



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08365/2018**

THE IMMIGRATION ACTS

**Heard at Bradford
On the 20th July 2022**

**Decision & Reasons Promulgated
On the 23rd August 2022**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

Between

**DWR
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk instructed by Freedom Solicitors.

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

DECISION AND REASONS

- 1.** In a decision promulgated on 3 July 2019 Deputy Upper Tribunal Judge Taylor set aside a determination of the First-tier Tribunal having found an error of law material to that decision.
- 2.** The case comes back before us today, following the making of a judicial transfer order, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
- 3.** The appellant is a citizen of Iraq born on the 5 February 1994.

- 4.** The appellant's home area is Kirkuk, which is not disputed by the Secretary of State.
- 5.** The current country guidance relating to Iraq is SMO & KSP [2022] UKUT 00110 (IAC).
- 6.** A further change has occurred in that the Secretary of State now makes enforced returns to any airport within Iraq, including the IKR, meaning there is no need for the appellant to return to Baghdad. There was no evidence before us of direct flights to Kirkuk International Airport at this time.
- 7.** The reference in the country guidance decision of SMO to only those originating from the IKR being returned to that area of Iraq, with all other enforced returns being to Baghdad, has to now be read in light of the Home Office changed policy in the CIPU, Internal relocation, civil documentation and returns, Iraq, 27 May 2022 at 2.6.3, which reads:

2.6.3 Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the KRI.

- 8.** The position set out in SMO is not a reference to a prevailing country condition in Iraq but a reflection of the Secretary of State's policy as it was at that time, which is no longer applicable.
- 9.** The appellant's CSA office is in Kirkuk, and it was not disputed before us that that office is no longer issuing CSID cards and only issues the biometric INID.
- 10.** We also take note of paragraph 2.4.4 of the respondents CIPU, Internal relocation, civil documentation and returns, Iraq, 27 May 2022, in which it is written:

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.

- 11.** We find that the appellant failed to make out he cannot be returned to the IKR in accordance with the current policy, or that as an Iraqi Kurd he will not be able to obtain a laissez passer from the Iraqi authorities in the United Kingdom. There is insufficient evidence to show the appellant will experience any difficulties in arriving at either international airport in the IKR or be unable to leave.
- 12.** The problem for the appellant in this appeal arises as a result of the fact he will need to travel from the IKR to his home area to obtain a biometric INID.
- 13.** The country guidance case makes it clear that in circumstances where a local CSA is no longer issuing CSID there is no realistic prospect of obtaining documentation from within the United Kingdom. The appellant entered the UK on 18 February 2016, claiming to have left Iraq on 20 July 2015 from the international airport in Sulamaniyah from where he flew to Turkey. The significance of this date is that it was prior to the INID being rolled out in Iraq which occurred from 1

January 2016. The only document the appellant will therefore have had is his CSID.

- 14.** A number of issues were canvassed at the hearing and reference made to preserved findings of the First-tier Tribunal, issues such as the appellant's Facebook activities, attendance at demonstrations, and the issue of whether the finding of the First-tier Tribunal that the appellant cannot return to Kirkuk and the reasonableness of internal relocation if not. This occupied a considerable amount of the hearing time although the issue of the CSID was properly addressed.
- 15.** The appellant's case has always been that the agent who facilitated his journey to the United Kingdom took his CSID from him in Turkey. Despite Ms Young's attempts to shake the appellant's account in cross examination we do not find it made out that such a claim is not credible.
- 16.** The issue, as identified by Mr Schwenk, is whether there is anybody within Iraq in possession of or with access to the appellant's original CSID when he lands in the IKR.
- 17.** In addition to the appellant's evidence we also heard evidence from his brother ZWR, who whilst unable to recall some detail sought by Ms Young in cross examination was not sufficiently shaken in relation to his claim to have returned to Sulamaniyah on five occasions, three of which were for the purposes of trying to locate their parents in Iraq, without success. ZWR also states he left Iraqi in 2001, does not have any Iraqi identification as he became a British citizen in 2008, and cannot recall any of the information relating to the Family Book or Page number.
- 18.** The account given by both the appellant and his brother is that they lost contact with the family in Iraqi in 2017 and have no news from them since.
- 19.** In his witness statement [6] ZWR writes:
 6. We had lost contact with our family in 2017 and had no news of them since then. I had been to Kurdistan in July 2019 for just over three weeks. At that time, I had asked one of my friends to try to help me to find my family as we had lost contact with them. My friend had warned me against travelling to Kirkuk myself because he said it was dangerous and I would be at particular risk because I was now very westernised and it would be assumed I had money. He said there was a risk to me from the Shia Militias who now controlled Kirkuk and also from ISIS who was still operating there. Instead, he said he would contact a friend of his who worked as a taxi driver in Kirkuk and ask him to go to my uncle's house and see what he could find. Unfortunately, his friend reported back that the house was now occupied by other people (Arabs) and they would not give him any information about what had happened to the people who had lived there previously. He said he had tried to get information from the neighbours but they said they did not know anything and asked him to leave.
- 20.** Attempts to trace the appellant's family in Iraqi through the Red Cross have not been shown to be successful.
- 21.** It matters not that the appellant was found to lack credibility on a previous occasion or that adverse findings may be warranted in relation to sur place activities and whether the Facebook entries

create a real risk following the guidance provided by the Upper Tribunal in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC), as we find to the lower standard applicable in this appeal that the appellant has established he does not have and cannot obtain his CSID.

- 22. The appellant will therefore be returning as an undocumented Iraqi national. It will be necessary for him to travel to Kirkuk by road which will require him to pass through checkpoints some of which are manned by Peshmerga and some by militia groups.
- 23. It is clear from the country guidance case that lack of documentation for the appellant means that remaining within the IKR could lead to destitution as he will not have the basic means to obtain employment, secure accommodation, etc, and that if he tried to travel to his home area he will face a real risk of harm as he could not prove his true identity in an acceptable form, in accordance with the decision in SMO.
- 24. On this basis we find the appellant has made out that he is entitled to succeed with this appeal as a person facing harm on return stemming from a lack of a CSID and inability to obtain a biometric INID without having to travel to his home area.

Decision

- 25. **We allow the appeal.**

Anonymity.

- 26. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated: 21 July 2022