



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001235

First-tier Tribunal No: PA/03509/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15th May 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

Taha Khalil Ibrahim
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Office

Respondent

Representation:

For the Appellant: Mr Moriarty Counsel instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr Melvin Senior Presenting Officer

Heard at Field House on 19 April 2024

Order Regarding Anonymity

An anonymity order was previously made the First-tier Tribunal Judge Wilsher. However, having ascertained that the applicant's fear of Article 3 ECHR harm is a lack of documentation in order to allow him to travel safely through Iraq, in accordance the Guidance Note 2022 No 2 and given the importance of open justice both parties agreed that it is appropriate to lift the anonymity order.

DECISION AND REASONS

1. This appeal comes before me for re-making. I set aside that part of the decision of First-tier Tribunal Judge Wilsher dated 15 October 2021 dismissing the appeal on Article 3 ECHR grounds for the reasons given in my error of law decision annexed to this decision at Appendix A.
2. Various findings were preserved. These will be dealt with in due course.

Appellant's background

3. The appellant is a citizen of Iraq of Turkman ethnicity who previously lived in Kirkuk, Iraq. He left Iraq at the age of 17 and travelled to Turkey, Greece and onto Sweden where he claimed asylum on 6 October 2015. His claim was dismissed by the Swedish authorities, and he then travelled to France living in the "jungle" before he travelled to the UK on 17 October 2018. His claim for asylum was refused on 8 June 2020 and his appeal was heard on 13 September 2021. He initially claimed to be at risk because he had been threatened by a group of Arab young men after an altercation in which one of the Arab men was stabbed by his friend and because of his ethnicity. This issue was settled by the judge who accepted the core of the appellant's claim but found that he was not at risk of serious harm in his home area on account of the previous altercation, given the passage of time, or on account of his ethnicity.

Issue in the appeal

4. The only remaining issue in this appeal is whether it would be a breach of Article 3 ECHR for the appellant to be returned to Iran because he is unable to get hold of his original CSID and therefore cannot travel safely to his home area in order to obtain an INID.

Procedural history

5. This appeal has a lengthy procedural history. There was a delay between listing the appeal for re-making after the error of law decision. When the appeal was listed for hearing, the country guidance had changed. The first hearing was converted to a case management hearing because the respondent had failed to comply with directions and raised new issues late in the day. The second re-making hearing was adjourned because the incorrect interpreter had been booked.
6. In the intervening period the situation in respect of redocumentation in Iraq has moved on. It is trite that when assessing the Article 3 ECHR risk the situation must be assessed as at the date of the hearing.

The hearing

7. The appellant attended the hearing in person. The appellant gave his evidence in the Turkman language through an independent court interpreter. The interpreter attended remotely. Communication was sometimes difficult because the interpreter spoke a Turkic language rather than Iraqi Turkman and the internet connection was poor. Nevertheless, we were able to proceed with the hearing. Questions were repeated or re-phrased as necessary, and the appellant and his representative did not complain that the appellant was not able to understand or that his evidence had been misinterpreted. Although imperfect, I considered the interpretation to be adequate. I took into account the difficulties in securing a Turkman interpreter, the delay in hearing this appeal and the previous adjournments. Neither party asked for an adjournment and I was satisfied that it was not appropriate to adjourn the hearing of my own accord because the appellant was able to participate sufficiently for the appeal to proceed fairly. A witness Mr Abdulqadir also attended to give evidence on the appellant's behalf. His evidence was given in English. The proceedings were recorded and there is a note of the evidence in my record of proceedings. I also

made a note of the submissions. Both representatives relied on their respective written arguments.

Documentation

8. At the outset of the hearing both parties confirmed they had the same documentation. This was complicated by the number of bundles on the electronic database. However, both parties had access to bundles A, B and C which contained the appellant's witness statements and the original SEF interview and asylum interview. I was also provided with an up-to-date position statement from the respondent and a skeleton argument from the appellant as well as a new bundle of evidence containing the statement from the witness.

Position of the respondent.

9. The respondent's position in respect of documentation appears to have changed from the date of the first decision on 8 June 2020. The respondent's refusal letter was premised on the basis that the appellant could obtain a new CSID with the assistance of his family in Iraq. At that time the country guidance was that CSIDs could be obtained by proxy or with the assistance of the Embassy in the UK. Further guidance was issued in SMO & KSP (Civil Status documentation Article 1) Iraq CG [2022] UKUT 110 (IAC). By the time of SMO the new INID was being rolled out across Iraq. More recently on the Secretary of State has confirmed that all Civil Status Offices in Iraq are issuing INIDs.
10. The current position of the Secretary of State as set out in the position statement drafted by Mr Melvin is that the appellant has not been truthful about contact with his family nor in relation to documentation. It is submitted that he has left his original CSID with his family in Iraq. It is said that in these circumstances the document could be posted to him in the UK by his family or they could meet him with the document in Baghdad allowing him to travel safely from Baghdad to Kirkuk, his home area where he is not at risk either as an ethnic Turkman nor because of the previous incident with a group of young men.

