IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000099

First-tier Tribunal No: PA/51548/2021
IA/03420/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 December 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss G Patel of Counsel.
For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

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.

Heard at Phoenix House (Bradford) on 29 November 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Cowx ('the Judge'), who in a decision promulgated following a hearing at the Glasgow Tribunal Centre on 13 December 2021, dismissed his appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Appellant is a citizen of Iraq who gave a date of birth of 25 November 1999. The Secretary of State accepted his nationality although issue was taken in relation to his date of birth which the Judge records was asserted by the Respondent to be 25th November 1993.
3. The Judge records the Appellant's immigration history being that he left Iraq on 23 November 2015 from where he travelled to Turkey where he remained for 7 – 9 days. From there he travelled to Bulgaria where he remained for one day before moving to Serbia and then on to Austria where he stayed in a refugee camp before travelling to Germany. The Appellant remained in Germany for a period of time before travelling to France where he remained for a number of months before finally arriving in the UK by lorry on 28 February 2017. The Appellant claimed asylum on 1 March 2017 which was refused in a decision dated 24 March 2021.
4. The Judge records the core of the Appellant's claim being to have a well-founded fear of persecution in Iraq by Daesh (otherwise known as ISIS) who he claims killed his father and brother. They were both members of the Kurdish Peshmerga and the Judge records it being accepted in the course of the hearing that both were killed during the course of the armed conflict between Daesh and the Peshmerga. The Appellant also claimed he was a risk of persecution by other Kurds who had been in dispute with his father some years before when he was a child [2.4].
5. At [2.6] the Judge records that by the time the appeal came before the First-tier Tribunal the claim altered substantially in the Appellant now claiming that he had a well-founded fear not only of ISIS but of the Shia militia whom he asserts prevailed in his home city and governorate of Kirkuk, and also that he was at risk of persecution because of mental illness.
6. Having assessed the evidence and submissions to Judge sets out findings of fact from [6] of the decision under challenge. At [6.4] the Judge writes:

> 6.4 Taking the sum of the various newspaper articles, most of which were not recent and lacked detail, I find they do not paint a picture of a situation where the persecution of Kurds in Kirkuk is prevalent. I find that HSM does not have a well-founded fear of being persecuted by Shia militia. If Shia militia are still operating in the area, I was provided with no evidence that this Appellant would be of particular interest to them and will be targeted in any way.

7. The Judge notes that in assessing whether the Appellant has a genuine well-founded fear of persecution his credibility as a witness needed careful consideration. At [6.5] the Judge finds that the Appellant is not a credible witness and was someone prepared to lie about significant issues, such as his date of birth and his CSID card.
8. The Judge finds that a CSID card provided by the Appellant was counterfeit, noting a document verification report from an expert instructed by the Secretary of State to this effect [6.9]. In the same paragraph the Judge records that the Appellant's own solicitor had similarly instructed a document verification expert and that although a report had been produced it was not relied upon by the Appellant. The Judge records the Appellant's representative confirming she did not have instructions to share the findings of their expert with the Tribunal but did agree that inferences could be drawn from the fact the expert report was not being relied upon.
9. The Judge also finds further evidence of dishonesty in the Appellant's original asylum form, and having analysed the evidence concludes that the Appellant is an economic migrant and not a refugee and that he does not have a genuine fear of persecution in Iraq.
10. The Judge moves on to consider the Appellant's mental health from [6.11] in which the Judge finds it was not accepted the Appellant has significant mental

health issues as the Judge had not been provided with cogent evidence to show he would be subjected to persecution because of it.

11. The Judge analyses the medical evidence that had been provided including a report from Dr Asghar, a psychologist, in relation to which the Judge sets out a number of reasons why the weight to be given to that report had to be reduced - see [6.13 – 6.17], leading to the finding at [6.18] in the following terms:

> 6.18 Taking all of the above into account, I am not persuaded that HSM has significant mental health problems which would act as an obstacle to his return to Iraq or which might put him at risk of persecution. My own observations of the Appellant at a face-to-face hearing was that he was a calm, composed and coherent individual which led me to conclude that there were no outward signs of serious mental health problems. Again, I acknowledge that I am not an expert in mental health, but the Appellant interacted with the Tribunal at some length and with no apparent difficulty. He was in fact relaxed and confident in an environment which others might have found unsettling.

12. The Judge's assessment of Article 15 (C) and Humanitarian Protection is to be found between [6.19 – 6.20] of the determination in which the Judge finds Appellant was not entitled to such protection for the reasons stated.

13. Article 8 ECHR is considered at [6.21 – 6.26] in which it was found the decision is proportionate for the reasons stated.

