Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00463/2020**
(PA/50834/2020)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On the 22 February 2022	**On the 29 March 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Ansar Anzadin Ahmad

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs Johnrose, instructed by Broudie Jackson Canter
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Iraq, of Kurdish ethnicity, born on 7 April 1997, from Albu Najm in the Daquq district, Kirkuk governate. He arrived in the UK on 13 September 2019 in a lorry from Italy, having left Iraq in July 2019 and travelled through various countries, and claimed asylum on 14 September 2019. His claim was refused on 13 July 2020 and he appealed against that

decision. His appeal was heard in the First-tier Tribunal on 4 February 2021 and was dismissed in a decision promulgated on 1 March 2021.

3. The appellant's claim was based upon a fear of being recruited to join ISIS or the Popular Mobilisation Forces (PMF), or of being killed by those groups, upon return to Iraq. He claimed that his home village, Albu Najm, was invaded by ISIS in August 2015 and that his sister was abducted by ISIS. He managed to escape from the village with his parents whilst ISIS were fighting the peshmerga and he relocated to a nearby village, Mansur, for two to three months where he stayed with his father's friend Ali. They then returned to their home village whilst ISIS were still present, but he had no problems with them. On return to the village they found that their house had been broken into and their CSIDs, which they had left behind when they fled, were missing. Then on 16 October 2017 the PMF came to the village to fight ISIS. The appellant claimed that his father died around that time and then in January 2019 his mother passed away and after a month he went back to Mansur and moved in with Ali. Ali and his family were Kaka'i and people believed that he had become Kaka'i too. He helped Ali in voluntary work with a Kurdish group whilst living in Mansur, helping to provide food and clothes to less fortunate Kurdish families. On 20 June 2019 Ali received a call from ISIS informing him that they had abducted his wife and son and they subsequently beheaded his son and sexually abused his wife. His wife was sent home with a letter warning Ali of the consequences of not following the Islamic faith, as he was a Kaka'i. The appellant claimed that ISIS and the PMF believed that he was also a Kaka'i although he did not personally experience any problems with them. He left Iraq on 5 July 2019 when Ali arranged an agent to help them all flee. He had his passport when he left but it was taken from him by the agent in Turkey. At that time he also became separated from Ali.

4. The respondent, in refusing the appellant's claim, accepted that he was from Albu Najm in Kirkuk and that he was of Kurdish ethnicity. It was also accepted that his village of Albu Najm was invaded by ISIS in 2015. However the respondent did not accept the appellant's claim that ISIS had abducted his sister and considered it unclear how he had managed to avoid being recruited or mistreated by ISIS himself. The respondent rejected the appellant's claim of being perceived as a Kaka'i by ISIS and the PMF and did not accept that he had any subjective fear of return to Iraq on the basis claimed or that any fear he had was objectively well-founded. The respondent found the appellant's account of having left his CSID in his village to be inconsistent and considered that it was not clear why he would constantly carry his passport on his person but not his CSID. The respondent considered in any event that he could obtain a new CSID with the assistance of his family members and could therefore return to his home area by air or land. The respondent considered that the appellant could travel to Suleymaniyah where his family could meet him and accompany him to his home village or alternatively that he could remain in Suleymaniyah or relocate to another area in the KRI. The respondent considered that the appellant was therefore not at risk on return and that his removal from the UK would not be in breach of his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Curtis. Judge Curtis did not find it credible that the appellant would have been able to avoid being recruited by ISIS from the time of his return to his village in 2015 until February 2019 when he moved in with Ali in Mansur and considered that that indicated that ISIS were not present or active to any significant degree in the village from the end of August 2015. The judge also did not consider it reasonably likely that the PMF or ISIS would associate the appellant with the Kurdish volunteer group on his return to Iraq and did not accept that the appellant would be targeted by the PMF in his local area or that he would be perceived as being a Kaka'i. The judge accepted that ISIS invaded the village, that the appellant's sister was abducted and that his family fled, that the PMF operated and exerted control in the Kirkuk area, that the appellant lived in a nearby village with his father's friend for a short while after his parents passed away and that he did voluntary work helping needy families, but did not consider that the appellant would be at risk of serious harm if he returned to his village. The judge did not consider it unreasonable for the appellant to return to his village and found it speculative to suggest that the family's house and land had been given away.