Position of the appellant

11. The appellant's position is that when he left Iraq he was in possession of his original passport, CSID card and National Registration document. He lost his passport in Greece because the agents confiscated it. He lost his identity documents in France in the "jungle". He retained photographs of the passport and National Identity card which he forwarded to the Secretary of State. The system in Iraq has now changed. It is not possible for him to obtain an INID from outside Iraq. In order to obtain an INID the appellant must attend his local civil registration office in Kirkuk in person. This would involve him travelling across Iraq as an undocumented ethnic minority Turkman and leave him vulnerable to violence from Shia militias and others.

Accepted findings

12. It is accepted by the Secretary of State based on the Country Policy and information note: internal relocation, civil documentation and returns Iraq October 2023 CPIN that all Civil Status Offices in Iraq have moved over to the new biometric system. The CPIN states:

“Following the replacement of the CSID with the INID, nationals of Iraq are no longer able to reapply for CSIDs either in Iraq or abroad and can only obtain an initial INID, in person, in the governorate they originate from. Whilst CSIDs are no longer being produced in Iraq, they can still be used to pass through checkpoints”.

13. It follows therefore that if the appellant does not have access to a CSID he will need to attend a civil status office in the governorate from which he originates to obtain an INID.

14. It is also accepted that all forced returns are to Baghdad in line with SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37 (IAC).

15. It is not possible for an individual to travel in Iraq without a CSID or INID. The position is as set out at 3.1.1 of the CPIN which states:

“The Civil Status Identity Card (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 Government of Iraq and are unlikely to permit an individual without a CSID or an INID to pass”.

16. And 3.2.3 which states:

“Where a person is unable to obtain a CSID or INID within a reasonable time frame, consideration must be given to their other means of support (i.e. family members etc). While a family may be able to provide support, it may not be possible for the returnee to access it. As an example, while a wealthy family based in Mosul could provide an undocumented person with food and shelter, the undocumented person would not be able to travel internally from their airport of arrival to Mosul without being at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 ECHR at the various security checkpoints along the route. In cases such as these, a grant of Humanitarian Protection is appropriate”

17. In line with this guidance Mr Melvin helpfully conceded that were I to find that the appellant is not able to obtain his original CSID from Iraq with the help of his family, his appeal will fall to be allowed pursuant to Article 3 ECHR as there will be a real risk to him travelling from Baghdad to Kirkuk at checkpoints from Shia militias. Further, he will not be able to access services.

Preserved findings relevant to the outcome of the re-making decision

- a) The appellant was credible in his account of being threatened in Kirkuk by Arab youths.
- b) The appellant is not at risk of serious harm in Kirkuk.
- c) The agent confiscated his Iraqi passport in Greece.
- d) The appellant did not have his CSID document in the UK.

- e) The appellant is in touch with his family in Iraq and would be able to obtain a replacement CSID or details of his family book which would allow him to obtain the replacement document with the assistance of the Iraqi Embassy in the UK (my emphasis).

Burden and standard of proof

18. The burden of proof is on the appellant to demonstrate to the lower standard that there would be a real risk or reasonable likelihood of him being subject to serious harm contrary to Article 3 ECHR.

My findings and reasons

19. The appellant was cross examined at length by Mr Melvin in respect of contact with his family in Iraq and in respect of his documents. It is trite that a witness may lie or exaggerate in respect of some of his evidence but be truthful about other aspects of his evidence.

Contact with his family

20. First-tier Tribunal Judge Wilsher did not accept that the appellant had lost contact with his family because of the appellant's lack of detailed evidence about what attempts he had made to contact them. The appellant's oral evidence in this appeal was similarly vague. He stated that he had not had any contact with them since he left Iraq. He stated that he had tried and failed but there was a dearth of detail in his new statements since his appeal was heard in 2020 to the present date. His evidence was that he had contacted the Red Cross but the letters confirming this had been lost in a house fire. This may have been the case. In my opinion what was lacking was any evidence of other attempts to contact his family.
21. The appellant's oral evidence was that he set up Facebook in Iran prior to leaving as a young man of 17. I find it surprising that he has not given more evidence about his attempts to contact his family through Facebook. He states that his parents do not have Facebook and are old and that he did not have many friends in Iraq, but I agree with Mr Melvin that it is likely that he set up Facebook as a way of staying in contact with others. His father was a police officer and the appellant's family lived in the city of Kirkuk not in a village. The appellant went to school until the age of 16. From this I infer that his family was middle class. His evidence is that he had wider family in Iraq - he travelled to Turkey with a paternal cousin and has two uncles. He refers to a maternal uncle in his statement. I find that if the appellant had genuinely wanted to contact his family, he would have tried to locate his family through Facebook or through other relatives, friends or contacts in Iran and he would be able to provide evidence of this. This was raised as a specific issue in the appeal decision of 2021 and the appellant has not explained very clearly what he has done to try and contact his family since then, either in his witness statements or in his oral evidence. On this basis I do not depart from the preserved findings of the First-tier Tribunal Judge Wilsher. I find to the lower standard that the appellant is in touch with his family in Iraq.

