



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04678/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 July 2021 and 5 August 2021

Decision & Reasons Promulgated  
01 September 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

R O A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. R Wilcox, Counsel, instructed by Barnes, Harrild & Dyer  
Solicitors  
For the Respondent: Mr. T Lindsay, Senior Presenting Officer.

**DECISION AND REASONS**

**Introduction**

1. The appellant's appeal on international protection and human rights (articles 3 and 8) grounds was initially heard by the First-tier Tribunal sitting at Taylor House and refused by a decision dated 18 June 2019. The appellant was granted permission to appeal to this Tribunal and by means of a decision sent to the parties on 15

November 2019 I set aside the decision of the First-tier Tribunal with preserved findings of fact.

### **Anonymity**

2. By means of my decision of November 2019, I confirmed the anonymity direction issued by the First-tier Tribunal. Neither party sought for the direction to be set aside, and so I confirm it at the conclusion of this decision. I do so as it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection: paragraph 13 of 'Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders'.

### **Facts**

3. The appellant is an ethnic Kurd and a national of Iraq. He is presently aged 23.
4. He entered this country clandestinely on 26 September 2017 and claimed asylum on arrival. He asserted a fear of local militia, claiming that he was suspected of having murdered a member of Hashd Al Shaabi.
5. He stated that whilst living in Kirkuk, he worked as a porter/security officer in the city's Azadi General Hospital. On 6 July 2017, whilst working at the hospital, a member of Hashd Al Shaabi called Abu Safia was brought into the hospital by two bodyguards, having been shot. Two days later a colleague of the appellant called 'DKM', who worked at the hospital as a cleaner, went into Abu Safia's room and remained there for some twenty minutes. After the appellant finished work, he accompanied DKM to a restaurant. Whilst there, his colleague received a phone call and was informed that Abu Safia had been strangled and was dead. The appellant believed that DKM had committed the murder because his father had been involved with the Peshmerga and had been killed by Hashd Al Shaabi.
6. The appellant fled Iraq as he believed that he was suspected of being involved in the murder and would be targeted.
7. The respondent refused the application for international protection by a decision dated 1 May 2019. The appellant appealed and his appeal came before Judge of the First-tier Tribunal Aujla on 18 June 2019. The Judge confirmed at [31] of his decision that he did not for a moment believe that if the appellant were suspected of involvement in the murder case:

'31. ... he would not readily mention that as the basis of his claim right at the beginning of the asylum process, when the screening form was completed. That fact alone fundamentally undermined the appellant's entire credibility. I reject his claim he was suspected of involvement in the murder case.'

8. As to credibility the Judge concluded at [34]:

'34. Having considered the Appellant's account, I make the following findings. I find that the Appellant's credibility was wholly undermined. I find that the

Appellant has simply fabricated his claim about the authorities looking for him in connection with the murder of Abu Safia. I do not find that account credible whatsoever. I find that that was a later addition to his claim designed solely to enhance the strength of his claim. I therefore reject his account in its entirety.'

9. In respect of the appellant's ability to return to Iraq the Judge found at [37]:

'37. I have considered whether the Appellant was in need of humanitarian protection or could safely return to his locality or another part of the IKR. The Appellant is from Kirkuk where his whole family lived. He spent 19 years of his life there and is now 21 years old. He is in possession of a valid Iraqi passport. He stated that he had [a] CSID which was with his family in Kirkuk. He would be returned to the capital Baghdad. He would be in possession of his passport when he arrived there and should have no difficulty entering the country. He should be able to make his way from the capital to Kirkuk, showing his passport to security personnel on the way as necessary. Alternatively, he could arrange to meet his family in the capital. I do not accept his account that he was not in contact with his family. Although Kirkuk may still be a contested area to a certain extent, I bear in mind the fact that ISIS had been ousted from the city. Furthermore, there were no individual characteristics relating to the Appellant that would make his return to the city unreasonable, especially as his whole family still lived there. Alternatively, the Appellant could relocate to Suleymania [sic].'

