



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

Case No: UI-2022-001965

First-tier Tribunal No: PA/50774/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 25 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**NMA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes of Counsel, instructed by Parkview Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House by remote video means on 6 July 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. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. In my decision promulgated on 1 June 2023 an error of law was found in the decision of First-tier Tribunal Judge Galloway promulgated on 24 March 2022 in which the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claims dated 3 July 2020 was dismissed. For the reasons set out in that decision which is appended, the First-tier Tribunal decision was set aside and this is the remaking of the Appellant's appeal.
3. The Appellant is a national of Iraq, born in 1989, who entered the United Kingdom on 24 April 2019 and claimed asylum. The basis of his claim was that he would be at risk on return to Iraq because he was part of a Peshmerga unit, serving under the Kurdish Democratic Party (the KDP), who had been detained and mistreated by the Patriotic Union of Kurdistan (the PUK) who wanted to recruit him and had made threats against the Appellant.
4. The Respondent refused the application the basis that although it was accepted that the Appellant was a volunteer with the Peshmerga in 2014, the remainder of his claim that he had been arrested, detained, tortured and then threatened after release by the PUK was not credible as there were multiple inconsistencies in the account which went to the core of the Appellant's claim. These included as to the date of arrest; the duration of detention; whether the Appellant was armed at the time of arrest; the reasons for the arrest; the basis of the Appellant's release; the threats made; the identity of PUK members and the date on which the Appellant left Iraq. The Respondent also applied section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 as the Appellant had travelled through various European countries on the way to the United Kingdom, including a period of three years spent in Austria where he unsuccessfully claimed asylum. The Respondent concluded that the Appellant would not be at risk on return to Iraq and in any event could internally relocate to Erbil. The Appellant had previously stated that he did not have his Iraqi passport but that his CSID card was with the head of the family in Iraq such that it could be sent to the Appellant for use on his return. The Appellant had close family members in the IKR who could assist him on return. Overall, there was no risk on to the Appellant, no basis for a grant of humanitarian protection, no Article 15(c) risk, no breach of Articles 3 or 8 of the European Convention on Human Rights and no basis for any grant of leave to remain, even on a discretionary basis.

## **The appeal**

### *Applicable law*

5. The relevant country guidance for the purposes of this appeal is contained in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) which, so far as relevant, states:

### ***B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)***

7. *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.*

8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

### **C. CIVIL STATUS IDENTITY DOCUMENTATION**

11. *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.*
12. *In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*
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.*
14. *Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*

15. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
16. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
17. *A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.*
18. *Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.*
19. *There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.*
20. *The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.*
21. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*
22. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence*

*of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.*

**E. IRAQI KURDISH REGION**

26. *There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.*

**Kurds**

27. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
28. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
29. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
30. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.*
31. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
32. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-*

*makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*

6. There follows paragraphs dealing with Kurds without the assistance of family members in the IKR, but there is no dispute in this appeal that the Appellant has family in the IKR with whom he is in regular contact and has not asserted that they would not be able to support or assist him on return.
7. In addition, section A of the headnote in SMO deals with indiscriminate violence in Iraq in relation to Article 15(c) of the Qualification Directive but is not directly quoted here as the Appellant has not made any distinct claim for protection on this basis and in any event, the country guidance is that there is no such risk for a civilian returned to Iraq save for in one small geographical area and nothing in the sliding scale of personal characteristics would apply to this Appellant so as to increase risk above that for a normal civilian.

