



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Appeal No: UI-2022-002957
FtT Appeal No: PA/50412/2021
IA/01201/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 August 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SMS
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Bachu, Counsel, instructed by Freedom Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 April 2024

Order Regarding Anonymity

As the underlying claim is a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Iraq and of Kurdish ethnicity. He arrived in the United Kingdom on 19 October 2015 and claimed asylum. That claim was refused by the respondent on 11 February 2016. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Moan ("Judge Moan") for reasons set out in a decision promulgated on 13 September 2016.
2. On 4 September 2019 and 1 June 2020, the appellant made further submissions to the respondent. On 4 January 2021 the respondent refused the appellant's claim for international protection but accepted that the further submissions amount to a fresh claim thereby giving rise to a further right of appeal. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Law ("Judge Law") for reasons set out in a decision promulgated on 22 April 2022. The decision of Judge Law was set aside by me for reasons set out in my 'error of law' decision issued to the parties on 9 January 2024.
3. At paragraph [28] of the 'error of law' decision, I said:

".... the decision of Judge Law is vitiated by an error of law upon the sole ground regarding 'Documentation and Feasibility of Return'. As to disposal, I am satisfied that the appropriate course is for the discrete issue of the availability of a CSID/INID and redocumentation, to be considered and the decision remade in the Upper Tribunal. For the avoidance of any doubt, the following findings are preserved:

 - a. There is no reason to depart from the previous finding made by Judge Moan that the appellant's father was not a member of the Ba'ath Party and that the appellant had not been threatened by others in Iraq. (*Paragraph [28] of the decision of Judge Law*). The appellant is not at risk in his home area from people opposed to former members of the Ba'ath party or their families, and no other reason has been given as to why the appellant could not return to his home area after being re-documented. The living conditions there would not reach the level for a breach of Article 3 of the ECHR or for him to require subsidiary protection under Article 15(b) of the Qualification Directive, and there is nothing in the appellant's specific profile making it necessary to depart from that assessment. (*Paragraph [43] of the decision of Judge Law*)
 - b. Makhmur is currently a disputed territory controlled by the government in Baghdad. (*Paragraph [30] of the decision of Judge Law*)
 - c. The appellant has a maternal uncle, a mother and sister, who were last seen at the uncle's home in Erbil. The appellant's uncle has not moved away from Erbil and the appellant still has those family members to support him on return. (*Paragraph [33] of the decision of Judge Law*).
 - d. The appellant has not made use of the Red Cross service to trace his family. (*Paragraph [33] of the decision of Judge Law*)
 - e. Since his arrival in the UK, the appellant has taken part in two demonstrations which were outside the Iraqi embassy. The appellant

could not say when those demonstrations took place or what he was demonstrating against. He did not explain who organised the demonstrations or what cause he thought he was supporting. The appellant was not politically active in Iraq. The appellant does not hold views which are contrary to the central government or the government in the IKR and the posed photographs of him of his attendance at the demonstrations are a belated attempt to enhance his claim. The appellant would not continue to hold anti-government views if he were returned and neither the Central Government or Kurdish authorities would have any reason to regard him as an activist or troublemaker. There is no evidence to make it reasonably likely that his presence at a demonstration outside the embassy has ever been noted by the authorities. (*Paragraph [34] of the decision of Judge Law*)

- f. The appellant could not relocate on a long-term basis to Baghdad, as he is not an Arab. (*Paragraph [42] of the decision of Judge Law*).
- g. It would not be unduly harsh for the appellant to internally relocate in Erbil or Sulaymaniyah. (*Paragraph [44] of the decision of Judge Law*)."

- 4. It is against that background that the appeal is listed before me to remake the decision. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant bears the burden of establishing his claim to the lower standard.

THE EVIDENCE AND SUBMISSIONS

- 5. I have been provided with a Composite Bundle comprising of some 684 pages. The evidence relied upon by the appellant is set out in sections B and C of that bundle.
- 6. The appellant was called to give evidence. He adopted his witness statement dated 28 March 2024 that is to be found in Section B of the composite bundle. In cross-examination the appellant confirmed that in Iraq he worked as a Farmer. He had not attended school. He confirmed that when travelling to another town or city, a CSID was required. He confirmed that he has previously had an operation to his right foot. The operation was undertaken in a village where the appellant lived by a doctor.
- 7. The appellant confirmed he had an ID card in Iraq but claimed it was lost. Mr Lawson referred the appellant to the asylum interview in which the appellant had claimed (*Q.48*) that he had never obtained a CSID. The appellant said he meant that he did not have a passport but did have a CSID. He claimed that he had a 'fake' passport that did not record the same details as his CSID. The 'fake' passport was provided by the agent. The appellant claimed that when ISIS came to the village in which he lived, he left without taking the CSID. It was early in the morning when ISIS came and the appellant was tending animals in the farm about 2 kilometres away from home, in an area between the village and some mountains. There was no time to take any belongings. The appellant said he had not been carrying his CSID with him because he did not pass

through any checkpoints. The appellant maintained he is not in contact with his family in Iraq and that he had not left his CSID with anyone. He maintained that it had been left in the village. The appellant claimed his family have not moved back to the family home and ISIS are still occasionally active in the area.