10. By means of the appellant's grounds of appeal no challenge was made to the adverse credibility findings made by Judge Aujla. The only challenge advanced by the grounds of appeal was to the findings concerned with redocumentation and the ability to either return to Kirkuk or relocate elsewhere within Iraq. The ground advanced was concisely identified at §4:

'Having found the Appellant not to be credible, the Tribunal fails entirely to consider issues arising from redocumentation or internal relocation which are held in established case law to impact all citizens of Iraq irrespective of the inherent credibility of their claim for asylum.'

11. In considering the decision of the First-tier Tribunal, I concluded in my decision of November 2019, at para.18:

'18. I am satisfied that in finding that the appellant could travel with his passport alone to the IKR the Judge materially erred in law by failing to apply the guidance provided in AAH. I am further satisfied that in seeking not to apply the guidance in AA as to the appellant's ability to return to Kirkuk, the Judge failed to identify very strong grounds, supported by cogent evidence, for not following country guidance. This is also a material error of law.'

## **Hearing**

### *Scope of resumed hearing*

12. I detailed at para. 19 of my November 2019 decision:

'19. There is no challenge to the Judge's findings as to credibility, and consequently the limited findings of facts to be remade are those erroneously addressed at [37] of the Judge's decision, namely i) the ability, or otherwise, of the appellant to secure his CSID from his family in Kirkuk; ii) to return to Kirkuk; iii) to relocate to the IKR; and/or iv) to relocate to Baghdad.'

13. I confirmed at para. 21 that all findings of fact made by the First-tier Tribunal were preserved, save for [37].

*Rules 15(2A) application*

14. By means of a rule 15(2A) application, the appellant relied upon a further bundle running to 261 pages, the majority of which concerned objective country material. Contained within it was a further witness statement from the appellant, dated 1 February 2021, and a short witness statement from Mr. Tarik Arif, dated 18 January 2021. Also included were photographs of the appellant outside the Iraqi Embassy, London and email correspondence between the appellant and the British Red Cross. I admitted the evidence.

*Evidence*

15. In his initial interview with the respondent held on 26 September 2017, the appellant confirmed that his passport was issued by the authorities in Al Sulaymaniyah, Iraqi Kurdistan Region ('IKR') and was in the respondent's possession.

16. In his witness statement, dated 5 March 2019, the appellant confirmed at §8:

'8. ... I left ... on 12 July 2017 with the agent and we travelled by plane to Aman [Sic] and then to Istanbul using my own passport ...'

17. The representatives confirmed before me that the respondent is in possession of the appellant's Iraqi passport which is valid until 2024.

18. At an interview with the respondent held on 6 March 2019 the appellant confirmed at Q7 that he had been issued with a Civil Status Identity Document ('CSID') card and citizenship certificate, both of which remain with his family in Iraq.

19. By means of his witness statement dated 1 February 2021 the appellant sought to address the outstanding issues. He stated that he left his CSID card at home in Iraq. As he does not have contact with his family in Iraq, he is unable to obtain the necessary documents to obtain a replacement CSID. He confirmed:

'When I left Iraq on 12 July 2017, I left behind my parents and my brother in Kirkuk who I last spoke to when I was in Istanbul. I also have an uncle who lives in Chamchamal in the IKR who I have not spoken to since leave [sic] Iraq. I have not been able to speak to my family because I lost my mobile phone which had their contact details in Romania. On 18 January 2021 I attended the Iraqi Embassy

in London with a copy of my passport to re-document myself. I was accompanied by a witness Mr. Tarak Arif who was instructed by my legal representatives to witness my visit. We both arrived at the Iraqi embassy and spoke to the embassy official but was advised that they would not be able to facilitate my request for a replacement CSID. I was advised that CSID documents were no longer valid and I would need to apply for a new biometric card known as an INID card in Iraq.

As I am not from Baghdad and with the introduction of the new INID card, use of family by proxy is not viable as I need to go to my home area to register my biometrics. It is unclear as to the likelihood of the CSA office not having an INID terminal/ no longer holding records in Kirkuk as the area is highly likely to have been affected by dispute and possible damage following the previous conflict.'

20. The appellant further confirmed that he had approached the British Red Cross to help trace his family. Despite stating that he had been unable to contact his family following the loss of their contact details when he was transiting Romania, the appellant provided details of his father's mobile number. He informed the British Red Cross by an email dated 18 January 2021:

'My last contact with my family was on 12 July 2017 when I left my country, since I arrived in the UK I have been trying to call their numbers and not not [sic] been successful.'

