



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002525
(PA/51324/2021); IA/02949/2021**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 8 December 2022**

**Decision & Reasons Promulgated
On the 05 January 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SAMI YOUSEF HUSSEIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Rutherford, instructed by Halliday Reeves Law Firm

For the Respondent: Mr Gazge, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a citizen of Iraq of Kurdish ethnicity from Kirkuk. He claims to have arrived in the UK on 20 November 2008. He claimed asylum on 24 November 2008, giving a date of birth as 25 December 1992 and producing his

Iraqi identity card (CSID) as evidence of his identity and age. However, following an age assessment, the appellant was assessed as being older than claimed and was assigned a date of birth of 1 January 1983. No weight was given to the identity card because it had not been accompanied by a translation. The appellant's asylum claim was refused on 27 October 2010. He appealed against that decision and his appeal was dismissed on 2 December 2010. He became appeal rights exhausted on 14 February 2011.

3. The appellant made further submissions on 5 April 2013 which were refused on 7 May 2013, further submissions on 16 January 2015 which were refused on 24 September 2015 and further submissions again on 26 November 2020. The most recent submissions were treated as a fresh claim but that claim was refused, with a right of appeal on 25 February 2021.

4. The appellant's claim, as initially stated, was that he was at risk on return to Iraq because of his father's previous work for the Ba'ath Party. The appellant claimed that his father was actively involved in the party and as part of his role had harmed both Arabs and Kurds. As a result he was shot and killed in 1996. The appellant claimed to have been threatened himself by two men in October 2008 when he was working in his uncle's shop and to have been beaten up by them and received a broken nose. The men threatened to return and kill him. The appellant claimed that he then returned home and his family sent him out of Iraq. The respondent, in refusing the appellant's claim on 27 October 2010, did not consider his claim to be credible and found him to be at no risk on return to Iraq.

5. In a decision promulgated on 2 December 2010, Immigration Judge MacDonald doubted that the appellant had told the truth about his age but accepted the core of his claim, namely that he had been targeted by two men who wanted to harm him because of his father's activities, and found that he would not be safe in his home area. Judge MacDonald noted that the appellant was relying upon an arrest warrant but did not accord any weight to the document and found that the appellant could safely and reasonably relocate to another part of Iraq. He dismissed the appeal on that basis.

6. The appellant's fresh claim, dated 23 November 2020, relied upon the guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 and was made on the basis that he was at risk of serious harm if he returned to Iraq as he could not obtain a replacement CSID and could not return to Kirkuk or relocate to the IKR without a CSID. It was claimed, further, that the appellant was at risk of being perceived as affiliated with ISIS due to his father's Ba'athist past and of being persecuted on that basis and that he was also at risk from the Shia militia as a Sunni Kurd.

7. In refusing the appellant's application, the respondent did not accept that he was at risk as a Kurdish Sunni Muslim or on any other basis. With regard to his documentation, the respondent noted that the appellant had previously submitted his Iraqi ID card to the Home Office and that, since he had managed to obtain the document from his family in Iraq, he would be able to obtain a

new copy of his CSID and use that to travel from Baghdad to Kirkuk or to another part of the country.

8. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Juss on 8 April 2022. In support of his appeal, he produced an appeal bundle and a supplementary bundle. In the latter he produced a copy of the CSID card submitted to the Home Office and an authentication report relating to the CSID concluding that it was not a reliable document. Judge Juss found there to be no reason why the findings of the previous Tribunal rejecting the appellant's claim should not still apply and he concluded that the appellant could therefore safely and reasonably relocate to another part of Iraq. As for documentation, Judge Juss found that if the CSID already produced was not a genuine document then it must be possible for the appellant to procure a genuine one on return to Iraq from his mother and uncle whom he found were still living at their home address. The judge found that the appellant could return to Iraq on the existing CSID card and that he could voluntarily return directly to Erbil or Suleymaniyah in the IKR and relocate there or return to Kirkuk where the KRG authorities could protect him. He found that the appellant would not be at risk as a Sunni Muslim or as a Kurd and he accordingly dismissed the appeal.

9. Permission to appeal to the Upper Tribunal was sought on the grounds that the judge had erred in law by finding that the appellant could utilise the CSID he had in his possession or obtain a replacement one. With regard to the former he had failed to make any finding as to whether the document was genuine and failed to engage with the authentication report. With regard to the latter the judge failed to explain how the appellant could travel to Kirkuk if he did not have a genuine CSID and given that it had previously been found that he was at risk in Kirkuk.

10. Permission to appeal was granted in the First-tier Tribunal and the matter then came before me for a hearing.

11. At the hearing, Mr Gazge conceded that Judge Juss had made material errors of law in his decision and that the decision ought to be set aside.

12. In light of Mr Gazge's concession there is no need for me to make any detailed findings on the error of law, other than to conclude that, in failing to make a finding on the reliability of the CSID card held by the appellant and in failing to provide any proper reasons as to how the appellant could obtain a replacement CSID card or INID card, the judge erred in law in reaching the conclusions that he did. Accordingly I set aside the judge's decision.

13. With regard to the disposal of the appeal both parties submitted that the appropriate course would be for the matter to be remitted to the First-tier Tribunal. I have to agree. This is not simply a case of re-making a decision on the issue of risk on return in relation to documentation where sound findings of fact have been made. There is a need for clear findings to be made on all issues including the credibility of the appellant's claim to remain at risk of persecution in Kirkuk, the reliability of the documentary evidence, and the

ability to obtain documentation. In the circumstances it is necessary for the matter to be heard afresh, with no findings preserved. The appropriate course, as the parties agreed, is for the matter to be remitted to the First-tier Tribunal to be heard *de novo* by a different judge.

DECISION

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Juss.

Signed: S Kebede

Upper Tribunal Judge Kebede
2022

Dated: 8 December