IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002962
First-tier Tribunal No: PA/00036/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

UPPER TRIBUNAL JUDGE LANE
UPPER TRIBUNAL JUDGE LODATO

Between

TD
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole, Parker Rhodes Hickmotts
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 23 September 2024

DECISION AND REASONS

Order Regarding Anonymity

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.

Introduction

1. Following the resumed hearing in this appeal on 23 September 2024, we now remake the decision and provide our reasons. The background to the appeal is set out in the error of law decision of Upper Tribunal Judge Mandalia, dated 23 June 2023. In short, the appellant, an Iraqi citizen, appeals against the decision of the respondent, dated 1 December 2021, refusing him asylum and humanitarian protection. The Upper Tribunal, at the initial hearing, found that the First-tier Tribunal, which had dismissed the appellant's appeal, had erred in law and set aside its decision. No findings of fact were preserved.

Legal Framework

2. To succeed in an appeal on asylum grounds, an appellant must show a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group, political opinion). To succeed on an appeal on humanitarian protection grounds an appellant must show a real risk of serious harm at the date of the hearing. The burden of proof rests on the appellant. The standard of proof is a reasonable degree of likelihood, which can also be expressed as a reasonable chance or a serious possibility.

3. We have considered *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC) and *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC).

Issues in Dispute

4. The issues to be determined in remaking the decision were crystallised at [11] of Judge Mandalia's error of law decision in the following terms:
    a. *The extent to which any of the findings made by First-tier Tribunal Judge Nicholson in the decision dated 23rd July 2008 are undermined by the three documents now relied upon by the appellant. The weight to be attached to the documents is a matter for the Tribunal.*

    b. *Whether the appellant is in contact with any family or friends in Iraq.*

    c. *The availability of identity documents in the form of a CSID or INID as relevant to the issues in that regard set out in the relevant country guidance.*

5. At the outset of the hearing, Mr Cole shifted the focus of the appeal such that the centrepiece was the evidence of the army identification card which was said to confer a good reason to depart from the previous judicial findings that the appellant was not in the military between 2003 and 2007. If it was found that the appellant was in the army when he claimed, this, taken together with his Sunni Muslim faith, the length of

time he has been away from Iraq and the broad country conditions, meant that he would be at risk of persecution. The second pillar of his case was that the new evidence of his work with the army tended to support his case that he was forced to relinquish his CSID card to his superiors before he left Iraq and that consequentially he could not hope to be reunited with this essential document and would therefore be at risk of Article 3 conditions on return.

6. Mr Cole further clarified that the new evidence of the appellant's wife's death certificate would be unlikely to sway our overall decision. This was because the appellant simply could not say how his wife died, or who was responsible, beyond the brief a general cause of death recorded in the certificate. Mr Cole did not pursue with any conviction the suggestion that the appellant remained at risk from the group who were said to have threatened him as long ago as 2007 in Iraq.

7. Following the promulgation of the error of law decision, an expert report was served on the appellant's behalf. The report of Dr Fatah commented positively on the authenticity of the army identification card the appellant continued to rely upon. Mr Cole explained at the hearing before us that he no longer sought to rely on this expert evidence. He further explained that the reasons which underpinned the abandonment of this evidence were subject to privilege.

8. In accordance with the principles of *Devaseelan (Second Appeal, ECHR, Extra-Territorial Effect)* [2002] UKIAT 702 , the starting point for our decision is the decision of Judge Nicholson to dismiss the appellant's protection appeal in 2008. An important dimension of the appellant's factual claim was (as it is now) that he was in the Iraqi army between 2003 and 2007. This was said to be the very reason why he was targeted by a terrorist group. Below are the key findings which we take from the previous determination:

    - The judge approached with caution a letter, dated 2004, purporting to be from the appellant's commanding officer referring the appellant for medical tests. However, it was ultimately decided that the letter was worthy of modest weight in supporting the appellant's case to have been in the army in 2004. [12(iv)-(v)]

    - Following a detailed analysis of the evidence, the judge summarised, at [13], his positive and adverse observations going to whether the appellant had served in the army between 2003 and 2007.

    - A threatening letter purporting to be from a terrorist group was the subject of detailed consideration and found to be unreliable ([15]).

- For the detailed reasons articulated at [17(ii)], the judge found that the appellant did not serve with the Iraqi army between 2003 and 2007.

- The judge rejected the appellant's account to have been threatened by a terrorist group and placed no weight on the letter produced by the appellant to support this claim ([17(iii)]).

- The appellant's overall case was rejected at [18] on the basis that he was "not of adverse interest to anyone in Iraq".

9. At the resumed hearing, the appellant attended with an Arabic interpreter. He gave oral evidence and was cross-examined by Mr Tan. During his evidence, the appellant expressed some frustration with the interpreter because he spoke a different Arabic dialect. After it was clarified that the appellant continued to understand the interpreter and vice versa, Mr Cole confirmed that he did not have any concerns about the fairness of proceeding with the appointed interpreter. The appellant's evidence continued without further difficulty. We address any oral evidence of significance in our findings below.