#### *The Appellant's evidence*

8. In his written statement signed and dated 28 November 2019, the Appellant sets out his family and background in Iraq. He states that he joined the KDP as a volunteer Peshmerger in February 2014 at the age of 25 in response to Daesh/ISIS taking over Mosul, to try and protect and keep them out of Dohuk. The Appellant would volunteer as a Peshmerger for a consecutive 14 day period, with duties including standing guard, preparing food and helping other Peshmergers. After that, the Appellant would have 2-3 days leave to visit family and during that time he worked as a labourer. The main base was in Zummar. The Appellant describes some of the battles and those involved.
9. The Appellant states that in August 2014 on the 14<sup>th</sup> day he was going on leave and travelling back from Zummar to Dohuk with four friends. They had to travel to Hikna to get a bus, an area controlled by both the KDP and PUK. Around 5pm, the Appellant and his friends were approached by two vehicles from the PUK (carrying their emblem on the cars) from which a group of 12 men came out from the trucks and stopped them. Specifically he states that, *"They told us to drop our weapons and if we didn't, they would shoot us. We dropped our guns and they blindfolded us and took us in the cars."* The Appellant was driven for around 6-7 hours and was taken to a PUK base and then to another area in Sulaymaniyah. The men were put in a cellar and regularly beaten on the soles of their feet using cables. The PUK wanted the Appellant and his friends to join them and work for them, if they didn't, the PUK would kill them. The detention lasted approximately one month and five days. The Appellant and his friends told the PUK that they agreed to work for them only so they would be released, which they were, being told they would be contacted with further instructions.
10. On 15 or 18 September 2014 the Appellant received a phone call from the PUK, giving him an address and telling him to meet them there. The Appellant did not attend. The PUK continued to call him and would not stop, everytime threatening the Appellant. The Appellant could not return to volunteer as a Peshmerger and remained indoors. The KDP could not protect him as the Appellant could not identify the individual members of the PUK involved. The Appellant's friends also received threatening phonecalls. The Appellant decided to leave in September 2014 and did so with the help of an agent via Turkey to Austria and then on to Switzerland and France before coming to the United Kingdom, arriving here on 24 April 2019.

11. In his second written statement signed and dated 22 March 2022, the Appellant responded to points in the Respondent's reasons for refusal letter, including further details as to the photographs previously submitted and confirming that the Peshmergas base was in Hikna/Hukna. The Appellant could not remember exactly when he was arrested but it was between August and September 2014. As to the arrest, the Appellant stated, *"We were off duty and three cars arrived with soldiers from the PUK. They all had weapons with them. When they arrived they did not say anything to us and bundled us in the cars, as we could not defend ourselves we could not escape from them."* Whilst being detained, the Appellant said that they were ordered to work for the PUK, using the KDP building between the respective camps to store weapons and use the building, but this was refused. The Appellant and his friends were identified by name but those detaining them were not identified as they were wearing hats and their faces were covered.
12. The Appellant was threatened and although decided to leave Iraq in September 2014, he did not actually leave until March/April 2015. He gives further details of his travel between then and arrival in the United Kingdom. Finally the Appellant refers to evidence in the form of a court statement dated 2019 requesting him to attend, otherwise he will be arrested and that he continues to fear for his life in Iraq.
13. In addition to a number of photographs, the documentary evidence included a court document with translation. The Claimant is referred to as 'Court' with the Defendant named as a Peshmerga from Duhok. The time of 9am on 29 October 2019 is stated to have been set to attend the court to hear the claim that has been made against the Appellant by the court. It states, *"Therefore, you or your representative are required to attend at court on the mentioned time and date, otherwise the hearing will proceed in your absence according to the regulations ..."*. It is signed by a Judge dated 22 October 2019 and refers to two attachments, first 'copy of the claim' and secondly, 'subpoena'. No attachments have been submitted.
14. At the oral hearing, the Appellant confirmed his details, adopted his two written statements in full and gave evidence through a court appointed interpreter in Kurdish Bahdini. With regards to the statements, the Appellant specifically asserted the trust of his statement quoted in paragraph 9 above; that as soon as they were told to drop their weapons, they did so.
15. In cross-examination, the Appellant was asked why he would be of interest to the PUK on return to Iraq now, when the events there were over a decade ago. The Appellant stated that the important point for the PUK is that they would be revealed, a worry for them as a group of martyrs and he would be killed. The Appellant confirmed he is in regular contact with his family in Iraq and his younger brother has been threatened by the PUK because of him. It was the Appellant's brother who had provided him with the court document by email or perhaps facebook. The Appellant confirmed that the court case was to be heard in his absence, but no orders have been made to date, the case has been adjourned. When asked what claims were against the Appellant in court, he stated that because the PUK are the ruling party in government, the courts are in their hands and they can produce notifications. The Appellant had not received any other documents about the case and no lawyer had been instructed because they are not allowed to work on such cases, they are in the hands of the parties only.

