



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09159/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft
Teams
On Wednesday 12 January 2022**

**Decision & Reasons Promulgated
On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**M M A
[Anonymity direction made]**

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel instructed by Freedom solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. Although this appeal no longer involves a protection claim, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 7 June 2021, I found an error of law in the decision of First-tier Tribunal Judge Hands promulgated on 5 November 2020 dismissing the Appellant's appeal against the Respondent's decision dated 11 September 2019 refusing his protection and human rights claims. My error of law decision is at appendix 1 to this decision for ease of reference.
2. The Appellant is a national of Iraq of Kurdish ethnicity. He arrived in the UK on 27 April 2018 and claimed asylum on the same day. As I will come to, he had previously claimed asylum in Germany. The Respondent for that reason made a take-back request of the German authorities under the Dublin regulation. That request was rejected on 25 June 2018. The German authorities rejected the request on the basis that they had previously accepted on 18 September 2017 a request by the French authorities to take back the Appellant. A transfer was planned on 18 October 2017 but that did not take place and no extension was sought. The German authorities therefore concluded that they were not responsible for processing the Appellant's asylum claim, time limits under the Dublin regulation having expired.
3. The effect of my error of law decision was to preserve the findings of Judge Hands dismissing the Appellant's protection claim. The only issues which remain are humanitarian protection and human rights grounds. The issues as remain are agreed between the parties to be only whether the Appellant is able to return to the Kurdish region of Iraq (IKR) which in turn requires me to consider whether the Appellant has or could obtain documentation which would enable him to do so.
4. As I have noted above, the Appellant previously claimed asylum in Germany. Judge Hands noted at [40] of his decision that the Appellant had stated that his Civil Status Identity Document ("CSID") was with the German authorities. Accordingly, I gave directions for the Appellant to make enquiries with the German authorities as to documents held by them and for the return of those documents if still held.
5. On 14 September 2021, a case management review ("CMR") was convened before me. My directions following that CMR and the reasons for them are annexed to this decision as appendix 2. In short, by that stage, the Appellant's identity documents had been obtained by his previous solicitors. They had then declined to act further. The Appellant appeared before me in person at the CMR. As I noted at [5] of that decision, after I had indicated that the Appellant would have to file and serve copies of the documents which he had obtained from Germany, he indicated that he had lost them on a train. I was invited by the Respondent to seek copies of those documents from the Appellant's previous solicitors. The Respondent having indicated that the credibility of the claim to have lost the documents was in issue, I also gave directions for the Appellant to file and serve written evidence in this regard.

6. The Tribunal subsequently received untranslated copies of the identity documents. The Appellant has now changed solicitors. His current solicitors also (I was told) had filed and served a bundle including the written evidence on which reliance was placed. Although the Tribunal had not received that bundle so far as I am aware, Mrs Aboni confirmed that the Respondent had been served. Ms Allen kindly arranged to provide me with a further copy. Although my error of law decision had envisaged that the resumed hearing would not take place until after the promulgation of the further country guidance decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (“SMO and others”) (see direction [2]), and that decision has not yet been made, both parties confirmed that they did not wish to have the hearing adjourned to await that decision.
7. I had before me the Appellant’s original bundle before the First-tier Tribunal (referred to hereafter as [AB/xx]), the bundle prepared for the hearing before me (referred to hereafter as [ABS/xx]) and the core appeal documents including the Respondent’s bundle (referred to as [RB/xx]). Having heard evidence from the Appellant and his witness and submissions from Mrs Aboni and Ms Allen, I reserved my decision and indicated that I would provide that in writing which I now turn to do.

ISSUES

8. As I have indicated above, the only issue now pursued by the Appellant is that he is unable to return to Iraq because he does not have the necessary identity documentation. It was accepted by the Respondent that if the Appellant does not have or is unable to obtain identity documents, in particular his CSID, then he will be unable to travel from Baghdad to IKR following return and cannot, for the time being, be returned there. For the Appellant, Ms Allen accepted that the Appellant’s identity documents obtained from Germany include his CSID. Accordingly, if the Appellant has or could obtain the original of that document, he would be able to return to IKR and his appeal would fail.

THE IDENTITY DOCUMENTS

9. The Appellant’s identity documents, and their translations (“hereafter referred to collectively as “the Identity Documents”) appear at [ABS/16-24]. They are as follows:
- (1) An identity card at [ABS/16-17] translated at [ABS/18]. Having discussed this with Ms Allen during her submissions, I understand this to be the CSID. It states that it is the Appellant’s “Personal Identity Card” and is “Issued under the Civil Status Law...”. It provides the Appellant’s date and place of birth along with his family details.
 - (2) An identity card at [ABS/20] translated at [ABS/22]. This is, as I understand it, an Iraqi Nationality Certificate (“INC”). It is titled “Certificate of Iraqi Nationality”.

(3) An Iraqi passport at [ABS/21 and 24]. This is written in English. It was issued in 2012 and expired in October 2020.

