



Case No: UI-2022-006673

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: PA/52428/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12 June 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

KKK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M. Cleghorn Counsel instructed on behalf of the appellant

For the Respondent : Mr M. Diwnycz , Senior Presenting Officer

Heard at (IAC) on 22 May 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the determination of the First-tier Tribunal (Judge Moran) promulgated on 13 June 2021. By its decision, the Tribunal dismissed the appellant's appeal on all grounds against the Secretary of State's decision dated 26 October 2020 to refuse his protection and human rights claim.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.
3. 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.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Iraq of Kurdish ethnicity. He claimed to have arrived in the United Kingdom on 30 November 2006. He claimed asylum on 1 December 2006. This was refused on 16 March 2007 and his appeal against the decision was dismissed on 4 May 2007 in a decision made by Immigration Judge Shimmin. A High Court Review was granted on 21 June 2007. A reconsideration Immigration Judge Hearing was dismissed on 10 October 2007 by Senior immigration Judge Batiste. A panel hearing was convened and dismissed his appeal on 10 October 2007. Permission to appeal to the Court of Appeal was refused on 31 January 2008. His appeal rights were exhausted on 19 February 2008.
5. Further submissions were submitted on 11 April 2008 which were refused on 25 October 2010. The outcome of the decision was withdrawn on 21 December 2011 and further submissions were refused on 29 December 2011. Further submissions were submitted on 1 September 2014 which were refused on 7 January 2015. Further submissions were submitted on 29 April 2016 which were refused on 10 May 2016.
6. The last set of submissions were submitted on 28 March 2018 which led to the decision made by the respondent on 26 October 2020.
7. The basis of his claim was that he was Kurdish and has lived all of his life in Gwer where he worked as a shepherd and in July 2006 armed Islamic militants came to him in the night while he was at work. The men started asking him to spy for them and keep a lookout whilst they were planting bombs. The appellant refused to help them stating he did not share their views. They became aggressive and issued threats against him around the end of August or beginning of September 2006. They gave him an ultimatum to join them or cooperate or they would kill him and his family. The appellant sold his sheep to raise money to travel and his wife went into hiding at his brother's house. At around the end of September 2006 he fled to Erbil where he hid in his maternal uncle's house for some days. He then flew from Erbil to Turkey using his own passport arriving on 1 December 2006.
8. IJ Shimmin set out his findings of fact between paragraphs 12-27. It was accepted by the respondent that the appellant could not return to his home area Iraq because of fear of Islamic terrorists. The issue turned on whether he could internally relocate within Iraq or Kurdistan.
9. The appellant claimed that he could not relocate to Kurdistan because he was in a blood feud with his cousins over land in Gwer. He claimed that they have power and influence over the KDP and the PUK government.
10. IJ Shimmin did not find that the appellant had established that he was involved in any blood feud with his cousins. The judge found that he stated he could obtain evidence about the blood feud, and he had sufficient time in which to do so but none had been presented. In cross-examination he said he tried to obtain evidence from a couple of friends, but it was difficult to do so. The judge did not find that to be reasonably likely. He did not accept that his cousins if they existed had power and influence.

