



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-006315

First-tier Tribunal No: PA/50867/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 25 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**SA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Eaton, counsel instructed by Halliday Reeves Law Firm

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 13 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**

## Introduction

1. This is the remaking of the appellant's appeal against the decision of the Secretary of State dated 18 February 2022, refusing his protection claim.

## Anonymity

2. An anonymity direction previously made is maintained because this is a protection matter.

## Factual Background

3. The appellant is a national of Iraq, of Kurdish ethnicity, Sunni Muslim by religion and from Kirkuk. He left Iraq during 2016, for Turkey and thereafter travelled to Italy before returning to Turkey. He was returned to Iraq by the Turkish authorities during December 2016. The appellant left Iraq again during July 2018 and travelled to the United Kingdom, via Turkey, Italy, and France. He entered the United Kingdom clandestinely during February 2019. He applied for asylum on 27 February 2019. The basis of that claim was the appellant was forced to join Hashd Al Shaabi or the Popular Mobilization Forces (PMF) and that he fled Iraq to avoid being taken for fighting. The appellant fears that he would be killed by members of the PMF if he was removed to Iraq.
4. In the decision letter dated 18 February 2022, the Secretary of State accepted the appellant's nationality and ethnicity and that he was from Kirkuk. His claims regarding the PMF were rejected owing to being implausible. Regarding documentation, the Secretary of State considered that the appellant, who left his CSID card in Iraq, could be returned to Baghdad with a Laissez Passer from the United Kingdom and that his family members could obtain a CSID or IND by proxy from Iraq.

## The decision of the First-tier Tribunal

5. Following an error of law hearing which took place on 4 April 2023, the decision of the First-tier Tribunal was set aside with no preserved findings. This matter was retained in the Upper Tribunal for remaking on a de novo basis.

## The continuance hearing

6. At the outset, Ms Everett stated that the position of the respondent was that the appellant could return to Iraq as the PMF would not pose problems for him. She accepted that the credibility issues raised in the decision letter were not good challenges and that her submission would be that there was no evidence to suggest that the PMF would pose an ongoing threat to the appellant. Ms Everett explained that she saw little point in cross-examining the appellant on issues he could not be expected to answer, such as why he was permitted home leave from the PMF. Instead,

the focus of her cross-examination was on the answers the appellant provided in his asylum interview regarding his documents and his ability to travel in and out of Iraq.

7. The appellant attended the hearing and gave evidence with the assistance of a Kurdish (Sorani) speaking interpreter whom he confirmed he understood. A note of his evidence and the submissions made by the representatives is set out in my note of the proceedings.
8. At the end of the hearing, I announced that the appeal was allowed. I give my reasons below.

#### Decision on remaking

9. The burden of establishing that he has a well-founded fear of persecution for a refugee Convention reason is on the appellant. The standard of proof which applies is that of a reasonable degree of likelihood. In reaching this decision, I have taken into consideration all evidence before me and submissions made, even where not directly referred to.
10. The appellant was cross-examined on his documentation and the manner in which he entered and left Iraq in the past. No inconsistencies emerged between his oral evidence and the accounts he had provided previously. As indicated above, there was no challenge to the appellant's claim that he was forced to join the PMF and that he absconded from the group to avoid combat. The respondent's view is that the appellant is no longer of adverse interest to the PMF. The only criticism of the appellant's evidence concerned his account of having lost contact with his brother in 2020 and that he was not in touch with anyone else in Kirkuk, in that Ms Everett argued that this was unlikely.
11. Considering the evidence and submissions in the round, I am prepared to accept that the appellant has provided a truthful account of all matters including having left his CSID card in Iraq, that his parents died sequentially and that he lost contact with his brother. The appellant's account is that there was no longer any reply when he messaged his brother shortly after the death of their mother and that he fears his brother is deceased.
12. While Ms Everett stated that the appellant provided a 'lacklustre' account of having lost contact, I prefer the argument of Mr Eaton which relied upon the relevant background material set out at between [26-49] of *SMO, KSP & IM* (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (referred to as *SMO 1* hereafter).
13. The death of the appellant's parents and loss of contact with his brother occurred following circumstances when the PMF took control of Kirkuk and forced ISIL out the region. The background evidence refers to the

displacement of hundreds of thousands of mainly Kurdish people, that the city was largely under the control of the PMF and the Arabisation of Kirkuk amid hostility towards Kurdish people. Against this background, the appellant's account of his family does not lack credibility.

14. In addition, I consider it a stretch too far to conclude that the PMF would be unlikely to recall that the appellant had initially refused to join them and after being forced to join, escaped from them as these incidents occurred only five years ago. Given the appellant's ethnicity and religious sect as well as his refusal to fight for the PMF, I consider it plausible that if he returned to Kirkuk, he would be subject to the hostility towards Kurdish people noted in *SMO 1* and that he is likely to be at a real risk of ill-treatment amounting to persecution. It was rightly not argued on the respondent's behalf that there was an internal flight alternative available to the appellant, given the appellant's ethnicity, faith, lack of documents and absence of any links to Baghdad or the KRG.
15. I further accept that the appellant succeeds in relation to the documentation issue. As indicated above, the appellant left his CSID in Kirkuk in his family home and he is unable to obtain any assistance in recovering it. In *SMO* [2022] UKUT 00110, (*SMO 2*) it was held that a replacement CSID could only be obtained from abroad if the local Civil Status office in Iraq was still issuing CSIDs. However, the appellant is from Kirkuk, which is an area which does not appear on the list of offices at [64] of *SMO 2*, which still issue the CSID. The comments in *SMO* are reiterated in the respondent's latest CPIN of July 2022 which lists eight areas which still issue CSIDs, none of which are in Kirkuk.
16. In *SMO 2*, it was found that the INID was not available in the United Kingdom, and it was necessary for a returnee to go to their home area to obtain one. The appellant is facing removal to Baghdad and at headnote [11] of *SMO 2* it was found that it was not possible to travel to Kirkuk without identification and that the absence of identity documents was likely to lead to a real risk of a breach of Article 3.

### **Notice of Decision**

The appeal is allowed on asylum grounds.

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 June 2023**

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 June 2023**

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email.**