



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003866

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th September

2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

GTQ
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Sadiq, Adams Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 14 September 2023

Anonymity:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

DECISION AND REASONS

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1. The Appellant is a national of Iraq born in 1984. He appeals with permission against the decision of the First-tier Tribunal (Judge Lewis) dated the 7th July 2022.
2. The matters in issue before Judge Lewis were relatively narrow. Although the Appellant had once sought protection in the United Kingdom on the grounds that he was a refugee, he no longer pursued that claim, an appeal against its rejection having been dismissed by First-tier Tribunal Judge Ennals on the 24th May 2019. Instead the Appellant advanced two arguments based on his human right to live in dignity, free from serious harm. The first of these revolved around his claimed lack of documentation, and the second his ill-health. Judge Lewis dismissed his appeal on both grounds.
3. On the 23rd March 2023 the Appellant's appeal against that decision came before the President of this chamber, Mr Justice Dove. At that hearing Mr McVeety for the Respondent accepted that the decision of Judge Lewis was flawed for error of law, and the matter was settled by consent, with the decision being set aside in its entirety, save for Judge Lewis' finding of fact about the nature and severity of the Appellant's illness, to which I return below.
4. A transfer order was signed by Principal Resident Judge Blum on the 10th May 2023 and on the 4th July 2023 the matter came before me to 're-make' the decision in respect of both the arguments advanced by the Appellant. Unfortunately on the day of the hearing the Civil Justice Centre in Manchester was closed to the public for emergency repairs. The hearing was therefore converted at very late notice to a 'remote' hearing and I remain grateful to Mr McVeety and Mr Sadiq for their efforts to assist the Tribunal in this regard. In light of their submissions I was able to dispose of the Article 3 health claim by the end of that hearing. The reasons for that decision are set out below in part I.
5. The remaining humanitarian protection claim could not however be determined by way of remote hearing. The parties agreed that the resolution of the outstanding issues about documentation in Iraq would require some oral evidence from the Appellant. Although he appeared that day via video link from the offices of Mr Sadiq, the challenges presented by his medical condition meant that he found it very difficult to vocalise loudly enough so that the interpreter could hear him. At the beginning of the hearing I had exchanged greetings with him and asked the interpreter to explain the procedure; the effort to respond to these short questions loudly enough to be heard had left him exhausted. Mr Sadiq asked that the remaking of this last issue in the appeal be adjourned to enable the hearing to be resumed in person: the Appellant could then sit right next to the interpreter and would be better able to give his evidence. Mr McVeety had no objection to that, and in the interests of justice I agreed. It is this element of the appeal that I determine today. My deliberations and reasons appear in part II below.

Part I: Health Claim

6. It was not in issue that the Appellant suffers from Segmental Dystonia, a condition described by Mr Sadiq's grounds as "a severe and incurable neurological condition". The medical evidence before the First-tier Tribunal, from sources including the GP, the Greater Manchester Mental Health NHS Trust and the Neurology department of Salford Royal NHS Trust, describes symptoms including spasms, severe and chronic pain, difficulty in swallowing and speaking,

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paralysis of the neck, and the risk of choking. These in turn give rise to panic attacks, poor sleep and appetite, and palpitations. The condition is a neurological one, variously described by the Appellant's clinicians as spasmodic torticollis, dystonia and dysphonia. The medication which the Appellant is prescribed as a muscle relaxant to try and relieve the pain in his neck has side effects including constipation, difficulty in urinating, confusion and hallucinations. Perhaps understandably, given the condition he finds himself in, the Appellant is also suffering from depression. In a letter dated the 28th April 2021 Dr C Kobylecki, Consultant Neurologist at Salford Royal, says this:

"[the Appellant] has Segmental Dystonia which is an incurable condition causing severe abnormal involuntary movements of the neck muscles and the vocal muscles. This results in significant abnormal postures of the head and neck and impaired ability to speak. This condition is a lifelong condition and is treated via a complex range of therapies. He is receiving a complex oral medication regime of Trixexyphenidyl, Mitrazapine and Baclofen which help with his abnormal movements. In addition he is receiving Botulinum toxin injections in a specialist multidisciplinary clinic to the neck and vocal chords. He is also being considered for deep brain stimulation surgery which is a form of neurosurgical treatment for refractory Dystonia given that he does not respond fully to the Botulinum toxin injections. He has a complex treatment which requires complex multidisciplinary team input for his abnormal movements and is being worked up for specialist neurosurgery as well for this. The treatment cannot readily be given elsewhere and in many countries this level of complex treatment is not available at all".

7. Judge Lewis appeared to accept, on the basis of this and other medical evidence, that the Appellant is suffering from a serious illness, finding that there is "clearly a risk that the Appellant's health will deteriorate and that with the absence of treatment there is a risk of serious deterioration, that is to say paralysis". He did not however consider that the high threshold for finding a violation of Article 3 in a health case was met, because the evidence before him failed to demonstrate that there was a prospect of *rapid* decline. That is what is required under the revised N test set out in Paposhvili and approved in AM Zimbabwe:

"183. The Court considers that the 'other very exceptional cases' within the meaning of the judgment in N v The United Kingdom (para 43) which may raise an issue under article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness."

8. At the hearing before the President in March, Mr Sadiq submitted that the Tribunal had acted irrationally, and/or unfairly, in dismissing the Article 3 appeal on this narrow ground. It could be inferred from the medical evidence that the decline in the Appellant's condition would be rapid, and if the Tribunal felt unable to do so, it should have indicated the same to Mr Sadiq so that clarification could be sought from the clinicians currently involved in the Appellant's care. At that hearing Mr McVeety accepted that the Tribunal's reasoning was indeed flawed for error of law and invited the President to set it aside, with the finding of fact at paragraph 19 preserved:

[there is] "clearly a risk that the Appellant's health will deteriorate and that with the absence of treatment there is a risk of serious deterioration, that is to say paralysis".

9. The President accepted that concession, and adjourned the remaking to give the Appellant the opportunity to submit further medical evidence. That evidence comes in the form of a letter dated the 6th April 2023 from Dr Koblecki who writes:

"if treatment was withdrawn one would expect very significant deterioration in his mobility and functioning within three months or cessation of treatment. It would therefore be the case that if he was unable to receive treatment in a timely manner he would most likely experience deterioration within days or weeks of the usual treatment date as the treatment is normally done every three months"

10. It was my understanding of this evidence that because the injections which relieve the Appellant's symptoms are given every three months, there would be an immediate reaction should an injection be missed, with a significant deterioration in mobility and functioning - and the corresponding increase in pain, loss of the ability to swallow and speak - occurring swiftly thereafter. That is also the reading of the Secretary of State, who before me accepted that this evidence fills the lacuna perceived by Judge Lewis to the extent that the Appellant's case on Article 3 health grounds is made out. At the hearing on the 4th July 2023 Mr McVeety indicated that in light of Dr Koblecki's evidence the Secretary of State would be granting the Appellant Discretionary Leave on health grounds. The appeal was therefore allowed on human rights grounds.

Part II: Documentation

11. As set out in successive country guidance decisions on Iraq, most recently in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO II'), Iraqi law requires citizens to carry, or at least possess, valid national identity documents which enable the bearer to access a wide range of services and benefits including housing, travel, aid, work, rations, healthcare and even buying a mobile telephone. The cumulative effect of not having such identity documents is such that the Home Office accept that life without them would be intolerable, that is to say the undocumented individual would face such difficulties that they would find themselves destitute and living in inhuman and degrading circumstances. The old paper 'CSID' cards are now being replaced by biometric 'INID' cards.