11. When asked who we feared in Iraq he said, “the Arab groups, terror groups” and made no mention of being afraid of his cousins until question 59 when he was referred to his statement. The appellant gave no details of his cousins such as their names, their tribe or their position of power within Kurdistan. The Judge found that his evidence did not reach even the lower standard. Even if a blood feud did exist the judge stated that he was not satisfied that the appellant could not relocate to another area of Iraq or Kurdistan.
12. The Immigration Judge set out that in his interview the appellant indicated that the blood feud was “dormant” and that “nothing has happened for many years”. His cousins lived in Erbil 35 minutes away from Gwer and if they wished to continue the feud they could have done so. The disputed land was so close to where his cousins lived in and there was no evidence that the troops controlled movements around Erbil and Gwer so that the cousins could not travel between the two areas. His brothers was also living in Gwer and would be liable to be attacked but but there has been no trouble
13. The judge found that there was no evidence that the appellant could not relocate away from the influence of his cousins in Erbil; they had not sought him out for many years and there was no reason why they should do so now
14. The appellant was able to stay in Erbil in hiding for 3 or 4 nights at his maternal uncle’s home and then leave by the airport without coming to the attention of his cousins. If they were actively looking for him or had such influence as he claimed he would have been apprehended or would not have risked travelling via the airport on his own passport. His appeal was dismissed.
15. The further submissions that were sent to the respondent are set out at B5 of the respondent’s bundle. There is an undated document stating that the appellant could not return to Gwer, Mosul as it is a contested area and that he has no contact with his family. It is also stated that he does not know the page or volume number of the family book. The 2nd set of submissions dated 24 April 2020 stated could not return to Gwer or Erbil as he has no documents. He could not relocate to Baghdad as he is a Sunni Kurd. The submissions provided an arrest warrant and translations.
16. The decision letter of the 26 October 2020 relied upon the decision of Judge Shimmin in 2007 which rejected his claim that he was involved in a blood feud. As set out above the judge found that he could relocate to the IKR region in Iraq it being accepted that threats from terrorists in his home area of Gwer meant that he could not return there. The respondent accepted he could not return to Gwer, but it would not be unduly harsh to expect him to relocate to the IKR. The decision took into account the new evidence in the form of the arrest warrant, but for the reasons set out between paragraphs 15 – 19 did not accept that he was the subject of any arrest warrant. The respondent did not accept that the evidence was sufficient to depart from the previous decision of Judge Shimmin.
17. It is noted from the objective information that in general, the humanitarian situation is not so severe that a person is likely to face a breach of Articles 15(b) of the Qualification Directive / Articles 2 and 3 of the ECHR, requiring a grant of Humanitarian Protection (HP). It was considered that his personal situation was not especially vulnerable as a male of working age, with no known serious medical conditions who has shown personal fortitude by travelling to the UK. The decision letter further noted that “you have an uncle in Iraq” and that “you have failed to show that you personally would face a real risk of persecution over and

above the rest of the general Iraqi population because of the security situation there. Your claim to be at risk on return to Iraq as you claim to fear persecution at the hands of Iraqi terrorists has not been accepted and it is noted the IJ did not accept that you do not have any family in Iraq. Whilst it is accepted that Iraq remains in a situation where indiscriminate acts of violence may occur, it is considered that such random acts are not sufficient as to engage the UK into granting you leave to remain, as Iraq is not considered to be a place of internal conflict that meets the threshold of Articles 2 and 3 of the ECHR and Article 15(c) of the QD.”

18. The decision letter went on to state “Whilst it was previously accepted that you cannot return to your home area in Iraq because of your fear of the Islamic terrorists with whom you did not cooperate, the IJ found that you had not established that there is a blood feud with your cousins, and it was not established that you would be reasonably likely to suffer serious harm if you relocated to another area of Iraq generally or Kurdistan in particular. It is considered that you can return to Erbil, where you claim you were able to safely stay before leaving Iraq. Further, you have family in Iraq, namely your maternal uncle”.
19. It was further set out that it was noted from the guidance that the CSID is being replaced with a new biometric Iraqi National Identity Card, the INID, and it is necessary for an individual to have one of these two documents in order to live and travel within Iraq. “You have provided no evidence to demonstrate that you are unable to obtain documentation, or that you are not in touch with your family in Iraq. It is further noted that you have submitted an arrest warrant that you claim to rely on. Therefore it is considered that you have maintained contacts in Iraq. It is considered that your maternal uncle or the contacts you have in Iraq could obtain a CSID in Iraq for use on your arrival. You can then apply for an INID on return to your local CSA office in Iraq. It is therefore not considered that you are undocumented. A CSID can help you access healthcare and services which will enable you to integrate into society in Iraq. It is noted that you are a Kurdish Muslim and speak Kurdish Sorani, a language commonly spoken in the Kurdish region of Iraq therefore you can return to the IKR (see paragraph 28).”
20. The decision letter also stated, “It is noted former residents of the KRI who do not return voluntarily are returned to Baghdad, from where they will travel to their destination, and it is necessary for an individual to have either a CSID or a INID in order to travel by land within Iraq without encountering treatment or conditions which are contrary to Article 3 of the ECHR. Persons who can obtain a CSID in the UK would be able to return to their home governorate via the various security checkpoints and are, in general, unlikely to encounter treatment or conditions which are contrary to Article 3 of the ECHR. It is considered that you would be able to obtain a CSID and would be able to use your CSID for onward travel to the IKR. It is considered you can attend your local CSA office to enrol your biometrics and obtain an INID to replace your CSID. It is noted from the guidance that there are regular direct flights from the UK to the Iraqi Kurdish Region. It is also considered you can voluntarily return to the IKR without having to travel via Baghdad as above. It is not considered you are undocumented, and you have family in Iraq therefore, it is not accepted Articles 2 and 3 of the ECHR would be breached on return to Iraq, or that you meet Article 15 (c) of the Qualification Directive as you do not qualify for leave to remain in the UK under the Refugee Convention or for Humanitarian Protection (paragraphs 30 and 31)”.