16. The Appellant stated that in interview he had said that his father had his CSID card, but he passed away in 2022. He stated that another family member can not send his CSID card to him as his sister has it and it requires renewal, which the Appellant has to be there in person to do. That is to change it to a new INID card which needs the Appellant's biometrics and his CSID card is no longer valid. If his old CSID is required, the Appellant is more than happy to submit it but he has never been asked. If he is able to return to Iraq safely, he would go to Erbil.
17. I asked the Appellant some supplementary questions. First, as to which of his two statements were correct as to what happened at the point of arrest as they appeared to be inconsistent. He stated that they were asked to drop their weapons and raise their hands up, but they were not carrying weapons so did not drop anything.
18. As to the court documents, the Appellant initially said that the attachments to the court document had been given to his solicitors, but later in re-examination he said that he had not seen them and only received the single page in the bundle. The Appellant did not know what the case against him was, only that he had been notified to report to the police station and would then be told what it was about, nobody would know before that. The Appellant knew that the case had been adjourned because he had received documents about it, which had been submitted to his solicitor.

*Closing submissions on behalf of the Respondent*

19. On behalf of the Respondent, Mr Melvin relied on the reasons for refusal letter, the Respondent's review before the First-tier Tribunal and his skeleton argument. The Respondent was not satisfied that the Appellant had given credible evidence of the events in 2014 and a number of inconsistencies in his claim are listed in the reasons for refusal letter and there remained a glaring inconsistency as to what happened at the point of the claimed arrest. In any event, even if the Appellant had a difficulty with the PUK in 2014, there is little, if any, credible evidence that he would be of any ongoing interest in the Appellant some ten years later after he had been a volunteer Peshmerga for a few months in 2014.
20. As to the court documentation, it was submitted that little weight should be placed on this. There was no explanation or documents showing how the court document had been obtained, there is nothing in the Appellant's evidence about this and no evidence of any adjournment. It was submitted that it was inconsistent that the Appellant's brother had been able to obtain this document, but not the attachments or anything about the adjournment or developments in the last three to four years since this was issued. The Appellant's explanation as to why no lawyer had been engaged was incoherent, as was his answer about PUK control. There is no background evidence to suggest the PUK has control over the judicial system.
21. Finally on the feasibility of the Appellant's return to Iraq, the Appellant confirmed his family have his CSID and there is no evidence that this has expired. The card could be sent to the Appellant to use for travel and to obtain a new INID on return. It would be sufficient on an enforced return to Baghdad to travel to his home area and it is open to the Appellant to voluntarily return directly to the IKR. At present, the Appellant is simply seeking to frustrate the authorities attempt to return him without a credible protection claim in the United Kingdom.

