IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005637

First-tier Tribunal No: PA/00162/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th February 2025

Before

UPPER TRIBUNAL JUDGE PINDER

Between

H I
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F Ahmed, Counsel instructed by Hanson Law.
For the Respondent: Ms Simbi, Senior Presenting Officer.

Heard at Birmingham Civil Justice Centre on 10 January 2025

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 the re-making of the decision in the Appellant's appeal, following the setting aside of the decision of First Tier Tribunal Judge Farrelly, who had dismissed the Appellant's protection and human rights appeal but

had allowed this on humanitarian protection grounds. The latter was as a result of the Appellant not being documented. The earlier decision of Upper Tribunal Judge Hanson setting aside Judge Farrelly's decision is appended to this decision as a separate annex.

2. I have maintained the Anonymity Order in favour of the Appellant. I consider that on the specific facts of this appeal the maintenance of the integrity of the United Kingdom's immigration system and the potential risk of serious harm if the Appellant is identified are such that an Anonymity Order is a justified derogation from the principle of open justice.

3. Although it was the Respondent Secretary of State, who initially appealed against Judge Farrelly's decision, for ease of reference, I have listed and have referred to the parties as they appeared below. For the avoidance of doubt, this also applies to the Anonymity Order provided for above, which is favour of the Appellant HI.

Background

4. The Appellant is a citizen of Iraq of Kurdish ethnicity, from Halabja, and is aged 31 years old. His first claim for asylum was refused on 21st August 2016 and an appeal against that decision was dismissed by First-tier Tribunal Judge Garbett on 25th May 2017. Further submissions were made to the Respondent by the Appellant on 15th June 2021, which were rejected by the Respondent. On 30th June 2023, a further set of further submissions were made. These too were refused by the Respondent, by way of a decision dated 21st October 2022.

5. As referred to above, the Appellant's appeal against the Respondent's decision of 21st October 2022 was allowed by Judge Farrelly on humanitarian protection grounds only. Upper Tribunal Judge Hanson set aside Judge Farrelly's decision finding that the ground of appeal pursued by the Respondent Secretary of State was made out. Judge Hanson was satisfied *inter alia* that Judge Farrelly had failed to take relevant evidence into consideration and had reached findings of fact in relation to the Appellant's documentation (or lack of) which were equivocal. In setting aside the decision, Upper Tribunal Judge Hanson preserved, at [18] of his decision, the adverse findings made by Judge Farrelly, in relation to those issues in the appeal which were dismissed.

The appeal hearing

6. Following the making of a transfer order, this appeal was listed before me for re-making on 10th January 2025. The sole remaining issue to be determined in the Appellant's appeal is the narrow issue of the Appellant's documentation and risk on return as a result, if any. I raised with Mr Ahmed that the Appellant's skeleton argument for this appeal hearing addressed the Appellant's *sur place* claim at paragraphs 18-29. Mr Ahmed confirmed that he was not seeking to rely on those sections of the skeleton argument, since the Appellant was not successful in the

First-tier Tribunal on this aspect of his protection claim (see [20]-[27] of Judge Farrelly's decision and [18] of Judge Hanson's decision).

7. I heard oral evidence from the Appellant, who was assisted by a Kurdish Sorani court interpreter, as well as oral evidence from a friend of the Appellant, also assisted by the same interpreter. The Appellant had applied on 8th January 2025 (two days before the hearing) to adduce the witness statement of his friend and to call him as a witness. There was no objection to this application from Ms Simbi on behalf of the Respondent and I duly granted permission to the Appellant accordingly. Similarly the day before the hearing, the Respondent filed and served a consolidated bundle in preparation for this appeal hearing, which included further background evidence upon which the Respondent wished to rely. There was no objection from the Appellant to this being admitted either and so I granted permission to the Respondent to admit the consolidated bundle into evidence.

8. At the conclusion of the oral evidence, I heard oral submissions from both advocates. At the end of the hearing, I reserved my decision. I do not propose to rehearse the oral evidence heard and the oral submissions made here, but will consider and address these as part of my analysis set out below.

