IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002444

First-tier Tribunal No:
HU/52337/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 October 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

BJQ
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Ul-Haq, instructed by Lei Dat & Baig Solicitors
For the Respondent: Mr F Gazge, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 11 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and his uncle are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and his uncle. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant is a national of Iraq and of Kurdish ethnicity. He was born on 15 October 1999 and arrived in the United Kingdom on 31 August 2016, aged 16. He was accompanied by his paternal uncle who I refer to as [SA]. [SA] made a claim for asylum and the appellant was named as a dependent. That claim for international protection was refused by the respondent on 1 March 2017. An appeal lodged by the appellant's uncle was dismissed by First-tier Tribunal Judge Rowlands for reasons set out in a decision promulgated on 22 May 2017. I will return to that decision in due course.

2. In May 2018, the appellant made his own claim for international protection. That claim was refused by the respondent and an appeal against that decision was dismissed by First-tier Tribunal Judge Shergill for reasons set out in a decision promulgated on 18 January 2019. I will return to that decision too, later in this decision.

3. The appellant made further submissions to the respondent in December 2019. He maintained that he will be at risk upon return to Iraq because of the humanitarian and security situation in Iraq. He claimed that he had lost all contact with his family and would be at risk as an undocumented individual who would be unable to enter Iraq, freely move around and gain access to employment and public services. That claim too was refused by the respondent, although the respondent accepted the claim amounts to a fresh claim giving rise to a further right of appeal. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Ford for the reasons set out in a decision promulgated on 24 March 2022.

4. The appellant was granted permission to appeal to the Upper Tribunal and the decision of Judge Ford was set aside for reasons set out in an error of law decision made by Deputy Upper Tribunal Judge Chamberlain and I promulgated on 15 February 2023. We preserved the finding made at paragraph [39] of the decision of Judge Ford. That is:

> "…The appellant is from the village of Zahra Khatun and that the village is in the Mosul province….The appellant is from a village in the former contested area of Mosul in the Nineweh governorate.."

5. The appeal was listed for a further hearing before me to remake the decision. The relevant country guidance is now set out in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO & Others II"), which postdates the previous decisions of the Tribunal. That country guidance bears on the question whether the appellant can safely return to his home area of Zahra Khatun in the Nineweh governorate and/or whether he can live elsewhere in Iraq.

6. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds

for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country.

The evidence before me

7. In readiness for the hearing before me, the appellant's representatives had prepared a consolidated bundle of documents comprising two parts. Part A contains the relevant Tribunal documents including the previous decisions, and Part B comprises of the bundle that had been before First-tier Tribunal Judge Ford at the hearing on 11 March 2022. I was informed that [SQ] has separately made further submissions to the respondent. I was told that the appellant's representatives do not act for [SQ] and they have no information about the claims being made, although he would be giving evidence before me. The evidence of the appellant and [SQ] is a matter of record.

The appellant

8. In summary, the appellant adopted his witness statement dated 17 November 2021 as being true and correct. The appellant claims he fled Iraq because ISIS attacked his village on 8 August 2014. He describes the events of 8 August 2014 that lead to him and his uncle leaving the village and their escape from ISIS. He claims they reached an area where there were Peshmerga who assisted with their transfer to Erbil city. He claims they were taken to a camp and they were then taken to hospital. He claims they "stayed a while at the hospital and then went to the Bahrka refugee camp". He claims that after a short time in the refugee camp, the police came to the camp and accused them of being with ISIS as they were not with the rest of their family. He claims they were told to go and get their family or leave the camp and return to their own area. He claims that he and his uncle then stayed with [TS], a friend of [SQ], for about two years before [TS] was told that there were arrest warrants being issued against them and the police knew that they were staying with him. The appellant claims his home area has now been taken over by Hasht Al Shaabi, a Shia militia who are very brutal, and who do not like Sunni Muslims.

9. The appellant also adopted a second statement dated 17 November 2021 in which he sets out his response to matters referred to by the respondent in her decision dated 10 December 2020. Finally, the appellant adopted a statement dated 9 March 2022 in which he explained that he has received documents from Iraq that are from the Erbil Bahrka Camp and confirm that the appellant and [SQ] *"came to Bharka Camp on 09-08-2014, they were refugees in Bahrka Camp but they are no longer in the camp and we don't have any information about them"*; [Part B, Page 25]. The documents were sent to him by [TS]. [TS] and [SQ] remain in contact, and [SQ] had asked for help in obtaining documentation from the camp to support the appellant's claim. [TS] was able to obtain documents from the camp because he is well known at the camp and involved in charity work there. He claims [TS] has not been able to find the appellant's family and as they

are not related, he would be unable to assist the appellant in re-documenting himself.