*Closing submissions on behalf of the Appellant*



22. On behalf of the Appellant, Mr Holmes submitted that the Appellant has been accepted to have been a Peshmerga which is an important building block upon which the rest of his claim rests and is positive evidence of his truthfulness. It was suggested that even in the absence of medical evidence, the circumstances of local events in Iraq including loss of friends and two brothers may have affected the Appellant's recall of specific events. At around the time of these events in 2014/2015, there was an acute level of instability in Iraq and the peak of the context with ISIS. Whilst it may seem unusual for the PUK to try and recruit members by force, these actions may be understandable in the particular context of this time.
23. As to the credibility points taken in the reasons for refusal letter, it was submitted that those identified in paragraphs 42 and 43 were not truly differences of any significant and the length of detention appears to be a simple error on the face of the record between 1.5 months and 1 month 5 days. In response to paragraph 44 it was submitted that the Appellant was doing his best to recall events several years later and there was a gap of some two years between his written statements, as such recollections may vary. The issue in paragraph 51 is not a true inconsistency, the fact that the local PUK were known to the Appellant does not mean that the Appellant could identify those who detained him who had taken steps to hide their identities. Overall, the Appellant has done what he can to substantiate his claim both as to being a Peshmerga and as to the court case against him. It was submitted that in the absence of any other difficulties in Iraq, it could be inferred that the court case is to do with events in 2014 as there is no other reason for it.
24. There would need to be an assessment of internal relocation in accordance with paragraphs 33 and 34 of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC), albeit submitted that if any material part of the Appellant's claim was accepted, it would be a state fear such that there is no realistic option of internal relocation.
25. On the feasibility of return, Mr Holmes submitted that there was a conflict in the evidence about the whereabouts of the Appellant's CSID and it may not be fair to suggest that the Appellant is trying to frustrate his removal. Mr Holmes confirmed that there is no background country evidence available on the expiry of CSID cards.

### **Findings and reasons**

26. The two main issues in this appeal are the Appellant's credibility as to whether he could be at risk on return from the PUK due to events in 2014 and as to documentation for return. It is common ground that the Appellant is an Iraqi Kurd who was a volunteer Peshmerga between February and August/September 2014, with family members remaining in Iraq with whom he is in regular contact.
27. As to the claimed events with the PUK and the Appellant leaving Iraq, there are a number of inconsistencies in the Appellant's account as follows. First, the Appellant stated in his asylum interview that he was arrested in August 2014 (on the fourteenth day as he was going on leave) and in September 2014; and later in his written statements he stated this was in August 2014 and then that he could not remember whether it was August or September 2014.
28. Secondly, the Appellant has given three different accounts of what happened at the point of his arrest between his asylum interview, his two witness statements

and in oral evidence. The relevant parts of the two witness statements are set out above and are directly inconsistent. This point was put to the Appellant to clarify which was correct, to which he said both and gave a third account that he and his friends were told to put down their weapons, but they did not have any. These are significant inconsistencies which even when highlighted to the Appellant, he was unable to explain or even consistently assert what happened in oral evidence.

29. Thirdly, the Appellant stated in his screening interview that he was arrested because he was accused of being involved with terrorism, but in his asylum interview he stated that he did not know why he was arrested. The point was not addressed in either written statement or at the hearing.
30. Fourthly, in his asylum interview, the Appellant stated both that he did not know why he was released by the PUK and that he had agreed to volunteer for the PUK to secure his release.
31. Fifthly, the Appellant in his asylum interview stated that he decided to leave Iraq in March or April 2015, but in a written statement he said that he decided to leave in September 2014. Further, in his asylum interview, the Appellant said that he left Kurdistan in April 2015 but in a written statement said that he stayed in Istanbul for a month until March 2015.
32. I do not find that there is any inconsistency to which weight can be attached to as to the Appellant's claimed length of detention by the PUK of either 1.5 months or 1 month 5 days, which could be explained by a transcription error depending on how this was said. Nor do I find that there is strictly any inconsistency between the Appellant stating in interview that he did not know who detained him because their identities were covered and also that he knew PUK members from the base near his.
33. Considering the Appellant's evidence in the round, I find that there are a number of inconsistencies as to the core of his claim about the PUK in 2014. Whilst some are more significant than others, the Appellant has failed to offer any explanation for any of the differences and in oral evidence and did not offer any explanation for the major inconsistencies as to what happened at the point of arrest. Although Mr Brown sought to suggest that the Appellant may have suffered from traumatic events in Iraq and/or from frailty of memory given the passage of time, this was not even remotely hinted at by the Appellant himself (save for his second written statement saying he could not remember if the arrest was in August or September 2014, having previously identified both months) and there is no medical evidence suggesting any difficulty on either basis. On the evidence before me, there is no rational or credible explanation for the inconsistencies in the core of the Appellant's claim as to what happened with the PUK, especially as to the point of arrest, which I find significantly damages his credibility. This remains so even taking into account that the Respondent accepts the Appellant was a volunteer Peshmerga and that two of the inconsistencies relied upon by the Respondent are not strictly inconsistencies at all.
34. I attach little weight to the court document. It is on its face incomplete, with no details of the claimant, the claim or the terms of any subpoena. The Appellant has not explained how this document was obtained, why the attachments to it are not available, nor has he been able to identify even in broad terms what the claim is actually about. The Appellant stated that he could not instruct a lawyer to deal with the case, however on the face of the document it refers to

