



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02142/2020**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 November 2022**

**Decision & Reasons  
Promulgated  
On the 06 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

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

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Mr Parkin, Counsel instructed by Barnes Harrild & Dyer

For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

**DECISION**

1. By a decision promulgated on 1 February 2022, a panel (comprising of DUTJ Cotton and myself) set aside the decision of the First-tier Tribunal (Judge of the First-tier Tribunal Easterman). I now remake that decision.

Background

2. The appellant is a Kurdish citizen of Iraq from Sulaymaniyah in the IKR who claims to face a risk of persecution for several reasons: his support for the Gorran party, his conversion to Zoroastrianism and his support for his sister's marriage despite his father's disapproval.
3. The First-tier Tribunal found the appellant's account lacking in credibility and rejected it in its entirety. The First-tier Tribunal's adverse credibility findings were not challenged in the error of law proceedings. The only ground of appeal advanced by the appellant – and the sole basis for the First-tier Tribunal decision being set aside – was that the First-tier Tribunal erred in its assessment of whether the appellant is able to obtain his (or a replacement) Iraqi civil status identity document (“CSID”).

#### Country Guidance on Iraqi Documentation

4. This case turns on issues relating to the Iraqi CSID. Paras. 11-18 of the headnote to *SMO and KSP (Civil status documentation, article 15) (CG)* Iraq [2022] UKUT 110 (IAC) sets out relevant Country Guidance that neither party sought to depart from. It provides:

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.

12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs (“CSA”) office at which they are registered 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.

13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.

14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also 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, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.

15. 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.

16. 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.

17. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.

18. Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.

### Hearing on 15 June 2022

5. A hearing took place on 15 June 2022, where I decided to adjourn the appeal and gave directions to the respondent. I summarised the factual issues to be resolved as follows:
  - a. Does the appellant have (or is he able to obtain) his own CSID?
  - b. If the appellant does not have his own CSID (and is unable to obtain it), will he be able to obtain a replacement without first encountering conditions or treatment that violate article 3 ECHR? Whether or not the appellant will be able to do so depends on the following:
    - i. Whether the Sulaymaniyah civil status affairs ("CSA") office has transferred to the digital Iraqi national identity card ("INID"). This is highly material because if it has transferred to the INID, the appellant would not be able to obtain a replacement CSID whilst in the UK and would need to attend the Sulaymaniyah CSA office in person to obtain an INID. See paras. 12-13 of the headnote to

*SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC).*

- ii. Whether the appellant has the necessary documents and information, as set out in para. 14 of the headnote to *SMO*, to obtain a replacement CSID whilst in the UK. Relevant to this question is the contact, if any, that the appellant has maintained with family members. It was common ground that it would only be necessary to address this issue in the event that the Sulaymaniyah CSA office had not transferred to the INID, as if it had then there would be no alternative to the appellant attending at the Sulaymaniyah CSA office in person.
6. In his oral evidence on 15 June 2022, the appellant stated that he gave his CSID to the authorities in Germany. This was contrary to the evidence he gave in his witness statement, where he maintained that he gave his CSID to an agent in Turkey. Ms Everett, who represented the respondent, stated in her submissions that in the light of the appellant's oral evidence it was clear that his documents were with the German authorities. In paragraphs 6 and 7 of my decision following the hearing on 15 June 2022 I stated:

Prior to this hearing, the appellant had maintained that he gave his CSID to an agent in Turkey. This is what he states in paragraph 20 of his undated witness statement and it is what the First-tier Tribunal understood his case to be. However, at the hearing before me, in response to a direct question from Ms Everett, the appellant stated that he did not give his CSID to an agent in Turkey but that he gave it, along with his passport, to the authorities in Germany. In answer to Ms Everett asking "are you saying the German authorities have your CSID", the appellant's unequivocal response was that they do. The appellant's evidence was that he has not made any attempt to obtain the CSID (or other documents) from the German authorities.

Ms Everett, in her submissions, stated that it was clear that all relevant documents were with the German authorities. I asked whether the respondent was able to obtain the appellant's documents from the German authorities. She thought that this would be possible, but was not certain and was not in a position to confirm the process or timescale.

7. I gave directions at the hearing for the respondent to make two enquiries, the outcomes of which I considered to be potentially determinative of this appeal.
8. The first enquiry concerned contacting the German authorities and ascertaining from them whether they have, and are prepared to provide, the appellant's CSID and passport. I observed that this was potentially determinative of the appellant's article 3 claim because if the appellant's CSID can be obtained from the German authorities the difficulties of obtaining a replacement, as set out in *SMO*, will not arise.