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12. The argument made by the Appellant before Judge Lewis was as follows: I will be sent back to Baghdad; I have no documents with which to pass through the many checkpoints between the airport and my home town of Kirkuk; my family are themselves internally displaced without documentation in the IKR town of Chamchamal, so are unable to obtain documentation on my behalf, and in any event the documents now issued by the civil registry in Kirkuk are the electronic 'INID' discussed in SMO II, which require my physical presence to be issued.
13. Judge Lewis noted that in 2019 Judge Ennals had concluded that the Appellant would be able to get a CSID with the help of his family, with whom - on his own evidence - he remained in contact. He went on:
- "18...there is evidence, and I find that the appellant's family have secured housing, the ability to have relocated in the IKR and to be able to send personal messages to the appellant in the UK through an emissary, Ms. Amin.
19. Chamchamal is located midway between the international airport in Sulymaniah and Kirkuk. It is approximately 30 miles from Kirkuk. Given that it is possible now to return the appellant directly to the IKR [CPIN 2.6.3] and that he family have relocated approximately 30 miles from the office from which he would need to present himself to be redocumented. The appellant has not provided sufficient evidence that he could not visit Kirkuk and within a short period with the assistance of him family to obtain replacement documentation in the IKR.
20. As set out in SMO2 at paragraph 83, it is highly likely that an individual who is in contact with family members in Iraq would be able to learn their own family book details from family members. At paragraph 15 of the Country Guidance in SMO 2, I note that 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.
14. At the hearing before the President the Respondent accepted that this reasoning does not appear to take account of the factual findings in SMO II (and indeed SMO I) that there is now an INID terminal in Kirkuk which requires returning residents to present themselves in person. The references to the Appellant's family, their documentation status and their recollection of their 'family book' particulars were therefore all irrelevant and to that extent the decision should be remade, because it is the Appellant himself who needs to get to Kirkuk. She however pointed out, and sought to cross-appeal on this point, that Judge Lewis appears to have also overlooked pertinent findings made by Judge Ennals about what documents the Appellant's family are currently in possession of. If they are a short distance away, and have a valid CSID for the Appellant, the installation of the INID terminal is irrelevant, because he can use that old card to get there.
15. Applying the guidance in Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 the findings made by Judge Ennals must be my starting point. It is an authoritative assessment of the Appellant's status at the time it was made. I may however take into account facts that have arisen since, in particular any country background information that may be relevant. I am

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cautioned by the decision in Devaseelan to treat any evidence personal to the Appellant that was not brought to the Tribunal's attention in his first hearing, when they could have been, with the greatest circumspection: "an Appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility.

16. Judge Ennal's findings on the matter of documentation can be shortly stated. Having generally rejected the Appellant's credibility as a witness (his account was that he was falsely accused by the Kirkuk authorities of providing transport to extremists) he said this:

"The question of the feasibility of return then needs to be addressed. The appellant originally said that his passport was still at home, and then later said that it had been taken by the police. I have not accepted his account, so I see no persuasive reason why he would not be able to obtain his passport and CSID, with the assistance of his family, or if these are for some reason not available, then obtain appropriate replacements".

17. As Mr McVeety fairly accepted, this is no more than Judge Ennals saying that since he rejected the account overall, he also rejected any claim that the Appellant was undocumented. That was a decision open to him at the date that he made his decision, and it is to be treated as an authoritative assessment of the evidence as it stood on that date. Unfortunately the decision of Judge Ennals does not set out where the Appellant might have made reference to having a passport (itself somewhat unusual for a man who had never before left Iraq) or explain the circumstances in which the police (presumably the Iraqi police) are said to have taken it. The evidence does not appear, from what Judge Ennals says there, to make any reference to the Appellant's CSID at all. Since the Home Office routinely omit evidence relating to previous claims from 'fresh' claim bundles, I am unable to see for myself.