REQUIREMENTS FOR RETURN DOCUMENTATION

10. The Appellant's bundle includes at [ABS/28-119] the Respondent's Country Policy and Information Note entitled "Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns" ("the CPIN"). My attention was drawn to the following paragraphs by Ms Allen:
- (1) Paragraph 2.6.22: In order to obtain a passport from outside Iraq, a person needs to present to the Iraqi Consulate a CSID, INC and residency card for the country in which they are living. That is reinforced by what is said at [6.2.1].
 - (2) Paragraph 2.6.24: This lists the documentation requirements for the issue of a laissez passer which include a passport, INC and CSID. However, as made clear at [2.5.8] by reference to the existing country guidance, a laissez passer is of no assistance within Iraq. It is taken away at the airport and an INC or CSID is required for travel within Iraq over ground. The position is, as Ms Allen fairly accepted, a little less clear in terms of internal flights. As I understand it from [2.5.9], a valid passport might suffice for that purpose. It may be that little turns on this as the Appellant's passport appears to have expired. In any event, his case is that he has lost all his documents.
11. It is implicit in what is said at [2.6] of the CPIN that, if it is accepted that the Appellant does not have documents which permit him to return to Iraq, travel within Iraq and access services there, he can succeed on the basis of Article 3 ECHR based on the lack of possibility of internal relocation and the humanitarian conditions he would face (see also [B] and [C] of the headnote to SMO and others). The crux of this appeal therefore now rests on the evidence of the Appellant that he no longer has and/or cannot obtain his original identity documents. I therefore turn to the evidence in relation to the loss of those documents.

THE EVIDENCE

The Appellant's Evidence

12. The Appellant gave evidence through a Kurdish Sorani interpreter. The interpreter confirmed that she and the Appellant were able to understand each other. There were no apparent difficulties with the Appellant's understanding of the questions or the giving of his answers.
13. The Appellant has provided a signed statement dated 21 December 2021 which is attested to by a statement of truth ([ABS/1-4]). He adopted that statement orally.
14. The Appellant explains that, following receipt of the Identity Documents, his previous solicitors told him they could not act for him. He therefore

collected the documents from them. He was thereafter unable to find a solicitor who would represent him and turned to his friend, [MN], for help. [MN] lives in Hemsworth near Wakefield. The Appellant lives in Newcastle. I refer to [MN]'s evidence to me below. However, the Appellant says that he was told by [MN] that there were "good solicitors in Birmingham". On 23 August 2021, he therefore travelled to Birmingham from [MN]'s house with his assistance. He was there met by a friend of [MN] who took him to the solicitor. That solicitor said he could not act without payment and required high fees, so the Appellant came away without instructing that person.

15. The Appellant says that he "left his bag on the train when he got off at Sheffield". He says that when he realised this, he went back and tried to explain what had happened to one of the station staff. However, this person was unable to understand him so he phoned [MN] who explained the situation to the member of staff who took the Appellant's details and said the bag would be returned if found.
16. Following the CMR hearing when the Appellant was told that he would need to provide evidence about the loss of the Identity Documents, he says that he went back to [MN] to see what could be done to obtain evidence of the loss. With the assistance of a Pakistani friend of [MN]'s, they completed a lost property report and advertised the loss in the newspapers.
17. Thereafter, due to the Appellant's concerns about being unrepresented, [MN] agreed to pay for a solicitor for the Appellant and the Appellant's current solicitors were instructed. The Appellant explains that the copies of the Identity Documents in the bundle are from the copies provided to his previous solicitors which were sent with his file to his current solicitors.
18. In response to questions at the hearing, the Appellant indicated that the Identity Documents were with his other papers in a carrier bag. He confirmed that the Identity Documents themselves were the originals and were a normal sized passport and two identity cards.
19. The Appellant indicated that he had reported the loss to a "security officer" at the station and had not completed any report. The Appellant says that this person "just gave [him] a piece of paper and took an address and telephone number". The Appellant had never been back to the station to check whether the bag was received.
20. The Appellant did not know the name of the friend who had helped him and [MN] to file the lost property report. He said that he had told [MN] what to put on the form and [MN] had conveyed that to his friend.
21. Nor did he know the name of the solicitor he saw in Birmingham. In this regard, I found the Appellant's evidence somewhat confusing. It was unclear to me why the Appellant was in Sheffield at all given that the solicitor was in Birmingham and [MN] lived near Wakefield. I therefore asked him about this. The Appellant said that he had travelled from [MN]'s home

from Doncaster which he said was the nearest station via Sheffield to Birmingham and back. The Appellant himself continued to live in Newcastle.

22. The Appellant also said that he had reported the loss of the Identity Documents to the police. He recounted that they said that they could do nothing for him and could not provide him with any evidence. There is no reference to this in the Appellant's statement.
23. The Appellant said he had not reported the loss of his passport (or the Identity Documents generally) to the Iraqi Embassy and had not approached them to see if they could provide a replacement based on the copy. He did not know he could do this and was waiting and hoping that he would get the Identity Documents back.

Evidence of [MN]

