Malakia was suspicious given it placed his birth in that area whilst he himself stated he was born in Tal Habbash some 122km away, in a different administrative division, and his suggestion that he had in fact been born in the former location and moved to the latter had not

been proffered at his asylum interview; and Ms Pargeter observed that the document was undated, which was very unusual;

(e) The Appellant's voluntary departure to Iraq strongly indicated that that was his country of origin given the inherent unlikelihood of an asylum seeker seeking to travel to a country other than their own, noting Ms Pargeter's statement that his account of having been provided a document facilitating entry to Iraq from the International Organisation for Migration was inconsistent with her understanding that the IOM provided assistance with obtaining travel documents but did not itself provide them.

5. Judge Suffield-Thompson concluded that the Appellant would face no difficulties as he would not be returned to Syria but to Iraq, where as a person apparently from the Kurmanji-speaking community he could live in the Iraqi Kurdish Region without difficulty.

6. On 30 December 2019 the Appellant made further representations supported by further evidence, by way of a Certificate of Identification from his local authority in Syria, a copy of his Civil Record, and an Authentication Report confirming that that Civil Record matched the central records held in Damascus.

7. The Appellant's witness statement supporting those further representations set out that

(a) He could understand Arabic but did not wish to speak the language.

(b) At least one of his two new documents was obtained via his uncle who had attended the Civil Register in Damascus on his behalf.

(c) After his asylum claim failed in the Netherlands he requested to be permitted to return to Syria, or to return to Turkey, but those requests were refused and he was told that Iraq was the only option; he was given an emergency travel document and some money, and was nervous when he returned to Erbil airport. He spoke Kurdish to the officials there, his paperwork was taken from him and he was told to leave the airport, and permitted to take a taxi onwards to Turkey and then travelled onwards to the Syrian border, by which time his relatives had negotiated a solution with the family with whom they had previously feuded, and who had now left his home area. He resumed working on the family's land but as the civil war continued he became fearful of conscription and was helped to leave the country by his uncle.

(d) He had attended the Iraqi Embassy in London to determine whether he could apply for Iraqi identity documents but his application was rejected for lack of proof of any such entitlement; a witness statement from an interpreter, Bavel Salam, instructed to accompany the

Appellant on that visit from his previous representatives was provided.

8. Supporting evidence with those representations included

   (a) An Individual Civil Record from the Council of Al Hasakah City in the Al Hasakah Governorate for Abdul Salam Ahmed, son of Salim and Zainab Ali, born 22 December 1985; a DHL receipt indicating that the document had been sent by his uncle from Qamishli in North-Eastern Syria, a town said to be close to the Appellant's home area.

   (b) A Certificate of Identification for Abdul Salam Ahmad, which the Appellant was to describe at the hearing below as issued by the representative of the relevant district, giving his place of birth as Amuda, witnessed and signed by the village chief (Mukhtar) and bearing a stamp from the Ministry of the Interior.

9. The Appellant's advisors had also obtained a verification report into this document from Dr Giustozzi from the LSE, who explained that the original document was not required for verification purposes given that the relevant authorities would compare a copy with record numbers, signatures, stamps, and other information from their records including any pictures. He had instructed a Damascus based researcher (who was a journalist and student from Damascus University), to visit the Civil Affairs Department of the Syrian Arabic Republic's internal affairs office, where on 22 September 2021 she asked an employee (Khalid al Noor) to check that the document matched the civil affairs department's own records. He duly checked the document against the relevant database and confirmed it was genuine.

10. Before Judge Robinson against whose decision this appeal is brought, the Appellant contended that the usual approach by which Judge Suffield-Thompson's findings would be treated as the starting point for future appellate consideration of his case should be departed from, because he was previously unrepresented and he had been denied the opportunity to make submissions on the available evidence; the Pargeter report was no longer available to the Appellant and so should be discounted. In the alternative if he was removed to Iraq, as the Respondent's own CPIN noted, a person unable to replace their CSID and/or obtain an INID was likely to face significant difficulties in accessing services and thus risked being exposed to conditions which were likely to result in destitution sufficient to amount to a breach of Article 3 ECHR.

