



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

Case No: UI-2023-001576

On appeal from: PA/01225/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> December 2023

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

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

Appellant

**and**

**A A M (IRAQ)**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Chris Avery, a Senior Home Office Presenting Officer

For the Respondent: Ms Jackie Bond of Counsel, instructed by Leonard & Co Solicitors

**Heard at Field House on 2 November 2023**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials initialshere. 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. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 19 May 2021 to refuse his protection and human rights claim and to maintain a deportation order served on him on 11 October 2019. He is an Iraqi citizen.
2. The claimant is a foreign criminal. The index conviction on 19 July 2019 was for causing harm by dangerous driving, for which on 16 August 2019 he was sentenced to 4 years' imprisonment.
3. For the reasons set out in this decision, I have come to the conclusion the Secretary of State's appeal fails and the decision of the First-tier Judge will be upheld.

### **Procedural matters**

4. **Vulnerable appellant.** The claimant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. He had a brain injury in 2018 and is badly affected, suffering seizures and being advised to avoid stress.
5. **Mode of hearing.** The hearing today took place on a hybrid basis, with both representatives appearing by video link. There were no technical issues during the hearing.

### **Background**

6. The claimant has been in the UK since 2001, when he was 14 years old, graduating from exceptional leave to remain to indefinite leave to remain on 17 December 2007. He was born in Iraq and is a Muslim, but not of Kurdish ethnicity. His father, who worked as an army officer under Saddam Hussein, was of Yemeni/Cuban origin, and his mother was Yemeni/Portuguese. The Secretary of State has treated him throughout as an Iraqi citizen.
7. The evidence in the claimant's witness statement and his original asylum application is that his family lived in Baghdad until he was 14. In August 2001, the claimant's father made arrangements for the family to leave Iraq and seek refuge elsewhere. The claimant's father remained in Iraq and the Judge found that the claimant had lost contact with him.
8. The claimant and his mother crossed the border, but were separated later in their journey at an airport in (probably) the Netherlands, resulting in the claimant arriving as a unaccompanied asylum seeking child and being taken into care here. In his witness statement, the claimant said that

despite efforts to trace his parents through the Red Cross, he had been unable to do so and presumed that both are now dead.

9. The claimant has a significant criminal history, beginning in 2015 (when he would have been 29 years old) and including driving offences, violence, and drug offending (Class B cannabis resin). He has failed to surrender to custody on two occasions, and failed to complete unpaid work required by a community order. Following the index offence, and while he was serving his 4-year sentence, the claimant was convicted of battery and sentenced to 20 weeks' imprisonment, concurrent with the sentence in the index offence.
10. The claimant's case was that he would be at risk on return to Iraq because of his claimed bisexuality. He declined to be interviewed and provided no evidence beyond his own assertion of that sexual orientation.
11. The claimant also relied on his private and family life developed in the UK since his arrival in 2001, and in particular, on his asserted paternity of a son born in 2006, and a daughter born in 2009. Again, there was no supporting evidence about his paternity, where the children lived, or any contact he had with them, and nothing from their mother about the relationship of the claimant with the children.

## **Refusal letter**

12. The Secretary of State invited submissions, but rejected the claimant's protection and human rights claims. He did not accept that the claimant could bring himself within the Exceptions in section 33 of the UK Borders Act 2007. Accordingly, the Secretary of State considered that he was required to make and maintain a deportation order, pursuant to section 32(5) of that Act.
13. On 1 February 2021, the Secretary of State served the claimant with a notice under section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended), raising a rebuttable presumption that the claimant was a danger to the community.

## **First-tier Tribunal decision**

14. The First-tier Judge upheld the section 72 certificate, finding that the claimant had not rebutted it. He rejected the claimant's asserted bisexuality, and his claimed paternity of two children in the UK. In dealing with the credibility difficulties in the claimant's evidence, he had regard to his health problems:

"30. I made allowances when assessing the appellant's evidence about his sexuality given the appellant's head injury, his low mood and the culture sensitivities and stigma that the appellant may feel in discussing his sexual orientation, but notwithstanding these factors the appellant has not demonstrated on a lower standard that he is bisexual."

15. The First-tier Judge allowed the claimant's appeal, on Article 3 ECHR human rights grounds alone, because he found as a fact that the claimant did not have a CSID document and that he would be at risk of treatment contrary to Article 3 because he would have to travel to his local CSA office in person in Iraq to obtain an INID:

"37. The appellant does not have access to his original CSID. I did not consider it reasonably likely that the appellant could redocument either prior to or within a reasonable timescale on return to Iraq.

