



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

Appeal Number: PA/14191/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 21st February 2020**

**Decision & Reasons Promulgated
On 20th April 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**S M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt, instructed by Paragon Law

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was previously made. As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, SMA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Iraq. He arrived in the United Kingdom on 28th November 2017 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 6th December 2018. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Row for reasons set out in a decision promulgated on 3rd June 2019. That decision was set aside for reasons set out in a decision of Deputy Upper Tribunal Judge King TD promulgated on 20th November 2019. Judge King directed that the matter will be re-heard in the Upper Tribunal with no findings preserved.
3. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse this claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention and Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees (the Qualification Directive). Alternatively, he claims that his removal to Iraq would be contrary to Article 3 ECHR.
4. The account of events initially relied upon by the appellant in support of his claim for international protection was set out in a witness statement dated 25th June 2018, and in the record of the interview completed on 20th November 2018 in the presence of a responsible adult, the appellant's support worker. In the decision dated 6th December 2018, the respondent accepts the appellant is an Iraqi national, of Kurdish ethnicity and that he is from Kirkuk.
5. At the resumed hearing before me on 21st February 2020, I heard oral evidence from the appellant. I have before me, a copy of the respondent's bundle and the appellant's bundle for the hearing listed before me, that was sent to the Tribunal on 7th February 2020. I also have a supplementary bundle from the appellant comprising of an additional 31

pages of background material. Mr Holt relied upon a skeleton argument dated 21st February 2020. The appellant's claim is summarised at paragraph [2] of that skeleton argument, but at the outset, Mr Holt confirmed that the appellant does not maintain the claim that return to Kirkuk would expose the appellant to the risk of indiscriminate violence contrary to Article 15 of the Qualification Directive. He accepts that in light of the country guidance decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) the appellant now accepts that the Kirkuk Governorate in its entirety is no longer a "contested area".

6. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country. Paragraph 339C of the immigration rules provides that an applicant who does not qualify as a refugee will nonetheless be granted humanitarian protection if there are substantial grounds for believing that if returned, they will face a real risk of suffering serious harm and they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.
7. A full account of the evidence and the submissions made before me is set out in my record of proceedings and has been fully considered by me in reaching my decision, whether or not it is expressly referred to in this decision.

The appellant's claim

8. The appellant was born on 21st September 2000. He lived with his parents and sister in the village of Qara Dara, in the Kirkuk Governate. The appellant's sister was born in 2008 and is younger than the appellant. The family owned a small grocery shop in the village. The appellant attended

the local primary school until 2011. His father was killed in an explosion in 2011 and after leaving school following the death of his father, the appellant helped his mother at the shop. The appellant, his mother and his sister remained living in Qara Dara following the death of his father. The appellant has a maternal uncle who lived in Dibis, the closest town to Qara Dara, a distance of about 5-6km away. The appellant claims that on 16th October 2017, he had travelled to Dibis with a neighbour to get supplies for the shop. His neighbour had driven the appellant to Dibis, and whilst the appellant was getting supplies for the shop, his neighbour went to complete his own jobs. That morning, the appellant received a call from his mother, and she informed him that people had started to evacuate their village because Al-Hashd al-Shaabi (*also known as the Popular Mobilisation Forces*) were on the way to the village. The appellant was told that the local Peshmerga forces had left, and his mother intended to leave with his sister. The appellant claims that as news spread in Dibis, people there also started to flee, heading towards the IKR, and in particular, Erbil. The appellant telephoned his uncle who lived in Dibis, but his phone was switched off. The appellant eventually found a Kurdish family who were fleeing the area and they agreed that the appellant could travel with them to Erbil. The appellant travelled with the family to Erbil and they all spent the first night in a park.

9. The following morning the appellant received a call from his maternal uncle on his mobile phone and the appellant was told not to worry about his mother because she was safe. The appellant was told by his uncle that he would arrange for someone to collect the appellant and take him to his uncle. That afternoon the appellant met with an individual named Omar, who had been sent by his uncle. The appellant was taken in a van to a house by Omar, and the appellant was assured that he would be taken to see his uncle the following day. The appellant handed his mobile phone to Omar that evening for it to be recharged. The next day the appellant was again placed in the van and was taken out of Iraq. When the appellant asked whether he could see his uncle, he was told that they were no

longer in Iraq and were now in Turkey. The appellant was told that his uncle had told Omar to take the appellant to a safe place.

