



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/08733/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 14<sup>th</sup> May 2021**

**Decision & Reasons Promulgated  
On the 28<sup>th</sup> June 2021**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**K A F  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Miss L Brakaj, Iris Law Firm

For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq of Kurdish ethnicity. He was born on 14 July 1985 and claimed asylum in the United Kingdom 16 August 2016. He is from Fariq village, near Kirkuk. His case was that although the area in which he lived was initially protected by Peshmerga forces, they had left when ISIS attacked and after that, various Shia Muslim groups including Hashd Al Shabi (“HAS”) had operated in

this area, attacking the appellant and his family for being Kurdish. The appellant went initially to the Kurdistan region of Iraq but was unable to live there without a sponsor. That was in Sulaymaniyah. He then went on to Erbil, then found an agent to help him leave Iraq, which he did in January 2016, arriving in the United Kingdom on 16 August 2016. He said that he had had his nationality card, passport and CSID with him but had lost them during the journey at sea between Turkey and Greece.

2. The Secretary of State accepted that the appellant is from Iraq and of Kurdish ethnicity but rejected the remainder of his claim, concluding that he had not shown that the authorities were unable or unwilling to offer him protection, that in any event he could relocate to areas within the KRI including Sulaymaniyah, that he had not shown it would be unreasonable to expect him to return there nor was it unduly harsh to relocate to a different part of the KRI.
3. The appellant's appeal against the decision to refuse his claim came in front of First-tier Tribunal Judge Buchanan sitting at North Shields on 24 August 2018. For the reasons set out in a determination promulgated on 28 November 2018, the judge finding that the appellant was a person who needs to seek replacement of the CSID and passport [31] and that the appellant could obtain or seek to obtain a copy or replacement of his passport from the Iraqi Embassy in London or a consulate, finding similarly that he could obtain a replacement CSID [33].
4. The judge did not accept that the appellant had lost contact with his family in the KRI nor that he did not know the whereabouts of his family nor did he accept that the appellant had made no meaningful attempt to contact his family since arriving in the UK. He concluded that it would be practical for the appellant to travel from Baghdad to the KRI as he would have relocation support from the UK to facilitate that journey and that he has family support available to him in the KRI and thus he could safely relocate there. He found that even if the appellant was not from the KRI he could enter, that he would have family support there and be able to remain without risk. He therefore dismissed the appeal.
5. The appellant sought permission to appeal on the grounds that the judge had erred in his finding that the appellant would be able to obtain a replacement CSID either from the London Embassy or from the Civil Status Affairs Office in his home governorate of Kirkuk, failing properly to take into account the country guidance decision AAH [2018]. Permission was granted and the matter came before Deputy Upper Tribunal Judge Mahmood sitting at North Shields on 3 May 2019. For the reasons given in his decision of 28 May 2019, the decision of the First-tier was set aside in part. A copy of that decision is attached.
6. Materially, in that decision, the judge said as follows:

“Notice of Decision

1. There is an error of law in the decision of First-tier Tribunal Judge Buchanan;

2. the findings made with that decision shall stand save that the issue of being able to obtain a CSID shall be revisited at a resumed hearing in the Upper Tribunal;
  3. the appellant shall file and serve any documents that he seeks to rely upon fourteen days before the resumed hearing. That should include a skeleton argument;
  4. the respondent shall file and serve any further documents that are relied upon seven days before the resumed hearing. That should include a skeleton argument;
  5. a Kurdish Sorani interpreter is required for the resumed hearing.”
7. Owing to the need to make a transfer order and subsequently the COVID pandemic, the matter was not relisted for hearing until it came before me on 10 February 2021. Unfortunately, that hearing had to be adjourned owing to a failure to book an interpreter.

### **The Hearing**

8. The hearing was scheduled to be heard by Skype for Business. There were significant problems in the appellant connecting to the hearing. He was not in Miss Brakaj’s offices and despite several attempts to connect, although he could see and hear us and we could see him, we could not hear him. Despite the assistance of the interpreter, we were unable to get the video connection working. The appellant was, however, able to join by telephone and he proceeded to give evidence on that basis. No objection was raised to that although taking evidence over a telephone link from an appellant is less than ideal.
9. I did canvas the possibility of adjourning the hearing again, given also that the appellant would have to comment on photographs in the bundle which he did not have with him. We were, however, able to proceed through identifying the photographs by reference to page number and the appellant was able to comment on them. In the event, little of what the appellant said was controversial.
10. The appellant confirmed that the photographs showed him initially at the Iraqi Consulate in Manchester in May 2019, the second set were taken in March 2020 when he went on his second visit to the consulate.
11. The appellant said that the consulate had said they would not be able to help him and that they had had difficulties with the Home Office in the past in helping Iraqis with their documentation, so they had stopped doing so. He said he gave them his date of birth, name and place of birth but they would not help him and was told that in order to help him they would need proof from him.