10. In cross examination the appellant confirmed he was 14 years old when he left Zahra Khatun and that he had lived in the refugee camp in Erbil for about two months. There was a simple registration process at the camp and they were asked for their details and where they had come from. The appellant said his uncle had not undertaken paid work at the camp but they helped voluntarily unloading trucks when people brought donations. He recalls [TS], who the appellant said was a businessman that brought donations to the camp. The appellant said that he lived with [TS] for a period of about two years between 2014 and 2016. He claims he asked [TS] to help locate his family but he was unable to find out any information about them. The appellant said he has attended the Red Cross offices in the UK and has provided information about his profile and a profile picture. He said he had attended the offices of the Red Cross on his own and had provided the Red Cross with details of his family. The appellant maintained that [TS] had told [SQ] that there was a warrant for their arrest. He was unable to explain how [TS] became aware of the warrant. He claimed that the warrant had been issued because the authorities were suspicious that only the two of them had left the village and travelled to Erbil without the rest of the family. The appellant said that he did not know how his journey to the UK was funded. In response to questions from me, he said that he had no money at all and he had no money when he left the village, or when he was in Erbil.

11. In re-examination the appellant confirmed that in 2018 he had approached solicitors to make his own claim for international protection. He recalled attending a screening interview in London that was followed by a substantive interview in Birmingham. Mr Ul-Haq referred the appellant to the screening interview completed on 4 June 2018, in which the appellant claimed (*Q.4.1)* that he fears his life is at risk in Iraq and that he will be killed by the same people who killed his parents. The appellant claimed that he did not say his parents have been killed, but he assumes they are no longer alive because he has been searching for them for many years and has been unable to find them. The appellant confirmed he is not certain that his parents have been killed but he has heard nothing from them since 2014.

12. I asked the appellant whether he knows about various ID documents that are used in Iraq. He said that he had seen his CSID card in Iraq when he was living with his parents. He could not recall when that was or when that CSID card was issued or obtained. When asked why the family had obtained a CSID card for him, the appellant claimed that his father had told him that everyone in Iraq has to have a CSID card. The appellant confirmed that the CSID card was at home in Zahra Khatun when he last saw it, and he had not taken it with him when he be left the village.

<u>The evidence of [SQ]</u>

13. [SQ] was called to give evidence with the assistance of an interpreter. He adopted his witness statement dated 9 March 2022, in which he confirms

that he and the appellant travelled to the UK together and the appellant was a dependent on his previous claim for international protection. He confirms that he had asked [TS] to obtain documents through his contacts at the Refugee Camp confirming they had lived there. He claims he has provided [TS] with details of their family, although [TS] has been unable to find the family. He claims [TS], as a Sunni Muslim like the appellant and him, is unable to go to the village as it is currently under the control of Hashd Al Shabi and it would be dangerous for him there.

14. In cross examination [SQ] confirmed that he lived in Zahra Khatun with the appellant and his parents. He maintained that they were at home when ISIS came to the house. He claimed everyone was taken outside in a queue and the men were separated from the women. His brother (*the appellant's father)* had been in the same room when ISIS arrived. When asked how he had managed to escape, [SQ] claimed that at the time, ISIS were busy doing the same thing to other neighbours and because it was dark some of them were able to run away. He claimed that he had been handcuffed and that when they were running away they were being fired at. He said that after a while they met the Peshmerga and he was taken to hospital. [SQ] claimed they were then taken to the refugee camp where they stayed for about two months. They left because they were told to search for their families otherwise they would have to leave. [SQ] explained that he worked at the camp as a volunteer with [TS] and [TS] helped out with food and other things. He helped load and unload food and drinks that [TS] brought to the camp. They then moved in with [TS] and he worked in a food and drinks warehouse run by [TS].

15. [SQ] was referred to the evidence that he had previously relied upon as recorded in paragraph 4 of the decision of Judge Rowlands promulgated on 22 May 2017. Mr Ul-Haq accepted that in paragraph [4] of that decision, Judge Rowlands recites the content of a witness statement made by [SQ] on 25 January 2017 that [SQ] had adopted. Mr Gazge reminded [SQ] that in that statement he claims he moved to the refugee camp with his nephew and they stayed there until May 2016. In that statement he claimed that he had a small stall inside the camp selling biscuits and sweets. [SQ] claimed that it was not his stall but a stall owned by [TS] and he would help sell things on a table. All the money was handed to [TS]. [SQ] maintained he had never worked for himself and had always been helping [TS] in the camp or in his warehouse. [SQ] said that he believes his family has been killed but he cannot be sure. He had asked [TS] to help trace their family, but to the best of his knowledge, all [TS] had done was to speak to those in control of the camp to see whether the rest of the family had come to the camp. He did not think [TS] had done any more. [SQ] maintained he had been told about the arrest warrant by [TS]. [TS] was told about the arrest warrant by the local authorities who had said that because [TS] associated with [SQ] and the appellant, he may know where they had come from. [SQ] did not know whether [TS] had ever seen the arrest warrant.

