Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09394/2019

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 18 November 2020 and 21 January 2021	**On 23 February 2021**
via Skype for Business	

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

ML (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. Allison, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that I was referred to are set out, where relevant, in the decision below.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly in their remote form.

1. This is an appeal against a decision of the Secretary of State dated 13 September 2019 to refuse the appellant's asylum and humanitarian protection claim. The appellant is a Kurdish citizen of Iraq. While he has given a number of dates of birth, and relied on different aliases, for the purposes of this decision, I will proceed on the basis that he was born on 16 December 1995.

2. The respondent also served a "supplementary" decision dated 22 January 2020, which seeks to address the appellant's return to Iraq in light of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), which was handed down after the original refusal decision.

Procedural Background

3. The appellant's appeal against respondent's decision of 13 September 2019 was initially dismissed by the First-tier Tribunal in a decision promulgated by First-tier Tribunal Judge Baldwin on 12 November 2019. On 23 January 2020, sitting with Lord Uist, I found that the decision of Judge Baldwin involved the making of an error of law, and set the decision aside, insofar as it related to the judge's findings concerning the appellant's ability to obtain Civil Status Identity Document ("a CSID") in Iraq, and the judge's findings that the respondent would offer him a choice of locations in Iraq to which he would be returned. All other findings were preserved. A copy of the Error of Law decision may be found in the **Annex** to this decision.

4. The scheduled resumed hearing was postponed due to the pandemic. The matter resumed before me, sitting alone, on 18 November 2020, via Skype. Although the appellant's solicitors initially suggested that the appellant would not be able to participate in a hearing remotely, Mr Allison confirmed on that occasion that appropriate arrangements had been made, and that the appellant had been able to secure access to a suitable location and device through which to participate in the proceedings. It was, submitted Mr Allison, the appellant's preferred choice to participate in that manner, as it was far easier and cheaper than having to travel to London. Unfortunately, the interpreter on that occasion was experiencing significant internet connectivity issues. By the time they were resolved, there was not enough time to complete the hearing. I heard some evidence from the appellant. The hearing had to be resumed on 21 January 2021. There were no significant connectivity problems on that occasion, and the hearing was completed.

5. Mindful of the overriding objective and the need for hearings to be conducted fairly, I was content that it was appropriate to conduct the hearing remotely, as set out above. I recall that those representing the appellant had initially objected to the hearing being conducted remotely. For the reasons given by Mr Allison referred to above, those objections were not only abandoned by the appellant, but participating in the hearing remotely was his preferred choice. Although the November 2020 hearing encountered technical difficulties, both Mr Allison and Ms Isherwood were

content that there had been no unfairness to either side, either overall, or upon the conclusion of the resumed hearing on 21 January 2021.

Factual background

6. The appellant claims to have arrived in this country clandestinely on 30 June 2016. He claimed asylum the next day. The basis of his claim was that he feared his father who had threatened and attacked him, forcing him to leave the family home and live with an aunt. The key incident was said to have taken place in March 2013. The appellant claims to have returned home after drinking alcohol. His father chased him with a gun to the roof of their home. The appellant jumped to the safety of a neighbour's roof, injuring himself, and was taken to hospital. The appellant's father threatened him in hospital. The appellant moved to live with his aunt after some time in hospital.

7. The appellant claimed his father worked for the Peshmerga, and that he was an influential man in the Kurdish region, thereby placing him beyond the protection of the authorities. He left Iraq in 2015, travelling through France to arrive here in June 2016. He was encountered by the respondent's officers at border crossing points in Dunkirk before his successful entry, and gave a number of aliases and dates of birth on those occasions.

8. The asylum claim was refused on 23 December 2016. The appellant's appeal against that refusal was dismissed by First-tier Tribunal Judge Spicer on 23 February 2017. The appellant did not leave the country. There was no challenge to Judge Spicer's decision.

9. In February 2019, the appellant was convicted of aggravated vehicle taking, criminal damage, driving while disqualified, and breach of a conditional discharge, which had been imposed for motoring offences the previous month. He was sentenced to 3 months' imprisonment. On 2 March 2019, the Secretary of State served a notice of a decision to deport the appellant, pursuant to section 5(1) of the Immigration Act 1971. On 11 March 2019, the appellant is recorded by the respondent as having "made a verbal asylum claim" again stating that his father would kill him were he to be returned to Iraq. The appellant's representatives, Duncan Lewis solicitors, made representations on his behalf on 12 July 2019. The respondent considered the appellant's protection claim and refused it in a decision dated 13 September 2019. That was the decision under appeal before Judge Baldwin.