10. The appellant fears Al-Hashd al-Shaabi, who he says, hate Kurdish people. The appellant claims he would not be able to live elsewhere in Iraq and he does not know the current whereabouts of his family. He states that he would be alone if returned to Iraq and does not know how he would cope. The appellant confirms that he did not leave Iraq with any documents. He states that when he lived in Iraq, he had an Iraqi ID card, but he does not know where that is now. He has no idea how he would get a new card, and he claims he does not have any family members who could support him with this.

11. When interviewed, the appellant confirmed that his mother, sister and maternal uncle were in Iraq and he last had contact with his mother on 16th October 2017. He confirmed that he left Iraq because his village was occupied by Al-Hashd al-Shaabi and that before that, neither the appellant nor his family had had any problems with the militia. He confirmed that on 16th October 2017, like any other day, he went with his neighbour to Dibis. At the time, there was a large peshmerga force in his village and people did not think that Al-Hashd al-Shaabi could take control of the area. He confirmed that he received a call from his mother who told him that everyone was running away from Al-Hashd al-Shaabi and that he should not return. That was the last time he spoke to his mother. The appellant confirmed that people in Dibis were becoming anxious and running away towards the Kurdish provinces. He said that he begged a few families to take him with them as he could not return to his village and eventually, a family agreed to take him with them. The appellant said that in the beginning, there were problems crossing the border into Kurdistan because people were being asked for their ID cards. However, because of the number of people crossing the border, people were allowed to enter without an ID card, but identities were being checked the following day. The appellant said that he did not have his CSID, and the following day,

the male from the family that he travelled with, was afraid the appellant would get into trouble if police asked for his ID card. The appellant explained to him that he was unfamiliar with the area in Kurdistan but gave him the telephone number for his mother and maternal uncle. Eventually the appellant was contacted by his uncle and unbeknown to the appellant at the time, arrangements were made for the appellant to leave Iraq.

The appellant's evidence before me

12. The appellant adopted his witness statements dated 25th June 2018, 17th January 2019 and 4th February 2020. In cross-examination, he confirmed that he last had contact with his maternal uncle on 17th October 2017 when the appellant was in Erbil. His maternal uncle had called the appellant on his mobile phone. The appellant explained that he was unable to contact his uncle again because the appellant did not have his mobile phone. The phone had been taken by the person sent by his maternal uncle to collect the appellant when he was in Erbil. The appellant said that he has not managed to obtain any further information about his family in Iraq. He has been to the Red Cross, but he is still waiting for them to come back to him with any information. The appellant confirmed that he had a CSID when he was in Iraq, but it was at home when he left. He said that he did not know of any of the details or references on the CSID card.
13. I asked the appellant some further questions about his CSID card. He said that he did not know when it had been issued, and although he had seen the document he could not remember when. The appellant said that official documents were looked after by his mother and she would bring the documents out when she was looking for something. It was in this context that he would from time to time see his CSID card, but he himself did not take it anywhere, and had never used it. The appellant confirmed that the CSID had various pieces of information on it, including his name, his parents' names, his grandfather's name, the appellant's date of birth

and a photograph. The appellant could not remember when the photograph was taken. The appellant said that he had in fact had two CSID cards. The first one had expired, and it was renewed. The appellant said that he thought he was between 10 and 15 years old when his CSID card was renewed. He recalls that a photographer came to their house and had taken pictures of all the family members, and he understands that all the CSID cards were renewed together. His father had passed away by this time and the photographer took photographs of the appellant, his mother and his sister. The appellant said that his mother and maternal uncle arranged for the CSID cards to be renewed, and he does not know where they went or how they were renewed.

The submissions

14. On behalf of the respondent, Mrs Aboni relied upon the matters set out in the respondent's decision dated 6th December 2018. The respondent noted that the manner in which the appellant claims to have fled the Kirkuk Governate in October 2017, is consistent with the background material relating to the invasion of Kirkuk. However, it is equally clear that the appellant was not personally targeted by the Al-Hashd al-Shaabi militia when he lived in Qara Dara, nor when he fled from Dibis. Mrs Aboni referred to the country guidance set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400. It is noted that although there continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD. She acknowledges that the situation in the formerly contested areas, including Kirkuk, is complex and whether the return of the appellant to Kirkuk would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment. Mrs Aboni submits the appellant has

a genuine fear of the security situation in Kirkuk and is not of any direct adverse interest to the Al-Hashd al-Shaabi militia. Mrs Aboni submits there is now no generalised risk in Kirkuk and the appellant has no profile or personal characteristics that would put him at risk. Mrs Aboni submits that internal relocation to the IKR would be open to the appellant, and there is no risk upon return for a convention reason. The key issue is whether the appellant could obtain the necessary ID documents. She submits return would be to Baghdad and the appellant would have to make the journey to Kirkuk or the IKR. Mrs Aboni submits the Iraqi authorities will allow an Iraqi national in the United Kingdom to enter Iraq only if they are in possession of a current or expired Iraqi passport, or a Laissez Passer.

