



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

Appeal Number: UI-2023-003839  
First-tier Number: PA/00441/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> of December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**HIMAN SELAM KHALID  
(Anonymity order not made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri, counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**Heard at Field House on 1 December 2023**

**The Appellant**

1. The appellant is a citizen of Iraq and is of Kurdish ethnicity. He was born on 3 November 1990. He appeals against a decision of Judge of the First-tier Tribunal Head dated 29 May 2023 in which the judge dismissed the appellant's appeal against a decision of the respondent dated 18 May

2022. That decision was to refuse the appellant's application for international protection. The appellant entered the United Kingdom on 28 September 2015 claiming asylum three days later. He appealed against an initial refusal of asylum but his appeal was dismissed at a hearing on 10 August 2016. He made a claim by way of further submissions on 1 September 2017 and it was the refusal of that second application which gave rise to the present proceedings.

### **The Appellant's Case**

2. The appellant repeated the arguments he had made in his earlier unsuccessful asylum appeal, that he could not return to Iraq as he feared the terrorist group Isis would target him as his father had previously held a low ranking position in the Ba'ath party. He was now in a relationship with a Romanian citizen who was settled in the United Kingdom and they lived together in Tottenham. The appellant's partner gave evidence at first instance that she did not wish to return to Romania as she loved living in United Kingdom. She had never been to Iraq.

### **The Decision at First Instance**

3. In the course of submissions before the First-tier Tribunal it was conceded by the appellant that there was no new evidence concerning the protection claim that had been before the previous immigration judge. The judge therefore held that there was nothing which would cause her to depart from the previous judge's findings. The appellant could relocate to Baghdad or the Iraqi Kurdish region. No adequate new evidence was put forward to establish that the appellant was not in touch with his family in Iraq. In consequence, the judge maintained the previous finding that the appellant was in contact with his family.
4. At [28] the judge set out her findings and reasons in relation to the claim under article 8. The judge did not accept that the appellant and his Romanian partner had been living together since 2016 or indeed that they were in a relationship now. Had they been the appellant would have informed the respondent of this fact earlier. There was a lack of adequate reliable independent documentary evidence of the existence of such a relationship.
5. The appellant had a private life in United Kingdom and at [40] the judge set out the proportionality balancing exercise and thereafter looked at the matter through the prism of the immigration rules, paragraph 276 ADE and section GEN 2.3 in appendix FM. There was inadequate evidence to establish that there were very significant obstacles to the appellant integrating into Iraq. The appellant had been away from Iraq for some years but he was a citizen of Iraq and spoke the national languages of his home country. He would be able to support himself and the judge dismissed the appeal.

## **The Onward Appeal**

6. The appellant appealed against this decision arguing that the judge had made perverse or irrational findings on matters that were material to the outcome. The original grounds of onward appeal were supplemented by a skeleton argument from counsel who appeared before me. The original grounds of onward appeal argued that the judge had failed to consider a letter from the Red Cross which, it was argued, indicated the appellant had looked for his family without success thereby supporting his claim to have lost contact with his family. Secondly, the judge failed to give consideration to article 15 C of the qualification directive in relation to the appellant's claim for humanitarian protection. Thirdly, the judge failed to give consideration to the evidence in the form of (a) WhatsApp messages between the appellant and his partner and (b) photographs and did not consider the insurmountable obstacles preventing the appellant and his partner enjoying family life together in Romania.
7. The First-tier Tribunal refused permission to appeal but on renewal Upper Tribunal Judge Owens granted permission finding it arguable that the judge had failed to consider updated evidence from the Red Cross about the inability to trace the appellant's family. That arguably undermined the finding that the appellant was still in contact with his family. The Upper Tribunal judge noted the respondent's concession that the appellant was unlikely to be in possession of a genuine and current CSID document. Although not pleaded in the grounds it was a Robinson obvious point (accepted by the respondent in the review 14 May 2023) that it was not possible for the appellant to obtain a CSID by proxy and the appellant would thus need to travel to his home area to obtain an INID. The Upper Tribunal acknowledged that the situation was complex because of the long history of the matter and the fact that the country background material in respect of civil documentation had moved on since the first asylum appeal back in 2016. The remaining grounds were said to be weaker, (by which I assume the UTJ was referring to the article 8 appeal) but she did not limit the grant of permission.

## **The Hearing Before Me**

8. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
9. In oral submissions counsel relied upon his skeleton argument in which he argued that the Respondent had accepted in the review of 14 May 2023 that the Appellant was unlikely to be in possession of a genuine and current CSID document because of the passage of time. This was a material change in the accepted risk in the light of the background evidence. The judge's failure to consider a letter from the Red Cross

dated 31 August 2018 which had been in the bundle before the FTT judge was a material error of law. The letter supported the argument that the appellant did not know the whereabouts of his family. That in turn impacted upon the ability of the family to assist the appellant in obtaining appropriate identification document upon return to Iraq. The determination was flawed and there should be a reconsideration of the appeal. The issue regarding the appellant's CSI document was more relevant now than it had been at the previous appeal in 2017. The judge had failed to consider the appellant's ability to be re-documented. There was an error in the judge's approach.

