IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002492
First-tier Tribunal Nos: PA/51679/2022
IA/04423/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr A F A
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms D Revill (Counsel)
For the Respondent: Mr E Terrell (Senior Home Office Presenting Officer)

Heard at Field House on 8 September 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. This is an appeal against the determination of First-tier Tribunal Judge F E Robinson, promulgated on 19th December 2022, following a hearing at Hatton Cross on 5th December 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the

Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant claims that he was kidnapped in Iraq as a child in connection with the dispute of his father with these people. He fears that the same will happen again. He had left Iraq with his parents because they had feared the same. However, *en route* he was separated from his parents. He also maintains that there is a court case in Iraq to do with the disputed property. He had not set this out in his original witness statement. The reason was that he did not tell his solicitor everything at the time. It was the asylum interview which provided opportunity for fuller disclosure of information. He was, however, never told the full details of his father's problems or the reasons why he was kidnapped as a child. He maintains that he has been kidnapped by high-ranking people and the day after he was released, his father left the country with him.

3. Additionally, the Appellant also maintains that he could not return to Iraq because he would not be able to obtain the necessary documents to be able to do so. He has only been in contact with his sister once since she has been in the United Kingdom. He has not been able to contact his parents. He has been separated from them en route. He is not in contact with his brother. He has, however, a relative in the United Kingdom whom he has approached for assistance with respect to precuring the necessary documents. His relative has not been able to help him and has shown a reluctance to do so. If he returns to Iraq now, this would also violate his Article 8 ECHR rights because he has no family support in Iraq and he would not be able to reintegrate into society there. He was just over 19 years of age now and still vulnerable.

The Judge's findings

4. The judge held that it was reasonably likely that the Appellant was kidnapped in Iraq and that he left with his parents the next day and that they were separated on the journey to the UK (paragraph 39). The judge came to this conclusion because:

> "The Appellant has been consistent in his assertions in the asylum interview, witness statements and oral evidence regarding the kidnapping, regarding his departure from Iraq with his parents the next day, the fact that his father only told him about the property dispute and court case whilst they were in Turkey, and that he was separated from his parents and the manner of how this happened" (paragraph 40).

5. Indeed, the judge also held that the Appellant "answered the questions put to him in oral evidence openly and fully …" (paragraph 40). Moreover, the judge also held that she would accept that the Appellant "was only a child when these events occurred and that his father would not have told him about the dispute prior to the kidnapping; moreover that there was no time to tell him more before the departure the following day" (paragraph 40).

6. Although there was no corroboration of the Appellant's account, the judge also added that there is no requirement for corroboration in this respect (see **ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119)**. In fact "the Appellant's earlier witness statement of 17th March 2020 is not inconsistent with the Appellant's later statement regarding his father's issues in Iraq …" (paragraph 41).

7. The judge, nevertheless, found against the Appellant for the following reason. The Appellant had said that his father told him that his kidnappers were quite famous and powerful and that he was scared of them, but that "there is no corroborating evidence that the people who kidnapped the Appellant were 'highranking' as asserted and would have any influence with the government" (paragraph 42). Accordingly, the judge held that she could not find that the kidnappers were high-ranking as claimed. Therefore, "the Appellant's fear of these unknown persons in Iraq does not fall within the Refugee Convention …" (paragraph 43).

8. With respect to the second issue, namely, the plausibility of the Appellant's return to Iraq on the basis of his present lack of documentation, the judge applied the guidance in **SMO & KSP (Civil status documentation; article 15) Iraq (CG) [2022] UKUT 00110**. Here the judge considered "the question of whether an individual who is unable to recall their family book details would be able to obtain those details" (as stated at paragraph 83 of that decision). The judge went on to recall that,

> "Given the interconnected nature of the Family Book records, it is highly likely that an individual who is in contact with family members in Iraq would be able to learn their own Family Book details from their family members. Given the patrilineal nature of the record keeping, that would particularly be the case if the individual asylum-seeker is in contact with male members of the family …" (paragraph 83).