16. [SQ] said that he had not taken his CSID when he left the village. He had just taken some money. He claimed to have taken around $3500 in cash

that he claimed was “under my pants”. He claimed that they had heard that ISIS were approaching and his father had advised him to keep the money because ISIS were unlikely to suspect him because of this age. He was about 22 years old at the time. The money had belonged to his father. Mr Gazge referred [SQ] to his evidence as set out in paragraph [11] of the decision of Judge Rowlands. It was pointed out to him that he claimed that he had paid for the trip to the UK out of savings and from the work he did for [TS]. He claimed he had brought $3500 with him, and his evidence was that the money belonged to his brother and was given to the appellant to enable him to come here. [SQ] said that the whole family had lived together, and money that belonged to his brother counted as his father’s money. [SQ] was unable to explain the inconsistencies in his account and maintained that ISIS had not been able to find the money because he was hiding the money in his groin area. [SQ] said that following their arrival in the UK, he and the appellant have tried to trace their family. He contacted the Red Cross for the first and last time in 2017. He said that he had a CSID when he lived in Iraq, but it was lost and he had not stayed for long enough after it had been lost to get a replacement.

17. In re-examination, [SQ] maintained that [TS] had spoken to those in control of the refugee camp in which they lived, to enquire about the appellant’s family. He explained that after leaving the camp they lived in Erbil with [TS] for about six to eight weeks. He believes they had lived at the camp for a period longer than they spent with [TS] in Erbil. He said that he cannot recall any of the information that was on his CSID. He explained that he had to attend offices in the Hamdanya City in the Nineveh governorate when the CSID was issued.

18. Having heard the evidence I heard submissions from both Mr Gazge and Mr Ul-Haq, which are recorded in the record of proceedings and which I have carefully considered in reaching my decision. It serves no purpose to burden this decision with a recital of those submissions.

19. On behalf of the appellant, Mr Ul-Haq submits there are two issues to be determined by the Tribunal. The first is the appellant’s asylum claim and the second is the appellant’s access to or ability to redocument himself with the necessary CSID or INID. There is a preserved finding that the appellant is from the village of Zahra Khatun, in the province of Mosul, in the Nineveh Governorate.

Decision

20. I have had the opportunity of hearing the appellant and his uncle give evidence, and seeing their evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the evidence is received through an interpreter. I acknowledge that there may be a danger of misinterpretation, but I was satisfied that the witnesses understood the questions asked, and the interpreter had a proper opportunity to translate the answers provided by them. I recognise that there may be a tendency by an individual to embellish evidence because although the core of the claim may be true, he or she believes that by embellishing their evidence, the claim becomes stronger. In reaching my

decision I have been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the claims made the appellant and his uncle and the story as a whole, against the available country evidence and other familiar factors, such as consistency with what has been said before, and the documents relied upon.

21. Before I turn to the evidence before me, it is helpful for me to say a little more about the previous decisions that are relevant to this appeal.

22. The first in time is the decision of First-tier Tribunal Judge Rowlands promulgated on 22 May 2017. That decision was made in respect of the claim for international protection made by the appellant's uncle, [SQ], and in which the appellant was named as a dependent. The appellant did not give evidence. The claim advanced by [SQ] is set out in paragraph [4] of the decision of Judge Rowlands. Judge Rowlands cited extracts from the witness statement made by [SQ] dated 25 January 2017. As far as is relevant, his evidence can be summarised as follows. The family lived in Zahra Khatun, in the Mosul province. In August 2014, ISIS forces raided the village and on 8 August 2014, they overpowered the Peshmerga forces and rounded up people from the village, all of whom were separated according to sex. [SQ] was badly beaten and suffered injuries. He cannot see properly as his left eye was badly damaged. They were told they were being taken to Mosul city where they would be inducted to fight. They walked at the middle of the night. It was dark, and [SQ] and the appellant managed to escape with some members of the village. They eventually arrived at a Peshmerga area and were told they had entered the IKR. [SQ] was bleeding profusely and was taken to hospital for medical attention. He was admitted to the hospital for over five months and required surgery three times. The appellant remained with him during the five months that he spent in hospital. When he was released from hospital they were accommodated at the Erbil Baharka Refugee Camp where they remained until May 2016. [SQ] began to support himself with a small stall inside the camp selling biscuits and sweets. He struck up a relationship with a gentleman, [TS], who would supply him with goods. [SQ] claimed he began experiencing problems from the Kurdish authorities and was accused of working for ISIS. With the help of the Kurdish police forces, [SQ] and the appellant visited different refugee camps looking for their family. As they were unable to locate their family, they were informed that they would be returned to Mosul. [TS] accommodated them in Erbil, and [SQ] started working for [TS] 'loading and unloading goods'. At the end of July 2016, [TS] informed [SQ] that the police in Kurdistan were looking for him and he risked being returned to Mosul' [TS] said he was going to assist with the journey out of Iraq. [SQ] gave him some money he had saved to pay agents.