attendance by the Appellant or his representative, suggesting that someone could attend on his behalf. Further, the Appellant said for the first time in evidence to the Upper Tribunal that contrary to what was on the face of the document, the case was not heard in his absence in 2019 but was adjourned, however no documents have been provided supporting this and no clear explanation has been given as to how the Appellant knew of the adjournment. There is no information at all as to what happened next having been provided in the nearly four years since it was issued and no indication or when or if there is a further a hearing. It is entirely unclear whether there is any arrest warrant connected with this case or what potential consequences the Appellant may face as a result of it. Finally, although Mr Brown submitted that it would be a coincidence if this court case was anything other than to do with events in 2014, it is entirely unexplained as to why any proceedings would be issued some five years after those events and when the Appellant already been out of the country for most if not all of that time. The Appellant's reliance on this court document does nothing for his credibility and only serves to damage it further.

35. Overall, for the reasons set out above, although the Appellant has been accepted as truthful in relation to his short period as a Peshmerga, I generally find him to not to be credible in relation to the core of his claim and reject entirely his account of an arrest, detention, torture and/or threats from the PUK and the claim of any later court proceedings in 2019. As such, there is no risk on return to Iraq for the Appellant from the PUK or anyone else. In any event, even if I had found the claimed events of 2014 to have happened, the Appellant has not put forward any credible reason as to why he would still be at risk because of that nearly ten years later and there is no background country evidence to support any such risk. The Appellant's answer to this specific point in oral evidence was incoherent. I do not find the court document to be reliable or in any event, evidence of any risk on return to the Appellant. In these circumstances, it is not necessary to consider whether there would be a sufficiency of protection or the option of internal relocation. The Appellant can safely return to his home area.
36. The second issue is as to documentation on return to Iraq. There is nothing to suggest that the Appellant would not be able to obtain one of the relevant documents required for travel to Iraq itself. Although Mr Brown submitted that there was a conflict in the evidence as to the Appellant's CSID card, the Appellant initially stated that his CSID card was with his father in Iraq and in oral evidence, confirmed that it still remains with a family member in Iraq (his father having passed away in the interim), his sister. There is nothing to support the Appellant's assertion that his CSID has expired, a point only mentioned in oral evidence before the Upper Tribunal, either by way of a copy of the card itself or by way of background country evidence as to expiry of such documents. The Appellant further confirmed in oral evidence that he could be sent his CSID card and I find, in accordance with his latest evidence (also consistent with his initial interview) that this is the case. The Appellant's sister can send him his CSID card and in accordance with SMO, that would be sufficient for him to travel to his home area if returned to Baghdad and could be used to register in his home area for a new INID card. Alternatively, the Appellant can voluntarily return to the IKR to do the same, without the journey needed internally from Baghdad. In these circumstances, there would be no risk of a breach of Article 3 of the European Convention on Human Rights for lack of documentation.
37. There were no separate issues raised or relied upon by the Appellant as to risk on return to Iraq because of his Kurdish ethnicity or on any humanitarian

protection need. In any event, I find no basis on which the Appellant would be at risk on return to his home area, nor would return there be a breach of Article 15(c) of the Qualification Directive, nor Article 3 of the European Convention on Human Rights in line with the country guidance in SMO.

