Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11567/2019**

THE IMMIGRATION ACTS

Heard remotely at Field House
On Monday 4 October 2021 *via Teams*

Decision & Reasons Promulgated
On Tuesday 9 November 2021

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

ARA
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Greer, Counsel, instructed by Legal Justice Solicitors
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been not been 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 were primarily the materials that had been before the first-tier Tribunal, an updated witness statement provided by the appellant, and documents relating to earlier appeal proceedings in which the appellant was involved, the details of which are set out in the body of this decision, the contents of which I have recorded.
The order made is described at the end of these reasons.

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

1. The appellant is a citizen of Iraq born in October 1993. He appeals against a decision of the respondent dated 6 November 2019 to refuse his fresh asylum and humanitarian protection claim. In light of the procedural history set out below and in the Annex to this decision, there is now only a narrow issue for resolution in the proceedings: will the appellant be able to obtain, either from within this country, or shortly after his return to Iraq on a *laissez passer*, a so-called Civil Status Identity Document ("CSID"), or its updated equivalent, the Iraqi National Identity Document ("INID")? It is common ground that if it is reasonably likely that he will not be able to secure a CSID or INID, this appeal must succeed on Article 3 grounds.

2. The proceedings are narrow in scope because most issues in the appellant's appeal against the Secretary of State's decision were resolved against him by First-tier Tribunal Judge Saffer, in a decision and reasons promulgated on 14 August 2020. I heard the appellant's appeal against that decision on 25 February 2021 and, in a decision and reasons promulgated on 16 March 2021, dismissed the appeal on all grounds save that relating to Judge Saffer's analysis of whether the appellant would be able to obtain a CSID. I preserved all findings of fact reached by Judge Saffer on issues not relating to the CSID issue, and directed that the appeal be reheard in this tribunal, in order to determine whether the appellant will be able to obtain a CSID. My decision dated 16 March 2021 may be found in the Annex to this decision.

Factual background

3. The appellant arrived in this country on 19 December 2014 and claimed asylum. By a decision dated 20 May 2015, his claim was refused by the Secretary of State. The appellant appealed against the refusal, and the appeal was dismissed by First-tier Tribunal Judge Spencer on 14 December 2015. This tribunal refused permission to appeal against Judge Spencer's decision, and the appellant became "appeal rights exhausted" on 12 May 2016.

4. The basis of the appellant's original claim as first made to the Secretary of State, and advanced before Judge Spencer, was that he feared ISIS. Although he is a Sunni Muslim, ISIS and other militia will think he is Shia, and he will face being persecuted on that account. He also feared Shia militia. His home in Ramadi was in an area of intense conflict and was unsafe for habitation. Relocation to Baghdad would not be an option. He had no sponsor, and so no one would support him to find work or accommodation.

5. The appellant made further submissions to the Secretary of State on 20 April 2017[1]. The fresh claim built upon the earlier narrative rejected by Judge Spencer. I summarised the fresh claim in the following terms in the error of law decision at the Annex:

> "6. The applicant's fresh claim was based on additional background evidence concerning the treatment of Sunni Muslims, from the respondent's *Country Policy and Information Note – Iraq: Sunni (Arab) Muslims, June 2017* ('the CPIN'). The CPIN suggested that the Shia-dominated society in Baghdad resulted in marginalisation for Sunni Muslims but concluded that they were still represented in official positions. A Sunni Muslim may be able to demonstrate a real risk of persecution on account of the Shia majority on a case-specific basis.

[1] The letter is dated 1 September 2016: see A1 of the Respondent's Bundle. However, the Secretary of State's decision dated 6 November 2019 refers to the further submissions having been made on 20 April 2017. Nothing turns on the discrepancy in dates.

> 7. The appellant also relied on a missing person's report from the Baghdad police regarding his father, after he disappeared following his refusal in October 2014 to join ISIS. He relied on the death certificates for his brother and a friend who were said to have been killed by ISIS, as evidence of the indiscriminate violence in Iraq."

6. The claim was refused, and the appellant appealed against the refusal to the First-tier Tribunal; it was that decision that was under appeal before Judge Saffer and which, partially at least, remains under appeal before me.

