



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

Case No: UI-2022-001089

First-tier Tribunal No: PA/00624/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 29 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KMQ**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Khan instructed by Liberty Solicitors.

For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 12 April 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted 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. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hands ('the Judge'), promulgated on 8 November 2021, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the UK on any other basis.
2. It was not disputed before the Judge that the appellant is an Iraqi Kurd who was formerly a member of the Peshmerga.
3. The Judge rejected the credibility of the appellant's account referring to discrepancies arising in his evidence, and at [22] that his account has also been rejected in Finland where he had earlier claimed asylum.

4. In relation to documentation, the Judge noted the appellant claimed his CSID had been left in Iraq where his sister still lived, as did his maternal uncle, but found the appellant's claim in relation to such family members lacked credibility. As the appellant is not a witness of truth it was not accepted he had lost contact with either his sister or his maternal uncle [27].
5. The Judge finds, based on lack of credibility, that the appellant's identity documents are likely to be with him or his family members and that he has chosen to claim he has no documents and has lost contact in order to resist being returned to Iraq [30].
6. The Judge finds the appellant can be flown directly to the IKR with no evidence of a real risk or entitlement to international protection on any other basis.
7. The appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Sheridan on 13 June 2022, the operative part of the grant being in the following terms:
  1. The grounds of appeal argue that the judge (Judge of the First-tier Tribunal Hands) erred in finding that the appellant would be able to obtain a replacement CSID. The appellant is unrepresented and the grounds do not identify any particular error in the decision. However, having regard to paragraph 69 of AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC), I grant permission because I consider it to be arguable that the judge's finding at paragraph 29 that the appellant would be able to obtain a registration document in the UK which would enable him to obtain a new identity document in Iraq is inconsistent with the then extant (but now replaced) Country Guidance case of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC). It is also arguable that the wrong standard of proof was applied when assessing whether the appellant (or his family) has his CSID: paragraph 30 refers to this being "more than likely", indicating that arguably the correct - and lower - standard ("reasonable degree of likelihood") was not applied in this part of the decision.
8. The Secretary of State opposes the appeal in a Rule 24 response dated 13 October 2022 in the following terms:
  2. Permission was granted on the following basis namely that (i) it may be arguable that the FTJ findings are inconsistent with SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC). The grant of permission acknowledges that this decision has been replaced. (ii) The FTJ applied the incorrect standard of proof.
  3. The appellant does not challenge the adverse credibility findings. At paragraph 25 the appellant's evidence is that he does not have any family in Iraq who could help him, if need be, on return or for him to obtain the relevant documentation. The FTJ does not find this evidence credible and finds that the appellant is not a witness of truth, paragraphs 27. The FTJ notes how the appellant's evidence has changed over time. Having made these findings the FTJ is entitled to find that the appellant would be able to obtain the relevant information to enable him to return to Iraq, please see paragraphs 29, 30 and 31.
  4. At paragraph 11 the FTJ set out the burden and standard of proof and it can clearly be seen it was applied throughout this decision.

## **Discussion**

9. In her submission to the Tribunal Miss Khan accepted the Judge had set out the correct burden and standard of proof but argued that it was the manner in which the Judge applied the burden and standard of proof that was in issue, and that the wording at [30] shows that the civil standard was applied. Accordingly, in relation to the documentation issue, it was the language used by the Judge that was the

key problem such as to amount to material error of law warranting the appeal being remitted.

10. At [11] of the decision under challenge the Judge sets out the correct legal self-direction in relation to the standard of proof in the following terms:

11. On the question of protection, it is for the Appellant to establish his case. The standard of proof is, however, not a high one. It is lower than the normal civil standard. In determining this Appeal, I am not restricted to those facts and circumstances prevailing at the time of the decision appealed against. For the Appellant to succeed he must show that either: a. Owing to a well-founded fear of being persecuted for one of the grounds defined in Regulation 6 of the 2006 Regulations, he is outside his country and is unable, or owing to such fear is unwilling to avail himself of the protection of that country. For the Appellant's fears to be well-founded he only has to demonstrate a reasonable degree of likelihood of being persecuted on one or more of said grounds if returned to his country. This standard of a reasonable degree of likelihood also applied to past events and to the whole question of the existence of a well-founded fear of being persecuted for one or more of said grounds. The standard has sometimes been described as that of a real risk. This question of whether a person has a well-founded fear of persecution must be looked at in the round in the light of all the relevant circumstances; or b. Substantial grounds for believing that he would face a real risk of serious harm if returned to his country as defined in paragraph 339C of the Immigration Rules.

