



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07448/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 14 January 2021

Decision & Reasons Promulgated
On 09 February 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

G M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Smyth of Kesar & Co, Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. This is the determination of the Upper Tribunal re-making the decision following the Upper Tribunal's decision promulgated on 2 October 2020 setting aside the decision of the First-tier Tribunal as involving the making of a material error of law.

Background

3. The appellant is a citizen of Iraq who was born on 1 November 1991. He comes from the Rahim Awa area of Kirkuk City in Kirkuk Governorate. He is Kurdish.
4. He arrived in the United Kingdom on 23 September 2008 and claimed asylum. He claimed that his father had been killed by a terrorist group (Jund al Islam). The appellant claimed that he had been threatened and tortured by the group when he refused to plant a bomb in a government official's car. His application for asylum was refused on 26 January 2009. However, as an unaccompanied minor, he was granted discretionary leave to remain until 1 May 2009. He made a further application for leave which was refused on 9 July 2014.
5. Between November 2010 and February 2013, the appellant was convicted of a number of criminal offences both in the Magistrates' Court and Crown Court. Most recently, on 7 December 2010 at the Ipswich Crown Court he was convicted of burglary of a non-dwelling and sentenced to 12 months' imprisonment which was suspended. Then, on 22 February 2013, again at the Ipswich Crown Court, he was convicted of the offence of blackmail and sentenced to 30 months' imprisonment.
6. As a result of his convictions, the appellant was served with notice of liability to be deported on 28 March 2014. The appellant responded on 6 May 2014 making an international protection claim and also a human rights claim. On 9 July 2014, he was served with a decision to deport him and his claims refused. The appellant appealed against the refusal of his international protection and human rights claims on 14 July 2014. His appeal was dismissed on 7 June 2016. Judge Peart did not accept that the appellant's father had been killed as the appellant claimed or that the appellant was threatened by the terrorist group as he claimed. The appellant was subsequently refused permission to appeal by the First-tier Tribunal and Upper Tribunal. As a result, he became appeal rights exhausted on 22 August 2016.
7. On 27 March 2017, the appellant was detained under immigration powers in order to be interviewed by Iraqi officials which the appellant declined to attend. On 21 September 2017, the appellant was again detained with a view to taking part in an interview with Iraqi officials. That interview took place on 26 September 2017 and a laissez-passers was issued.
8. The appellant then made further submissions on 21 December 2017 and 2 January 2018. On 5 January 2018, the Secretary of State rejected those submissions and concluded that they did not amount to a 'fresh claim' under para 353 of the Immigration Rules (HC 395 as amended). Following the lodging of a judicial review claim on 5 January 2018, pursuant to a consent order signed on 6 September 2018 the Secretary of State withdrew the decision of 5 January 2018.

9. In reconsidering the appellant's submissions, on 18 July 2019 the Secretary of State made a decision to refuse the appellant's asylum claim, humanitarian protection claim and claims under Arts 3 and 2, 3 and 8 of the ECHR. The appellant appealed against that decision to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

10. In a decision sent on 3 January 2018, Judge Hosie dismissed the appellant's appeal on all grounds. The judge rejected the appellant's claim under the Refugee Convention and on humanitarian protection grounds on the basis that he was excluded from protection under s.72(6) of the Nationality, Immigration and Asylum Act 2002 (as amended) and under para 339D of the Immigration Rules respectively. In relation to his claim under Art 3 of the ECHR, the judge found that the appellant would be able to obtain a Civil Status Identity Document ("CSID") and so he would not be at real risk of serious harm or of destitution on return to Iraq. The judge also found that the appellant's return to Iraq would not breach Art 8 of the ECHR.

The Appeal to the Upper Tribunal

11. The appellant sought permission to appeal to the Upper Tribunal solely on the ground that the judge had erred in law in her approach to the issue of whether the appellant would be at real risk of serious harm in concluding that he would be able to obtain a CSID within a reasonable period of his return. The basis of that ground was that the Upper Tribunal had, between the hearing of the appeal and the date that the judge's determination was promulgated, reported a country guidance decision in SMO and Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) which was inconsistent with the judge's finding that the appellant would be able to obtain a replacement CSID before, or within a reasonable time of, returning to Iraq.
12. On 22 May 2020, I granted the appellant permission to appeal on that ground. Following an error of law hearing on 24 September 2020, in a decision promulgated on 2 October 2020, as the Secretary of State conceded, I concluded that the judge had materially erred in law by failing to apply SMO and Others which was the relevant CG decision as it had been reported before her decision was promulgated. As a consequence, I set aside the First-tier Tribunal Judge's decision in order that the decision could be remade solely on the issue of risk to the appellant (whether under Art 3 of the ECHR or on the basis of Art 15(b) of the Qualification Directive) because he would not have a relevant document such as a CSID or Iraqi Nationality Identification Document ("INID") on return.

