



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2021-001234  
(PA/51547/2021); IA/03506/2021

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 16<sup>th</sup> August 2022**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> September 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**B S M  
(Anonymity Direction Made)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss A Supulveda, instructed by Hanson Law

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

**DECISION AND REASONS**

**Anonymity**

An anonymity direction was made by the First-tier Tribunal. The appeal before me arises from a claim for international protection and it is appropriate for an anonymity direction to be made by me. 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 his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Iraq of Kurdish ethnicity. He claims that he left Iraq using his own passport and arrived in Turkey on 23<sup>rd</sup> September 2019. He then travelled through France and arrived in the UK on 22<sup>nd</sup> October 2019. He claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 26<sup>th</sup> March 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Shepherd ("Judge Shepherd") for reasons set out in her decision dated 6<sup>th</sup> July 2021.
2. The claim for international protection made by the appellant was summarised by the respondent in her decision and is referred to in paragraphs [7] to [9] of the decision of Judge Shepherd:

“7. The Appellant is an Iraqi national born in Hajiawa, Iraq. He is a Kurd of the Jaff tribe. He lived in Iraq with his parents and sister. His paternal uncle has a high rank in the KDP and wanted his son to marry the Appellant's sister but the Appellant refused. His uncle hit him and threatened to kill him, continuing to ask for his sister's hand in marriage but he refused. He was issued with an arrest warrant accusing him of activities against the KDP. His maternal aunt heard his paternal uncle say that he will kill him so she warned him and he was taken to Erbil to hide. He fears his paternal uncle will kill him. He fears the KDP as his uncle has a high rank and an arrest warrant has been issued against him saying that he has participated in activities against the KDP.

8. The Appellant says another uncle bought him a plane ticket and he flew to Turkey using his own passport, arriving on 23 September 2019; his agent took the passport and threw it away; he stayed in Turkey for 7 days after which the agent took him out of Turkey by boat to France; when he landed he was taken to a 'jungle' where he stayed for 15 days; he travelled to the UK clandestinely by lorry and arrived on 22 October 2019 whereupon he was served with a ILL EN 101 notice as an illegal entrant and claimed asylum.

9. The Appellant has since said that in the UK he is actively posting against the KDP and other political parties on Facebook and has participated in demonstrations against corruption in Iraq and Kurdistan”

3. As Judge Shepherd recorded at paragraph [11] of her decision, the respondent had accepted the appellant is a national of Iraq and is of Kurdish ethnicity. Judge Shepherd summarised the respondent's reasons for refusing the claim for international protection at paragraphs [12] and [13] of her decision. Judge Shepherd identified the evidence before the Tribunal at [14] and identified the issues in the appeal at paragraph [17].

She carefully records the appellant's oral evidence at paragraphs [20] to [52]. Judge Shepherd's findings and conclusions are set out at paragraphs [71] to [125]. It is fair to say she did not find the appellant to be a credible witness. She rejected his account of the events that caused him to leave Iraq, and found the appellant is able to secure the relevant documentation so that he can return to his home within the IKR without risk of encountering treatment or conditions which are contrary to Article 3 of the ECHR. She also concluded that there are no very significant obstacles to the appellant's integration in Iraq and that his removal would not be disproportionate to the legitimate aim of having effective immigration controls.

#### The appeal before me

4. The appellant advances four grounds of appeal. First, he claims Judge Shepherd applied too high a standard when making findings as to whether the appellant is credible. The appellant claims the "lower standard of proof" should have been applied. Second, the appellant claims that in reaching the decision that the appellant could obtain a replacement CSID from the Civil Status Affairs Office in his home of Governorate by proxy, or by using a lawyer, the judge failed to give adequate reasons. Furthermore, the judge failed to give adequate reasons as to why the appellant would be able to obtain a 'Registration Document (1957)' whilst he is in the United Kingdom and failed to give adequate reasons as to why the appellant would be able to obtain the volume and page reference of the entry in the Family Book in Iraq. Third, the appellant claims the judge failed to provide adequate reasons for not accepting the appellant's account that he has participated in 'anti-KDP' activities in United Kingdom. It is said the judge also failed to adequately assess whether the appellant had previously been beaten by his uncle. Finally, the appellant claims the judge failed to provide adequate reasons as to why the appellant's private life claim under paragraph 276ADE(1) (vi) of the immigration rules was not made out.