24. [MN] is the Appellant's friend. As already indicated, he lives in Hemsworth which is a village near Wakefield in Yorkshire. He has provided a signed witness statement dated 21 December 2021 which is attested to by a statement of truth [ABS/25-27]. He too gave evidence via the interpreter. There were no apparent difficulties with his understanding of the questions or the giving of his answers.
25. [MN] says that when the Appellant explained that he needed a new solicitor, [MN] contacted solicitors in his local area but none could help. He heard from friends in Birmingham that "there were good solicitors there" so he thought they should try to find someone there. He says that "[w]e managed to get through to a couple of solicitors there and they said [the Appellant] could take his papers to them and they would have a look. In spite of this, [MN] said that he did not know the name of the solicitor who the Appellant went to see. He said that his friend in Birmingham had taken [MN] to see the solicitor.
26. [MN] said that he booked the tickets for the Appellant to go to Birmingham and had tried to book a ticket back but could not do so. He therefore asked his friend to give the Appellant the money to buy a ticket back. The Appellant says in his statement that he had a "normal ticket" for the return which he then threw away.
27. The evidence about the train tickets appears at [ABS/6 and 8]. Those documents are an exchange of text messages (untranslated) between (it appears) [MN] and the Appellant. The first document shows an online ticket for travel from Sheffield to Birmingham at 1056 hours which appears to have been forwarded at 1107 following a telephone call at 1057. It is not clear whether that was forwarded to [MN] by the Appellant or vice versa. When asked why the documents did not include a ticket for travel from Doncaster to Birmingham which is the way in which [MN] confirmed that the Appellant travelled, [MN] said that the Appellant had to change trains at Sheffield and there were two tickets. Even if that is a plausible explanation,

it does not explain why there is no copy of the first ticket between Doncaster and Sheffield. [MN], when asked, said he had provided it but there is no copy of it provided. The second document shows only that [MN] was trying to book a ticket from Birmingham to Sheffield later that day. It does not show any communication between him and the Appellant asking for the ticket or between [MN] and his friend asking him to pay for the return ticket for the Appellant.

28. Regarding the lost property report which the Appellant says that [MN]'s friend helped him complete, [MN] said that it was he who told his friend what to put on the form. When asked whether the Appellant had reported the loss of the Identity Documents to the police, [MN] said that the Appellant had told him that he did, but they said they could not help. He did not purport to have direct knowledge of this. His evidence is that the Appellant told him that he had reported to the police. It is not mentioned in his statement.

FINDINGS ON THE EVIDENCE

29. I do not accept the Appellant's account of the loss of the Identity Documents for reasons which follow.
30. Ms Allen submitted that the discovery of the Identity Documents emanates from the Appellant himself which she said undermined the Respondent's submission that he was trying to avoid the consequences of that discovery by fabricating the loss.
31. The Appellant's evidence when interviewed in relation to his asylum claim was that he did not know where his CSID was and he intimated that, if he could return to Iraq, he could obtain it or a replacement (see answers to questions [41] to [44] at [RB/25]). His evidence at that time therefore appears to be that the CSID remained in Iraq. Although the Appellant admitted to having a CSID, he did not therefore tell the truth about where it was. In screening interview, he said in answer to a question about his identity that he did not have any identity documentation "at the moment". In his witness statement before the First-tier Tribunal, he said that he had no identification documents ([§10] at [AB/4]). He did not volunteer at that stage (October 2019) that the documents were in Germany. That evidence appears to have emerged during the hearing before Judge Hands (see [40] of that decision albeit set aside). I appreciate that the Appellant could have said that his documents were lost during his journey or left behind in Iraq. However, I consider it likely that he did not realise that it might be possible for the authorities in the UK or, more accurately, the Tribunal in the UK to direct that those documents be released to him here. I do not place weight therefore on this fact. The Appellant was clearly aware by the time of his statement in October 2019 that there was some importance to the existence of identity documents and the more so following my error of law decision.

32. In light of the importance of the Identity Documents to the Appellant's case, particularly since the existence or otherwise of those are now the only remaining issue between the parties, it is a fortunate coincidence for the Appellant if he has lost them (in terms of his appeal and the Respondent's ability to return him to Iraq). I do not though place any great weight on this as coincidences do happen. Realising as he does the importance of the Identity Documents to the success or otherwise of his appeal, though, the Appellant has good reason to fabricate their loss.
33. I do not place any significant weight on the earlier credibility findings in relation to the Appellant's protection claim. Judge Hands found at [35] of his decision (which is preserved) that the Appellant had "fabricated his account of why he left Iraq and he is, in reality, an economic migrant who has travelled to the United Kingdom in the belief he would be able to access a better life than he had in Iraq or for such other reasons he has chosen not to reveal". However, that the Appellant has lied in relation to his protection claim does not mean that he is lying now in relation to what is a discreet issue. Nonetheless, the fact that he has lied about his claim in the past is evidence that he is prepared to do so to assist his cause.
34. Turning then to the evidence about what happened on 23 August 2021, I begin by observing that I have very serious doubts about the journey which the Appellant is said to have undertaken on that day. The evidence I have is that the train ticket was bought by [MN] and that he also tried to buy a return ticket. That is as consistent with [MN] travelling from Sheffield to Birmingham on that day as the Appellant doing so (particularly since the friends in Birmingham are of [MN] and not the Appellant). Although I accept that the Appellant and [MN] were consistent in their account about how the Appellant travelled (from Doncaster via Sheffield), there is no evidence of a ticket being procured for the initial stage of that journey. Nor is there any evidence of the return journey which is the crucial one given when the loss is said to have occurred. I am therefore reliant on the evidence of the Appellant and [MN] alone as to that journey having occurred. I do not place much weight on this lack of evidence, however, as it was not put to the witnesses.
35. Assuming though that the Appellant did travel from Sheffield to Birmingham, there is no supporting evidence about why he did so save for his say-so and that of [MN]. Neither [MN] nor the Appellant knew who was the solicitor that the Appellant saw that day nor even the firm he visited. That is not credible in particular given [MN]'s assertion in his statement that he and the Appellant had contacted the solicitors to agree that the Appellant could take his papers to the solicitor (see [25] above). There is no evidence from [MN]'s friend who is said to have accompanied the Appellant to see the solicitor in Birmingham. The entire account given by the Appellant and [MN] is vague. This is in the context of an account that the Appellant who lives in Newcastle was assisted by a person living near Sheffield to go to see a solicitor practising in Birmingham. I realise that the Appellant has since, with [MN]'s assistance, instructed solicitors in Birmingham. However, I do

not find credible that the Appellant would at the time in question (before [MN] agreed to pay for a solicitor) have travelled all the way from Newcastle to visit [MN] near Sheffield and then travelled to Birmingham to see a solicitor, particularly when other solicitors in Sheffield had refused to take on the Appellant's case unless they were paid (which is unsurprising).