14. The Judge considers the issue of Iraqi identity documents from [6.27 – 6.29] in which the Judge finds the Appellant can obtain the necessary documents.

15. The Judge's conclusions are set out in section 7 in the following terms:

> **7 Conclusion**
>
> 7.1 Based on my above assessment of the evidence, I conclude that the Appellant has not proved, to the applicable lower standard of proof, that he is entitled to international protection, and I dismissed his appeal.
>
> 7.2 I find that the Appellant is not a refugee for the reasons given by him in the claim for asylum relating to any proposed removal from the UK. His claim is dismissed.
>
> 7.3 The Appellant's claim, if relating to humanitarian protection, would rely on the same factual matrix as the claim for asylum. Because I am not persuaded the Appellant is a refugee, who does not qualify for a grant of humanitarian protection on the basis of his claim.
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> 7.4 (incorrectly numbered 9.4) I also find that the evidence does not persuade me to Appellant, if returned to Iraq, is at risk of conduct likely to breach articles 3 or 8 of the ECHR because I have rejected the suggestion he cannot obtain identity documents and that return to Iraq would be a disproportionate interference with his private life.

16. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 31 January 2022, the operative part of the grant being in the following terms:

> 1. As the Judge appears to accept that the appellant is not in possession of his Civil Status Identity Document, paragraph 7 of the grounds are at least arguable on the basis that since the introduction of the new INID terminals the ability to use a proxy has reduced [SMO §388-389] and that Kirkuk (which appears to have been treated as the appellant's place of registration for the purpose of the appeal) operates a CSA office with an INID terminal [SMO §431].
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> 2. Permission to appeal is granted on all grounds.

17. The Secretary of State opposes the appeal in a Rule 24 response dated 23 February 2022, the operative part of which is in the following terms:

> 1. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately.

2. SMO did not state that any Kurd faced a real risk from PMF in the Kirkuk area simply from their presence there. Rather return to a formerly contested area required a fact-sensitive assessment (headnote 3-5). The FTTJ was clearly aware of this [6.19] and the findings thereafter [6.20] were open to the FTTJ on the evidence. The FTTJ was not departing from SMO [6.3] in this context by noting the lack of sufficient reliable evidence 'at the date of hearing'.
3. The FTTJ cogently acknowledged the Appellant's family members had been peshmerga, as many Kurds were at a time of conflict against ISIS (who the PMF also opposed) and was entitled to conclude on the available evidence neither the Appellant's ethnicity nor historic family connection to the peshmerga raised as 'real risk' on return [6.20].
4. Having found the Appellant to have provided a false narrative as to the whereabouts of his original CSID [6.7-6.9]; an unchallenged finding, the FTTJ was entitled to conclude contrary to assertions the Appellant had family contact [6.29]. The SSHD would maintain that having rejected the Appellant's false narrative the Appellant has offered no alternative credible explanation for being unable to access his own genuine CSID (either he has retained it and not disclosed it, or has access to it via family/friends). The SSHD therefore contends that the FTTJ's assessment of 'replacing' his CSID is immaterial. The Appellant has failed to credibly explain why such a replacement is needed. As the FTTJ recorded [6.29] 'HSM is not a witness of truth'.
5. The respondent requests an oral hearing.

Discussion and analysis

18. As submitted by Miss Patel, the date of the determination is 24 December 2021 at which point the relevant country guidance was SMO 1 - [2019] UKUT 400. The current version, SMO 2 - [2022] UKUT 00110 was not published until 16 March 2022.
19. The Appellant left Kirkuk in 2015 and 17 years of age. It is accepted that Kirkuk is not in the IKR and so guidance relating to that area is not arguably relevant.
20. In October 2017 the Iraqi army restored central government control over the Kirkuk governorate, a move triggered by the Kurdish independence referendum staged in September 2017 after the Appellant had left Iraq.
21. History shows that in June 2014 ISIS entered Kirkuk governorate reaching the outskirts of the capital city of that region. Units of the Iraqi army that was stationed there fled following which Kurdish Peshmerga quickly filled the vacuum. ISIS was held off and prevented from seizing the city for approximately three years before ISIS were defeated, resulting in the push towards statehood by the Kurdish forces in organising the referendum at the end of September 2017.
22. When the Appellant fled Kirkuk, he could have had a subjective credible fear from ISIS, as per his original claim, but following 2017 no such credible fear exists on the basis it was originally claimed by the Appellant. There is no error in the Judges analysis on that basis.
23. The Judge records the Appellant changing his claim during the time he has been in the UK, and whilst there is evidence of some facing a real risk in the Appellant's home area it was not made out that he will have an actual or perceived association with ISIS such as to create a credible enhanced risk on return. That is a sustainable finding.
24. It was not made out before the Judge that the Appellant has expressed credible opposition or criticism of the Government of Iraq or the Kurdish regional government or local security actors. It is not made out that he is a member of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area. The Appellant is not a LGBTI individual, nor a person who does not conform with Islamic mores, is not wealthy