6. Turning to the question of documentation, the judge did not accept the appellant's account of having left his CSID in his family home when he fled after ISIS invaded the village and of the CSID having disappeared on his return. He did not accept that the appellant would have kept his passport with him but would have left his CSID behind, given the importance of the CSID. He rejected the appellant's account of not being in possession of his CSID and found that the appellant was therefore able to make the journey from Baghdad to Kirkuk. The judge found that if the appellant no longer had his CSID, he could not apply for a new one from within the UK and could not obtain one in Baghdad, but his primary finding was that he still had his CSID. On that basis the judge dismissed the appeal.

7. Permission was sought on behalf of the appellant to appeal the decision to the Upper Tribunal on the grounds that the judge had erred in his findings regarding the appellant's possession of his CSID and had erred by finding that it was reasonable for the appellant to return to his former home village.

8. Permission to appeal was granted in the Upper Tribunal on 3 November 2021.

Hearing and Submissions

9. The matter came before me and both parties made submissions.

10. Mrs Johnrose submitted that the judge had erred by finding that the appellant still had his CSID. She submitted that, in reaching such a conclusion, the judge ought to have considered that the appellant would have been searched when he was detained by police on arrival in the UK and that if he had his CSID on him that would have been recorded. Further the judge failed to consider the appellant's profile when concluding that he could not have lived in

Iraq without his CSID, as his evidence at his interview had been that he had only ever worked with his father in their land, and therefore the family would have been self-sufficient and would not have needed to carry their CSIDs with them. When finding that the appellant would have taken his CSID with him when he fled his village, the judge failed to consider the background evidence referring to thousands of undocumented civilians fleeing from their homes in 2018. The judge failed to consider that the smuggler would have taken the appellant's CSID from him when he took his passport. The judge was speculating when finding that the appellant would need his CSID to pass through checkpoints, when the appellant had not stated that he needed his CSID to pass through checkpoints to Mansur village. The judge accordingly erred by finding that the appellant still had his CSID and, given that he found that the appellant could not obtain a replacement CSID in the UK or in Baghdad, he ought to have found that the appellant succeeded under Article 3.

11. With regard to his findings on risk on return, Mrs Johnrose submitted that the judge erred by failing to consider the picture in Iraq at the relevant time and the reports in the background evidence of ethnic tensions and Arabisation resulting in Kurdish families being forcibly evicted from their homes and of boys who had previously fled being accused on return of supporting ISIS. The judge ought to have accepted that ISIS believed the appellant had converted to Kaka'i and to have considered the risk to him on that basis. The judge ought also to have considered that the appellant had already tried to relocate but had been unable to do so as he had no family or other support. Mrs Johnrose submitted that all of those matters individually or cumulatively were sufficient to show that the judge had materially erred in law and his decision ought to be set aside and re-made.

12. Mr Tan submitted that the appellant's submissions were simply an attempt to re-argue the case with the benefit of hindsight and to plug the gaps in the evidence. He submitted that the matters raised ought to have been put to the First-tier Tribunal Judge rather than being argued at this stage. Mr Tan referred to the assertion in the appellant's written grounds, that there was procedural unfairness arising from the lack of opportunity given to the appellant to address the matter of him still being in possession of his CSID, submitting that the appellant had been given plenty of opportunity to address the matter having been put on notice of the respondent's concerns in that regard in the refusal decision. He submitted that the judge had given various reasons at [48] for finding the appellant's account inconsistent as regards his use of the CSID to obtain his passport. Following the guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 it was open to the judge to find that it was not plausible for the appellant to be able to pass through checkpoints without a CSID. The judge also properly found that the appellant and his family would have needed their CSIDs to travel to another area to access medical treatment. As for the suggestion that the smuggler would have taken the CSID with the passport, that was pure speculation and the obvious point was that a passport was important to the smuggler as it was required for international travel. Similarly the question of the CSID not being found on the appellant when he was detained on arrival in the UK could be

explained by it having been sent to the UK in advance or sent after his arrival. There were many possible scenarios.

13. As for the question of risk on return, Mr Tan submitted that the judge had referred to the 'sliding scale' analysis in SMO and had considered all relevant matters. He had referred to the CPIN on religious minorities and had considered the risk as a Kaka'i but had concluded that the appellant would not be perceived as a Kaka'i. As for the question of the living conditions to which the appellant would return, that had been considered by the judge at [43]. There had been no assertion that he would be destitute or that he would be subjected to conditions contrary to Article 15(b) of the Qualification Direction, as referred to at [6] of the headnote to SMO.