What happened to the original CSID?

22. This of course does not mean that he has not been truthful about other aspects of his claim. The preserved finding by First-tier Tribunal Judge Wilsher was that the appellant did not have his original CSID card in the UK, but that he could obtain a replacement document with the assistance of his family or the Iraqi Embassy. The inference is that the judge accepted the appellant's evidence that he had lost his documents 'en route' to the UK. Nevertheless First-tier Tribunal Judge Wilsher did not make an explicit finding in respect of this. The position has manifestly changed on the possibilities of obtaining a CSID from outside Iraq.
23. Mr Melvin's position is that the appellant left his CSID card in Iraq with his parents. The appellant can obtain it from them either by them posting it to him in the UK or by them meeting him with the document on his arrival in Baghdad. I agree with Mr Moriarty that the respondent's position does seem to have to have changed somewhat in line with the changing guidance on documentation because there appears to be some acceptance in the original reasons for refusal letter that the appellant does not have his document but can obtain a replacement from Iraq with the assistance of his family.
24. My starting point is the preserved finding that the appellant does not have his original CSID in the UK.
25. I turn to the appellant's evidence about his documents. Shortly after his arrival in the UK the appellant had a screening interview. In his screening interview he stated that he had lost his documents in France but that he might be able to obtain replacements from the Embassy. He described travelling out of Iraq by bus using his own passport into Turkey then to Greece, Serbia, Macedonia or Croatia then to Denmark before travelling to Sweden where he claimed asylum. After his claim was rejected in Sweden, he travelled to France where he remained in the "jungle" before travelling illegally to the UK in a lorry. The appellant was interviewed in Kurdish Sorani which is not his main language within 24 hours of arriving in the UK after camping out in France.
26. At his substantive interview which took place in January 2020 with an Iraqi Turkman interpreter he repeated that he travelled to the Iraqi/ Turkish border by bus and legally entered Turkey using his own passport. He initially stated that he lost his documents in Greece, but he then clarified at some length that he lost his Iraqi passport on a boat between Turkey and Greece because his bags were taken by the agents and that his other two identity documents were in a bag with his money which was stolen in France. He gives a very detailed account. He explained that he left Iraq with all three documents and that he stayed in a hotel in Turkey. He had to present his Iraqi passport to the hotel in Turkey so took a picture of it to keep it safe which he kept on Facebook. After his substantive interview the appellant provided the UK authorities with a copy of his passport which was issued in in 2015 and a copy of his Iraqi national identity card.
27. His evidence has consistently been that he entered Turkey with his Iraqi passport. The appellant's oral evidence was consistent with this account and Mr Melvin's cross examination did not undermine his evidence. The fact that he crossed the border lawfully using a valid Iraqi passport is consistent with his evidence that he travelled from Kirkuk to the Iraqi border by bus.