21. The appeal came before Judge Moran. In a decision promulgated on 13 June 2021 the appellant's appeal was dismissed on all grounds.
22. The judge summarised his case at paragraph 11. The appellant was born in Erbil. His parents died around 1996 - 97. His sister died in 2003. He was married but his wife died in 2008/9. He lived in Gwer where he worked as a shepherd. He moved to Gwer from Erbil around 2004 after his sister died. He was there for 2 years and 4 months.
23. He was in a feud with his cousins and uncles as they wanted him to give his land over to them and he refused. The family feud began in the 1960s and the land was between Gwer and Erbil. It was in his father's name but now he has the right over it. His cousin threatened to kill him, and his cousins and uncles have a lot of power and influence as they are in the KDP.
24. In July 2016 Islamic militants asked him to spy for them to be a lookout. He refused and was threatened and fled the area. He sold his sheep and went to Erbil. He hid at his maternal uncle's house for a few days and then left the country flying from Erbil to Turkey on his own passport.
25. The maternal uncle who helped him leave Iraq died in 2015. He has no other relatives that can assist, and he is not in contact with anyone in Iraq. He has no means of obtaining a CSID, INID or any other document.
26. He was sent an arrest warrant by his friend in Iraq. He lost the envelope that it came in and he is no longer in contact with his friend. He was told that the warrant was delivered to his home in Iraq by member of the authorities. He received it in the UK in 2016. His friend had the key to KK's house and used to check the house regularly. Nobody lives there. On one visit his friend found the warrant. KK was asked why he had waited to March 2028 to make further submissions based on the warrant. He said he gave it to his solicitors in 2016 a few days after he received it.
27. The FtTJ stated he had a copy of the warrant and translation but not the original. It is dated the 18th of February 2016 says it is from the Investigation Court in Erbil . It authorises the rest of KK and his address is just given as "Erbil".
28. He is not in contact with any family members or anyone else in Iraq. He last saw his CSID in Iraq, he left it with his maternal uncle.
29. Although he said in his witness statement that he was unable to go to the embassy as he would be arrested he said that he had been to the Iraqi consulate, but they refused to issue him any documents.
30. FtTJ Moran set out his findings between paragraphs 14-23. They can be summarised as follows.
31. The FtTJ began his assessment by identifying an issue that had arisen which related to the appellant's home area. He noted that the previous appeal proceeded on the basis that it was Gwer, and the respondent's closing submissions submitted that it was correct. However on behalf of the appellant it was argued that his home area was Erbil. The Judge took the view that it was more accurate that KK originates or is from Erbil rather than Gwer and that he had only lived in Gwer for just over 2 years and spent the rest of his life in Erbil.

The judge found that the outcome of the appeal would have been the same however whether his home area was Gwer or Erbil (see paragraph 15).

