



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02932/2018**

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice Centre Decision & Reasons Promulgated
On the 18 July 2022 On the 23 August 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SK
(Anonymity Direction made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz, instructed by Oakmount Law Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq, born on 1 November 1989, from Daquq District in Kirkuk Governate, of Kurdish ethnicity. He arrived in the UK on 7 August 2015 by lorry, having previously unsuccessfully claimed asylum in Norway and returned to Iraq in March 2011 and then left Iraq again on 6 July 2015 and travelled to Turkey and then to the UK through Bulgaria, Hungary and France. He claimed asylum upon arrival in the UK, but his claim was refused on 5 February 2016. An appeal against the refusal of his claim was heard by First-tier Tribunal Judge Burnett on 8 November 2016 and dismissed on 24 November 2016. The appellant unsuccessfully sought to appeal Judge Burnett's

decision to the Upper Tribunal and became appeal rights exhausted on 27 March 2017.

2. The appellant's claim, as initially made, was that it was unsafe for him to return to his home area of Kirkuk because of the presence of ISIS and the ongoing fighting there between the peshmerga and ISIS and that he was at risk of persecution because of his religious beliefs and his imputed political opinion. His family had all been killed and he had no-one there and no identity documents. He could not relocate to Baghdad as it was not safe for him there either. He had no connections anywhere else in the IKR. He had tried to obtain identity documents from the Iraqi Consulate in Manchester but they had been unable to help him because he had no form of identification.

3. Judge Burnett noted that the respondent had accepted that the appellant was Kurdish and was from a contested area. He noted the appellant's claim that his family had been killed and that he had no links to the Kurdish region. He found that the appellant would be at risk in his home area, but concluded that he could relocate to Baghdad or to the IKR and he accordingly dismissed the appeal.

4. The appellant then made further submissions on 22 September 2017 based on the change in the country situation and asserting that he would be at risk on return due to the high levels of violence throughout the country and his lack of identity documents and family support. He claimed that he would face discrimination in Baghdad as a Sunni Kurdish Muslim and would be at risk of being kidnapped.

5. The submissions were treated as a fresh asylum claim, which was in turn refused by the respondent on 1 February 2018. The respondent noted that Kirkuk was no longer a contested area and considered that the appellant could return there. Alternatively the respondent considered that the appellant could relocate within the IKR. It was considered that he had failed to provide evidence demonstrating that he could not obtain a CSID.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Garratt on 15 June 2018 and dismissed in a decision promulgated on 26 June 2018. He found the decision of Judge Burnett to be unclear as to whether or not he accepted the appellant had no family remaining in Iraq and he therefore made his own decision on the matter, concluding that the appellant had failed to show that he had no relatives in Iraq. He otherwise followed the findings of Judge Burnett, finding that the appellant would be able to obtain a CSID and return to Kirkuk or relocate to Baghdad.

7. Judge Garratt's decision was, however, set aside by Upper Tribunal Judge Mandalia, who concluded that it was open to Judge Garratt to make his own finding on the appellant's claim to have no family in Iraq, but that he had erred in his application of the country guidance and by failing to consider how the appellant could obtain a CSID. The case was then remitted to the First-tier Tribunal to be heard *de novo*.

8. The matter then came before First-tier Tribunal Judge Brookfield on 4 November 2019, by which time the country guidance in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 had been issued. Judge Brookfield concluded that the appellant would be unable to relocate to Baghdad as he would not enjoy a sufficiency of protection there. Since Kirkuk was a contested area, the judge went on to consider whether the appellant could relocate to the IKR and concluded that he would be able to gain entry to the region and would not require a sponsor to do so. As to whether the appellant could obtain a duplicate of the CSID he had previously held in Iraq in order to travel to the IKR, the judge noted his evidence that he had had his own Iraqi passport which had been taken from him by the agent together with his CSID on his journey to the UK. The judge considered that the appellant had given inconsistent evidence about the existence of family members in Iraq and concluded that he would be able to find a male relative to help him obtain a duplicate CSID, noting in particular a previous reference to a maternal uncle who had raised him and his sister. She considered that the appellant could instruct a lawyer in his home area of Kirkuk and provide him with a power of attorney to obtain a duplicate CSID by approaching the Passport Directorate for the information it held about the book and page number of his family registration. The duplicate could then be sent to the appellant by the lawyer and he could use that document to apply for a new passport to travel to Iraq. The judge concluded, therefore, that the appellant would be able to obtain a duplicate CSID prior to his departure from the UK and a new passport to replace the one taken by the agent. She considered that any reluctance by the appellant to provide a lawyer with a power of attorney would strongly suggest that he had in fact retained his CSID and did not give it to the agent as he claimed. The judge went on to find that the appellant would be able to access basic necessities on his return to Iraq and would have financial support through work and remittances from relatives abroad. The judge found further that the fact that the appellant had returned to Iraq from Norway and then lived there from March 2011 to July 2015 without problems suggested that the claim he had made in Norway was not genuine and that that undermined his credibility, as did the fact that he did not seek asylum in any of the safe countries through which he passed on his way to the UK. She rejected his claim to have been prevented by the agent from doing so and found that he had a viable internal relocation alternative in the IKR and that he had therefore failed to show that he would be at risk on return to Iraq. Having found that the appellant's return to Iraq would not breach his human rights, she dismissed the appeal on all grounds in a decision promulgated on 11 November 2019.