The Resumed Hearing

13. The substantive appeal was listed at Cardiff Civil Justice Centre on 14 January 2021. I was based at the Cardiff CJC and Mr Smyth, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business. In addition, the appellant joined the hearing remotely by Skype for Business and gave evidence via the video link through the Tribunal's interpreter who also joined the hearing remotely by Skype for Business.

14. In addition to the appellant's oral evidence, pursuant to an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended), and without objection from Mr Howells, the appellant also put into evidence a 27 page bundle of additional documents. This bundle included an additional statement by the appellant dated 11 January 2021 and a statement from his partner, "S" dated 11 January 2021. Mr Smyth also helpfully prepared a short skeleton argument.

The Issues

15. At the outset of the hearing, the representatives narrowed the relevant issues for decision.
16. It was common ground that the judge's decision to dismiss the appellant's appeal on asylum grounds and under Art 8 of the ECHR had not been challenged and stood.
17. It was common ground that the sole issue for determination was whether the appellant could establish that he was at real risk of serious harm on return to Iraq because he would not have the necessary document, namely, a CSID or INID. It was common ground between the parties that if he were to return without such a document then he would be at risk of serious harm contrary to Art 3 of the ECHR or Art 15(b) of the Qualification Directive, not least at the hands of Shi'a militia in seeking to travel from Baghdad (to which he would be returned) to his home area of Kirkuk. The risk to the appellant in such circumstances is recognised in SMO and Others at para (11) of the judicial headnote.
18. On behalf of the Secretary of State, Mr Howells accepted that the appellant, if he did not have, or could not access, a CSID would not be able to obtain a replacement in the UK from the Iraqi Embassy. In that regard, he adopted the position set out in the *CPIN*, "Iraq: Internal Relocation, Civil Documentation and Returns" (June 2020) at para 2.6.16 that: "it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK."
19. Second, Mr Howells accepted that the appellant would not be able to obtain a replacement CSID through a proxy from the relevant CSA office in Kirkuk. Mr Howells accepted, on the basis of [431] of SMO and Others, that the CSA office in Kirkuk had an INID terminal and was no longer issuing CSIDs. An INID could not be obtained by proxy; it could only be obtained in person, as it required biometric data, including fingerprints and iris scans to be provided set out in SMO and Others at [388] and [431].
20. Third, Mr Howells accepted that the appellant could not obtain a replacement CSID from Baghdad as set out in SMO and Others at [393].
21. In short, therefore, the representatives accepted that the issues in remaking the decision in this appeal were as follows:
 - (1) Did the appellant still have the original CSID which he accepted he had in Iraq?

- (2) (a) If not, was it left with his family in Iraq whom he could contact and obtain access to it by them sending it to him in the UK or, perhaps, bringing it to him on arrival at Baghdad Airport?
 - (b) In relation to this issue, an additional factual issue arose, namely whether the appellant could contact his family in Iraq.
- (3) If neither of these was established, could the appellant safely travel from Baghdad Airport to Kirkuk (where he could obtain an INID) by obtaining from the Iraqi Embassy in the UK a Registration Document (1957)?

The Evidence

22. The principal factual issue concerned whether the appellant had, or has access via his family in Iraq, his original CSID. That issue, in turn, incorporated the issue of whether the appellant could make contact with his family if his CSID was still in Iraq.
23. On these issues, the appellant's evidence is contained within his two witness statements dated 19 November 2019 and 11 January 2020. Also, the appellant gave oral evidence in which he adopted his statements and was cross-examined by Mr Howells. There was no re-examination of the appellant in his oral evidence.
24. In his statement of 19 November 2019, the appellant says this about his CSID at para 50:

“When I was in Iraq, I did have a CSID but that got taken from me when I left the country. The agent asked for it and I gave it to him. We were not asked why he wanted it. I was scared at the time and did not want to question him about it. I do not remember anything about the document and cannot remember what it said as I cannot really read and write. I also didn't have a passport as there was no need for me to get one as a child as I didn't leave my home town of Rahim Awa.”
25. In his more recent statement dated 11 January 2021 the appellant says much the same at paras 5-6 as follows:
 5. I confirm again that I once had a Civil Status Identity Document (CSID) when I was in Iraq. This was taken off me when I left Iraq. The agent asked me to give it to him and I handed it over. I was intimidated by them and by the situation at the time and I didn't question him. I can't read or write well and I can't remember anything about the details on that document.
 6. I confirm that I cannot remember any details about the CSID that I had and I do not know how I would be able to get one. I have called the Iraqi Embassy to try to assist me on their number [...] numerous times and have not had any response from them yet. They do not answer their phone.”
26. In relation to his family in Iraq, in his first statement the appellant said this at paras 46-49 as follows:

- “46. After leaving my family and coming to the UK, I have wanted to see my family again. I have made attempts to find my mother, brother and sister but have not been able to find out what happened to them or where they are. My social worker tried to find them when I was younger but was unsuccessful. The Red Cross also tried but could not locate them.
47. I have asked people in the Kurdish community who have gone back to Iraq to help me look for my family, but they have told me they cannot find any information about them. One person went to my house and told me that he found an Arab family living there. Another time, I asked a friend of mine, [“U”], who was travelling back to Iraq to go and look for my family. He was also unable to find them.
48. I have made numerous attempts to try and find my family over the years but I have not been able to find them. The most recent was when I was interviewed by the Iraqi government officials in September of 2017. I gave them the names of my family and the names in my house. I asked them to try and find my family so that I could contact them. I received no response from them.
49. I have spoken before about my friends [U] and [A] who returned to Iraq a long time ago. They are back in the UK now. I do not keep in contact with any people in Iraq. I have a life in the UK now, [S] is like my wife. I have no life in Iraq and cannot obtain help from anyone.”

27. At para 54, the appellant adds this:

“I have tried to contact my family since I first arrived in the UK over eleven years ago but have never been able to contact them. I have no friends or relatives in Iraq, no one would help me. I have no documentation from Iraq and I am not able to obtain one because I do not have any connections to that country. ... if I was able to find my family, it would be okay for me to return as I would have people there who could care for me and help me obtain documentation.”

28. In para 39 of that statement the appellant talks about telling his partner, S about his family:

“I also told her about my family, that my father had died and that I have not been able to contact them for a long time. It was very hard for me to tell her about it, but I want her to know more about me.”

29. In his more recent statement dated 11 January 2021, the appellant says this about contact with his family at paras 3-4:

- “3. I confirm that I have had no contact with anyone in Iraq since coming to the UK. I do not know what happened to my remaining family there.
4. I confirm that I have approached British Red Cross’s tracing service twice, once a long time ago with my social workers and once more recently, in January 2020 during the COVID-19 lockdown. The British Red Cross worker there actually recognised me from the first time I attended and confirmed that they had not been able to find my relatives.”

30. In his oral evidence during cross-examination, the appellant was asked questions across a number of areas and issues.
31. First, the appellant was asked about the decisions in his two earlier appeals. He was asked, given that the two judges had not found he was telling the truth about what happened in Iraq, why he should be believed that he had lost contact with his family and did not have a CSID. His evidence was that what he had said about his life was the truth. He had been here for a long time and he did not have anyone in Iraq and that was why he was in the UK. He maintained that if, in fact, his father was alive and had not been killed by terrorists, how could he not have spoken to him since 2008.
32. Second, the appellant was asked about his evidence concerning his address in Kirkuk. He said that he lived in the Rahim Awa area of Kirkuk but that he could not recall the number as he had not been there for a long time. It was pointed out to him that in his interview in 2008 (at question 10) he had given the address as "20, Rahim Awa" and that in the appeal before Judge Hosie in 2020 he had said that the number was "22" (see para 60). He was asked why was there a discrepancy. The appellant responded by apologising and saying that he could not now remember. It had been many years that he had been living in the UK. He was asked how it was that he had remembered the number last year but not today. He replied that he forgot things and that he had a problem with his memory.
33. Third, the appellant was asked about his family in Iraq. He accepted that after his father had died he had a mother, brother, sister and maternal uncle in Kirkuk but no other relatives. He said that he did not know what had happened to his relatives. He was asked whether that was what he had told his partner, S. He said that he had told his partner that he had lost contact with his family members. She liked to make him happy and she had told him that he might see them again. The appellant was asked about S's statement at para 13 where she had said that she understood they were all dead and if his evidence was that she had said he might see them again, how did that explain what she said in her statement that she thought they were all dead. The appellant replied that he had been with his partner for a number of years and had had no contact with his family. She had said this to comfort him. She told him not to lose hope and that maybe some are alive. He had no knowledge of them, however, from 2008.
34. Fourth, the appellant was asked a number of questions concerning his evidence of attempts to contact his family in Iraq since he has been in the UK. He was asked whether he had any documents to show, as he claimed, that local Social Services had tried to contact his family sometime ago. He said that his social worker had tried very hard but, although he had told his social worker, he did not have any documents. He said that he did have contact with his social worker.
35. He was asked whether he had any documentary evidence relating to his friend (U) whom he said had visited Kirkuk to look for his family. He said that he did not have anything. He lived in a "very bad life".