36. Even if the Appellant did travel to see a solicitor in Birmingham on the day in question, I do not accept as credible that he lost the Identity Documents as he now claims.
37. First, I can see no reason why the Identity Documents would have been in a carrier bag at all. Whilst the Appellant may well have had his other papers in such a bag, those are not as valuable as original identity documents. The Appellant confirmed that the Identity Documents were a normal sized passport and two normal sized identity cards. They would fit in a wallet or a pocket. I do not accept as credible that the Appellant would put those in a carrier bag. Whilst I note Ms Allen's submission that people do often leave important things on trains and I accept that to be the case, I do not accept as credible that such important documents as the Identity Documents would be put in a carrier bag (even if that were lost) rather than carried on the Appellant's person.
38. Second, there is an inconsistency in the Appellant's evidence regarding the reporting of the incident on the day. I do not place weight on the Appellant's reference to "security officer" in his oral evidence rather than a member of "station staff" in his written statement. However, in his written statement, the Appellant says that he was unable to make himself understood and therefore that [MN] spoke to the man who then said he would make a note of the Appellant's details ([8]). That is consistent with what is said by [MN] at [5] of his statement. However, the Appellant's oral evidence was that the "security officer" "just gave [him] a piece of paper and took [his] address and telephone number".
39. Third, I do not accept as credible that, if the Appellant or [MN] had reported the loss whether via the Appellant or [MN] that they would not have been told to file a lost property report. I accept that a lost property report was filed but not until 20 October 2021 ("the Lost Property Report"). That apparently followed the CMR when the Appellant was asked whether he had filed one. The Lost Property Report appears at [ABS/12]. As Mrs Aboni pointed out, there is a discrepancy in the Appellant's evidence emerging from the Lost Property Report. The Appellant's written and oral evidence is that the Identity Documents were in a bag (later clarified to be a carrier bag) whereas the Lost Property Report refers only to the Identity Documents themselves. There is a further inconsistency between the Appellant's and [MN]'s evidence about the completion of the Lost Property Report. The Appellant said in his oral evidence that he told [MN] what to say and he communicated this to his Pakistani friend. [MN] said that it was he who provided the information. There is no evidence from the friend who is said to have completed the Lost Property Report. Whilst neither of the

inconsistencies alone are very significant, taken together, they cause me to conclude that the Lost Property Report which was filed was completed only with a view to bolster the Appellant's case.

40. Fourth, I do not accept as credible that the Appellant would not return to the railway station to check whether the Identity Documents had been filed. That brings me on to the evidence that the Appellant reported the loss to the police. The Appellant said that he had done so. That was confirmed by [MN] although only as hearsay that the Appellant had done so. This is not dealt with in either written statement. I do not accept as credible that the police would refuse to assist. The documents said to be lost were valuable identity documents. Even if the police were unwilling to investigate which may be the case if the Appellant told them simply that he had left them on the train, the police would, at the very least, provide an incident number which the Appellant could use to report the loss further. I do not accept that the Appellant reported the loss to the police. Had he done so, he would have said so in his statement. His evidence and that of [MN] is I conclude an afterthought concocted in an attempt to bolster the Appellant's case.
41. That brings me on to the fifth reason for disbelieving the Appellant's claim. The Appellant has made no attempt to contact the Iraqi consulate in relation to the loss of the Identity Documents. If those were found and the finder wished to return them but did not know where the holder could be found, the obvious first port of call would be the Iraqi authorities in the UK. That is particularly so in relation to the passport. The Appellant is well aware of the whereabouts of the Iraqi Consulate as he has visited it (in Manchester) when he was seeking proof that he could not get identity documents from within the UK. I do not accept as credible that if the Appellant had genuinely lost the Identity Documents, he would not have reported the loss to the Iraqi Consulate. Given that he has copies of the documents, he might also be expected to have asked whether replacements could be obtained from the copies. I do not suggest that he would necessarily have been successful as there is little evidence about the extent to which the Iraqi authorities would provide replacements based on copies from within the UK. However, the fact that the Appellant did not even try to contact the Iraqi Consulate to enquire about this is further reason to disbelieve his claim.
42. The Appellant also advertised in the "Asian Express" for Yorkshire to say he had lost his passport. The edition is 1 October 2021 ([ABS/13-14]). The advertisement gives the passport number of the document said to be lost. The Appellant says that he provided the copies of the Identity Documents in the bundle to the Tribunal and Respondent based on those retained by his previous solicitors who sent them to his new solicitors. He does not say that he had made or retained copies. It is therefore unclear how the Appellant would know the passport number in order to include it in the advertisement. I do not though place weight on this as the Appellant was not asked for an explanation.