9. On this basis, the judge held that, given that there was no evidence that the Appellant's sister and brother, living in Erbil, as well as his extended family, were no longer in Iraq (paragraph 47), he would be able to acquire the necessary documentation to go back to his country. In fact, the judge held that "Even more notably, on the Appellant's own evidence he is in touch with a relative on his father's side who is in the United Kingdom", and although, "he thought that he didn't want to help, I have heard nothing to indicate that the Family Book details could not be obtained from him if necessary in order for the Appellant to redocument himself" (paragraph 48). There was, therefore, no basis for concluding that the Appellant could not safely return to Iraq (paragraph 49). Finally, the judge gave reasons (paragraphs 50 to 57) for why the Appellant's Article 8 ECHR rights were not preached if he was required to return back to his country. The appeal was dismissed.

Grounds of Application

10. The Grounds of Appeal assert that the judge made material errors of law when concluding that the Appellant was not at risk of harm on return to Iraq. She had initially indicated (paragraphs 39 to 40) that the Appellant had indeed been kidnapped in Iraq and that no corroboration was required (paragraph 41) before going on to conclude that as there was no corroboration of the account that the people who kidnapped the Appellant were of high-ranking status (paragraph 42) this could not be found in his favour.

11. Second, the judge also made material errors of law in reaching the conclusion that the Appellant could obtain the necessary documentation, such as a CSID or INID to return to Iraq, given that the Appellant was separated from his parents and the relative who he had contacted in the UK was not prepared to help him. As for his brother and sister, the judge was wrong to have said that there was no evidence to suggest that he was not in contact with them, given that the Appellant had said in his evidence that he was no longer able to contact his sister.

12. Permission to appeal was granted on 18th December 2023 by the First-tier Tribunal.

Submissions

13. At the hearing before me on 8th September 2023, Ms Revill, appearing on behalf of the Appellant, submitted that as there was no Rule 24 response from the Respondent, she would continue to rely upon her Grounds of Appeal and skeleton argument. The Appellant was from the IKR and specifically from Erbil. It is no longer possible to acquire a CSID nowadays, except in Mosul, which means that given that the Appellant is from Erbil, he would only be able to acquire an INID, and for this he has to be physically present in Iraq, because no-one else can get that for him. This means that on this basis alone, the Appellant would not be able to acquire a CSID and that the failure to have regard to this matter in the context of CPIN was an error. The judge has also misconstrued the application of **SMO**.

14. Second, the judge had erred in first accepting that corroboration was not a requirement in such cases (at paragraphs 41 to 42) but then to have irrationally concluded that the absence of corroboration with respect to the kidnappers being people of high-ranking status meant that the Appellant could not be said to have proven his case on the lower standard.

15. For his part, Mr Terrell submitted that the procedure for acquiring identity documents was first set out in the 2019 decision of **SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400**, which stated (at paragraph 390) as follows:

> "The process for obtaining a replacement CSID by the use of a proxy (or a power of attorney) has been considered in previous cases and there is no reason to depart from the guidance given in those cases. As explained at [25] of AAH (Iraq), a number of documents are ordinarily required and, if those documents are available, and a suitable proxy can present them to the relevant CSA office, a CSID should be issued within three days: [27]. In the event that some of the documents are missing, it might nevertheless be possible to obtain a replacement CSID and the key piece of information which is required is the family's volume and page reference in the civil register: [28]. A great deal of effort has been expended, both in the preparation of these cases and in previous country guidance decisions, on considering how this information might be obtained if it is not known to the individual. We do not consider the evidence collated by the respondent in defence of R (SS) v SSHD or in these appeals to take matters any further. The evidence does not establish that the Central Archive is accessible to individuals, or that its microfiche records are searchable. Given the number of records it contains, we think it highly unlikely that the Central Archive would be of any assistance to an individual who finds themselves in such a position".