18. The evidence before me is that since the Appellant gave his testimony to Judge Ennals in May 2019, developments in Iraq have changed the picture significantly. That is that in December of that year his family fled their home in Kirkuk, forced out by pro-government Shi'a militia who seized the property. In his undated statement which accompanied his fresh claim he says this:

"I confirm that I have some contact with my wife and mother. They continue to reside together in Iraq but they have had to move home. They have moved to an area called Chamchamal. That is in Kirkuk governate. They had problems where they previously resided (and where I previously resided before I came to the UK). This was at the hands of Shia militia who have displaced many people from the area in which my family resided. They do this without caring for the locals. They know that my family are Kurdish and Sunni Muslim. The Shia militia are against us. It is not just my family that have suffered this way but my understanding is that the majority of my neighbourhood have had to relocate and move away. The area and residencies I believe are controlled by Shia militia now".

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19. In his subsequent statement, prepared for the hearing before Judge Lewis, the Appellant reiterated this evidence and explained that the family were “forced to leave under threat of violence - this is exactly how Shia militia operate”. He said that his wife and mother no longer have any documentation and nor does he: “we all had to flee for our safety so urgently and quickly”. His mother sent him confirmation of their new residence in Chamchamal by sending a letter from the local Mukhtar confirming their presence in that area of the IKR. In his last statement, dated the 13th June 2022, the Appellant explains how that letter came to be in his possession (it appears in the evidence before me). He states that an Iraqi woman known to him only through a mutual acquaintance brought it back to the UK for him after she had visited the IKR.
20. In his oral evidence the Appellant adopted all of these statements. He confirmed that he remains in regular contact with his family. His mother, brother and sister-in-law and their children, his own wife and children all live in a rented house in Chamchamal together. They are supported by his brother who works as a casual labourer he stands on the street waiting to see if someone needs a handyman or help carrying things on a building site - you do not need documents for work like this. He supports the whole family.
21. Mr McVeety reminded me that Judge Ennals had not believed that the Appellant’s account was true. He pointed to the country guidance cases which explain how important identity documents are in Iraq. Although he did not challenge the claim that the family had now relocated to the IKR, he questioned why they would have gone without taking their IDs, and asked how they have managed to travel, work and rent a property without them. See headnote 3 of SMO II:

“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”.

22. He asked me to infer that the Appellant’s family are likely in possession of those documents, and that having grabbed their own, the likely took the Appellant’s with them too. They are now only a short distance from Sulaymaniyah airport (about 60km) and could simply bring the documents there, enabling the Appellant to travel back to Kirkuk where he would be able to apply to update his card to an INID.
23. Mr Sadiq asked me to begin by recognising the objective country background material explaining what has happened in Kirkuk since Daesh were driven out by the Peshmerga. He said this was relevant because it would support the Appellant’s claim that his family were forced to leave in a hurry. Unfortunately he was not immediately able to point to that material. He took me to a Country Policy Information Note dated 11th January 2021 which deals with Sunni Arabs. Although this provided generally helpful material on the behaviour of Shia militias in Kirkuk and surrounding areas, it was concerning Arabs, and this man is a Kurd¹. Furthermore the Country Policy Unit appears to have taken the rather unhelpful decision to only cover very recent events in the CPIN². In order to find out what

¹ At [2.2.2] the CPIN expressly states that the information therein does not apply to Kurds.

² I would observe that there must be a large number of cases where the information sought by the reader concerns the period that the claimant left his or her country of origin. This is likely,

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was happening in Kirkuk in the period leading up to and including December 2019 when this family decided to leave Kirkuk for Chamchamal, we needed to look to now archived versions of the CPINs.