38. For all of these reasons, the Appellant's appeal is dismissed.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was set aside the decision.

The appeal is remade as follows:

The appeal is dismissed on protection grounds.

The appeal is dismissed on human rights grounds.

G Jackson

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**17<sup>th</sup> July 2023**



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

Case No: UI-2022-001965

First-tier Tribunal No: PA/50774/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

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**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**NMA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Determined on the papers on 17 May 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Galloway promulgated on 24 March 2022, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 3 July 2020 was dismissed.

2. The Appellant is a national of Iraq, born in 1989, who entered the United Kingdom on 24 April 2019 and claimed asylum. The basis of his claim was that he would be at risk on return to Iraq because he was part of a Peshmerga unit, serving under the Kurdish Democratic Party (the KDP); and had been detained and mistreated by the Patriotic Union of Kurdistan (the PUK) who wanted to recruit him. The Respondent refused the application on 3 July 2020, accepting that the Appellant was part of the Peshmerga, but not that he had had any difficulties with the PUK or would be at risk on return.
3. Judge Galloway dismissed the appeal in a decision promulgated on 24 March 2022 on all grounds. An adverse credibility finding was made primarily on the basis of a single discrepancy in the Appellant's evidence as to what happened during his claimed arrest (in particular whether he was armed or not) and on the basis of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. A court document relied upon by the Appellant was not found to be reliable considering the evidence in the round and the concerns as to the Appellant's credibility. As a result, the Tribunal found that there was no risk to the Appellant on return to Iraq. Further, it was accepted by the Appellant that his CSID card was with the head of his family and could be sent to him such that he would be documented on return to Iraq.

### **The appeal**

4. The Appellant appeals on the grounds that the First-tier Tribunal erred in law in failing to consider the documentary evidence in the round and failed to give adequate reasons for the adverse credibility findings made against the Appellant.
5. In a rule 24 response dated 13 June 2022, the Respondent indicated that she did not oppose the Appellant's appeal to the Upper Tribunal and invited the Upper Tribunal to "determine the appeal with a fresh oral continuance hearing". Further to this, directions were sent to the parties on 27 March 2023 indicating my preliminary view that there had been a material error of law in the decision of the First-tier Tribunal in that the Judge had failed to consider all of the evidence in the round before making an adverse credibility finding, rejecting the documentary evidence on the basis of his assessment of the Appellant's witness evidence alone and without any detailed analysis or reasoning as to why court documents should not be given weight or assessed in the round. The parties were directed to make written submissions if there was any objection to the proposal to issue a decision finding a material error of law on this basis, set aside the decision of the First-tier Tribunal and list a hearing in the Upper Tribunal to remake the Appellant's appeal. Both parties were in agreement as to this course.
6. For the reasons given in the directions and repeated above, I find a material error of law in the decision of the First-tier Tribunal and set aside that decision. There will be a de novo hearing of the Appellant's appeal in the Upper Tribunal.
7. Directions are given below for the further hearing to remake the appeal. A remote video hearing has been proposed following the Appellant's request for a listing as soon as possible as this is likely to allow an earlier listing. If however there are any objections to this, the parties may make written representations within 14 days and the appeal can in the alternative be listed for a face to face hearing in Manchester.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

**Directions**

1. The appeal to be listed for hearing on the first available date before UTJ Jackson, by remote video means, with a time estimate of 2 hours. A Kurdish (Bahdini) interpreter is required.
2. Any further evidence on which the Appellant wishes to rely must be filed and served no later than 14 days before the relisted hearing. An up to date written statement is required to stand as evidence in chief for the Appellant and any other person giving oral evidence.
3. Any further evidence on which the Respondent wishes to rely must be filed and served no later than 14 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**17<sup>th</sup> May 2023**