32. At paragraph 16 he set out the factual findings he made on the arrest warrant, and for the reasons set out between subparagraphs (i)-(v) the evidential difficulties in placing reliance on that document. He rejected the appellant's account that it took his solicitors in 2016 and it took until 2018 to submit it. He took into account there was no documentary evidence as to how it was sent to the UK or evidence of how, when and who sent it and there was no evidence of the person that KK said had found it and sent it to him. He had not given a detailed information of how he claimed to have lost contact with this person and what he had done to renew contact. Lastly, he took into account the appellant's factual claim that he not been at the address since 2006 and no one else was living there thus it would have been obvious he had not been in the country for a decade and therefore he could see no credible reason why anyone would wish to obtain a warrant against him. The address given for him was only as "Erbil."
33. At paragraph 18, the FtTJ having taken into account the new events relied on since the last appeal found that they were "brief and lacking in detail" and he provided no credible explanation as to why attempts had been made to arrest him when he was not in the country and had not been for 10 years. The judge therefore concluded that the arrest warrant was unreliable and that his claimed events in Iraq in 2016 was not reasonably likely to be true. Therefore he did not depart from the earlier findings of IJ Shimmin (paragraph 19).
34. As to his claim to have attended the Iraqi consulate, the FtTJ found that there was no detailed evidence about the visit and that if he gave the account that he has no documents or means of contacting anyone Iraq, that it was not surprising that they would say they could not assist him.
35. The FtTJ identified at paragraph 20 that the real issue was whether his account of his circumstances as to documents and contacts in Iraq is reasonably likely to be true. In this context the judge stated :

"21. KK's account is that he has been aware of some events in Iraq, including his uncle's death and it also said that he was in contact with a friend at one stage. I am satisfied that he would be anxious to maintain contact with friends and family in Iraq. I do not regard it as credible that he is not in contact with family and friends. I am satisfied that he either is or could be if he chose to. He was born in Erbil and spent nearly all of his life in Iraq there. I conclude that he could obtain family assistance to either have his CSID sent to him, or they could assist him in obtaining another one, either in Erbil or in the UK. They could if necessary assist in providing the book and page number of his family registration. I do not regard it as credible that there are no male family members available to do this. I do not accept that it has been shown that Erbil is somewhere where CSID's are no longer issued. It is possible for a proxy to be given a power attorney to assist in obtaining the necessary documents.

22. It is also highly likely that family members hold other documents of hits including a nationality certificate. As someone who was born in and lived in the IKR the most of his life I am satisfied that he could return there and rely on the support of family members.

23. As to the practicalities of his return on my findings there is no reason why he should not return voluntarily, in which case return will be directly to the IKR. If I am wrong about this and he is entitled to be treated as an involuntary return he will be returned to Baghdad in the first instance. On my findings he would however be in possession of a CSID and would therefore be able to transit safely to the IKR by air or land. Whether going

to Erbil is seen as return to his home area or internal relocation from Gwer I am satisfied that it is an available and safe option for him.”

36. The FtTJ therefore dismissed his appeal.
37. The appellant sought permission to appeal, and permission was granted on 6 May 2022 by FtTJ Murray for the following reasons:

“The grounds of appeal assert that the First-tier Tribunal Judge erred in failing to make findings of fact in relation to what family the Appellant had in Iraq in relation to the issue of obtaining a CSID card/INID. It is further argued that the Judge failed to consider the evidence set out in the grounds in relation to obtaining an INID. It is submitted that there was no evidence before the Tribunal that the Appellant was in contact with any family members that could assist him with the process.

Whilst the Judge made clear findings at paragraph 21 that he did not accept the Appellant’s account that he was not in contact with family in Iraq, it is arguable that there is an error of law in relation to the findings in the decision of the First-tier Tribunal regarding the Appellant’s ability to obtain a CSID card/INID in light of the revised guidance on remittal from the Court of Appeal in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)”.

38. At the hearing before the Upper Tribunal Ms Cleghorn appeared on behalf of the appellant and Mr Diwnycz appeared on behalf of the respondent. He confirmed that there was no rule 24 response.
39. Ms Cleghorn relied upon the written grounds of challenge and her skeleton argument. They are as follows:
40. She submitted that the FtTJ made the following findings of fact:
41. FTJ Moran upheld the decision of Judge Shimmin finding that
- (i) It is not credible that he is not in contact with family and friends;
 - (ii) He was born in Erbil and spent nearly all his life there;
 - (iii) He could obtain family assistance to have his CSID sent to him, or they could assist in obtaining another, either in Erbil or the UK;
 - (iv) It was not shown that Erbil is somewhere where CSIDs are no longer issued, and he could therefore use a proxy; (v) Family members hold other documents including his nationality certificate; (vi) He could return to the IKR and rely on family members.
42. The written grounds were twofold:
- (1) The FTJ failed to make findings of fact as to family members that could assist (as his account was that his parents and sister was deceased);
 - (ii) The FTJ has erred in finding that he would be able to obtain a CSID in the IKR where the INID has been rolled out.
43. The FtTJ erred in finding that the Appellant could obtain a CSID on return to Iraq.
44. The initial skeleton/grounds refer to page 12 of the Land info report which notes that Iraqis who live abroad, need to go to Iraq to obtain a new ID card. For an old

ID, they would need a power of attorney plus three main documents; the old ID card, the nationality certificate and the residency card.

