



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

**Case No: UI-2021-001967**  
**First-tier Tribunal No:**  
**PA/52468/2020**  
**IA/02104/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 08 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**  
**and**  
**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**DMA**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: The appellant appeared in person and is unrepresented  
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 15 February 2024**

**ANONYMITY**

**Although no anonymity direction was made by the First-tier Tribunal (“FtT”), as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, DMA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.**

## **DECISION AND REASONS**

### **INTRODUCTION**

1. The appellant is a national of Iraq. His appeal against the respondent's decision of 2 November 2020 refusing his claim for international protection was dismissed by First-tier Tribunal ("FtT") Judge Athwal for reasons set out in a decision dated 5 August 2021. The decision of Judge Athwal was set aside for reasons set out in the decision of Upper Tribunal Judge Mandalia issued on 30 November 2023. We return to that error of law decision below.
2. The Tribunal has received a letter dated 12 February 2024 from Halliday Reeves Solicitors confirming they no longer act on behalf of the appellant. The appellant appeared before us in person and without representation. He has been assisted throughout the hearing by an interpreter arranged by the Tribunal. The appellant and interpreter were able to communicate without any difficulty in the Kurdish Sorani language. The appellant confirmed that he no longer has legal representation, and he was content for the hearing of his appeal to proceed.
3. We record from the outset that the Tribunal had received an application made by Halliday Reeves Solicitors on 1 February 2024, for permission to adduce further evidence regarding the availability of a CSID in Iraq. Two items of background material are relied upon that refer to the transition from the CSID to an INID as the only official identity documents. We admit that evidence, and we have had regard to that background material in reaching our decision.

### **THE PRESERVED FINDINGS AND THE ISSUE**

4. Although the decision of Judge Athwal was set aside, in his error of law decision Judge Mandalia directed that the discrete issue that remains as to the availability of a CSID/INID is a matter that can be determined in the Upper Tribunal. It is against that background that the appeal is listed for hearing before us. The findings made by Judge Athwal which are preserved, are set out at paragraph 14 of the decision of Judge Mandalia:

"14. The fact that the appellant is a national of Iraq, and of Kurdish ethnicity, is uncontroversial. The following findings made by First-tier Tribunal Judge Athwal, which are unchallenged, are preserved:

- a. It is clear from the findings of Judge Garbett that the appellant did not have an actual or perceived association with ISIL. The appellant would not be the focus of attacks by ISIL. ISIL are not a significant threat in Makhmour; (*paragraph 64*).
- b. The appellant is a single male of fighting age and does not speak Arabic and has been absent from the Makhmour area for a significant period of time. (*paragraph 67(i)*)

- c. The appellant has never claimed that he or his family had an actual association with ISIL. There is no reason why he would be on the checklist of any individual security actors. *(paragraph 67(ii))*
- d. The appellant would be 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. *(paragraph 67(iii))*
- e. The appellant would not be at real risk on return to Iraq on the basis that he will have pro-ISIL political opinion imputed to him. *(paragraph 68)*
- f. Apart from Mosul and the outskirts of the city, most of Ninewa is controlled by the Iraqi army and as such there is not a threat from the militia that would be particular to the appellant. *(paragraph 73).*
- g. The appellant was not politically active in Iraq and he did not raise his political activism in his first appeal in 2017. There is no evidence that the Iraqi authorities are monitoring the sur place activities carried out by nationals currently residing in the UK or that they are asking those such as the appellant to show their Facebook pages upon return to the country. *(paragraph 74)*
- h. The Facebook posts provided show that the appellant first posted political material in 2018. The appellant has not explained why there is an inconsistency between his written accounts, the dates of his Facebook posts and his oral evidence. *(paragraph 81)*
- i. The Tribunal has not been provided with any evidence to suggest that KRI or Iraqi authorities have seen the appellant's Facebook posts. *(paragraph 83)*
- j. The timing of the appellant's posts, the limited evidence of his activism and the contradictions between his various accounts leads the Tribunal to find even on the lower standard that the appellant is not a credible witness. The appellant is not a genuine political activist, this is an attempt to bolster a weak asylum claim *(paragraph 84)*
- k. Judge Garbett did not find the Appellant to be a credible witness. Judge Athwal did not find him to be a credible witness either: the appellant is willing to manufacture a political belief in an attempt to bolster his asylum claim. *(paragraph 88)*
- l. Judge Garbett found that in 2014 the appellant fled his village with his mother, brother and sister and moved to his maternal uncle's home which was nearby. His mother and siblings remain with his uncle. The appellant must have known where his family were in 2016-2017. *(paragraph 85)*
- m. The appellant has not provided any evidence as to how he lost touch with his family since he last spoke to them. *(paragraph 89)*
- n. There is no explanation as to why Mr Tofiq was not asked to go to the appellant's uncle village and make enquiries about the appellant's family. *(paragraph 90)*
- o. The appellant has not lost contact with his maternal uncle, his mother and his siblings. *(paragraph 91)*