16. Mr Terrell then went on to say that since 2019, there has been the decision of **SMO & KSP (Civil status documentation; article 15) Iraq (CG) [2022] UKUT 00110 (IAC)** where it was stated (at paragraph 67) that,

> "There is an extensive network of Civil Status offices across Iraq, with each district (sub-governorate) or sub-district having a local Civil Status office, comprising in the region of 300 offices in total. An individual who expects the respondent to confirm whether INIDs or CSIDs are issued in his place of registration must first provide the specific place of registration".

17. However, Mr Terrell went on to submit, none of these matters were actually argued before the First-tier Tribunal Judge. These matters were not before the judge. The judge dealt properly with the CSID issue (at paragraphs 47 to 48) and there is accordingly no material error of law. She was sceptical about the Appellant having had no contact with anyone in Iraq (see also paragraphs 45 to 46). On the substance of the Appellant's claim that he was kidnapped, the judge was entitled to conclude (at paragraph 42) that there was no evidence that these people were powerful people, as asserted by the Appellant. There was therefore here no error of law. Similarly, there was no error of law in the way that the judge disposed of the Article 8 issue.

18. In reply, Ms Revill submitted that this was a "**Robinson** obvious" point in that the issue about the availability of CSID arises directly from the CPIN. This meant that even if the precise issue was not before the Tribunal below, the Respondent had a duty to draw the relevant parts of its policy to the attention of the Tribunal which the Secretary of State plainly did not do.

Error of Law

19. I am satisfied that he making of the decision by the judge involved the making of an error on a point of law such that it falls to be set aside. My reasons are as follows. First, there is the issue of the Appellant being kidnapped and whether this was by high-ranking people in Iraq whom his father feared because of their ability to continue to harass him further. The judge had found that in relation to the matters alleged, "corroborating evidence would not be easily obtainable given the Appellant's current lack of contact with his parents and his age when he was separated from them" (paragraph 41). The judge had also found that the Appellant's evidence was consistent with his earlier witness statement of 17th March 2020. If the judge had made these findings, the Appellant's evidence (which had been consistent throughout) that he had been told by his father that his kidnappers were "quite famous and powerful and he was scared of them" (as referred to at paragraph 42), also did not require corroboration. Afterall, as the judge had found, on his own evidence, the kidnappers were masked and he was not able to identity them" (paragraph 42). That, however, was the evidence of the Appellant when he was a child. This was not a sufficient basis upon which to have then concluded that "the kidnappers were not high ranking and did not hold any influence and there is no present risk to the Appellant" (paragraph 43).

20. Second, and in any event, there is the issue of the ID documents that would be available to the Appellant. The law has moved on from the time when the 2019 decision was made in **SMO** because there is now the 2022 decision in **SMO**. In the latter, the Tribunal observed that, "We note also that the Respondent has adduced no evidence about the specific locations which continue to issue CSIDs in the IKR". There was evidence from Dr Fatah with regard to "the shortage of INID cards from the European supplier as a result of delayed payments by the Iraqi authorities", and the evidence was that "there were particular shortages in Erbil". The June 2020 CPIN was to the effect that eleven civil status offices out of 43 in Erbil were issuing INID by November 2018, but that, "At that stage, only 180,000 of Erbil's population of 2 million people had received an INID" (paragraph 66). The latest decision also notes that "it is the respondent who is more likely to be able to ascertain whether a given CSA office still issues the CSID", and it was the Tribunal's view that "it will be necessary for an appellant to provide a clear indication of their place of registration before the respondent can be expected to make such an enquiry" (paragraph 67). None of this can be taken for granted given that the evidence before the Tribunal was that the Appellant was only in touch with a relative in the UK who had failed to help him in any way. All these matters clearly

need further enquiry because the latest 2022 decision in **SMO** has not been applied in the decision under appeal.

Notice of Decision

21. The decision of the First-tier Tribunal involved the making of a error on a point of law such that it falls to be set aside. I set aside the decision of the original judge and remit the matter back to the First-tier Tribunal to be determined by a judge other than Judge Robinson because under Practice Statement 7.2.(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding object in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023