10. Judge Baldwin rejected the appellant's asylum claim, taking the earlier decision of Judge Spicer as his starting point. Judge Baldwin rejected the core of the appellant's account relating to the claimed threat from his father on credibility grounds, based partly on the fact the appellant claimed he had gone to live with his aunt, who lived only an hour away from his father. Shortly before leaving Iraq, found the judge, the appellant had returned to his father's town, experiencing no difficulties. Judge Baldwin noted at [29] that the appellant's claimed Iraqi nationality had been accepted by an Iraqi official, with the consequence that the appellant could be issued with the

necessary documentation to facilitate his return. The judge also found that the combined help of his mother, aunt, or cousin, would be available upon his return. With that support, the appellant would be able to find the documentation he would need to access employment and accommodation. The appellant had worked in the area previously, and it was not credible that his cousin would not be prepared to use his contacts to help return him to work.

11. Before the Upper Tribunal, the appellant did not challenge the judge's findings concerning the substance of his asylum claim. However, for the reasons set out at [10] to [13] of the Error of Law decision, other aspects of the judge's reasoning did involve the making of an error of law, and were set aside. They must now be reconsidered. It remains necessary to determine whether the appellant would be able to obtain a CSID (or its successor, an Iraqi National Identity Document, or "INID") prior to or upon his return to Iraq to facilitate his travel from Baghdad, to where he would be returned, to the Kurdish region, and whether he would face "very significant obstacles" to his integration, upon his return.

12. The judge had also found that the appellant would be offered a choice of locations within Iraq to be removed to; that finding was also set aside as it was not consistent with the country guidance then in force [12]. In any event, it is now clear (see the skeleton argument of Ms A. Fijiwala, Senior Home Office Presenting Officer, 6 February 2020 at [3]) that enforced returns are only to Baghdad.

13. The appellant's case is that he cannot be returned as he would be without the documents necessary to ensure his safe passage from Baghdad to the Kurdish region. He does not have a CSID and has not memorised, or otherwise have access to, the information he requires to obtain one. As an undocumented Kurd with no sponsor and the inability to speak Arabic, he could not settle in Baghdad. He would face Article 3 mistreatment when seeking to return from Baghdad to the Kurdish region without a CSID. He claims to have lost all contact with his family in Iraq, and would return to a life of destitution and homelessness, as well as a risk of death from his powerful father. Even if he managed to travel to the Kurdish region, he would be required to attend the Civil Status Office in Kirkuk to obtain a CSID or INID. Kirkuk is a "contested" area, and it would not be safe for him to go there.

14. The respondent contends that the appellant would be able to obtain a CSID or rely on a "certification letter", make the journey from Baghdad to the Kurdish region without encountering Article 3 mistreatment, and there find employment and integrate, drawing on his remaining family links.

The hearing

15. The appellant gave evidence at each hearing through a Kurdish Sorani interpreter. I established at the outset of each resumed hearing that the appellant and interpreter could understand one another and communicate through each other. The appellant adopted his statement dated 3 November 2020 and was cross-examined.

16. I treated the appellant as vulnerable, in light of his medical conditions. In practice, the cross-examination by Ms Isherwood was conducted in a sensitive and non-combative manner. Mr Allison confirmed that no other reasonable adjustments were necessary. I have taken the appellant's mental health conditions, as outlined in the reports of Dr Tarik Al-Kubaisy, a consultant psychiatrist, into account when assessing the reliability of his evidence. The reports are dated 25 May 2019 and 15 July 2019. They were before Judge Baldwin. No updated evidence was prepared for the proceedings before me.

Documentary evidence

17. As well as his statement dated 3 November 2020, the appellant also relied on the bundle he prepared for the proceedings before the First-tier Tribunal and the report of Christoph Bluth, a country expert, dated 1 November 2019.

18. I will not recite the entirety of the evidence here. I will set out the salient aspects of the evidence to the extent necessary to give reasons for my findings.