- p. In accordance with the country guidance, there is no general risk in KRI whether under Article 15(c) or Article 3 ECHR. The appellant does not fall within the enhanced risk category set out at paragraph 314 of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400. The appellant can produce evidence of recent entry from the UK to dispel fears. There are no entry sponsorship requirements for Erbil and Sulaymaniyah and as a Kurd he will not require a sponsor to live in Dohuk. The appellant will also qualify for £1500 settlement grant if he chose to voluntarily return. (*paragraph 94*)
- q. Judge Garbett stated at paragraph 14(iv) of his decision that the appellant had worked in Erbil. The Appellant lived and worked in Erbil before he came to the UK. In doing so he would have formed relationships there. The appellant has not provided any explanation as to why he could not return to Erbil again. (*paragraph 94*)
- r. As far as the Article 8 claim is concerned.
- i. The appellant arrived in the UK in 2015. The appellant still speaks Kurdish Sorani and has maintained ties with others from that community whilst living in the UK. He still has close family members in KRI. (*paragraph 105*)
  - ii. The Appellant has not described any situation or factors that would amount to exceptional circumstances such that it would render refusal a breach of Article 8 because it would result in unjustifiably harsh consequences for him. (*paragraph 106*)
  - iii. The appellant's removal from the UK would interfere with his private life and that would engage Article 8. (*paragraph 107*)
  - iv. The public interest in maintaining effective immigration controls significantly outweighs the individual rights of the appellant. Consequently, the appellant's removal would be proportionate. (*paragraph 109*)"

## **THE EVIDENCE**

5. The appellant confirmed he has not prepared any further witness statement since the 'error of law' hearing in October 2023. We have a copy of the appellant's bundle that was relied upon before First-tier Tribunal Judge Athwal in July 2021. The bundle includes a copy of a witness statement signed by the appellant on 11 January 2021. The focus of that witness statement is upon the appellant's response to the respondent's decision to refuse his claim for international protection and the claims made by the appellant have been addressed in the findings previously made.
6. Before us, the appellant maintained that he does not have an ID card and cannot return to his home area of Makhmour in the Ninewah Governorate. He claims that he had a CSID when he left Iraq, and it was in a bag with his clothing when he boarded a lorry. He said he thinks that may have been in France, but he cannot be sure. He claims the lorry was crowded and when get off the lorry in the UK, there were many people getting off the lorry. He claims he forgot to take his bag with him, and the bag containing his

clothes and CSID card was left on the lorry after he had arrived in the UK. The appellant said that when he got off the lorry. The police arrived and although the truck was driven to one side, the appellant claims he did not inform the police that he had left his bag in the lorry. He said that at the time he felt nervous and scared and did not think to tell the police.