nor westernised, is not a member of a humanitarian or medical staff associated with Western organisations or security forces, is not a woman or child without genuine family support or an individual with disabilities, on the facts as presented before the Judge. It was not made out before the Judge on the evidence that the extent of any ongoing ISIS activity or behaviour of any of the other groups, militia, or authorities in Kirkuk will be such as to pose a real risk to the Appellant on return sufficient to entitle him to a grant of international protection. The Judges finding to that effect has not been shown to be infected by material legal error.

25. A determination speaks from the date of decision which, in this appeal, was December 2021. The Judge did not depart from the country guidance when assessing the situation that existed in Iraq at that time on the basis of the evidence that had been provided.

26. The Judge accepted the Appellant's family associations with the Peshmerga who played an active role in defending Kirkuk following the ISIS advances. The Appellant claimed in his witness statement prepared for the purposes of the hearing before the Judge that his father and one of his brothers were killed during battle in January 2015 and that his other brother had disappeared and you had not heard from him since. At that point the Appellant stated he went to live with maternal uncle as did his mother. Miss Patel raised the issue of whether the Appellant would face a real risk on return as a result of his family association with the Peshmerga but there was no evidence before the Judge to show, on the specific facts of this appeal, that there was such a real risk. This is not a case of family members fighting against the authorities after the announcement of the referendum by the Kurdish government and intervention by Iraqi government forces referred to above.

27. I find no material error in relation to the Judge's assessment of the Appellant's claim concerning real risk based on past events or family connections, by reference to the country guidance or the Judges factual analysis and resultant findings. I find no legal error in the Judge's dismissing of the claim on the grounds challenged as the first and second grounds of appeal, [5 – 6] of the grounds seeking permission to appeal.

28. The third issue is a challenge the Judge's findings in relation to documentation. It is stated the Judge erred in law by failing to assess the risk on return to the Appellant in travelling through Iraq to Kirkuk in the absence of a CSID or INID.

29. The Judge deals with Iraqi identity documents from [6.27] of the decision under challenge. The Judge takes into account the Respondent's Country Policy and Information Note "Iraq: Internal relocation, civil documentation returns" (CPIN) June 2020. The document refers to the CSID being phased out and replaced by the INID which a person cannot apply for if they are not in Iraq.

30. At [6.29] the Judge writes:

> 6.29 HSM claims to have lost contact with relatives in Kirkuk. HSM is not a witness of truth and I find that it is more likely than not who can act as a personal representative to complete the registration process. For example, he was assisted by an uncle when he left Iraq. HSM is a man capable of obtaining a counterfeit Iraqi CSID document as an unsupported illegal migrants living in the UK. I'm satisfied he is well capable of communicating with contacts in Iraq and to find one willing to act as his personal representative in order to obtain a genuine identity document by the means explained in the CPIN.

31. That mention by the Judge was to the section in the CPIN in which reference is made to the Registration Document (1957) which could be obtained by a nominated representative in Iraq.

32. At the date of hearing there was little guidance in relation to the 1957 Registration Document which was not provided until SMO 2 was published. The

relevant summary in that case is to be found at [20 -21] of the headnote in the following terms:

> 20. The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.
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> 21. The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.

33. Although not published until 2022 it does refer to the situation which existed at the date of the hearing before the Judge.
34. It was also the situation before the Judge that the Secretary of State had published a policy that returns will be to any airport within Iraq. In this case this means the Appellant will be returned directly to Kirkuk.
35. The Appellant will be returned with a Laissez Passer which will enable him to fly directly to Kirkuk international airport or via transit through Turkey. There will be no need to use the 1957 Registration Document for that purpose.
36. At [375] of SMO1 it is written:

> 375. The Laissez Passer has been a feature of the Iraq CG landscape for years. In AA (Iraq), the Tribunal considered the feasibility of return in some detail, which in turn necessitated consideration of the ways in which an individual might obtain a passport or a Laissez Passer. At that stage, Dr Fatah explained that an individual who wished to obtain a Laissez Passer was required to produce "either a CSID or INC or a photocopy of a previous Iraqi passport and a police report noting that it had been lost or stolen is required in order to obtain a Laissez-passer". Further enquires made by Dr Fatah with the Iraqi Consulate in London suggest that this is no longer the case, and that an individual must simply be able to establish their nationality in order Iraqi national can request family members in Iraq to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or, failing that, "legal procedures will then be started to prove the Iraqi nationality of the failed asylum seeker through a list of questions in relation to their life in Iraq". These details are checked against Iraqi records, and once verified the individual will be issued with a document enabling the individual to return to Iraq. Dr Fatah goes on to state in his report that the website of the Iraqi Ministry of Foreign Affairs states that the resulting document is valid for six months and that it 'permits a single entry into Iraq'.