9. It is appropriate to record at this juncture that the Appellant raised a concern at the outset of the hearing (and before the Appellant had been called to give evidence) that he had difficulties understanding the court interpreter as she was not originally from Iraq. This had been communicated by him directly to the interpreter and to the Appellant's advocate. I made further enquiries of Mr Ahmed, the Appellant's counsel, to ascertain the nature of the difficulties experienced and I explained to Mr Ahmed that the court interpreter was to my knowledge an experienced interpreter, who had interpreted in other cases for Kurdish Sorani speakers who originated from different countries/regions. I asked the Appellant, via his counsel, to consider whether he would agree to making a start with his evidence and for all concerned, including myself, to keep matters under review. I facilitated a brief adjournment of the hearing to permit Mr Ahmed to take further instructions from the Appellant, and if necessary from his instructing solicitors, in private.

10. Upon Mr Ahmed's return, he confirmed that the Appellant was content to proceed as suggested with the court interpreter provided. I addressed the Appellant and the court interpreter, each in turn, asking them to notify me if any language or communication difficulties were experienced by either of them and both agreed to do so. The Appellant's evidence was taken without any such difficulties being experienced and raised. At the end of the Appellant's evidence, before the advocates started their submissions, a break was taken for Mr Ahmed to take instructions from the Appellant. Mr Ahmed then confirmed that the Appellant had been content with the way in which his evidence had been taken and with the interpreter's assistance.

Analysis and conclusions

The Appellant's contact, if any, with his family members

11. Relevant to the issue of the Appellant's documentation is first whether the Appellant is in, or could re-establish, contact with his family members. The Appellant's evidence is that he had a CSID prior to coming to the UK but that this was taken from him on his journey by the agent. The Respondent does not dispute this aspect of the Appellant's case and so it is not contentious that the Appellant, while in the UK and as at the date of this hearing, does not have in his own possession a CSID or any other form of Iraqi identity or travel document.

12. The Respondent's primary submission is that the Appellant still has his uncle, and his mother and sister, and that they could each or all assist him in either forwarding another identity document to him to enable his re-documentation in the UK or to enable this shortly after his arrival in the IKR. If the latter, the Respondent submits that the Appellant's family members could also assist in meeting him at the airport on his return in order to effectively vouch for his identity, which would in turn enable him to be let through the airport and issued with temporary documentation. This would then permit the Appellant to attend his local CSA office to re-document himself fully thereafter. This is in line with the background information provided at §5.1.3 of the Respondent's CPIN *'Iraq: Internal relocation, civil documentation and returns'*.

13. In response, the Appellant has maintained that he is no longer in touch with his mother. The Appellant explained in his written and oral evidence that he was 10 years old when he was taken in by his uncle. This was because his father had passed away, as a result of and a few years after the chemical weapons attack carried out on Halabja by the Saddam Hussain regime. Following the death of his father, his mother re-married and his only sibling, his sister, left with his mother on her re-marriage. He was not taken to live with his mother and so his uncle and his uncle's wife started to take care of him from then. The Appellant has maintained that he has not had any contact with his mother and sister ever since.

14. At [33] of Judge Farrelly's decision, the previous finding on the Appellant's contact with his family from the Appellant's first asylum claim is recorded. This was that the Appellant was still (then) in contact with his uncle and sister. At [39], Judge Farrelly also recorded that the Appellant's contact with his family members (as found by the earlier judge in 2017 may have changed with the passage of time but that it was improbable that all contact would have simply ended.

15. Upper Tribunal Judge Hanson recorded at [7] of his decision the finding at [33] of Judge Farrelly's decision. Ms Simbi argued before me that this, read together with the preservation of the adverse findings of Judge Farelly ("in relation to those issues in the appeal which were

dismissed"), meant that the finding on the Appellant's continued contact with his uncle and sister was also preserved. In the alternative, Ms Simbi submitted that pursuant to the *Devaseelan* principes, I would need to consider this finding as my starting point and then consider whether the Appellant had submitted sufficiently cogent evidence to permit me to depart from this finding.

