IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003680

First-tier Tribunal No: PA/53681/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

31st January 2025

Before

UPPER TRIBUNAL JUDGE MAHMOOD
DEPUTY UPPER TRIBUNAL JUDGE WILLIAMS

Between

SF
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood, Legal Representative, Immigration Advice Service
For the Respondent: Mr A Tan, a Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 13th January 2025

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.

DECISION AND REASONS

1. This is our remaking of the decision of the First-tier Tribunal ('the FtT'), which was set aside in part by Upper Tribunal Judge Hirst in a decision promulgated on 11th November 2024. In that decision, Upper Tribunal Judge Hirst found material errors of law within a decision of First-tier Tribunal Judge Thorne and it comes before us for remaking.

The First-tier Tribunal Decision

2. The Appellant made a protection claim to the Respondent on 22nd February 2021, asserting that he was at risk upon return to Iraq because in the course of his employment as a mechanic, he was presented with a car which had been damaged by bullets. The Appellant had commenced repairs on the vehicle when it was confiscated by the Asayish. The owners of the vehicle demanded it back, and upon the Appellant explaining it had been confiscated, he himself was kidnapped by the owners of the vehicle, beaten and threatened. This attack was reported to the Asayish but to no avail, and subsequently the Appellant left Iraq and travelled to the United Kingdom.

3. Whilst the FtT found the Appellant's account credible, it was determined the Appellant was not entitled to humanitarian protection (it being conceded by Mr Wood who appeared below there was no 'Convention reason') because there was no reason to conclude there would still be an adverse interest in the Appellant, and that there was a sufficiency of protection. It was also found the Appellant's mother (who had hitherto refused to provide the Appellant with his Civil Status Identity Card ('CSID')) would act rationally upon the Appellant explaining he was no longer at risk, and that she would return the CSID to him to facilitate his return. The appeal was accordingly dismissed.

The Error of Law Hearing

4. The Appellant appealed to the Upper Tribunal, having been granted permission by Upper Tribunal Judge Loughran. At the Error of Law hearing, Upper Tribunal Judge Hirst found that the finding of the FtT that 'the group would no longer pursue the Appellant simply because of the passage of time' was not supported by the evidence.

5. It was also found that the conclusion that there was sufficiency of protection available to the Appellant was inadequately reasoned, and that the finding that the Appellant's mother would provide him with the CSID she held for him was also unsupported by the evidence and/or was inadequately reasoned.

6. It is therefore these three issues which come before us for determination, the findings in paragraphs 18 to 20 of the decision of Judge Thorne, (i.e. that the narrative provided by the Appellant was credible) having been preserved.

The Resumed Hearing

7. Provided for the resumed hearing was a consolidated bundle of 232 pages. Also provided for the appeal, by Mr Tan, was further evidence as it pertained to the 'roll out' of facilities for Iraqi nationals to be issued with the INID card by the Iraqi Embassy in London. This evidence was received by the Tribunal and Mr Wood on 11th January 2025, the working day before the hearing.

8. Mr Wood observed there had been no application made pursuant to Rule 15(2A), and the Tribunal was therefore without any explanation as to why this evidence had been served late. In response, Mr Tan explained that part of the evidence did not exist prior to the Error of Law hearing, having been published

afterwards. Issues with how the Respondent allocates cases to Senior Presenting Officers and the continual flow of work were also cited as reasons.

9. As observed at the hearing, the reasons proffered by Mr Tan were unsatisfactory to say the least. The Tribunal is aware of the method by which appeals are allocated to Senior Presenting Officers, and in any event, as accepted by Mr Tan, the Upper Tribunal is a superior court of record and should not be subjected to the filing of evidence without any regard to timeliness.

10. In a decision which was given orally to the parties at the hearing, we admitted the evidence but indicated the weight afforded to it would be a matter we would outline in our decision, which we will do below.

11. The Appellant was present at the hearing and assisted by a Kurdish Sorani interpreter. The Appellant was available to give evidence however it had been agreed between the representatives no further evidence was necessary as the remaining issues in dispute could be dealt with by way of submissions. We did not have any questions for the Appellant and the hearing proceeded with submissions only as summarised below, following which we reserved our decision.

The Respondent's Submissions

12. For the respondent, Mr Tan relied on the reasons for refusal letter, and the Respondent's review which were both in the bundle. Looking first at the question of ongoing risk to the Appellant, the Appellant's evidence indicated he knows little about those who threatened him (AIR 190-192), and that he had confirmed the owner of the car was 'not a powerful person in the Government' (PIQ, p.196).

13. Further, the Appellant had said he was unsure as to whether or not those he fears were actively looking for him (AIR 92, 147, 149-150) and that his family who had remained in Iraq had not come to any harm since the Appellant's exit, and that the Appellant had previously stayed with an Uncle in Iraq who only lived half an hour's journey from the garage where the Appellant had experienced his problems. The fact it had now been over four years since the Appellant left Iraq, and that those the Appellant feared clearly had no influence themselves by which they could recover the car were said to be further indicators there is no ongoing risk. The Appellant is unlikely to be perceived as having any power or influence by which he could have the car returned, and there is therefore unlikely to be of any further interest to those whom he fears.

14. As far as sufficiency of protection was concerned, Mr Tan relied on the Appellant's evidence (AIR 216) that the Appellant had been told by the Asayish to contact them were he to experience any further problems, said to be indicative of their willingness to assist him. The Respondent's CPIN *Iraq: Actors of protection, version 1.0, December 2020* was said to support the assertion that there exists within the Kurdistan Region of Iraq effective protection, specifically 2.3.16 of the CPIN. The Appellant did not fall within a category of people who would be unlikely to be protected by the authorities, i.e. he was not affiliated with Da'esh, nor was his conflict with a politician. The Appellant had lived elsewhere in Iraq without being discovered, and in the absence of evidence there was any control or influence over the security forces, internal relocation would also not be unduly harsh.

15. The Respondent's submissions on documentation were that the Appellant has a CSID within his mother's possession. The Appellant could arrange to have this sent to him whilst he is still in the United Kingdom, or alternatively the Appellant's mother could meet him with it at whichever airport the Respondent returns the Appellant to, i.e. Erbil or Sulaymaniyah. Alternatively, 5.1.3 of the Respondent's CPIN *Iraq: Internal relocation, civil documentation and returns, version 1.4, October 2023* ("the documentation CPIN") provides a process by which a person's identity can be 'vouched for' by their extended family members or a local *Mukhtar.*

16. The evidence provided from the Iraqi Embassy outlined a method provided for Iraqi nationals to enrol their biometrics and be issued with an INID within the United Kingdom. It was submitted the requirements outlined clearly provide for some flexibility, and that the Appellant could provide any form of ID such as his Asylum Registration Card which could be used to obtain an INID to be used upon return to Iraq. We were invited to dismiss the appeal on all grounds.

The Appellant's Submissions

17. For the Appellant, Mr Wood submitted that the evidence showed there would continue to be an ongoing risk to the Appellant. Paragraph 33K of the Immigration Rules was a relevant factor in this appeal, it being accepted by the FtT that the Appellant was telling the truth about the issues he had faced. There had been threats made against the Appellant that he would be hunted and 'killed like a dog', and that the car which had been confiscated by the Asayish was clearly of significance to those whom the Appellant fears as they had been willing to kidnap him previously to recover it.

18. The Respondent's submissions relating to sufficiency of protection were said to be undermined by the lack of any deterrent effect the Asayish had previously upon those the Appellant fears, as they were still willing to kidnap, mistreat and threaten the Appellant. The background evidence within the bundle (p.44) suggests the 'domestic law enforcement bodies struggled to maintain order' within Iraq. Any further problems the Appellant experiences could only be reported to the authorities after the fact, which would invariably be too late.