Legal framework

19. The sole issues for my consideration are whether it would be possible for the appellant to be returned to Iraq without breaching the United Kingdom's obligations under Article 3 of the European Convention on Human Rights, or engaging the criteria for a grant of humanitarian protection set out in Article 15.b of the Qualification Directive, Directive 2004/83/EC ("torture or inhuman or degrading treatment or punishment").

20. It is for the appellant to establish his case, to the lower standard of the reasonable likelihood threshold.

Discussion

21. I reached the following findings having considered the entirety of the evidence, in the round, to the lower standard of proof.

22. It will be helpful to recall the relevant preserved findings of fact upon which my findings must be based. At [27], Judge Baldwin found that the appellant had remained in Iraq for around 33 months following the claimed March 2013 incident with his father. The judge also rejected the appellant's explanation for not having claimed asylum in France, finding that the responsibility for having not done so could not be shifted wholly onto the agent the appellant claimed was controlling his travel. The appellant had been able to live and work in Iraq during the three years prior to his departure. It was not credible that the appellant's cousin, with whom he lived having left the family home, would not provide him with some assistance in finding work and accommodation upon his return [29]. There was no reason to believe that the appellant's aunt, cousin and family are not still where they were when the appellant left Iraq [30].

23. The Iraqi authorities have already accepted the appellant to be an Iraqi citizen following an interview they conducted with him in a detention centre, and Mr Allison did not contend that the appellant could not be returned on a *laissez passer* document. The appellant also accepted in cross examination that, if he were asked further questions during the course of such an interview, he would cooperate and answer truthfully. Mr Allison submits that his willingness to cooperate on a *reactive* basis if interviewed by the Iraqi authorities may be distinguished from his unwillingness, and general refusal, to take the proactive steps necessary to obtain a CSID or INID either before or upon his return to Iraq. As such, the focus of Mr Allison's submissions, as set out below, was the appellant's ability to obtain a CSID or other identity documents necessary for his onward travel, and subsequent settlement, in Iraq. I find the appellant is "returnable" on a *laissez passer*.

Location of return

24. At [20] of the headnote in SMO, this tribunal recorded that there are regular direct flights from the United Kingdom to the Kurdish region of Iraq, and at [15] of the error of law decision, I identified that the location of the appellant's return was an issue that fell to be determined. However, it is now clear that *enforced* returns are only to Baghdad. The respondent's skeleton argument referred to in paragraph 11, above, states the following at paragraph 3:

> "Having discussed this matter with the [Home Office] removals team, it has now come to light that although there are direct flights to the IKR [Iraqi Kurdistan Region] there is no current agreement with the IKR authorities to enforce returns to that location. Voluntary returnees can be returned to the IKR on these direct flights. Enforced returnees can only currently be returned to Baghdad. Therefore, if the appellant chooses to return voluntarily, he can be returned to the IKR, otherwise he will be returned to Baghdad. The appellant can be returned to Baghdad on a *laissez passer* as confirmed in SMO and will then need to make an onward journey to the IKR. If the appellant is able to obtain a CSID prior to travelling to Baghdad or once in Baghdad… removal to Baghdad can then be enforced and he can safely make his onward journey to the IKR."

25. Accordingly, if the appellant is to be returned, it will be by means of an enforced return to Baghdad. He will have to make his way to the Kurdish region by land. In order to do so, he will need a CSID, an INID or a valid passport. Paragraphs 22 and 23 of the headnote to SMO provide:

> *22. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
>
> *23. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route,*

> *including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*

26. Ms Fijiwala, in her skeleton argument dated 6 February 2020, invites me to depart from SMO, and to find that the appellant would be able to travel on a so-called "certification letter" issued at Baghdad airport. The guidance in SMO is that there is "insufficient evidence" to show that returnees are issued with a certification letter: see [12] of the headnote. Ms Fijiwala invites me to reach a different view based on correspondence from the Iraqi Embassy in London, specifically a letter from the Ambassador dated 5 September 2018, and a 2 October 2018 letter from the Counsellor.

27. That correspondence was considered in SMO at [352] to [372]. At [374] the Upper Tribunal held:

> "With very little hesitation indeed, we do not consider the evidence adduced by the respondent to be sufficiently cogent to cause us to depart from a clear and consistent line of country guidance authority…"

Thus SMO considered and rejected the same evidence which Ms Fijiwala now proffers as a basis to depart from its conclusions. To do depart from SMO on that basis would be irrational, and I decline to do so.