11. Judge Robinson dismissed the Appellant's appeal, finding as to his claim to be a Syrian national:

   (a) There was no reason not to treat Judge Suffield-Thompson's decision as the starting point: the Appellant had been represented prior to the appeal hearing if not actually at it, and indeed that was the basis upon which Ms Pargeter had been instructed. The Judge had explained

how the proceedings would be conducted, a court interpreter had been provided whom the Appellant understood, and he had answered questions at the hearing indicating that he had a proper opportunity to put his case. The Judge appeared to have examined all relevant evidence including the Appellant's own evidence of the modality of his admission to Iraq with some assistance from the IoM and Ms Pargeter's report, which was the basis of some of the adverse findings, had been provided on his behalf. The fact that there was country evidence indicating that Syrian Kurds faced difficulties in obtaining documents did not explain the deficiencies in the documents that *had* previously been obtained.

(b) There was no explanation why the Certificate of Identification gave the Appellant's birthplace as Amuda rather than his asserted home area (Tal Habbash). He appeared to have produced an Identity Card before Judge Suffield-Thompson which was absent at this hearing, without good explanation.

(c) As to the Individual Civil Record, Dr Giustozzi, whilst an undoubted expert known to the Tribunals, had not in fact personally verified the report, and no independent evidence had been put forward regarding the qualifications of Khalid Al Noor to assess the document; nor had a translation of the document given to him been provided on the appeal. There was no evidence to show that the DHL envelopes from his uncle contained these identity documents.

12. The Judge then addressed the Appellant's claim in the alternative based on risks arising from removal to Iraq (in so doing starting from the premise that rejection of the Appellant's claim to originate in Syria meant he fell to be treated as an Iraqi national). Judge Robinson did not accept that the Appellant's involvement in demonstrations against the UK's involvement in Iraq would cause him any problems. Nor that he would face destitution amounting to an Article 3 violation in Iraq due to a lack of relevant identity documents entitling him to social security and safe passage from the point of assumed return, Baghdad, to the Kurdish North, rejecting that claim because

(a) The Appellant had been returned to Iraq previously in possession of a travel document and would have been in possession of all other relevant documents including a CSID before originally leaving Iraq.

(b) The witness statement from the interpreter, Bavel Salam, who accompanied the Appellant on his unsuccessful attempt at obtaining documentation from the Iraqi Embassy deserved no weight as the interpreter had not attended this hearing to give oral evidence. The Appellant's evidence was vague on this visit and he did not appear to have advised the Iraqi Embassy of his previous successful admission to the Kurdish North (and hence of the prior availability of an Iraqi identity document).

(c) The Appellant was, on Judge Robinson's findings, not someone who "*does not currently have the relevant identity documentation in his possession*". But in the alternative he could be presumed, noting his choice to previously travel to Iraq, to have family or friends there, who could send his existing CSID to him, and would thus either be able to voluntarily return to Erbil using his CSID, or to cross Iraq following an enforced return to Baghdad relying on his CSID when necessary.

13. The First-tier Tribunal also found that the Appellant's human rights claim failed; no challenge has been made to that conclusion.

14. The Appellant's grounds of appeal against Judge Robinson's decision contended that

(a) The Tribunal had effectively treated Khalid Al Noor as having conducted an expert verification process himself, rather than recognising that he was simply an employee checking Syrian official records.

(b) Whether or not he held a CSID, that form of documentation expired in 2019 and as the Appellant lacked its modern replacement, the INID, the Tribunal was wrong to have failed to examine how he would manage to safely traverse the journey from Baghdad to the IKR.

15. Permission to appeal was granted by the First-tier Tribunal on 25 March 2022 because the Judge had arguably not had regard to the process undertaken by Dr Giustozzi to check the veracity of the document.

