



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02081/2020

**THE IMMIGRATION ACTS**

Heard remotely at Field House  
On 29 April 2021 *via Skype for Business*

Decision & Reasons Promulgated  
On 8 June 2021

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MN (IRAQ)  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L. Brakaj, Iris Law Firm (Middlesbrough)

For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS (V)**

*This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.*

*The documents that I was referred to were primarily the decision of the First-tier Tribunal, the grounds of appeal, and the bundles relied upon by the parties before the First-tier Tribunal, the contents of which I have recorded.*

*The order made is described at the end of these reasons.*

*The parties said this about the process: they were content that the proceedings had been conducted fairly in their remote form.*

1. This is an appeal against a decision of First-tier Tribunal Judge Fisher promulgated on 11 August 2020 dismissing the appeal of the appellant, a Kurdish citizen of Iraq born in 2002, against a decision of the respondent dated 18 February 2020 to refuse his claim for asylum made on 23 September 2019.

*Factual background*

2. The appellant arrived in this country as an unaccompanied minor. He claimed asylum on the basis that he would be the victim of a blood feud in Iraq and that he feared ISIS. He also contended that upon his return he would without the documents that are essential to avoid being subject to treatment that would be contrary to Article 3 of the European Convention on Human Rights (“the ECHR”). The judge rejected the appellant’s claim to be at risk on account of the blood feud and from ISIS, and there has been no challenge to those findings.
3. At [23] of his decision, the judge addressed the appellant’s likely circumstances in Iraq upon his return. The judge reached various findings of fact relating to the appellant’s ongoing contact with his family. He rejected the appellant’s claim to have travelled with a mobile phone but without a SIM card, on the basis that it would not be possible to use such a device without one. He found that the appellant held a telephone number for his uncle in Iraq, who had paid \$15,000 to an agent to facilitate his journey to the United Kingdom. As to the appellant’s ability to obtain the documentation that is necessary to engage with life in Iraq and make the journey from Baghdad to the Kurdish region following an enforced return, the judge said this, at [23]:

“The [Upper Tribunal in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)] found that, notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi consular facilities. It concluded that there would only be a small number of cases in which an individual could plausibly claim to have no means of contacting family members from whom the relevant volume and page number [of the Family Book; an Iraqi register of persons essential for acquiring identity documents] could be obtained and traced back. The appellant was not particularly young when he left the country. Relevant details would have been shown on his birth certificate or the passport which had recently been acquired for him. If he is not already in possession of the documents which would enable him to return to the [Kurdish region], **I am satisfied that he could obtain them from his family or they could provide him with the details which would enable him to obtain replacements from the Iraqi consulate in the UK.**” (Emphasis added)

An “INID” as referred to by the judge means an “Iraqi National Identity Card” which, as described by this tribunal in SMO, is a document which replaces a CSID. I refer to the judge’s finding that the appellant could obtain a CSID from within the UK as “the impugned CSID findings”.

4. The judge dismissed the appeal on asylum, humanitarian protection and human rights grounds.

*Permission to appeal*

5. Permission to appeal was granted by Upper Tribunal Judge McWilliam on the basis it was arguable that the judge erred by not having regard to the respondent's country policy and information note Iraq: Internal relocation, civil documentation and returns, version 11.0, June 2020 ("the CPIN"), which appears at paragraph 2.6.16 to suggest that, contrary to the judge's conclusion, the Secretary of State now accepts that it is not possible to obtain CSID documents from within this country.

*Submissions*

6. In her oral submissions and in her undated skeleton argument, Ms Brakaj relies upon SMO (Iraq) to demonstrate that the appellant's enforced return would be to Baghdad, thereby necessitating a lengthy internal journey by road. It is common ground that under the current country guidance if the journey is made without a CSID or INID, the individual concerned faces a real risk of substantial harm contrary to Article 3 of the ECHR. Thus the judge's finding that the appellant would be able to obtain a CSID from within this country was pivotal to the appeal being dismissed, submits Ms Brakaj. Against that background, Ms Brakaj submits that it was an error for the judge not to consider the passage of the CPIN set out below, even though it had not been relied upon by her firm, Iris Law Firm, at the hearing before the First-tier Tribunal. The CPIN was before the judge, as part of a bundle of approximately 1,000 pages, but his attention was not drawn to the paragraphs concerning this issue.
7. Paragraphs 2.6.15 and 2.6.16 of the CPIN address post-SMO developments of which the Secretary of State is aware concerning the apparent reduced ability to obtain a CSID from within the United Kingdom. Referring to information provided by the 'Returns Logistics Department' within the Home Office located at Annex I to the CPIN, those paragraphs read as follows, with emphasis added:

"2.6.15 Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957) which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

'The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document...

and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the [Foreign and Commonwealth Office] and provide parents names, place and date of birth to their nominated representative in Iraq.

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

'The [Home Office] cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

**2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq."**

8. The judge's conclusion that the appellant could obtain a CSID from within the UK is at odds with the respondent's accepted and public position that obtaining a CSID is not possible from within the UK, submits Ms Brakaj.
9. Although not part of the appellant's grounds of appeal, Ms Brakaj additionally criticises the judge's findings that the appellant must have had a SIM card in his smartphone, for without one, he would not have been able to access the internet. That finding, submits Ms Brakaj, was instrumental in the judge's broader reasoning concerning the appellant's ability to contact his family in Iraq. Ms Brakaj applied under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit evidence demonstrating that smartphones can be used to access the internet through a wifi connection, and do not need a SIM card to do so.
10. In a rule 24 notice, and in submissions advanced orally by Ms Isherwood, the respondent submits that was for the appellant to rely on the passages of the CPIN in question. It is not for the Secretary of State to make an appellant's case for him. In any event, the judge's findings concerning the appellant's ability to obtain a CSID from within the UK were alternative to his primary findings, also at [23], that the appellant remains in contact with his family. The evidence concerning the SIM card was not before the judge, and he was entitled to reach the conclusions set out at [23] for the reasons he gave. I was invited to dismiss the appeal.

