



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

**First-tier Tribunal No:**  
**PA/13293/2017**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 May 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MNA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Edwards, instructed by Albany Solicitors  
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

**Heard at Cardiff Civil Justice Centre on 16 March 2023**

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698), I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the Appellant. A failure to comply with this direction could lead to contempt of court proceedings. 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.

**Introduction**

2. The Appellant is a citizen of Iraq of Kurdish ethnicity, a resident of Kirkuk, who was born on 8<sup>th</sup> September 1994. He entered the United Kingdom unlawfully on 9<sup>th</sup> February 2016 and claimed asylum. His application was refused by the Secretary of State on 1<sup>st</sup> December 2017.
3. The appeal has a long and complex history.
  - (a) The Appellant appealed to the First-tier Tribunal. On 26<sup>th</sup> January 2018, Judge Lloyd dismissed the Appellant's appeal on asylum grounds. The judge rejected the Appellant's claim to have commenced a covert relationship with an 18 year old woman named Ala and that his parents, some three months after the relationship had started, approached her family to propose marriage, only to be rejected on two occasions. On his account, he continued to meet his girlfriend but was discovered at her house and detained and had his ear cut as a sign of an honour punishment and his arm burnt with a knife before he escaped by jumping out of a window. The relationship with Ala ended in April, and then in June Ala's family had shot at his house at night time and Ala told him that her father intended to kill him.
  - (b) Judge Lloyd noted difficulties with the account as drawn to his attention by the Respondent including that the Appellant had been unable to provide any specificity about the family and his girlfriend, including her name. The judge concluded that the account was not credible, not least because an account of a family proposing marriage to a girl whom he had little more than seen in the street and of whose family they had no knowledge at all, lacked credibility. The judge concluded that the Appellant had provided a "speculatively prepared story full of inconsistencies composed purely as a means of supporting an otherwise unmeritorious asylum claim". Having dismissed the appeal on asylum grounds, the judge nonetheless allowed the appeal on humanitarian protection grounds, accepting that the Appellant had lost contact with his family and did not have a CSID card. The appeal came before Deputy Upper Tribunal Judge Murray who concluded that the positive humanitarian protection findings could not stand. They were inexplicably unreasoned in the light of the sound adverse credibility findings which had led to the dismissal of the asylum claim and which findings were not challenged. The matter was remitted to the First-tier Tribunal to deal again with the humanitarian protection claim, the dismissal of the asylum appeal being preserved on those findings.
  - (c) The Appellant's appeal next came before Judge Lever in January 2019. Judge Lever at paragraphs 29 and 30 found that the Appellant had not lost contact with his family. Judge Lever notes that the Appellant's evidence was that his brother and sister lived with his parents and his brother worked as a construction worker. The Appellant said that he had not written to his parents at their home address because he had been told by a friend that the family, including his siblings, moved to Failaq, a different area in Kirkuk and he had lost contact with them since 16<sup>th</sup> October 2017 on which date the situation in Kirkuk had changed dramatically. The judge found there was no adequate explanation as to why the Appellant had lost contact including with the friend who had told him his parents had moved. The clear view the judge formed was that the "Appellant was content to essentially say anything that could demonstrate an entire lack of contact with any individual in Iraq. It was a clear pattern that emerged from his evidence." The judge went on to conclude that the Appellant had a regular and not

unsophisticated network of contact between himself, friends and family who could assist him including financially should he need it. Dealing with the question as to whether or not the Appellant has a CSID card, Judge Lever noted a question mark over his assertion not to have a CSID card but decided it was not necessary for him to decide the matter because on the evidence he was satisfied that in any event he could obtain a replacement.

(d) In the context of Article 15(c) the judge concluded that the Appellant's home area of Kirkuk is no longer in an area which can be said to be a contested area as had been found to be the case in AA (Article 15(c) (Rev 2) [2015] UKUT 544 (IAC) and AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC) [2018]. The judge finding no subjective or objective difficulties in Kirkuk dismissed the Appellant's appeal on humanitarian protection grounds.