45. The FtTJ relies upon the Land info Report of November 2018 A report on the issuance of the new Iraqi ID card paragraph 12 Stating that only 11/43 branches in Erbil are issuing the new card . The entirety of the document has not been considered.
46. It is submitted that the following paragraphs of that report should have been considered in support of the submissions by the appellant. When submitting the application form, applicants must present their ID card, nationality certificate and residence card (only held by the head of household). These documents will be checked at the Directorate of Nationality and Civil Status. Director Azaz stated that it takes seven to ten days to have a new card issued.
47. According to the KRG MoI, the processing time is one month. Asked what Iraqi citizens abroad can do to either renew an old ID-card or to replace an ID-card that is lost, Director Azaz replied that Iraqi citizens, who live abroad, need to go to Iraq to obtain a new national ID card An Iraqi citizen abroad, who wants to apply for an old ID card, an ID document that is still in use in Iraq, must go to an Iraqi embassy to have their fingerprints taken. In addition, an applicant must bring a power of attorney, and the three main documents: the old/expiring ID card, the nationality certificate and the residency card (only held by the head of household). The way to prove Iraqi nationality to the embassy is by a power of attorney. The embassy will forward the application to the Ministry of Foreign Affairs and the Ministry of the Interior in Baghdad. The process is very long and can easily take from six months to a year. The source added that there are many problems in the procedure, and that the applicant must give proof of life. When the application is approved, the applicant will be issued an old ID card not the new national ID card.
48. At page 14 Director Abdulrahman Ismael Azaz initially informed the delegation that there are 43 branches (registration offices) of the Directorate of Nationality and Civil Status in Erbil Province out of which 11 branches may issue the new ID card. The remaining branches are still issuing the old type of ID card. So far, approx. 180,000 persons out of a population of 2 million have received the new ID card in Erbil. Within 2 years, the new national ID card system will be fully implemented
49. It is submitted that the FtTJ failed to adequately consider the appellant's position with regards to contact and familial support in Iraq in obtaining an ID card and that by the time of the tribunal hearing, the new ID card system would be fully implemented.
50. In her skeleton argument at paragraph 5, Ms Cleghorn set out that SMO1 stated:

“Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK 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, most Iraqi citizens will recall it. That information 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.

51. As to Ground 1, at his appeal hearing in 2007, the Appellant was clear that he had been unable to contact his family since arriving in the UK. The Appellant hid at his maternal uncle's house who could not assist with redocumentation as it follows the patrilineal line. There was no evidence and no finding that the Appellant, who has been out of Iraq since 2006, has paternal relatives that could assist with the redocumentation.
52. It is submitted that the FTJ was very vague in concluding that he 'had family' and that they 'hold other documents' without specifying who has the document and whether they have the documents detailed in the Land info report. The written grounds submitted that the Judge failed to determine whether that account was accepted and did not make any specific findings of fact on that issue.
53. It was submitted that the FtTJ errs as he states in paragraph 21 that "he would be anxious to maintain contact with friends and family in Iraq. I do not regard it as credible that he is not in contact with family and friends. I am satisfied that he is or could be if he chose to".
54. There was no evidence before the FTT that that appellant was in contact with any family members that could assist with the process. It is accepted that the appellant arrived in the UK in 2006, some 17 years ago and yet the expectation is, as determined at they could if necessary assist in providing the book and page number of his family registration it is highly likely that family members hold other documents of his including his nationality certificate It is unduly harsh to expect someone to retain such documents over such a length of time.
55. The FtTJ erred in making adverse findings of fact against the appellant but failed to make clear sustainable findings on his ability to access the requisite evidence.
56. At paragraph 7 of her skeleton argument Ms Cleghorn submitted that as noted in the grant of permission, things have moved on significantly with the promulgation of SMO2 and subsequently. Even SMO2 has been superseded by the latest CPIN dated October 2023 on internal relocation and civil documentation. This new CPIN confirms the following: 3.3.3 At paragraph 61 of SMO2, the UT held that 'The process for applying for a CSID whilst in the UK was examined at [173]-[177] of AA (Iraq) and it was clear, even at that stage, that the Embassy did not issue the document itself; it would act as an intermediary by sending the completed application for a CSID to the General Directorate for Travel and Nationality...' 3.3.4 However, since the promulgation of SMO2, there are no longer any Civil Status Affairs (CSA) offices in Iraq producing and issuing CSIDs following the rollout of the INID system (see Annex E and Annex F). 3.6.7 However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the KRI to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection). 9. The Appellant therefore could not obtain a replacement either in the UK or in Iraq. He could not travel from the airport to a INID office, without an INID or CSID without it breaching his Article 3 rights. It therefore follows that if the FTJ has erred in respect of his contact with