### *Discussion*

11. I accept that the impugned CSID findings were not open to the judge, in light of the June 2020 CPIN. The parties failed to draw the Secretary of State's new policy concerning her view of the likelihood of an Iraqi obtaining a CSID from within this country to the judge, and the judge did not identify it for himself from the materials that were before him. It was primarily for the Secretary of State to highlight the policy encapsulated in passage to the judge, pursuant to BH (policies/information:

SoS's duties) Iraq [2020] UKUT 189 (IAC), headnote (a). By not doing so and by arguing that the appellant could obtain a CSID from within the UK, the Secretary of State adopted an approach that was inconsistent with her own published policy.

12. It is necessary to determine whether, had the judge been alerted to the relevant paragraph, it would have changed the operative findings of the tribunal. In other words, I must address whether the impugned CSID findings infected and thereby undermined the judge's overall decision.
13. Ms Isherwood highlights how the CSID findings judge were ancillary to his primary finding that the appellant remains in contact with his family in Iraq, who have the documents, and could send them to him. There is support for that submission in the materials that were before the judge, for example the appellant's asylum interview, at questions 26 to 28:
  - "26. What ID documents did you have in Iraq?  
*Civil status ID card and National Certificate.*
  27. Where are these documents now?  
*I left the [sic] in Kurdistan, at home.*
  28. So there [sic] are with your maternal uncle?  
*Yes."*
14. Although the appellant maintained in his written evidence and at the hearing that he was no longer in contact with his family, the judge found that the appellant does remain in contact with them, that the CSID remains with his family in Iraq, and that they could send it to him here if need be. While the judge was not entitled reach the impugned CSID findings, those findings were secondary to his primary findings that the appellant remains in contact with his family, that he left his CSID with them, and that they will be able to return it to him here, for him to use upon his return. The judge was "satisfied" that the appellant could obtain the documents from his family. The impugned CSID findings were non-operative, fallback findings.
15. Ms Brakaj seeks to challenge the judge's finding that the appellant remains in contact with his family, on the basis that it was not open to him to the judge to find that his smartphone would have no use without a SIM card. Although this was not a ground of appeal, I will address that submission for completeness.
16. Smartphones work without SIM cards, Ms Brakaj submits, and it was irrational for the judge to conclude otherwise. She relies on a website printout demonstrating that smartphones may be used in that way, and seeks permission to rely on it under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I do not need to admit the new evidence as I accept that smartphone can access the internet without a SIM card, via wifi. The question then arises as to whether it was irrational for the judge to find the appellant to be in contact with his family, given his approach to the SIM card issue.

17. The jurisdiction of this appellate tribunal to interfere with findings of fact reached by trial judges is limited. Appeals lie on the basis of errors of law, not disagreements of fact. The constraints on an appellate tribunal interfering with findings of fact reached by trial judges are summarised in a series of now well-known cases; see, for example, the oft-quoted summary in Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 at [114], per Kitchin LJ, as he then was. In Perry v Raleys Solicitors [2019] UKSC 5, the Supreme Court stated that the principles concerning the jurisdiction of appellate courts and tribunals to interfere with findings of fact reached by courts below:

“may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact, **or that the trial judge’s finding was one that no reasonable judge could have reached.**” (Emphasis added)
18. Wifi is, of course, not available everywhere. The appellant’s case was that he travelled under the control of an agent or a guide, which included time walking and sleeping in forests and on the street (see the summary of the appellant’s evidence at [9] and [11] of the judge’s decision). In such locations, not having a SIM card *would* be a barrier to using a smartphone. The appellant’s case was that his journey was managed by an agent at all times, which would have restricted his ability to access wifi points. The appellant’s evidence was not that he had regular access to, say, internet cafés or wireless access points.
19. The judge also found at [23] that there would be little point in having a mobile telephone without a SIM card, and that it was not credible that the appellant would not have asked the agent for his uncle’s telephone number, which is what the appellant’s evidence had been. The judge’s findings included a rejection of the appellant’s evidence that he would have been sent on such a long and expensive journey by his uncle *without* being provided with his uncle’s mobile telephone number or other means of contact, and his inconsistent answers under cross-examination concerning why he did not ask the agent for his uncle’s telephone number if, as he had claimed, it was only the agent who had those details. Those were findings that were open to the judge, on the evidence, and the appellant’s disagreement with them amounts simply to an objection concerning weight.
20. In my judgment, it cannot be said that the judge reached a conclusion no reasonable judge could have reached concerning this issue. The judge’s findings must be viewed in the context of the whole sea of evidence of which he had the benefit of surveying (in contrast to this tribunal’s ability merely to ‘island hop’: see Fage UK Ltd v Chobani at [114.iv]).
21. I find that the judge reached operative findings that were open to him on the evidence, which were not tainted by the respondent’s failure to highlight her then-new policy concerning the ability to obtain a new CSID from within this country.
22. The appellant’s CSID remains in Iraq, and may be sent to him here to ensure he will not be subject to Article 3 mistreatment when making the journey from Bagdad to the Kurdish region.

**Notice of Decision**

The decision of Judge Fisher did not involve the making of an error of law such that it must be set aside.

This appeal is dismissed.

I maintain the anonymity order already in force.

**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 *Stephen H Smith*

Date 27 May 2021

Upper Tribunal Judge Stephen Smith