(e) The Appellant's appeal then came before Upper Tribunal Judge Grubb on the Appellant's appeal. In a decision promulgated in June 2019, Upper Tribunal Judge Grubb concluded that the finding in respect of Article 15(c) was flawed because, although the decision accurately reflected that Kirkuk was not in a contested area any longer, it was nonetheless incumbent upon Judge Lever to consider all of the current evidence to determine whether the admittedly significant threshold of a real risk of indiscriminate violence continued to exist upon the evidence relied upon. The CPIN Report before the judge continued to recognise ISIL activity in and around Kirkuk and that position was also supported by additional material in the Appellant's bundle pointing to indiscriminate violence arising from Islamic State militants and insecurities arising therefrom. Judge Lever had made no reference to that. In light of the information that the Upper Tribunal was due to hear a number of cases concerning the current position in respect of Article 15(c) in Iraq, the re-making of the decision awaited the outcome of new country guidance.

4. There was further Case Management of the appeal in February 2023 following the issue of the new country guidance case SMO and KSP (Civil status documentation: article (15) Iraq CG [2022] UKUT 00110 (IAC). At that hearing, it was agreed the Appellant provide the copy of the December 2022 report from Dr Fatah as only the 2020 report was in the bundle. The Appellant was also to provide details of his local CSA office to the Respondent so as to inform her position in respect of identity card replacement. In the event, a rehearing concluded he had not got access to his CSID. The Appellant initially provided Civil Status Office Hakim 1 Area, Aljihmurya St, Kirkuk, as the address for his local identity card (CSA) office but then provided a second different address "Bridge 4 in Kirkuk". At the case management hearing, it was also agreed that the Respondent would provide evidence in respect of her ability to return the Appellant to the IKR as an alternative to Baghdad. Ms Rushforth served a document confirming such returns.

5. So it was that the matter came before me on 16<sup>th</sup> March 2023 to re-make the decision in respect of humanitarian protection.

6. It was agreed between the representatives that I needed to first make factual findings on the following:

(a) whether or not the Appellant has access to his CSID card which he said he had left in Iraq

(b) in respect the issue of a replacement card, when asked by Mr Edwards about the reason for the change in the addresses provided the Appellant asserted that in fact he had never provided the first address but only the second, and blamed misinterpretation by the interpreter employed by his representatives. In the event, Ms Rushforth explained the Home Office had been unable to identify any office based on either address provided and accordingly did not assert that the Appellant came within an area where a CSID card would be issued so that the more complex INID position would apply.

7. The Representatives were agreed that, having decided the issue about access to his CSID card, I then needed to decide whether or not, accepting Kirkuk is no longer a contested area, the Appellant would face, to the standard of a reasonable likelihood, risk on return on account of the sliding scale of factors identified in SMO [2022].

8. The headnote of SMO [2022] states as follows:

*"This decision replaces all existing country guidance on Iraq.*

**A. *INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE***

1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, 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.*
2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
3. *The situation in the Formerly Contested Areas ( the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, 'sliding scale' assessment to which the following matters are relevant.*
4. *Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*
5. *The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of*

*ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*

- (i) Opposition to or criticism of the GOI, the KRG or local security actors;*
  - (ii) Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
  - (iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
  - (iv) Humanitarian or medical staff and those associated with Western organisations or security forces;*
  - (v) Women and children without genuine family support; and*
  - (vi) Individuals with disabilities.*
6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question”.*

