



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11190/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 1 October 2020

Decision & Reasons Promulgated
On 8 October 2020

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

P R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, Counsel, instructed by Quality Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq of Kurdish ethnicity. His date of birth is 1 June 1973. He made an application on protection grounds which was refused by the Secretary of State. He appealed against that decision. His appeal came before Judge of the First-tier Tribunal Kudhail. The First-tier Tribunal dismissed his appeal on protection grounds and allowed his appeal under Article 8 of ECHR. The Appellant was granted permission to appeal against the dismissal of his appeal on protection grounds by Judge of the First-tier Tribunal Ford on 25 June 2020.

2. The appeal was heard on 11 February 2020. The decision of the judge, which comprises 27 pages, is dated 12 March 2020.
3. The judge set out the Appellant's lengthy immigration history. The Appellant made further submissions on 21 August 2019 under paragraphs 353 of the Immigration Rules which generated the decision which was the subject of the appeal before the First-tier Tribunal. The judge set out in detail the Respondent's claim, the Appellant's fresh submissions and documents in support.
4. The Appellant's evidence as recorded by the judge was that he does not hold any original Iraqi identification documents. He is a single man with no children. He grew up in Qalazada (the judge referred to this as "Q") with his family. His father was a PUK member from 1978 and a commander in the security forces. As a result their home was attacked several times. In 1996 the Appellant was forced to work as a bodyguard for his father. In 1998 he left his job and lived a low-profile life with various relatives. In 1999 the Appellant was shot. He feared for his life because of his role as a bodyguard and his father's role in the security forces. He decided to leave Iraq in January 2000.
5. The Appellant's appeal was dismissed by an Immigration Judge Halliwell ("the first judge") on 3 September 2000. However, the first judge accepted the central core of the Appellant's evidence about his father's work and that it may carry some risks to his father and to the rest of the family.
6. At paragraph 14 the judge noted that the Respondent relied heavily on the decision of the first judge. The first judge's conclusion was that the risk to the Appellant was no higher than that to the rest of his family who remain in their home area and that this indicated that there is sufficiency of protection.
7. At the hearing, a new matter was advanced by the Appellant. He had been in the UK for twenty years and thus relied Article 8 as informed by the Immigration Rules. The Presenting Officer consented to the Appellant relying on the new matter. The judge ultimately allowed the appeal on Article 8 grounds.
8. The Appellant gave evidence and was cross-examined at some length, all of which is set out in detail in the judge's decision. Several witnesses gave evidence in support of the Appellant, including his sister ("Ms K").
9. The judge set out the legal framework at paragraph 43 and the case of Devaseelan in some detail. She directed herself in relation to Devaseelan and said that she would take as a starting point the decision of the first judge.
10. The judge concluded that the Appellant was not credible and had not established on the lower standard of proof that he was at risk on return as a result of his father's role in the PUK and his father's current affiliation to the Goran Party or indeed his own profile as a member of the Goran Party in PUK.
11. At paragraph 64 the judge said "the only remaining question is whether or not he could obtain the documents he needs on return". The judge directed herself with

reference to SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400. She said the Appellant is a former resident of the IKR and thus he would be returned to the IKR. She referred to the Reasons for Refusal Letter which confirmed that the Appellant would be returning to Erbil or Sulaymaniyah. The judge said that the first judge found that the Appellant lived in a town which was some distance to the east of Sulaymaniyah towards the Iranian border. The Appellant's sister in evidence confirmed she has been back to this area in 2019. The judge said it is accessible.

12. At paragraph 66 the judge said that the Appellant's case is that he is unable to access a CSID (or a new biometric Iraqi national identity card – the "INID"). The judge said as a general matter it is necessary for an individual to have one of these two documents to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. The judge said as follows.