15. Mrs Aboni acknowledges that although the appellant could enter Iraq with a Laissez Passer, a Laissez Passer will be of no further assistance in the absence of a CSID or an INID. She acknowledges that in SMO the Upper Tribunal held that although replacement CSIDs remain available through Iraqi Consular facilities, whether the appellant 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. She acknowledges that although the Upper Tribunal held in SMO, at paragraph [391], that the number of individuals who do not know and could not ascertain their volume and page reference would be quite small because of the importance of an individual's volume and page reference in the civil register, and the fact that those details appear on numerous official documents, the appellant was 17 at the time that he left Iraq and had not used his CSID himself. She accepts the appellant's evidence regarding the circumstances in which he has lost contact with his family, and thus his ability to obtain the information required, has remained internally consistent. Mrs Aboni candidly accepts that here, what was said by the Upper Tribunal at paragraph [393] is likely to be relevant.

“If an individual genuinely has no relevant documents to present, via a proxy, to the relevant CSA office, if they genuinely do not know the volume and page reference in the civil register, and if they genuinely cannot contact a family member from whom those details cannot be obtained, there will be no realistic prospect of that person obtaining a CSID remotely upon return to Baghdad....”

16. In view of the candid acknowledgment by Ms Aboni that there is no realistic prospect of the appellant obtaining a CSID upon return to Baghdad, Mr Holt relied upon the matters set out in his skeleton argument. The appellant does not assert that he is entitled to international protection merely because he is not in possession of a current or expired Iraqi passport. In any event, it was found in SMO that an appellant "will be at no risk of serious harm at the point of return [to Iraq] by reason of not having a current passport". The appellant's case is that even if he were able to obtain an Iraqi passport or the respondent issued him with a Laissez Passer, he would be subject to ill treatment amounting to a breach of Article 3 of the European Convention on Human Rights, if removed to Baghdad.
17. Mr Holt submits the appellant would be unable to obtain a replacement CSID by proxy from the CSA office in Kirkuk. He refers to paragraph [431] of the decision in SMO in which the Upper Tribunal was of the view that the CSA office in Kirkuk has an INID terminal, and that it would not be willing to issue a CSID through a proxy. In the circumstances, he submits, the appellant would be unable to travel from Baghdad to Kirkuk and cannot internally relocate to the IKR such that the appeal can be allowed on Article 3 grounds because irrespective of refugee status, the appellant's removal would be contrary to Article 3
18. Mr Holt submits an individual must have a CSID card or the new biometric Iraqi National Identity Card, in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3. He submits that in SMO, the Upper Tribunal noted at paragraph [425] that 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. He submits it is because the appellant had to flee Kirkuk, that he does not have a CSID and it is his ethnicity that exposes him to an increased risk at checkpoints. Mr Holt submits there is a direct causal link between the risk upon return, and the immutable characteristics of the appellant.

Findings and conclusions

19. It is uncontroversial that the appellant is an Iraqi Kurd whose home area is Kirkuk. I find that prior to his departure from Iraq, the appellant lived with his mother and younger sister in the village of Qara Dara, in the Kirkuk governate. The respondent concedes, and I find, that the appellant's account of events relating to the invasion of Kirkuk in October 2017 is consistent with the background material. I accept the appellant's account that he fled Iraq after his village was occupied by the Al-Hashd al-Shaabi militia on 16th October 2017. I accept the appellant's claim that he was in Dibis at the time and that he received a telephone call from his mother informing him that the Al-Hashd al-Shaabi militia were heading to the village and that he should flee and not return home. I also accept the appellant's evidence that he last spoke to his mother on 16th October 2017 and that he last spoke to his maternal uncle on 17th October 2017. Both the appellant's mother and his maternal uncle were in Iraq at the time. I accept the appellant's evidence that he does not know of their whereabouts now. I accept the appellant's evidence that he had a CSID, but he left it at home in Iraq. The appellant's evidence is that the CSID was looked after by his mother and notwithstanding the importance of the family's volume and page reference in the civil register, he did not know the information. I am satisfied that the appellant does not know the information given his age. Although the details appear on numerous official documents, including an Iraqi passport, and birth certificate, I am satisfied that the appellant did not have access to such documents.