28. The appellant's evidence has always been that he left Iraq not only with his passport but with two other forms of Iraqi identity. His oral evidence is that he did not leave any documentation with his family in Iraq. Mr Melvin's cross examination did not undermine his evidence in this respect. I note that in answer to question 268 at the substantive interview the appellant states "We have different IDs, different sort of ID, Iraqi National ID and passports" he then said "in Kirkuk or Iraq in general when you are over 18 they asked you about your ID". In answer to question 271, he states; "They all got lost. I have my Iraqi ID my other ID and a passport I lost it". I find that in his response to question 271 one of the documents he is referring to is the CSID.
29. The appellant's oral evidence was that he would not have been able to leave Iraq without a CSID card and that he showed all three of his documents to the authorities at the border. Mr Melvin submitted that there was no suggestion in the background evidence that the authorities at the Iraqi/Turkish border would need to see a CSID card. Neither party referred me to any background evidence which pointed either way in this respect.
30. I also consider the appellant's evidence against the country background material in general.
31. In 2015 when the appellant left Iraq the country was unstable. The country guidance AA (Article 15 (c))[2015] UKUT 544 (IAC) promulgated in May of 2015 was that a civilian, simply by virtue of his presence in one of the contested areas which included the governates of Kirkuk was at real risk of suffering serious harm of the type identified by Article 15(c) of Council Directive 2004/83/EC. AA endorsed the earlier guidance of MK (documents -relocation) Iraq CG [2012] UKUT 00126 (IAC) states at [22]:
- "It is common ground that the most important document is the CSID. The evidence of the experts and UNHCR is that without the CSID card it is impossible to access any of the other documents listed above, and this has a clear impact on ability to move around Iraq, to relocate within Iraq and to enjoy socio-economic rights, housing and food rations and to access aid and humanitarian support".
32. Prior to INID the CSID was the document which allowed you to travel within Iraq. The appellant took a 36-to-38-hour land journey by bus through Iraq to the Turkish border at a time when Iraq was unstable. His oral evidence that he would not have been able to leave Iraq without his CSID card is consistent with the background information. He knew that he would need the CSID card to identify himself in case he was stopped at a checkpoint. Although I am not satisfied that there is any reason that the Turkish authorities would want to see this document, I find that it is plausible and not contrary to the background evidence that on the Iraqi side of the border, the Iraqi authorities would want to see his CSID card as well as his passport before permitting him to leave Iraq and that he showed them both documents along with his Iraqi Registration document.
33. Further the appellant was a 17-year-old boy fleeing his country to set up a new life in Europe. He knew that he would be required to demonstrate his identity in future including his age, nationality, and town of birth. This is consistent with him taking his original documents with him. I find that his evidence is consistent with the background evidence on documentation in Iraq which stresses the fact that the CSID is of the utmost importance to Iraqi citizens. The appellant stated

that he showed these documents to the Swedish authorities but that they wanted an original passport which he had lost at that point. I also note and take into account that the core of the appellant's claim was accepted to be detailed and consistent with the background evidence by the respondent and his account was found to be credible by the judge. The judge also found that he gave a credible account of his Iraqi passport being taken by the agents. The appellant has good general credibility apart from his evidence about being in contact with his family.

34. Having considered the totality of this evidence, I find that the appellant left Iraq with his original CSID card and that on that basis, even if he remained in contact with his parents, it would not be possible for them to post it to him or meet him with it because they do not hold it. I also find that they would not be able to assist him to obtain a replacement CSID from Iraq because this is no longer possible.
35. First-tier Tribunal Judge Wilsher made a preserved finding that the appellant did not currently have his CSID card in the UK.
36. For the sake of completeness, I go on to make further findings about what happened to the document. The appellant's consistent evidence has always been that his identity documents were stolen in France when he was in the "jungle" trying to enter the UK. He has not really given a very clear explanation as to why he had a digital image of his Iraqi Registration Document available to him which he could give to the Secretary of State and no digital image his CSID, however this does not alter his evidence that he had neither original document on his arrival in the UK. In the screening interview which took place on 18 October 2018 within 24 hours of his arrival, he stated from the outset that he had all his ID's stolen in France. I give weight to the fact that this evidence was given six years ago in 2018 by the appellant when he was twenty years old. Unusually for an Iraqi asylum seeker, he was able to produce some images of his documents as set out above. This account was repeated in his substantive interview and in his witness statement. His oral evidence was also consistent. I also find it plausible that belongings could be lost or stolen in the chaotic and difficult circumstances in the "jungle".
37. The Tribunal also had the benefit of hearing evidence from a witness Mr Abdulqadir. He has been granted refugee status in the UK at first instance which as Mr Melvin acknowledged means that his own account was accepted by the respondent. Mr Abdulqadir gave detailed evidence very fluently in English with great confidence. His evidence was entirely consistent with his written statement. He confirmed that he was a journalist in Iraq and therefore documented his journey to the UK by filming it. He has written a book about his experiences.
38. He explained that he was in the "jungle" in Dunkirk with a few other friends. The French police used to regularly evacuate the camps which were then reestablished. He explained that some other men (who he now knows to be the appellant and a friend called Kaiwan) had left their possessions in bags whilst they were away from the camp trying to organise their journey to the UK. The camp was evacuated in their absence. Mr Abdulqadir's friends at the camp were fed up with being placed in a position where they had to look after the appellant's possessions. There was an argument between these men and the appellant and his friend and the friends decided to destroy the possessions. The

witness saw them destroy the appellant's CSID as well as a German document belonging to the appellants' friend Kaiwan. He knew it was a CSID because as an Iraqi national he is familiar with the document.