7. Judge Saffer reached a number of findings of fact which, for the reasons set out in the Annex, have not been disturbed. I summarised the preserved findings at [34] of the Annex in these terms:

    a. The death certificates were reasonably likely to be genuine, and relate to the appellant's brothers, and not a friend as both record the same parents' names. Even if there was a discrepancy it was not a material discrepancy.

    b. It is not reasonably likely that the brothers' died 'in anything other than the general mayhem prevalent in 2015 and they could have died at the hands of ISIS, the Iraqi armed forces, or in a random attack.' It was not reasonably likely that the brothers were targeted for any reason or that the appellant is at risk due to his family membership, or solely because he is a Sunni Muslim.

    c. It is not reasonably likely that the appellant would be suspected of having supported ISIS, as he had been out of Iraq for over five years, and there as no cogent evidence as to why he would be thought to support them.

    d. The police report of the appellant's father's claimed kidnapping is based entirely on what his mother said, 'and she is not impartial.'

    e. There was nothing in the background materials before the judge suggesting that the appellant's name would present him with problems.

    f. The report of Julie Guest, relied upon by the appellant as a country expert, attracted little weight, for the reasons given by the judge.

    For the reasons given in the Annex, I set aside Judge Saffer's findings insofar as they related to the CSID issue.

Documentary evidence

8. The appellant relied upon his bundle from before the First-tier Tribunal, plus an additional witness statement dated 6 May 2021.

9. Mr Greer helpfully provided copies of Judge Spencer's decision (which had not been available to me at the error of law stage: see [5] of the Annex), plus the appellant's written submissions advanced before the First-tier Tribunal, and the "respondent's review", a document similar to a defence in civil proceedings now required from the Secretary of State in appeals before the First-tier Tribunal.

10. Mr Melvin provided a skeleton argument.

The hearing

11. The hearing was listed before Covid restrictions had eased, and, as such, took place remotely. Both advocates confirmed at the end of the hearing that no fairness concerns had arisen from the proceedings being conducted remotely.

12. The appellant gave evidence and participated in the proceedings in Arabic through an interpreter. At the outset, I established that the appellant and interpreter could understand one another.

13. The appellant gave evidence and adopted his statements dated 7 January 2020 and 6 May 2021. I permitted Mr Greer to put some additional questions to the appellant during his evidence in chief. The appellant was cross-examined.

14. In this decision, I do not propose to recite the entirety of the evidence or submissions; I will summarise the salient aspects of each to the extent necessary to reach and give reasons for my findings.

The law

15. This is an appeal brought under Article 3 of the European Convention on Human Rights. The appellant contends that he faces a real risk of cruel, inhuman or degrading treatment upon his return to Iraq because he will be without a CSID or INID document. A CSID or INID is required for many aspects of engaging in daily life. The respondent's *Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns*, version 11.0, June 2020 states at paragraph 5.4.3:

> "The 2015 Landinfo report stated that the CSID is 'deemed to be the most important personal document, since it is used in all contact with the public authorities, the health service, the social welfare services, schools, and when buying and selling houses and cars. In addition, the ID card must be presented when applying for other official documents, for example a passport."

16. The appellant's case is that without a CSID, he will be unable to secure accommodation, work or travel internally. At [11] of the Headnote to *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 (IAC), this tribunal held:

> "11. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel."

The appellant's case and Secretary of State's response

17. The appellant's case is that he has lost contact with all friends and family in Iraq, and that he has no way of resurrecting contact. He left his CSID with a friend, Haidar, when he left the country in 2014, and no longer has any contact with him. He does not know the volume and

page number of the Family Book in Iraq, and so will not be able to obtain a replacement upon his return, still less will he be able to arrange for a proxy to apply for one on his behalf. While he managed to rekindle contact with his mother briefly in 2016/17 when making his fresh claim – it was his mother who sent to him copies of the arrest warrant concerning his father and the death certificates of his brothers – his resumed contact lasted only for one month. His mother's phone suddenly stopped working. He has not heard from her since. He disagrees with Judge Spencer's 2015 findings that he would be able to obtain a CSID upon his return; it would not be possible, he contends.

18. On behalf of the Secretary of State, Mr Melvin submits that the appellant lacks credibility, as found by Judge Spencer. It is not credible that the appellant spontaneously resumed contact with his mother at precisely the time he made his fresh claim, and yet managed to lose all contact very shortly thereafter.

