



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09942/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 22nd November 2022**

**Decision & Reasons Promulgated
On the 06th December 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**HHA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Sobowale, of Counsel, instructed by Rodman Pearce Solicitors Ltd

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Interpretation:

Ms B Karimi in the Kurdish Sorani language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iraq born in July 1987. He arrived in the UK in 2015 and claimed asylum. He is of Kurdish ethnicity. His claim centred around his claimed fear of a real risk of serious harm arising out of a relationship outside marriage with the daughter of a senior peshmerga. His application was refused, and his appeal was dismissed by First-tier Tribunal Judge Juss in a determination promulgated on the 23rd December 2019.
2. Permission to appeal was granted on the basis that it was arguable that the First-tier Judge had erred in law in relation to the determination of the appeal with respect to whether the appellant could obtain a replacement CSID prior to return to Iraq. An error of law was found by consent on this point alone, and the decision of the First-tier Tribunal was set aside by Upper Tribunal Judge Sheridan in a decision promulgated of 16th October 2020. The error of law decision is attached to this decision as Annex A.
3. The remaking of the appeal came to me pursuant to a transfer order. It was listed for remaking before me on 3rd May 2022 but adjourned with directions for the respondent to use her best endeavours to make enquiries about whether the CSID or INID system of identity documentation was operational in the Makhmur district. The relisted hearing on 31st August 2022 had to be adjourned again due to lack of any certain information on the operation of these systems having been obtained by this point in time. I issued further directions for the respondent to attempt to clarify the response they had received from the Iraqi authorities dated 7th July 2022, and in particular to clarify whether the CSID or INID system operates for Makhmur town, and whether Makhmur town was in Makhmur district. It was possible that Makhmur district might be administered by Nineveh Governorate, or might have reverted to being administered by Erbil, or might have no effective administration by either at the current time. These were issues that needed to be clarified and the respondent was asked to use her best endeavours to do so.
4. The matter comes before me now to remake the appeal with the key factual issue being whether or not the appellant will be able to obtain a CSID prior to returning to Iraq, and thus whether his appeal falls to succeed, or not, on Article 3 ECHR grounds.
5. At the start of the hearing Ms Everett and Mr Sobowale had a short discussion to try to narrow the issues. I provided them with extracts from the European Union Agency for Asylum Country Guidance: Iraq Common analysis and guidance note dated June 2022 which made some observations about Makhmur in the general remarks and subsidiary protection sections, the Wikipedia entry for Makhmur district, and two maps of the Makhmur area of Iraq.

6. At the end of their discussion Ms Everett summarised the position of the Secretary of State as being that despite the best endeavours of Mr Whitwell (senior presenting officer) it had not been possible to obtain any clarification of the 7th July 2022 emails from the Iraqi authorities or to obtain a clear picture of the civil status administration or whether CSIDs continued to be issued in Makhmur in any other way. She accepted for the respondent that the appellant was from Makhmur as he had set this out consistently in his claim. She said that she was in essence without instructions about the factual situation and was careful to make it clear that she could not therefore put forward a position for the respondent on the situation in this area of Iraq.

Evidence & Submissions - Remaking

7. The appellant's relevant evidence to determining the issue before me was agreed to be that he was born in Makhmur town, in Makhmur district, which was part of Mosul district, which in turn came at the time of his birth under the governate of Ninewah. It is accepted by the respondent that he was part of the peshmerga fighting ISIS in 2013/2014 in this area. He says his original CSID was lost when ISIS took control of the area where he was living, and that his passport was taken by the agent who brought him to the UK. The position of the respondent in the reasons for refusal letter is that the appellant can obtain a replacement CSID document by approaching the Iraqi Embassy or through friends and relatives acting as his proxy in Iraq. He says he cannot obtain a CSID through family/ with the help of his family as he has none to assist him: his father died in 1991; and his mother, a maternal uncle and two married sisters have moved away from the area. He says he does not remember his family book details.
8. Ms Everett confirmed that as per the reasons for refusal letter the removal of the appellant would be to Baghdad. She submitted that I should consider that the burden of proof to show he would be subject to a real risk of serious harm was ultimately on the appellant, but accepted that the respondent had been unable to assist in providing information about whether the CSID or INID system operated in Makhmur.
9. Mr Sobowale submitted that as per paragraph 67 of the decision of the Upper Tribunal SMO & KSP (civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) the respondent was more likely to be able to obtain information as to whether a given Civil Status Affairs Office (CSA) office issues CSID or INID documents and would be prepared to make the necessary enquiries so long as the appellant gives clear information regarding their place of registration. This appellant had given the required information in his statement of November 2020, and thus prior to the decision in SMO, making very clear his CSA office is the one in Makhmur. The expert information in SMO at paragraph 64 indicates that all offices in Mosul bar those listed (which does not include Makhmur) continue to issue the CSID. However, the email from the Iraqi authorities dated 7th July 2022 gives a list of CSA offices in Mosul/Ninewah which

