



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001647
IA/00533/2020**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 6 September 2022**

**Decision & Reasons Promulgated
On 10th October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SAEID KARIM FATAH
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzan of Burton & Solicitors.

For the Respondent: Ms S Rushford, a Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Law ('the Judge'), promulgated following a hearing at the Nottingham Justice Centre on 17 March 2021, in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** Permission to appeal was granted by a Designated Judge of the First-tier Tribunal on 11 August 2021, the operative part of the grant being in the following terms:

The grounds of appeal assert the Judge erred in law when considering whether the Appellant could obtain a CSID or INID within a reasonable time. They do not challenge the Judge's adverse findings in respect of what the Appellant claims he experienced in Iraq.

The Appellant states his family lived in Kirkuk but the Judge makes no finding where his family is registered for CSID purposes, that is to which CSA office he would need to apply to obtain a replacement CSID or INID: see paragraphs 385ff and the latter part of paragraph 405 of *SMO, KSP & IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400(IAC)*. Further, the Judge has not considered return to Erbil or Sulaymaniyah: see paragraphs 421ff of *SMO*. The Grounds disclose arguable errors of law and so permission to appeal is granted.

3. There have been a number of changes that have occurred since the Judge promulgated the decision under challenge. The only remaining country guidance case relating to Iraq is now *SMO & KSP [2022] UKUT 00110*. The Secretary of State has updated her CPIN - internal relocation, civil documentation and returns, Iraq, July 2022 which contains a change of policy in that enforced returns to Iraq and now to any airport within Iraq, including the IKR.
4. The appellant's home area in Kirkuk is no longer a contested area.
5. None of the CSA offices in Kirkuk are issuing CSID's, only the biometric INID.
6. One feature of this appeal is that the appellant left Iraq in 2015 prior to the introduction of the INID in January 2016, so he will be required to attend at his local CSA office to enrol his biometrics as he would not have done so previously.
7. It is not disputed before me that the appellant will be unable to obtain a replacement CSID either in the UK or from Iraq by proxy.
8. The issue is therefore whether the appellant has his CSID with him or whether it is at home which a family member can send to him.
9. In the reasons for refusal letter at [54] it is recorded by the decisionmaker "*it is noted that you have previously had a CSID card that lost it, and you are in the process of applying for a new card....*" As Ms Rushford acknowledged in her submissions, no issue was taken in the refusal letter about the appellant's claim to have lost his CSID. Indeed, if one looks at the following paragraphs it is clear that the view of the Secretary of State was that the appellant could obtain documentation in the UK, which may have been feasible when the refusal letter was written but is not now, and focuses upon the appellant having stated he fled Iraq with the help of a friend and a doctor, and suggesting it was possible they could assist him in verifying his identity to obtain a CSID. There is also reference to the appellant's father remaining in Iraq who could support the appellant in obtaining a replacement for his CSID [56].
10. Judge Law in the impugned decision at [5] notes the Secretary of State's position set out above at [26] and writes "*it is also relevant that the appellant's Iraqi passport is on his own account held by the asylum authorities in Germany although it does not know how to request its return. He had lost his CSID shortly before he left Iraq but has found out how to get a replacement*".

11. At [32 -33] the Judge writes:

32. *Bearing in mind the burden of proof and the findings which I have made, the appellant has not established to the standard of reasonable likelihood that there is an INID terminal in his home area of Kirkuk. He has not established that on return to Baghdad in possession of the registration document (1957) he would not then be able to obtain a CSID with the help of a family member or friend as his proxy and then continue his journey to Kirkuk. I'm not satisfied that the appellant will become destitute in the limited period of time he would have to spend in Baghdad while he made arrangements to rejoin his family.*

33. *It is clear this registration document (1957) is an official document issued by the authorities in Iraq as confirmation of an individual's status as an Iraqi national. It is also clear that the intention of the Iraqi authorities is the possession of such a document is a means to enable an individual to obtain any further identity documents required, when they do not have the means to obtain the same for themselves in Iraq.*

12. It is now known from *SMO* [2022] that no reliance can be placed upon the registration document (1957) especially in the way in which the Judge did on this occasion, albeit at that time guidance from the Upper Tribunal on the status of this document was awaited. It is also the case that it is now known that there is an INID terminal in the appellant's home area of Kirkuk.

13. It is also known that the appellant will not be able to obtain a replacement CSID.

14. The appellant as an Iraqi Kurd can be returned directly to either of the airports in the IKR. To travel to his home area, however, he will be required to pass through checkpoints which *SMO* [2022] continues to refer to, manned by Shia Militia. The country guidance case also confirms that without either a CSID or INID an individual is unlikely to be allowed to pass those checkpoints meaning the appellant will not be able to return to his home area to apply for his INID.

15. If the appellant cannot travel to his home area he will have to remain in the IKR but would do so without the necessary identity documents required to enable him to lead a normal life by way of access to basic needs including work, medical treatment, any engagement with officialdom, or the other reasons identified in *SMO* [2022].

16. It was not made out before the Judge that if the appellant does not have the necessary identity documents he will be able to survive without facing destitution or possible ill-treatment. In this respect I refer to paragraph 2.4.4 of the July 2022 CPIN, which is in the following terms:

2.4.4 Decision makers must therefore first determine whether a person would face any harm on return stemming from a lack of CSID/INID before considering whether their return is feasible. In cases where a person would be at risk on return due to a lack of documentation (i.e. facing destitution or possible ill treatment

due to the requirement to travel internally within Iraq to obtain a CSID/INID) a grant of HP would be appropriate.

- 17.** I find that the Judge has erred in law in a material manner for the reasons identified in the grant of permission to appeal. I find that in light of the absence of any challenge to the appellant’s claim not to have his CSID and to have lost the same, and the current situation prevailing which clearly shows the appellant will not be able to obtain a CSID in the UK or within Iraq by any of the suggested means, the fact the appellant left Iraq in 2015 prior to the issue of the INID, that he would return to Iraq without the necessary required identity documents. On that basis I set aside the decision of the Judge and substitute a decision to allow the appeal for the reasons set out at paragraph 2.4.4 of the CPIN.

Decision

- 18. The Judge materially erred in law. I set the decision aside. I substitute a decision to allow the appeal.**

Anonymity.

- 19.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated 6 September 2022