5. Permission to appeal was granted by the First-tier Tribunal on 6<sup>th</sup> November 2021. The judge granting permission identified the four grounds of appeal and said, at [2]:

“2. I am less persuaded that the judge applied an incorrect standard of proof, and he did consider the appellant’s factual claim in detail. I am less persuaded that the article 8 claims were inadequate. However, the judge arguably erred in his assessment of SMO and the appellant’s ability to obtain a CSID by proxy”

6. Notwithstanding the judge’s reservations regarding the first, third and fourth grounds of appeal, permission to appeal was granted on all grounds.
7. Before me, Miss Supulveda adopted the grounds of appeal. Addressing each of the grounds in turn, she submits the judge’s findings are clearly set out at paragraph [88] of her decision. Miss Supulveda submits the judge has applied a higher threshold than is required in making her findings. She referred me to the adverse credibility finding set out in paragraph [88(vii)], and submits that applying ‘the lower standard’, the Judge should have accepted what the appellant had said. Miss Supulveda submits that at paragraph [88(vi)], the judge accepted the background material as to corruption within Iraq and the evidence concerning arbitrary arrests, detentions and unlawful killings. However, the judge required the appellant to establish that due to his uncle’s role, the uncle would have the power, reach and influence that the appellant says he has. Miss Supulveda submits the Judge was assessing the case adopting a higher standard of proof than she was required to.
8. In reply to submissions made by Mr Williams, Miss Supulveda submits it is implicit in the first ground of appeal that the appellant challenges the adverse credibility findings made by Judge Shepherd. Although not expressed in those terms in the grounds of appeal, Miss Supulveda submits that the adverse credibility findings are undermined by the failure of Judge Shepherd to apply the correct standard of proof.

9. As far as the second ground of appeal is concerned, Miss Supulveda submits at paragraph [97] the judge gave the appellant the benefit of the doubt and accepted and proceeds on the premise that the appellant does not have his CSID. Miss Supulveda submits that in considering whether the appellant is able to secure the necessary CSID, the judge did not consider material factors. Although the appellant can voluntarily return to the IKR, any forced return would, at the material time, have been to Baghdad as set out in the respondent's CPIN - 'Iraq - Internal relocation, civil documentation and returns (June 2020)'. Furthermore, if the appellant is returned to Baghdad, Judge Shepherd failed to consider the risks the appellant will be exposed to, travelling from Baghdad to his home area. Miss Supulveda submits Judge Shepherd did not properly consider the process for obtaining the CSID by proxy. The respondent's CPIN - 'Iraq - Internal relocation, civil documentation and returns (June 2020)', addresses 'Redocumentation' in section 6. At paragraph 6.3.8, the CPIN suggests that when applying for a new card by proxy, the applicant must issue a written authorisation to a person in the applicant's home country (i.e. here, Iraq). The authorisation must be sent via the embassy in the country where the applicant is staying (i.e. here, the UK). The CPIN notes this may be difficult if the applicant is unable to verify his identity. The applicant must present a passport, birth certificate, an old ID card or nationality certificate. Miss Supulveda submits there is no suggestion that the Embassy would accept a photocopy of a document to prove an individual's identity and the appellant does not have any of the required documents to verify his identity.
10. Turning to the third ground of appeal, Miss Supulveda submits Judge Shepherd gave inadequate reasons at paragraphs [90] and [91] of her decision for rejecting the appellant's claim that he has participated in anti-KDP activities in the United Kingdom. Miss Supulveda accepts that the appellant had not provided evidence to establish his claim that he had posted things on Facebook or attended a demonstration. Miss Supulveda submits the appellant was entitled to rely upon his oral evidence and Judge Shepherd does not provide adequate reasons for not

accepting the appellant's oral account. She submits paragraph [89] was not concerned with the appellant's activities in the UK, and there are no reasons given as to why the Judge did not believe the appellant.

11. Finally, as far as ground four is concerned, Miss Supulveda submits that ground stands and falls with the other grounds of appeal. If Judge Shepherd erred in her assessment of the appellant's international protection claim, that has an impact upon whether there are very significant obstacles to the appellant's integration in Iraq.
12. In reply I invited Mr Williams to address the second ground of appeal. He submits the second ground of appeal is a 'reasons challenge' and it is not alleged that the Judge made any mistake as to fact. He submits the issue for the judge was whether the appellant can obtain a replacement CSID card. There is an unchallenged finding that the appellant's family is in Iraq and that he is in contact with them. He submits the respondent's CPIN - 'Iraq - Internal relocation, civil documentation and returns (June 2020)', addresses 'Redocumentation', and sets out the information that is needed to obtain a CSID by proxy. At paragraph 6.3.5, the CPIN refers to a letter from the British Embassy in Baghdad that explains the requirement for Iraqi consulates to liaise with the Nationality Directorate to enable Iraqi citizens living overseas to acquire their CSID card. That can be done by filing an application from the head of family, the applicant (record holder), a guardian or a lawyer with the power of attorney. Paragraph 6.3.6 confirms that to obtain a replacement, a person should provide a copy of the lost ID, or importantly here, the ID of a close relative such as a father or brother. It is noted that it is usually straightforward to identify the citizen from other relatives records. Mr Williams submits Judge Shepherd found at paragraph [106] that the appellant is likely to still be in contact with his family and it is possible that the appellant could obtain the volume and page reference of the entry in the family book in Iraq, if he does not recall those details himself. The Judge referred to the material before the Tribunal regarding the 'registration Document (1957) and what is said about redocumentation in