"68. The Appellant had attempted to go to the Iraqi Embassy to get his Iraqi documents such as birth certificate, Iraqi national ID and Iraqi national passport. The evidence of GA (p73/AB) indicates he went to the Iraqi Embassy and was turned away by an embassy employer as he had no proof of his nationality. This is consistent with the findings in SMO at paragraph 375.

69. The Appellant claims he travelled to the UK with his CSID and then gave this to the agent who destroyed it. I do not accept this account. The agent had no reason to take this particular document from the Appellant and it is unclear how the Appellant knows he destroyed it. Further given its importance as highlighted in SMO, I do not accept he would allow this document to be taken. This entire account lacks credibility and coupled with the other findings I do not accept the Appellant no longer has his CSID.

70. In oral evidence the Appellant stated he does not know where his family currently are, I do not find this credible. He has from his evidence had contact with them during his time here and certainly had contact with them in 2018. He states contact is dependent upon them contacting him. I do not find this credible as he has friends and neighbours who have acted as witnesses who have contacts in his home area who are in touch with his family. So, he can make contact. Further he lives with his sister, who stated she last visited her family in 2019. Thus, she has had recent physical contact with them.

71. Ms K in her oral evidence also stated she does not currently have contact with her family but failed to explain why this is the case. This evidence is inconsistent I find it is embellished for the purpose of enabling the Appellant to state he cannot get his CSID. I find the Appellant does have contact with his family and that the family have the CSID and can send it to him in the UK.

Acquiring a CSID via a proxy

72. In the alternative, I have considered whether the Appellant could obtain a CSID by use of proxy whilst in the United Kingdom. For the avoidance of

doubt, I find, following paragraphs 386 and 387 of SMO, that the Appellant could not acquire a CSID or INID by himself from within Baghdad.

73. The Upper Tribunal in SMO provided at paragraph 389 that:

‘389. In respect of the CSID, the position remains as it was before, subject to the introduction of the INID and the gradual phasing out of the old forms of identification. We are satisfied that the CSID is still being issued in parts of Iraq. That is clear from the section 2.4.4 of the EASO report. We consider it to be clear from that report, and from Dr Fatah’s evidence about the practice in the IKR, that an individual who is registered in a city in which the INID process has been rolled out would be unlikely to secure a replacement CSID there. The logic which underpins Dr Fatah’s evidence is irrefutable and was implicitly accepted by the respondent at [151] of her closing submissions, which spoke only of the CSID still being issued ‘in rural areas’. The Iraqi government wishes to have a more secure identity system and has spent large sums to implement that new system. The implementation is behind schedule. In the event that CSID documents were issued by the CSA offices in which the INID terminals have already been located, that would further delay the implementation of the new system. In the event that an individual CSA office has no terminal, the position is obviously different and it is individuals who are registered at those offices who might be able to secure a CSID by the use of a proxy. We have no list of the CSA offices which do and do not have an INID terminal, however, and any such list would be quickly outdated as the INID programme continues to expand. It will consequently be for an individual appellant who does not have an CSID or an INID to establish on the lower standard that they cannot obtain a CSID by the use of a proxy, whether from the UK or on arrival in Baghdad’.

74. I have no direct evidence about whether or not an INID terminal has been set up in Q and the parties made no submissions on this point. If it has been, then SMO establishes that the Appellant himself must be present at the office in order to provide his biometrics and obtain the INID document and as such the issue of using a proxy does not arise. As such, I find that the Appellant cannot obtain a CSID by proxy.

Acquiring a replacement CSID from within the United Kingdom via the consulate

75. Further and in the alternative, I consider whether the Appellant could obtain a CSID from within the consulate in the United Kingdom.

76. The relevant guidance from the Upper Tribunal in SMO is as follows:

‘383. We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq)’. ...

‘Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity’ (paragraph 353).

77. The following points can be distilled:

177. In summary we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if a person is able to produce a current or expired passport and/or the book and page number for their family registration details. (AA)

78. I take account of paragraph 26 of the judgment in AAH and I note that the Tribunal was recounting the evidence of Dr Fatah. The Tribunal specifically records at paragraph 29 that ‘the key piece of information that the individual would however have to have would be his family’s volume and page reference number in the civil register’.

