



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003760

FTT No: PA/54157/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 July 2023**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

Between

HMK

(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr Da Silva
For the Respondent: Mr Clarke, Senior Presenting Officer

Heard at Field House on 21 June 2023

Order Regarding Anonymity

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

**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.**

DECISION AND REASONS

1. The appellant is a male citizen of Iraq. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 21 August 2021 refusing him international protection. That refusal addressed a fresh claim made by the appellant; a previous claim had also been refused and an

appeal to the First-tier Tribunal (Judge Wilson) had been dismissed. The First-tier Tribunal, in a decision following a hearing on 12 April 2022, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Permission was granted in the Upper Tribunal by Upper Tribunal Judge Smith:
 1. Arguably, the judge gave insufficient reasons for finding that the appellant would be able to secure a CSID document prior to, or upon, his return to Iraq. While the judge's findings at [32] appear to be predicated on the appellant's uncle being able to obtain a CSID document for the appellant from the Kirkuk Civil Status Registry Office on a proxy basis, the judge's finding that the appellant's uncle resides there was only reached to the 'reasonable likelihood' standard, which is arguably an insufficient basis upon which to found a positive finding of fact adverse to the appellant: see [22]. Further, at [57], the judge appears to accept that the appellant has no contacts in the region, which is arguably inconsistent with his earlier findings concerning the appellant's contact with his family.
 2. Notwithstanding the deference with which this appellate tribunal should approach first instance judges' findings of fact, it is at least arguable that the judge gave insufficient reasons for reaching his positive findings that the appellant would have the benefit of a CSID document upon his return, and ahead of the journey to his home area.
 3. Both grounds, which properly understood are different sides of the same coin, are arguable.
3. The Secretary of State had accepted that the appellant is not in possession of a CSID card. The judge accepted [32] that the appellant cannot currently obtain an INID card from outside Iraq. The core question in the appeal, as the judge correctly identified it, is whether the appellant can obtain a CSID card from outside Iraq, that is from the consular authorities of the Iraqi government in London.
4. Reaching his own findings of fact on the evidence and relying on the credibility assessment of the previous Tribunal under the principles of *Devasseelan* [2002] UKIAT 00702*, the judge found, in essence, that nothing the appellant had said in evidence could be relied upon. The judge found it 'surprising' that the appellant had made no fresh attempt to visit the Iraqi Embassy following a visit in 2019, given that the circumstances in Iraq had changed significantly. He did not accept that the appellant had lost touch with family members or that the appellant does not know the volume and page reference of the entry in the Family Book [33]. Ultimately, he found that the appellant would not return without documentation [40].
5. It is clear from the decision that the judge was relying on the most recent country guidance namely *SMO & KSP (Civil status documentation; article*

15) *Iraq CG* [2022] UKUT 110 (IAC). He cites headnote paragraph 14 at [26]:

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.

It is clear from *SMO* that there exists the possibility of a returning failed asylum seeker obtaining, whilst still in the United Kingdom, a CSID notwithstanding the Iraqi government policy of replacing CSIDs by INIDs. The judge found that the all the conditions for doing so were met in the case of the appellant. Further, the judge addressed each of the concerns regarding redocumenting with a CSID raised by Dr Fatah in his expert report [35-38]. Given that his findings were patently available to him on the evidence and by reference to the findings of the previous Tribunal, we find no reason to revisit them. Although the judge does not say so in exactly these terms, it is clear that he found that the appellant fell squarely within that category of Kurdish Iraqi asylum seeker who could obtain a replacement CSID whilst still in the United Kingdom as envisaged by the Tribunal in *SMO* headnote (14).

6. We have considered whether the judge made inconsistent findings and findings reached by reference to an inappropriate standard of proof regarding the appellant's uncle. Upper Tribunal Judge Smith noted that that the judge's finding that it was 'reasonably likely' that the appellant's uncle had returned to Kirkuk [22] was 'arguably an insufficient basis upon which to found a positive finding of fact adverse to the appellant.' However, Upper Tribunal Judge Smith's observation, in turn, appears to be predicated on his view that the judge was only considering that the 'appellant's uncle [would be] able to obtain a CSID document for the appellant from the Kirkuk Civil Status Registry Office on a proxy basis.' As we have noted above, the judge's primary finding (which we uphold) is the appellant can obtain a CSID whilst still in the United Kingdom and that no use of proxies would be required. Given his primary finding, any error by the judge in respect of redocumentation within Iraq would not, therefore, be material. In any event, and in the light of his comprehensive rejection of the appellant's evidence as a whole, we find that the judge would have reached the same finding by reference to any standard of proof.
7. As regards the reference in the grant of permission to the judge appearing 'to accept that the appellant has no contacts in the region, which is arguably inconsistent with his earlier findings concerning the appellant's contact with his family', we find that the judge's findings are

clear and consistent. The judge found at [22] that the appellant's uncle had returned to Kirkuk whilst at [57] he found that the appellant has 'no contacts in the region'. Kirkuk, although disputed by the governments of Iraq and the KRG, is in Iraq, not the KRG, whilst it is obvious from the context that 'the region' referred to by the judge at [57] is the KRG.

8. In the light of what we say above, we do not consider that the judge has erred in law for the reasons advanced in the grounds of appeal or at all. The findings which he made were available to him on the evidence and his conclusions as regards the appellant's ability to redocument himself before returning to Iraq are consistent with the most recent relevant country guidance. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed

Lane

C. N.

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 21 June 2023