family members and their ability to provide his original CSID, the appeal falls to be allowed.

57. In her oral submissions, and in answer to my question concerning the appellant's home area, Ms Cleghorn referred to the decision of the FtTJ at paragraph 15 where the judge had raised with the parties, the issue of where in fact KK's home area was. The FtTJ noted that at the previous appeal in 2007 it proceeded on the basis that it was Gwer, and that had been the respondent's position in the closing submissions. However it was argued on behalf of the appellant that it was Erbil. Ms Cleghorn made reference to the witness statement of the appellant, where he stated, "I had to flee Erbil to live in Gwer due to the dispute I had with my cousins and uncles". Her position was that what was recorded in Judge Moran's decision was the case. That he was born in Erbil, he had lived in Gwer and had left Gwer to live in Erbil. She confirmed that that was no further witness statement confirming his position and as set out above the witness statement before Judge Moran made reference to him leaving Erbil to live in Gwer and thus it was advanced on the basis that his home area was Erbil.
58. Dealing with the 1st ground, she submitted that the judge failed to make findings as to what family members could assist him. She referred to the grant of permission who referred to the judge making clear findings at paragraph 21 that he did not accept the appellant's account that he was not in contact with family but that the grant identified that they might be in error in the appellant's ability to obtain a CSID in light of SMO (2).
59. She submitted that the whilst the judge found that the appellant had family members in Iraq he did not articulate specifically which family members are said to be able to assist the appellant redocument or provide his original documentation. The appellant left Iraq in 2006 and it was not reasonably likely that the appellant's original documentation would still exist in the IKR due to the passage of time and the appellant had always been clear that his close family members including his parents and sister had died. She submitted that his case is predicated on the feud with his cousins and uncle, but he was not found to be credible in respect of that. Judge Shimmin did not set out what family members would still be alive and who could assist and in light of SMO(1), it would not be sufficient for the judge to make a general finding as to family members because SMO(1) was clear that to obtain replacement documents he would need someone from his patrilineal line to assist him. Therefore if there were no close family members who can help the appellant in providing documentation to obtain a CSID he would be difficulty in obtaining documentation for the reasons set out in SMO(1).
60. In this respect she directed the tribunal's attention to the headnote in SMO(1), and in particular that the CSID were being replaced by the INID and the appellant would require 1 of those documents to travel and to survive in the country. A laissez passer would not be of any assistance. Also as set out at paragraph 16 of SMO(1), and contrary to the FtTJ's finding the use of proxy had reduced due to the introduction of the INID system. Ms Cleghorn also referred to the production of necessary information following the patrilineal line thus the mail on the father's side who would have to go to the CSID's office to obtain the documentation.
61. She further submitted that things had moved on since the decision of the judge and there was a further CG decision of SMO(2) which itself had been superseded by the new CPIN which she had set out in her additional skeleton argument. She

submitted that he would not be able to obtain a CSID on arrival and would have to travel internally to Kurdistan and would be at risk.