39. Mr Abdulqadir did not meet the appellant until he encountered him in a refugee camp near Lille called Armenties. At that point he realised that the appellant was one of the individuals whose identity document had been destroyed. The two became friends. He did not mention what had happened to avoid issues between the appellant and his own friends. They later returned to the jungle.
40. The witness showed me two photos of the appellant taken by himself. The first was taken at the refugee camp in Armenties and the second was taken in the "jungle" at Dunkirk. Mr Melvin submitted that the witness was not telling the truth and had come to assist his friend. However, I found him to be an impressive witness. His evidence was not undermined in cross examination. I also give weight to the photographic evidence and to the fact that his evidence was consistent with the appellant's evidence given six years ago that his documents were lost in France.
41. Having accepted that both the appellant and the witness are credible witnesses in terms of their evidence about the destruction of the documents, I find in line with the preserved finding that the appellant lost his CSID in France and that he did not enter the UK with the original document.
42. Having found that the appellant does not have a CSID in the UK and that he has not left the original document with his family in Iraq, I find that in order to redocument himself he would be required to travel to Kirkuk from Baghdad in order to obtain an INID in person. In line with the respondent's guidance and Mr Melvin's concession, I find that this would involve a real risk of treatment contrary to Article 3 ECHR and I allow the appeal on this basis.

Notice of Decision

1. Appeal allowed under Article 3 ECHR.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 May 2024

Appendix A



IAC-FH-CK-V1

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

Appeal Number: PA/03509/2020
UI-2021-001235

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2022**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

**TI
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr Burrett, Counsel instructed by JD Spicer Solicitors
For the Respondent: Ms Lecointe, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq of Turkmen ethnicity born on 12 February 1998. Prior to leaving Iraq he lived in Kirkuk. He appeals against the decision of First-tier Tribunal Judge Wilsher dated 15 October 2021 dismissing his appeal against a decision dated 8 June 2020 to refuse a protection and human rights claim. Permission to appeal to the Upper

Tribunal was granted on 18 December 2021 by First-tier Tribunal Judge Veloso.

Appellant's Background

2. The appellant claims that there is a real risk of serious harm to him if he is returned to Iraq. He claims that prior to leaving his home area of Kirkuk, he and a friend were attacked by a group of Arab men and that he would still be at risk from them.

The Respondent's decision

3. The respondent's decision was made some time ago on 8 June 2020. The respondent accepted that the appellant was of Turkman ethnicity, that he and his friend had been attacked by a group of Arabs and that following the incident the group had attacked his home and searched for him. It was not accepted that he would still be at risk on return. It was not considered that his claim would breach his rights under Article 15(c). The respondent considered the difficulties that the appellant would face in returning to Iraq in accordance with SMO, KSP & IM (Article 15(c); Identity documents) Iraq CG [2019] UKUT 00400 (IAC).("SMO1"). It was accepted by the respondent that the appellant would require a CSID card or an INID in order to live and travel internally in Iraq without encountering conditions contrary to Article 3 ECHR. The Country Guidance at that time was that it was possible to obtain replacement CSID cards through Iraqi Consular facilities depending on the documents available and critically the availability of the volume and page reference of the entry in the Family Book in Iraq. It was said that most Iraqi citizens can recall these details or that they can obtain the details with assistance from family members in Iraq. It was said that INID terminals will only issue identity documents in person.
4. The position of the respondent was that the appellant could obtain a replacement CSID from the Consular facilities in the UK with the assistance of his family and that he would also be able to obtain an ID card in order to obtain a passport or Laisser Passer to be able to travel to Iraq. Once in Kirkuk the appellant's family could assist him to avoid destitution.

The Decision of the First-tier Tribunal

5. The judge noted that the appellant's account of being attacked by a group of Arab men and being threatened by them was accepted by the respondent. The judge found that the appellant's family continued to reside in Kirkuk and that the attack was motivated by revenge and was not a blood feud. He concluded that the appellant was no longer at risk given that it is not clear what happened to the victim, that the appellant himself had not been the aggressor and because of the passage of time. The judge also found that there would not be a risk of a random encounter in the street because of the change in the appellant's appearance.

6. The judge found it was implausible that the appellant had not contacted his family to inform them that he had reached a place of safety. In summary, the judge found that the appellant had not given a detailed enough account of failed attempts to contact his family and in these circumstances the judge found that he had not shown that there was no reasonable likelihood that he could not contact his family.
7. The judge accepted that the appellant had lost his documents and that he was not in possession of a CSID card. The judge also accepted that the appellant had forgotten his Family book number because of the age at which he entered the UK. Nevertheless, having found that the appellant would be able to contact his family in Iraq, the judge found that he had not discharged the burden of proof that his family could not assist him to obtain a CSID card from the Consulate in the UK, particularly as he has copies of his documents including his Iraqi passport. He would therefore not face any risk of Article 3 ECHR treatment.
8. The judge dismissed the appeal.