37. It was not made out before the Judge that the Appellant will not be able to gain entry to Iraq using this document. I find no error in the Judge finding that he will.
38. In his witness statement, in relation to documentation, the Appellant stated:

15. I have provided my CSID to the Home Office. It was in my possession when I left Iraq. I handed it over to my friend in Germany before I left there. I was scared that I would lose it on my journey so I asked him to keep a hold of it for me as a favour. I remained in contact with my friend after arriving in the UK. I got him to post it to me in the UK and submitted it to the Home Office. I submitted the CSID to confirm my age because the Home Office did not believe I was the age I told them. The CSID that I submitted confirms this, however, the Home Office has not updated my date of birth on their records.

39. The finding of the Judge is that the CSID submitted to the Home Office is a forgery. The Appellant's claim is that he had his CSID with him when he left Iraq, handed it to a friend in Germany, who he has remained in contact with since arriving in the UK. If that is the truth in relation to his original CSID, as the document submitted was not the original CSID, it was not made out before the Judge that the Appellant did not have access to the original document. The difficulty as noted by the Judge is that the Appellant is not a witness of truth. He claims not to be in contact with family yet the Judge finds that he is. The Judge also finds he is in contact with friends and relations too.
40. The Appellant fails to identify where his local CSA office is, but as he claims he left Erbil in the IKR and the family moved to Kirkuk when he was young, it is likely to be one of the offices in that city.
41. The CPIN referred to by the Judge, at Section 5, deals with return of Iraqi nationals. It is at [5.1.1] that it is stated Iraqi nationals can be returned to any airport in federal Iraq or Erbil or Sulaymaniyah.
42. The section also deals with a failed asylum seeker returned to Iraq without an ID document, at which point it states they will be detained at the airport and interviewed to enable them to give some indication of whether they are from the claimed governorate or region. It is not disputed the Appellant is from the area he claims to be so this, per say, is not likely to create any risk for him.
43. The CPIN states at that time the returnees claimed name and address will also be cross-referenced against suspect names in the possession of the security services. The Appellant left Iraq from the property of his maternal uncle with no evidence there is anything in relation to this individual or that address that would give rise to any real risk on return, in the evidence before the Judge.
44. Next, it is stated the returnee will be asked to phone their immediate family and bring their ID. The Judge makes a finding that the Appellant's claim not to be in contact with his family lacks credibility so he should be able to contact family members and ask them to bring their ID to the airport. It is not made out the Appellant could not contact family in advance of return so they could be at the airport waiting for him with necessary documentation.
45. There is specific reference in the CPIN for those with no immediate family to contact paternal uncles or cousins, indicating confirmation by such family members is acceptable.
46. The Appellant will need to attend his local CSA office to obtain an INID for which he will need to provide his biometrics. The CPIN states that if another relative comes to the airport with their own ID and agrees to act as a guarantor for the returnee, that would enable the returnee to be given a seven day residency permit pending proof of identity. On that basis the Appellant will be able to leave the airport and return with a family member who it was not shown will not be able to accommodate him and provide for his needs as required.
47. The Appellant will, however, have to obtain his own identity documents and communicate to the security services at the airport that he is in the process of obtaining the same. It is not made out either he or his guarantor would not do so. It was not made out on the evidence before the Judge that the Appellant could not obtain his INID within a reasonable period of time.

48. Although the Judge does not analyse the CPIN in this manner that was a document before the Judge which shows the Judge's conclusion that the Appellant was not entitled to succeed on any basis, including that relating to documentation, is a finding within the range of those reasonably open to the Judge on the evidence and any error, if made on this point, is not material.

49. Having regard to the guidance provided by the Court of Appeal in in Volpi v Volpi [2022] EWCA Civ 462 at [2], Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26], and Hamilton v Barrow and Others [2024] EWCA Civ 888 at [30-31], and the above analysis, I find no material legal error in the decision of the Judge in dismissing the appeal on all grounds.

Notice of Decision

50. No material legal error is made out in the determination of the First-tier Tribunal which shall stand. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 December 2024