62. She submitted the challenge was that whilst the FtTJ found that whilst he might have family members who could assist him in obtaining his documents and that he may have his original documents, the reality was that having arrived in 2006 and given there was no dispute as to the death of his sister and parents it was reasonably likely that his CSID no longer existed or was not accessible he would not be able to obtain a replacement as they are not issued any more. He would have to register his biometrics and on the evidence would not be able to get through the checkpoints to obtain an INID without encountering Article 3 treatment.
63. Mr Diwnycz on behalf of the respondent confirm that there was no rule 24 response. In his oral submissions he referred to the new CPIN paragraph 3.6.7 and that the appellant will be returned to Erbil, and he would not have to be required to travel internally to the CSA office, and that he would be entitled to travel directly from Erbil airport to the CSA office and redocument himself. He submitted that if there were people who could not exit from the airport safely, there would be independent background evidence to show that. However there was no evidence in support of that and therefore the appellant could safely return to Erbil. He further submitted that the FtTJ was satisfied in the decision that everyone else was still alive; that he was not involved in a blood feud with his cousins, in that he gave reasons at paragraph 21 and 22.
64. Ms Cleghorn by way of response submitted there was no dispute as to the close family members and therefore the FtTJ erred in law by making vague findings as to family members and that was not sufficient to dismiss the appeal.
65. She further submitted that in SMO(1), the process for obtaining replacement documents was not straightforward there would be little interest in the government assisting him. Even if he could make it to the CSA office he would not be given a document as he had no information about his background.
66. I reserved my decision.

Decision on error of law:

67. There are 2 grounds of challenge advanced on behalf of the appellant. The first ground challenges the decision on the basis that the FtTJ failed to determine or make findings of fact as to the relatives the applicant had in Iraq, and this was relevant to the FtTJ's assessment of whether he will be able to re- document in order to return to Iraq. As set out in the summary of the submissions and grounds advanced, it did not appear to be disputed that the appellant's close family members, his parents and sister were dead therefore it is submitted that the vague reference to family members was insufficient in the light of the case of SMO(1) which set out the process of re-documentation which was patrilineal. Alongside that submission was the general point made that in view of the length of time outside of Iraq it was not be reasonably likely that he would still have a CSID available to him.
68. I begin by observing that in relation to ground 1 the grant permission sets out that the FtTJ made clear findings at paragraph 21 that he did not accept the appellant's account that he was not in contact with his family in Iraq but that it

was arguable that there was an error of law in relation to the finding relating to his ability to obtain a CSID/INID in light of the later country guidance decision of SMO(2). The FtTJ decided the permission application after SMO(2) had been promulgated.

69. I make three observations. Firstly, notwithstanding the content of the grant where the judge sets out that the FtTJ made clear findings of fact at paragraph 21 concerning family members, the FtTJ did not seek to limit the grant of permission. Secondly, where the judge identified an arguable error by reference to SMO(2), that is an error of approach in light of the current jurisprudence as set out in FA (Iran)v SSHD [2024] EWCA Civ 149 at paragraphs 1-3. The operative CG decision relevant to whether there is an error of law in the decision of the FtTJ is the CG decision in force at the time of the hearing which is SMO(1). References to SMO(2) and the CPIN of 2023 would only be relevant if the appellant establishes an error of law. Whilst Ms Cleghorn and her skeleton argument did refer to SMO(2), I take that reference to be on the basis that it would have relevance was if an error of law were found in the decision of the FtTJ and oral submissions she made as summarised above did concentrate on SMO(1).
70. The third observation I make relates to the appellant's home area. At paragraph 15 the FtTJ set out the dialogue he had with the advocates at the hearing, and it was resolved by the appellant's representative who advanced the appellant's case on the basis that his home area for the purposes of the hearing was Erbil. This may have been different from what was recorded in earlier decisions, but in light of paragraph 17 of his witness statement and the way in which his case was advanced before the FtT it can be taken that this was the appellant's account. There is no further evidence on this point, and I proceed on the basis that this was the appellant's case before the FtT.
71. Turning to ground 1, it is necessary to return to the factual findings made upon the appellant's account. Immigration judge Shimmin beyond accepting that he would be at risk of Islamic terrorists in Gwer, wholly rejected his factual basis of claim to be involved in a blood feud with his cousins. The appellant claimed that his parents had died in 1996 - 1997 and his sister died in 2003. The FtTJ did not make any specific findings, but the appellant's case has always proceeded on that basis. However there were other male family relatives identified before the FtT which included the appellant's brother (see paragraph 8 IJ Shimmin) who the judge found not been the subject of any trouble, and his cousins in Erbil. The judge having rejected the appellant's factual account to be involved in an altercation or blood feud with them. He also identified his maternal uncle with whom we stayed in Erbil and helped him leave Iraq.
72. Following this there were a number of submissions sent on his behalf which did not lead to a fresh claim until the last set of submissions which resulted in the appeal before FtTJ Moran. In the undated submissions it is referred in vague and unsubstantiated terms that "the appellant has no family". No details were given beyond that bare assertion. The further submissions dated April 2020 referred to the arrest warrant sent to him from Erbil and that he had no documents. No reference is made to the maternal uncle. In the decision letter of 26 October 2020, reliance is placed on the previous findings of Judge Shimmin who did not accept that he had no family members in Iraq and that he had a maternal uncle (see paragraph 28) and that he was in touch with people in Iraq in light of the documents sent to him and therefore he had maintained contact with those in Iraq who could obtain documents for him.

