



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

Appeal Number: PA/12223/2019

THE IMMIGRATION ACTS

**Heard on 7th September 2020
At Civil Justice Centre (remote
hearing)**

**Decision & Reasons Promulgated
On 10 September 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**KI
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Ms Smith, Counsel instructed by Barnes Harrild and
Dyer Solicitors**

**For the Respondent: Mr McVeety, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1997. He appeals with permission against the decision of the First-tier Tribunal (Judge JK Thapar) to dismiss his appeal on protection and human rights grounds.
2. The Appellant's case before the First-tier Tribunal included the following submissions:

- i) Notwithstanding the decision of the Upper Tribunal in SMO and Others (Article 15(c): identity documents) Iraq CG [2019] UKUT 400 (IAC) to the effect that conditions in the formerly 'contested territories' no longer engaged Article 15(c) of the Qualification Directive as far as the general population was concerned, he could demonstrate that he fell into an enhanced *Elgafaji* risk category because he was a Sunni Kurd from Mosul;
- ii) As an undocumented returnee his appeal fell to be allowed pursuant to Article 3/Article 15(b) of the Qualification Directive because he would not be able to make the journey from Baghdad to his home area without encountering conditions that amounted to inhuman and degrading treatment.

3. In respect of (i) the First-tier Tribunal makes no findings. In respect of (ii) the Tribunal noted that there were material discrepancies between the Appellant's evidence about his documentation and what he had told an earlier Tribunal (chaired by Judge Brookfield in 2018). Now he said that he had never been issued with a CSID, despite being 19 when he left Iraq; in 2018 he is recorded as having told Judge Brookfield that he gave his CSID to an agent in Turkey. Although the Appellant had attended the Iraqi embassy in London to ostensibly obtain new documents, he did not do so in good faith. He had failed to demonstrate that he had provided the kind of information that would have been required. In any event, the Tribunal found, he has family in Iraq who could assist him in obtaining a new CSID once there.

4. Ms Smith's point on (i) was predictably brief. Her lay client was entitled to have his protection submissions dealt with. The failure to do so amounted to an error of law. Mr McVeety agreed, and so do I.

5. On point (ii) the parties were also in agreement. The Appellant is not from the IKR, but from Iraq proper. As such he will be returned to Baghdad. The question for the Tribunal, applying SMO, was therefore a simple one. Will the Appellant be able, within a reasonable time of arriving in the country, be able to obtain the relevant documentation to enable him to safely travel home and/ or support himself.

6. The First-tier Tribunal's first conclusion on this point, that he may be able to obtain a new document in London, fails to take material country guidance into account: in three successive country guidance cases¹ Dr Fatah has given extensive evidence about the difficulties in obtaining any assistance from the embassy in London. His accepted evidence has consistently been that although it remains *possible* to obtain documentation from the embassy here, the reasonable likelihood of someone being unable to do so must be evaluated in light of the multiple obstructions to the operation of good

¹ SMO, AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) and AAH (Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC)

administration on the part of the Iraqi authorities: the de-Ba'athification of the civil service, corruption, inefficiency and that in the context of many millions of undocumented Iraqis the problems of individual returnees are seen as "trivial". The fact that this evidence is uncontested is confirmed by the current CPIN: as of June 2020 the Respondent has adopted the position that it would be "highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the United Kingdom" [CPIN Iraq: *Internal relocation, civil documentation and returns* at 2.6.16].

7. The First-tier Tribunal's alternative case theory was that the Appellant has family in Iraq who could assist him in obtaining a new CSID. On this point, Ms Smith submits, the Tribunal failed to address at all the evidence set out in SMO about the new INID system in operation in in most of Iraq. If, as Ms Smith submits, the civil registry for Nineveh is operating this new system, it matters not whether the Appellant has relatives there, since the Iraqi authorities will not issue the new cards to a proxy: the point of the INID is that it contains biometric data which can only be obtained from the holder in person.
8. The decision of the First-tier Tribunal is therefore set aside by consent. The questions to be decided in remaking are:
 - a) Whether the Appellant requires international protection under Article 15(c);
 - b) In respect of Article 15(b) whether the Appellant will be able, within a reasonable time of arriving in Baghdad, be able to obtain valid identity documentation enabling him to travel, work and obtain essential services such as housing.
9. The parties agreed that these issues are likely to necessitate live evidence being called and extensive findings of fact such that a remittal to the First-tier Tribunal would be appropriate.

Anonymity Order

10. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decision and Directions

11. The decision of the First-tier Tribunal is set aside for error of law.
12. The decision in the appeal is to be remade in the First-tier Tribunal
13. There is an order for anonymity.

Upper Tribunal Judge Bruce
7th September 2020