8. To clarify matters, I asked the appellant when he had last spoken to his family. He claimed that he spoke to his mother once in 2018/19. He claimed he has not had any contact since, because he does not have any contact numbers. He claimed that on the occasion he spoke to his mother, he had contacted his family via a friend, with whom he no longer has any contact. He said that he had got in touch with a 'man' (who was a neighbour in Iraq) whose father was a friend of the appellant's father and he had obtained his mother's number, but he does not have that number anymore. The 'man' had given the appellant the number for the appellant's mother. When I asked the appellant what had happened to the number he had been provided with, the appellant said he lost his mobile phone and no longer has the number he was given.
9. There was no re-examination. The submissions made by the parties are a matter of record and there is nothing to be gained by my setting them out at any length in this decision. In summary, Mr Lawson submits the appellant now accepts that he had a CSID in Iraq. The appellant's account is that it was left at home when ISIS came to the village and the appellant was away looking after animals. Mr Lawson submits the appellant's account that he left the CSID at home is not credible. He refers to paragraph [19] of the decision of Judge Moan (promulgated on 13 September 2016) in which Judge Moan recorded:

"The Appellant said in his asylum interview that he fled his village when ISIS came to the area, he went to (the city of) Makhmur for one night and then to Erbil where his maternal uncle lived. He said that his mother and sister were also at his uncle's home. His uncle took him to a mountainous area called Qandil which was still within the IKR. The Appellant returned to his uncle in Erbil due to bombing in the mountains, he stayed with his uncle for twenty days whilst his uncle arranged for the Appellant to leave Iraq. At all times the Appellant has remained within the Kurdish region."
10. Mr Lawson submits the appellant's evidence is that before his departure from Iraq the appellant travelled within Makhmur and Erbil and the appellant would have required his CSID. In any event, Mr Lawson submits that if the appellant's evidence that he left his CSID at home is accepted, it can be sent to him so that he can return to the IKR or travel between Baghdad and his home area or the IKR through checkpoints without any adverse consequences.
11. In reply, Ms Bachu adopts the skeleton argument settled by her and dated 8 April 2024. She refers to paragraphs [36], [38] and [39] of the decision of Judge Moan:

"36. I acknowledge that the Appellant does not appear to have an ID card and this would hamper his access to basic services in Baghdad. He has family who could assist him in getting an ID Card or to arrange for his immediate transfer to Erbil. There would be issues for the Appellant if he

remained in Baghdad.... It could take three weeks in Iraq for him to get a replacement ID Card and this time he would find it difficult to access services and provide for his basic needs.

...

38. Travel from Baghdad to Erbil is possible by air thereby avoiding the conflict in the Baghdad belts. The Appellant has support from family members in the IKR that could facilitate this transport....As he is Kurdish, and having come from a Kurdish Region he would be allowed entry to the IKR. That same family support could assist him in getting a replacement ID Card.

39. The Appellant does not have a passport or ID to facilitate his return to Iraq..."

12. Ms Bachu submits there is a clear finding by Judge Moan that the appellant does not have a CSID and that a 'replacement' will be required. Judge Law found at [42] that the appellant has not established that he would not be able to obtain a CSID card with the help of a family member or friend in his home area as his proxy. Judge Law therefore proceeded upon the basis, like Judge Moan, that the appellant does not have access to a CSID and that he would need to obtain a CSID. Ms Bachu submits the appellant has consistently maintained he does not have access to a CSID and as he cannot obtain an INID, his family would be unable to assist with redocumentation.

DECISION

13. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have also had regard to the submissions made by the representatives both in writing and orally before me although I do not consider it necessary to address everything that is said. I have had in mind throughout, the preserved findings that are set out at paragraph [3].
14. The consolidated bundle provided to me includes a statement made by the appellant dated 28 March 2024. In that statement, the appellant confirms, that he had a CSID but it was left at his home in Punjina when ISIS attacked. He states he did not carry his CSID with him as he worked as a shepherd and did not need to have it with him. He was just outside the village in the morning when ISIS attacked. He saw what was happening and ran away to escape ISIS. He found his mother and sister, but he did not go back to the village and so everything in the house, including his identity documents were lost at that time. The appellant claims the CSID is no longer issued and has been replaced by the INID.
15. Although it was not adopted in his evidence before me, I have also had regard to the witness statement of the appellant dated 28 September 2021.
16. The respondent accepts the appellant cannot safely internally relocate to Baghdad. It is common ground between the parties that he sole issue before me is whether the appellant has access to a CSID to facilitate safe

passage to his home area, Makhmur, or elsewhere in the IKR. At paragraph [137] of the decision, the respondent said:

“In assessing your claim against the above, it can be clearly shown that you can fly to the KRI, which is near the part of Iraq in which you lived, Makhmur in the Erbil governate.”

