



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

Appeal Number: IA/02178/2020  
PA/52287/2020, (UI-2021-001184)

**THE IMMIGRATION ACTS**

**Heard at Field House IAC  
On 27 May 2022**

**Decision and Reasons  
Promulgated  
On 15 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**H H  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms L Brakaj, instructed on behalf of the appellant  
For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

**Anonymity :**

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge O'Hanlon (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection appeal in a decision promulgated on the 17 June 2021 but allowed the appeal on human rights grounds (Article 3).
2. Permission to appeal that decision was sought on behalf of the appellant and on 3 November 2021 permission was granted by designated Immigration Judge Shaerf.

The background:

3. The appellant is a citizen of Iraq. The basis of his claim is set out in the decision letters in the respondent's bundle and summarised in the decision of the FtTJ.
4. The Appellant is a national of Iraq born 15th October 1993. He is of Kurdish ethnicity and lived in the X district of Sulaymaniyah with his family.
5. In approximately January 2018 he met a woman, N a Yazidi living in a refugee camp, and they established a relationship together. Their relationship continued over the following six months. They spoke on the telephone on a daily basis and met up in secret in the refugee camp where N resided. Their meetings were in secret. In July 2018, the Appellant and N had discussed marriage. It was decided they would ask their respective families for permission to marry. The Appellant's father became angry and beat him following this conversation. The Appellant later discovered that N had been similarly treated by her family.
6. On the following day N's family came to the Appellant's family house whilst he was out. On his return the Appellant's father and brother and paternal uncle attempted to kill him. He was beaten until he was unconscious. He was discovered by a shepherd who took him to a hospital where he remained overnight. The following day the Appellant contacted his friend who took him to his home where they remained for one night. The Appellant contacted N and they decided to leave Iraq together. His friend made the arrangements and the Appellant left Kurdistan with N on 15th July 2018.
7. The Appellant and N fled Kurdistan with the assistance of an Agent. The Appellant entered the United Kingdom alone by lorry with the assistance of the Agent. The Appellant does not have a passport or CSID card or an Iraqi identification document. He is not able to obtain replacement documentation to facilitate his return to Iraq.
8. Since the Appellant has been in the United Kingdom he has attended a demonstration against the authorities in Iraq. He has also posted Facebook posts showing his opposition to the authorities in Iraq. As a result of these

Facebook posts he has received threats from people who have replied to the posts.

9. The respondent refused his protection and human rights claim in decision taken on the 9 November 2020.
10. Whilst it was accepted that the Appellant's claim was based upon a reason recognised by The 1951 Convention namely that he is a member of a particular social group, specifically a potential victim of an honour crime ( at [26]) the Respondent did not accept the Appellant's account of his relationship and the problems with his family thereafter as a result of that relationship as a result of inconsistencies in his account. Thus the respondent considered that the Appellant's overall account was not credible or plausible and he would not be at risk of being a victim of an honour crime.
11. The Respondent did not consider that the Appellant would face a risk in the event of his return to Iraq and that in any event he Appellant could internally relocate in a part of Kurdish region of Iraq (KRI) in an area such as Dohuk or Erbil away from his family.
12. The respondent also considered that on the available evidence the humanitarian situation in Iraq generally was not such that Article 15(c) of The Qualification Directive would be breached.

The decision of the First-tier Tribunal Judge:

13. The FtTJ undertook an assessment of the issues of credibility raised in the decision letter but concluded at [49] that as far as the Appellant's account generally was concerned, whilst finding that there are some minor inconsistencies, the FtTJ found that the Appellant's account had been generally had consistent throughout his screening interview, his asylum interview and his evidence at the hearing.
14. The FtTJ noted the Appellant's manner in response to the questions put to him at the hearing. As was submitted by the Appellant's representative, he answered all of the questions which were put to him without hesitation or prevarication. As to the alleged inconsistency between the SCR and AIR about how he met his partner was corrected by the letter of 2 nd August 2019 prior to the asylum interview.
15. The FtTJ therefore concluded :
16. "Having considered all of the evidence before me in the round, I find that the reasons given by the decision-maker for disbelieving the Appellant's account, namely the inconsistencies referred to, are rather thin. Overall, I find that the Appellant has given a consistent and coherent account and that, in the event of return to Iraq, the Appellant would be at risk from his family or the family of N. 50. In the light of my finding that the Appellant would be at risk in the event of return to his home area it is necessary for me to consider whether the Appellant could internally relocate to another area of Iraq where he would not have a well-

founded fear of being persecuted and whether it would be reasonable for the Appellant to do so. In this respect, the Respondent had noted that the Appellant has expressed fear of returning to his home area of x in the province of Sulaymaniyah but had not expressed a fear of other regions in Iraq. This is not strictly the case as in the letter from the Appellant's Representative previously referred to and dated 2nd August 2019 the Appellant had claimed that he feared return to any area of Iraq."

17. The FtTJ then addressed the position of internal relocation. Hr set out the Respondent's position, as set out in the Reasons for Refusal letter, that the Appellant could reasonably relocate to other areas of the Kurdish region of Iraq (KRI) such as Dohuk or Erbil.