43. For the foregoing reasons, however, I find the Appellant's claim to have lost the Identity Documents not to be credible. Having found the Appellant's claim to have lost the Identity Documents not to be credible, it follows that I find that the Appellant has the original of his Iraqi passport (albeit expired), his INC and his CSID.

CONCLUSION

44. Having found that the Appellant has the originals of the Identity Documents, I do not need to consider whether the Appellant could obtain replacements if they are genuinely lost. I do not accept that they are. It follows also that I find that the Appellant's return to and travel and residence within Iraq is feasible. The Appellant is able to return, travel within and reside in Iraq. He has no need for humanitarian protection within UK and his removal would not entail any breach of Article 3 ECHR. Since that is the only issue before me and the remainder of the Appellant's claim was disposed of by the conclusions of Judge Hands which were preserved, it follows that the Appellant's appeal fails.

45. I dismiss the Appellant's appeal on humanitarian protection and human rights grounds. The Appellant's appeal on protection grounds was dismissed by First-tier Tribunal Judge Hands in his decision promulgated on 5 November 2020 and I preserved that conclusion. The Appellant's appeal is therefore now dismissed on all grounds.

DECISION

The Appellant's appeal is hereby dismissed on humanitarian protection and human rights grounds.

The Appellant's appeal on protection grounds is dismissed for the reasons given by First-tier Tribunal Judge Hands in his decision promulgated on 5 November 2020, that conclusion and reasoning having been preserved by this Tribunal by its error of law decision promulgated on 7 June 2021.

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 17 January 2022

APPENDIX 1: ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09159/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft
Teams
On Tuesday 25 May 2021**

**Decision & Reasons Promulgated
7 June 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**M M A
[Anonymity direction made]**

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Brakaj, solicitor, Iris Law Firm

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hands promulgated on 5 November 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 11 September 2019 refusing his protection and human rights claims.
2. The Appellant is a national of Iraq of Kurdish ethnicity. He arrived in the UK on 27 April 2018 and claimed asylum on the same day. He has previously claimed asylum as I will come to in Germany. The Respondent for that reason made a take-back request of the German authorities under the Dublin regulation. That request was rejected on 25 June 2018. The German authorities rejected the request on the basis that they had previously accepted on 18 September 2017 a request by the French authorities to take back the Appellant. A transfer was planned on 18 October 2017 but that did not take place and no extension was sought. The German authorities therefore concluded that they were not responsible for processing the Appellant’s asylum claim, time limits under the Dublin regulation having expired.
3. The Judge did not accept as credible the Appellant’s claim to be at individual risk on return to Iraq. I do not need to say any more about that aspect of the appeal as there is no challenge to the Judge’s findings. The challenge to the Decision relates to the documentation issue and whether the Appellant has or can obtain before return a Civil Status Identity Document (CSID). The Judge concluded that he could. For that reason, she also rejected a claim that return to Iraq would breach Article 3 ECHR. She concluded that the Appellant did not qualify for humanitarian protection for the same reason.
4. The Appellant’s grounds of appeal challenging the Decision are narrow. He says that there is a legal flaw in the Judge’s reasoning. The Appellant says that he has lost contact with his family in Iraq and does not have any documentation. Reference is made to the country guidance given in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (“SMO”). It is asserted that the Judge’s reasoning at [40] and [43] of the Decision is inconsistent with what is said in SMO and also with the Home Office Country Policy Information Note dated June 2020 (“the CPIN”).
5. Under cover of an email dated 24 May 2021, the Appellant purported to make an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The email does not comply with the requirements of rule 15(2A). Those requirements are to indicate the nature of the evidence and to explain why it was not submitted to the First-tier Tribunal. I do not say any more about that since, for reasons which will become apparent below, those documents are of no relevance certainly at this point in time. They go to the issue whether the Appellant can obtain documentation from

the Iraqi consulate in the UK. That is not relevant to the Judge's reasoning in the paragraphs about which complaint is made.

6. Permission to appeal was refused by First-tier Tribunal Judge Ford on 3 December 2020 in the following terms so far as relevant:

"..3. The grounds are not arguable. What distinguished this Appellant from Appellants in other similar Iraqi cases is that he claimed asylum in Germany and in doing so he had provided his ID documents to the German authorities. The Tribunal was satisfied that the Appellant either had his CSID or had the capacity to retrieve that documentation from Germany if he cared to, and he did not need to secure replacement documents from the Iraqi authorities. There is no arguable material error of law."

7. On renewal of the application for permission to appeal to this Tribunal, permission was granted by Upper Tribunal Judge Plimmer on 1 February 2021 as follows:

"1. I note that the grounds of appeal only seek to impugn the FTT's findings regarding the appellant being able to access a CSID.

2. It is arguable that the FTT's approach to the requisite documentation required to obviate serious harm in Iraq at [40] is inadequate and flawed. This paragraph is difficult to follow. In addition the FTT has arguably inverted the standard of proof at [40].

3. The grounds of appeal have not been clearly or carefully drafted but they raise an arguable error of law."

8. The Respondent filed a Rule 24 reply on 8 February 2021 in the following terms so far as relevant:

"..2. The respondent opposes the appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

3. The judge in considering the appellant's ability to obtain a CSID was alive to the fact that it is highly unlikely a CSID could be obtained from the Iraqi embassy prior to him returning home (Determination ¶139). The judge found that notwithstanding the issue of the embassy in the UK, the appellant's evidence led him to find that the appellant was in possession of his CSID; could either obtain a registration document to return or obtain his CSID from the German authorities.