23. At paragraph [11] of the decision, Judge Rowlands recorded the following evidence of [SQ]:

> "He was asked if there had been any problems from leaving the camp in 2015 to when he left Iraq and he said there had been with the Asaysh who

were the Kurdish intelligence. They had accused him of having links with ISIS. It was also the case that in July 2016 he had been warned by [TS] that a warrant had been issued for him and that they were included on the warrant. He accepted he didn't have a copy he was just told this and that is why they had to leave. He said the trip had been paid for out of savings and he had worked for [TS]. He brought $3500 with him. [TS] had not paid him whilst he was working for him. It was put to him that in his statement he said that it was his brother's money and he said it was his brother's money the money was given to [the appellant] to enable him to come here but he was a minor. He is his nephew (i.e. his brother's son)…"

24. Judge Rowlands accepted [SQ] is a Kurdish Iraqi and said that the issue in the appeal is whether or not he has been credible about what he says happened. As far as relevant, Judge Rowlands made the following findings:

> "30. So far as his claim to have been injured by ISIS when they overran his village is concerned there is no medical evidence to support the claim that that is how he was injured. When he came to describing how he had escaped from their clutches he had given inconsistent answers. He had claimed to have been in an area he didn't know then in the alternative said it was an area he was familiar with. He also had said that they had discussed an escape plan amongst the villagers but then maintained that it was a chance escape in the dark. I believe that his inconsistencies damaged his credibility. I am not satisfied that his confrontation with ISIS was as he has claimed nor at all.
>
> 31. He claims that following his escape from ISIS and treatment in hospital he was sent to a camp from where he eventually left to travel specifically to the United Kingdom. He gave no reason as to why the UK was chosen. He also claimed that there was a substantial cost for the journey but it was paid for by a substantial amount of money his nephew had from his father, some money he had and money he earned in the months that he worked for [TS]. However, he has failed to explain how the $3500 his nephew had was still available bearing in mind the way they supposedly escaped in the middle of the night from ISIS. How was the money obtained?. I do not believe that this shows the escape was as claimed and the truth is that they are economic migrants who prepared for the trip and had it simply arranged to meet in the United Kingdom. He clearly intended only to come here, not accepting the opportunity to claim elsewhere on the way.
>
> 32. As to his claim to be wanted by the Kurdish authorities, there is no evidence to support this. His claim to have been on some wanted list is completely discredited by his answers over his claimed interrogation by the authorities. On the one hand he claims to have been interrogated whilst on the other hand he said that they were simply writing letters to him. I am not satisfied that he is wanted by the Kurdish authorities nor that it would put him at risk on return."

25. The decision of Judge Rowlands arose from a claim for asylum made by [SQ] in which the appellant was a dependent. In AA (Somalia) v SSHD [2007] EWCA Civ 1040 the Court of Appeal confirmed the guidelines set out in Devaseelan v SSHD [2002] UKIAT 702, regarding the weight to be attached in immigration appeals to an earlier finding of fact, also apply to cases where the earlier decision involves different parties but where there was a material overlap of evidence. The appellant did not give evidence in that appeal and I have considered the merits of his own appeal, noting that

the claims made by the appellant and [SQ] arise from the same factual matrix and series of events.

26. The second relevant decision is that of First-tier Tribunal Judge Shergill promulgated on 18 January 2019. Unfortunately, Judge Shergill did not have the previous decision of Judge Rowlands, although Judge Shergill was aware of the overall conclusions reached. In any event, having considered the claims made by the appellant, Judge Shergill said:

> "23. … when assessing all of the evidence in the round to the lower standard, I am not satisfied the appellant has given plausible or credible accounts about what happened to him and his family in Iraq such that I am not persuaded: a) he fled a village in the contested area; b) that he was in a refugee camp; and c) that he was wanted along with his uncle by the IKR authorities."