18. The FtTJ set out the family relatives of the appellant. The FtTJ referred to the respondent referencing the personal circumstances of the appellant and that he was a single man who had been educated to degree level and who had expressed fear of non-State actors who he had not demonstrated had any power to locate the Appellant elsewhere in the KRI.

19. At [53] he concluded:

" Having considered all of the circumstances, I find that it would be reasonable for the Appellant to relocate to an area of the KRI such as Dohuk or Erbil as I do not find that the Appellant has demonstrated why he would be unable to do so. The Appellant has vaguely stated that he has relatives throughout the KRI but that is not what he had detailed in his asylum interview. The Appellant stated in his asylum interview that his family members had no high rank in the police force or Peshmerga and there has been no evidence brought to suggest that the Appellant's family would be able to trace him in another area of the KRI in the event of his return. The Appellant is of Kurdish ethnicity, he is male, is in relatively good health and speaks Kurdish Sorani which is the language spoken in the KRI. The Appellant spent the majority of his life in Iraq including his formative years and I find he would have strong cultural ties there. Having considered the individual circumstances of the Appellant's case and the background information I do not find it would be unreasonable to expect the Appellant to relocate to another area of Iraq away from his immediate home area. He has education and experience of work and overall I do not find that relocation of the Appellant elsewhere in the KRI from his home area would be unreasonable."

20. Having reached that finding that the Appellant could reasonably internally relocate to a different area of the KRI, the FtTJ went to consider the feasibility of the Appellant's return and in particular, whether he can obtain the necessary documentation to facilitate his return.

21. In this regard the FtTJ set out his assessment at paragraphs [58]-[61].The FtTJ set out he appellant's evidence as to the location of his CSID card and documents and that they were at the family home. The Appellant's account was that he has not had any contact with members of his family since he left Iraq in July of 2018. The FtTJ stated that having previously found that the Appellant would be at risk from his family in the event of return to Iraq and therefore it follows that it would not be possible for the Appellant to retrieve his CSID card from Iraq with the assistance of his

family. In this regard he noted Paragraph 2.6.16 of the CPIN - Iraq: Internal relocation, civil documentation and returns, June 2020 which stated that it is highly unlikely an individual would be able to obtain a CSID from the Iraqi Embassy whilst in the UK.

22. The FtTJ then addressed the issue by reference to the CG decision of SMO headnote Paragraph 20 that as far as the KRI was concerned there are regular direct flights from the UK to the KRI and returns might be to Baghdad or to the KRI, it being for the Respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah. "However, it is the case that according to the June 2020 CPIN Paragraph 4.2.1 enforced returns are to Baghdad and therefore it is necessary for me to consider the situation in that light".
23. The FtTJ concluded that for the Appellant to obtain a replacement CSID card, given his findings that he could not obtain his original CSID card, which was located in the family home, the Appellant would therefore be in the position of returning to Baghdad without being in possession of a valid CSID card. The FtTJ found: "Paragraph 21 of the headnote of SMO provides that for an Iraqi national returnee of Kurdish origin in possession of a valid CSID or Iraq national identity card the journey from Baghdad to the KRI is affordable and practical and can be made without risk of suffering persecution, serious harm or Article 3 ill-treatment. However, the Appellant would not be, on my findings, in possession of a valid CSID card"
24. He further took into account that paragraph 22 of the headnote of SMO provides that a person is unable to board a domestic flight between Baghdad and the KRI without either a CSID, Iraq national identity card or valid passport and as the Appellant would not be in possession of a valid passport but a laissezpasser and on the basis of his findings, would not have a CSID card.
25. The FtTJ then cited paragraph 23 of SMO which provides that a person would face considerable difficulty in making the journey between Baghdad and the KRI by land without a CSID card. According to Paragraph 23 there are numerous checkpoints en-route including checkpoints in the immediate vicinity of the airport and there is a real risk of a person without a CSID card being detained at a checkpoint until such time as security personnel are able to verify their identity. He stated "Paragraph 23 goes on to say that it is not reasonable to require such a person to travel between Baghdad and the KRI by land without the ability to verify identity at a checkpoint. This verification would normally be the requirement of a male family member and production of identity documents. In the case of the Appellant, for the reasons previously given, I do not find that the Appellant would be able to obtain the assistance of a male family member to verify his identity. I therefore find in the absence of a CSID card and on the basis of my finding that the Appellant would not be able to obtain the same that, on the basis of the Country Guidance case of SMO, the Appellant would in the absence of a CSID card face a real risk of suffering persecution, serious

harm or Article 3 ill-treatment in attempting to make the journey from Baghdad to the KRI”.