4. Those findings were open to the judge on the evidence presented and the judge has given a full reasoned consideration as to why he has found so. The grounds do not address why it would not be an option for the appellant to obtain his documents from the German authorities, nor has any evidence been submitted to suggest such an attempt has been made. The grounds and/or the evidence before the tribunal at the appeal did not show that the appellant CSA office in his home area has been transferred over to the new INID system at the date of the hearing. In light of the above, it will be submitted that the determination does not contain a material error of law."

9. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit

the appeal to the First-tier Tribunal to do so. The hearing was conducted remotely with the agreement of the parties. There were no technical issues affecting the conduct of the proceedings. I had before me a core bundle of documents relating to the appeal including the Respondent's bundle, the Appellant's bundle as before the First-tier Tribunal, and as loose documents the documents to which I refer at [5] above and the letter from the German authorities to the UK Dublin/Third Country Unit to which I refer at [2] above.

DISCUSSION AND CONCLUSIONS

10. I begin with what is said at [40] of the Decision since it is that paragraph which formed the basis for oral submissions made to me. That reads as follows:

"The Appellant has sent an email which does not bear a date nor provide any details other than his name to the Iraqi consulate in Manchester. The fact the Appellant states he was refused asylum in Germany and that his CSID card is with the German authorities leads me to find that this email is not sufficient to enable him to demonstrate that he cannot be documented. He would have been given paperwork when he claimed asylum, he would [have] correspondence in connection with his asylum claim and would also have his refusal letter. In my judgement, his unwillingness to share this documentation or any further details of his interaction with the German authorities with the Respondent to enable a more informed approach to be made to the German authorities to obtain his CSID (or the French authorities if that was where he claimed asylum)) or alternatively, to share the information with his representatives so that an approach could be made on his behalf to recover his CSID does not enhance his credibility. It is, therefore, reasonably likely that he either still has the CSID in his possession or that he would be able to obtain the details from it to enable him to be redocumented reasonably quickly when he returns to Iraq."

11. Although I do not understand the Appellant to resile from what he said when interviewed about this issue, I set out the basis on which the Judge was led to believe that the German authorities are in possession of the CSID and, as I understand it, also his passport. At 1.8 of the screening interview, when the Appellant was asked the whereabouts of his passport, he said that it was in Germany as he had "previously claimed there". He said he had been fingerprinted in Germany in 2016 and he had left Germany three days ago in a lorry and travelled to the UK. As an aside, I note that this is inconsistent with what the German authorities now say. When asked whether he had any additional documents, he said that he would "be able to get the documents sent to [him] from Germany".

12. The Appellant was then asked a series of questions during his asylum interview about his CSID as follows:

"Q39: I'm going to ask you some questions about Iraq, do you have a civil status identity document?

A39: Yes

Q40: Where was it issued?

A40: In Halabja

Q41: Where is it now?

A41: [Applicant shrugs shoulder - advised I need verbal answers for the recording I don't know]

The Appellant then told the interviewer that he would be able to get the CSID if he returned to Iraq. He told the interviewer that he had claimed asylum in Germany, but that his claim had been refused in March/April 2017.

13. As I refer to at [2] above, the German authorities refused the Respondent's take-back request. The letter provides a reference of 7516521-438 and gives the address of the part of the authority from which it emanates. That is however from the authorities dealing with the take-back request who are not or not necessarily those who would have dealt with the Appellant's asylum claim. The letter provides four alternative names for the Appellant all with the date of birth of 15 December 1990 and area of origin as Halabja, Iraq.
14. I accept as Ms Brakaj pointed out that the Respondent did not assert in her reasons for rejecting the claim on the documentation aspect that the Appellant could get his documents from the German authorities. She did accept that this issue was raised in the course of the case management hearing for this appeal. However, Ms Brakaj directed my attention to what was said as recorded in the Directions made by Judge Gumsley. It is there recorded that the Home Office representation had indicated that "further consideration would be given as to whether the German authorities still retain the Appellant's CSID."
15. I accept Ms Brakaj's submission that there is no indication that the Appellant has been obstructive about providing documents or information to the Respondent in connection with the documents which are or may be held by the German authorities. Ms Brakaj told me, presumably on instructions, that the Appellant had not brought any of his documents in relation to the asylum claim in Germany with him. He had been picked up and claimed asylum on arrival and she therefore submitted that the Respondent would have any documents which he had with him at the time. I accept that it is probably the case that the Appellant did not bring those documents with him, not least because it appears from the letter from the German authorities that between that claim and arriving in the UK, he had also claimed asylum in France.
16. I do not however consider that this makes any material difference to the Judge's reasoning in relation to paragraph [40] overall. I do not consider that the Judge was right in her assumption that the Respondent could play any part in obtaining the documents from the German authorities. Leaving aside that the Dublin regulation is no longer in force and therefore the Respondent will not have the same degree of interaction with other EU member states as previously, the contact made concerns the operation of the Dublin regulation. That contact deals only with the appropriate member state for determination of the asylum claim. Whilst it may be the case that a member state transferring an individual under the terms of the Dublin

regulation also transfers any documents held (although I do not know that to be the position), that is not what occurred in this case. The contact between member states may be useful for the obtaining of information. However, I can see no basis on which the authorities of an EU member state could, via the Dublin regulation mechanism or otherwise, be required to transfer to the UK (particularly when it is no longer an EU member state) identity documents which belong to an individual asylum seeker.