7. In cross-examination, the appellant said he had previously worked as a labourer in Iraq and understood the importance of the CSID because it was the form of identity used to travel and pass through checkpoints. He said that the only other items that were in the bag that he left on the lorry following his arrival in the UK, were spare clothes.
8. In answer to questions from us, the appellant said that upon his arrival in the UK he had not told his family about the loss of his CSID. He initially claimed that he has not spoken to any member of his family since his arrival in the UK, but then said that he has not spoken to his mother but cannot recall whether he has spoken to his uncle. He said he may have spoken to his maternal uncle on one occasion but cannot recall whether they have spoken. He claimed that he was young at the time, and now has no clear recollection. He said that his maternal uncle had arranged the agent that facilitated the appellant's journey and he could not recall if he has spoken to his maternal uncle to confirm his safe arrival in the UK and to confirm that the money due to the agent can be paid to him.

## **SUBMISSIONS**

9. Mr Lawson submits that at paragraph [29] of the decision of Judge Garbett promulgated on 8 February 2017, Judge Garbett referred to contradictions that concern the core of the appellant's claim and concluded that the appellant's behaviour is designed or likely to mislead and designed or likely to obstruct or delay the handling or resolution of his claim. The judge rejected the appellant's claim that he was visited by ISIS or that he has abandoned his Muslim faith. Mr Lawson submits the appellant's claim that he lost his bag in which he claims he kept his CSID is not a credible one, given the appellant's knowledge of the importance of that document. He invites the Tribunal to find that even to the lower standard, the appellant left the CSID with his family in Iraq or that he has it in his possession. The claims that he has made about other aspects of his claim have been comprehensively rejected, and he is not a reliable witness of truth.
10. In reply, the appellant said that he has maintained since his arrival in the UK that he lost his CSID in the lorry during his journey to the UK. When he first made that claim nine years ago, he did not know that he would be returned to Iraq and he had no reason to speak to his family about the loss of that document. The appellant claims that without a CSID he will be at risk on return to Iraq because he cannot travel through checkpoints. He submits there remains an on-going conflict in Iraq between Arabs, Kurds, Al-Shabbab and ISIS and wherever he is returned to in Iraq, he would not be able to safely pass checkpoints.

**DECISION**

11. The appellant has appealed under s.82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant bears the burden of establishing his claim to the lower standard.
12. In reaching our decision we have considered all of the evidence presented to us, whether we refer to it specifically in these findings and conclusions or not. We have also had regard to the submissions made both in writing and orally before us although we do not consider it necessary to address everything that is said.
13. We have had the opportunity of hearing the appellant give evidence and seeing that evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the evidence is received through an interpreter. We acknowledge that there may be a danger of misinterpretation, but we were satisfied that the appellant understood the questions asked, and the interpreter had a proper opportunity to translate the answers provided by him. In reaching our decision we have been careful not to find any part of the account relied upon, to be inherently incredible, because of our own views on what is or is not plausible. We have considered the claims made by the appellant and the story as a whole, against the available country evidence and other familiar factors, such as consistency with what has been said before, and the documents relied upon.
14. We have had in mind throughout, the preserved findings that are set out at paragraph [4]. The appellant's account of events in Iraq has previously been rejected. We acknowledge that if a court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. It does not follow from the adverse findings previously made about the core of the appellant's account that his account of the risk upon return on account of the lack of CSID must also fail. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. That is because a person's motives may be different as respects different questions. We have borne that in mind in reaching our decision.
15. The appellant arrived in the UK on 30 April 2015. A screening interview was completed on 27 April 2015. The appellant claimed during that interview that he had an ID card and it was in a bag that was lost on the lorry. He was interviewed again on 28 August 2015 regarding his claim for international protection. He claimed that he lost his ID card 'on the way' inside a lorry.
16. It is uncontroversial that the appellant had a CSID card that was issued to him when he lived in Iraq. We reject the appellant's claim that his CSID card was lost in a bag that he left on a lorry following his arrival in the UK. The appellant is clearly aware of the importance of his CSID. In his evidence before us the appellant confirmed that in Iraq, without a CSID

you could not go anywhere and that it was required when passing through checkpoints. He claims that he left the bag in which his CSID and spare clothes were kept, in the lorry that he travelled to the United Kingdom in. Although we accept the appellant has been internally consistent in this respect, we find the appellant's claim to be vague and not credible.