17. The primary submission made by Ms Bachu is that there is a clear finding made previously by Judge Moan that the appellant does not have access to a CSID. He would require a replacement CSID. Ms Bachu submits Makhmur is currently a disputed territory controlled by the government in Baghdad and the appellant would be unable to travel by land or air through checkpoints to get to his home area absent a CSID. As CSID's are no longer being issued, Ms Bachu submits the appellant is unable to obtain an INID because he will be unable to attend the CSA office in person without being at risk of treatment contrary to Article 15(c).

18. I reject the claim made that there is a previous finding that the appellant does not have a CSID. At paragraph [36] of his decision, Judge Moan said:

“I acknowledge that the Appellant does not appear to have an ID card and this would hamper his access to basic services in Baghdad. He has family who could assist him in getting an ID Card or to arrange for his immediate transfer to Erbil...” (*my emphasis*)

19. To say that the appellant “does not appear to have” an ID card is not a finding that the appellant either has, or does not have, an ID card. Judge Moan was considering the evidence of the appellant in the context of the issues as they were at the time of the hearing before him. Judge Moan referred in his decision to the country guidance set out in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). He also referred to the respondent's ‘Country of Origin Information Report’ issued in August 2016. The report referred to the challenges for displaced living in Baghdad who are without family support, do not speak Arabic and those without an ID Card. It was in that context that Judge Moan said: *“I acknowledge that the appellant does not appear to have an ID card and this would hamper his access to basic services in Baghdad”*. Judge Moan went on to consider whether the appellant's family could assist him in getting an ID card or to arrange for his immediate transfer to Erbil. At paragraph [39] of the decision Judge Moan said:

“The Appellant does not have a passport or ID to facilitate his return to Iraq. I do not need to consider whether it is practically possible for him to return i.e. whether travel documents can be secured for him. I refer specially to paragraphs 6 and 7 of the judgement in AA [2015] - ...”

20. Judge Moan considered the absence of a passport and ID card in the context of the relevant country guidance at the time. The discrete question as to whether the appellant has access to a CSID has since gained prominence because of the transition in Iraq from CSID to INID documents. As matters stand, the starting point, when there is an issue as to the availability of any documentation including a CSID must always be to consider and to make a finding about the actual availability of a CSID or INID. Here, the appellant had a CSID in Iraq and in the event that the

appellant's CSID is at his home or with his family, it can be sent to him in the UK or taken to him upon arrival in Iraq and there will be no breach of Article 3 ECHR as he travels home. To say that "the appellant does not appear to have" a relevant document represents no finding on this crucial issue. A finding is required as to whether the appellant does or does not have access to a CSID.

21. Put simply, although he claimed in interview (Q.48) that he had never obtained a CSID, the appellant accepts, and I find that he had a CSID when he was in Iraq. His evidence is that his CSID was at home and 'lost' when ISIS attacked his village and he fled the area with his mother and sister. I do not accept the evidence of the appellant that he was not in possession of his CSID or that he 'lost' his CSID when the village was attacked by ISIS. The appellant is not a credible witness and his evidence regarding his CSID is vague. He has given an inconsistent account of the events on the day he claims he fled the village regarding the whereabouts of his mother and sister. The appellant claimed in his asylum interview that he fled to Qaraj where he remained for a few hours before going to Makhmur. He claimed that his mother was not there so he fled to Erbil, where his maternal uncle lived. He claimed his mother and sister were at his maternal uncle's home because his wife was having a baby. In his witness statement dated 28 March 2024 the appellant claims he did not carry his CSID with him as he worked as a shepherd and did not need it. He claims he heard the attack on the village and joined others running away to escape from ISIS. He claims he managed to find his mother and sister but his two brothers were lost at the time.
22. The importance of a CSID in Iraq has been considered and commented upon by the Upper Tribunal in a number of country guidance decisions *inter alia*.
 - a. In MK (documents - relocation) Iraq CG [2012] UKUT 00126 (IAC) the Upper Tribunal held that the CSID is an important document, both in its own right and as a gateway to obtaining other significant documents. It said:

"22. It is common ground that the most important document is the CSID. The evidence of the experts and UNHCR is that without the CSID card it is impossible to access any of the other documents listed above, and this has a clear impact on ability to move around Iraq, to relocate within Iraq and to enjoy socio-economic rights, housing and food rations and to access aid and humanitarian support."
 - b. In AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) the Tribunal said:

"152. ...whilst Dr Fatah provides evidence, which we accept, that a CSID is required to access income/financial assistance, employment, education, housing, a pension, and medical committee documents, there will be persons who do not have a CSID but who nevertheless have access to an adequate support mechanism in Baghdad..."

- c. In AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) reported in June 2018, the Tribunal referred to the evidence of Dr Fatah regarding the CSID:

“23. ... This card - the physical representation of the information in the family record book - is a crucial document for adult life in Iraq. Without one an individual cannot legally work, or find accommodation. Prospective employers or landlords would not contemplate providing work or housing without one, since they are legally obliged to inform the local security services (in the IKR the Asayish) of any new employee or tenant. Failure to do so would expose them to the risk of a raid and detention. Without a CSID one cannot vote, access services such as education or healthcare, receive a pension or food aid, confidently cross a checkpoint, withdraw your own money from the bank, nor even purchase a ‘SIM’ card for a mobile telephone. Reflecting as it does the contents of the official register, the CSID card is the most comprehensive document Iraqis hold. It also enables the holder to obtain other documents such as a passport, driver’s licence or a Public Distribution System (PDS) card, used to obtain food rations. It is not compulsory to have a CSID – young children do not for instance carry them - but without one, life is extremely difficult.”

23. It is clear therefore that a CSID may be an essential document for life in Iraq. It is for practical purposes necessary for those without other resources to access basic services and is a crucial document for adult life in Iraq. Without one, an individual cannot legally work or access services including healthcare and cannot confidently cross a checkpoint. Given the importance of the CSID to everyday life in Iraq, it is contrary to common sense that the appellant would have left his home, even to work as a shepherd, a short distance away from his home without his CSID and I find that the appellant either had his CSID with him or that it was held by his mother when they left the village. I accept, as Mr Lawson submits, that after the village was attacked by ISIS the appellant travelled within Makhmur and Erbil and the appellant would have required his CSID. I reject the appellant’s claim that the CSID was ‘lost’ and that neither he nor his family are in possession of it.
24. The appellant’s case is to be considered in light of the latest country guidance set out in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (“SMO II”).
25. I note from the decision of the Upper Tribunal in *SMO II* that although there continues to be an internal armed conflict in certain parts of Iraq involving government forces, various militia and the remnants of ISIL, 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. The situation in the formerly contested areas, including the Ninewah governorate is complex and whether the appellant can return to those areas requires a fact sensitive ‘sliding-scale’ assessment. The core of the appellant’s claim has been rejected and I find that he left Iraq as an economic migrant. He has no actual or perceived association with

ISIL and he does not have any of the characteristics that are identified in paragraph [5] of the Headnote in *SMO II*.

26. In any event, the Upper Tribunal confirmed in *SMO II* that for an Iraqi national returnee of Kurdish origin in possession of a valid CSID, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of the individual suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh. The Tribunal recorded in the headnote:

“30. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

31. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

32. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a ‘relatively normal life’, which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P’s family on a case by case basis.

27. The burden of proof remains on the appellant to prove why internal relocation within the IKR would be unduly harsh; see MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC).
28. The appellant has a maternal uncle, mother and sister who were last seen at the uncle’s home in Erbil. The appellant claims his maternal uncle assisted him with the arrangements for his departure from Iraq and I reject the appellant’s claim that his uncle would not assist him on return to Iraq. I pause to note that Iraq is a collectivist society in which the family is all important (see *SMO, KSP and IM (Article 15(c); identity documents) (CG) [2019] UKUT 00400 (IAC)*). The appellant’s uncle has assisted the appellant’s mother and sister in the past. They were living in Erbil at the time the appellant left. There is no good reason why the appellant’s maternal uncle would not be willing to assist the appellant on return. There is a preserved finding that the appellant’s uncle has not moved away from Erbil and the appellant still has those family members to support him on

return. It would not be unduly harsh, I find, for the appellant to internally relocate to Erbil if he cannot return to his home area.

29. The appellant has a CSID in Iraq and I find the CSID is available to the appellant from his family who remain in Iraq and with whom the appellant maintains contact. The question of obtaining a replacement does not therefore arise. If the appellant does not have the CSID in his possession, there is no reason why the appellant cannot take immediate steps, with the assistance of his family to have his CSID sent to him here in the UK or why the appellant could not be met by his family or relatives, in Baghdad, with the CSID, within a reasonable time of the appellant's arrival to facilitate safe travel between Baghdad and his home area. On the findings made and preserved, I reject the claim that the appellant will be at risk in making the journey from Baghdad to his home area and I find there will not be a breach of Article 3.
30. It follows that I dismiss the appeal on Asylum, humanitarian protection and Article 3 grounds.
31. No separate Article 8 claim is advanced before me.

Notice of Decision

32. The appellant's appeal is dismissed on asylum, humanitarian protection and ECHR grounds.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 July 2024