



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04357/2019

THE IMMIGRATION ACTS

Heard at Bradford  
On 24<sup>th</sup> July 2020

Decision & Reasons Promulgated  
On 12<sup>th</sup> August 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

QKM  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Greer, Counsel instructed by Legal Justice Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1995. He seeks international protection and leave on human rights grounds.

**Case History**

2. The Appellant claimed asylum on the 23<sup>rd</sup> September 2016. Protection was refused on the 25<sup>th</sup> April 2019 and the Appellant exercised his right of appeal before the First-tier

Tribunal. His case came before First-tier Tribunal Judge Dearden on the 12<sup>th</sup> June 2019. It was dismissed by a written decision promulgated on the 25<sup>th</sup> June 2019.

3. The first matter in issue before Judge Dearden was whether the Appellant has a well-founded fear of persecution in Iraq for reasons of his imputed political opinion. The factual matrix asserted by the Appellant was that his family are indelibly associated with the regime of Saddam Hussain by virtue of his father's service in the army, and latterly for Uday Hussain. That claimed risk was rejected by Judge Dearden and permission to challenge his decision was refused first by First-tier Tribunal Woodcraft on the 23<sup>rd</sup> July 2019 and then by Upper Tribunal Judge Reeds on the 12<sup>th</sup> August 2019. I can therefore to say no more about that.
4. The second issue before Judge Dearden was however whether the Appellant would face very significant obstacles to his integration in Iraq, or even conditions of such destitution such that Article 3/Article 15(b) of the Qualification Directive would be engaged. The Appellant relied in particular on the fact that he has not lived in Iraq since he was a young child and has no identity documents or family there: it is accepted that he has lived in either the UAE or the United Kingdom since 2003. On this issue Judge Reeds was persuaded that the grounds were arguable and permission was granted on that point.
5. The matter came before me on the 16<sup>th</sup> September 2019 and for the reasons I set out below under the heading 'Error of Law' I set the decision of Judge Dearden aside to the limited extent identified. The matter was then stayed pending the decision of the Upper Tribunal in the new Iraq country guidance case. There followed some regrettable delay. The country guidance case became delayed and was not handed down until the 20<sup>th</sup> December 2019: SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). The date earmarked for the resumed hearing of this appeal then had to be abandoned due to the Covid-19 emergency. The hearing before me was on the first available date for a face-to-face hearing. I heard oral evidence from the Appellant, and submissions from Mr Greer and Mr Diwnycz for which I am grateful. I reserved my decision which I now give under the heading 'The Decision Remade'.

### **Error of Law**

6. The Appellant left Iraq for the United Arab Emirates when he was approximately seven or eight years old. He travelled with his family who were fleeing the country following the fall of Saddam - this would have been in approximately 2003. Because he was a young child he had not at that point been issued with his own CSID. He states that he has to date never held a CSID, and he asserts that he has no relatives in Iraq who would be able to assist him in obtaining one. As such he would be unable to work, receive government or non-governmental assistance, or secure accommodation. His case before the First-tier Tribunal was therefore that he would face significant obstacles in integration in Iraq such that his removal there would be disproportionate.