Discussion

19. I reached the following findings having analysed the entirety of the evidence in the case, in the round, to the lower standard. It is common ground that if it is reasonably likely that the appellant does *not* have access to his CSID, or the ability to obtain a replacement or an INID within a reasonable time, this appeal must be allowed on Article 3 grounds.

20. I commence my analysis by recalling the unchallenged findings of fact reached by Judge Spencer, and the preserved findings of fact reached by Judge Saffer. Judge Spencer rejected the appellant's account of having lost contact with his friends and family ([22], [29]). He found that the appellant would be able to contact the friend with whom he left his CSID, either for it to be sent to him in this country, or for it to be reunited with him shortly after his arrival in Baghdad ([34], [35]). Of course, those findings represent the position as at the date of the hearing in December 2015, and so may need to be revisited in light of further evidence. But nevertheless, those findings are the starting point for my factual analysis. The judge also found that the appellant lacked credibility, although, of course, simply because the appellant was not credible on that occasion does not necessarily mean that his evidence before me is similarly unreliable.

21. Turning to the evidence the appellant relied upon before me, in his January 2020 witness statement, the appellant commented on the respondent's conclusions in the decision letter that he remains in contact with his: "The truth is that I have no contact with anyone in Iraq and am unable to obtain my passport of [*sic*] CSID card" (paragraph 11). The difficulty for the appellant, as Mr Melvin submitted, is that he plainly *was* in contact with his mother, in order to obtain the documents upon which this fresh claim was based. There is at least superficial force to Mr Melvin's submission that the appellant's contact with his family in Iraq resumed when it suited him, such as when he needed documents to advance a fresh claim, but ceases when it does not suit him, such as at the present time when, if the appellant can establish that it is reasonably likely that he has lost all contact with friends, family and others in Iraq, his appeal may well succeed. However, Iraq is a chaotic country which has been beset by violence, and the appellant's home city of Ramadi is in a formerly contested area. The mere suggestion of no contact, followed by brief contact, followed by no contact, is not without more a sufficient basis to merit a finding that it is highly likely that the appellant remains in contact with at least his mother. I do note, however, that the appellant's account of not being in touch with his family in his first witness statement is in high level terms, and is light on detail.

22. In his updated witness statement dated 6 May 2021, the appellant gives a similar account of having lost contact with his mother. He says her telephone stopped working (see [4]).

23. The difficulty with both written accounts is that they are very light on detail. On the appellant's case, he is in a "limbo" situation, and his inability to contact his mother and sisters weighs heavily on him: see [5] of his second witness statement. That being so, one would expect the appellant to have outlined in more depth the attempts he claims to have made to resume contact, a process he claims to have engaged in continuously throughout his time in this country. At [3] of his second statement, the appellant's evidence was that he continued to try to call his mother throughout his time in the UK, and that eventually it worked for a month or so. When contact ceased, he nevertheless continued to attempt to contact her, he claims. There are no details of the calling platforms he used to attempt to place the calls, such as using a phonecard, or an app-based platform. In neither of his statements does he outline any other attempts he may have made, such as enlisting members of the Iraqi diaspora in this country to attempt to make or secure contact on his behalf. That is significant because in his oral evidence, the appellant claimed to have done precisely that.

24. In additional evidence in chief, the appellant introduced, for the first time, the suggestion that he met an unnamed friend in this country who was travelling to Iraq, and that he asked him to look for his family upon his return and report back. This person, the appellant said, was unable to locate his family. Under cross-examination, the appellant was unable to provide any further information about this individual; adopting a change in emphasis from his evidence in chief, the appellant said the person was not his friend as such, but someone he met in a restaurant. In my judgment, this vague and shifting approach is damaging to the appellant's credibility. The appellant was confused as to whether this person was a "friend" or "just somebody I met in the restaurant". The high watermark of the appellant's attempts to resolve the "limbo" in which he exists, which "weighs heavily" upon him, was, on his own case, to enlist the assistance of an unnamed person he met in a restaurant, who was not a friend. This person, the appellant suggested, was in principle content to visit Ramadi to look for his family. In my judgment, to visit a formerly contested area on behalf of a person who was not a friend and who was encountered only in a restaurant, would be a significant step for this unnamed individual to take. It is the sort of step that, if it really did take place, one would expect to generate at least a cursory level of evidence, such as an exchange of text messages, or copies of travel receipts for the period in question, or even a letter for the attention of the tribunal, if not a witness statement. There is nothing of that sort. I find the appellant was improvising in this aspect of his evidence.