36. The appellant was asked about what he had said in his recent statement about approaches by the Red Cross and the submitted evidence (in the form of text messages) and whether there was any evidence of his claimed first approach to them. He said he did not know why the first approach was not there.
37. It was put to the appellant that he had come to the UK about twelve years ago as a 16 year old and that the only documentary evidence of attempts to contact his family was very recent and that the truth was that he was in contact with his family in Kirkuk. The appellant replied "no".
38. Fifth, the appellant was asked about his evidence concerning his CSID. He agreed that in his statements he had said that his CSID had been taken by the agent when he left Iraq. When asked what age he had obtained the document, he said he could not remember how old he was because his parents had obtained it for him. He was asked whether it had an expiry date or did it last permanently. He said he did not know. It could be forever but he had left Iraq a decade ago and did not know the system there.
39. The appellant agreed that he did not have a National Identity Document. He only had a CSID which he called a 'Taskera' and the agent took that from him. Apart from that he had nothing. He was asked where the agent took it from him and he said whilst he was on route to the UK. He did not really know where. He did not know the route. The agent took the ID from him but he did not know exactly where.
40. The appellant was asked about his interview with the Iraqi officials in 2017 when the Home Office was trying to remove him to Iraq and the Iraqi officials issued him with a document to enable him to fly to Iraq (that is a reference to the laissez-passer) and that the officials must have been satisfied that he was an Iraqi national. He was asked whether he produced any identity documents when interviewed by the Iraqi officials. He said "no". He did not give them anything and they did not give me anything apart from tickets.
41. It was put to the appellant that the truth was that his CSID was with his family in Iraq or he had it in the UK. The appellant replied that it was not with him nor was it with his family. It was with the person who arranged his exit.
42. Finally, the appellant was asked about what he had said in his statement about not knowing the details of his family book. It was put to him that the evidence, in SMO and Others, was that these were very important details and people normally knew them, such as the volume and page number in the family book in the Civil Registry. He replied that it was not something that every individual knew. His evidence was that you brought the file and details and that the person in the registry knew about it.
43. In addition to this evidence, the appellant's bundle also contains a statement from the appellant's partner, S. Much of this statement concerns her relationship with the appellant which, in effect, relates to the appellant's Art 8 claim which it is accepted stands as dismissed as a result of Judge Hosie's decision.

44. However, there is one matter in that statement to which I should make reference although Mr Smyth, on behalf of the appellant, made no reference to it. It was, in effect, raised in cross-examination of the appellant and concerns what S says the appellant has told her about his family. The relevant evidence is at paras 13-14 as follows:

“13. [The appellant] has not really spoken to me about his family as it is very tough for him. He told me that he lost his family very early on in our relationship. He was very sad when I asked about his mum and dad, he burst into tears. Whenever he has a few drinks, he talks about how much he misses his family. Though I have not spoken to him a lot about his family, I understand that all of them are dead. He told me that he was on his own before he left Iraq and that he left because he did not want to die.

14. For the four years I have been with [the appellant], he has never spoken with his family and has never talked about looking for them as far as I know. I don't understand why people would think that [the appellant] would be lying about his family. For as long as I've known him, he has always found it very difficult to talk about his parents and is very sad when he talks about them. He tells me that he wishes he could talk to his family one more time and I do not understand how he could be so sad about his family and be lying.”

45. That statement is unsigned and S did not give oral evidence at the hearing.

46. Finally, there is at pages 24-27 of the bundle photocopies of text messages which is said to relate to his claim to have recently been in contact with the Red Cross to trace his family. At page 27 is a text which is signed by an individual followed by the words “Red Cross”. That text says as follows:

“please check with [the appellant] if he has used any different names in the UK or Iraq. I have done a check on our database and cannot find a record of [the appellant's name]. How does his solicitor and Home Office spell his name?”

47. So far as I can tell, that is a text between the Red Cross (said to be in January 2020) and the appellant's partner, S. Again, Mr Smyth did not refer to this evidence in his submissions or skeleton argument.

The Submissions

The Respondent

48. On behalf of the respondent, Mr Howells invited me to reject the appellant's evidence that he had handed over his CSID to the agent when coming to the UK and that he had lost contact with his family in Iraq. He invited me to find either that the appellant still had his CSID or, if not, it was in Iraq with his family whom he could contact and obtain it from them.

49. Mr Howells relied on Judge Peart's adverse credibility finding in the 2016 appeal and, again in relation to his international protection claim, by Judge Hosie in this appeal. Mr Howells drew my attention, in relation to the former, to Judge Peart's

determination at paras 48-52, where he found that the appellant's claim "lacks credibility" and the judge's rejection of the appellant's account, upon which his international protection claim was based, namely that his father had been killed by terrorists and he had been threatened and tortured by terrorists for refusing to plant explosives on government vehicles and was forced to flee Iraq.

50. Mr Howells also relied upon para 72 of Judge Peart's determination where he also found the appellant not to be credible

"with regards to events and his family circumstances in Kirkuk. There is nothing to suggest that he cannot access support from family or friends in the event of his deportation to Baghdad."