16. I do not accept that Judge Farrelly's finding at [33] has been preserved. This was a finding relevant to Judge Farrelly's consideration of the documentation issue, which has been set aside for the making of material errors of law. It is clear from [18] of Upper Tribunal Judge Hanson's decision that he sought to preserve the findings that led to the dismissal of the Appellant's appeal under the Refugee Convention and under Article 8 ECHR. The finding on contact with family formed no part of those findings and those outcomes in the appeal.

17. I also consider that Judge Farrelly took into account at [39] of his decision that contact with family in the IKR may have changed over time. Considering the Appellant's first asylum appeal was heard and determined in May 2017, nearly eight years ago, I find it is appropriate to consider the issue afresh. In the alternative therefore, and for the reasons that I have set out below, there is in my view sufficient evidence to consider matters afresh and to depart from the earlier finding.

18. In 2017, in the earlier asylum appeal, the Appellant confirmed that he remained in contact with his uncle ([13] of Judge Garbett's decision). Before Judge Farrelly and before me, the Appellant stated that he has since lost contact with his uncle. He had heard from a cousin, seven or eight years ago, that his uncle and his wife had left Iraq and gone to live in Iran. After not being able to resume contact with this cousin, the Appellant asked the Red Cross for assistance in tracing his family members. The Appellant stated that he has maintained contact with the Red Cross but to date, they have not received any notifications that his uncle has been traced. The Appellant also stated that he has tried to locate his uncle and his family on social media but this has been in vain.

19. In support of the Appellant's case, the Appellant also tendered his friend as a witness. They met in the UK. I do not name the Appellant's witness as this is not necessary – the parties are aware of the witness' identity and this is on record in the appeal bundle. This is also to avoid any risk of the Appellant being identified in light of the Anonymity Order being in place.

20. The Appellant's witness confirmed in his written and oral evidence that he is from Iran and now a British citizen. He travels to Iraq fairly frequently as his wife is originally from there. The Appellant had asked him to let the Appellant know the next time the witness might be travelling to Iraq, so that he could help the Appellant to look for his uncle. The witness agreed and in October 2024 (before the error of law hearing in these appeal proceedings), the witness contacted the Appellant from

Iraq while he was there. Arrangements were then made for the witness to travel to Halabja and to visit the house where the Appellant's uncle had previously lived. The witness did so, attended the family home and was told by a different woman that the uncle no longer lived there. She had bought the house approximately three or four years ago. The woman did not know where the previous owner of the house had gone to. Following this, the witness visited the local Mukhtar (local leader or elder). The Mukhtar confirmed that he was not the Mukhtar when the Appellant's uncle lived in the area but he was aware that the Appellant's uncle had left the area approximately four years ago.

21. Ms Simbi did not make any submissions seeking to challenge the credibility of the Appellant's account nor that of his witness, on the witness' assistance in visiting Halabja in October 2024. Nor did the Respondent seek to challenge the reliability of the Appellant's witness more generally. Ms Simbi asked me to consider the totality of the evidence before me concerning whether or not the Appellant continues to have contact with his uncle in particular.

22. The Respondent did not suggest that the Appellant was otherwise untruthful or unreliable on whether he has had or continues to have contact with his mother. In light of the above, I find that the Appellant has not maintained contact with his mother. There is also no suggestion in the evidence before me, including the previous findings of the earlier FtT judges that the Appellant has maintained contact with his sister. Judge Garbett recorded the evidence of the Appellant to have maintained contact with his *uncle*, at that time, and there is no positive finding that the Appellant had maintained contact with his mother and sister (see [13] of Judge Garbett's decision). Considering the Appellant's account that his mother re-married after his father died, moved away when he was 10 years old and that his mother is of Kurdish ethnicity from Iran, I accept the Appellant's account that he has not maintained contact with her nor with his sister.

23. The evidence of the Appellant's witness was consistent with that of the Appellant. No basis has been placed before me to suggest that the Appellant's witness is not reliable, and I accept that the witness gave a truthful account of his attempts to assist the Appellant in looking for his uncle. I therefore accept the witness' evidence and place considerable weight upon this. I also take into consideration that the Appellant has separately taken steps to try and trace his uncle through the Red Cross (see pp.545-547 of the consolidated bundle for the error of law bundle). This evidence was not successfully challenged before me.