25. The appellant was cross-examined about his knowledge of his CSID. He claimed not to know the volume and page number of his entry in the Family Book in Iraq. He explained that he did not know those details because only those who work in administrative roles have access to them.

26. As held by this tribunal in *SMO* at [391]:

> "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."

27. Mr Greer submitted that *SMO* had been remitted to the Upper Tribunal by the Court of Appeal, and its conclusions concerning the volume and page number should no longer be treated as binding. The correct position is that *SMO* has been remitted in relation to a single sentence in the operative country guidance, namely at [425], replicated at paragraph 13 of the Headnote, which states, "*Given the importance of that information, most Iraqi citizens will recall it*." I accept Mr Greer's submission insofar as it goes, and will not find against the appellant solely because he is unable to recall the exact details of his volume and page number. However, it remains the case that the appellant's general description of the accessibility of the volume and page number is at odds with the undisturbed findings of *SMO* concerning the profile and role of the volume and page number across a whole range of civil documentation in Iraq. The appellant's evidence that only administrative staff in official roles have access to those data is at odds with the country guidance and broader background materials. It was also inconsistent with the death certificates the appellant himself provided in order to make the fresh claim, which feature, under the heading *Information related to Directorate of Nationality and Civil Affairs* entries for "register number", "page number" and "province ID". The very details the appellant claims are inaccessible to ordinary civilians feature on documents he has adduced as part of his own case. I find that the appellant was improvising in this aspect of his oral evidence. The lack of credibility of the appellant's evidence was consistent with his overall lack of credibility as found by Judge Spencer. I find that the appellant has fabricated his evidence in this regard in an attempt to maintain the façade that not only does he not have any contact with his family or with his friend, that he would not be able to obtain the relevant details to obtain a replacement CSID even if he were.

28. Drawing this analysis together I find that the appellant has not acted as one stuck in the claimed heavily-weighing limbo territory of having lost all contact with friends and family in Iraq. He has provided a very thin account in his witness statements of the steps that he has taken to resume contact. Despite receiving some assistance from the Red Cross in relation to food vouchers, he has not sought to register for its international family tracing service.

29. I find that it is highly likely that the appellant remains in contact with his mother and with the friend with whom he left his CSID. When the appellant first made his asylum claim, he claimed that he had lost contact with all family and friends in Iraq. That claim was rejected as not credible by Judge Spencer: [34]. In order to make the fresh claim which led to these proceedings, it was necessary for the appellant to accept that he had very limited contact with her, as there would have been no other way to explain the provenance of the new documents upon which his fresh claim was founded. Faced with the obvious difficulty, from his perspective, of having resumed contact with his mother, he had to generate an account of no longer being I contact with her. Again, while I do not rule out that in the chaos of a formerly contested area of Iraq contact could be resumed and lost, the broader credibility concerns I have outlined above lead me to question the entirety of the appellant's account in this respect. Judge Spencer, of course, specifically rejected the appellant's account that he had tried, and failed to contact his mother (see [23]), and found that the appellant remained in contact with his friend in Baghdad, or his friend's family (see [34]).

30. I see no reason to depart from Judge Spencer's findings that the appellant remained in contact with either the CSID friend, or that person's family. In addition, I make specific

findings that the appellant is in contact with his mother. Judge Spencer did not have the benefit of the appellant's evidence concerning the resumption of his contact with his mother, which, on any view, is a significant development in a case which centres on the appellant's claimed inability to contact his family. Before Judge Spencer, the issue was whether the appellant could internally relocate to Baghdad. The appellant's evidence had been that he gave his CSID to his (then unnamed) friend and that it was "still" in Baghdad: see [22]. The judge found that the appellant's inconsistency revealed that he was not telling the truth. Under cross-examination from Mr Melvin before me, the appellant was clear that he gave his CSID to his friend in his home area, and not Baghdad. That is inconsistent with the account the appellant gave to Judge Spencer, which itself was subject to internal contradictions.