51. Mr Howells pointed out that Judge Hosie did not depart from that adverse credibility finding and her decision stood unchallenged in this appeal.
52. Mr Howells submitted, that as a result, the appellant's claims now should be treated with caution. He accepted, however, that just because the appellant had not been believed by Judge Peart and Judge Hosie did not mean that the appellant should necessarily not be believed on everything.
53. Mr Howells submitted that there were good reasons to disbelieve the appellant's evidence now concerning his claim to have lost contact with his family in Iraq and to have handed his CSID to the agent.
54. First, he relied upon the appellant's consistent evidence concerning his address in Kirkuk. In his asylum interview he had said he lived at number "20"; in 2016 he had given his address as number "22" and in his oral evidence he could not remember. Mr Howells submitted that cast doubts on the reliability of the appellant's evidence.
55. Second, Mr Howells relied upon the inconsistency between the appellant's evidence that his father had been killed but he did not know what had happened to his other family whilst his partner, in her statement, said she understood that all the appellant's family had died. Further, in cross-examination, he had said that she had offered him hope that he would be reunited with his family some time. That was inconsistent with his partner's evidence that she understood they were all dead.
56. Third, Mr Howells submitted that the appellant's evidence concerning attempts to contact his family was largely unsupported. The only documentary evidence concerning attempts to contact his family was very recent in the form of the text message with the Red Cross. There was no supporting evidence that his social worker had previously attempted to make contact and there was no evidence from U, his friend to support his claim that he had looked for the appellant's family unsuccessfully. There was no supporting evidence of an earlier approach by the appellant to the Red Cross.
57. Fourth, Mr Howells submitted that the appellant accepted that he had a CSID in Iraq and he invited me to reject his claim that he had handed it over to the agent. He relied upon the appellant's evidence in cross-examination about how this occurred as

being vague. He submitted that I should find that his CSID is either with his family in Iraq or with him in the UK. Although, as regards the latter, foreshadowing Mr Smyth's oral submissions based upon his skeleton argument, Mr Howells did accept that it was likely that if his CSID had been with him on arrival, in the circumstances in which he was dealt with shortly after arrival, it was likely to have been found and that therefore, it was more likely that he had left it in Iraq.

58. Mr Howells also relied on the fact that the appellant had been interviewed by the Iraqi Embassy and had been recognised as an Iraqi national even, on the appellant's evidence, when not producing any ID documents.
59. Fifth, as regards the appellant's evidence that he could not remember the details of his family book, Mr Howells relied upon [391] of SMO and Others which recognised that this information was fundamental to Iraqis and only in exceptional circumstances was it likely that an Iraqi could not be expected to know this information. Mr Howells submitted that the appellant did not fall within any of the situations contemplated in SMO and Others at [392], namely he was not of a particularly young age when he left Iraq (he was 16); and he was not mentally unwell. Mr Howells relied upon Judge Hosie's caution concerning the psychiatric assessment of the appellant (at para 95), finding that there was nothing significant about his mental health. Those findings were not challenged. Likewise, Mr Howells submitted that although the appellant claims not to be literate, he did attend school as the judge found. He submitted that I should find that the appellant is likely to know the details of his family book entry. Although, Mr Howells submitted this would only be relevant if the appellant did not have a CSID and was seeking a Registration Document (1957) via the Iraqi Embassy in the UK.
60. Sixth, Mr Howells invited me to find, bearing in mind what was said in SMO and Others at [392] that Iraq has a family orientated culture and that mobile phones are part of the social circumstances and that only in a small number of cases should it be said that an individual was not able to trace his family.

The Appellant

61. On behalf of the appellant, Mr Smyth relied on his skeleton argument. The majority of his skeleton argument deals with issues not (now) in dispute between the parties.
62. In relation to the issue of whether the appellant has established that he has lost his CSID, Mr Smyth placed reliance upon the appellant's evidence at para 50 of his witness statement dated 19 November 2019. Mr Smyth contended that it was not advanced with any enthusiasm that the appellant had his CSID in the UK. He was questioned on the day of arrival at a police station before being handed in to the care of the local authority. Mr Smyth submitted there was no realistic basis for claiming that he had retained his CSID and managed to keep it hidden from the authorities. He pointed out that this had never been part of the respondent's case. Further, Mr Smyth submitted it was not implausible that, as the appellant claimed, the document was taken from him by the agent during the journey to the UK.

63. As regards the appellant's family in Kirkuk, Mr Smyth made no specific submissions in relation to whether the appellant had lost contact with them. Although, he relied on the fact that it was no part of the appellant's evidence that he had left his CSID with his family.
64. In addition, Mr Smyth submitted that there was no logical basis for concluding that a CSID, issued some considerable time ago, was still valid.
65. Mr Smyth submitted that the appeal should be allowed because the appellant did not have his CSID and could not access it. Even if he did, it would not be much use to him as it would not be valid.