24. The Country Policy and Information Note *Iraq: Security and Humanitarian Situation* (Version 6.0, May 2020) explains that the oil-rich Kirkuk has been contested since the inception of the state of Iraq. Saddam Hussain pursued Arabisation policies by settling Arab Sunnis from the south of Iraq in the area in an effort to undermine Kurdish influence. From June 2014 to October 2017 the city was under Kurdish control. Peshmergas fought off a major attack by Daesh in 2016. The CPIN reports [at 5.10.4] that 180,000 civilians fled their homes in October 2017 as “security forces realigned” in the city. At that time Kurdish forces retreated, allowing the Iraqi army to retake control. The security situation remains poor. Joel Wing’s ‘Musings on Iraq’ [cited at 7.1.3 of the 2020 CPIN] reported in October 2019 that continued Daesh activity in Kirkuk included assassinations, bombs, shootings, gun battles and suicide attacks. This is reflected in the extant country guidance [at headnote A3 of SMO II] where the situation in Kirkuk is described as “complex, encompassing ethnic, political and humanitarian issues”.
25. The Shia militias are described in the 2022 *Sunni Arabs* CPIN as being Iranian-backed, or more specifically, trained and directed by the Iranian Revolutionary Guard Corps (IRGC) [see 7.2.2]. They are considered to be the most active and most capable militias inside Iraq. The Institute for the Study of War describes them as having a “freedom of action” in several areas, “especially in Salah al-Din and Kirkuk”. Multiple sources report that these militias (also described as PMUs or PMFs) commit human rights abuses against Sunni civilian populations, including harassment, threats, intimidation, physical violence, killing, abduction, and importantly for the purpose of this appeal, the destruction or confiscation of property [see for instance 2.4.8, and 8.1.8]. This CPIN obviously contains no specific reference to Kurdish property being seized but I note that in the general background information set out at paragraph 13 of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) it says this:

“In September 2017 the KRG held a referendum on whether the IKR should declare independence; the population voted overwhelmingly in favour. The Government of Iraq (GoI) declared the referendum to be illegal and unconstitutional. Baghdad responded by taking punitive measures against the authorities in Erbil, such as banning international flights directly into the IKR. Forces aligned with the GoI were ordered to enter, and re-take key territory including Kirkuk and its oil fields. Although the PUK *peshmerga* that had held Kirkuk retreated, there were elsewhere numerous clashes between Kurdish forces, Iraqi Army units and associated Shi’a militias. These reached their peak in October 2017 when fierce fighting led to the large scale displacement of civilians throughout the border area. In Tuz Khurmatu, a town in Salahadin, tens of thousands of Kurdish civilians were displaced,

given the current timeframe for resolution of claims, to have been some time ago. Editing the CPINs in this way is making it more difficult for Home Office caseworkers to access the relevant information. In order to read this material I established the dates and titles of the documents I needed to read, which are listed as ‘updates’ (but with no hyperlink provided) on the Home Office website. I then pasted that title into a search engine, where I found copies on Refworld and ecoinet.

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with their homes and shops being allegedly looted and destroyed by Gol troops; Human Rights Watch report that at least 51 civilians were killed. Dr Fatah has been informed by fieldworkers in Ninewa that Shi'a militias have displaced hundreds of Kurdish families and destroyed homes. These groups, primarily *Hashd al-Shaabi*, have impeded the work of international humanitarian organisations and targeted minorities such as the Yezidis; **the same militia is reported to be occupying Kurdish neighbourhoods in Kirkuk where they patrol the streets in armed vehicles and harass civilians.** Military forces on both sides remain mobilised and 'combat ready'".

26. It is against this background that the Appellant says his family were forced to flee when a pro-government Shia militia seized property in their neighbourhood.
27. I next consider the objective material about Kurdish IDPs. Mr McVeety's point was a simple one. For at least a decade the expert evidence given to the Tribunal in the context of country guidance cases has been that an identity document is vital for any kind of life in Iraq: a document is needed to board transport, pass through checkpoints, rent a home, get a job, access benefits or even buy a mobile phone. How, Mr McVeety asks, have this family managed to relocate to Chamchamal, organise a house to rent, and be supported by the Appellant's brother if none of them have any documents?
28. I accept that the family circumstances may well be an indicator that they are documented. Had the evidence been different, for instance that the Appellant's brother was working in local government and that they were living in an affluent suburb, it would have been a strong indicator. As it is, there are other explanations.
29. First of all, the reality is that many IDP's do not have documentation. In AAH the Tribunal heard detailed evidence about the circumstances faced by Kurdish IDPs in the IKR. That evidence was that these were populations displaced from Iraq proper by open conflict or the threat of instability. Many of them had indeed fled in a hurry as one military force or another rolled into their towns. The clear evidence was that a great many of them are without up to date documentation:

104. First, it must be recognised that the Iraqi civil registration system is in disarray. Between 2014 and 2017 ISIL closed down all of the relevant offices in areas under its control, damaging or destroying many of them. No marriages, births or deaths were recorded in these offices during that period and officials are today preoccupied with trying **to register and re-document the many hundreds of thousands men, women and children currently in need of assistance in Iraq.** In this context the problems of individual returnees are regarded as "totally insignificant"; no procedures have been implemented to assist in their re-documentation. Dr Fatah maintained that he has never known anyone to obtain new documents from the central registry in Baghdad. **Minority Rights Group International (December 2016) state that 50% of IDP families have at least one member who is missing papers. There is a 'domino' effect at play: where a father has moved district no births or deaths in his family can be recorded until his**

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record is amended, which may not be possible if his records have been destroyed or remain inaccessible. Where entire families have fled fighting at short notice they may all be missing papers. Women face particularly high hurdles and find that officials will not assist them without the intervention of a male representative.

30. It is therefore possible to live, albeit with extreme hardship, without documentation. We know that, because many hundreds of thousands of people are doing just that. The Appellant's brother is working as a day labourer. We know nothing at all about the property that the family are renting. In AAH the evidence was that casual labouring is one of the only options for men without the necessary identity documents. Whilst 64% of IDP's are living with relatives, many were able to enter into private rental agreements [AAH 112-118]. For those without identity documents, what are known euphemistically as 'critical shelter arrangements' are another option: these include unfinished or abandoned buildings [127].
31. I have considered the Appellant's evidence in the round, set in the context of the country background material. I have kept in mind that Judge Ennals rejected the Appellant's account of trouble with the authorities in Kirkuk. He found, not unreasonably, that the truth was more likely to be the original reasons that the Appellant gave in his screening interview when he initially arrived in the UK: that "Kirkuk was not suitable to live in because of the war. When asked to explain all the reasons why he could not return to Iraq, he referred to fighting between the government and IS, as well as hostility between minority groups. He also said that he could not receive health treatment in Iraq" [at 18]. The question I have to ask myself today is whether it is reasonably likely that the Appellant's family are not in possession of his old CSID card.
32. I have concluded the Appellant has discharged the burden of proof. The country background material indicates that in the years immediately preceding this family's departure from Kirkuk the area that they lived in was heavily contested. It supports the Appellant's claim that Shia militias were forcing Kurdish families out of their neighbourhoods and homes. The evidence accepted by the Upper Tribunal in AAH was that many hundreds of thousands of Kurdish people were displaced within Iraq without their documentation, very often because they had to leave in a hurry. All of this is consistent with the Appellant's account before me. His family have gone from living in their own property in Kirkuk, to living in someone else's in Chamchamal. It is likely that there is a good reason for that. I find it to be reasonably likely that they did so without taking the relevant paperwork with them. Accordingly I find it to be reasonably likely that the Appellant's family are no longer in possession of his CSID. Without it, he will not therefore be able to make the journey from the airport to the civil registry in Kirkuk. The appeal must be allowed on the alternative limb: the Appellant is entitled to humanitarian protection.

Decision and Directions

33. The decision of the First-tier Tribunal is set aside by consent.
34. The appeal is allowed on human rights grounds by consent.

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35. The appeal is allowed on protection grounds.
36. There is an order for anonymity.

Gaenor Bruce
Judge of the Upper Tribunal
Immigration and Asylum Chamber
14th September 2023