



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

**Case No: UI-2021-000510  
FtT No: RP/50021/2020  
IA/01895/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 28 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**K S AWLA**

(no anonymity order)

Appellant

and

**S S H D**

Respondent

For the Appellant: Ms H Cosgrove, of Latta & Co, Solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

**Heard at Edinburgh on 13 September 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq, born on 2 February 1994. FtT Judge Prudham dismissed his appeal by a decision dated 31 July 2021. The FtT refused permission to appeal to the UT.
2. The appellant sought permission from the UT, advancing these grounds:
  1. Consideration of *sur place* activity
    - (i) At paragraph 34 the Judge states:

*"I find it odd that this political activity only began some 4 ½ years after the appellant arrived in the UK and was never referenced at an earlier point. The appellant said that this was because he did not previously had a smart phone with which to post on Facebook. Even if that were accepted, the absence of a smart phone does not explain*

*why he had never expressed any previous political opposition or why there was no other evidence of involvement in political opposition”.*

During oral submissions it was submitted to the Judge that the Appellant’s timeline for becoming involved in political activities accords with the rising tensions in Iraq and many individuals choosing this time to speak out against both the Iraqi and Kurdish authorities. Reference was made to the background evidence and Key Passage Index in support of this submission. Whilst it is accepted that the Judge is not expected to set out why they accept or reject each piece of evidence, it is submitted that this is clearly a matter of significance for the Judge and it is unclear whether this evidence has been taken into account by the Judge. *Esto* it is believed the Judge did take this evidence into account, it is submitted that the Judge has erred in law by failing to provide reasons why he rejects this evidence.

2. Risk of persecution on return to Iraq

i) At paragraph 36 the Judge has noted:

*“However there was no evidence that as a Sunni Kurd the appellant faced a real risk of persecution from the PMF.”*

In support of the submission that the Appellant would be at risk of persecution from the PMF if returned to his home area, the fresh claim was adopted as part of the submissions and specific reference was made to pages 375 and 376 of the appeal bundle as well as the background evidence. It is submitted that the Judge has erred in law by failing to take this into account or failing to provide reasons why he rejects this evidence.

ii) At paragraph 40 the Judge has stated if the CSID is not valid:

*“...the appellant could obtain a Registration Document using a family member in Iraq and then obtain his INID at his local CSA.”*

As per headnote 11 of *SMO, KSP & IM* (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC):

*“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. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.”*

In light of the above, it is submitted the Registration Document will not be accepted at checkpoints and the Appellant will not be able to travel to his local CSA to obtain the INID. He is also likely to be subjected to treatment which would be a breach of Article 3 ECHR. It is therefore submitted that the Judge has erred in law by failing to properly apply the Country Guidance.

3. On 7 December 2021 UT Judge Rintoul granted permission:

It is arguable that the First-tier Tribunal erred in concluding at [35] that there was no evidence that the appellant was at risk from the PMF. Whether that is material or not will need to be addressed by the appellant at the hearing. It is also arguable that the FtT erred in its approach to the issue of an INID, given that the appellant would arguably need to travel to his home area to obtain one. Again, the materiality of that is in issue. There is less merit in the first ground, but I do not refuse permission on that.

4. In a rule 24 response to the grant of permission the SSHD says: ...
  3. The grounds are a disagreement with the findings of the Judge. There is no indication that the First Tier Tribunal did not properly consider the evidence relating to the PMF and it was open for them to conclude in para 35 that this did not disclose any real risk of persecution to the appellant.
  4. With respect to the findings relating to re-documentation any error would not be material as the primary finding of the FTT was that the appellant had retained his CSID. There is no error of law.
  5. The respondent invites the Tribunal to uphold the decision of the First Tier.
5. On ground 1, *sur place* activity, Ms Cosgrove had little to add. She said that the decision recorded at [12] what the appellant said about timing, and at [28] briefly acknowledged submissions, but the ground showed that the resolution of the matter at [34] was an inadequate recognition and resolution of the issue.
6. I do not uphold that analysis. The Judge identified that the *sur place* activity was confined to 3 weeks activity on Facebook 4 ½ years after entering the UK. The appellant's explanation for this limitation was not that it was a period of heightened tension in Iraq but that he did not previously have a mobile phone. The Judge was entitled to find that feeble, and to say that it did not explain lack of any prior political interest or of any interest of a nature other than by way of Facebook. There was no error by failing to embark on an examination of whether the posts were made during a tense time.
7. Ground 2 (i) is that the Judge erred by failing to examine further whether the appellant is at risk from the PMF (Hashdi Shaabi) in the governorate of Nineveh.
8. At [35] the Judge noted that country guidance is generally against there being a risk simply as a member of a minority ethnic or religious group. That is not alleged to be wrong.
9. The Judge also said there was "no evidence" of such risk to the appellant as a Sunni Kurd. That is indeed brief.
10. Ms Cosgrove referred to submissions in the FtT and to evidence at pages 375-6 and 391-442 of the bundle which was before that tribunal, without direct citation of anything to substantiate the risk claimed. I have looked at the bundle and key passage index provided, without pretending to exhaust their detail. The materials are far too extensive and largely

irrelevant to the particular case. The key passage index is not related to the issue of general risk to Sunni Kurds in Nineveh.

11. I have identified the skeleton argument which was before the FtT. On this point, it is based on an expert opinion, not obtained for this case but cited from country guidance, on risk from being of an ethnic or religious group not in control of a particular area; and on one article in 2020, referring to the PMF then being in control of “key roadways and districts not only in Mosul city but across the province”. That is said to be “sufficient evidence to demonstrate that the PMF remain in *de facto* control of Nineveh”.
12. It would be a very considerable stretch from those weak materials to a risk of persecution, at the date of the FtT hearing, to the appellant, if returning to his home area in Iraq.
13. The Judge should perhaps have said more than he did about this aspect. However, the appellant has not shown that there was anything before the tribunal which might realistically have shown that he qualifies for protection as a Sunni Kurd from Nineveh.
14. The Presenting Officer said in his submissions, although without reference to evidence (in the FtT bundles or elsewhere) that the appellant’s home area may not be in Nineveh but in Irbil, which would negate his claim entirely; but I take nothing from that.
15. Ms Cosgrove re-numbered her next point as ground 3, not 2 (i); correctly, as it is distinct.
16. At [38] Judge Prudham, dealing with a submission that the appellant’s CSID card might require to be renewed, founds upon a “Landinfo Report” from 2015 in holding that renewal is required only on changes such as in marital status or relocation, and that cards up to 15 years old may be used to obtain passports abroad. He concludes that the appellant “retains a valid CSID” or at least may use it to obtain another document.
17. Ms Cosgrove, while acknowledging that the point is not in the grounds, said that the Judge should not have founded upon a report which was not produced by either side. She argued that it was only to be expected that a document would expire at some stage, and that observations in country guidance on the need for a “valid” CSID suggest acceptance of that point. She also accepted that Judge at [40] made findings on the alternative of no valid CSID, but she submitted that reliance on a registration document was contrary to country guidance.

18. Mr Diwyncz, fairly, did not object to the matter of the report being raised, and was also prepared to accept that although there was no evidence, from either side, on how long a CSID remains valid, or when it might need to be renewed, it was reasonable to assume that some limitation of validity applies.
19. Ground 3 is accurate, in that a registration document is not an adequate substitute for a CSID or INID. The decision at [40] is wrong. However, the ground ignores that the matter is only in the alternative. There is no challenge to the primary finding that the appellant has a valid CSID and is not at risk through lack of documentation. The answer to the ground is succinctly stated in the rule 24 response.
20. The Judge should not have founded upon a report which was not before the parties, without giving them the chance to submit further, or to produce anything else; but that procedural unfairness is now immaterial. The appellant has had ample time to find any further evidence which might help him on the issue; and it was for him to make his case. It was rather optimistic to found upon a vague suggestion that documents are likely to run out sometime. The Judge's analysis is well within reason.
21. The decision is cursory on part of the claim; flawed by reliance on a report which, although in the public domain, was not before the parties; and goes wrong about the registration card, but only as an alternative. Nevertheless, it has not been shown to error on any point of law, or of procedural fairness, which requires it to be set aside, and accordingly stands.
22. No anonymity order has been requested or made.

Hugh Macleman  
Judge of the Upper Tribunal, Immigration and Asylum Chamber  
14 September 2023