7. Of this argument the First-tier Tribunal said this. The Appellant is educated, resourceful and able to work. He has a passport and so could use the details therein to obtain an identity card. His family in the UAE could support him. He speaks fluent Arabic. These factors indicate that he is not actually going to find himself destitute homeless or otherwise in difficulty that would render his removal a breach of any of the United Kingdom's obligations.
8. Having heard from both parties I find that in its analysis on this point the First-tier Tribunal erred in two material respects.
9. At its paragraph 35(8) the Tribunal says this: "The Appellant still retains his father's phone number and email address and there is nothing in the short term to stop him availing himself of his assistance from the United Arab Emirates whilst he is in Iraq". This was a key part of the reasoning on the Appellant's ability to reintegrate and establish himself in Iraq. It was obviously important, since financial security would go a long way to addressing the arguments put on the Appellant's behalf about the difficulties that he might face in Baghdad today. I am satisfied that in making that finding the First-tier Tribunal has failed to address material evidence on the point, namely the Appellant's evidence that he has fallen out with his father following his parents' divorce, and that as such any financial assistance is unlikely to be forthcoming. The Tribunal alludes to this evidence at its paragraph 35(7) but nowhere makes a finding on whether it is accepted. The failure to take material evidence into account, and the failing to make findings on it, are material errors of law.
10. The second problem is this. The Appellant, it is accepted, is a young single Sunni male who has absolutely no experience of living in Baghdad apart from as a very young child. As such it was incumbent upon the Tribunal to give some consideration to the relevant country guidance on conditions in the capital: BA (returns to Baghdad) Iraq CG [2017] UKUT 0018 (IAC). Whilst the matters identified by the First-tier Tribunal here - the Appellant's fluency of Arabic and his potential possession of a CSID - were obviously relevant, they were not the only factors that required consideration. There was for instance the risk of kidnapping for a young man who might be considered a wealthy returnee from the diaspora, and importantly the fact that he is a Sunni male without any support or familial links to the city. As such whatever difficulties he might encounter in Baghdad, he would not receive a sufficiency of protection from the Iraqi state: headnote (vii) of BA. The failure to consider those matters renders the assessment on 276ADE(1) incomplete.
11. For those reasons the decision of the First-tier Tribunal is set aside.

### **The Decision Remade**

12. I am guided in my decision by two country guidance decisions: SMO and BA (Returns to Baghdad). I was further referred to the June 2020 CPIN Iraq: *Internal relocation, civil documentation and returns*. It was not in the end necessary for me to have regard to any of the materials in the Appellant's bundle.

13. In terms of the factual matrix to be applied, it is as follows. The Appellant is a male born into an Arab Sunni family in Baghdad in 1995. He left Iraq in 2003 and has not been there since. The Home Office are agreed to be in possession of his valid Iraqi passport (expiry 2023) but despite a reference alluding to the possibility that the file also contains an identity card of some description, none has been produced and the Appellant denies all knowledge of what that might be. Having heard from the Appellant, and having had regard to the many opportunities that the Home Office has had to produce such a document, I am satisfied that it is reasonably likely that the reference is a mistake and that no CSID or similar is held on file.
14. In respect of the Appellant's language skills I accept that he speaks English and fluent Arabic, although given the young age that he moved to the UAE I accept that it is likely that this will be with a detectable Emirati 'international' accent as opposed to a native Baghdad one. Given the length of time that he has been out of the country I further accept that it is reasonably likely that the Appellant has no relatives in Iraq to whom he could turn for support.
15. In his cross examination of the Appellant Mr Diwnycz identified that the Appellant had moved house without telling the Home Office. The Appellant said that he had been ejected from his NASS accommodation and that he had therefore gone to live with his girlfriend. He was advised to call the Migrant Helpline which he did but never managed to get through. Then by the time he spoke to his solicitor, who told him to go his reporting centre and tell them he had moved, Covid has started and he was worried about going so he left it. Mr Diwnycz asked me to infer from this that the Appellant was not particularly interested in complying with the requirements placed upon him by the Home Office, and asked me to find that the Appellant's behaviour generally detracted from his reliability as a witness. I have borne that in mind in determining the only real credibility issue arising in submissions before me: whether the Appellant could expect to receive financial assistance from his family in UAE.
16. The Appellant's evidence on the matter is that his relationship with his dad was already difficult when he came to the United Kingdom to study in 2016: his father disapproved of him for "various reasons". After the Appellant arrived in the United Kingdom his parents' marriage went through a crisis and the Appellant sided with his mother. His father has not spoken to him since, and has provided him with no assistance, either by way of more evidence for the claim as originally advanced (see my §3 above) or financially. In response to Mr Diwnycz's questions the Appellant pointed out that if his father was helping him he would not have had to live in NASS accommodation or rely on the voucher scheme. Even taking into account the fact that Judge Dearden dismissed the claim as originally advanced, and that the Appellant failed to notify the Home Office of his new address, I am satisfied to the lower standard that the account of estrangement from the Appellant's father is likely to be true. It is a matter about which the Appellant has been consistent, even when his claim relied on his father's claimed Ba'athist links. Had he been in contact with his father he could for instance have asked him to provide a letter confirming his claims; as it was he had to make do with the very brief note from his sister which

appears at page 37 of the Respondent's bundle. Had he been in contact with his father, who is it would seem living in relative comfort in the UAE, he would no doubt have been receiving some financial assistance, and would not have found it necessary to live in the less than luxurious accommodation offered by NASS in Hull.

17. It is against that factual background that I consider the situation faced by the Appellant upon his return to Iraq.
18. Mr Greer places reliance on the following extracts from the country guidance given in SMO:

" ...

*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.*

....

*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.*

*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.*

*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."*

19. He further places reliance on the findings in BA (Returns to Baghdad). Although this is technically no longer country guidance (all earlier decisions having been replaced by SMO) there was no issue before me that the findings therein continue to be helpful when considering the position of a Sunni returnee to the city:

*“Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.*

*Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.*

*Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.*

*In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.”*

20. The first matter arising is whether the Appellant would be able to get a CSID before he leaves the United Kingdom. In his evidence to a series of country guidance panels (AA, AAH, SMO) Dr Fatah has consistently described this as a feat that although not impossible, is fairly difficult. Those difficulties would be compounded in the Appellant’s case by his lack of family in Iraq itself, and his estrangement from the head of his family, his father. I need not go into any further detail on this point however, because Mr Diwnycz realistically conceded that he would be unable to argue to the contrary, given the clear policy statement at [2.6.16] of the latest CPIN: “it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK”.
21. The next question is whether the Appellant would be able to leave the environs of the airport, as discussed in AAH. Unlike the claimant in that case, who had to travel all the way to the IKR, the Appellant only need make it as far as the city. Mr Greer conceded that on the basis of the findings at §347 of SMO, he would be able to do this using his passport.
22. I am satisfied that the Appellant can therefore get back to Baghdad without any real difficulties. Once there, however, things become more challenging.
23. In respect of whether the Appellant could obtain new documentation within a reasonable time frame Mr Greer referred me to the findings in SMO, and the evidence replicated in the new CPIN. As set out above the Tribunal recorded that the

Iraqi authorities are now replacing the old paper-based CSID system with a digital card. At the date of SMO's appeal this system was being rolled out across the country and it was hoped that the new system would be universally in use by the end of 2019. The Tribunal did not feel able to give a list of the locations at which new 'INID' terminals have been installed but it appeared to endorse the position of the Respondent [at §389] that the new terminals were now operational in most cities and that it was only in "rural" locations that the old CSID system persisted. Before me the parties therefore proceeded on the assumption that Baghdad would be operating the new system.

24. Dr Fatah's evidence, accepted by the Tribunal, about how to obtain an INID is set out from §364 of SMO (the bracketed references are to Dr Fatah's own report):

"364. Dr Fatah stated that the INID process was centralised, whereas the CSID process was regional: [950]. **The procedure for obtaining the new card was that the individual would go to their local Civil Status Affairs Office and provide their CSID, INC and Residency Card, although the document of a close male relative may also be used (as it would enable the entry in the Family Book to be located). The scribe who took the applicant's details would send the application form to the relevant office and present a copy to the applicant. The applicant would be required to provide their photograph, an iris scan and fingerprints in order to complete the application process. It would take two weeks for the INID to become available.** The application had to be made in person due to the need to provide iris scans and fingerprints, although it could then be collected by a proxy: [953]-[954]. Dr Fatah provided an image of a redacted card and explained the security features in the document: [955]-[958].

365. At [960]-[967], Dr Fatah stated that there were a number of difficulties associated with issuing documents. Civil Status Affairs Offices had been destroyed and many people had been displaced without their documents. The Iraqi authorities were not managing the problem and the lack of good calibre civil servants was an ongoing problem. Restrictions on IDP movement had further compounded the difficulties. The UNHCR had recognised the severity of the problem, describing undocumented individuals as being in a 'legal limbo', and had assisted some 2,500 Iraqis whose documents had become lost or destroyed. Courts had been set up within camps to provide certificates of births, deaths and marriages and notaries had been sent to camps so that they could be granted power of attorney and assist with documentation problems. **No such procedures had been put in place for returnees and Dr Fatah believed that this was because the Iraqi authorities believed their situation to be "trivial".**

366. Dr Fatah did not believe that a CSID could be obtained from abroad any more, since it had been replaced by the INID. At [968]-[980], however, he described how a CSID could have been obtained in the past from an embassy. At [981]-[984], he describes the process for applying for a passport and at [985]-[990], he considers the Laissez Passer. **At [991]-[100], he considers whether it would be possible to instruct a lawyer to assist with obtaining documentation in Iraq, emphasising that this would not assist in the case of the INID** and that the applicant would, in the case of a CSID, still be required to know their page and ledger number. An individual's family might be able to assist even if a lawyer could not, and would not need power of attorney."

25. I note that this accords with the information provided to the Secretary of State by DFAT and set out in the CPIN at [5.6.1] and [5.6.2]. Having had regard to that evidence I am satisfied that it is reasonably likely that the Appellant will find it impossible to obtain valid Iraqi identity documentation within a reasonable time frame. Although he has an asset in the form of his passport, he has none of the documents necessary (a CSID, INC and residency card); nor does he have a male relative there who may be able to assist him with the process. In light of the Respondent's concession in SMO to the effect that someone in that position faces a real risk of destitution such that Article 3 ECHR/Article 15(b) of the Qualification Directive would be engaged, I need go no further, since the appeal must be allowed on that basis.
26. I would however add this. The difficulties that this Appellant is likely to encounter as an undocumented returnee are significantly compounded by three personal characteristics, each of which are considered by the Tribunal in BA. First he is a young Sunni male and as such vulnerable to discrimination by the largely Shi'a population, making any kind of informal employment (ie where an employer, contrary to the law, employs undocumented individuals on a day to day basis) even more unlikely. That same characteristic leaves him vulnerable to worse treatment at checkpoints. Second as a man who left Baghdad as a very young child he has absolutely no idea how that city operates. Mr Diwnycz suggested that in this regard he might be assisted by his mother, who could advise him by telephone. The difficulty with that is that seventeen years of brutal conflict and sectarian violence means that the Baghdad of today is a very different place from the Baghdad that this family left in 2003. The Appellant may have demonstrated a degree of resourcefulness in adjusting to life in the United Kingdom - where he is protected and supported by the state - but adjusting to life in Baghdad, with no such support, would be a very different proposition. Third, it will be evident to anyone who hears him speak that he is not 'from' there. The Appellant has grown up in the very international community in the UAE where Arabic is spoken with a discernibly different accent from that spoken in Baghdad. He will be readily identifiable as a returnee who has spent a considerable amount of time abroad, rendering him even more vulnerable to crimes such as kidnap and extortion.
27. For all of those reasons I am satisfied that the appeal must be allowed on protection (Article 15(b)) and human rights grounds (paragraph 276ADE(1)(vi) of the Immigration Rules).

### **Anonymity Order**

28. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"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”

### **Decisions**

29. The decision of the First-tier Tribunal contains an error of law and it is set aside to the extent identified above.
30. The appeal is allowed on protection and human rights grounds.
31. There is an order for anonymity.

Upper Tribunal Judge Bruce

1<sup>st</sup> August 2020