The Grounds of Appeal

Ground 1: The judge made inadequate findings in respect of the appellant's ability to obtain a replacement CSID card

9. The judge failed to make a finding as to whether the appellant would be able to obtain a replacement reasonably soon after arrival in Iraq in accordance with AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC). This is in the context that the judge had found that there was no duty for the appellant to apply for the CSID card at the Iraqi Consulate in the UK and that it was reasonably likely that he would not be able to recall the volume and page number of the Family Book.

Ground 2: The Tribunal erred in failing to conduct an enquiry consistent with AAH(Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 212 (IAC)

10. The judge failed to make any findings on what the appellant's circumstances would be in Baghdad, all the circumstances in respect of how he would obtain a CSID card and how he would be able to get to the IKR in the absence of documents.

Ground 3: The judge erred in respect of the appellant's refugee claim in circumstances where he accepted that was insufficiency of protection.

11. The judge accepted that the appellant was subject to violence by a large group of men who visited his family home. The judge gave inadequate reasons for finding that the risk would have evaporated over the passage of time. The judge's finding that there is an absence of risk is a speculation when the family home was targeted repeatedly. The judge

failed to take into account that the threats did not continue because the appellant left his home area after the incident.

Permission

12. Permission was granted in respect of Grounds 1 and 2. Nevertheless the actual grant of permission did not expressly limit the grounds pursuant to rule 22(2)(b) of the Upper Tribunal Procedure Rules and in accordance with [EH \(PTA: limited grounds; Cart JR\) Bangladesh \[2021\] UKUT 0117 \(IAC\)](#) all grounds are therefore arguable.

Rule 24 response

13. The respondent submitted a rule 24 response dated 9 February 2022 resisting the grounds. The issue of redocumentation was intrinsically linked to the credibility of the appellant's assertion that he had lost family contact. It is maintained that the appellant can use a proxy to obtain a replacement CSID prior to leaving Iraq.
14. Further the respondent cross appealed and submitted that the judge's reasoning that the CSID would only be valid in the Kirkuk region rendering internal relocation to the IKR unreasonable was inadequate and not supported by any reference to objective evidence or Country Guidance.

Submissions

15. Mr Burrett submitted that the respondent's position in the original refusal was that the appellant would be removed to Iraq on a Laisser Passer and would need to obtain the document following removal. The judge erred by failing to grapple with the central issue of whether the appellant would be able to obtain a CSID within a reasonable period of time after he had arrived in Baghdad.
16. He submitted that it would be difficult for the appellant to contact his family members and they would need to make the arrangements to get the necessary paperwork which involves obtaining a large number of different documents. Even if the appellant could obtain the document with the use of a proxy there was no indication of how long this would take and in the meantime the appellant would be living in conditions in breach of Article 3ECHR. The judge failed to consider this aspect at all, and this error is material to the outcome of the appeal.
17. Ms Lecointe submitted that the decision was sustainable. The judge found the appellant not to be credible in relation to his ability to contact his family. It was open to the judge to find that the appellant could obtain a CSID from the UK with the help of his family and therefore the judge did not need to consider the situation in Baghdad because the appellant would be travelling to Bagdad with the necessary documentation.

Discussion and conclusions

Ground 1

General comments

18. The decision in this appeal was promulgated on 15 October 2021. The grounds were prepared on 28 October 2021.
19. The question for the judge when evaluating the Article 3 ECHR risk on the basis of a lack of documentation in October 2021 was whether the appellant would be able to obtain a CSID or INID either in the UK prior to travel, or in Baghdad within a reasonable time for the purpose of onward travel. This appellant was to be returned to Baghdad and his proposed destination for internal relocation is Kirkuk where he resided prior to leaving Iraq.
20. Before the judge, the respondent accepted that the appellant would require a CSID in order to access services and to work and to travel from Baghdad to Kirkuk. However, it was the respondent's position that a CSID could be obtained from the Iraqi Consulate in the UK or in Iraq with the help of the appellant's family by using a proxy if the appellant knew his family book details. The respondent is also recorded as submitting that the appellant's passport number would be sufficient to obtain a CSID in the UK (This is manifestly incorrect). It was submitted that although the new identity card system was replacing the CSIDs, it had not been rolled out completely. The respondent also submitted that the new identity card system was not used by Consulates.
21. Counsel for the appellant referred to the June 2020 CPIN which was relevant at the date of the appeal hearing which covered the relevant documentation that would be needed by the Consulate in London to secure a CSID. This includes the family book details. It was argued that the ability to use a proxy had reduced due to the introduction of the INID. The appellant referred to the evidence in SMO1 that the INID system was being rolled out and that an applicant would have to attend their local CSA office in person to obtain one.
22. The appellant also argued that it would not be reasonable for the appellant to return to the IKR as a non-Kurd would because a residence permit is required for Arab, Turkmen and other minority IDP's.
23. It is my view that neither party appears to have considered that by the date of the appeal the Secretary of State had accepted in the June 2020 CPIN the difficulties in obtaining a CSID card from the UK, which had been articulated by Dr Fatah in previous country guidance cases. I refer to section 2.6.16 of the June 2020 CPIN Iraq: Internal relocation, civil documentation and returns. The relevant part of the CPIN reads as follows:

2.6.15 Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe

the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

24. And at 2.6.16:

Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead, a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq.