79. In SMO the Tribunal states at paragraph 385:

‘The clear expectation – and this strand runs consistently through the country guidance decisions – is that an individual should apply for a new or replacement document in the place where their family is registered, that being the location of the Family Book ledgers in which the family record is made and retained. That expectation remains clear in the more recent evidence before us’.

80. I have considered the Appellant’s evidence as to contact with his family in Iraq above. The Appellant has failed to show that he has irretrievably lost contact with the remaining members of his family in Iraq. Even if they are unable to send him his CSID, I find that his parents, brothers and sisters including Ms K would know the family’s volume and page reference number and could convey this to the Appellant.

81. I also take account of the following findings of the Tribunal in SMO:-

‘391. We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual’s volume and page reference in the civil register. These details appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. It was suggested in a report from the British Embassy in Baghdad, quoted at 6.1.9 of the Internal Relocation CPIN of February 2019, that “[a]ll Iraqi nationals will know or be able to easily obtain this information”. We find the former assertion entirely unsurprising. The volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person’s life. We do not lose sight of the fact that there remain a significant number of people in Iraq who are undocumented.

We do not consider that problem to be attributable to a difficulty with recalling the relevant information. It is instead attributable to the closure – until comparatively recently – of the local CSA offices at which people were required to obtain replacement documents and to their reluctance to return to those areas from a place of relocation.

392. There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. As is clear from AAH (Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back’.

82. Firstly, these findings fortify my own findings above in respect of the Appellant’s contact with his family in Iraq. Secondly, the Appellant on his own case has worked in Iraq and he had lived there for seventeen years. Whilst he left Iraq twenty years ago, he is a healthy man and there is no suggestion that he falls into the categories of one of the individuals who would be unable to recall their family volume and page reference. As I found earlier, this information must have been available to a family member particularly Ms K, who came to the UK to join her husband and thus must have a marriage certificate (p76/AB). She is with her husband and so this information may be in her possession.

83. Accordingly, the Appellant has not established to the lower standard that he would be unable to acquire a replacement CSID from the Iraqi Consulate in London using his family. As such, I find that this option remains open to the Appellant”.

13. The judge dismissed the appeal under the Refugee Convention and Articles 2 and 3 of the ECHR, however at paragraph 85 the judge considered the appeal under Article 8 concluding that he had been here for over twenty years and that he accordingly meets the requirements of paragraph 276ADE(1)(ii). His appeal was allowed under Article 8.

The grounds of appeal

14. The grounds of appeal are threefold. The first ground is that the judge did not consider the risk to the Appellant returning to Baghdad in the light of the acknowledgment by the Secretary of State that whilst flights have resumed to the IKR, returns will continue to Baghdad.
15. Ground 2 asserts that the findings are inconsistent. While the judge finds that the Appellant has his CSID he also found that his family has his CSID. These are not findings in the alternative. They are inconsistent and irrational.
16. Ground 3 asserts that the judge's finding at paragraph 69 that it is inherently implausible that the Appellant would have allowed his CSID to be taken from him by an agent is not lawful because it is inadequately reasoned. There is a myriad of possible reasons why an agent might have seized the Appellant's documents during the journey he facilitated.
17. Ground 4 concerns the Appellant's ability to obtain a CSID from the consulate in London. The Appellant relies on the evidence of Dr Fatah at [26] of AAH (which was accepted and the findings of the Upper Tribunal in AAH in this respect were undisturbed by SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400.¹
18. It is submitted that having the family volume and page number alone would still be insufficient to obtain a CSID in the United Kingdom. The Appellant would have to produce his Iraqi passport and proof of status in the United Kingdom. The Appellant relies on [26] of AAH to support that the judge's findings are inadequate and or inadequately reasoned.
19. Mr Melvin relied on the Rule 24 response. It is accepted by the Secretary of State that enforced returns are to Baghdad. The judge found that the Appellant would be able to obtain documents which would enable him to travel by air from Baghdad to the IKR. The judge was entitled to reject the Appellant's evidence that he gave his CSID to the agent who in turn destroyed it. This should be considered in the context of the judge having found the Appellant not credible. He did not accept that the Appellant has lost contact with his family and was entitled to conclude that his family has the