31. I find that the appellant remains in contact with his mother, as he has been throughout his time in the UK. She will be able to help him to obtain his CSID from his friend, or his friend's family, and that she will be able to make arrangements send the CSID to him here, just as she sent the death certificates and the police report in order to facilitate the fresh claim. Alternatively, she will be able to enlist the support of his friend to arrange to return the CSID to him upon his arrival in Baghdad, from where he will be able to travel to his home region using the CSID, in order to obtain an INID at the Ramadi Civil Status Affairs office. I reject the appellant's case that it is reasonably likely that he cannot be returned on account of not having his CSID document, and find that it is highly likely that he will be reunited with it, either immediately upon his arrival in Iraq, or before his departure from the UK.

32. It follows that the appellant has not demonstrated that he faces a real risk of treatment contrary to Article 3 of the European Convention on Human Rights.

33. This appeal is dismissed.

34. I maintain the anonymity order already in force.

Notice of Decision

The decision of Judge Saffer involved the making of an error of law. I set the decision aside, subject to the findings of fact identified in the body of this decision being preserved.

I remake the appeal and dismiss the appeal on human rights, asylum and humanitarian protection 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 5 October 2021
Upper Tribunal Judge Stephen Smith

Annex – Error of Law decision

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11567/2019

THE IMMIGRATION ACTS

Heard remotely at Field House
On 25 February 2021 *via Skype for Business*

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

ARA
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Greer, Counsel, instructed by Legal Justice Solicitors
For the Respondent: Mr C. Avery, 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 were primarily the grounds of appeal, the First-tier Tribunal decision of Judge Saffer, and the materials that were before the First-tier Tribunal, the contents of which I have recorded.

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 remote form.

1. This is an appeal against a decision of First-tier Tribunal Judge Saffer promulgated on 14 August 2020 dismissing the appellant's appeal against a decision of the respondent dated 6 November 2019 to refuse his fresh claim for asylum.

2. The essential issues are whether the judge inverted the lower standard of proof applicable to asylum appeals, and whether he failed to reach findings on matters central to the appellant's fresh claim.

Factual background

3. The appellant is a citizen of Iraq born in 1993. He arrived in the United Kingdom on 19 December 2014 and claimed asylum the same day. His claim was refused on 20 May 2015, and his appeal against that refusal was dismissed by the First-tier Tribunal on 14 December 2015, with all avenues of appeal being exhausted on 12 May 2016. On 20 April 2017, the appellant made further submissions to the Secretary of State, which were refused as a fresh claim on 6 November 2019. That was the decision under appeal before the judge.

4. The appellant is a Sunni Muslim. He claims to be at risk of forced recruitment into ISIS upon his return to Baghdad or being placed at risk of kidnapping or death if he refuses. He cannot be returned to his home area, he claims, for, even though he is Sunni, he has a Shia name, which will place him at risk.

5. I do not have a copy of the 14 December 2015 decision, but it is summarised at paragraph 9 of the refusal letter. It is common ground that the summary is accurate. In the decision, according to the summary, the appellant's account was rejected. He was found to have provided inconsistent evidence going to the core of his account. He would not face being persecuted in Baghdad from ISIS on account of his imputed political opinion. He had had no personal contact with ISIS, and the suggestion he would be targeted upon his return was speculation. There was no indiscriminate violence in Baghdad such that Article 15(c) of the Qualification Directive was engaged. A large number of Sunni Muslims lived in Baghdad, without being persecuted. The 2015 judge rejected the appellant's evidence that he had lost contact with a friend in Baghdad and found that the appellant would have access to his existing 'Civil Status Identity Card' ('CSID') reasonably quickly after his return, and with it secure access to work, rented accommodation and financial assistance from the authorities. The appellant could, therefore, relocate to Baghdad.

6. The applicant's fresh claim was based on additional background evidence concerning the treatment of Sunni Muslims, from the respondent's *Country Policy and Information Note – Iraq: Sunni (Arab) Muslims*, June 2017 ('the CPIN'). The CPIN suggested that the Shia-dominated society in Baghdad resulted in marginalisation for Sunni Muslims but concluded that they were still represented in official positions. A Sunni Muslim may be able to demonstrate a real risk of persecution on account of the Shia majority on a case-specific basis.