11. In *AA (Nigeria) v Secretary of State* [2020] EWCA Civ 1296 [at 9] - (final sentence which must apply to the burden and standard of proof as well as other legal issues) Lord Justice Popplewell wrote:

9. ... Judges who are experienced in these specialised courts should be assumed by any appellate court or tribunal to be well familiar with the principles, and to be applying them, without the need for extensive citation, unless it is clear from what they say that they have not done so.

12. At [30] the Judge wrote:

30. In my judgement, the Appellant's claim that his family have moved out of his home area and he lost contact with them has not been substantiated. In my judgement, the Appellant's CSID card, as with all the other documentation he referred to in his screening interview, is more than likely to be with him or them and he has chosen to say he has no documentation and that he lost contact with his family so that his documents or information about his family book is not available to him, in order to resist being returned to Iraq. In addition, he has made no reference to any information about his brother's knowledge of the family book number or of any assistance his brother can give him in that regard.

13. It is therefore clear that this challenge is based upon the three words by the Judge in the third line of "is more likely" rather than a full assessment of the content of this detailed determination of some 45 adequately reasoned paragraphs. The Judge does not find it is more likely to the civil standard and it is not made out the Judge was applying a 50-50 assessment when coming to this conclusion. A reading of the determination as a whole does not support the claim the Judge applied an incorrect burden or standard of proof. A decision-maker can apply the lower standard and having done so find it is more likely that the outcome is that the appeal is allowed or dismissed. If the Judge had said it was more likely on the balance of probabilities that the appellant's identity documents were with him or his family members that would have supported the submission of an incorrect standard of proof. They were not the

words used by the Judge and cannot be inferred from the facts. No legal error is made out on the basis in which the Judge assessed the evidence, or the weight given to that evidence.

14. I do not accept any merit in the submission made in reply to Mr McVeety by Ms Khan that the Judge's wording is direct evidence from the First-tier Tribunal of legal error even if the Judge set out the correct standard of burden of proof. Not only does the phraseology not support this contention but a reading of the determination of a whole undermines the grounds on which permission to appeal was sought and granted. It is not made out that the Judge has erred as alleged.
15. The Judge's findings are that, as in Iraq Kurd the appellant will face no risk within the IKR. The appellant's evidence was that he is from Darbindkhan which is a town within the Sulaimaniyah Governorate of the IKR.
16. The current practice of the Secretary of State is to return Iraqi Kurds from the IKR to either Erbil or Sulaimaniyah. The appellant can therefore be flown directly to an airport in his home area. It was not made out the appellant will not be able to obtain a laissez-passer from the Iraqi embassy in the UK which he could use to return to Iraq. The appellant had fought for the Kurdish forces and his claim to face a real risk was found to lack credibility by the Judge. It has not been made out there is any reason why the appellant would not be able to pass through the airport on return. The Judge's findings in relation to availability of identity documents have not been shown to be infected by arguable legal error. His family could either send the documents to him, meet him on arrival, or assist him in obtaining relevant documents. There is also the fact the appellant has a living male family member who will be aware of relevant family book details. The latest information provided by the Iraqi authorities shows that Darbindkhan, CSA Office reference number 1312, is still issuing the old style CSID documents.
17. In conclusion I find that the appellant has not established arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this appeal. The application is, therefore, dismissed.

### **Notice of Decision**

18. No legal error has been made out in the decision of the First-tier Tribunal Judge the determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**26 April 2023**