¹ Paragraph [26] of AAH reads as follows:- " If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant, he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.

CSID. This is not inconsistent with the finding that he did not give it to the agent. The judge's findings are grounded the evidence and adequately reasoned. In any event, the judge has clearly reasoned how the Appellant would be able to obtain a CSID from the consulate in London.

SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)

20. The headnote to **SMO** reads as follows in as far as it relates to documentation and feasibility of return to the IKR reads as follows:-

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*
8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

C. CIVIL STATUS IDENTITY DOCUMENTATION

11. *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.*
12. *A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*
13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such*

relatives are on the father's or the mother's side because the registration system is patrilineal.

14. *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.*
15. *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.*
16. *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.*

E. IRAQI KURDISH REGION

20. *There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.*

Kurds

21. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
22. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
23. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
24. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local*

mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

Conclusions

21. The judge's primary finding is that the Appellant has his CSID. It is asserted that this is inconsistent with the finding at [71] that his family has it. The judge clearly found that the Appellant was not credible, that he was in contact with his family and that his family had the CSID. There is no conflict in the findings. A proper reading of the decision discloses that the judge found that the CSID was physically with his family and meant that the Appellant has possession of it in this context. The findings at [69] and [72] are rational.
22. The finding at [69] (that the Appellant's account in respect of having given the CSID to the agent is not credible) is lawful. Ms Harris submitted that the Appellant was not found to be wholly lacking in credibility and the finding which is essentially a plausibility finding is lacking in reasoning. However, while there are aspects of the account that the judge accepted, overall, the judge did not find the Appellant credible. The judge did not accept that there was a current level of risk to him on account of his father's past role in the PUK, his father's current affiliation to the Goran party or his own profile as a member of the Goran party in the United Kingdom. It properly reflects the decision overall that the core of the Appellant's account was not found to be credible by the judge. With this in mind, the conclusion in respect of the CSID and the agent cannot properly simply be characterised as a plausibility finding. As stated by the judge at [69] "... This entire account lacks credibility and coupled with the other findings I do not accept that the Appellant no longer has his CSID". In the light of the judge's conclusions about the CSID and the lawful and sustainable finding that the Appellant has contact with his family, the judge was wholly entitled to conclude that the Appellant could safely return. Enforced returns are to Baghdad. In the light of the Appellant's family having his CSID, the judge was entitled to find that he could safely return.
23. The judge did not need to consider the possibility of redocumentation. However, his conclusions in this respect are sound. The challenge is that the judge did not properly consider this in the light of the country guidance with specific reference to AAH. However, the problem for the Appellant is that his account was rejected. The judge found that he was in contact with his family. His evidence was that he had lost contact with them. This was rejected. The finding is not challenged. Having rejected his evidence about contact with his family - a core aspect of his account, there was no obligation on the judge to make any further findings of fact on the matter. The burden of proof is on the Appellant. Having found he was in contact with his family, the Appellant was not capable of discharging the burden of proof to establish that his parents would not be able to send to him the necessary documents. The judge's findings are adequate and sufficient. In the light of the judge's lawful conclusions and applying the country guidance, it is difficult to see how he could have reached a different conclusion.

24. The decision of the judge is lawful and sustainable. There is no error of law. The decision to dismiss the appeal on protection grounds is allowed.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Joanna McWilliam*

Date 5 October 2020

Upper Tribunal Judge McWilliam