12. The appellant said he had not been in contact with family since 2018 although he had tried via a friend of him and by email to various organisations but without any response.
13. In cross-examination the appellant said that he could not remember the page reference for the entry in the family book in Iraq and that he had never known it off by heart, it was not in use all the time. He said that he did have a CSID document and that he had lost his documents in travelling. He had tried in many ways to reach family or friends throughout Facebook and social media, in particular through a specific website Kirkuk–Daquq, the latter being a small town near his home village. He said that he and his brother had got passports in the first place and they had wanted to go to Iran with their father to get medical treatment but they did not do so.
14. Miss Everett submitted that the appellant’s credibility was in issue. She submitted that there was a difference in this case from that in SMO, given that he had had documents in the past and would be having them replaced. She submitted that caution should be applied in assessing whether the appellant had forgotten the family page number, the importance of which was stressed in SMO. She submitted it was not surprising the consulate were not particularly helpful, given the limited information the appellant had provided them and that they would have needed further information. She submitted it was not plausible that there was nobody in Iraq who could assist him or that he would not have ways of re-contacting, his family having left the country. Relying on SMO at [431], she submitted that there is a distinction here and the appellant would be able to get the relevant documents on return.
15. I gave time to Miss Brakaj to produce written submissions, given that at this point her laptop was causing problems and she did not have access to her files.
16. In summary, Miss Brakaj submits that there is no reason to doubt the appellant’s evidence that he attended the consulate in Manchester and had been able to obtain assistance. She submitted that this was difficult, given that the appellant was from Kirkuk as it had moved over to the new INID system which replaces CSID (see SMO at 383). She submitted further that in the June 2020 CPIN it shows (Annex 1) that consulates and embassies are unable to issue CSID documents and could only operate a post box service.
17. Miss Brakaj submits further that in order to obtain an replacement ID document, the appellant would need to try to obtain an INID, the only appropriate issuing body being the Kirkuk CSA Office and, as the evidence from UNHCR shows, it has difficulties even in obtaining documents for people who were in the camps within the governorate of Kirkuk itself.
18. On that basis, Miss Brakaj submitted that the appellant would be unable to obtain a CSID either by proxy in the United Kingdom or on return to Baghdad and, relying on paragraph 16 of SMO, if returned to Baghdad on a laissez passer he would not be

able to leave the airport or travel to Kirkuk in order to obtain documentation and would be at risk in doing so. (See SMO at paragraphs 430 and 431).

19. Miss Brakaj submitted that there was in reality no practical difference between somebody who had had documents in the past and who had not. The differentiation in SMO was whether somebody had actually retained access to the original documentation but that is not the case here. She submitted that the situation has changed since SMO as Kirkuk governorate, having rolled out new INID machines, are no longer issuing CSID documentation and thus whether he is in contact with his family was now no longer relevant as, knowing the page number of his family book and the number of his CSID would not assist as he would still need to apply for an INID, which could not be issued without him being present in Kirkuk and cannot be issued by proxy.
20. Miss Brakaj submitted that given that there was such a large displacement of people of the same area his inability to contact family was not incredible but considered overall was reasonably likely.

### The Law

21. It is for the appellant to show that he has a well-founded fear of persecution in Iraq or that he would on return be subjected to such serious ill-treatment as would constitute ill-treatment of sufficient severity to engage Article 3 of the Human Rights Convention; or, that he is entitled to humanitarian protection by operation of Article 15(c) of the Qualification Directive.
22. The starting point in this case is SMO and the guidance given in that case, in particular in this case at Sections B and C:

#### **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

36. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.

37. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

38. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

39. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

### C. CIVIL STATUS IDENTITY DOCUMENTATION

40. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.

41. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a ‘certification letter’ at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.

42. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father’s or the mother’s side because the registration system is patrilineal.

43. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.

44. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.