## **Documentation**

9. In addition to the bundle prepared for the error of law hearing, I had an updated country expert report from Dr R Fatah and a supplemental witness statement from the Appellant as well as a statement from the Respondent in respect of returns to the IKR.
10. Mr Edwards indicated that he relied on the appeal skeleton argument that he had prepared for the hearing of 2<sup>nd</sup> February 2023, and handed up a copy of the recent Court of Appeal decision in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216, and took me to paragraph 51 where it states:
- (a) “Strictly speaking it could be said that it is not entirely accurate to refer to this as a standard of ‘proof’, because the applicant does not in fact have to prove anything. It could more accurately be described as being an ‘assessment of risk’”.
11. In short, if I am satisfied to that relatively low threshold that there is a reasonable degree of likelihood that the Appellant will face a risk of serious harm on return to Iraq on account of his position in respect of documentation or because of the circumstances in his home area and the characteristics identified

on the sliding scale in SMO [2022], I must then consider whether or not any such risk can be met by internal relocation to the IKR.

### **Access to CSID**

12. Ms Rushforth submitted that I should not place any reliance on the Appellant's evidence about his lack of contact with his family. The reality was that his family would be able to meet him at the airport whether in Baghdad or Erbil/Sulaymaniyah and provide him with his CSID documentation. She reminded me of the adverse credibility findings of the previous judges, based on the Appellant's inconsistent evidence. Even in his latest evidence to me, further inconsistencies had emerged. In the supplemental witness statement, the Appellant said that his brother had left Iraq in March 2016 not long after he himself had left and that they had not spoken since. He said that his contact with his family had been facilitated by his old neighbour and that, although he had lost contact with his family in October 2017, he had continued to remain in contact with Yahya. That was inconsistent with his evidence to Judge Lever that his brother had handled the communications with his parents until October 2017 when his mobile had switched off. Further, that his friend told him that his family had left and they had had no contact or he had lost contact with his friend. In reality, the Appellant had provided an everchanging account both before Judge Lloyd in 2018 and Judge Lever in 2019 and before me. In those circumstances, there was no need for me to look at the question of replacement, in short his CSID card could be posted to him in the United Kingdom or the family could bring it to the airport.
13. Mr Edwards said that the inconsistencies were explicable, given the length of time that had passed and the fragility of human memory: as the Appellant had said, he had been coming and going to court over the last 7 years so it was easy to get confused. It was to his credit that he had freely given evidence to me that he had always been and remained in frequent contact with his friend and neighbour. He asked me to consider that, whatever the position had been with his card, was it really likely it would be available now, given the passage of time, possible expiry of validity and that the family thought he had gone for the long term, i.e. they might have disposed of it or it might be lost.
14. Ms Rushforth's points about the inconsistencies in his evidence were made out. As accepted, there are significant earlier adverse credibility findings and his position was again inconsistent before me. I found that the inconsistencies were not easily explained. There is a significant difference between saying that you had had no contact with your brother since you left your home country right up until the day of hearing on the one hand, and saying that your brother had handled all communication with your family until October 2017 when, as a result of conditions in Kirkuk, you lost and had never regained contact. The Appellant's oral evidence to me was that he had not said to the judge that his brother had been the one who was his contact, so that there was misinterpretation. That is very late evidence provided only in his oral evidence. The Appellant was not assisted when, in response to the change in his evidence about contact with the neighbour, he again added to his evidence, saying that he had never said to a previous judge that he had lost contact with him. Looking at the position in the round, I concluded that the Appellant lacked credibility and I placed no reliance on his account of having lost contact with his family.
15. Mr Edwards referred me to Dr Fatah's report and I took the time to read all the parts that he advocated supported his client's case, including the parts relevant

to the security position in Kirkuk and the security incidents listed thereafter identified as recent but which stretched back to early 2019, as well as the ethnosectarian tension section covering instances going back to 2018. Mr Edwards submitted that, whilst some aspects of the evidence predated SMO, the report evidences that there continued to be a moderate level of violence. Mr Edwards next took me the parts of the report covering issues with obtaining new documentation in Iraq, and he argued that the absence of a CSID card or INID card would cause difficulty. In short, having a document is necessary to avoid Article 3 treatment. Mr Edwards further submitted that, even if the authorities wanted to issue a new INID card, the process of issuance is at best unreliable as there are logistical problems providing the cards. Temporary documents issued would be looked at sceptically. Checkpoints are not centrally managed, and there was sufficient to show that a risk would arise. There was insufficient evidence that this was a process reasonably likely to be available to the Appellant to give him safe passage or obtain a new document in reasonable time.