28. Accordingly, much turns on the appellant's documentation, and whether he will have, or be able to obtain, a CSID or INID.

29. I accept Mr Allison's characterisation of the matters which must determine in order to make findings on the above issues, set out at paragraph 2 of his skeleton argument:

    a. Does the appellant know the volume number and page reference of his Family Book entry, which is required to obtain a CSID in the UK?

    b. Can the appellant obtain the necessary information for the purposes of obtaining a CSID in the UK?

    c. Is it possible for the appellant to obtain a CSID from Iraq via a proxy?

    d. In the event of the appellant having/acquiring the necessary details, would he provide those details to the Iraqi authorities in the UK in order to obtain a CSID prior to his removal?

Does the appellant know the volume number and page reference of his Family Book entry, which is required to obtain a CSID in the UK?

30. The "Family Book" is the term used to describe the records kept in Iraq which are used by the authorities to issue identity documentation. In SMO, it was held that the volume and page reference of an entry in the Family Book are required to obtain replacement CSID documents from outside the country. Notwithstanding the phasing out of CSID documents, they remain available to those outside Iraq through Iraqi Consular facilities: see [13] of the headnote.

31. Paragraph [13] continued in these terms:

> "Given the importance of [the volume and page reference 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."

32. The appellant's written and oral evidence was that he does not remember the details necessary to obtain a replacement CSID. He states that he was a child when he was last issued with a CSID, that his mother held it, and that she dealt with all matters arising from it. He does not know the volume or page numbers of the Family Book, he said.

33. It is clear that the appellant did previously hold a CSID document; in cross-examination, he said that he took it with him on his journey to Europe, handing to an agent in Turkey for return to his mother, something that never happened. The document had expired before he left Iraq in any event, and he needed to travel to Kirkuk to renew it, but it was too dangerous to do so.

34. The appellant's explanation about not knowing the details of the Family Book entry does have a degree of credence to it; the appellant was 20 years old when he left Iraq and, at the time, Kirkuk was a contested area, which supports the suggestion that it was too dangerous to renew the card (see [3] of the headnote to SMO). I also accept that the appellant no longer holds his expired CSID; when explaining what happened in Turkey under cross-examination, the appellant said that he surrendered the CSID along with his driving licence and passport. By revealing the prior existence of not only a CSID, but also a driving licence and passport, the appellant was confirming that he previously held the key documents necessary to engage with life in modern Iraq. I accept that evidence, to the lower standard. He does not currently know the information required to obtain a CSID from within the United Kingdom without assistance.

Can the appellant obtain the necessary information for the purposes of obtaining a CSID in the UK?

35. A key issue in these proceedings is whether the appellant retains sufficient contact with family in Iraq to assist with obtaining a CSID prior to, or upon, his return to Baghdad. If he retains contact with his family, he will be able to ask them to send

him the volume and the page number to enable him to obtain a CSID in this country, or may be able to arrange to be met in Baghdad with a replacement CSID obtained by proxy on his behalf, perhaps by his cousin.

36. The appellant's evidence was that he has lost contact with all family members. That claim lacks credibility, for the following reasons.

37. First, the appellant's journey to the United Kingdom was funded by his mother. It would have been expensive. Planning the journey required the cooperation of his cousin, who returned to the appellant's former home to retrieve his CSID and other travel documents, and later accompanied him to the bus stop when he left for Turkey. His journey to this country was a family effort, requiring considerable family resources. That implies a commitment which is not commensurate with losing all contact once here. The appellant claimed not to have spoken to his mother for around 18 months, with the last time being a telephone call from a detention centre, as his mother's phone number now no longer working. I do not accept that aspect of the appellant's evidence. It is not consistent with the findings of Judge Baldwin, nor the appellant's insistence that the Kurdish community is close and would provide assistance in locating family members in this country, nor the considerable effort the appellant has expended in order to arrive here, with his family's assistance.