9. Further to the grant of permission to the appellant to appeal Judge Brookfield's decision, the decision was set aside following a hearing on 24 June 2021 by Upper Tribunal Judge Canavan. In so doing, UTJ Canavan noted that Judge Brookfield did not appear to have come to any clear conclusion as to whether she accepted or rejected the appellant's claim not to know his family book number or whether he was likely to be in contact with a male relative in Iraq, but considered that that did not matter because she had gone on to consider the possibility of whether a CSID could be obtained by other means and had found that the appellant could obtain his book and page reference

number through records held at the Passport Directorate since he had been issued with a valid Iraqi passport in the past. UTJ Canavan accepted that it was open to the judge to consider that possibility and that it had also been open to her to conclude that it might be possible to appoint an attorney to obtain a CSID in the absence of a paternal male family member. UTJ Canavan accepted that many of the findings made by Judge Brookfield were open to her. She found, however, that Judge Brookfield had omitted a material consideration from her assessment, namely whether even if the appellant was able to instruct a proxy, the process of obtaining a new CSID might be 'severely hampered' (in terms of the Tribunal's finding in AA (Article 15(c)) Iraq CG [2015] UKUT 544) by the fact that the Civil Status Affairs Office that was most likely to hold his family registration information was in a contested area, namely Kirkuk. UTJ Canavan found that the error in that finding impacted upon the assessment of whether it was reasonable to expect the appellant to relocate to the IKR, since possession of a CSID was a material consideration in that assessment. UTJ Canavan accordingly set aside Judge Brookfield's decision and directed that the case be listed for a resumed hearing in the Upper Tribunal

10. The matter then came before me, following the issue of a transfer order.

11. The appellant gave oral evidence before me, through an interpreter, adopting his statements in the respondent's bundle and his own appeal bundle before the First-tier Tribunal. In response to Mr Tan's cross-examination he said that he had travelled illegally to Norway from Iraq in 2008 using an agent but had travelled by legal mode of transport when returning to Iraq as he was sent back there by the Norwegian government. His documentation was sent to him after he had left Norway. He had taken his passport with him to Norway but had destroyed it on the way. He had left his identity card in Iraq when he left for Norway. He obtained a new Iraqi passport in Norway, as it was easy at that time and only involved sending US\$500 and doing a photograph and giving fingerprints. The reference at [18] of Judge Garratt's decision to him having an identity card when he left Norway was a mistake as he had not taken it to Norway. He had brought his identity card with him when he left Iraq the next time, as well as his passport, as he did not have any family members left to leave it with that time, but the documents were taken from him by the agent in Turkey. It was a different agent to the one used previously when he went to Norway. He did not remain in Turkey because it was not safe there as the Turkish government supported ISIS, and he was under the control of the agent. He was not able to stay in Bulgaria or Hungary as the agent decided where they were going. He was in a group of people being led by the agent and had no say in where they were going. He had paid the agent US\$12,000 to take him to a safe place. He had tried to leave the agent but had been beaten up. When asked why he had contacted the Red Cross in October 2019 to find his family when he already knew they were dead, as he had claimed previously, the appellant said that he was aware that ISIS had abducted people from his village and had taken them to Syria and elsewhere and he did not know who that had included. He had not been aware of the Red Cross tracing procedures until he was told of it by his solicitor and by friends. The appellant confirmed to Mr Tan that his family registration details had been held in Kirkuk when he was living there.

12. When re-examined by Mr Aziz, the appellant said that he had destroyed his passport when he travelled to Norway as the agent had told him that it was not safe to keep it. He had obtained a new passport when he was living in Norway as it was an easy process, but that had changed since ISIS had invaded Iraq. He had been given a Norwegian identity card when he was in Norway. In response to my further enquiry the appellant said that he believed that the new INID system was in place in Kirkuk instead of the CSID system.