9. The second enquiry concerned whether the Sulaymaniyah CSA office has transferred to the INID system, thereby making it impossible for the appellant to obtain a replacement CSID or INID without travelling to Sulaymaniyah to attend the office in person. In the event that the appellant's current CSID cannot be obtained from Germany, this is potentially determinative of the article 3 claim.
10. I gave directions in the following terms:

The respondent shall contact the German authorities in order to obtain the appellant's CSID and passport. Within four months of these directions being sent, the respondent shall either (a) file with the Upper Tribunal and serve on the appellant confirmation that the appellant's CSID and passport have been obtained; or (b) file and serve a witness statement setting out the steps that have been taken to obtain the appellant's CSID and passport.

The respondent shall, in accordance with the procedure outlined paragraph 67 of *SMO*, make enquiries with the Iraqi authorities about whether INIDs or CSIDs are issued in the Sulaymaniyah CSA. Within four months of these directions being sent, the respondent shall file and serve the outcome of the enquiries with the Iraqi authorities.

In the event that the respondent needs further information from the appellant in order to make the enquiries identified in paragraphs 12 and 13, the appellant must respond to any request for information within 7 days of it being made.

### Submissions

11. Ms Ahmed candidly acknowledged that the respondent had not complied, in any way, with the directions given on 15 June 2022. She stated that she did not seek a further adjournment in order to comply with them as she accepted that I had already given the respondent considerable time to comply.
12. Ms Ahmed accepted that, in the light of the respondent's failure, following the directions given on 15 June 2022, to ascertain (or even take any steps to seek to ascertain) from the Iraqi authorities whether INIDs or CSIDs are issued in the Sulaymaniyah CSA, she was unable to argue that the appellant would be able to obtain a replacement CSID; and she accepted that it is reasonably likely that, if the appellant needs a replacement document, he will have to travel to Sulaymaniyah in order to obtain an INID.
13. She submitted, however, that the question of whether a replacement CSID could be obtained is immaterial because I should find that the appellant has in his possession, or can obtain without leaving the UK, his own CSID. This was because (1) the burden is on the appellant to establish (to the lower standard of proof) that he does not have (or cannot obtain) his CSID; and (2) the appellant has

failed to discharge the burden because he has given contradictory accounts (including about what he did with his CSID) and was found by the First-tier Tribunal (in unchallenged findings) to lack any credibility. She acknowledged that in the hearing on 15 June 2022 Ms Everett appears to have accepted the appellant's claim to have given his documents to the German authorities but submitted that irrespective of this the appellant cannot not be believed and therefore I should not place any weight on what he says about where his CSID is located.

14. Mr Parkin argued that the respondent's position at the previous hearing, as set out in paragraph 7 of my decision dated 30 June 2022, was that the appellant's CSID is in Germany. He argued that if the respondent has been unable to obtain the CSID from the German authorities in four months, it is unlikely that the appellant would be able to obtain it himself. Mr Parkin also argued that the standard of proof is reasonable degree of likelihood and even if the appellant's account has been found to lack credibility such that his evidence cannot be relied on it does not necessarily follow that he has, or can obtain, his CSID.

#### Analysis

15. As recorded in paragraphs 6 and 7 of my decision following the hearing on 15 June 2022, Ms Everett accepted - and made submissions on the basis - that the appellant handed his CSID to the German authorities. This was a concession by the respondent that Ms Ahmed is now, in effect, seeking to withdraw from.
16. In deciding whether or not to permit a concession to be withdrawn, there are no all embracing principles and I need to adopt a broad approach having regard to the overriding objective, as expressed in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008. See *AM (Iran) v Secretary of State for the Home Department* [2018] EWCA Civ 2706. In this case, it would not, in my view, be consistent with the principles of fairness and justice to allow the concession to be withdrawn because (i) the respondent did not make a timely application and the applicant had no indication prior to the hearing that the respondent intended to change her position; (ii) resolution of this appeal has been significantly delayed, in part because of a direction I gave on the basis of the respondent accepting that the appellant gave his CSID to the German authorities; (iii) the context in which the respondent seeks to withdraw from the concession is that she failed to comply (or even attempt to comply) with directions given many months earlier, compliance with which might have rendered this application unnecessary; and (iv) the respondent has not explained - even belatedly - why it would now be just and fair to allow the concession to be withdrawn. Moreover, I consider the concession by Ms Everett to have been a reasonable one that was properly made. Although

the appellant has been inconsistent in his evidence (and, for good reason, his account was found to lack credibility by the First-tier Tribunal), his oral evidence at the hearing on 15 June 2022 about giving his CSID to the German authorities came across as unscripted and honest. Having regard to all of the circumstances, I do not consider it to be in the overall interest of justice to allow Ms Everett's concession to be withdrawn. Accordingly, this appeal proceeds on the basis that it is common ground – and a finding of fact – that the appellant gave his CSID to the German authorities.