38. Judge Baldwin, of course, found that the appellant's cousin would be able to assist the appellant to find work and accommodation upon his return. The appellant's evidence before me was that he had not attempted to contact his cousin in Iraq, mainly because he has no contact details for them. He accepted under cross-examination that, if his cousin came to this country, he could use contacts in the Kurdish community to locate him, but, curiously, contended that the same would not be true in reverse. If he, the appellant, were to return to Iraq, he contended that the community would not assist with locating his cousin. He said it would not be "practical".

39. That the appellant has made no attempts to contact his cousin undermines the credibility of his account to be beyond contact with him: he has simply never tried. This is despite, as the appellant outlined under cross-examination, having volunteered in the Kurdish community with matters such as translation, and helping those who have been here for less time than him. Nor has the appellant sought to rely on the services of a charity, such as the Red Cross. For the appellant's claim to have lost all chance of contacting his cousin or aunt to be credible, one would expect some efforts on his part to have tried to contact them. If true, it reveals a lacklustre and half-hearted attitude to making contact with his family in Iraq, providing an insufficient basis upon which to base a finding that he has lost all contact. Alternatively, the appellant is not being truthful with his claims not even to have tried to contact his cousin or family.

40. The appellant added under cross-examination that his aunt and cousin were abusive to him when he lived with them, making him leave the house early in the morning,

preventing him returning until it was late. Strikingly for such a significant element of the appellant's current narrative, that was the first time he mentioned such difficulties. It was not part of the protection narrative he originally advanced, despite the asylum claim being based on threats from his family. His asylum interview dated 5 December 2016 was silent on the issue; the most he said was that he occasionally slept in a park because he was embarrassed to remain in their house for a long time: see question 111. There was no suggestion of abuse of any sort.

41. The appellant also has what he described as "half-sisters" in Iraq; sisters with whom he shares a mother, but not father. He could not remember when he last spoke with them. It had been "such a long time". The vagueness of these answers lacked credibility, when considered alongside the matters outlined above. The appellant added that it was the refusal of his family members to provide him with help and support that led to him being displaced; I reject that aspect of his evidence, given, on his own case, it was his mother who funded his travel to this country. A lack of help and support is not commensurate with funding an expensive clandestine journey across Europe, to the United Kingdom.

42. Ms Isherwood contends that much of the appellant's evidence is not to be trusted. There is force to that submission, even taking into account the appellant's mild depression and moderate anxieties, and their possible impact on the quality of his evidence. The appellant has given a number of different aliases and dates of birth to the immigration authorities. He maintained under cross-examination that he had never sought to deceive the authorities in this country, and that he only did so in France. Specifically, he accepted that he pretended to the French authorities (or the British authorities operating at the juxtaposed controls border in France) to be a child upon being intercepted attempting to board a lorry to this country, in order to be released and returned to the "Jungle" in Calais. He has demonstrated that he is willing to use deception in seeking to achieve his immigration goals. While one must always be cautious before linking lies on one occasion to broader poor credibility findings, when looked at in the round, along with Judge Baldwin's preserved findings, and the weaknesses in the appellant's evidence as set out above, such deception can acquire a broader significance.

43. I do not accept the appellant's evidence that he has lost all contact with his family. I find that he remains in contact with them, and that the same support that was available to him in Iraq will, as Judge Baldwin also found, continue to be available to him upon his return. His mother had custody of his CSID card previously, and was sufficiently well connected to work with his cousin to fund and facilitate the use of an agent to travel to this country.

44. I find that the appellant will be able to obtain the necessary information from his family for the purposes of obtaining a CSID in this country. While the system is patrilineal, it is clear that the appellant's mother has previously taken charge of obtaining his documentation for him. There is no reason to conclude that she would not have the necessary information to hand at home, as she plainly ensured that he

received an education until at least the age of 11, and that the appellant had a CSID previously.

45. In light of the above analysis, I find that the appellant's cousin, aunt or mother will be able to assist him to obtain a CSID by providing him with the necessary information.

Is it possible for the appellant to obtain a CSID from Iraq via a proxy?

46. Obtaining a CSID by proxy in Iraq is difficult due to the phasing in of the INID system, which has replaced the CSID system in the civil offices across Iraq: see [16] of the headnote to SMO. The headnote continues:

> "The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information."

47. There is, therefore, a reducing number of civil status locations capable of issuing a CSID. Civil status offices that have switched to the INID system are "unlikely" to issue a CSID, whether to an applicant in person, or a proxy.