Discussion and Findings

66. In reaching my findings, I bear in mind that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that there are substantial grounds for believing that there is a real risk of serious harm on return. That burden and standard of proof applies to the factual matters in issue in this appeal.
67. For the reasons I now give, I accept in substance (though not in every specific detail) Mr Howells' submissions.
68. First, the appellant has on two occasions been found not to be credible by Judges of the First-tier Tribunal. In 2016, Judge Peart rejected the appellant's account that his father had been killed by terrorists and that he had been threatened thereafter and forced to leave Iraq in fear for himself. Judge Hosie in 2019, accepted that conclusion and, at this stage of the appeal, her findings in that regard stand unchallenged.
69. Judge Hosie also made adverse findings concerning the appellant's family in Kirkuk. She was considering whether the appellant would have the assistance of a male family member in Kirkuk in order to obtain a CSID for the appellant in Kirkuk. That, of course, is no longer an issue, as the parties agreed before me, in the light of SMO and Others. Nevertheless, the finding is, in my judgment, significant. At para 103 of her determination, Judge Hosie said this:

"The question remains however whether he would be able to obtain a CSID on arrival within a short period thereafter. This would entail the assistance of a male family member to assist him in obtaining a CSID. No evidence has been presented that the appellant's uncle is not still alive and living in Kirkuk."
70. I would also observe that there is still no evidence that the appellant's uncle is still not alive and living in Kirkuk.
71. Judge Hosie then went on to deal with claims by the appellant that he had sought to trace family members without success at paras 103-104:

"103. The appellant claims to have made attempts to trace his family however no evidence has been presented by him of this. He claims to have sought the

assistance of social work who in turn contacted the Red Cross and again no evidence has been presented of this.

104. The appellant claims that he asked his friend [U] to go to his family home when he returned to Iraq as they live in the same area previously and [U] makes regular trips to Iraq. The appellant claimed in oral evidence that [U] went to the appellant's family home and did not find anyone. The evidence was vague and inconclusive and the appellant was unable to answer whether [U] made inquiries of neighbours or other associates yet these would have been obvious questions for the appellant to have asked him. The appellant claims to have been in frequent contact with [U] although they spoke some three months previously. He did not ask [U] to provide a witness statement or attend court on his behalf. The appellant could have gone back to the Iraqi Embassy with the information provided by [U] and asked them to assist him more recently in family tracing however, no evidence has been provided that he has done this. All of this weakens the appellant's claim to be unable to obtain a CSID within a short period of time on arrival in Iraq."

72. Then, at para 111 the judge reached the following finding:

"I refer to my findings above in relation to whether the appellant would be able to obtain a CSID. There is insufficient evidence before me to displace the fact that his evidence is that his maternal uncle lived in Kirkuk."

73. It is, of course, as Mr Howells submitted, not conclusive that the appellant was found by Judge Peart or Judge Hosie not to be credible and not to have told the truth.

74. I bear in mind the self-direction, known in the context of criminal trials as the "Lucas direction" which applies in international protection proceedings as the Court of Appeal recognised in Uddin v SSHD [2020] EWCA Civ 338 at [11] (per Sir Ernest Ryder, SPT):

"I note in that regard the conventional warning which judges give themselves that a person may be untruthful about one matter (in this case his history) without necessarily being untruthful about another (in this case the existence of family life with the foster mother's family), known as a 'Lucas direction' (derived in part from the judgment of the CACD in *R v Lucas* [1981] QB 720 per Lord Lane CJ at 723C). The classic formulation of the principle is said to be this: if a court concludes that a witness has lied about one matter, it does not follow that he has lied about everything. 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. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases."

75. Of course, the findings of both judges, including Judge Hosie's finding that the appellant has not established that he has lost contact with at least his uncle in Kirkuk, are only the 'starting point' in my reaching findings applying Devaseelan [2002] UKIAT 00702.

76. In this appeal, the appellant has provided little supporting evidence. There is still no evidence from U to support the appellant's claim that U travelled to Iraq and unsuccessfully sought to trace the appellant's family. There is still no supporting evidence for the appellant's contention that, earlier in his time in the UK, he sought through his social worker and the Red Cross to trace his family. In his oral evidence, he said he was still in contact with his social worker and, in any event, he could, if he wished, attempt to obtain supporting evidence about that but has not done so. There is evidence of contact with the Red Cross in, it is said, January 2020 (but it may be January 2021 in context), but that evidence does not, as the appellant claimed, provide support to his contention that the Red Cross acknowledged that he had earlier used their services to contact his family. Further, the evidence itself goes no further than stating in a text message (at page 27 of the bundle) that the Red Cross has been unable to find on their database any record of a person bearing the appellant's name. It does not support a claim that the Red Cross has effectively attempted to trace the appellant's family but without success.
77. The evidence of the appellant's partner, S was in the form of an unsigned witness statement. She did not give oral evidence before me at the hearing and so her evidence was not subject to forensic challenge. That, in my judgment, affects the weight that can be given to it.
78. In any event, her evidence is, in part, as Mr Howells submitted, inconsistent with what the appellant said. His evidence is that his father was killed but he does not know what happened to the other family members. S's evidence is that she believes that all his family has died. That is a belief that could only have been engendered by what the appellant said to her. The inconsistency was not, in my judgment, adequately explained in the appellant's oral evidence. Further, in cross-examination the appellant said that S encourages him and offers hope that he will be reunited some time with his family. Yet that, on its face, is inconsistent with her understanding that they are all dead.
79. In my judgment, these matters lead me to conclude that I do not accept the appellant's evidence that his CSID was handed over to the agent when he came to the UK. Mr Smyth submitted that that was a plausible circumstance, namely that an agent might well take documents from a person such as the appellant. That contention was not supported by any background evidence. It cannot be taken as a given, in my judgment, that represents the modus operandi of agents bringing individuals clandestinely to the UK. In the absence of supporting evidence, it amounts to mere supposition.
80. I did not understand Mr Howells to pursue, in the light of Mr Smyth's submission, that it was likely that the appellant had his CSID when he arrived in the UK and had been able to conceal it from the police and Social Services with whom he came into contact shortly after arrival. In my judgment, the evidence does not establish that the appellant brought the CSID with him to the UK. In my judgment it is far more likely, and I find as a fact in this case, that there is a reasonable likelihood that the appellant