Decision

10. As alluded to above, Mr Cole relied heavily on the reliability and evidential weight to be attached to the army identification card which was said to show that the appellant had been enlisted with the Iraqi army between 2003 and 2007 just as he had always claimed. The difficulty we have with this evidence is that, according to the appellant's evidence, it was plainly a document which existed in 2008 when Judge Nicholson rejected the very same factual claim. *Devaseelan* is clear that circumspection is required when an appellant produces evidence in subsequent proceedings which could have been produced in the previous proceedings. Mr Cole argued that he could not have put the army identification card before Judge Nicholson because he simply did not have it in his possession at that time. However, the judge's findings, summarised above, show all too clearly that the appellant was mindful of the need to support his case that he was in the Iraqi army between 2003 and 2007 because he obtained and relied on the medical referral letter to gainsay this very proposition. In his oral evidence before us, the appellant was equally clear that he knew that the identification card was with his sister in Iraq because he used to get changed from his military uniform at her home so as not to draw attention to his own family home. It follows that he always knew where he had left this document. No explanation was offered as to why he had the presence of mind to obtain the medical referral letter from his commanding officer to put before

Judge Nicholson but did not take the necessary steps to obtain arguably even more persuasive evidence of his service with the army from his sister.

11. We note that Judge Nicholson found that the appellant had relied on documents which aroused significant reliability concerns. The content of the threatening letter from the terrorist group which was adduced in those proceedings simply did not accord with the appellant's narrative account about what was in that very same letter.

12. In our assessment of the army identification card, we adopt the starting point of Judge Nicholson's decision that the appellant is a man who has adduced unreliable documents in support of his protection claim in the past. Moreover, we are mindful that the appellant's case can only be understood on the footing that he was fully aware that the army identification card was in existence, and available to him through his sister, when his appeal was heard in 2008. It is equally clear that he knew of the importance of establishing his service with the army between 2003 and 2007 as demonstrated by his reliance on a medical referral letter from his commanding officer in those earlier proceedings. We are entirely satisfied that the army identification does not provide the evidential basis to depart from the findings of Judge Nicholson that the appellant had not established that he was in the Iraqi army when he claimed.

13. The starting point that the appellant was not in the Iraqi army between 2003 and 2007 is important in the assessment of whether the appellant would encounter conditions contrary to Article 3 of the ECHR based on a lack of documentation. The appellant's case is that he was required to relinquish his CSID card to his military superiors before he fled the country. The claim that his CSID is in the hands of the Iraqi military or other authorities must fall away if there is no basis to depart from the previous judicial finding that he was not in the Iraqi army when he claimed to have handed over his CSID to his military superiors. Mr Cole submitted that it was entirely plausible, when seen against the known country background information, that a Sunni Muslim soldier would be forced to hand over his CSID card to deter desertion. This broad plausibility argument becomes academic given our finding that the appellant was not in the army at this time to hand over his CSID to his superiors.

14. For the reasons given above, we reject the appellant's evidence about the claimed whereabouts of his CSID card. This causes us to entertain the most serious doubts about the truthfulness of his contingent claim that he does not have constructive access to this important document. This tallies with additional doubts we had with the

evidence he gave about the extent of contact he has had with his family and whether he has made genuine attempts to establish contact with them. The appellant claimed in oral evidence that he had approached the Red Cross in an effort to trace his family but was unable to explain why the tracing email they had sent to him, and which he claimed to have passed on to his representatives, was not served for the purposes of these proceedings. This was despite the clear directions of Judge Mandalia that it would be important to adduce such evidence. We were further struck by the tension in his evidence, under cross-examination, about whether he lost contact with his mother in 2013 or 2014. On the appellant's case, he plainly had some communication with his sister and an uncle who were said to have provided him with supporting documents. There was very little evidence about why he had lost contact with his children (two of whom are now adults). We found the overall evidential picture to be unsatisfactory in relation to the appellant's claim to no longer have contact with his family in Iraq and to be unable to access his CSID card. He has failed to establish that he would not be able to use his existing CSID card to obtain a replacement INID card on return to Baghdad.

15. Mr Cole did not suggest the death certificate for the appellant's wife could take his case any further. Accordingly, we need say no more about this document.

16. Mr Cole argued that the appellant would be at risk of persecution on return to Iraq on account of being a Sunni Muslim who had been absent from Iraq for 17 years. This submission was predicated on the suggestion that former country guidance, in the shape of *BA (Returns to Baghdad) (CG)* [2017] UKUT 18, noted the extreme dangers faced by Sunni Muslims at the hands of Shia groups. The position was said to have only worsened since and it was argued to be difficult to understand the basis on which *SMO* had superseded this guidance when the risk of persecution was not the focus of those later country guidance proceedings. We have no difficulty in rejecting the argument that *SMO* should be overlooked in favour of *BA*. Firstly, it would be difficult to regard paragraph 25 of the headnote of *SMO* as not overtaking anything said to the contrary in BA. Notwithstanding that this part of the headnote appears under the heading of "Internal Relocation", this evidently provides guidance to tribunals considering the prospects on return to Baghdad of Sunni Muslim men. Given our finding that the appellant was neither in the Iraqi army in the wake of Saddam Hussain's fall from power nor the recipient of threats from a terrorist group, we have no reason to think that he would be at risk of persecution, serious harm or general Article 3 condition on return to Baghdad. While it is clear that he has been outside in the UK for 17 years, this, together with his particular circumstances, does not establish that he would be at risk on return. We

are not satisfied that he has no family network to return to nor that he would not have access to the necessary documentation.

Notice of Decision

We have remade the decision. The appellant's appeal against the decision of the respondent dated 1 December 2021 is dismissed.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 27 September 2024