



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

**Appeal Number: UI-2022-005050  
[PA/55372/2021]  
IA/16245/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 25 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**ASK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondents

Representation:

For the appellant: Mr Winter, Counsel instructed by Maguire Solicitors  
For the respondent: Mr Mullen, Senior Home Office Presenting Officer

Heard at Employment Tribunal, 52 Melville Street, Edinburgh On 26 April 2023

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**DECISION AND REASONS**

- 1.** This is an appeal against the decision issued on 7 August 2022 of First-tier Tribunal Judge Farrelly which refused an appeal brought on protection and

human rights grounds. Permission to appeal to the Upper Tribunal was granted on 10 October 2022.

2. The appellant is a national of Iraq, born in 1988. He is from Kirkuk and is of Kurdish ethnicity.
3. The appellant came to the UK on 18 April 2009 and claimed asylum the same day. The appellant maintained that he was a serving soldier in the Iraqi army which he deserted and that he would therefore be at risk of persecution upon return to Iraq from both the Iraqi government for deserting the army and terrorist groups for being involved with the army. His claim was refused on 12 May 2009. His appeal was dismissed by Judge Howard who did not find any aspect of the appellant's claim credible and found that he would not be at risk on any basis on return to Iraq. The appellant became appeal rights exhausted on 6 January 2010.
4. The appellant made further submissions on 9 October 2019 which were refused on 3 December 2019 but generated a further a right of appeal. The appeal was dismissed by First-tier Tribunal Judge S Gill on 12 March 2020. It was common ground before Judge Gill that the appellant was from Kirkuk and that he would be returned to Baghdad. The appellant maintained that a friend had brought his CSID to the UK and that later he had lost it due to having no fixed abode. The appellant maintained that he could not remember the volume and page number of his registration in the Civil Register and so could not obtain new identity documents.
5. Judge Gill made findings on whether the appellant would be able to obtain documents allowing him to return safely to his home area. When doing so Judge Gill took into account the case of SMO (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) (SMO1). That case has been superseded by SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (SMO2). When applying SMO1, Judge Gill was required to assess whether the appellant's evidence about his CSID was credible. Judge Gill found that the appellant was not credible on this (or any other) issue. His findings are set out in paragraphs 66 to 68 of the decision:

“66. I note that the appellant has relied upon the fact that he is an uneducated man and as such he would not be able to replace his documents. However, I do not concur with this. His account has varied in relation to the contact he has had with his family, the existence and possession of documents. *He clearly has been issued with a CSID*. I see no reason why he would not be able to obtain the necessary details despite receiving limited education.

67. The appellant had not attended the Iraqi Embassy to try to obtain the documents necessary for return. I did not receive any information about the appellant's passport, whether or not one existed. The case of **SMO** makes it clear that this is a non-essential document, being required only for foreign travel [380]. *The appellant has a CSID*. Given he was in regular touch with his maternal uncle and through him his parents *it is somewhat surprising*

*that he has not asked for his CSID. I infer from this that it has not been sent because the appellant did not want to be perceived as having any documents which could lead to a laissez passer being issued.*

68. The appellant admitted that he had lied about contact with his parents during oral evidence in his first hearing. He stated in his statements he had not been in touch since leaving Iraq. He had contacted the Red Cross in order to trace them. His oral evidence in the present hearing, was that he had been in touch with his maternal uncle up until last year, spoken to his parents on two occasions. When I sought clarification, he stated his parents had moved Turkey with his maternal uncle. *As a result of the variety of explanations that have been advanced I find the appellant wholly incredible. On this footing I am satisfied that he is able to able to (sic) obtain his CSID to facilitate his return. He has been unable to demonstrate otherwise.(my emphasis)"*

6. As highlighted above, Judge Gill found that the appellant had been issued with CSID in Iraq; see paragraph 66. He did not accept that the appellant's CSID had been brought to him in the UK; see paragraph 67. His account of having obtained his CSID and then lost it in the UK and all of his other evidence concerning his CSID was wholly incredible; see paragraph 68. The appellant could obtain his CSID in order to go home; see paragraph 68. Judge Gill's decision was upheld and the appellant became appeal rights exhausted on 21 July 2020.
7. The appellant made further submissions which were refused on 18 October 2021 but generated a further right of appeal. The respondent, relying in part on the findings of Judge Gill, considered that the appellant could obtain his CSID that had been issued to him in Iraq; see paragraphs 13, 16 and 17 of the refusal decision.
8. The appellant appealed the decision and the appeal was heard on 14 July 2022. First-tier Tribunal Judge Farrelly refused the appeal in a decision dated 7 August 2022. It is that decision that is under challenge now.
9. Before Judge Farrelly the appellant continued to maintain that he had lost his CSID in the UK and could not obtain another one as he did not have the details of his registration in Iraq. He also maintained that if the Civil Status Affairs office (CSA) in Kirkuk had transferred to the INID system, he would not be able to obtain an identity document at all as a CSID would not be issued there and sent to him in the UK so that he could travel from Baghdad to Kirkuk. He could not obtain an INID as he would have to attend the CSA in person .
10. The appellant made an adjournment application at the hearing before Judge Farrelly as he wanted the respondent to find out whether the CSA in Kirkuk had transferred to the INID system; see paragraphs 20 and 21. The appellant maintains that the HOPO before Judge Farrelly did not oppose the adjournment and agreed to investigate whether the CSA in Kirkuk had transferred to the INID system.

**11.** Judge Farrelly refused the adjournment application. He refused the adjournment (and, in part, the appeal) on the basis that whilst the INID system was being introduced, the “old” CSID system would continue and a CSID could still be issued either in the UK or in Iraq; see paragraphs 21, 26 and 28 to 30.

**12.** This is a misreading of SMO2. This states in paragraph 13 of the head note that:

“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.”

**11.** The appellant’s grounds are correct in asserting that, in light of SMO2, the First-tier Tribunal was not correct to assume that the appellant could obtain a CSID from Iraqi authorities in the UK as they continue to be issued whilst the INID system is rolled out. Paragraph 13 of the head note of SMO2 confirms that the appellant can only obtain a new CSID whilst in the UK if his CSA in Iraq continues to issue this form of identity rather than an INID.

**12.** It is not my view, however, that the decision not to adjourn, even though it was made on an incorrect understanding of the country guidance, amounted to a material error of law. The extant facts before Judge Farrelly were, as set out above, that the appellant had been issued with a CSID, that it had not been sent to him in the UK and that he could obtain it in order to return to Iraq. The question of whether the CSA in Kirkuk was still issuing CSID documents could not be material unless Judge Farrelly found that the findings of Judge Gill could be distinguished. It was not necessary to know about the CSA in Kirkuk before proceeding to conduct that assessment. It was not a procedural error to proceed to find the appellant was not credible and could obtain his CSID from Iraq without knowing about the CSID/INID arrangements at the CSA in Kirkuk. The refusal of the adjournment could only have had any impact on the outcome of the appeal if the First-tier Tribunal had found that the appellant could not get the CSID that had already been issued in Iraq. Judge Farrelly did not find that to be the case, setting out in paragraph 29 that the appellant had not shown that he was unable to obtain his CSID from Iraq and finding him generally lacking in credibility, the third First-tier Tribunal judge to do so.

**13.** Where that is so, the appeal had to fail. The status of the CSA in Kirkuk was irrelevant to the outcome. That is so regardless of Judge Farrelly’s misreading of the ratio of SMO2. The adjournment application was made on the basis of seeking information that could not have made any difference to the outcome of the appeal. It was not my view that a procedural or

material error requiring the decision to be remade was shown where that is so.

14. Also relevant to whether it was an error to refuse the adjournment, as set out in the Rule 24 response dated 20 October 2022, the appellant's grounds concede in paragraph 1(i) that the appellant "could not recall the registry office which had issued his CSID". The grounds go on to state that it "is reasonable to assume it was in Kirkuk". It did not appear to me that the latter statement was correct. The appellant has been found to be profoundly lacking in credibility on two occasions before Judge Farrelly reached the same conclusion. The appellant's evidence about his documentation had been found to be wholly unreliable. This is not a case where it is "reasonable" to assume that the appellant's details are registered at the CSA in Kirkuk when he has stated that he could not remember which CSA office held his details. As before, it has not been accepted that he is out of contact with his family or does not have family in Iraq to assist him. He could be expected to have brought information confirming which was the relevant CSA but did not do so. In that context, it cannot be merely assumed that his CSA is that in Kirkuk. Notwithstanding the apparent agreement of the HOPO before Judge Farrelly to look into the CSA in Kirkuk, SMO2 states that the respondent need only be prepared to make enquiries about a CSA office where "an appellant is able to provide the Secretary of State with the details of the specific CSA office". The lack of clarity concerning which CSA held the appellant's details is a further reason why the decision to refuse the adjournment could not amount to a procedural or material error.
15. Ground 2(i) raises the same argument concerning Judge Farrelly's misreading of SMO2, albeit regarding the issue of a registration document being issued by the Iraqi authorities in the UK. This ground has no merit on the same basis as the discussion above. As the appellant can obtain his CSID from Iraq, the misreading of SMO2 cannot be material.
16. Ground 2(ii) is misconceived. The First-tier Tribunal was obliged take into account the earlier findings on the appellant's credibility; see Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [2002] UKIAT 00702. Judge Farrelly set out why the new material did not show that the previous findings should be distinguished; see paragraphs 27 to 29.
17. Ground 2 (iii) is also misconceived. There were findings from previous appeals before Judge Farrelly that the appellant was not credible regarding his documentation, family contact and so on. Judge Farrelly was not obliged to accept the appellant's reassertion that he did not have any ID and could not obtain any and was entitled, as before, to find that the new material was not capable of distinguishing the earlier findings.
18. For all of these reasons, it is my conclusion that the decision of the First-tier Tribunal does not disclose a procedural or material error on a point of law.

## **Notice of Decision**

19. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 11 May 2023