17. By contrast, since those documents are the property of the Appellant, he would have every right to ask for them and to expect them to be returned to him if they are indeed held by the German (or even the French) authorities.
18. Ms Brakaj submitted that it was for the Respondent to obtain the documents. In support of that submission, she pointed out that, in the UK, the Home Office holds identity documents such as passports where an asylum claim is made until such time as the claim is determined and, if appropriate, the individual is about to board a plane. That might explain why the German authorities would be holding the Appellant's passport, if he left without telling them that he was going. However, it gives no indication as to the appropriate course for recovering such documents after the Appellant has left.
19. It was open to the Judge to suggest that the Appellant could obtain these documents. As I have pointed out, they are his personal property, and he could therefore demand their return. The lack of any reference number or address to contact is no answer to this. It is evident from the letter refusing the take-back request that the German authorities are able to trace the Appellant using only his name, birth date and nationality (as would be the case also in the UK). The Appellant will know at the very least where he was living in Germany and therefore the appropriate area in which his claim was made. It may be the case (although I have no evidence in this regard) that he had a lawyer in Germany in connection with his asylum claim who would be able to help him to make the relevant contact.
20. In answer to this point, however, Ms Brakaj made what I consider to be a cogent submission namely that the failure to seek out the documents should not have been held against the Appellant where he was not on notice that he was expected to take such action. I accept that the Appellant had indicated that he could get his documents from Germany. As Ms Brakaj submitted, it may well be that he hoped that the documents would be sent on to him. The fact that the issue was not raised in the Respondent's refusal letter would not have mattered since the issue was identified at the CMR. However, the Home Office having indicated that it would consider whether the documents could be obtained from Germany, I consider it was procedurally unfair to blame the Appellant in the way the Judge does at [40] of the Decision for failing to obtain the documents. Put another way, if this issue had been canvassed at the hearing, an explanation for that failure might well have been forthcoming as it was before me. Absent the

opportunity to deal with the point, it was not a reason to conclude that the Appellant has or is able to get the CSID prior to return.

21. I appreciate that the grounds appealing the Decision are not explicitly formulated in that way. However, the fairness issue is inherent in what is said at [9] and [10] of the grounds.
22. I am for that reason satisfied that there is an error made by the Judge at [40] on the basis that the points there made were taken in a manner which was procedurally unfair to the Appellant.
23. Mr Clarke also accepted that there was an error at [43] of the Decision. What is there said about the Appellant being able to obtain his CSID in Baghdad and travel to the IKR is inconsistent with SMO and the CPIN. As he submitted and I would have accepted, that would make no difference if the finding that the Appellant could and should have obtained his CSID or other identity document from Germany was upheld. However, although it may still transpire that the Appellant is able to do so, given my conclusion regarding [40] of the Decision, this section of the Decision will in any event need to be set aside.
24. It was agreed between the parties that, since there is no challenge to the Judge's findings in relation to the individual asylum claim, it is appropriate to preserve those findings. I therefore preserve the findings made up to and including [35] of the Decision and the conclusion that the appeal fails on protection grounds under the Refugee Convention. I set aside the remainder of the Decision.
25. Since what remains is a very narrow issue, it was agreed that the appeal should remain in the Upper Tribunal. It was also agreed that since SMO is to be revisited following remittal by the Court of Appeal and may provide more up-to-date guidance about identity documents in Iraq, it would be appropriate for the resumed hearing to be listed after the further country guidance is given. In any event, a reasonable period will need to be given in order for the Appellant to make enquiries of the German (and if appropriate French) authorities about any documents which they continue to hold. I have given directions below to deal with those points.

DECISION AND DIRECTIONS

The Decision of First-tier Tribunal Judge Hands promulgated on 5 November 2020 involves the making of an error on a point of law but only in relation to paragraphs [36] onwards of the Decision and the outcome dismissing the appeal on humanitarian protection and human rights grounds. I therefore set aside those paragraphs and the dismissal of the appeal on those grounds. I preserve paragraphs [1] to [35] of the Decision and the outcome dismissing the appeal on protection grounds under the Refugee Convention.

I make the following directions for the resumed hearing:

- 1. Within two months from the date when this decision is sent, the parties shall file with the Tribunal and serve on the other party any additional evidence on which they seek to rely at the resumed hearing. This shall include evidence from the Appellant concerning enquiries made of the German asylum authorities (and if appropriate the authorities in France) as to documents held by them and, if they no longer hold those documents, what has become of them. The Respondent shall use her best endeavours to provide any information which the Appellant may reasonably need in order to assist him in the making of those enquiries.**
- 2. The appeal will be listed for a CMR (to be held remotely via Teams or similar) on the first available date after three months from the date when this decision is sent in order that the position as regards the enquiries can be clarified and also in order to update the position in relation to the pending country guidance case of SMO and others. Time estimate: one hour.**
- 3. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents which should continue to be sent by post.**
- 4. Service on the Secretary of State may be to [email] and on the Appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.**
- 5. The parties have liberty to apply to the Tribunal for further directions or variation of the above directions, giving reasons if they face significant difficulties in complying.**

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 27 May 2021

APPENDIX 2: CMR DIRECTIONS



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09159/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft
Teams
On Tuesday 14 September 2021**

