



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

Appeal Number: PA/07408/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> September 2022**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> September 2022**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

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

Appellant

**And**

**DBA  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer  
For the Respondent: Mr K Parking of Counsel, instructed by Barnes Harrild & Dyer Solicitors

**DECISION AND REASONS**

1. In my decision promulgated on 18 February 2020 an error of law was found in the decision of First-tier Tribunal Judge Sweet promulgated on 15 October 2019, in which DBA's appeal against the decision to refuse his protection and human rights claims dated 25 June 2019 was allowed. For the reasons set out in that decision which is appended, I set aside that decision. This decision is the re-making of the DBA's appeal. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with DBA as the Appellant and the Secretary of State as the Respondent.

2. An anonymity order is made in this case in light of the nature of the Appellant's asylum claim.
3. The Appellant is a national of Iraq, born on 23 May 1992, who arrived in the United Kingdom as a minor in July 2007 and shortly thereafter claimed asylum. His claim was refused on 20 September 2007 and no appeal was pursued against that refusal as the Appellant had been granted leave to remain as an unaccompanied asylum seeking minor to 22 November 2009. An application for further leave to remain was refused on 2 March 2010, the Appellant's appeal against refusal was dismissed on 24 April 2010 and he was appeal rights exhausted on 31 January 2011. The Appellant made further submissions which were refused on 6 October 2015 and 28 April 2016. His latest further submissions were made on 20 May 2019 which were refused by the Respondent but accepted as a fresh claim under paragraph 353 of the Immigration Rules with a right of appeal to the First-tier Tribunal. The further submissions relied upon the Appellant's claimed risk on return to Iraq because of a family feud and also that he would be returning without a CSID, without any family support and as a Sunni Muslim and would therefore be unable to integrate or support himself on return.
4. This appeal was heard on 7 September 2021, at which time the country guidance was that set out in SMO, KSP, IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), with the weight of evidence and submissions directed to the issue of whether the Appellant would be able to obtain a replacement CSID card. An earlier indication on behalf of the Appellant at a hearing on 16 November 2020 (which was adjourned) that the Appellant wished to pursue wider grounds of appeal on protection and human rights grounds was not ultimately pursued at the hearing on 7 September 2021, with no submissions made or evidence relied upon in support of the claim that the Appellant feared return to Iraq on the basis of a blood feud and with acceptance that the Appellant's claim under Article 8 of the European Convention on Human Rights stood or fell with his protection claim based on the issue of re-documentation only.
5. Following the hearing, updated country guidance was issued in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC), which was materially different in relation to the issue of whether a person could obtain a replacement CSID card due to the introduction within Iraq of the Iraqi National Identity Card (the "INID") and phasing out of the CSID.
6. The parties were invited to make written submissions pursuant to the updated country guidance in directions dated 10 May 2022. Written submissions were received on behalf of the Appellant dated 17 May 2022, which referred to paragraphs 13-15 of the headnote in the country guidance in particular and that the Respondent indicated that she was prepared to make enquiries with the Iraqi authorities to ascertain whether the Kirkuk CSA has moved to the INID system and as to the extent of any destruction of records in the Kirkuk CSA during the fighting in recent years. Further directions were issued dated 23 June 2022 requiring the

Respondent to make written submissions as to the time required for such enquiries and/or written submissions setting out the information.

7. On 12 August 2022, the Respondent confirmed that following enquiries to the Iraq Embassy that as at 7 July 2022, all but eight of the Iraq's departments (including those in the IKR) issued the Iraqi National Card. The only offices which were at that date still issuing CSID cards were Shiekhan, Sinjar, North, Qahtaniyah, Zelkan, Al-Baaj, Wanh and Shura; which were in Mosul and surrounding areas of the Nineveh Governate. This means that the Kirkuk CSA had by that date moved to the INID system.
8. For the reasons set out below, this information is largely determinative of this appeal in accordance with the current country guidance and it is not necessary to set out in full the wider evidence before the Upper Tribunal nor submissions made at the hearing. That which is relevant to the issue of a CSID or INID is set out below.

## **The appeal**

### *Applicable law*

9. The relevant country guidance for the purposes of this appeal is contained in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) which, so far as relevant, states:

### **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*
8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

### **C. CIVIL STATUS IDENTITY DOCUMENTATION**

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.*

- 12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. 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.*
- 13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.*
- 14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.*
- 15. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
- 16. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
- 17. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.*
- 18. Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.*

19. *There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.*
20. *The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.*
21. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*
22. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.*

#### *The witness evidence*

10. In his written statement signed and dated 27 August 2019, the Appellant confirms that he has no contact with any family members in Iraq and he is pursuing tracing through the Red Cross. He maintains that he remains at risk on return to Iraq due to a family feud and claims that he would be at risk on return to Baghdad as a Kurdish Sunni muslim.
11. In his written statement signed and dated 11 November 2020, the Appellant states that he attended the Iraqi Embassy on 26 September and 9 November 2019, with a copy of his CSID card but his application for re-documentation was refused. The number on his CSID card, obtained via his Uncle in 2011, does not look familiar to the Appellant and he does not know whether the CSID card he has is genuine or not.
12. The Appellant attended the oral hearing, adopted his written statements dated 27 August 2019 and 11 November 2020 and gave oral evidence. In

cross-examination he stated that he had sought to re-document himself through the Iraqi Embassy on four occasions. The first time he did not have his CSID card as it was with the Home Office but had a number he was told by his father related to the family book entry. On the second occasion, he had his CSID card but was told this had expired as it was over fifteen years old. The Appellant was not entirely confident of the number on his CSID card as the reference did not look familiar to what he remembered as a child. At the Iraqi Embassy, there was no a match with his family book number which also made him unsure if his CSID was correct. The Appellant has his CSID card, a copy is available in the Tribunal bundle and it does not contain an expiry date, only an issue date of 2001.

13. In his written statement signed and dated 11 November 2020, the Appellant's uncle, LN, states that he obtained the Appellant's CSID with the help of his maternal uncle and returned via a friend visiting Iraq. LN was informed by his uncle that the CSID would be obtained from the local registry office but LN does not know if this is what happened and he can not confirm the genuineness of the document.
14. The Appellant's uncle, LN attended the oral hearing, adopted his written statement dated 11 November 2020 and gave evidence in Kurdish Sorani through a court appointed interpreter. In cross-examination he stated that when the Appellant arrived in the United Kingdom in 2007, there was a dispute as to his age, so LN contacted his maternal uncle in Kirkuk to obtain an Iraqi ID document for the Appellant as the only remaining relative there. This person knew people in offices in charge of documents in Iraq and was able to obtain the Appellant's CSID. LN stated that this was an official document which had to be obtained officially, but his uncle had connections to enable this. The CSID was obtained in 2007, LN thinks it was probably originally made in 2001 with a copy being made by cutting and pressing it in 2007; or with the original details in the office, a person can obtain a copy with a picture and it being stamped. LN's uncle in Iraq passed away in 2015.

#### *The documentary evidence*

15. There is a letter from the Iraqi Embassy dated 26 September 2019 referring to the Appellant attending the consulate to apply for an Iraqi passport and quotes his CSID number (different to the one given in his written statement) and states that the application could not be processed without a CSID that is less than 15 years old; an INID; two photographs and attendance in person at the consulate. There are similar letters dated 14 and 17 May 2019, the first of which specifies a different CSID number to the later letter (but the same as that in the Appellant's written statement) and the second without specifying the Appellant's CSID number.
16. A copy and translation of the Appellant's CSID card showing an identity number, a registry and page number and a date of registration of 23 May 2001. The card bears a photograph of the Appellant.

*Closing submissions on behalf of the Respondent*

17. At the hearing, it was submitted on behalf of the Respondent that the Appellant had a CSID and details of his family book entry, such that a new CSID could be issued with the assistance of relatives in Kirkuk. The Appellant would be returned to Baghdad on a *Laisser Passez* and could access his new CSID card from there.

*Closing submissions on behalf of the Appellant*

18. At the hearing, it was accepted that the Appellant had an old CSID card but submitted that because this was issued more than 15 years ago it had expired and in any event would not be of any use to the Appellant for travel between Baghdad and Kirkuk because it contained a picture of the Appellant as a child. Counsel did cautiously accept that with the expired CSID card and information available to the Appellant, he could obtain an INID in Kirkuk but would not be able to safely travel there from Baghdad. It was not disputed that the Appellant had no relatives or contacts in Baghdad.
19. Whilst accepted that there was no direct country evidence on the expiry of a CSID, this is mentioned in the (then current) guidance and the letters from the Iraqi Embassy stated that the Appellant's CSID had expired and could not be used to obtain a passport.

*Further written submissions*

20. In the further written submissions made in response to directions on behalf of the Appellant dated 17 May 2022, it is submitted that if the Kirkuk CSA has moved to the INID system; then the Appellant has no means of obtaining a new CSID or INID without travelling to his home area. However, he would not be able to do this on his old CSID because it has expired and without this, the journey would risk breaching Article 3.

**Findings and reasons**

21. Following the country guidance and information received from the Respondent set out above, the position is this. The Appellant does not have an Iraqi passport (nor has he been able to obtain one from the Iraqi Embassy) and would therefore be returned on a *Laissez Passer* to Baghdad. That document would be retained on arrival to Baghdad and would not be available to nor of any use to the Appellant for onward travel to Kirkuk, his home area. The Appellant's home CSA in Kirkuk has transferred to the INID system, such that he would not be able to obtain a new CSID from there, in person or by using a proxy and would also not be able to obtain a CSID from the Iraqi Embassy (see paragraph 13 of the country guidance). The Appellant is not from Baghdad, is not likely to be able to obtain a replacement identity document there, and not within a reasonable time. The only remaining issues is therefore whether the CSID that the Appellant has would be valid for onward travel to his home area to obtain an INID there. It seems likely, as cautiously accepted by Counsel for the Appellant, that if he was able to reach Kirkuk, he could use his CSID

issued in 2001 and/or details of his family book entry to obtain an INID there.

22. There is unfortunately no background evidence at all as to how long a CSID is valid for and the document itself bears only a registration date (not even an issue date) and no expiry date. There is a brief reference in evidence given to the Upper Tribunal in the previous country guidance case to expired CSIDs which suggests that they do expire at some point, but no further detail as to any time period for validity. The only other evidence pointing towards the CSID being expired are the letters from the Iraqi Embassy stating that for the purposes of applying for a passport (not a replacement CSID) a CSID has to be less than fifteen years old. However, there is some uncertainty in the present case as to whether the Appellant's CSID was issued in 2001 (as per the registration date on it and at a time when the Appellant says he has no knowledge of it) or in 2007 when the Appellant's uncle states that it was obtained through another male family member in Iraq. The latter would indicate that the CSID was in fact still within 15 years from issue on the dates when the Appellant attended the Iraqi Embassy. Further, the Appellant had, according to those letters and his own evidence previously, stated that he had sought an Iraqi passport and not a replacement CSID when attending the Iraqi Embassy. Although given the transfer to INID cards, this may represent no more than a missed opportunity for the Appellant to have obtained a new CSID card in the past, something which is no longer available.
23. The Appellant has also called in to question the genuineness of the CSID card that he has and his uncle was unable to say one way or another if it was genuine. There is however nothing to suggest that it is not and it is noted that the Appellant's evidence over the years as to documentation has not been consistent; with a long period of him denying he had ever been issued with a CSID at all.
24. Despite the lack of background evidence and some concerns as to the validity of the CSID card that the Appellant has, the question is whether this document would be sufficient for him to be able to safely pass through checkpoints in Iraq for travel between Baghdad and Kirkuk where he is likely to be able to obtain an INID. I do not find that it would, to the lower standard of proof applicable in asylum cases, primarily because whether issued in 2001 or 2007, it is now more than fifteen (or perhaps more than twenty) years old and importantly, bears a photo of the Appellant from 2001 when he was aged 9. Whilst the document may be sufficient for the Appellant to obtain an INID in his home area as it contains his family book and registration details, I do not find that a CSID with a photograph of the Appellant as a relatively young child will allow him to safely pass through checkpoints in Iraq, particularly as those are not necessarily state controlled checkpoints or manned by someone with access to any supporting database to check the details. For these reasons, I find that the Appellant is at real risk of a breach of Article 3 of the European Convention on Human Rights if returned to Baghdad without the necessary ID documentation (which he would not be able to obtain there, or not



within a reasonable time) for onward travel to his home area. The appeal is therefore allowed.

### **Notice of Decision**

For the reasons set out in the appended decision, the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was set aside. The decision is remade as follows.

The appeal on protection and human rights grounds is allowed.

### **Anonymity order**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (DBA) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant (DBA), likely to lead members of the public to identify the Appellant (DBA). Failure to comply with this order could amount to a contempt of court.**

Signed G Jackson

Date 15<sup>th</sup> September 2022

Upper Tribunal Judge Jackson



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

Appeal Number: PA/07408/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> February 2020**

**Decision & Reasons Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

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

Appellant

**And**

**DBA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Cunha, Home Office Presenting Officer

For the Respondent: Mr R Thompson of Counsel, instructed by Barnes Harrild & Dyer Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Sweet promulgated on 15 October 2019, in which DBA's appeal against the decision to refuse his protection and human rights claims dated 25 June 2019 was dismissed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with DBA as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Iraq, born on 23 May 1992, who arrived in the United Kingdom as a minor in July 2007 and shortly thereafter claimed asylum. His claim was refused on 20 September 2007 and no appeal was pursued against that refusal as the Appellant had been granted leave to remain as an unaccompanied asylum seeking minor to 22 November 2009. An application for further leave to remain was refused on 2 March 2010 and the Appellant's appeal against refusal was dismissed on 24 April 2010 and he was appeal rights exhausted on 31 January 2011. The Appellant made further submissions which were refused on 6 October 2015 and 28 April 2016. His latest further submissions were made on 20 May 2019 which were refused by the Respondent but accepted as a fresh claim under paragraph 353 of the Immigration Rules with a right of appeal to the First-tier Tribunal. The further submissions relied upon the Appellant's claimed risk on return to Iraq because of a family feud and also that he would be returning without a CSID, without any family support and as a Sunni Muslim and would therefore be unable to integrate or support himself on return.
3. The Respondent refused the application the basis of the then current country guidance in AAH (Iraqi Kurds - Internal relocation) Iraq CG [2018] UKUT 00212 (IAC), the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944 and by reference to the recent Country Policy and Information Note, 'Iraq: Internal Relocation, Civil Documentation and Returns' dated February 2019 (the "CPIN"). The Respondent considered that the Appellant would not be at risk on return either because he did not currently have a CSID, nor on the basis of his ethnicity or religion and he would be able to internally relocate to the KRI. The Appellant did not meet the requirements for a grant of leave to remain under Appendix FM or paragraph 276ADE of the Immigration Rules and there were no exceptional circumstances.
4. In a decision promulgated on 15 October 2019, Judge Sweet allowed the Appellant's appeal on humanitarian protection grounds. The totality of the findings leading to that conclusion are contained in the following two paragraphs:

*"38. The essence of the fresh claim is based on a claim for humanitarian protection in that he will allegedly [be] at risk on return and would not be able to relocate. One of the issues raised was whether the appellant has a CSID. Such a document was produced following the hearing on 4 September 2019 and shows that he has a card numbered [...], issued on 23 May 2001. According to letters from the Iraqi embassy in London (dated May and September 2019) such a card must be valid for no more than 15 years and that period has now elapsed. According to the letters from the embassy, the appellant cannot obtain an Iraqi passport without a number of documents including an Iraqi civil card less than 15 years old, an Iraqi nationality card and photographs. It appears that the appellant can not therefore obtain the necessary documents in order to return to Iraq. I also note the established unhelpfulness of Iraqi officials in respect of undocumented IDPs (according to the expert evidence of Dr Fatah in AAH).*

39. A further issue is to where he would be returned. It appears that he would be returned to Baghdad, and would have difficulty relocating to his home area in Kirkuk, described as a 'contested' area in AA. Even if he was able to obtain the necessary travel documents in Baghdad, the issue then was how to reach Kirkuk. He does not have any family support, despite having asked the Red Cross to try and locate his family. He would need a male member of his paternal family to vouch for him in Kirkuk. He could not travel from Baghdad to Erbil without a passport or CSID. He is a Sunni Muslim and therefore from a minority community."

## **The appeal**

5. The Appellant appeals on two grounds. First, that the First-tier Tribunal's decision involves a material misdirection in law in allowing the appeal on humanitarian protection grounds in circumstances where there has been no express consideration of section 5.4 of the CPIN nor any consideration of any of the rest of the document which outlines numerous ways in which a person can obtain a replacement CSID. Secondly, that the First-tier Tribunal erred in failing to take into account the case of Amin CO/2508/2017, decided two years after AA which concluded that Kirkuk is no longer a contested area and as such, the Appellant could safely return to Kirkuk.
6. At the oral hearing, Ms Cunha relied on the written grounds of appeal and sought to add a third error of law, that the First-tier Tribunal erred when finding the Appellant had no family in Iraq by not taking into account the previous adverse findings on this point by the First-tier Tribunal in 2010, to which the principles in *Devaseelan* would apply.
7. Mr Thompson opposed the appeal on two grounds. First, that the Respondent had failed to place a copy of the CPIN relied upon before the First-tier Tribunal and it could not therefore be an error of law for the Judge not to have referred to it or taken it into account. However, this fails to recognise that Respondent's decision letter, which was before the First-tier Tribunal, quotes extensively from the relevant country guidance and CPIN on the issue of whether and how a person can obtain a CSID.
8. Secondly, that the First-tier Tribunal was bound by the country guidance and there was nothing to suggest the case of Amin was specifically relied upon by the respondent as to the situation in Kirkuk.

## **Findings and reasons**

9. The First-tier Tribunal's decision on both issues, the ability of the Appellant to obtain a new CSID and/or passport and the situation in Kirkuk, is incredibly brief and fails to engage in any detail with the applicable country guidance, the CPIN, the Respondent's reasons for refusal, the previous Tribunal decision nor the Appellant's evidence. On the CSID, paragraph 38 focuses on whether the Appellant can obtain a new Iraqi passport and therefore the documentation required to return to Iraq and

not the ability to obtain a CSID which is actually the key issue (with options for alternative documents for travel to return to Iraq such as a laissez-passez or emergency travel document, the CSID being relevant to travel and access to services after return). In any event, the decision simply accepts at face value a letter from the Iraqi embassy in London that the Appellant could not obtain the necessary documents to return to Iraq as his CSID is too old. There is no consideration of whether documents could be obtained by any other means (as considered in the country guidance which was binding on the Tribunal and in the CPIN, which was before the Tribunal within the decision letter) and no reference at all to how the conclusion which follows to allow the appeal on humanitarian grounds is reached on this basis. The First-tier Tribunal simply fails to properly engage with or make any detailed findings on the issue as required. This is a clear error of law and is material to the outcome of the appeal, such that it is necessary to set aside the decision of the First-tier Tribunal and remake the decision on appeal.

10. On the second issue, it is wholly unclear that there was any request by the Respondent based on significant new material for the First-tier Tribunal to depart from the country guidance in AA that Kirkuk was a contested area. However, new country guidance in SMO, KSP, IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) has been promulgated since the decision under appeal in which it was found that Kirkuk is no longer a contested area. This second ground of appeal has now been overtaken by recent events and given that in any event the decision has to be set aside due to the first error of law, it is appropriate for this part of the decision to be set aside and determined in accordance with the latest country guidance.
11. The final point raised by Ms Cunha about the findings of the First-tier Tribunal in 2010 was not part of the grounds of appeal and I make no formal decision on it. However, there was some merit in the submission and when the appeal is remade, the Tribunal will inevitably need to consider and apply the principles in *Devaseelan* and the findings in 2010.
12. Having regard to paragraph 7 of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, the matter is retained in the Upper Tribunal to remake the decision on appeal. Although the First-tier Tribunal has failed to make adequate or detailed factual findings on the key issues, this is not a case where the effect of the error of law has been to deprive a party of a fair hearing and the nature and extent of fact finding is not so significant as to require remittal to the First-tier Tribunal having regard to the overriding objective in rule 2.

## **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

**Directions**

- (i) The appeal to be re-listed before any Judge of the Upper Tribunal on the first available date, with a time estimate of two hours. On the assumption that the Appellant will give further oral evidence, a Kurdish Sorani interpreter is required.
- (ii) Any further evidence the Appellant wishes to rely upon is to be filed and served no later than 14 days before the re-listed hearing.
- (iii) The parties are at liberty to, but are not required to, file a skeleton argument no later than seven days before the re-listed hearing.

**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  
2020



Date 13<sup>th</sup> February

Upper Tribunal Judge Jackson