17. It may be that the German authorities would be prepared to provide the appellant's CSID to either the appellant or to the respondent. Recognising that this is a possibility, and having raised with Ms Everett and Mr Parkin at the hearing on 15 June 2022 the question of whether the appellant or respondent would be in a better position to obtain a response from the German authorities, I gave directions to the respondent to make enquiries with the German authorities. The respondent did not comply with the directions. Ms Ahmed did not seek an extension of time in order to do so. Nor did she provide any evidence (or make any submissions) on the question of whether there are practical or other difficulties for the respondent to make enquires of the German authorities. Based on the evidence before me, I have no idea whether the German authorities retained the appellant's CSID and whether, if they did, they would be willing to provide it to the appellant or respondent. In the light of the low standard of proof (reasonable degree of likelihood) I am not satisfied that the appellant would be able to obtain his CSID. Put another way, I am satisfied that the appellant has discharged the burden of establishing that it is reasonably likely that, were he to be returned to Iraq, he would arrive in Iraq without his CSID.
18. As the appellant would not have his own CSID with him when returned to Iraq, I must address the question of whether he would be able to obtain a replacement.
19. In *SMO* it is explained that there are two civil status documents in Iraq: the CSID and the INID; and that without having one of these an Iraqi citizen would be unable to live and travel in Iraq without encountering treatment or conditions contrary to article 3 ECHR. A CSID can be obtained from outside of Iraq as well as by proxy. However, an INID can only be obtained by personally attending the person's local Civil Status Affairs ("CSA") office. In the appellant's case, this would be the CSA in Sulaymaniyah.
20. CSIDs are being phased out and can only be obtained by Iraqis who are registered at a CSA office which has not transferred to the INID system. Therefore it is important to know whether a person's local CSA office has transferred to the INID system. Recognising this, paragraph 13 of the headnote to *SMO* states:

Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.

21. In this case, the appellant provided the respondent with the necessary details to make enquiries, and on 15 June 2022 I directed the respondent to make those enquiries. The respondent failed to comply with this direction and has not sought an extension of time to do so. Ms Ahmed's position was that the respondent has had adequate time and all she can do is apologise. In these circumstances, I consider it appropriate to decide the question of whether CSIDs are available in the appellant's local CSA on the basis of the (absence of) evidence before me. In the light of what is said in *SMO* about CSA offices transferring to the INID system, I find that it is reasonably likely that the appellant's local CSA has transferred to the INID system. Consequently, I find that the appellant would need to attend the office in Sulaymaniyah in person.
22. In *SA (Removal destination; Iraq; undertakings) Iraq* [2022] UKUT 00037 (IAC) it was found that enforced removal of Iraqi nationals is currently only possible to Baghdad: see paragraph (v) of the headnote to *SA*. Ms Ahmed did not submit that this has changed. Accordingly, the appellant would need to travel from Baghdad to Sulaymaniyah without a CSID or INID in order to obtain an INID. Such a journey is reasonably likely to result in the appellant encountering treatment or conditions contrary to article 3 ECHR: see paragraph 11 of the headnote to *SMO*.
23. I therefore conclude that the appellant's removal from the UK would be contrary to article 3 ECHR.
24. The appellant has not sought to argue in the proceedings before me that he is entitled to protection as a refugee. Given that he could voluntarily return to the IKR but refuses to do so, he was right to not do so, for the reasons given *SA*. As explained in paragraph 5 of my decision following the hearing on 15 June 2022:

With respect to the appellant being able to voluntarily return to the IKR, I drew to the attention of the parties the recent Upper Tribunal decision *SA (Removal destination; Iraq; undertakings) Iraq* [2022] UKUT 00037 (IAC), where this issue had been considered. Neither Mr Parkin nor Ms Everett argued that I should depart from *SA*; where, in short, it was found that although being able to safely voluntarily return to the IKR means that a claim under the Refugee Convention will not succeed, it is irrelevant to a human rights (article 3 ECHR) appeal, since the focus in a human rights appeal can only be of the safety of forced removal to Baghdad.



25. I note what is said in paragraph 59 of SA, which applies equally in this case:

I add this observation, which reflects the closing submissions made by Mr Bazini. The appellant is not a refugee and the decision I have reached affords him no comparable status. He is simply entitled not to be removed to Baghdad because to do so would be in breach of Article 3 ECHR. What leave the respondent should grant to a person in that position – who is perfectly able to return to a safe part of his country but refuses to do so – is a matter for her. It might well be thought that such a person is undeserving of any leave to remain, regardless of the outcome of such an appeal.

26. I would add to this that if enforced removal to the IKR were to become possible it may no longer be the case that removal of the appellant would be contrary to Article 3 ECHR.

**Notice of decision**

27. Having set aside the decision of the First-tier Tribunal, I now remake that decision by allowing the appellant’s appeal on human rights grounds.

**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 the appellant or any member of the appellant’s 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

D. Sheridan  
Upper Tribunal Judge Sheridan

Dated: 28 November 2022