20. However, even undertaking a fact-sensitive, “sliding scale” assessment, I am not satisfied that the appellant, as a Kurdish Sunni Muslim, with absolutely no political or security profile, faces a risk on return to Kirkuk. The appellant has not been involved in activities of voiced opposition to, or criticism of the GOI, the KRG or local security actors and does not have the personal characteristics identified in headnote 5 of SMO.
21. The appellant has a general fear of the security situation in Kirkuk and I was not directed to any evidence which clearly indicates that the shift in the balance of power in the Kirkuk governorate has been, per se, sufficient to expose an individual such as the appellant to a real risk of harm. The most recent country guidance indicates that the security situation in Kirkuk is no longer so serious as to attract Article 15(c) protection.
22. The appellant would be returned to Baghdad and the issue is whether the appellant is able to travel safely from Baghdad to his home area. To that end, I must consider whether the appellant can obtain the necessary identity documentation (his existing or a new CSID or a newer form INID) in order to make the journey from Baghdad to his home area. An Iraqi national living in the UK might be able to obtain a CSID through the consular section of the Iraqi Embassy in London. Notwithstanding the phased transition to the INID within Iraq, a replacement CSID remains available through Iraqi Consular facilities, but whether the appellant 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. It is not disputed that the appellant was seventeen years old when he arrived in the UK and that he did not have a passport with him when he did so. I accept the evidence of the appellant does not know the volume and page reference in the civil register, and as he no longer has any contact with his mother and maternal uncle. He has no means by which he can obtain the information required to support an application. I find, on the requisite lower standard of proof, that the appellant does not know the volume and page number of

his patrilineal family's entry in the Family Book which he would need in order to obtain a CSID through Iraqi consular facilities.

23. In SMO, the Upper Tribunal held that 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.
24. Even if it were possible to obtain a CSID by proxy in Kirkuk (*and in SMO, the Upper Tribunal doubted it is, when considering SMO's appeal*) Mrs Aboni candidly accepts the appellant has no relevant documents to present, via a proxy, to the relevant CSA office. I have found the appellant does not know the volume and page reference in the civil register, and that he is no longer in contact with his family and does not know their whereabouts. It follows that in my judgment, there will be no realistic prospect of the appellant obtaining a CSID upon return to Baghdad. In SMO, the Upper Tribunal found that any Laissez Passer issued to facilitate removal to Baghdad will be of no assistance thereafter, in the absence of a CSID or an INID. In the absence of a CSID or an INID, the appellant will be unable to return to his home area or to travel to the IKR.
25. This means that there is at least a reasonable likelihood that the appellant will find himself at Baghdad airport with no means of onward travel. He cannot board a domestic flight to Kirkuk and cannot pass through the many checkpoints on the road north, because in order to do so, he would need a CSID or an INIC.
26. In SMO, The Upper Tribunal also considered the circumstances of a Kurdish individual who was returned to Baghdad but who had no CSID or INID to travel on to his place of birth. It found that; "*Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for*

residency. A documented individual of working age is likely to be able to satisfy those requirements". Although the appellant is a Sunni Muslim of working age, he remains very young and given his lack of connections to Baghdad, his very limited education, and his lack of skills, I accept that he is likely to require external support that simply would not be available to him. There is no evidence that he has any extended family or tribe that would be willing and able to provide genuine support to him.

27. In all the circumstances, although I reject the claim by the appellant that he is entitled to refugee status under the 1951 Refugee Convention, I am satisfied that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK. The risk upon return is not based upon any immutable characteristic of the appellant, but because of the risk that the appellant would be exposed to, travelling from Baghdad to Kirkuk. The Country Guidance in SMO points to the Article 3 risk that may be encountered by somebody making their way from Baghdad to another place in Iraq in order to obtain a CSID or INIC. Applying the guidance in SMO it follows in my judgement that the appellant would, on arrival, be exposed to conditions amounting to a violation of Article 3 and his appeal must be allowed on that basis.

NOTICE OF DECISION

28. The appeal is allowed on Article 3 grounds.

Signed

Date 9th April 2020

Upper Tribunal Judge Mandalia