26. When setting out his conclusions at paragraph [62] he stated, “Although I have found that the Appellant would be at risk of persecution for a reason recognised by the 1951 Convention, the Appellant is not entitled to a grant of refugee status as on the findings I have made the Appellant would not have a well-founded fear of being persecuted outside of his home area of Iraq and the Appellant can reasonably be expected to stay in that part of Iraq”.
27. His conclusions on Humanitarian Protection were set out at paragraph [63]; “Although on the basis of the facts as found in this appeal, the Appellant would face a real risk of suffering serious harm by reference to Paragraph 339C of the Immigration Rules as amended, the Appellant is not entitled to a grant of humanitarian protection as he would not face a real risk of suffering serious harm and can reasonably be expected to stay in a part of Iraq other than his home area”.
28. The FtTJ concluded that “ there are grounds for believing that the Appellant’s removal would result in treatment in breach of Article 3 ECHR”.
29. He therefore dismissed the appeal on asylum grounds and dismissed on humanitarian protection grounds but allowed the appeal on Article 3 grounds.
30. Permission to appeal that decision was sought on behalf of the appellant.

The hearing before the Upper Tribunal:

31. The written grounds set out the following. It is submitted that the factual basis of his claim for asylum was found to be credible by the FtTJ who accepted his account and concluded that he was at risk of persecution in his home area, Sulaymaniyah. Having concluded that the appellant was at risk in his home area, the FtTJ directed himself, quite properly, to the issue of whether Internal Relocation to another area of Iraq would be possible [para 50]. 2.
32. At para 53, the FtTJ concludes ‘having considered all of the circumstances’ that it would be reasonable to expect the appellant to relocate to another area of Iraq, such as Duhok, or Erbil, both being in the KRI.
33. The FtTJ then proceeds to consider the feasibility of the appellant’s return to Iraq overall. Having made an unequivocal finding that the appellant would not be able to access a CSID by either obtaining one in the UK or from his home area in the KRI, the FTTJ finds that the appellant would therefore be in the position of returning to Baghdad without a valid CSID in his possession, or a valid passport. At paras 60 & 61, the FtTJ therefore

concludes that the appellant would face considerable difficulty in travelling from Baghdad to the KRI either by air or by land and applying the principles of SMO concluded that he would suffer 'persecution, serious harm, or Article 3 ill-treatment' in attempting to make the journey from Baghdad to the KRI.

34. The asylum appeal and the humanitarian appeals are dismissed on the grounds that the appellant can live somewhere in Iraq other than his home area, however, the Article 3 appeal is allowed, assumedly because the appellant would face persecution or ill treatment in trying to get there.
35. It is contended that there is a fatal material error in the decision to dismiss the appellant's asylum and humanitarian protection appeals and that it was irrational to conclude that it was reasonable to expect the appellant to internally relocate to another area in the KRI to avoid persecution in his home area when it was simultaneously concluded he could not reach the KRI without suffering persecution or treatment contrary to Article 3. Plainly internal relocation is not reasonable for anyone who cannot safely reach the area to which it is said they can relocate. As such, the Tribunal erred in concluding there was a reasonable internal relocation option and in dismissing the asylum appeal on that basis.
36. Similarly, the Tribunal erred in dismissing the Humanitarian Protection appeal, and that the conclusion is confused. It is contended that the findings of the Tribunal with regard to the appellant's inability to safely travel from Baghdad to the KRI ought to have led to the HP appeal being allowed as there is, contrary to the finding, nowhere else the appellant could go to avoid that harm.
37. On 3 November 2021 permission was granted by designated Immigration Judge Shaerf.
38. The appellant is represented by Ms Brakaj, and the respondent is represented by Ms Young, Senior Presenting Officer.
39. At the hearing, the parties were in agreement that the FtTJ had materially erred in law in his decision to dismiss the appeal on asylum grounds for the reasons set out in the written grounds of challenge. Ms Young on behalf of the respondent submitted that the parties were in agreement that the FtTJ had made a finding of fact that the appellant would not be able to obtain his CSID because it was in his home area where the judge had also found he would be at risk of persecution or serious harm, and that the issue of documentation had not been considered as part of the assessment of internal relocation. She submitted that on the basis of the factual findings made by the FtTJ, internal relocation would not be reasonable and therefore the appellant was entitled to succeed in his appeal on asylum grounds.

40. As the parties are in agreement as to the outcome of this appeal it is only necessary to set out why that is the case. The FtTJ had found that the appellant would be at risk in his home area but found he could internally relocate to a different part of Iraq. The parties agree that the finding on internal relocation was erroneous in light of the finding of fact made that the appellant did not have access nor could he properly access his CSID as it was in his home area where he would be at risk of persecution or serious harm for a Convention reason.
41. As set out in in the decision of AA (Iraq) v SSHD [2015] UKUT 544 at paragraphs 38 and 39 and as amended on appeal [2017] EWCA Civ 944, a CSID is not simply a document to facilitate return but an essential document for life in Iraq. When that is properly taken account of and factored into the assessment internal relocation, without having access to his CSID he would not be able to access the support necessary and would not be able to “live a relatively normal life” (See AH (Sudan)).
42. Both parties therefore invited the tribunal to set aside the decision and to substitute a decision to allow the appeal on asylum grounds and article 3 grounds.

### **Decision**

43. The decision of the First.-tier Tribunal involved the making of an error on a point of law; the decision is set aside and is to be remade as follows:

The appeal is allowed on asylum grounds and human rights (Article 3)

#### *Rule 14: 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. 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 Upper Tribunal Judge Reeds  
Dated : 27 May 2022