24. Considering the passage of time since the Appellant left the IKR in or around early 2016, nearly 10 years ago, and considering the totality of the evidence on this issue before me, I accept that the Appellant has lost contact with his uncle, that he has been unable to re-establish contact with him, and that this is likely to be as a result of his uncle moving from the family home, without informing the Appellant. I have also reached

findings in favour of the Appellant in relation to him losing contact with his mother and sister. Even if I was wrong on the latter, I do not consider that his female relatives would be able to assist him as far as the Appellant's documentation is concerned. The Appellant's mother also moved away when the Appellant was 10 years old and when the Appellant went to live with his uncle.

25. For the reasons above, I do not accept that the Appellant can resort to his family members in order to assist him with retrieving any existing identity documents of the Appellant's nor with otherwise meeting the Appellant and/or vouching for him at any arrival in the IKR to permit his entry into the IKR and his subsequent re-documentation.

Re-documenting the Appellant from the UK

26. In the alternative, Ms Simbi submitted that the Appellant is able to re-document himself as a result of a recent programme conducted in the Iraqi Embassy in the UK. Ms Simbi relied on two print-outs from the Iraqi Embassy's website dated 15th and 17th October 2024 (pp.4-9 of the consolidated bundle). These print-outs, when read together, confirmed the following salient information:

(a) The Embassy has issued the first national card outside Iraq;
(b) The Embassy "is pleased to announce to the members of the Iraqi community residing in the United Kingdom the opening of the (National Card) system in the consular section of the embassy (on a trial basis)";
(c) The trial phase started on 21st October 2024 and the required documents listed on the same announcement website page are the following:

" - Prepare the form for obtaining the national card.
- Certificate of Iraqi nationality in the name of the applicant, or submission of an Iraqi nationality certificate or national card of support (father, mother, brother, sister, correct grandfather, uncle).
- Civil status ID.
- Iraqi passport.
- Proof of identity (in case of failure to present a holder in his name).
-A document to prove the address.
- It is also taken into account to fill out the electronic form for the unified card by visiting the official website of the Directorate of National Card Affairs (with the relevant link provided)."

27. Ms Simbi acknowledged that this was a recent development and that since the Appellant will have been issued with UK forms of identity document, he would be able to rely on the "proof of identity" reference in the list above. In reply, Mr Ahmed asked me to consider that first, it was unclear from the two print-outs whom might qualify to take part in this

trial phase. Second, there was reference to members of the Iraqi community, *resident* in the UK. Mr Ahmed submitted that this may refer only to those who have lawful and/or settled status in the UK and not necessarily to every Iraqi citizen who is without Iraqi identity and/or travel documentation in the UK. We did not know which, Mr Ahmed submitted. Mr Ahmed also submitted that there was insufficient information in these two print-outs, which meant that the Respondent had not placed before me "very strong grounds, supported by cogent evidence", capable of permitting a departure from the country guidance contained in *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 00110 (IAC) ('*SMO2*').

28. I have considered the print-outs very carefully together with the parties' competing submissions. I agree with Mr Ahmed that the level of information provided in the Embassy website print-outs is not sufficient for me to find that the Appellant would be likely to secure identity documentation within this trial phase, in the way that Ms Simbi advocated on behalf of the Respondent. Considering the Appellant has no form of Iraqi identity document and no contact with other members of his family, the evidence produced does not demonstrate how the Appellant would be re-documented.

29. For the reasons above, I consider that I am required to take into account the guidance provided by the Upper Tribunal in *SMO2* and to follow this - no very strong grounds, supported by cogent evidence, have been adduced to justify me departing from this. This is pursuant to *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940, [47]. Thus, I am satisfied that the Appellant is reasonably unlikely to secure an Iraqi identity document, whether in the UK or on arrival in the IKR, which would permit him to enter the IKR and to travel internally without subjecting him to treatment, contrary to Article 3 ECHR.

Notice of Decision

30. Pursuant to Upper Tribunal Judge Hanson's decision, the decision of the First-tier Tribunal involved the making of a material error of law.

31. I remake the decision by allowing the Appellant HI's appeal against the Respondent Secretary of State's decision dated 21st October 2022 on humanitarian protection grounds.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30.01.2025