left his CSID in Iraq with his family, in particular his uncle with whom his own evidence was he lived.

81. Further, there is nothing in the evidence before me to counter Judge Hosie's unchallenged finding that the appellant still has an uncle in Kirkuk. As regards contact, I bear in mind what was said in at [392] of *SMO* and others, albeit in the context of contact to obtain 'family book' information:

"It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back."

82. I am satisfied on the standard applicable in international protection cases that the appellant's CSID was left in Iraq and is available to his family, in particular his uncle. I do not accept that the appellant has lost contact with, or at least the ability to contact, his family, in particular his uncle in Iraq. I do not accept his, largely unsupported, evidence that he has unsuccessfully sought to trace and contact his family through the Red Cross or his friend, U. I am satisfied, therefore, that the appellant could obtain his CSID prior to returning to Iraq.
83. Mr Smyth raised the issue of whether that CSID would, if the appellant could obtain it, still be valid. The appellant's evidence on that was that he did not know whether the CSID had a limited period of validity or was permanently valid. No background evidence was referred to by either representative relevant to this issue. It was not, so far as I can tell, an issue raised in *SMO and Others*. In the light of that, I see no reason to doubt, despite the fact that the appellant has been in the UK for some twelve years, that his CSID would be valid and sufficient to allow him to safely travel, through any Shi'a militia checkpoints, from Baghdad Airport to his home area of Kirkuk.
84. In the light of that finding, it is not strictly necessary to resolve the other issue relied upon by Mr Howells in respect of the Registration Document (1957). That submission was that, even if the appellant did not have a CSID and it is accepted he could not obtain a new CSID or an INID in the UK, he could obtain a Registration Document (1957) via the Iraqi Embassy in the UK which would allow him to travel safely in the same way as a CSID or INID would when back in Iraq.
85. In that regard, Mr Howells relied upon paras 2.6.15 and 2.6.16 of the *CPIN* (June 2020) which is in the following terms:

"**2.6.15** Since *SMO* was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside

of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

'The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document [see paragraph 2.6.24 for list of national identity documents] and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.'

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.'

'The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

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

86. Mr Howells submitted that the appellant would need to know the details of the "family book" but, applying SMO and Others, I should find that he would despite his evidence to the contrary and, with this information, he could obtain a Registration Document (1957) via the Iraqi Embassy. That, he submitted, would allow the appellant to travel safely to Kirkuk in order to obtain an INID on arrival there.
87. Mr Howells accepted that there was a "gap" in the evidence as to whether this document would allow for safe travel. He accepted that, although the Upper Tribunal in SMO and Others had referred to this document, it had not considered whether the document allowed for safe travel in Iraq as the evidence at the time was that a CSID could be obtained from the Iraqi Embassy. Nevertheless, Mr Howells submitted that if the Iraqi Embassy was recommending an individual should apply for this document, as it was not able to issue CSIDs, it was highly unlikely that the appellant would not be able to travel in Iraq safely in order to obtain a new CSID or INID in his home area.
88. As I have said, given that I have found that the appellant would be able to obtain from Iraq via his own family his existing CSID which would allow him to safely travel within Iraq, it is not strictly necessary to decide whether he could obtain this alternative document which would allow for safe travel in Iraq.
89. I accept Mr Howells' submission, on the basis of [391] and [392] of SMO and Others, that it is likely that the appellant knows the relevant details of his family book which

would assist him to obtain the Registration Document (1957). I do not accept the appellant's evidence that he does not know the details. In SMO and others the UT said this:

"391. We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual's volume and page reference in the civil register. These details appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. It was suggested in a report from the British Embassy in Baghdad, quoted at 6.1.9 of the Internal Relocation CPIN of February 2019, that "[a]ll Iraqi nationals will know or be able to easily obtain this information". We find the former assertion entirely unsurprising. The volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. We do not lose sight of the fact that there remain a significant number of people in Iraq who are undocumented. We do not consider that problem to be attributable to a difficulty with recalling the relevant information. It is instead attributable to the closure - until comparatively recently - of the local CSA offices at which people were required to obtain replacement documents and to their reluctance to return to those areas from a place of relocation.