21. The appellant's assertion that he last had contact with his family when he left Iraq is inconsistent with earlier evidence that he last spoke to them when he was in Istanbul.
22. In answer to questions from Mr. Lindsay the appellant confirmed that he had a Facebook account. He explained that he did not have an email account whilst residing in Iraq but had used Facebook from 2014, when aged 16, until 2017. He confirmed that his account was set up by a friend. Over the course of three years he only linked up with two friends on Facebook, both of whom worked with him at the hospital. He lost his phone on the way to this country and consequently lost the password to his Facebook account. He could not remember the password, and he was unaware as to how he could request a new passport. He stated that he made 'many attempts' to reset the password but provided no detail as to the nature of such attempts. He explained that he could not remember the correct spelling of the password.
23. He set up a new account in this country but was unable to locate his family through the use of social network. He was also unable to find the accounts of his two friends from the hospital and presumed that they had given up on using Facebook. He detailed that that he only had two friends because he was busy at work.
24. The appellant explained that he was unable to locate family members on Facebook. In addition to his parents, he only had a maternal uncle and his brother who was aged 10 when he left Iraq. His parents were old and did not use Facebook.

25. He informed me that he had searched for his parents through the British Red Cross. He confirmed that he had provided the British Red Cross with correct details in relation to his parents last known whereabouts.
26. He stated that he does not presently know where his CSID.
27. The appellant confirmed that he attended the Iraqi Embassy in London to secure a new passport, but one could not be issued as he required documents establishing his father's identity. He wanted to show the respondent that he had made an attempt to secure documents that would aid him return home. He was informed by Embassy staff that they were no longer issuing CSIDs.
28. Mr. Arif attended and gave evidence on behalf of the appellant. He is an interpreter who was asked by the appellant's solicitors to attend the Iraqi Embassy in London in the company of the appellant. He confirmed in his statement, *inter alia*:

'I met [the appellant] at 9.00 outside the Consulate of the Iraq Embassy at 3 Elvaston Pl, Kensington, London, SW7 5QH and were waiting in a queue outside the building to be seen. He spoke to the embassy official but he was advised that they would not be able to facilitate his request for a replacement CSID. He was advised that CSID documents were no longer valid and he would need to apply for a new biometric card known as an INID card in Iraq.

I left Embassy of Iraq and [the appellant] took some photos as evidence.'

29. Mr. Arif confirmed to me that the appellant attended the Embassy at the request of his solicitor to secure a replacement CSID. When informed that the appellant's evidence at the hearing was that he attended to secure a passport, Mr. Arif stated that the appellant required a CSID to secure a passport. He confirmed that the appellant did not inform Embassy staff that he had a valid passport that was presently in the possession of the respondent.

#### *Adjournment and resumed hearing*

30. Consequent to the appellant and Mr. Arif giving evidence on 8 July 2021, the hearing was adjourned to permit the appellant the opportunity to file documents concerned with his efforts to search for family members through the British Red Cross. A further bundle running to over 130 pages was filed and served on 15 July 2021.
31. The hearing on 5 August 2021 proceeded by means of submissions only.

#### **Decision**

32. The appellant's case as advanced before me can be identified as follows: i) he presently has no contact with his close or extended family in Iraq; ii) he has proven unable, despite his best efforts, to locate family members through friends, social media or the British Red Cross; iii) he has no access to his CSID; iv) he would be returned to Iraq with his passport alone and so unable to return to Kirkuk or travel to the IKR; and v) it would be unduly harsh for him to relocate to Baghdad.

33. In his careful and helpful submissions Mr. Wilcox accepted that the crux of my decision was whether the appellant was in contact with his family, and on this issue the appellant's evidence as to his inability to contact them by phone or social media was key. If he was in contact with his family, and they remain in possession of his CSID, Mr. Wilcox did not assert that family members would be unable or unwilling to travel to Baghdad with the document and meet the appellant on his return to Iraq. It was accepted by Mr. Wilcox that the appellant would return with his valid Iraqi passport which is presently in the respondent's possession.
34. An alternative submission in respect of article 8 and the appropriateness of returning the appellant to Iraq during the present Covid-19 pandemic was addressed by Mr. Wilcox in his skeleton argument, though not advanced orally in submissions.