45. The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

23. I am satisfied that removal in this case is feasible as the appellant will be able to obtain a laissez passer, given the preserved findings of the First-tier Tribunal that he has contact with family in Iraq who would be able to support him. I am satisfied that he would on that basis be able to get one or more of the documents listed in the June 2020 CPIN at 2.6.24 or that family would be able to provide assistance of the sort referred to at 2.6.25 to enable the appellant to obtain a laissez passer. As he was formerly resident of Kirkuk, outside the KRI, removal would be to Baghdad, and this would be feasible.
24. Turning next to documentation, in this case, there is a preserved finding that (First-tier Tribunal Decision at [31]) that A “left Iraq with a full set of documents, including his passport, CSID, identity card and birth certificate.” It therefore follows that he needs replacements. The judge also concluded [32] that the appellant would be able to get a replacement CSID from his home governorate, accepted to be Kirkuk [33]. The judge also found that it was unreasonably harsh to expect him to relocate to Baghdad [36] and that as he has family support in KRI, he can go there and it would not be unduly harsh to expect him to do so.
25. The appellant has, I accept, now attended the Iraqi Consulate on two occasions and has not been able to obtain documentation but whether he provided the correct information is in dispute, as is whether the consulate would be able, in any event, to assist in obtaining a CSID.
26. The appellant’s circumstances are similar to those of the appellant SMO in that decision as noted at [429] to [431]. In particular,
  431. In any event, as we have noted, matters have moved on as the CSID is being phased out and replaced by the INID. If, as appears to be the case, the judge in the FtT concluded that the appellant would be able to use a proxy to obtain a replacement CSID from the CSA office in Kirkuk, we cannot be sure that this represents the position in 2019. It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy. In the circumstances, we consider that there must be further findings made regarding this appellant’s access to or ability to obtain a CSID card. In the event that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK, we think it likely that his return to Iraq would be in breach of Article 3 ECHR. As we have explained, we do not consider that he would be able to obtain either a CSID or an INID in Baghdad because he is not from that city.
27. I am satisfied that it would not be possible to obtain an INID card by proxy as personal attendance is required for enrolment of fingerprints - see paragraphs 2.6.16 to 2.6.19 of the Home Office’s Country Policy and Information Note “Iraq: Internal relocation, civil documentation and returns” of June 2020 (June 2020 CPIN”).
28. The UT was not persuaded in SMO [383] that consulates would no longer be issuing CSID cards but it accepted they could not issue INID cards.
29. Since then, further information has come to light. In the June 2020 CPIN, the following is noted:

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 [see paragraph 2.6.24 for list of national identity documents] 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 FCO 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 HO 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.** [emphasis added]

30. I find no sufficient evidence that CSID cards are being issued centrally if the CSA office for the relevant area has moved over to INID cards. Given what was noted by the UT in SMO at [431], and in the absence of any material tending to show the contrary, I find it would not be possible for the appellant, even with the assistance of family, to obtain a replacement CSID and he could not obtain an INID without travelling to Kirkuk which, absent a CSID or INID would not be possible.
31. These findings are, however, predicated on a return to Baghdad but no submissions have been made that this would not be the means of removal; indeed, it is the unchallenged basis on which the First-tier Tribunal made its decision ( see paragraph 30 thereof).
32. The appellant's account of the Consulate explaining that they could not help him is to an extent consistent with this but is lacking in detail. I do not accept, given the other negative credibility findings, that the appellant was fully open with the Consulate about the evidence available to him, but in any event, even had he given full details of his circumstances, relevant volume and page reference of the Family Book, that would not, in the light of the new evidence from the June 2020 CPIN have resulted in him being able to obtain a replacement CSID, or to be issued with an INID.
33. But in any event, assuming that appellant has the ability to obtain a 1957 Registration Document through family in Iraq, which is a reasonable assumption given the



preserved finding that he has family support there but, that will only get him as far as Baghdad.

34. Given the preserved findings that it would be unreasonable to expect him to relocate to Baghdad, and the inability to obtain a CSID or INID, he cannot relocate to the KRI.
35. Given also the acceptance that this would result in his situation in Baghdad being sufficient to engage Article 3 of the Human Rights Convention. There is, however, insufficient material to demonstrate that any ill treatment is on account of a convention reason. Accordingly, I am satisfied that the appeal falls to be dismissed on Refugee Convention grounds but falls to be allowed on humanitarian protection and human rights grounds.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside in part.
2. The decision is remade:
  - (a) Dismissing the appeal on refugee grounds
  - (b) Allowing the appeal on humanitarian protection grounds
  - (c) Allowing the appeal on human rights grounds.

### **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 his 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

Date 22 June 2021

*Jeremy K H Rintoul*  
Upper Tribunal Judge Rintoul