continue to issue the CSID, and this does not include Makhmur, and states that the rest of Iraq has gone over to the INID system of civil status documents. There is no evidence before the Upper Tribunal that the offices listed (Shiekhan, Sinjar, North, Qahtaniyah, Zeltan, Al-Baaj, Wanh and Shura) issue CSID to those in Makhmur or that they are in Makhmur district. Mr Sobowale argues therefore that it has been shown to the required standard of proof by the appellant on this evidence that Makhmur has gone over to the INID system, and that therefore the appellant would be subject to an Article 3 ECHR real risk of serious harm if returned to Iraq as he has no CSID, cannot obtain one from the Iraqi Embassy before travelling to Iraq and would have to travel from Baghdad to Makhmur to obtain his INID. Travel without a CSID or INID comes with Article 3 ECHR risk as per SMO.

10. In the alternative, if it were concluded by the Upper Tribunal that the appellant could potentially obtain a CSID document, as contrary to the above submission it was found that this system still operates in Makhmur, then it is argued that the appellant has no contact with his mother and married sisters, and has had no contact for a long time so could not obtain information or assistance from them. It is also contended, in accordance with paragraphs 83-85 of SMO, that this appellant is likely to be telling the truth when he says he does not remember the relevant details of his family book because he has had very little education and interaction with authority. He had three years of primary education, then worked as a farmer until he became a peshmerga, which he did until he left Iraq in 2015. As a peshmerga he had an identity document, which he provided to the respondent as part of his asylum claim, relating to this work which is not government issued and therefore does not include family book details. The information going to this issue was provided by the appellant to the respondent prior to SMO, and so cannot be said to have been tailored to meet the SMO requirements.

Conclusions - Remaking

11. In SMO the civil status identity document guidance is set out at C of the headnote. It is noted that the CSID is being replaced by the biometric INID in Iraq, and that it is necessary to have one of these two documents to be able to live and travel within Iraq without encountering treatment or conditions that are contrary to Article 3 ECHR. The CSID might be replaceable in the UK if the appellant knows the necessary volume and page references of his family book, but an INID would need to be acquired in Iraq at the Civil Status Affairs Office (CSA) of the appellant's birth.
12. I find that the appellant's relevant CSA is Makhmur and that his original CSID was lost during fighting with ISIS in this region in 2014.
13. Mr Sobowale has drawn my attention to the fact that the decision in SMO also contains information about the CSA offices which continue to

issue CSIDs in the Mosul district as at July 2021, but that is clearly superseded/clarified by the information in the emails of 7th July 2022 from the Iraqi government as to the offices in Mosul/Ninewah which continue to issue the CSID documents. Makhmur is not on this list. I am satisfied from the European Union Agency for Asylum Country Guidance: Iraq Common analysis and guidance note, June 2022, page 196 that Makhmur has “undetermined” administrative status. This is consistent with the guidance in SMO at 3 that Ninewah is one of the former contested areas in Iraq where there can be issues, depending on personal characteristics of an appellant, which mean the risk from indiscriminate violence amount to an Article 15(c) risk. I find on the information before me, on the balance of probabilities, that there is currently no operational CSA office issuing CSID documents in Makhmur for those like the appellant would be born in Makhmur because it has no determined administrative status according to EU Iraq guidance note dated June 2022 and because it is not on the list of offices issuing CSIDs provided by the Iraqi government in their email of 7th July 2022.

14. As a result, I find that the CSID system does not apply to this appellant and instead he would have to seek an INID card on return to Iraq, although how successful that would be if the district has undetermined administrative status, and maybe suffering from their records having been destroyed by ISIS I am not sure. I do not need to determine this issue however as it suffices that I find that the appellant could not go to the Iraqi Embassy in the UK and obtain a replacement CSID by providing details of his family book even if he were able to remember those details. In this connection I note that the appellant said at his asylum interview that he is illiterate (answer to question 20 of his asylum interview) is from a farming background and, from his 2020 statement, note that he works in the UK as a barber. He had an alternative peshmerga identity paper which he used in Iraq prior to leaving in 2015. Considering the totality of the evidence I find it credible that the appellant would not personally remember his family book details. I note that my attention has not been drawn to any contact with paternal relatives who could provide him relevant with family book information, and the evidence of family in Iraq from the asylum interview in 2019 and the appellant’s statement of November 2020 is only of contact with maternal relatives: mother, sisters and a maternal uncle. I therefore find that the appellant could not obtain his relevant family book details via contact with relatives in Iraq. Thus, in the alternative, even if I am wrong and the CSID system continues to operate in Makhmur, I find that the appellant could not obtain a replacement CSID prior to travel to Iraq.
15. As such I find that the appellant would, if returned to Baghdad, as proposed by the respondent, be without a CSID and access to obtain an INID and would be at Article 3 ECHR risks on arrival in Baghdad and when travelling to his home are from Baghdad. He is therefore entitled to succeed in his appeal on this basis.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. Upper Tribunal Judge Sheridan set aside the decision of the First-tier Tribunal dismissing the appeal.
3. I re-make the decision in the appeal by allowing it on Article 3 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley
2022