16. The Secretary of State's Response of April 2022 argued that it was legitimate for the Tribunal to have concluded that the Authentication Report did not include a verification by Dr Giustozzi applying his direct expertise of the document's veracity and nor was there any evidence of Mr Al Noor's ability to make a positive statement on the point. The lack of an INID was not relevant in the light of the finding that the Appellant possessed a CSID document which would still provide him with access to social security in Iraq.

17. For the Appellant Ms Sepulveda argued, vis-á-vis the first ground, that the First-tier Tribunal had been wrong in its approach to Dr Giustozzi's methodology. The qualifications of Mr Al Noor to verify documents were not the central issue, as the relevant process was not one of verifying the document via prior expertise but simply commissioning a researcher to visit the issuing authority's office to check its own records. The judge was wrong to believe there was no translation provided: there was one in the Appellant's bundle.

18. As to the second ground, there was no affirmative evidence that the Appellant could access a valid CSID and thus applying the relevant Country Guidelines he would face destitution in Iraq. We put to Ms Sepulveda Judge Robinson's statement §79 that, in relation to the

Appellant's possession of a CSID, there was “no evidence this is not the case.” She accepted that this could only reasonably be read as an alternative finding to the possibility of obtaining a CSID.

19. Mr Whitwell for the Secretary of State argued that there were cogent reasons for the Judge to reject the challenge to the earlier rejection of the Appellant’s claim to be Syrian, and there was no cogent challenge to the First-tier Tribunal’s alternative finding as to the Appellant's possession of a CSID.

## Decision and reasons

20. This appeal turns on the Appellant's nationality and origin. He has consistently asserted himself to be a Syrian national, which would be dispositive of his asylum claim in his favour. However that claim has been consistently rejected by administrative and judicial decision makers.

21. Dr Giustozzi’s evidence is of central importance to the Appellant's case. The context in which its assessment arises is important. This is not a case where the Appellant began with a clean slate as to the credibility of his assertion of Syrian origin. Judge Suffield-Thompson had made damning findings on that issue. And one cannot help but note the fundamental difficulties the Appellant faced with the case he sought to advance. He admitted putting forward a false asylum claim to the authorities in the Netherlands. Whilst he asserts that this was due to bad advice, his uncle having told him that his asylum claim would have more chance as an Iraqi than as a Syrian, that seems highly implausible. We take judicial notice that the response of European Union countries to Syrian asylum seekers has been generally very positive particularly in the years 2014-2016; the UK for example gives almost blanket recognition to them. Iraqis have not received the same response; countries have taken differing approaches, particularly to those from the IKR. Absent cogent evidence of there being some good reason that that approach would not be taken in the Netherlands, the Appellant had a steep hill to climb to convince anyone that his account was true. One appreciates that the issue ultimately turns on the subjective beliefs of him and his uncle, but where those asserted beliefs defy self-evident truths that would surely be known to those with a vested interest in considering their migration options, one can hardly turn a blind eye to the probabilities. The better asylum claim to advance would have been as a Syrian. There is the additional issue that he successfully achieved admission to the IKR. Whilst his representatives have pointed to statements in Country Guidelines decisions that Kurds are freely admitted to the IKR for short periods of residence, it is difficult to accept that that would apply to Kurds not originating in Iraq itself. It is one thing to say that the IKR takes a generous attitude to admitting Kurds from South and Central Iraq, but quite another to suggest it has an open borders policy towards Kurds from the rest of the world. Again that proposition would require cogent evidence to support it, and none has been identified.

22. In order to address those fundamental issues of plausibility and the diverse more precise adverse findings delineated above, the Appellant relies on the report from Dr Giustozzi summarised above. Para 6.2 of the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (May 2022) states that one of the criteria for an expert report is that it should

> "(e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision".