the relevant country guidance. She acknowledged the CSID is being phased out. It was for the appellant to show he could not obtain a document by proxy, and he failed to discharge the burden on him.

## Discussion

### Ground 1 - The standard of proof

13. I address each of the grounds of appeal in turn. There is no merit whatsoever to the first ground of appeal. The appellant claims without any attempt to elaborate on that claim, or to engage with the decision of Judge Shepherd that the judge applied too high a standard when making findings as to whether the appellant is credible. It is abundantly clear from any proper reading of the decision that the judge did precisely what the appellant claims she should have done. That is, to apply lower standard. Judge Shepherd expressly stated at paragraph [68] of her decision that it is for the appellant to show that there are substantial grounds for believing that he qualifies as a refugee. Judge Shepherd expressly states, at paragraph [80]:

*“To the lower standard I find it was the Appellant’s specific intention to reach the UK rather than claim asylum in the first safe country he got to, which damages his credibility...” (my emphasis)*

14. A similar expression of the application of “the lower standard” can be found at paragraph [89]. Following her analysis of the appellant’s evidence in paragraph [88], Judge Shepherd said at [89]:

*“Overall, I do not find it proved to the lower standard that the Appellant is at risk from his paternal uncle or others for refusing his uncle’s son permission to marry his sister, or that he was issued with an arrest warrant or that he is at risk in Iraq from 17 his uncle or relatives or the authorities. There are just too many inconsistencies in the evidence, or a lack of evidence on certain points and the Appellant was an evasive, inconsistent and incredible witness when asked about these points.” (my emphasis)*

15. Judge Shepherd again refers to the application of the ‘lower standard’ at paragraph [90] of her decision when reaching her findings as to whether the appellant has participated in anti-KDP activities in the UK. Similarly,

at paragraph [97] of her decision, she confirms she was not necessarily persuaded “even to the lower standard” that the appellant does not in fact have his CSID. Miss Supulveda did not draw my attention to anything in the decision that even begins to indicate that Judge Shepherd applied anything other than the lower standard. The judge's decision took account of all the evidence, and she accorded appropriate weight to the evidence that was available. It is in my judgement clear that in addressing the various strands of the appellant’s claim, Judge Shepherd applied the correct standard of proof. She was plainly entitled to reach the adverse conclusions that she did from the evidence. The appellant’s claim that the judge’s approach to the analysis of the evidence is mere disagreement with the reasoning of Judge Shepherd.

Ground 2 - The replacement CSID and ‘Registration document (1957)

16. The appellant claims Judge Shepherd gives inadequate reasons for her conclusion at paragraph [115] of her decision that there is no reason why a replacement CSID cannot be obtained from the Civil Status Affairs Office in the appellant’s home Governorate, using a proxy and the assistance of a lawyer. The appellant also claims Judge Shepherd failed to give adequate reasons as to why the appellant would be able to obtain a ‘Registration Document (1957), whilst in the UK.
17. This ground too has no merit. Judge Shepherd clearly gave the appellant the benefit of the doubt and proceeded on the basis that he does not have his CSID. She referred to the relevant country guidance and CPIN, at paragraphs [98] to [103] of her decision. It was undoubtedly open to her to note as she did at paragraph [104], that there is no evidence of the appellant having completed any forms to begin the process of obtaining replacement documents, including the ‘Registration Document (1957). It was open to her to note, at [107], that there is no reason why the appellant could not take immediate steps to apply for that document, for the reasons given at paragraph [107].



18. At paragraph [111] of her decision, Judge Shepherd refers to the decision of the Upper Tribunal in SMO, KSP & IM (Article 15(c); identity documents) (CG) [2019] UKUT 00400 (IAC). She expressly acknowledged at paragraph [113] that the likelihood of obtaining a replacement identity document by the use of the proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. She went on to say:

“.. However there is no evidence before me that the registry office in the Appellant’s home area is not operational or is an office in which INID terminals have been installed and thus is an office that does not continue to issue CSID cards.”

19. Judge Shepherd did not find the appellant to be a credible witness. She explained that with the appellant’s father available to vouch for him, the appellant could get his family page details from his parents who remain in Iraq and so his family members in Iraq could have power of attorney to obtain the CSID from the local Civil Status Affairs Office. Judge Shepherd explained at paragraph [115] that there is no reason why the appellant could not take immediate steps, with the assistance of his family to secure a CSID, and once obtained, there is no reason why the appellant’s CSID could not be sent to the appellant here in the UK, or why the appellant could not be met by his family or relatives within a reasonable time of the appellant’s arrival in Iraq to facilitate his safe travel.
20. The appellant’s criticisms amount to a mere disagreement with the reasoning of Judge Shepherd. The relevant evidence, or absence thereof, was considered by the Judge and she gave perfectly adequate reason so that the appellant is aware of the judge’s reasons for reaching her decision.

Ground 3; The appellant’s ‘anti-KDP activities in the UK

21. The appellant claims Judge Shepherd fails to provide adequate reasons for rejecting the appellant’s claim that he has participated in anti-KDP activities in the UK. Miss Supulveda accepts that the appellant had not

provided evidence to establish his claim that he had posted things on Facebook or attended a demonstration. Miss Supulveda submits the appellant was entitled to rely upon his oral evidence. It is true to say that evidence given by a witness, whether that is the appellant or anyone else, must be considered by a judge. In the opening sentence of paragraph [90] of her decision, Judge Shepherd said that for the same reason as stated in paragraph [89], she did not find it proved to the lower standard that the appellant has participated in anti-KDP activities in the UK. At paragraph [89], she had said there are just too many inconsistencies in the evidence, or a lack of evidence on certain points and the appellant was an evasive, inconsistent and incredible witness. At paragraph [90], she noted the appellant had, without explaining its absence, produced no evidence that he has posted things on Facebook or attended a demonstration. She records the appellant had to be asked three times what the nature of his activities was. Judge Shepherd went on to say, at [90]:

“...He did not answer the question as to whether his uncle was likely to use Facebook. Other than his word, which I have found not to be credible, there is no evidence before me that the Appellant has a Facebook account or is likely to come to the attention of his uncle or the authorities by using it, or that it shows the Appellant had participated in anti-KDP activities in the UK. Overall, I find it likely that the Appellant has made this claim in order to bolster his asylum claim more generally.”

22. A judge is required to consider the evidence as a whole, and not bound to accept the oral evidence of a witness. There is a lower standard in asylum claims and no requirement for corroboration, but if there is no good reason why evidence that should be available is not produced, a Judge is entitled to have that in mind. It is clear in my judgment that Judge Shepherd gave adequate reasons for rejecting the appellant's claim. The implication in the submissions made by Miss Supulveda is that the issue was considered by Judge Shepherd but not to the extent, or as desired by the author of the grounds of appeal. This ground too therefore has no merit.

#### Ground 4 - The appellant's human rights claim

23. I turn finally to the fourth ground of appeal. The appellant claims Judge Shepherd failed to provide reasons as to why the appellant's human rights claim under paragraph 276ADE(1)(vi) of the immigration rules and Article 8, was not made out. I can deal with this ground in short form because Miss Supulveda submits this ground essentially stands and falls with my decision as to whether the judge erred in her analysis as to the risk upon return to Iraq. For the reasons I have set out above, there is no merit whatsoever to the first three grounds of appeal and it follows therefore that this ground too, must fail.
24. For the avoidance of any doubt I have carefully considered what is said by Judge Shepherd at paragraphs [117] to [125] of her decision. In reaching her decision, she had proper regard to the appellant's background and connections to Iraq. I am quite satisfied that she gives perfectly adequate reasons for her conclusion that the appellant has failed to establish that there would be very significant obstacles to his integration into Iraq, at paragraph [120] of her decision. It was open to Judge Shepherd to find that it would be proportionate to remove the appellant to Iraq for the reasons given by her.
25. It follows that in my judgment, there is no material error of law in the decision of Judge Shepherd, and I dismiss the appeal.

### **Decision**

26. The appeal is dismissed. The decision of First-tier Tribunal Judge Shepherd shall stand.
27. I make an anonymity direction.

Signed **V. Mandalia**

Date:

17<sup>th</sup> August 2022

**Upper Tribunal Judge Mandalia**