Date: 23rd November

Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision

DECISION AND REASONS

1. The appellant is a Kurdish citizen of Iraq born in July 1987. He entered the UK in 2015 and claimed asylum. His claim, in summary, is that he fears reprisals following the discovery of an illicit relationship with the daughter of a senior figure within the Peshmerga, for whom he worked as a bodyguard.
2. The appellant's asylum application was rejected by the respondent. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Juss ("the judge"). In a decision promulgated on 23 December 2019 his appeal was dismissed. The appellant is now appealing against that decision.
3. The judge did not accept the appellant's account and found that he would not face any risk on return to Iraq.
4. At paragraph 20 of the decision the judge considered whether the appellant would be able to obtain a CSID. Applying the then extant country guidance case *AAH (Iraqi Kurds - internal relocation) Iraq (CG)* [2018] UKUT 00212, the judge found that it was likely the appellant would be able to obtain one as, inter alia, he would have the assistance of his paternal uncle, who had facilitated his exit from Iraq.
5. The grounds of appeal identify a single issue, which is that the appellant was assisted by his maternal, not paternal, uncle.
6. The respondent accepted that the judge erred.
7. It was common ground that the only issue to be determined in the remaking of the decision is whether the appellant would be able to obtain a replacement CSID whilst in the UK or within a reasonable time of returning to Iraq and that this issue should be determined in accordance with *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 (IAC), which has replaced earlier country guidance.
8. I heard submissions from both Mr Sobowale and Ms Cunha on the CSID issue for the remaking of the decision. Having considered these, along with *SMO*, I have reached the conclusion that, in order to deal with the remaking of the decision fairly and justly, there will need to be further fact finding.
9. I have therefore decided to adjourn the hearing in order for the question of whether the appellant will be able to obtain a CSID prior to, or within a short time of, arriving in Iraq to be determined following a hearing at which the appellant will be able to give evidence (and be cross examined) on facts relevant to this issue.

Notice of Decision

10. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
11. The decision will be remade at a resumed hearing in the Upper Tribunal.
12. The issue to be determined at the resumed hearing is whether the appellant will be able to obtain a CSID prior to, or within a short time of, arriving in Iraq.

DIRECTIONS

13. I have reached the provisional view that the hearing for the re-making of this decision can and should be held remotely, by Skype for Business.
14. No later than 7 days after these directions are sent by the Upper Tribunal:
 - (a) the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and
 - (b) without prejudice to the Upper Tribunal's consideration of any such objections, the parties shall also file and serve contact/join-in details, were the hearing to take place remotely by the means currently proposed.
15. If there is an objection to a remote hearing, the Upper Tribunal will consider the submissions and will make any further directions considered necessary.
16. If there is no objection to a remote hearing, the following directions shall apply.
 - (a) The parties shall, when complying with these directions, have regard to the Upper Tribunal Immigration and Asylum Chamber, Presidential Guidance Note No.1 2020: Arrangements during the COVID-19 Pandemic.
 - (b) The parties shall, within 21 days of the date of this notice being sent, file with the Upper Tribunal and serve on each other any evidence that they intend to rely on that was not before the First-tier Tribunal.
 - (c) In addition, the appellant shall, within 21 days of the date of this notice being sent, file with the Upper Tribunal and serve on the respondent a witness statement in which he addresses all issues relevant to his possession of and ability to obtain a CSID, having regard to the matters identified as relevant to this in *SMO*.

- (d) Within 7 days of receipt of the appellant's witness statement, the respondent will notify the appellant and the Upper Tribunal whether she intends to cross-examine the appellant.
 - (e) Unless the respondent states, in accordance with paragraph 16(d), that she does not intend to cross-examine the appellant, an adverse inference will be drawn if the appellant fails without good reason to make himself available at the resumed hearing for cross-examination.
 - (f) The parties shall file with the Upper Tribunal and serve on each other skeleton arguments at least 7 days before the resumed hearing.
 - (g) The appellant shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on at the hearing. The bundle should be compiled and served in accordance with paragraphs 23 - 26 of the Presidential Guidance Note at least 7 days before the resumed hearing.
17. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.
18. Documents and 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. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

9 October 2020