7. The appellant also relied on a missing person's report from the Baghdad police regarding his father, after he disappeared following his refusal in October 2014 to join ISIS. He relied on the death certificates for his brother and a friend who were said to have been killed by ISIS, as evidence of the indiscriminate violence in Iraq.

8. The respondent considered the missing persons report and death certificates to lack weight. The security situation was not as bad as the appellant feared. He would not be at risk in his home area. There was no evidence that he had a Shia name, nor that his name would place him at enhanced risk. Internal relocation to Baghdad would not be unduly harsh. He would

be able to obtain a CSID. The appellant did not meet the criteria for a grant of humanitarian protection.

Decision of the First-tier Tribunal

9. The judge accepted that it was reasonably likely that the death certificates were genuine, and that they related to the appellant's brothers. There was 'no real reason to doubt the appellant's evidence.' However, it was not reasonably likely that the brothers died 'in anything other than the general mayhem prevalent in 2015 and they could have died at the hands of ISIS, the Iraqi armed forces, or in a random attack.' The involvement of ISIS was 'nothing more than conjecture on his mother's part.' It was not reasonably likely that the family had been targeted for any reason, or that the appellant was at risk on account of being a Sunni Muslim. The police report concerning the appellant's father lacked weight, as it was based entirely upon what the appellant's mother had said 'and she is not impartial.'

10. At [41] the judge held:

> 'I am satisfied it is reasonably likely the appellant is in touch with his mother and best friend. That is because he was able to speak to her for a month by ringing her. There is no suggestion it was on any other number than she had when he was in Iraq. It is not reasonably likely she would have then changed her number without them having a method of continuing communicating. Nor is it reasonably likely that having apparently entrusted his best friends with his documents he would not have known how to contact him. Nor is it reasonably likely he would have changed his number without letting the appellant know the new number given he was entrusted with the documents.'

11. At [42]:

> 'I am not satisfied it is reasonably likely the appellant does not have the ability to obtain his CSID and passport as he can ask his mother and best friend and they can send them to him. On the contrary I am satisfied it is highly likely he has that ability but simply chooses not to. He does not therefore need to obtain a CSID, INID [an 'Iraqi national identity document'] or registration document from the Iraqi Embassy. The respondent's CPIN of June 2020 at [2.6.5 and 2.6.16] is therefore of no relevance in this case. He can therefore be returned to Baghdad, is able to travel to [his home area], and has a support network to assist him including his mother and best friend.

I refer to the matters discussed at [41] and [42] of the decision of the First-tier Tribunal as the 'CSID issue'

12. Finally, the judge concluded that the evidence of a documentary film maker, Julie Guest, who had provided an expert report on Iraq, attracted little weight. It was poorly structured and badly presented. It addressed matters pre-dating SMO, and covered LGBT issues, which were of no relevance in the present matter. See [44].

Grounds of appeal

13. There are two grounds of appeal.

14. Ground 1 is that the judge applied the wrong burden of proof when finding against the appellant on the CSID issue. The test is not whether it is reasonably likely that the appellant retains contact with persons in Iraq, but whether it is reasonably likely that he does not. The lower standard of proof admits of both possibilities, as it is lower than the balance of probabilities standard. A positive finding to a higher level of certainty is required in order to preclude the possibility that the appellant has established his case to the 'reasonable likelihood' standard. In any event, that finding was at odds with the evidence, and it was not clear the basis upon which the judge reached those findings.

15. Ground 2 is that the judge failed to address the appellant's submissions concerning his risk as a Sunni Arab, returning from a long absence, pursuant to BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC).

16. Permission to appeal was granted by Upper Tribunal Judge Rintoul, who noted that Ground 2 had less merit, but that both grounds were arguable.

Submissions

17. Mr Greer's submissions were admirably brief. Relying primarily on his grounds of appeal, he submitted that the judge appeared to have misunderstood the appellant's claim to have lost contact with his family. The appellant had not voluntarily lost contact with his mother and friend, and to the extent the judge ascribed significance to the appellant's past contact with them, he fell into error. The judge inverted the burden of proof.