48. It is not clear whether the Kirkuk civil office retains the ability to issue CSIDs. It would be speculation to conclude that it does. I accept that it is reasonably likely, based on the analysis in SMO at [16] of the headnote that it would not be possible for the appellant to obtain a CSID from there by means of a proxy. There are diminishing prospects of civil status offices issuing CSID cards to proxies. The focus of the Iraqi administration is on the provision of INID cards to applicants in person. As SMO makes clear, the infrastructure is being replaced by INID terminals. There is a real possibility that a proxy, even armed with the correct information, would not be issued with a CSID card on behalf of the appellant.

49. It is not reasonably likely that the appellant would be able to obtain a CSID by a proxy acting on his behalf in Iraq.

Would the appellant provide the details to the Iraqi authorities in the United Kingdom in order to obtain a CSID prior to his removal?

50. It would be possible, in principle, for the appellant to obtain a CSID from within the United Kingdom, in light of my findings that he has the ability to obtain the necessary information from family members in Iraq with whom he remains in touch. See [13] of the headnote to SMO:

> "Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities."

51. The appellant would be *able* to obtain a CSID from an Iraqi consular facility in this country. Mr Allison submits that the appellant would not be *willing* to do so, thereby, in his submission, resolving the appeal in his favour. Mr Allison categorised this as an "unattractive" argument.

52. The appellant's evidence was that he would not proactively seek to obtain a CSID from within the United Kingdom. He said that he would engage truthfully with the Iraqi authorities in the event they were to question him again, for example as part of the emergency travel documentation process facilitated by the respondent, but that he would not attempt to obtain a CSID.

53. I do not accept this aspect of the appellant's evidence. I find that, faced with the prospect of return to Iraq the appellant would rely upon or restore his family links in order to be able to obtain the necessary information to obtain a card before he returns. In his written and oral evidence, he emphasised the importance of having a CSID card. For example, see [13] of his 3 November 2020 witness statement. In his oral evidence, he said that he would engage truthfully with any Iraqi officials he would be required to confirm his details to. That is not commensurate with his insistence, in parallel, that he would refuse to obtain a CSID. I find that the appellant would be able to use his family links to obtain a CSID prior to his removal. It would be a criminal offence for the appellant to refuse to cooperate, and, in a submission made by the Secretary of State and accepted in HF (Iraq) v Secretary of State for the Home Department [2013] EWCA Civ 1276 at [102], "it should not readily be assumed that an asylum seeker would risk imprisonment by refusing to co-operate" with the documentation process.

54. In any event, as held in HF (Iraq) at [103] and [104], an asylum or humanitarian protection claim should not, as a matter of principle, succeed on the basis of wilful non-cooperation. Of course, to the extent the appellant contends that removal in the face of his non-cooperation would infringe his Article 3 rights, that principle cannot apply, as the rights guaranteed by Article 3 are non-derogable. However, for the reasons set out above, I do not accept that aspect of the appellant's evidence.

55. Mr Allison sought to rely on HF (Iraq) at [9] to [11] of his skeleton argument. The authority is of no assistance to the appellant's case, as the paragraphs quoted by Mr Allison concern the position of a failed asylum seeker who is irremovable due travel to documentation issues. By contrast, this appellant is removable. He may be removed on a *laissez passer*. The primary issue is whether, once he has arrived in Iraq, he will encounter Article 3 mistreatment on account of not being able to access internal travel documentation. For the reasons set out above, I find that he will be able to obtain a CSID before leaving for Iraq. He will thereby be able to make the internal journey to the Kurdish region without encountering Article 3 mistreatment. He will be able to utilise his family links in the region to obtain accommodation and support, as he did in the 33 months prior to his departure in 2016.

56. Drawing the above analysis together, I find that the appellant would be able to secure the necessary documentation to facilitate his internal journey to the Kurdish region. There, he would be able to draw on his existing family links in order to find accommodation and employment. The Bluth report adds little to this analysis. It was prepared ahead of consideration of the appellant's substantive asylum claim, and pre-dates the country guidance given in SMO. The appellant will be able to return to Iraq without the United Kingdom breaching its obligations under Article 3 of the

European Convention on Human Rights, nor by engaging the criteria for humanitarian protection.