*Contact with family*

35. I observe that the appellant has been found to be wholly untruthful as to his subjective fear of persecution. I note the judgment of the Supreme Court in *MA (Somalia) v. Secretary of State for the Home Department* [2010] UKSC 49, [2011] 2 All E.R. 65, at [31]-[33]. The significance of lies will vary from case to case. In some cases, a judge may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, a judge may conclude that they are of great significance.
36. In this matter I accept that though the appellant was wholly untruthful as to his fear in relation to a purported murder, he has been accepted to be truthful on certain elements of his history such as being a Kurd, having resided in Kirkuk and having left his CSID with his family. I consider that his lack of truthfulness as to his protection claim does not *per se* mean that he is untruthful as to presently having no contact with his family: *Secretary of State for the Home Department v. Chiver* [1997] I.N.L.R. 212.
37. I have considered with care the appellant's evidence as to his inability to use social media to contact his family and being mindful of the relevant standard of proof I find that he is not being truthful. I further find that he is untruthful as to not being in telephone contact with his family. I detail my reasons below.
38. As to his inability to access his original Facebook account, that a password may have been stored on a phone, not re-entered over time and subsequently forgotten is plausible. However, as Ouseley J observed in *MM (DRC - plausibility) Democratic Republic of Congo* [2005] UKIAT 00019, [2005] Imm AR 198 while it is correct that the assessment of credibility may involve an assessment of plausibility of what has been said, such assessment is not a separate stage in the assessment of credibility. A story can be implausible and yet be taken as credible, and vice versa. A decision as to whether an appellant is credible should properly be founded on the totality of the evidence, including consistency on essentials or major inconsistencies, omissions and details, improbabilities or reasonableness.

39. Having considered his evidence as to his two Facebook accounts, the first opened whilst he resided in Iraq and the second following his entry into this country, I find that the appellant is incapable of belief, even when benefitting from the application of the lower standard of proof.
40. I find that the appellant has sought to hide his true level of education by declaring that the highest level of education he received was the mandatory 6 years of primary education and thus leaving school in Year 6 (interview, Q33). I take judicial note that mandatory primary education in Iraq commences from the age of six. The mandatory years may then be followed by 3 years of intermediate school, then 3 years of secondary education. However, in his witness statement dated 5 March 2019 he details that he completed his mandatory 6 years at primary school between 2008 to 2014, when on his declared age he would have been aged ten to sixteen. On his own evidence, as detailed at para. 4 of his March 2019 statement after 'stopping attending school' he started to work. I do not accept that having left school in Year 6, when aged 12, he commenced working on his evidence as a hospital porter/security officer. There is clear and significant inconsistency in his evidence as to his education. I find that it is much more likely that he attended school until he was aged at least 16 and most probably until he was aged 18. I am satisfied that the entire story as to his having worked at a hospital is a fabrication. I find that he left Iraq for economic reasons when aged 19 soon after concluding his education and having obtained his passport in November 2016 when aged 18.
41. I am also satisfied that having studied until aged 18 he learned Arabic as well as Kurdish, contrary to his denial of such fact.
42. Before me the appellant confirmed that he opened his initial Facebook account in 2014. At this time, he would have been aged 16. I am satisfied that the appellant is well aware that the best chance of winning his appeal, consequent to the adverse credibility findings of Judge Aujla, is to distance himself from an ability to secure his CSID through family members upon his return to Iraq. Consequently, he has asserted that he has lost telephone numbers, failed to access a social media account and is incapable of contacting anyone he knows in Kirkuk, or in wider Iraq. He is aware that a Facebook account is an immediate means of contacting a number of friends and family. He has sought to explain that he has lost access to his original Facebook account, had connection to only two friends on the account and has been entirely unable to contact family or his only two friends upon setting up a new account in this country. To support his contention, he found himself required to establish that he did not have an email account at any time whilst in Iraq and required a friend set up the Facebook account. However, I find that in 2014 when he set up his account he was in Year 10, was literate and was surrounded by friends of his own age. I am therefore not satisfied that he required the help of a friend to set up a social media account widely used in Iraq. The stages of setting up the account would have been simple and straightforward for him either in the English language or in the available Arabic language setting.