13. Both parties then made submissions.

14. Mr Tan submitted that the appellant's claim to have had his documents taken by the agent had to be assessed as part of the overall credibility assessment. He submitted that the appellant's credibility was undermined by the fact that he was not claiming to be at risk on the basis previously claimed when in Norway and that he had been able to remain in Iraq for several years without problems, by his inconsistent evidence about the documents he had when he left Norway and his evidence as to why he did not take his identity card with him when he left Iraq the first time, and by his account of being prevented by the agent from claiming asylum in any of the safe countries en route to the UK. Mr Tan submitted further that the appellant's account of his family being dead was inconsistent with his claim to have asked the Red Cross to trace his family. If his family was still alive when he left Iraq in July 2015 the question arises as to why he did not leave his identity document with them as he had done previously when he went to Norway. Mr Tan submitted that the appellant's evidence was unreliable. He was able to return to Kirkuk as it was no longer a contested area. The medical evidence relied upon did not refer to anything that would have an impact on the appellant's return in terms of Article 3.

15. Mr Aziz submitted that it was credible that the appellant would take all his documents with him on the second occasion as he had no family remaining there at that time. That was consistent with the country information about ISIS having taken over by that time. The reference, at [18] of Judge Garratt's decision, to the appellant having his identity card when he left Norway, was to his Norwegian identity card and not a CSID. The appellant had given a credible account of being prevented by the agent from separating from the group. His account of contacting the Red Cross was consistent with him being advised to do so by others, even though he already knew that his family was dead. He could not obtain a CSID card in the UK and could not obtain one without any family members in Kirkuk. He could not obtain a new Iraqi passport as he had done previously when in Norway, as the system had changed since then and he now needed to be physically present to do a retina scan and give his fingerprints in Kirkuk. Without a CSID the appellant could not return to Kirkuk from Baghdad. This case turned on credibility and whether or not it was accepted that the appellant had a CSID card. It should be accepted that he had no family there and therefore could not obtain a duplicate CSID. Whilst he would be able to obtain a CSID duplicate through a proxy, he had no family there to instruct a proxy. Mr Aziz relied upon the Home Office Country Policy and Information Note (CPIN) for May 2022 in that regard. He agreed that if I

found that the appellant had family remaining in Kirkuk then it was accepted that he would be able to obtain a duplicate CSID by way of a proxy.

16. In turn, and in response to my enquiry, Mr Tan accepted that if I were to find that the appellant had no family in Iraq and no identity documents with him in the UK, the appeal had to be allowed. The decision therefore rested on credibility.

Consideration and findings

17. It is relevant to note that the reason given by UTJ Canavan for setting aside the decision of FTTJ Brookfield was that she had failed to consider whether, even if the appellant was able to instruct a proxy, the process of obtaining a new CSID might be 'severely hampered' by the fact that the Civil Status Affairs Office that was most likely to hold his family registration information was in a contested area, namely Kirkuk. UTJ Canavan had, otherwise, found at [9] to [11] that the judge's findings and conclusions were open to her. She did not make any specific directions as to which, if any, of Judge Brookfield's findings were preserved, but said at [14] that: "*given the time that has past since the First-tier Tribunal decision and the need to consider a protection claim holistically, a fresh decision will need to be made in relation to the protection claim.*" Clearly, therefore a fresh holistic assessment must be made of the appellant's claim, and I will of course consider the entire case in the light of the new evidence before me, that new evidence being the most recent country guidance in SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 and the appellant's oral evidence before me.

18. Both parties accept that Kirkuk is no longer a contested area, as is consistent with the headnote of SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 at [3], which refers to Kirkuk as a Formerly Contested Area. Mr Aziz did not seek to argue that, as a Formerly Contested Area, the same concerns as referred to by UTJ Canavan arising from AA (Iraq) still apply in regard to the ability to obtain duplicate identity documentation nor that there was any significant change from the CSID system in Kirkuk to prevent the appellant from obtaining duplicate identification documentation through a proxy rather than in person. He did not seek to rely on any evidence to suggest that CSIDs could no longer be obtained from the Civil Status Agency (CSA) office in Kirkuk. His submission rested solely on the appellant's lack of family and contacts in Kirkuk or elsewhere in Iraq enabling him to obtain the documentation through a proxy and he accepted that if I was to find that the appellant had family remaining in Iraq, it would be the case that the appellant could obtain some form of documentation sufficient to travel to Kirkuk. As I have stated above, both parties agreed that that was essentially the sole issue to be determined. Although Mr Tan also submitted that the appellant should not be believed as to his account of not currently being in possession of his CSID document himself, I note that that has not been previously considered as a realistic possibility and I am therefore prepared to accept the claim that the documents were taken off him by the agent bringing him to the UK.