73. It was after the decision letter that the appellant claimed that his maternal uncle died in 2015 as set out in his witness statement paragraph 15 "I did have an uncle he passed away in 2015". He also referred to having other uncles and cousins but that they were people he was in dispute with. He gave no details as to how he knew of his uncle's death or any details surrounding it. That was the evidence before the FtTJ, and it led to the findings that he made between paragraphs 21 and 22.
74. Having considered the new evidence available, the FtTJ rejected his factual account that he was involved in a blood feud with his cousins and that there was arrest warrant for him. As he recorded at paragraph 18 he considered that the new evidence had been provided was "brief and lacking in detail".
75. Turning to the findings at paragraph 21, the FtTJ gave adequate and sustainable reasons based on the brief and lack of details in the further evidence provided and that he was satisfied that the appellant's account was not credible that he was not in contact with family and friends in Iraq. He based that finding on the appellant's own evidence to have claimed to be in contact with a friend in Iraq, and also found that the appellant would be anxious to remain in contact with family and friends. The judge did not find it credible that there were no male family relatives available to him in Iraq.
76. Those were sufficient findings of fact made by the FtTJ whereby the FtTJ was satisfied that the appellant had not given credible and truthful evidence as to having no male members in Iraq. The appellant himself had identified uncles and cousins, a brother previously and an uncle whose death had not been referred to until after the decision letter, and even then with no detail.
77. Contrary to the grounds the FtTJ plainly identified male family members and it was not necessary to identify any further who they were. That being the case the FtTJ was entitled to find that the appellant could obtain family assistance to have his CSID sent to him and that was a finding reasonably open to him to make. At paragraph 22 the FtTJ made an additional finding that it was reasonably likely that the family members held other documents of his including his nationality certificate. The appellant's evidence was that he had said his CSID was in Erbil at his maternal uncle's home.
78. Having made those findings of fact it was not necessary for him to go on to consider if he could re-document himself by obtaining replacement documentation as he had a CSID available and at paragraph 23 the FtTJ found that the appellant would be returned in possession of a CSID to the IKR by air or land.
79. In summary, I remind myself of the need for appropriate restraint before interfering with the decision of the FTT, particularly where the judge below was heard and assessed a range of evidential sources relating to the reliability of an account. Not every evidential issue need be specifically addressed and there is no requirement to provide reasons for reasons. The FtTJ had regard to the evidence before him and gave adequate reasons to why he did not believe the appellant had no family in Iraq with whom he was in contact with or could so contact.
80. Therefore, even if ground 2 was made out, it would have no materiality as ground 1 has not been established, the judge having found that he had family members in Iraq with whom he was in contact with or whom he could contact who would

be able to provide him with his documents including his CSID, which he previously said was at his maternal uncle's home in Erbil.

81. Consequently the decision of the FtTJ did not involve the making of an error on a point of law, and the decision shall stand.

Notice of decision:

The decision of the FtTJ did not involve the making of an error on a point of law; the decision of the FtTJ shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

3 June 2024