



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/00736/2020 (V)**

**THE IMMIGRATION ACTS**

**Heard at Field House (by remote means)  
On 24<sup>th</sup> March 2021**      **Decision & Reasons Promulgated  
On 27 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**WN  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr F Ahmad, Legal Representative of Hanson Law  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Andrew promulgated on 17 July 2020, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 13 January 2020 was dismissed on all grounds.
2. The Appellant is a national of Iraq, who claims to have arrived in the United Kingdom on 12 March 2009. He claimed asylum, which was refused by the Respondent on 30 April 2009 and the appeal against that

refusal was dismissed by the First-tier Tribunal in a decision promulgated on 1 July 2009, following which the Appellant became appeal rights exhausted. The Appellant made further submissions on 11 November 2019 on the basis that he would be at risk on return to Iraq because his father had worked for the US military and because he was Kurdish; that he would be at risk of a risk of indiscriminate violence contrary to Article 15(c) of the Qualification Directive; that did not have a CSID card and on the basis that he would be destitute on return. The Appellant also claimed that he was in a relationship in the United Kingdom with a Latvian national.

3. The Respondent refused the application for the following reasons. First, that there was no new evidence or submissions in relation to the Appellant's claim to be at risk on return due to his connection with his father, a claim which had previously been refused and dismissed on appeal. Secondly, on the basis of the findings in the country guidance case of SMO, KSP & IM (Article 15(c): identity documents) Iraq CG [2019] UKUT 400 (IAC) the Appellant would not be at risk on return due to his Kurdish ethnicity or at risk of indiscriminate harm contrary to Article 15(c). Thirdly, the Appellant could return to Baghdad where he had lived previously with his family and would be able to obtain a new CSID card through details of his family book entry. Fourthly, the Appellant did not meet the requirements of either Appendix FM or paragraph 276ADE of the Immigration Rules for a grant of leave to remain on family or private life grounds. Finally, there were no exceptional circumstances to otherwise warrant a grant of leave to remain.
4. Judge Andrew dismissed the appeal in a decision promulgated on 17 July 2020 on all grounds, the detailed reasons for which I return to, so far as relevant, below.

### **The appeal**

5. The Appellant sought permission to appeal on five grounds, with permission to appeal only granted by the Upper Tribunal on the fifth and final ground. The grounds upon which permission was refused related to the refusal to grant an adjournment of the hearing; the First-tier Tribunal's application of the principles in *Devaseelan* and its assessment of evidence in relation to the Appellant's visit to the Iraqi Embassy and approach to the Red Cross for family tracing. Towards the end of the oral hearing the Appellant's representative sought to renew the application on these other grounds (or somehow set aside the refusal of permission on the other grounds), but this was not ultimately pursued given the lack of clarity as to the basis of the application; the procedural mechanism relied upon; the difficulties caused by the timing of the request and how the Appellant wanted the request to be dealt with.
6. The ground of appeal upon which permission was granted falls into two separate parts. First, that the First-tier Tribunal materially erred in law in failing to properly consider internal relocation given the Appellant's claim

that he was from Kirkuk, a former contested area. It is said that the Tribunal has failed to apply the country guidance in SMO, by (a) failing to consider the extent of ongoing ISIL activity in Kirkuk; (b) failing to consider whether the Appellant has an actual or perceived association with ISIL (relying on the Appellant's claim that ISIL attended the family home on 24 February 2009 threatening to kill his father); (c) failing to consider the Appellant's Kurdish ethnicity; (d) failing to consider the Appellant's associations with Western organisations or security forces, namely his father's work for Megaforce (albeit not accepted in the Appellant's appeal in 2009); and (e) failing to consider the level of family support the Appellant would have on return given he has no contact details for them.

7. The second part of the ground of appeal is in relation to whether the Appellant has or would be able to obtain a CSID or INID card; his claim is that he does not and would not be able to travel within Iraq without one in accordance with the country guidance in SMO. Further, the Appellant would not be able to obtain a replacement in the United Kingdom without relevant documents and information and would not be able to obtain a replacement on return to Baghdad with or without a proxy as he is not from there and does not have the required documents.

8. Permission to appeal on this ground was granted for the following reasons:

*"I am concerned, however, that the judge might arguably have erred in the respects contended in ground five. There seem to be two complaints here. The first relates to the judge's evaluation at page 7 of her decision, which concerns the appellant's ability to return to his home town of Kirkuk. It is arguable, in my judgment, that the judge failed to take material matters (as described in SMO) into account in reaching the conclusions that she did in this respect. In particular, it is arguable that she failed to take into account the matters required by the sliding scale described in that country guidance decision. It is less strongly arguable that the judge erred in the second respect contended in this ground, which relates to the appellant's ability to obtain his own, or a replacement CSID. On analysis, it might ultimately be thought that it was open to the judge to conclude - as she did at [32] - that the appellant has his own CSID or that he would be able to obtain a replacement. The point is nevertheless just arguable, and I grant permission on ground five as a whole."*

9. At the oral hearing, Mr Ahmad relied on the written grounds of appeal and proceeded to make submissions on what should happen next in this appeal on the assumption that there was a material error of law in the decision of the First-tier Tribunal. I indicated to Mr Ahmad that the error of law issue needed to be dealt with first and sought clarity as to the precise nature of the ground pursued.