19. However, it has been consistently found by previous Tribunals that the appellant's claim to have no family remaining in Kirkuk was not a credible one. That included Judge Brookfield, whose findings in that regard, whilst not specifically preserved by UTJ Canavan, were also not specifically set aside. Indeed, as observed above, UTJ Canavan accepted that it had been open to Judge Brookfield to consider the possibility that the appellant could obtain his family registration book and page reference number through records held at the Passport Directorate, having been issued with a valid Iraqi passport in the past, and to appoint an attorney to obtain a CSID. It is clear from that observation that UTJ Canavan found no particular error in Judge Brookfield's findings as to the presence of contacts in Kirkuk to enable that to be done - her concerns being only to do with the impact of the security situation in Kirkuk upon the ability of those contacts to do that.

20. There was nothing in the appellant's evidence before me to undermine Judge Brookfield's findings in regard to contacts remaining in Iraq and, aside from reiterating his claim that he had no family remaining there, the appellant did not seek to address or undermine Judge Brookfield's findings at [10(v)] of her decision about the maternal uncle who had raised him. As for the observation made by Judge Brookfield that the appellant's approach to the Red Cross to locate family in Iraq was inconsistent with his previous claim that they had all been killed, the appellant's evidence before me was that he only did so because he was advised to by friends and his solicitor. I do not consider that to be a credible answer and concur with previous decision-makers that the appellant's more recent evidence about enquiries made with the Red Cross to locate his family was inconsistent with the evidence previously given that his family had been killed in 2014 when ISIS attacked his home area (see Judge Burnett's decision at [10] and [35] and the appellant's statement of 21 September 2017 at [9] and [14]) and suggested that he had, in fact, retained relatives and contacts in his home area who could, by proxy or through a lawyer with a power of attorney, assist him in obtaining a duplicate CSID document. There is, furthermore, nothing in the most recent country guidance in SMO to undermine any of these observations and findings. The appellant, in response to my enquiry, said that he thought that the new INID system was in place in Kirkuk, but no evidence was provided to support that claim and it was not one specifically relied upon by Mr Aziz.

21. Accordingly the appellant's inconsistent evidence about the presence of relatives in his home area leads me to conclude that he is not without contacts who would be able to act as a proxy for him or assist in instructing a lawyer to act as a proxy, with a power of attorney issued by him, in order to obtain the relevant family registration details to obtain a duplicate CSID. That could then be sent to him in the UK to enable him to travel back to Kirkuk, or alternatively to relocate to another part of the IKR, after arriving in Baghdad.

22. The appellant's ability to return to Kirkuk or to relocate within the IKR via Baghdad was not a matter particularly challenged by Mr Aziz other than on the issue of documentation, as already discussed, and indeed there is nothing in the appellant's profile or past experiences to suggest that he would be at risk

in his home area, particularly in light of the most current country guidance in SMO. The Tribunal's findings in the headnote to SMO are that:

"3. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant....

6. The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question."

23. There is no evidence to suggest that the appellant has any of the personal characteristics set out in [5] of the headnote to SMO as being relevant to the "sliding scale" analysis required by Article 15(c) of the Qualification Directive. There is no reason why he could not re-establish his life in Kirkuk or in another part of the IKR. With a duplicate CSID he would have, or be able to obtain, the necessary identification documentation to enable him to find employment. With the assistance of his relatives or other contacts remaining in Kirkuk, or his family in the UK, and with the skills obtained from previous employment, he would be able to re-establish himself and support himself. There is nothing in the medical evidence produced within the supplementary bundle to suggest that the appellant's health would impact upon his ability to do so. There is no evidence to suggest that it would be unduly harsh for him to relocate within the IKR if he did not wish to return to Kirkuk, but the evidence suggests in any event that he would be able to return to his home area.

24. For all these reasons I conclude that the appellant would be at no risk on return to Iraq and that his removal there would not result in a breach of his human rights on Articles 3 and 8 grounds. Mr Aziz confirmed that Article 8 was not being pursued as a discrete issue in any event.

DECISION

25. The making of the decision of the First-tier Tribunal involved an error on a point of law and has been set aside. I re-make the decision by dismissing the appeal.

Signed S Kebede
Upper Tribunal Judge Kebede

Dated: 21 July 2022