Article 8

57. Judge Baldwin dismissed the appellant's appeal on Article 8 grounds. There has been no challenge to those findings, and nor did Mr Allison pursue any submissions seeking to advance new arguments concerning this issue. The appellant suggested in evidence that he has a partner who is pregnant, but no further details were provided, and the appeal cannot possibly succeed on the basis of such unsubstantiated assertions.

58. The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

Notice of Decision

The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed *Stephen H Smith* Date 27 January 2021

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *Stephen H Smith* Date 27 January 2021

Upper Tribunal Judge Stephen Smith

Annex – Error of Law Decision

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09394/2019

THE IMMIGRATION ACTS

Heard at Field House
On 23 January 2020

Decision & Reasons Promulgated

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Before

THE HON. LORD UIST (SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

ML
(ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. Allison, Counsel instructed by Duncan Lewis Solicitors
For the Respondent: Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq. For the purposes of this decision, we will proceed on the basis that he was born on 16 December 1995. He has used a number of aliases in the past, including one with the date of birth of 16 December 2000.

2. The appellant appeals against a decision of First-tier Tribunal Judge Baldwin promulgated on 12 November 2019, dismissing his appeal against a decision of the respondent dated 13 September 2019 to refuse his asylum and humanitarian

protection claim. That decision was taken following representations made by the appellant against a decision of the respondent to deport him for the commission of two offences; taking a vehicle without the owner's consent, and driving with excess alcohol whilst disqualified, uninsured and unlicensed.

Factual background

3. The appellant is of Kurdish ethnicity. He had claimed asylum on the basis that he was at risk from his step-father, following a dispute. He claimed he would not be able to return to the Kurdistan region as he did not have the appropriate documentation. He also sought to raise at the hearing before Judge Baldwin a new matter, namely his claimed conversion to Christianity, although that matter was not considered by the judge as the Secretary of State had not provided her consent.

4. The judge dismissed the appellant's appeal primarily on credibility grounds. He took as his "starting point" a decision of First-tier Tribunal Judge Spicer promulgated on 23 February 2017 dismissing the appellant's appeal against an earlier decision of the respondent, dated 23 December 2016, to refuse to grant him asylum, again on credibility grounds. Judge Baldwin did not accept the appellant's claimed dispute with his stepfather, nor his related claim that his father worked for a prominent PUK official.

5. Part of the appellant's case before Judge Baldwin had been that he would return to Iraq without a Civil Status Identity Document ("a CSID"), meaning he would be unable to make the journey to the Kurdish region from Baghdad, to where he would be returned. Further, without a CSID, claimed the appellant, he would not be able to obtain employment or accommodation, or live a normal day to day life in Iraq.

6. At [29], the judge dealt with the likely circumstances that would face the appellant upon his return. He noted that the appellant had been able to live and work in Iraq for at least three years before he came to this country, and there was no good reason to believe that he would be incapable of working again. The judge found that the appellant would be able to draw upon the combined help of his mother, aunt or her son, as they had all been able to help him in the past. In the course of that paragraph, the judge made two key findings which fall for consideration in these proceedings.

7. The judge said:

> "…there is no longer any need for [the appellant] to be returned to Baghdad and it is not unreasonable to assume he will be offered a choice of return to Sulaymaniyah, where his aunt, her son and his family live – or, if he prefers, Erbil."

He later added, having found that the appellant would continue to enjoy the support of his family, including his aunt, in Iraq:

> "With such support, I do not find it credible [that] he would not be able to obtain any documentation he will need, employment and accommodation, though he may need to ensure his consumption of alcohol does not again lead to him putting others at risk…"

Permission to appeal

8. The appellant was granted permission to appeal by Designated Judge Schaerf on the basis it was arguable that the judge erred by not considering the appellant's likely circumstances upon his return to Iraq in light of his claims not to have CSID, pursuant to the then applicable country guidance, contained in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC).

9. The appellant also sought permission to appeal on the basis that the judge erred by not allowing him to pursue his claim to have converted to Christianity. Although Judge Shaerf did not formally restrict his grant of permission to appeal to the CSID issue, he observed in his reasons for granting permission to appeal that it was not arguable that the judge erred in concluding that he had no jurisdiction in respect of that part of the claim. Before us, Mr Allison, who appeared for the appellant, did not seek to pursue that issue. For our own part, we entirely agree with Judge Shaerf that there was no jurisdiction for the judge below to consider that issue, and therefore no error of law can arise on that basis.