17. There is no evidence before us that the appellant reported the loss of any personal possessions following his arrival in the UK. It is contrary to common sense that during the course of a journey that took several months and during which the appellant claims he passed through several countries, he would, on arrival in the UK leave a bag that contained his possessions, including clothes and his ID card on the lorry without making any attempt to recover the bag. We do not accept the appellant's evidence that he did not think to tell the police when they spoke to him after he got off the lorry that he had left his bag containing an important ID document and his clothes on the lorry. We find, to the lower standard, that if the appellant's claim is correct he would have alerted the police and taken steps to recover his belongings from the lorry. Notwithstanding the appellant's age at the time, we find, to the lower standard, that having kept his ID document safe throughout a lengthy journey to the UK, the appellant would have been careful to take care of his possessions when he was in the lorry.
18. When we asked the appellant by way of clarification whether, upon realising that he had left his bag containing his CSID on the lorry, he had contacted his family, his evidence was evasive and he was not prepared to commit to an answer. The appellant's evidence is that he had not claimed asylum at an earlier stage in his journey after he fled Iraq because his uncle had arranged for him to come to the UK. Yet the appellant cannot recall whether he has spoken to his mother and or uncle since his arrival in the UK. Although we acknowledge the passage of time, it is simply not credible that the appellant cannot recall whether he has spoken to his uncle or mother to inform them of his safe arrival in the UK. We pause to note that Iraq is a collectivist society in which the family is all important (*see SMO, KSP and IM (Article 15(c); identity documents) (CG) [2019] UKUT 00400 (IAC)*). We do not accept, even to the lower standard that the appellant is not in contact with his family and the evidence before us served to re-enforce the preserved finding that the appellant has not lost contact with his maternal uncle, his mother and his siblings. We find that if the appellant had left his CSID and clothing in the lorry, he would have wanted his family to know of the loss. We find that the truth is that the appellant or his family are in possession of the CSID and the appellant's claim throughout that it has been lost, is an attempt to put obstacles in the way of his removal to Iraq.
19. There is, as we have already set out, a preserved finding that the appellant has family in Iraq, and he is in contact with them. We find the appellant is in possession of his CSID if he left Iraq with it. Alternatively, he left his CSID in Iraq when he left, and he has the ability to obtain the CSID from his family.

20. The appellant's claim that he has no contact with his family has been rejected by two previous judges. His credibility has been severely criticised. The core of his claim has been rejected and it has been established that the appellant is not at risk upon return. We take into account the decision of the Upper Tribunal in the latest iteration of the Country Guidance is *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)* ("SMO & Others II").
21. The preserved findings establish the appellant has no actual or perceived association with any political movement and neither is he a person who is politically committed in any way. We reject the appellant's claim that he has lost his CSID in the way he claims. We find that the appellant is in possession of his CSID. Alternatively, we find the appellant left his CSID in Iraq when he left and it will have been retained and kept safe by his family. If the CSID is not in the appellant's possession, we find he can obtain his CSID from his family, with whom he is in contact. Whether the CSID is held by the respondent or his family, the question of obtaining a replacement does not therefore arise. There is no reason why the appellant cannot take immediate steps, with the assistance of his family to have his CSID sent to him here in the UK or why the appellant could not be met by his family or relatives, in Baghdad, with the CSID, within a reasonable time of the appellant's arrival to facilitate safe travel between Baghdad and the Ninewah Governorate. On the findings made, we reject the claim that the appellant will be at risk in making the journey from Baghdad to his home area and we find there will not be a breach of Article 3.
22. It follows that we dismiss the appeal on asylum, humanitarian protection, and Article 3 grounds.

**NOTICE OF DECISION**

23. The appeal is dismissed on asylum, humanitarian protection and Article 3 grounds.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**29 May 2024**