10. Mr Ahmad submitted that the First-tier Tribunal erred in law in relation to whether the Appellant had or would be able to obtain a CSID, with support in the Respondent's Country Policy and Information Note that he would be unlikely to be able to obtain one from the Iraqi Embassy in the United Kingdom. Mr Ahmad said that the First-tier Tribunal's decision did not indicate clearly how it thought the Appellant would be able to obtain a replacement CSID.
11. In relation to internal relocation, Mr Ahmad submitted that the First-tier Tribunal's consideration and reasoning on this was inadequate, with a failure to apply the sliding scale. The Appellant would be returned to Baghdad but in paragraphs 36 and 37 of the decision, the First-tier Tribunal appeared to be unclear on this or where the Appellant was from. The Appellant's oral evidence was that he was from Kirkuk (there was no written or documentary evidence as to this) and that he had moved to Baghdad with his family in 2002. Mr Ahmad submitted that despite living in Baghdad for approximately 7 years, his return there would still be a matter of internal relocation because it is not the Appellant's original home area. The Appellant relied on objective evidence about ISIL relevant to a return to Baghdad or Kirkuk.
12. On behalf of the Respondent, Ms Isherwood opposed the appeal on the basis that there was no material error of law in the First-tier Tribunal's decision and emphasised that permission had not been granted on any of the matters on which the First-tier Tribunal had rejected the core of the Appellant's claim or against any of the adverse credibility findings made.
13. On the basis that the Appellant had lived in Baghdad for a number of years prior to leaving Iraq, Ms Isherwood questioned whether this was really a case where the sliding scale as to internal relocation really applied and noted that there is nothing to suggest the Appellant ever put his case on this basis before the First-tier Tribunal. In paragraph 36 of the decision, the First-tier Tribunal notes that there is a lack of information and evidence as to where the Appellant is from in Iraq and in relation to return to Baghdad, paragraph 37 notes the lack of evidence about the Appellant's likely circumstances on return there. The First-tier Tribunal found that there was no reason why the Appellant could not return to Kirkuk and there was no evidence of any ongoing ISIL involvement there; nor did the Appellant have any association with ISIL.
14. Overall, Ms Isherwood submitted that the burden of proof was on the Appellant and even to the lower standard, there was simply a lack of evidence supporting his claim before the First-tier Tribunal.

### **Findings and reasons**

15. There is some degree of confusion in the first part of the Appellant's ground of appeal upon which permission was granted, which Mr Ahmad was unable to properly clarify at the hearing. It is said that the Appellant is from Kirkuk but the complaint in the grounds refers to internal relocation

to Kirkuk. However, on the Appellant's case, this would be a return to his home area and not internal relocation as understood in the context of a protection claim, which could only be applicable to Baghdad or elsewhere (such as the IKR on the basis of the Appellant's Kurdish ethnicity).

16. The grounds and the grant of permission however refer to the sliding scale and factors identified in SMO that may be relevant when assessing whether an individual can safely return to a former contested area within the context of Article 15(c) of the Qualification Directive and refer, at least in part to Kirkuk as opposed to Baghdad; as well as general matters which may be relevant to either location.
17. The case as put to the First-tier Tribunal appears to have been equally unclear, referring, for example, in the skeleton argument to internal relocation, application of SMO and other generic factors as to relocation without clearly identifying where the Appellant was from (it being accepted there was no documentary or written evidence of this before the First-tier Tribunal) or where it was proposed he would be returned to.
18. The Respondent's reasons for refusal letter includes, in relation to Article 15(c) that the Appellant is not at risk on return because of the general country situation (save for the small mountainous area north of Baiji in Salah al-Din) nor because he has an actual or perceived association with ISIL nor any personal association with local or national government or security apparatus, nor any association to western organisations or security forces, nor because he has spent time in the west (matters which would be relevant to a return to a former contested area). Further, consideration was given to the Appellant's return to Baghdad, noting that the Appellant had lived there with immediate family members who could support him and it would not be unduly harsh to return to Baghdad, nor would there be any problems with feasibility of returning there due to a lack of CSID.
19. The previous First-tier Tribunal decision of Judge Baird, promulgated on 3 July 2009 records the Appellant's evidence that he lived in Kirkuk as a child and moved to Baghdad in 2002; however there were no findings in that decision as to where his home area was nor any specific reference as to where he would be returned to. The overall conclusion in dismissing the appeal was simply on the basis that the Appellant had not established his credibility or the truthfulness of his claim such that he would not be at risk on return.
20. Against this backdrop, the First-tier Tribunal found as follows:

*"36. I cannot say whether the Appellant comes from Baghdad, Kirkuk or elsewhere in Iraq. This has not been addressed in the documents that I have before me. All I am able to say is what has been accepted by the Respondent that the Appellant is of Kurdish ethnicity and is a citizen of Iraq.*

*37. If the Appellant is from Baghdad he will be returned there. I note that he claims to have lived next door to a maternal uncle but he adduces no evidence as to what might have happened to this uncle. It may be that on return the Appellant can make contact with him.*

*38. If the Appellant is from Kirkuk there is no reason why he is unable to return there, given I am satisfied for the reasons that I give above he will be able to obtain the appropriate documentation to allow him to travel. I have been referred to no country information to show that ISIL have ongoing activity there. In fact, I was referred to none of the country information that appears in the Appellant's Bundle."*

21. Whilst it is clear on the face of the decision that there was no specific finding as to where the Appellant was from in Iraq, the reasons for that are also clear in paragraph 36 and the Appellant has not been able to identify any evidence that was before the First-tier Tribunal as to where he was from, save for his representative submitting that in oral evidence he stated he came from Kirkuk (which is not referred to in the decision and is not supported by the record of proceedings). On the evidence before the First-tier Tribunal, there is no error in law in failing to make a specific finding as to where the Appellant was from in Iraq, he had simply failed to submit any evidence on this or establish his case.
22. In these circumstances, it was appropriate for the First-tier Tribunal to assess the different possibilities for the Appellant's return, either to Kirkuk or Baghdad, and later in the decision the IKR is also considered as a possible option. In the first instance, the Appellant's appeal in relation to the First-tier Tribunal's assessment of return to Kirkuk could not be a material error of law given the unchallenged finding in paragraph 37 that he could return to Baghdad (the Respondent's proposed place of return), a city where he has previously lived with family members and in the context of wider findings about the Appellant having contact with them and that he has or would be able to obtain a replacement CSID (which for the reasons set out below was not an error of law either).
23. In any event, I find no error of law in the First-tier Tribunal's assessment of the Appellant's return to Kirkuk when the decision is read as a whole. In the Appellant's grounds of appeal a number of specific factors are relied upon by reference to the factors set out in SMO but all have essentially been considered within the decision. First, the Appellant refers to ongoing ISIL activity in Kirkuk, but as recorded in paragraph 38, there was simply no evidence of this before the First-tier Tribunal (and none identified before me either). Secondly, the Appellant's claimed association with ISIL was expressly considered and rejected by the First-tier Tribunal, see paragraphs 22, 23, 33 and 34 of the decision together with the earlier adverse credibility findings of Judge Baird in 2009 on this part of the Appellant's claim. Thirdly, the Appellant's Kurdish ethnicity is expressly considered in paragraph 35 of the decision, with a reference to the lack of

evidence of any risk of being targeted for this reason. Fourthly, the Appellant was found in 2009 and by the First-tier Tribunal more recently not have any associations with Western organisations or security forces. Finally, the factors referred to in SMO are specific to women and children without family support rather than the availability of family support per se, but in any event there are clear findings in paragraph 31 in particular that the Appellant does have contact details for his family and in paragraph 30 that he is in contact with a paternal uncle in Germany. Overall, the factors relied upon in the grounds of appeal were all considered and expressly rejected by the First-tier Tribunal and as such, applying the sliding scale in SMO, it was entirely open to the First-tier Tribunal to conclude that there was no reason why the Appellant is unable to return to Kirkuk.

24. As to the second part of the ground of appeal, the grounds appear to be more of a reassertion of the Appellant's claim rather than identifying any error in the First-tier Tribunal's decision; shown by not least by being in essence a copy and paste of the skeleton argument previously submitted. The Appellant's case before the First-tier Tribunal was that he did not have a CSID card and could not obtain a replacement because he does not know where his family are. The only new evidence as to his family was in relation to the Appellant's approach to the Red Cross and his attendance at the Iraqi Embassy; both of which have been dealt with expressly in the decision in paragraphs 24, 26 and 28 to 31 and the Appellant has not been granted permission to challenge the assessment of this evidence or the finding that he did and does have contact details for his family.
25. In circumstances where the Appellant has been found to have contact details for his family and is in contact with a male member of his family, in accordance with the guidance in SMO and in combination with the findings as to the Appellant's claimed attendance at the Iraqi Embassy; it was entirely open to the First-tier Tribunal to find that would be able to obtain a replacement CSID if he did not already have one. The Appellant has simply failed to establish that he has made any reasonable efforts to obtain his CSID or a replacement; nor identified any specific reason for him being unable to do so given the rejection of his claim not to know the whereabouts of his family. For completeness, given the nature of the findings in the present decision about family contact, the conclusions are unaffected by the remittal of SMO to the Upper Tribunal by the Court of Appeal on the specific point about whether an individual would be able to recall details of their own family book entry.
26. For these reasons there is no error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed G Jackson

Date

14<sup>th</sup> April 2021

Upper Tribunal Judge Jackson