25. There was no suggestion in the CPIN that a 1957 registration document could be used to travel within Iraq.
26. It seems to me that the error made by the judge was to find that because the appellant was in contact with his family in Iraq, he would be able to obtain a CSID from the Iraqi Consulate in the UK when it had been accepted by the respondent in the CPIN that even with the family book details and copy documents that it would be "highly unlikely" that he would be able to obtain a CSID from the UK.
27. The judge was not assisted by the respondent's representative who did not appear to have drawn his attention to this document.
28. Somewhat problematically for the appellant, this was not pleaded specifically as a ground of appeal. Ground 1 focuses exclusively on the failure of the judge to make findings on the position of the appellant in Iraq on the basis that the respondent's case was that the CSID document would need to be obtained in Iraq with the assistance of a proxy. From my summary of the refusal above, this is not a correct summary of the respondent's position. The respondent both in the refusal letter and the submissions argued that the appellant knew his Family Book number or alternatively could contact family members in Iraq and obtain the necessary details to be able to obtain the CSID from within the UK.
29. The judge made clear findings which have not been challenged by the respondent that although it is likely he cannot remember his Family Book details that he has not demonstrated that he is unable to contact family in Iraq to provide him with the necessary information.
30. Since then, however there has been new country guidance on Iraq **[SMO & KSP (Civil status documentation; Article 15)] Iraq CG [2022] UKUT 110 (IAC) ("SMO2")** which was promulgated two days prior to the error of law hearing. Applying common law principles, that country guidance

decision is binding upon me in my analysis of the First-tier Tribunal decision.

31. There has also been a delay in writing up this decision due to illness and since then the Secretary of State has also been published a new Country Policy and Information note: internal relocation, civil documentation and returns, Iraq dated July 2022.
32. Since the original hearing the Country Guidance has moved on. It is now accepted that it is only possible to obtain a CSID via the Iraqi Consulate in the UK where the relevant CSA office in Iraq has not transferred to the digital INID system and even then, this will be dependent on the documents available -critically the availability of the volume and page reference of the entry of the Family Book in Iraq. Such details can be obtained from relatives on the father's side. If the CSA office has not been digitalised, the Iraqi Consulate can send the application to the office in Iraq who will process the application, issue the CSID and send the document back to the Iraqi Consulate.
33. The question therefore for the Tribunal to decide following the Country Guidance is firstly, (it being found that the appellant does not hold a CSID and that he can contact family members in Iraq to assist him with his Family Book details) whether an INID terminal has yet been installed at the Civil Status Affairs Office in his local office in Kirkuk. If the answer is no, it would not be possible for this appellant either to obtain his CSID card from the UK nor to travel to the INID terminal in his home region because in order to obtain the INID card he would need to travel in person and he does not hold the necessary documentation to allow him to travel. SMO2 does not list Kirkuk city as a place which is still issuing CSID cards.
34. I am satisfied that the situation has moved on in that there was an "obvious" error by the judge in deciding this issue because the current Country Guidance was not in existence at the date of the decision. I take into account that this appeal concerns Article 3 ECHR and the seriousness of the consequences for the appellant in this respect given the County Guidance.
35. On this basis, I set aside that part of the decision which relates to Article 3 ECHR in respect of identity documents in order for that part of the appeal to be re-made. I also set aside the judge's finding that the appellant can obtain a CSID from the Iraqi Consulate within the UK.

Ground 2

36. Having found that there is an error in the determination in respect of the appellant's ability to obtain a CSID from the UK, Ground 2 falls away. If the appellant's Civil Status Office does not have an INID terminal, on the judge's findings the appellant will be able to obtain a CSID from the UK and there is no error by the judge in failing to take into consideration the appellant's circumstances in Baghdad because the appellant will be

returning with the necessary documentation and will be able to travel to his home area and seek employment. Findings about the appellant's situation in Baghdad will only be needed if he is not able to obtain a CSID from the UK and can only obtain it in person from his local CSA office.