16. I have taken account of comments made by Counsel as to what may have befallen the card that the Appellant accepts was issued to him and which he says he left in the family home. Beyond saying that his family cannot bring it to him because he is not in contact with them, there is no evidence to support the contention that the card is not available to him, so that the comments from Counsel are speculative. In the skeleton argument it is suggested that, given the passage of time, the card may have expired. The Appellant has not suggested that it has expired.
17. In short, I am not satisfied that the Appellant has established any real degree of likelihood that his CSID card is not still available to him. Ms Rushforth suggested he could have it sent to him and there is no evidence to gainsay that position from the Appellant or Dr Fatah. However, I find that he can be reunited with it. It can be provided to him at the airport by his family or other contacts in Iraq. Dr Fatah explains that previously issued CSID cards remain valid and all the evidence points to even an expired card being a pertinent document. On the evidence I find that, if he chose to, he could replace it with a INID biometric card, given the fact of having it along with the assistance of his relatives.
18. I note Dr Fatah explains that the old CSID cards issued currently remain valid because of recognised difficulties in renewing to an INID card. I am satisfied that the Appellant will be able to access his. For these reason, I am not satisfied that the Appellant has established, on the only basis outstanding in this appeal, that he will face a risk contrary to Article 3 of the ECHR on return to Iraq because of the absence of identification documents.

### **The 15 (c ) risk as guided by the case of SMO**

19. Ms Rushforth reminded me that, since the error of law decision, SMO 2022 had been issued. She submitted that the case showed there was no generalised 15(C) risk anywhere in Iraq except in a small mountain area which was not the area with which I was concerned in this appeal. The violence identified in the report by Dr Fatah under the heading of the security situation in Kirkuk was not of a scale that met the threshold. References to westernisation were not set in any evidential context. In any event, the Appellant could relocate to the IKR given that he had work experience and family support.
20. Mr Edwards reminded me that inconsistencies were not sufficient to displace an assessment of risk, there was a sliding scale of risk, the Appellant had said he

was not practising the Islamic faith in the UK. He was not advancing any fresh claim in respect of persecution on religious opposition grounds, but rather the extent of westernisation was a factor to be drawn into the mix of the fact-sensitive exercise as to whether a 15(C) risk exists.

21. Looking at the sliding scale of risk factors relevant to a fact-sensitive assessment identified in SMO, I noted there is no suggestion that the Appellant faces any enhanced risk on the basis of actual or perceived association with ISIL. Nor does the Appellant have a current personal association with local or national government or the security apparatus.
22. Mr Edwards in submissions relied on his skeleton argument in which he submitted the Appellant's not conforming to Islamic mores and being a westernised individual were relevant risk factors. The evidence supporting that position was the Appellant's reference in interview on 23rd November 2017 stating that he was not practising Islam in the UK. Counsel submitted that it would be a reasonable inference from the period of time that he has been here that he would be perceived as western and would have difficulty conforming to Islamic mores in Iraq. The Appellant asked for, and was granted, an opportunity, following SMO, to prepare a supplemental witness statement covering the enhanced risk factors relevant to the sliding scale in SMO and provided one dated as recently as January 2023 and this is not mentioned. The submission exceeds the evidence. I am satisfied that the Appellant does not have personal characteristics which would cause him to be at enhanced risk on the sliding scale of individual factors referred to in SMO in the 15 (c ) context.
23. For all the reasons above the Appellant does not succeed in his appeal.

### **Notice of Decision**

The appeal is dismissed.

**E M Davidge**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**05 May 2023**