38. I considered it reasonably likely that the appellant is from an area operating the digital INID system. I came to this conclusion on the basis of the information contained in *Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns Version 13.0 July 2022 Annex D*.

39. On that basis it is not reasonably likely that the appellant could be issued with a CSID at the Iraqi Embassy in the UK. The appellant would be required to travel directly to his local CSA office in person. I remind myself that the CSID is needed to pass through checkpoints for the appellant to travel to his home area and there are two such checkpoints in the environs of Baghdad airport [*SMO* headnote 29].

40. Drawing the strands together the appellant is someone who is at risk of treatment or conditions amounting to article 3 due to his inability to redocument prior to or within a reasonable timescale on return to Iraq."

16. The asylum appeal was dismissed but the appeal was allowed under Article 3 ECHR. The Secretary of State appealed to the Upper Tribunal.

### **Permission to appeal**

17. The grounds of appeal set out the history and noted that the First-tier Judge found the claimant not to be a particularly reliable witness. At [6] of the grounds of appeal, the Secretary of State set out alternative findings of fact which the First-tier Judge could have made, but did not. He argued that it was not open to the First-tier Judge to find as a fact that the claimant had lost touch with his father in Iraq, or that he had no family in Iraq who could assist him in the redocumentation process.
18. The grounds of appeal also challenged the absence of a finding as to where in Iraq the claimant would need to reach, requiring him to pass through check points undocumented, such as to result in treatment contrary to Article 3 ECHR.
19. Permission to appeal to the Upper Tribunal was granted by First-tier Judge Chohan in the following terms:

"2. In short, the grounds assert that the judge failed to give adequate reasons for allowing the appeal.

3. There is substance in the grounds. Although the judge considered the relevant facts and evidence in the case, however, there is nothing to

suggest the judge gave any consideration to the strong public interest in deportation cases. As such, there is a lack of adequate reasons.

4. Accordingly, there is an arguable error of law.”

20. There was no Rule 24 Reply on behalf of the claimant.

21. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

22. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.

23. For the Secretary of State, Mr Avery observed that some of the claimant’s evidence had been rejected, in particular his account that his father had been killed in Iraq, although at [33], the Judge accepted that the claimant had lost contact with his father. The Judge’s record of proceedings did not confirm that the claimant had been challenged in cross-examination about the lack of contact with his father.

24. The country evidence had moved on: Mr Avery accepted that the Iraqi authorities were no longer issuing or renewing the paper CSIDs but that everyone now needed to attend in person and use an electronic INID machine.

25. For the claimant, Ms Bond referred the Tribunal to the First-tier Judge’s findings at [30]-[31]. The Judge’s reasoning, although not extensive, was not rationally unsustainable and the grounds of appeal did not reach the demanding standard for interference in findings of fact by an appellate Court or Tribunal: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed and *R (Iran) and others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke (Lord Justices Chadwick and Kay concurring).

26. At the end of the hearing I reserved my decision, which I now give.

### **Conclusions**

27. The grounds of appeal are in reality a challenge to the key finding of fact that the claimant has no family in Iraq now, and would have to find and access an INID machine on return as he does not have his CSID and on the current evidence, would be unable to obtain one in the UK. The challenge of a lack of finding as to the claimant’s area and any internal relocation issues is erroneous: the claimant’s evidence throughout was that he was born and grew up in Baghdad.

28. In *SMO and KSP (civil status documentation; Article 15) Iraq CG* [2022] UKUT 110(IAC), the Upper Tribunal found that all returnees would be returned to Baghdad. At [11]-[12] the Tribunal found that:

**“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. ...”*

29. The rest of section C of the country guidance deals with the issue of the older CSID document, which as Mr Avery accepted, is no longer relevant because the whole of Iraq is now covered by the INID machines.
30. Based on that decision, it was open to the First-tier Judge to find that this claimant, returning with no family in Iraq and no CSID card, would encounter a risk of treatment contrary to Article 3 ECHR in Baghdad, which is his home area. He would have a reduced ability to deal with any questioning or interrogation, due to his mental health difficulties.
31. Accordingly, even having regard to the public interest, it was open to the Judge to allow the appeal on the narrow Article 3 ground that he did. That will not give the claimant refugee protection and it is a matter for the Secretary of State as to the type of leave he gives, but there is no material error of law in the First-tier Tribunal decision.
32. The decision of the First-tier Tribunal is therefore upheld. The Secretary of State’s appeal is dismissed.

**Notice of Decision**

33. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 5 December 2023**