Ground 3

37. Mr Burrett did not vigorously pursue this ground. However for the sake of clarity I find that the judge's finding that the appellant would no longer be at risk in his home area is manifestly adequately reasoned. The judge was entitled to find from the background information at [11] that Turkmen people remain a significant minority in the city [of Kirkuk] and have strengthened their position since the Iraqi government returned to control the city in 2018. At [15] the judge's reasoning that the events in 2015 did not amount to a blood feud because the appellant's family members were not attacked is sustainable in light of the expert evidence. At [16] the judge's reasoning included that it is not known what happened to the victim or to the appellant's friend and that there is no evidence of an ongoing search for the appellant. At [17] the judge noted that the appellant himself did not harm anyone from the opposing group and that the incident happened six years ago and it is not clear why the young men would still have any interest in targeting the appellant given the passage of time. Further the appellant did not wield a knife; it is unclear how they would locate him if he returned; and the group was not an organised group that would have had any institutional means of keeping records on the appellant. Finally, his appearance will have changed. These reasons are manifestly adequate and sustainable on the evidence before the judge.
38. Ground 3 is not made out.

Cross appeal by the respondent

39. The Secretary of State asserts that the judge erred in finding that the appellant's CSID card would only be "valid in the Kirkuk" region because it is unsupported by any reference to objective evidence or Country Guidance caselaw. I am satisfied that any such error is immaterial to the outcome of the appeal because the judge found that the appellant was not at real risk of serious harm in his home area of Kirkuk from the gang of Arab youths and can safely reside there. Whether the appellant is able to relocate to the IKR is therefore not relevant to the outcome of the appeal.

Disposal

40. There are very few factual findings to be made in this appeal. I therefore find it appropriate to re-make the appeal in the Upper Tribunal.
41. I preserve the following findings:
- a) The appellant is a Sunni Muslim of Turkman origin
 - b) The appellant is from Kirkuk.

- c) He was working as a mechanic
- d) In 2015 he was in a café when his friend was attacked by a group of Arab youths and drew a knife stabbing one of the Arab youths.
- e) The group of youths visited his home assaulted his father and threatened to kill him. They visited his home a further five occasions in one week.
- f) The incident did not have the characteristics of a blood feud.
- g) The appellant is no longer at risk of serious harm from this group.
- h) The appellant is not at risk of serious harm for a Refugee Convention reason in Kirkuk. He is not at risk of serious harm from this group of men contrary to Article 3 ECHR in Kirkuk.
- i) The appellant left Iraq at the age of 17 in 2015. The authorities in Greece confiscated his passport. He has a copy of his passport. (this is an error and should read agents instead of authorities)
- j) The evidence does not demonstrate that there is no reasonable likelihood that the appellant is not able to contact his family.
- k) The appellant does not know his Family Book details.
- l) The appellant does not currently have a CSID card.

Decision on error of law

- 1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that it is unsafe and cannot stand in its entirety.**
- 2. The decision of the First-tier Tribunal in relation to the human rights ground and specifically to Article 3 ECHR is set aside.**
- 3. The finding that the appellant will be able to obtain a CSID from the Iraqi Consulate in the UK and that he will not be at risk of treatment contrary to Article 3 ECHR on the basis of a lack of an appropriate identity document are set aside. The findings at [41] above are preserved.**
- 4. The appeal is adjourned for re-making on a date to be notified.**

Directions

I make the following directions:

- a) The re-making hearing is to be listed for a face-to-face hearing on the first available date after the 15 February 2023 with a time slot of 1.5 hours.

- b) Within 14 days of the date of the issue of this notice the appellant must notify the Tribunal if an interpreter is required.
- c) Within the same timeframe the appellant must file and serve on the respondent and the Tribunal details of his local CSA Office and any evidence that the new digitalised system has been rolled out there to the extent that he will be required to attend in person to obtain an INID card.
- d) The respondent has a further 28 days from the service of this information to make the necessary enquires in line with their indication in SMO2 that such enquires can be made and to file and serve the result of the enquiries on the appellant and the Tribunal.
- e) In the same timeframe the respondent is to file and serve an updated position statement in the light of the result of the enquiries on the ability of the appellant to obtain a CSID card or INID from within the UK or within a reasonable time on arrival in Iraq as well as submissions on whether the appellant will be at risk of treatment in breach of Article 3 ECHR in Baghdad without a CSID card or INID card.
- f) The appellant is, no later than 21 days prior to the hearing, to file a consolidated up to date bundle of evidence. The relevant notices must be served in respect of any new evidence.
- g) The appellant is to file and serve a position statement/skeleton argument in response to that of the respondent no later than 7 days before the resumed hearing.

Anonymity Direction

42. I consider it appropriate to maintain the anonymity order made by the First-tier Tribunal in the following terms:

“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Signed
2022

R J Owens

Date 15 December

Upper Tribunal Judge Owens