23. Here the procedure adopted by Dr Giustozzi was to send his own researcher to the Syrian Arabic Republic's internal affairs office to make an enquiry via an employee, Khalid al Noor. When providing opinion evidence in his own right, Dr Giustozzi is undoubtedly an expert whose opinions are trusted and often given significant weight by the immigration tribunals. However here he was not providing opinion evidence so much as acting as the conduit for the results of an enquiry conducted abroad. Whilst Dr Giustozzi provided brief details of the researcher's background to the First-tier Tribunal, 'Ms Alshikh is a journalist and student of the Media Faculty at Damascus University', there was no statement from her directly as to the procedure undertaken and there was no evidence as to Mr al Noor's authority to provide reliable evidence. It is unclear whether he is a lowly administrative official or a person with real authority. We say again that were the Appellant's credibility not otherwise in doubt, this evidence might have had a material impact in a global assessment of his case. But where he had already received a series of negative findings on his account with cogent reasons to support them, only the most clear-cut evidence in his favour could carry the day for him. It was thus open to the judge to adopt the approach taken. In the face of these difficulties for the appellant the observation that there was no translation was not a material error on the part of the judge.

24. Moving to the second ground of appeal, in seeking to establish himself as a person without a CSID,the Appellant faced a significant legal obstacle, having been found generally dishonest as to his past account. As Sir John Dyson JSC put it in the Supreme Court in MA (Somalia) [2010] UKSC 49 §31, citing Laws LJ in GM (Eritrea) [2008] EWCA Civ 833:

> "where a claimant tells lies on a central issue, his or her case will not be saved by general evidence unless that evidence is extremely strong. It is only evidence of that kind which will be sufficient to counteract the negative pull of the lie. But much depends on the bearing that the lie has on the case. The Court of Appeal correctly stated at para 104 of its judgment in the present case:
>
> > 'The lie may have a heavy bearing on the issue in question, or the tribunal may consider that it is of little moment. Everything depends on the facts. For example, if in the Eritrea cases the

> Secretary of State had prima facie evidence that the appellants had left legally, the tribunal might think it appropriate to put considerable weight on the fact that the claimant told lies when seeking to counter that evidence. The lie might understandably carry far less weight where, as in YL itself, the judge is satisfied that the appellant has lied where the lie is against her interests.'"

25. Thus a person found to lack credibility on his primary asylum claim the Appellant faces real difficulties in establishing any other factual propositions except in so far as he can refer to some extrinsic evidence. As per the headnote of SMO Iraq [2022] UKUT 110 (IAC) §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." Judge Robinson found the Appellant *was* in possession of a CSID. That finding was unchallenged in the grounds of appeal to the Upper Tribunal, as Ms Sepulveda recognised with admirable pragmatism. Accordingly the question of surmounting the well-attested obstacles that might prevent some asylum seekers from obtaining such a document simply did not arise.

26. We note the Appellant's submission that CSIDs were ineffectual after 2019: but that argument cannot stand with the finding of SMO Iraq §60 that it was "more likely than not that CSIDs continue to be available through the Iraqi Embassy in the UK but only for individuals who are registered at a Civil Status Affairs office which has not transferred to the digital INID system." Further, as set out in the headnote of SMO Iraq at [11] and [12] there is a 'phased replacement of the CSID system' and thus not all departments in Iraq have yet transferred to the digital system. No evidence was produced to the effect that all CSID cards issued under the old system are invalid. Applying the principle identified in MA (Somalia) and GM (Eritrea), the Appellant having been found to have lied on central issues as to his origin, his case can only be saved by extremely strong general evidence: but absent reliable information as to his precise home area in Iraq, he is unable to advance a positive case that he comes from somewhere where the Civil Status Affairs office no longer issues CSIDs.

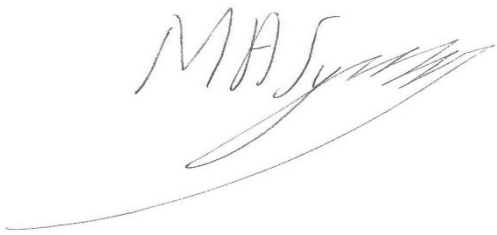
27. In conclusion, we find that there is no material error of law in the First-tier Tribunal's decision.

Decision:

1. The making of the decision of the First-tier Tribunal involved no material error of law.

2. We uphold the decision of the First-tier Tribunal dismissing the appeal.

Signed:



Deputy Upper Tribunal Judge Symes Date: 20th February 2023