19. In response to the Respondent's submissions on documentation, Mr Wood submitted there was accepted evidence the Appellant's mother would not return his CSID to him. This was outlined in the Appellant's witness statement before the FtT (p.39). Without a CSID, the Appellant could get no further than the airport. Paragraph 5.1.3 of the documentation CPIN referred to evidence from June 2020, and evidence of a similar nature had been rejected by the Upper Tribunal in paragraph 100 of *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC). The evidence of the rollout of the INID process in London was still untested, and it was unclear whether the Appellant would, in the absence of any Iraqi documentation, be issued with an INID. If he could not, the Appellant would be either be unable to leave the airport in Iraq, or he would be required to travel to his home area, visit the Civil Status Affairs office there, and await his documentation which would expose him to risk. We were accordingly invited to allow the appeal.

The Law

20. It was properly conceded at the hearing before the First-tier Tribunal that the Appellant could not succeed in his appeal on asylum grounds, his claim not coming within the ambit of the Refugee Convention.

21. In order to succeed on humanitarian protection grounds, according to paragraph 339C(iii) of the Immigration Rules, the Appellant is required to show that there are substantial grounds have been shown for believing that [he], if returned to the country of origin, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail [himself] of the protection of that country.

22. The applicable standard of proof is the lower standard, and the burden is on the Appellant.

Analysis and Consideration

23. Turning first to consider whether there is still an ongoing risk to the Appellant upon return to Iraq, we note the accepted findings. The FtT found the Appellant had experienced serious harm, and following paragraph 339K of the Immigration Rules, this is a serious indication of future risk, 'unless there are good reasons to consider it would not be repeated'. We have taken into account that the car was confiscated over four years ago. The Appellant was, following the confiscation of the car by the Asayish, kidnapped and beaten for a number of hours. This did not result in the Appellant returning the car.

24. As observed by Mr Tan, the Appellant himself does not appear to have any power or influence over the Asayish which would result in him being able to recover the car. There was no action taken against the Appellant in the nine days after he was kidnapped, which is indicative either of a lack of further interest, or an inability on the part of the group to locate the Appellant. The kidnapping of the Appellant took place at his place of work, and there is nothing before us to indicate the group are aware of where the Appellant lived, or the location of his family members within Iraq. For these reasons, we do not find that there is any ongoing interest in the Appellant from the group responsible for his kidnapping in 2020.

25. Notwithstanding our conclusion that there would be no ongoing risk to the Appellant, we have considered whether the Appellant could seek the protection of the authorities. The Appellant has had previous contact with the Asayish in relation to this matter, and they confirmed their willingness to protect the Appellant should he require protection in future. We have also considered the objective evidence relied on by both parties. The Respondent relies on evidence in the CPIN *Iraq: Actors of protection, version 1.0, December* suggesting that 'the security apparatus have the potential to provide effective security with law enforcement being described as more effective than in the south/central areas of Iraq' (2.3.16). As observed, it is not suggested the Appellant bears any of the characteristics said to reduce the willingness of the authorities to provide protection, i.e. he has no perceived affiliation with Dae'esh, and his conflict is not with a politician.

26. Having also looked at the evidence relied on by the Appellant, we note what is said in the passage we were referred to by Mr Wood at the hearing. We observe that this passage appeared to relate to the ability of the domestic law enforcement bodies outside of the KRI within the rest of Iraq. The passage

relating to the structure of the security services within the KRI did not comment on their ability provide protection, or to otherwise maintain order. We find that there would be a willingness and an ability on the part of the authorities with the KRI to offer protection to the Appellant were it needed. We also find that the Appellant would be able to relocate internally to another part of the KRI, in the absence of any evidence that those he fears would have the ability or motivation to trace him outside of his home area. The only issue pleaded by the Appellant in relation to his ability to relocate internally is that of his lack of documentation, which we consider separately, applying paragraph 339O(ii)(c) of the Immigration Rules.

27. The Appellant's accepted evidence is that he has a CSID, however this is within the possession of his mother who will not return it to him in the United Kingdom. The Appellant states within his witness statement (p.39) that although he has asked his mother to send his documents to the United Kingdom, she has informed him she will not do this as she knows that if he returns to Iraq he will be killed and so she will not help. Whilst the FtT found the Appellant's mother would 'act rationally' and send the CSID to the Appellant upon realising there is no risk upon return, this finding was unsupported by the evidence.