392. There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. As is clear from AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back."

90. In my judgment, the appellant does not fall within either of the three categories in [392] where it is plausible that he would not know, namely that he left at a particularly young age or that his mental health affects his knowledge or that he is illiterate or innumerate to a level where he might not know this, remembering always that his evidence was that he went to school. In any event, I see no reason why he could not obtain the information from his family in Iraq with whom he is able to contact.
91. Nevertheless, I do not accept that the evidence which, Mr Howells acknowledged contained a "gap", establishes that the Registration Document (1957) is a substitute for an CSID or INID allowing for safe travel in Iraq. The point has arisen in a number of cases where, on the basis of very similar submissions, Mr Howells invited

me to conclude that this document would suffice. In a previous appeal (PA/03933/2019), the submissions (made by Mr Howells) mirrored those he made in this appeal. Rather than seek to re-cast my earlier reasons for rejecting those submissions in different language here, it is appropriate that I reproduce my earlier reasons which were at paras 116-119 of that earlier appeal decision (dated 2 November 2020):

“116. On the face of it, the purpose of issuing a Registration Document (1957) is in order to permit an individual to apply for an INID on return to Iraq. Of course, that document can only be obtained by an individual attending the relevant CSA Office (which issues such documents) as it is a biometric document. Mr Howells, however, submitted that possessing a Registration Document (1957) was the equivalent of possessing a CSID for the purposes of safe travel from, for example, Baghdad to an individual’s home area.

117. The evidence from the Iraqi Embassy set out in the *CPIN* does not, however, contemplate the document’s use in this way. It is silent on whether the document would allow an individual’s safe passage to their home area. Mr Howells invited me to infer that that was the case otherwise why would the Iraqi Embassy issue such a document. The answer to that may be that the document is issued in order to allow an individual to obtain an INID in their home area. That may, for example, be Baghdad itself to where there may be no travel difficulties.

118. More specifically, however, the Iraqi authorities are not issuing Registration Documents (1957) in order to facilitate safe passage to an individual’s home area. The evidence from the Iraqi Embassy is not concerned with that issue. In my judgment, it cannot be inferred that is the case on the basis of the limited evidence set out in the *CPIN* from the Iraqi Embassy.

119. The UT in SMO did not express any view on whether that document would allow safe passage in Iraq. The UT in SMO was concerned with the relevance of a CSID, an INID, a ‘laissez passer’ or a ‘certification letter’. Neither of the latter two documents was considered by the UT to allow for such safe passage (see [374] and [378]) and, as [counsel or the appellant] submitted, that view was taken in the face of a (potentially) contrary position taken by the Iraqi Embassy itself. Here, of course, there is not even a view expressed by the Iraqi Embassy. In SMO, the UT referred to with approval the expert evidence that Shi’a militia were unlikely to find acceptable alternative forms of identification to a CSID or INID (see [378]). In the light of this evidence, I am not satisfied that even if the appellant obtained a Registration Document (1957) – and assuming he has not already obtained a CSID as I have concluded he could – that document would obviate any risk to him, for example at Shi’a militia checkpoints on his journey home to Kirkuk Govern[orate]. The evidence in this appeal simply does not make good Mr Howells’ submission as to the potential use of the document beyond it being a document that allows an individual, once in their home area, to obtain an INID.”

92. The evidential position is no different in this appeal and I adopt my earlier reasons here which are, in my judgment, equally applicable to this appellant’s claim and justify the rejection of Mr Howells’ submissions that a ‘Registration Document (1957)’ would allow the appellant to safely travel from Baghdad to Kirkuk where he would then be able to obtain an INID.

93. However, as I have already found, the appellant can obtain his existing CSID in order to travel safely and so his claims under Art 3 of the ECHR and Art 15(b) of the Qualification Directive do not succeed.

Decision

94. The decision of Judge Hosie to dismiss the appellant's appeal was set aside for error of law in my decision sent on 2 October 2020.
95. I remake the decision dismissing the appellant's appeal under Arts 2 and 3 of the ECHR and Art 15(b) of the Qualification Directive.
96. Judge Hosie's decision (and findings) dismissing the appellant's appeal under the Refugee Convention and Art 8 of the ECHR were not challenged and stand.
97. Consequently, the appellant's appeal is dismissed on all grounds.

Signed

Andrew Grubb

Judge of the Upper Tribunal
26 January 2021