43. I am satisfied that the appellant is untruthful as to events. I find that as a teenager in Iraq, living in a city and still in education, he possessed a valid email account. His rudimentary efforts to distance himself from his Facebook account have led to him asserting that in the three years before he left Iraq, he only linked up with two friends, both said to work at the hospital. Such assertion possesses no credibility. Facebook is a means of connecting with friends and acquaintances. On the appellant's evidence, he grew up in Kirkuk and I have found that he was at school for most of the time he had his account in Iraq. Social media is a mechanism designed for friends to stay in touch throughout the day, weeks and months. The appellant's crude efforts to diminish his use of Facebook can only properly be considered an ineffective effort to persuade the Tribunal that he has no ongoing contact with friends and family.
44. I note that the substance of his asylum claim was rejected in its entirety. He has therefore been found not to have possessed a well-founded fear of Hashd Al Shaabi, or any other agent of persecution, at any time. It is therefore reasonable to conclude that he travelled to this country for economic betterment. Whilst there may be many complex reasons for his having made such decision, there is no clear and apparent reason as to why he would not continue to remain in contact with his family since leaving Iraq in July 2017. I therefore conclude that the appellant is not truthful as to not being in contact with his family from his time in Istanbul onwards. He is untruthful as to having lost all relevant contact numbers for his family whilst in Romania. I find that he continues to be in regular contact with family and friends in Iraq through modern means of communication, including telephone and social media. His efforts to deny such contact are simply a crude means of trying to hide the clear ability for members of his family to meet him on his arrival following his return to Iraq and present him with his CSID.
45. I note the appellant's efforts to approach the British Red Cross to trace his family, but as I have found that he knows where his family reside, and indeed remains in regular contact with them, I find that he has provided false information to the charity in an effort to pursue his falsehoods. It is very unfortunate that the charity's valuable time and resources have been wasted.
46. In the circumstances, the appellant's visit to the Iraqi Embassy in London provides no support to his case. In any event, I am satisfied that Mr. Arif was correct in his evidence that the appellant attended the Embassy at the request of his legal representatives to secure a replacement CSID, and not a passport as asserted by the appellant.
47. I observe Mr. Wilcox's acceptance on behalf of the appellant that in light of present country guidance if, as I have found, the appellant can secure his CSID through his family on his return to Baghdad he can use this document and his passport to safely travel to Kirkuk and reside with his family, or to travel to the IKR and join his uncle if he so wishes: *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG UKUT 00400*.

*Covid-19*

48. By means of his skeleton argument, dated 8 February 2021, Mr. Wilcox relied upon pages 33 and 34 of 'EASO Country of Origin Information Report Iraq: Key socio-economic indicators for Baghdad, Basra, Erbil' (November 2020). The written submission is that while increased government expenditure is likely to ameliorate some of the problems faced by those residing in Iraq, it is extremely unlikely to mitigate the effects of the pandemic related economic slump in respect of new arrivals. No oral submission was made in relation to this issue at the hearing held in August 2021.
49. Mr. Wilcox was correct to not pursue this submission before me. The document relied upon is of limited value, but in any event the appellant's family continue to reside in Iraq and there is no evidence before me that they are incapable of providing for the appellant on his return.

**Notice of Decision**

50. By means of a decision sent to the parties on 15 November 2019 this Tribunal set aside the decision of the First-tier Tribunal promulgated on 16 July 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
51. The decision is re-made and the appellant's appeal on international protection, humanitarian protection and human rights grounds is dismissed.

**Anonymity Direction**

52. Pursuant to Rule 14 of the relevant Procedure Rules I make an anonymity order in respect of the appellant:

'Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.'

Signed: *D O'Callaghan*  
**Upper Tribunal Judge O'Callaghan**

Date: 11 August 2021

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

No fee was paid and so no consideration is given to a fee award.

Signed: *D. O'Callaghan*  
**Upper Tribunal Judge O'Callaghan**

Date: 11 August 2021