10. In reply the presenting officer stated that the letter from the Red Cross of 31 August 2018 did not take matters further and did not constitute new evidence. The judge's findings were still valid. The previous judge had found the appellant was not candid about what information he had concerning the whereabouts of his family. There was thus no new evidence to come into existence to support the appellant's claim since the dismissal of the earlier appeal in 2017 by Judge Burnett. The appellant's mother was still in the family home. The appellant had spoken to his family. The judge had pointed out that where the appellant lived was not in a contested area. If the appellant was in contact with his family they could assist him to get an identity document. The respondent's concession did not alter the picture. Counsel had no further comments to make in reply and did not make any submissions to me regarding the appellant's article 8 claim.

### **Discussion and Findings**

11. In the instant case before me, the judge hearing the appellant's appeal against refusal of international protection, had found no reason to depart from the previous findings of fact made by Judge Burnett. The appellant had not been candid at that earlier appeal with the tribunal as to the whereabouts of his family. Judge Head found the appellant was still not being candid about it. The appellant's argument was that he had put forward some new evidence which had not been before Judge Burnett which should have been dealt with by Judge Head in the second appeal. A poor photocopy of the letter from the Red Cross dated 31 August 2018 was indeed in the appellant's bundle that was before Judge Head. That letter post dated the decision of Judge Burnett but it is difficult to see how this letter took matters any further than a letter which was before Judge Burnett from the Red Cross which was dated 9 August 2017.
12. The letter of 31 August 2018 said that it was not possible to trace the appellant's family given the lack of information provided by the appellant. Whilst a judge does not have to set out each and every piece of evidence but must refer to material evidence, this further letter from the Red Cross does not take matters any further since in its effect it merely repeats what was before Judge Burnett and rejected by him. It

was not a material error for the judge not to specifically refer to it in terms.

13. The letter was put forward as evidence that the appellant was genuine in seeking to know where his family were but if in fact the position was that he knew where his family was and indeed was in touch with them the exercise in going to the Red Cross was simply to embroider his case further. Whether the appellant was genuine in approaching the Red Cross a second time, depended on an assessment of the appellant's credibility which Judge Burnett found was undermined a view with which Judge Head concurred. She made it plain that the appellant was not credible.
14. The appellant sought to argue that Judge Head was wrong and he, the appellant had never had contact with his family. The concession by the appellant's representative during the hearing before Judge Head that there was no new evidence to support the appellant's asylum claim meant that the appellant had no new evidence to challenge Judge Burnett's finding that the appellant was still in contact with his family. The red cross letter of 31 August 2018 was not new evidence which undermined Judge Head's view of the case. On that basis she was entitled to say that she would not go behind the finding of judge Burnett.
15. The second point argued by the appellant relates to the background information on whether citizens of Iraq can obtain identification documentation that would enable them to travel within Iraq and potentially obtain employment. The judge found that the appellant had been issued with a valid CSID which was currently still at the family home. Further the judge found that the appellant was in contact with his family. That being so, it was a relatively straightforward matter for the appellant to obtain appropriate identification documentation. The judge cited the country guidance authority of **SMO & KSP [2022] UKUT 110** which replaced all previous country guidance on Iraq.
16. Counsel's skeleton argument cited from the very detailed head note to **SMO** in particular sub paragraph 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.*

As the appellant was found to be able to access his existing CSID, he would be able to obtain a replacement as he would have access to the relevant information required. The subparagraph needs to be read in the context of the earlier country guidance given by the same panel and reported at **[2019] UKUT 400**. In that earlier decision the panel stated:

*The starting point, in considering this issue, must always be to consider and to make a finding about the actual availability of a CSID or INID. In the event that the appellant's CSID is at home in Kirkuk, it can be sent to him in the UK or taken to him upon arrival in Iraq and there will be no breach of Article 3 ECHR as he travels to Kirkuk.*

17. It was not necessary for the judge to go into details of how the appellant could obtain his documentation since on the evidence the CSID which the appellant would need as a starting point was in existence at the appellant's home. There is therefore no merit in the second ground of the appellant's onward appeal.
18. Correctly no submissions were made to me in relation to any article 8 claim. In granting permission Upper Tribunal Judge Owens indicated that this ground was weak and it was not pursued before me. The substantive claim was a claim for international protection on the grounds that the appellant could not return to Iraq. The judge rejected that on the basis there was no new evidence since the same claim was rejected by the previous judge, Judge Burnett. Further, the country guidance did not support the appellant's claim that he would be unable to access identification documents even allowing for the respondent's concession. In those circumstances I find that there was no material error of law in the judge's determination and I dismiss the onward appeal.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 6<sup>th</sup> day of December 2023

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

Signed this 6<sup>th</sup> day of December 2023

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge