



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-002647**  
**First-tier Tribunal No:**  
**PA/51619/2020**  
**IA/01634/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 12 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**ASS**  
**(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Hussain, Counsel instructed by Collingwood Immigration Solicitors

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

**Heard at Phoenix House (Bradford) on 22 February 2023**

**Order Regarding Anonymity**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born in 1993 who seeks permission to remain in the UK on protection and/or human rights grounds.
2. The original grounds of the Appellant's claim for protection are not now relevant. That is because his protection claim has been refused by the Respondent, dismissed by the First-tier Tribunal (Judge Forster) and those findings are undisturbed. On appeal to this Tribunal however, the Appellant

argued that Judge Forster had erred in his approach to the matter of the Appellant's circumstances should he be returned to Iraq as an undocumented returnee.

3. The appeal came before me in November last year. In my written decision of the 6<sup>th</sup> November 2022 I found that Judge Forster had erred as alleged, and I set that part of his decision aside to be remade. I begin this decision by setting out the pertinent part of my 'error of law decision and directions' by way of background.

### **Error of Law and Directions**

4. Did Judge Forster err in his application of the relevant country guidance on documentation and return of Iraqi nationals?
5. At the date of the appeal before Judge Forster the extant country guidance was SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) ("SMO I"). There were three findings in SMO I relevant to the matter of documentation. The first was that Iraqi nationals returning to that country need more than just a *laissez-passer*. The Secretary of State expressly accepts without an official identity card life in that country is going to be extremely difficult; so difficult in fact that there would be a real risk of the returnee facing inhuman and degrading circumstances without a valid card. The second finding was that the Civil Status Identity Card (CSID), a valid form of identification, can be obtained from the civil status registry in the place that the returnee is from. If he is unable to attend in person he can, with help and the right information, get someone else to obtain one for him. The third finding was that the old CSIDs are being replaced with an electronic system, known in English as the Iraqi National Identification Card (INID). INIDs can only be issued in person, to the individual concerned. That is because they hold biometric data which must be registered digitally. The consequence of all of this for the undocumented returnee is that judges must first consider where the returnee is from; having established where their civil registry is based an assessment must be made of whether or not it is now issuing INIDs. If it is, the judge must then consider whether the returnee will be able to get, within a reasonable timeframe, from Baghdad International Airport to that registry in order to get a new INID. If he cannot, then absent other factors the appeal is likely to be allowed because the returnee will be stuck, and facing a real risk of destitution at Baghdad Airport.
6. In this appeal it does not appear to have ever been in issue that the Appellant is originally from Arbat, in Sulaymaniyah Governate. The Appellant told the Tribunal that he has a large extended family still living in that area. Having made negative credibility findings about the account generally the Tribunal concluded that the Appellant "may be in possession of a CSID or that he has family in the country who could help him get it". Noting the importance of the CSID and the information held in the 'family book' of the civil registry the Tribunal rejected the Appellant's evidence that he does not know the requisite information: it concluded that he could get a new CSID with the help of a family member. It could then be brought to him in Baghdad, enabling him to make his way from there back to Arbat.
7. The Appellant challenged that reasoning on the grounds that it is inconsistent with the position in SMO I (that I have summarised above), in

particular in that no consideration had been given to whether the Appellant's civil registry is now issuing INIDs. If it is, then the intervention of a willing proxy would be meaningless.

8. For the Secretary of State Ms Young accepted that the First-tier Tribunal did err in not considering whether the Appellant's home registry would now be issuing INIDs. In fact, as she very fairly conceded, on the evidence before the Tribunal it was reasonably likely that it is: she directed my attention to evidence in the CPIN *Iraq: internal relocation, civil documentation and returns* (July 2022) which indicated that bar a few select offices in Mosul, every civil registry in Iraq is now issuing the INID. Having made that concession Ms Young did however emphasise the Tribunal's findings at its paragraph 39:

The Appellant claims that he does not have the documentation that he needs to return to Iraq. Given the Appellant's lack of credibility, as found by Judge Williams, I find that he may be in possession of his CSID or that he has family in the country who could assist him to obtain it.

9. She submitted that if a valid CSID continues to be available to the Appellant, the other errors made by the Tribunal do not matter.
10. I saw Ms Young's point, but the difficulty with the First-tier Tribunal's paragraph 39 is the way it is formulated. The question was whether it is reasonably likely that the Appellant will find himself without documentation. That does not appear to be what the Tribunal has asked itself. It has made a finding that the Appellant "may" be in possession of a CSID. That is not a finding that assists me with whether or not the burden of proof has been discharged.
11. For those reasons I indicated to the parties that I would set the decision aside, to the extent that it was challenged by the Appellant's grounds of appeal. The remaining findings would be preserved.
12. In response to my indication that the decision below was flawed for 'error of law', Ms Young submitted that the Secretary of State would be removing the Appellant directly to Sulaymaniyah. That being the case he would only need to travel 23km to Arbat to get home. She asked me to find that he it is likely that he would be able to do that without difficulty. This submission put Mr Tuburu, who appeared for the Appellant in November, in some difficulty, since he was without any information about the road between Sulaymaniyah and Arbat. Nor did he have any instructions about where the Appellant's local registry was. I would observe that since Arbat is a small provincial town, and Sulaymaniyah is a state capital, it is possible, indeed likely, that it is there.
13. In light of the difficulties faced by Mr Tuburu in dealing with this new point I decided that it would be in the interests of justice to adjourn the hearing to enable the parties to address the matters set out below:

**I direct that no later than 7 days before the resumed hearing date the Respondent is to confirm in writing whether she intends, and is able, to enforce removal of the Appellant direct to Sulaymaniyah.**

**I direct that no later than 5 days before the resumed hearing date the Appellant is to confirm in writing where, to the best of his knowledge, his 'home' registry is. In the absence of any evidence on the point the Tribunal is likely to proceed on the basis that it is in Sulaymaniyah.**

**The parties are to use their best endeavours to produce evidence on the ability of undocumented civilians to travel by road in Sulaymaniyah governate.**

**The parties are at liberty to produce any further evidence that they may consider relevant to the decision in this appeal, which will be remade following a hearing on the first available date in Bradford after the 5<sup>th</sup> December 2022.**

### **Discussion and Findings**

14. When the matter came back before me on the 22<sup>nd</sup> February 2023 my directions had been followed inasmuch as:
- i) The Respondent had provided written confirmation that the Appellant was to be removed to Sulaymaniyah. The letter from Ms Young, dated 2<sup>nd</sup> February 2023 and drafted on instructions, was supported by a witness statement by a Mairead Peronius of the Home Office who confirmed that enforced returns had recently been made to the IKR, and to Sulaymaniyah in particular.
  - ii) Mr Tuburu had written on the 6<sup>th</sup> February 2023 to confirm that it was his client's instructions that the home registry for Arbat is in Sulaymaniyah. He had been unable to find any information specifically addressing my enquiry about road travel within Sulaymaniyah.
15. Since the First-tier Tribunal took its decision 'SMO I' has been replaced, via the intervention of the Court of Appeal and another set of hearings, with new country guidance in the form of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO II'). The parties agreed that the decision in SMO II was therefore the applicable country guidance for the remade decision. Applying that guidance I was asked to proceed on the basis that the Appellant would be travelling on a *laissez passer* issued by the Iraqi embassy in London. See paragraph 7 of the headnote to SMO II:

*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.*

16. Mr Hussain questioned however whether a *laissez passer* was the only document required to gain entry to the IKR. He took me to various sections of the July 2022 CPIN (*supra*) which he relied on in support of his contention that in fact, for returning Kurdish residents of the IKR, a valid CSID would also be required. For instance at 2.8.11:

2.8.11 In general, Kurds who do not originate from the KRI can relocate to the region. Available country information suggests that

ethnic Kurds are able to enter the KRI, although some sources say this may depend on certain circumstances. **Available evidence indicates that a civil identity document (CSID or INID) are required to pass checkpoints and be admitted into the KRI.** Therefore, only those who are documented or who could obtain either original or replacement documents (i.e. a CSID obtained via proxy) from a family member would be able to enter the IKR...The risk of ill-treatment during the security screening process must be assessed on a case-by-case basis taking into account any additional factors that may increase this risk.

(emphasis added).

17. And here:

6.2.1 On 11 January 2021 the UNHCR published a report entitled 'Ability of Persons Originating from Formerly ISIS-Held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Internal Relocation' which stated:

**'An individual's ability to pass checkpoints and be admitted to the proposed area of relocation will require the individual to hold valid identity documentation** (such as an ID card, nationality certificate or passport).

(ditto)

18. Relying on these passages Mr Hussain submitted that it was reasonably likely that without a CSID the Appellant would not be able to even get into the IKR.

19. I am not persuaded that Mr Hussain's reading of the CPIN is the correct one. As Ms Young pointed out, the passages to which he has taken me are specifically concerned with the scenario where ethnic Kurds from outside the IKR are seeking to internally relocate there. That is not the situation here, since the Appellant is from the very town he is landing in. Furthermore, read in context, they are specifically concerned with such persons seeking to cross land borders. Elsewhere in the CPIN it is made clear that it is possible to land in the IKR without a CSID. See for instance at 2.6.8:

2.6.8 Those persons whose return is feasible and who would arrive in Iraq **or the KRI** in possession of a CSID or an INID, **or could be provided with an original or replacement document soon or shortly after arrival**, would be able to return to their home governorate via the various security checkpoints and are, in general, unlikely to encounter treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR.

20. Even if the evidence in the CPIN could be read as Mr Hussain contends, I am not satisfied that this could have any impact on my decision. If Mr Hussain is right, and the Appellant is refused entry to the IKR because he does not have a CSID, the consequence will be that he is returned to the United Kingdom. Being refused entry and put back on a plane is not a circumstance capable, absent other features, of engaging the UK's

obligations under either Article 15(b) of the Qualification Directive or Article 3 ECHR. It is simply a technical obstacle to return.

21. Further and in the alternative Mr Hussain asked me to consider the guidance at paragraph 2.8.11 of the CPIN, and cited above, that “the risk of ill-treatment during the security screening process must be assessed on a case-by-case basis taking into account any additional factors that may increase this risk”. I am unsure where that submission takes me. There are no factors at all in this case that could conceivably lead me to conclude, having regard to the country guidance and the additional evidence in the CPIN, that there is any risk at all of the Appellant being ill treated on arrival at Sulaymaniyah.
22. Finally I note that Mr Hussain sought to rely on the Tribunal’s decision in SA (removal destination, Iraq, undertakings) Iraq [2022] UKUT 00037 (IAC). Having looked at that decision again I am unable to identify how it might assist the Appellant. First because the Home Office has identified the place of enforced removal, second because it is now the case that enforced removals are being made there.
23. There is no evidence before me to suggest that the Appellant faces a real risk of any harm upon return to Sulaymaniyah, or that he will run a real risk of falling into destitution. He is being returned to the area where he can obtain a new INID, and has family members who can assist him in that endeavour if necessary, for instance by picking him up from the airport and taking him to the civil registry.

### **Notice of Decision**

24. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
25. The decision in the appeal is remade as follows:

“the appeal is dismissed”.
26. There is a direction for anonymity in this ongoing asylum appeal.

Upper Tribunal Judge Bruce  
23rd February 2023