14. Mrs Johnrose, in response, reiterated the points previously made and submitted that there had been a lack of anxious scrutiny of material matters in the judge's decision.

Discussion and conclusions

15. It is Mrs Johnrose's submission that the judge's decision failed to consider material matters when concluding that the appellant would still be in possession of his CSID and that his conclusion was therefore erroneous. However I have to agree with Mr Tan that the matters which she claimed were 'Robinson obvious' and which she submitted ought to have been considered by the judge were in fact simply an attempt to re-argue the case and present further arguments and evidence which ought to have been put to the judge in the first instance.

16. As Mr Tan submitted, the appellant had been put on notice by the respondent, in the refusal decision, that his account of the whereabouts of his CSID was not accepted. The respondent expressed concerns, at [58] and [73] of the refusal decision, about the appellant's account of carrying his passport with him but not his CSID, when the passport would only have been required for international travel whereas the CSID would have been required to access many basic services in Iraq, as he himself had accepted at his interview (question 41). The appellant had therefore had ample opportunity to address the matter but had not done so. The suggestion, at [11] of the appellant's grounds, that there was procedural unfairness in the matter not being put to the appellant, is without any merit.

17. The judge gave various reasons for concluding that the appellant's account about the loss of his CSID was not a credible one. In line with the respondent's concerns at [58] of the refusal decision, the judge, at [48] of his decision, provided cogent reasons for finding the appellant's account of having his passport with him rather than his CSID to be implausible, given the purpose and significance of each document in conducting daily life. It was Mrs Johnrose's submission that the judge ought to have considered that, being part of a self-sufficient family, the appellant would not need a CSID in his daily life. However, not only was that an attempt by Mrs Johnrose to import her own

arguments into the earlier proceedings, but the judge, in any event, gave various other reasons for finding the appellant's account about his CSID to lack credibility. In the same paragraph, [48], the judge also took account of inconsistencies in the appellant's account of how the CSID was used to obtain his passport and who had responsibility for the documents. At [49] the judge considered the country guidance about the need for CSIDs in navigating checkpoints and for accessing medical treatment and found the appellant's account to have conducted his life without his CSID in the years following the claimed loss of the document to be at odds with that guidance. I agree with Mr Tan, that it was entirely open to the judge, given the guidance in SMO, to find it implausible for the appellant to be able to pass through checkpoints without a CSID. As for Mrs Johnrose's suggestion that if the appellant had still retained his CSID at the time he left Iraq it would most likely have been taken by the smuggler with his passport, or alternatively it would have been recorded as part of his possessions when he was detained and searched on arrival in the UK, I agree with Mr Tan that that was complete speculation and could be explained by various alternative scenarios and was not a reason to undermine the properly made findings of the judge.

18. Accordingly it seems to me that the judge's reasons for concluding that the appellant was being untruthful about no longer being in possession of his CSID were supported by the background evidence and country guidance and were entirely open to him.

19. As for the challenge to the judge's findings on the issue of risk on return, again I agree with Mr Tan that those findings were made with full and proper reference to, and were consistent with, the background evidence and country guidance. At [40] to [43], the judge undertook a detailed assessment of the appellant's personal characteristics and circumstances in line with the 'sliding-scale' analysis as set out at [3] to [5] of the headnote to SMO when considering the Article 15(c) risks on return to a 'Formerly Contested Area', Kirkuk governate. The judge had regard to the appellant's claim to be perceived as a Kaka'i and to be at risk on that basis, and provided cogent reasons at [34] to [36] and [40] for rejecting that account and for concluding that he would not be at risk on such a basis. He also considered, at [43], the living conditions to which the appellant would be returning in line with the guidance at [6] of the headnote in relation to Article 3 risk and Article 15(b) of the qualification directive. The grounds assert that the judge only had regard to the generalised headnotes of SMO and did not consider the specific situation in the appellant's home area or his individualised circumstances at the current time, but that is clearly not the case. In so far as Mrs Johnrose made references within the background evidence which she submitted the judge failed to consider, I find again that she was simply seeking to re-argue the case and, as Mr Tan properly submitted, "plug the gaps" in the evidence and submissions presented before the judge.

20. For all of these reasons I find no merit in the grounds and the challenges to the judge's decision. Judge Curtis's decision was one which was fully and properly open to him on the evidence before him and was supported by clear

and cogent reasoning. I do not find any errors of law in his decision requiring it to be set aside and I accordingly uphold his decision.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede Dated: 24 February 2022
Upper Tribunal Judge Kebede