Discussion

10. It was common ground that the hearing that the judge erred in relation to his conclusion is that the appellant would be able to "obtain any documentation he will need". Before reaching that conclusion, there were a number of considerations the judge should have had regard to, particularly in relation to the CSID issue. Paragraph 1 of the headnote to AAH states that the following considerations were relevant:

> i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
>
> ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
>
> iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

11. The judge simply did not consider any of these issues and his failure to do so was an error of law, as the parties agree.

12. The judge found that it was "not unreasonable to assume" that the appellant would be offered a choice of return, whether to Erbil, Sulaymaniyah or Baghdad. That was a departure from AAH, which held at paragraph 2 of the headnote that there were no international flights to the Independent Kurdish Region, and that all returns from the United Kingdom to Iraq were via Baghdad. The judge appears to have based his decision to depart from AAH on the respondent's *Country Policy and Information Note: Iraq: Internal relocation, civil documentation and returns*, version 9.0, February 2019, at part 4. AAH has now been replaced by SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), which states at [20] of the Headnote that returns may indeed be to the Kurdish region, or to Baghdad. The headnote adds that it "is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah." We do not consider the judge's approach to this issue to have been a material error of law, but, for the reasons set out below, we do not preserve this finding, as it is for the respondent to state where she intends to return an individual to, rather than for a judge to speculate that it is "not unreasonable to assume" that an appellant will be returned to one of three very different locations.

13. The remainder of the decision has not been challenged and we need not interfere with it. Although it will be necessary for the decision to be set aside in order to be remade in the Upper Tribunal, all the judge's findings of fact may be preserved, with two exceptions.

    a. First, we do not preserve the judge's finding that the appellant will be able to obtain the relevant documentation, i.e. a CSID (or its successor, the INID: see SMO), upon his return to Iraq. It also follows that the judge's consequential findings that the appellant would be able to find accommodation and employment, to the extent that doing so depends upon the provision of a CSID, must also be set aside.

    b. Secondly, we set aside the judge's finding that the appellant will be "offered a choice of return". SMO sets out a new expectation on the respondent to state which part of Iraq she intends to remove an appellant to, and it is against that background that the circumstances of the appellant's likely return must be assessed. The process of the respondent stating where she intends to remove an appellant to may, of course, involve a process of consultation with the appellant (that is not a matter for us), but ultimately it is her role to enforce return to a particular location. That location, once specified by the respondent, forms an important part of the factual matrix within which the prospects of the appellant obtaining a CSID must be assessed.

Postscript

14. At the hearing, Ms Fijiwala handed up a "supplementary letter to refuse a protection claim" addressed to the appellant, dated 22 January 2020. No explanation

was provided as to why this document had been served at such a late stage. It appears to purport to consider the appellant's likely circumstances of return in light of the criteria in SMO. It was not relevant to the error of law which we had to consider, and we did not hear detailed argument upon it. The letter may be helpful to an extent, for it outlines the respondent's likely approach at the resumed hearing. We note that the letter does not state in terms where the respondent proposes to remove the appellant to within the IKR, namely Erbil or Sulaymaniyah. It is necessary for the respondent to state her intentions in this regard, pursuant to SMO, and we direct her to do so within 14 days of the date of the hearing before us.

Conclusion

15. We set aside the decision of Judge Baldwin for it to be remade in the Upper Tribunal. We preserve his unchallenged findings of fact, save for those relating to the location of the appellant's return in Iraq, and his ability to obtain documentation, and all findings consequential to that. We direct the respondent to state where (within the IKR) she intends to return the appellant to, within 14 days of the error of law hearing in the Upper Tribunal.

Notice of Decision

The decision of Judge Baldwin involved the making of an error of law and is set aside. We preserve all his findings of fact, save for those relating to the location of the appellant's return to Iraq, and the appellant's ability to obtain documentation and all consequential findings.

The respondent is directed to state where within the IKR she intends to return the appellant to, within 14 days.

The matter is to be reheard in the Upper Tribunal for the issue of the appellant's circumstances upon his return to be considered.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed *Stephen H Smith* Date 27 January 2020

Upper Tribunal Judge Stephen Smith