18. There was no rule 24 response. In submissions, Mr Avery contended that the judge set out adequate reasoning, reaching a sustainable conclusion that the appellant had not lost contact with those closest to him in Iraq. The grounds merely disagree with those findings. This was a case in which the guidance in Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 was engaged; there had already been an appeal which had reached unchallenged findings of fact that the appellant had not lost contact with his mother and friend, and that his profile as a Sunni Arab did not place him at a risk of being persecuted or otherwise facing a substantial risk of serious harm. There was no reason to depart from those earlier findings. The grounds simply sought to reargue the case.

Discussion

19. Ground 1 has three limbs. The first relates to the inversion of the burden of proof. The second is that the judge misunderstood the appellant's case concerning the circumstances in which he claimed to lose contact with his mother and friend. The third is that the judge failed to give sufficient reasons for those findings.

20. Mr Greer's written grounds of appeal articulate the first limb in these terms:

> '…the finding that it is *reasonably likely* that the Appellant is in touch with his mother and his best friend inverts the standard of proof in Asylum appeals. The Appellant need only show that it is *reasonably likely* that he is *not* in contact with his mother and best friend. That an alternative theory of the case is also *reasonably likely* does not mean that the Appellant's claim is untrue.'

21. While I note Mr Avery's submission that this was a Deevaseelan case, and that an earlier judge had made extensive findings that the appellant was in contact with his friend in Iraq,

those findings concerned the position in December 2015. The appeal against the refusal of the fresh claim was heard in August 2020, nearly five years later. It was incumbent upon the judge to make findings pertaining to the contemporary position, and to do so pursuant to the correct standard of proof. It is necessary, therefore, to address Mr Greer's submissions in further depth.

22. The lower standard of reasonable likelihood admits of the possibility of making parallel findings of fact which are at odds with each other. This reflects the positive role for uncertainty in asylum proceedings, which itself is reflective of the difficulties inherent to proving a future likelihood of risk in the context of fleeing persecution or serious harm. Anchored to the facts of this case, as submitted by Mr Greer, that it is reasonably likely that the appellant remains in contact with his mother and friend does not preclude a finding, to the reasonable likelihood standard, that he has lost contact with them.

23. The reasonable likelihood standard is not an '*either/or*' standard. For example, had the judge made a finding that it was *highly likely* that the appellant remained in contact with his mother and friend, that would almost inevitably have precluded a parallel finding to the reasonable likelihood standard that they had lost contact, and, in isolation, there could be no complaint about the judge's application of the standard of proof.

24. The judge's findings that the appellant is *not* reasonably likely to have lost contact with his mother and friend leave open the question of whether it is reasonably likely that the appellant *has* lost contact with them, when assessed to the lower standard. The approach adopted by the judge was essentially to invert the lower standard of proof, applying it to findings against the appellant. In doing so, he reached a finding against the appellant to a standard of proof which did not adequately deal with a central plank of the appellant's case.

25. The above approach may be contrasted with that adopted by the judge at [42]. There he found it was 'highly likely' that the appellant has the ability to obtain a CSID but had chosen not to.

26. By way of context, a CSID, or its predecessor, the INID, is an essential document for most returnees resume life in Iraq. For full details, see Part C of the Headnote to SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC). Their importance is outlined at [11] of the Headnote:

> 'As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR.'

27. If the appellant had been able to demonstrate that he would not have access to his CSID, his appeal may have fallen to be allowed on Article 3 ECHR grounds. Against that background, the judge's findings that the appellant would be able to obtain his CSID were of crucial and central importance to the appellant.

28. On a superficial analysis, the judge's finding at [42] concerning the appellant's ability to obtain his CSID is a finding which cannot be faulted on standard of proof grounds; it is a specific finding, at a standard of proof much higher than the reasonable likelihood standard ('highly likely'), and it leaves no room for the possibility that the appellant's contrasting narrative may have been established to the reasonable likelihood standard.

29. However, the basis upon which the judge reached his 'highly likely' finding is not clear. The finding at [42] that it was 'highly likely' that the appellant had the ability to obtain his CSID appears to be the culmination of the judge's earlier reasoning, at [41], concerning the appellant's contact with his mother and friend. For the reasons set out above, those findings were made erroneously, by reference to the lower standard of proof, thereby failing to preclude the possibility that it *was* reasonably likely that the appellant could not obtain a CSID. The judge appears to have taken the cumulative force of earlier findings reached only to the lower standard of proof and combined them to reach a total greater than the sum of their parts. The highest conclusion open to the judge to reach at [42] concerning the appellant's CSID, based on his reasoning at [41], was that it was *reasonably likely* that he had the ability to obtain a CSID. Again, that leaves open the question of whether it would be reasonably likely that the appellant could *not* obtain a CSID.