**Directions sent
14 September 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**M M A
[Anonymity direction made]**

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DIRECTIONS FOLLOWING CMR

BACKGROUND

1. By a decision promulgated on 7 June 2021, I found an error of law in part of the decision of First-tier Tribunal Judge Hands itself promulgated on 5 November 2020. I set aside that part of Judge Hands' decision which related to the issue whether the Appellant could return to Iraq which in turn related to whether the Appellant could obtain identity documents in order to do so ("the documentation issue").
2. At the heart of the documentation issue lay a question which required on the last occasion to be resolved concerning documents held by the German authorities from the time when the Appellant claimed asylum there. I gave directions in my June decision for the Appellant to make enquiries of the German authorities to obtain his documents or at least copies of them. I gave the parties two months from the sending of my decision to file and serve evidence about the enquiries made and documents received.
3. By an email dated 13 August 2021, the Appellant's previous solicitors informed the Tribunal that "[the Appellant's] documents [had] now been received from the German authorities". The email informed the Tribunal that the solicitors were taking instructions and would contact the Tribunal again by 19 August 2021. So far as I can see, no further communication was received in August although Mr Avery suggested that the solicitors had notified the Home Office that they were no longer acting. Be that as it may, on 13 September 2021, an email was received from those solicitors indicating that they no longer represented the Appellant and asking that the remote hearing link be sent to him.
4. So it was that the Appellant attended the CMR in person. He informed me that his English language ability was limited which I accept. He also said that, although he had contacted other firms of solicitors to represent him, none would do so (understandably) without payment and he could not afford to pay them. There was in any event no intention of hearing the appeal substantively on this occasion. I therefore informed the Appellant that I would re-list the hearing with a suitable time delay to allow him to find a solicitor if he could and otherwise to ensure that an interpreter was present to assist him in making submissions and giving evidence.
5. I also informed the Appellant that I would be directing him to serve on the Respondent and file with the Tribunal copies of the documents he had received from Germany. It was at this point that the Appellant said that he had lost those documents on a train to Sheffield when he had left his bag on a train and, although he had left his address with a man at Sheffield station, the bag had not been returned to him. I indicated that, if that were the case, the Tribunal would expect full evidence about when and where he had lost the documents, what those documents were and what steps he had taken to report the loss. If the documents included identity documents such

as his CSID and/or passport, I would have expected that he would report the loss to the police as those are important documents. If the documents did not include identity documents, he could provide evidence in the form of a witness statement confirming that and indicating what the documents were. The Respondent would be likely to wish to cross-examine him about the documents and the events which he outlined.

6. As Mr Avery also pointed out, since the Appellant's previous solicitors had obviously seen the documents, they might be expected to have retained copies. I agreed this was likely and indicated that I would also make a direction that the Appellant contact them to obtain copies.
7. Having considered the matter further, I have also made a direction that the Appellant's previous solicitors provide the Tribunal with a copy of the documents independently if they have them or a statement confirming that they do not hold copies (and if they do not, what those documents were and why they have not retained copies). I consider that rule 5(3)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Rules") enables me to make that direction. I also have the power to compel the solicitors to provide those documents under rule 16(1)(b) of the Rules (since I can see no reason why those documents would attract privilege) but I would hope that it is not necessary to take that step.
8. Finally, if the documents received from the German authorities did not include identity documents, then the Tribunal's country guidance decision in SMO may remain relevant. The next hearing in that matter is in early October. The position in that regard should therefore be clearer by the time of the hearing of this appeal.

DIRECTIONS

I make the following directions for the resumed hearing:

1. **Within 28 days from the date when these directions are sent, the Appellant must file with the Tribunal and send to the Respondent (the Home Office) copies of the documents which he received from the German authorities (not the originals). In the event that he no longer has those documents or copies of them, he must contact his previous solicitors to seek to obtain copies from them and file and send those copies. In the event that he is unable to provide copies of the documents, he must file with the Tribunal and send to the Home Office a witness statement signed by him and including a statement of the truth of what he says dealing with the following matters:**
 - (a) **What the documents were which he received from Germany;**
 - and**

- (b) Why he no longer has the documents including the date, time and circumstances in which he lost them and what steps he has taken to seek to recover them.**
- 2. These directions are to be sent also to the Appellant's previous solicitors, Iris Law Firm, 1st floor, Kent House, Church St, Gateshead, NE8 2AT. Within 28 days from the date when these directions are sent, the senior person dealing with immigration matters within that firm shall file with the Tribunal and serve on the Respondent copies of the documents received on the Appellant's behalf from the German authorities. In the event that the solicitors have not retained copies, that person shall file with the Tribunal and serve on the Respondent a witness statement signed by him or her and including a statement of truth explaining what the documents were and why they have not retained copies. If the solicitors object to production of the documents, they must explain in writing the basis on which the objection is made.**
 - 3. The appeal will be listed for a resumed hearing (to be held remotely via Teams or similar) on the first available date after six weeks from the date when these directions are sent. A Kurdish Sorani interpreter is to be booked for the hearing. Time estimate: ½ day.**
 - 4. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents which should continue to be sent by post.**
 - 5. Service on the Secretary of State may be to [email] and on the Appellant, unless any contrary instruction is given, to [email].**
 - 6. The parties have liberty to apply to the Tribunal for further directions or variation of the above directions, giving reasons if they face significant difficulties in complying.**

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 14 September 2021