28. On this point, we find the following. We accept as credible that the Appellant's mother is withholding his CSID. It is accepted the Appellant has been kidnapped and beaten, and that these events precipitated his exit from Iraq. It is unsurprising that the Appellant's mother is not willing to comply with a request which could facilitate his return and even were the Appellant to explain the findings of the Tribunal to her, i.e. that he is no longer at risk, we do not consider it likely that she would simply change her mind and provide the CSID to him.

29. We have also considered whether the Appellant's mother would, were he returned to Iraq, then assist him by meeting him at the airport with his CSID card. This was not a point put to the Appellant, and so we do not know whether or not she would assist in this way, and any finding on this point would be speculative. We therefore find that the Appellant is without a CSID and would be returning on that basis.

30. We have carefully considered in detail the evidence provided within the Respondent's CPIN as to whether or not there exists a process by which an individual can be returned to Iraq and admitted without documentation whilst their identity is being vouched for by a family member, as outlined in 5.1.3 of the CPIN on documentation. Following the footnotes provided within the CPIN on this point, it appears to be a comment made by Dr Fatah in a review of the Respondent's CPINs in January 2023. The evidence contained within 5.1.3 of the Documentation CPIN is 'from an Iraqi government official in the Erbil nationality department'.

31. Mr Wood submitted evidence of this tenor had been provided by Dr Fatah to the Upper Tribunal in *SMO*, and that it had been rejected. We find there is some force in this submission and agree this process does not appear to be adequately evidenced. We were also directed to Annex H of the Documentation CPIN, which is an email from the UNHCR to the Respondent. In answer to the question 'can the 30 day temporary entry authorisation "visa" be used to pass through checkpoints in absence of other ID such as INID/CSID/Passport?', the answer provided reiterates the need for 'valid identity documentation' defined as 'CSID, UNID, nationality certificate or passport'. Whilst Mr Tan indicates this evidence

pertains to those relocating to the KRI from outside of it, we do not see this distinction in the email and note the answers to the second and third questions posed in the email refer to both Federal Iraq and the KRI. We do not find that the Appellant will be admitted entry without identity documentation.

32. What remains then, is for us to determine whether or not the Appellant can be issued with an INID in the United Kingdom. We accept first, on the basis of the evidence provided by Mr Tan, that a person can in theory be issued with an INID here in the United Kingdom. There was no challenge to this aspect of the evidence before us, and we note that the evidence originates from the website of the Iraqi Embassy within the United Kingdom. What is in dispute between the parties is whether the Appellant could, in the absence of any other form of Iraqi documentation, obtain an INID here.

33. The evidence is in the form of three quotes taken from three announcements made on the website of the Iraqi Embassy. The second of these announcements, made on 17th October 2024, provides the process by which an INID can be obtained at the Embassy. Along with the completion of an online form, the required documents are listed as

> *Iraqi nationality certificate in the applicant's name, or presentation of an Iraqi nationality certificate or National Card supporting document (father, mother, brother, sister, paternal grandfather, uncle).*
>
> *Civil status identity card.*
>
> *Iraqi passport.*
>
> *Proof of identity (if no document is provided in the applicant's name).*
>
> *Proof of address.*

34. We have accepted the Appellant does not have a CSID available to him. There is no suggestion he has an Iraqi passport available to him, with the unchallenged evidence in his screening interview (p.213) that his passport is in Iraq. What is suggested is that the Appellant could use his Asylum Registration Card as proof of identity. We do not find, on the evidence before us, that we can be satisfied the Appellant could use this card as proof of his identity, it not being a form of ID issued by the Iraqi authorities, and there being no evidence before us this would be accepted as proof of the Appellant's ID which would facilitate issuance of an INID to him.

Conclusion

35. Drawing all of these factors together, we find the Appellant would be returning to Iraq without documentation and that he would therefore face a real risk of encountering treatment or conditions which are contrary to Article 3 of the ECHR.

Notice of Decision

36. The decision of the First-tier Tribunal being set aside in part, we remake the decision, allowing the Appellant's appeal on Article 3 grounds only.

CJ Williams
Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

28th January 2025