30. Allied to that preliminary concern are Mr Greer's submissions concerning the third limb of Ground 1. The judge found that the appellant's mother and friend would have contacted the appellant before changing their contact details. The judge gives no reasons for making those specific findings, which goes beyond a mere rejection of the case the appellant advanced. In granting permission to appeal, Judge Rintoul observed that it was arguably unclear as to the evidence that those findings were based upon, as opposed to speculation. I agree with those observations and find that the judge gave insufficient reasons for reaching those findings.

31. In light of the above analysis, it is not necessary for me to engage with the second limb of Ground 1. Ground 1 is made out.

32. Ground 2 contends that the judge failed to address the risk profile of the appellant as a Sunni Muslim. Part of the appellant's case was based on him having a Shia name. The judge would have had regard to the refusal letter which, at [18] and [19] highlighted the lack of background materials to support that assertion. At [43], the judge said that he had been pointed to no evidence 'within the vast body of background evidence' that the appellant's name would present him with problems. Mr Greer did not challenge that finding; he did not, for example, seek to demonstrate that there were background materials which supported this aspect of the appellant's case. In relation to the general risk faced by the appellant, judge had regard to the evidence of Julie Guest. She was an unsatisfactory expert, for the detailed reasons given by the judge at [44] which, again, are unchallenged by Mr Greer.

33. It is true that the judge did not engage with the detail of BA (Returns to Baghdad) Iraq CG, which is the specific complaint of the grounds. However, the hearing was in August 2020. On 19 December 2019, this tribunal handed down judgment in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) which, as stated at [30] of the headnote, replaces all country guidance on Iraq. It was not necessary for the judge to refer to BA, as it had been replaced by the date of the hearing. Mr Greer did not seek to take me to any provisions within SMO which, he contended, the judge failed to have regard to pursuant to this ground. There is no merit to Ground 2.

Setting the decision aside

34. There were no challenges to the findings in the following paragraphs, and there is no need for me to interfere with them:

a. [36], [37]: The death certificates were reasonably likely to be genuine, and relate to the appellant's brothers, and not a friend as both record the same parents' names. Even if there is a discrepancy it is not a material discrepancy.

b. [38]: It is not reasonably likely that the brothers' died 'in anything other than the general mayhem prevalent in 2015 and they could have died at the hands of ISIS, the Iraqi armed forces, or in a random attack.' It was not reasonably likely that the brothers were targeted for any reason or that the appellant is at risk due to his family membership, or solely because he is a Sunni Muslim.

c. [39]: It is not reasonably likely that the appellant would be suspected of having supported ISIS, as he had been out of Iraq for over five years, and there as no cogent evidence as to why he would be thought to support them.

d. [40]: The police report of the appellant's father's claimed kidnapping is based entirely on what his mother said, 'and she is not impartial.'

e. [43]: There was nothing in the background materials before the judge suggesting that the appellant's name would present him with problems.

f. [44]: The report of Julie Guest attracted little weight, for the reasons given by the judge.

35. I set aside the judge's findings at [41] and [42] concerning the appellant's ability to obtain a CSID or INID. It will be necessary for the appeal to be reheard in the UT to focus on that issue alone, and any consequential human rights implications.

36. This appeal is allowed to the extent set out above.

37. I maintain the anonymity direction made by Judge Saffer.

Notice of Decision

The decision of Judge Saffer involved the making of an error of law and is set aside, with the findings of fact summarised in paragraph 34, above, preserved.

The decision will be remade in the Upper Tribunal at a remote hearing.

Time estimate: three hours. Arabic interpreter.

Within 28 days of being sent these directions, the appellant is directed to file and serve a further witness statement, addressing his attempts to contact family and friends in Iraq, and his ability to obtain a CSID or INID.

Either party may object to the matter being resumed via a remote hearing **within 14 days of being sent these directions**.

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 25 February 2021
Upper Tribunal Judge Stephen Smith