27. Judge Shergill went on to address two matters that had not previously been considered. At paragraph [24] he said:

> "Two issues were not really addressed by the last tribunal but having rejected the core of the accounts I find that matters boil down to general credibility to the lower standard. The first is whether the appellant has the means to contact or resume contact with his family in Iraq. The answer to that is he has made no positive steps since coming here to trace them and I do not find it plausible that someone would sit idly by for the two years. It is more plausible that he is in contact with family either directly or through his uncle and the appellant has not been forthcoming about this. It is plausible that his family are in Erbil as asserted by the respondent given the background to the case as found by the last tribunal. In the alternative, as an adult he can take responsibility to undertake reasonable steps to trace his family. The second is that he does not have his CSID (or does not have access to it) or the pertinent details required for a replacement. These issues are a matter for him as I detail below."

28. Judge Shergill concluded that the appellant could seek the assistance of his various family members (including his uncle here) to provide him with his CSID or the details required for a replacement. He said, at [25], there is no reason why the appellant could not approach the United Kingdom based Iraqi or IKR authorities to contact his family and/or obtain a replacement CSID/passport or pre-clear his entry to the IKR if necessary. He saw no reason why the appellant cannot obtain new identity documents within a reasonable time if required. At paragraph [27], Judge Shergill said:

> "The case law states that returnees to the IKR return via Baghdad via an internal flight and they require a CSID. The appellant is a Kurd and he can obtain his CSID so I am satisfied to the lower standard he can return to the IKR. There is limited medical evidence before me about his claimed health issues. The description he gives of his condition does not cause concern that it is a serious condition. He has not shown that his treatments would be unobtainable or that this would be either breach of Article 8 or 3 rights. I am not persuaded that the evidence demonstrates that there are any medical issues which reach the requisite thresholds."

<u>The core of the account</u>

29. It is uncontroversial, and I find, the appellant is a national of Iraq and or Kurdish ethnicity. He is from the village of Zahra Khatun, in the former contested area of Mosul in the Nineweh governorate.

30. In considering the evidence I have borne in mind throughout the fact that the appellant was 16 years old when he arrived in the UK in August 2016 and his vulnerability as a child. The core of his account relates to matters that occurred in August 2014, when the appellant was 14 years old, and on his account, being cared for by his paternal uncle in difficult circumstances. However, having had the opportunity to hear the evidence of the appellant and his uncle regarding the events leading to their departure from Iraq, and of considering the wide canvas of evidence before me, I find, even to the lower standard, that the appellant and his uncle [SQ] are not credible witnesses. Their evidence is littered with internal inconsistencies and when pressed, their evidence before me was vague and lacked detail and clarity.

31. In his witness statement dated 17 November 2021 the appellant claims:

a. After they had escaped from Daesh, they reached an area where there were Peshmerga. The Peshmerga took them to a camp and registered their name. They were then taken to the hospital. They stayed "a while at the hospital and then went to the Bahrka refugee camp"; *(paragraph 9)*

b. After a short time at the Bahra refugee camp, the police came to the camp and accused them of being with ISIS as they were not with the rest of their family. The appellant claims they were told to go and get their family or leave the camp and return to their area. The appellant claims they then stayed with [TS] for about 2 years; *(paragraph 10)*

c. In cross-examination, the appellant claimed his uncle had not undertaken paid work at the camp but that they helped voluntarily to unload trucks when people brought donations to the camp.

32. The appellant's account is at odds with the claims made by [SQ] in his witness statement dated 25 January 2017 cited in paragraph [4] of the decision of Judge Rowlands.

a. [SQ] claims that they arrived at a 'Peshmerga area and were met by soldiers. He claims that as he was bleeding profusely, and they took him to hospital to get medical attention. He claims he was admitted to hospital for 'over five months' and had surgery three times. He claims the appellant stayed with him at the hospital during those five months. [SQ] claims that when he was released the authorities asked him if he had a guarantor so he could be accommodated in Erbil, and as he did not know anyone, the authorities took them to the Bahraka Refugee Camp.

b. [SQ] claims they had remained at the camp until May 2016.

c. [SQ] claims that at the camp he "started working for myself. I had a small stall inside the camp selling biscuits and sweets...[TS} would supply me with the goods I needed.."

33. I did not find [SQ] to be a witness of truth. His evidence before Judge Rowlands in support of his claim for asylum was that his journey to the UK was paid for out of savings and the work he had done for [TS]. Quite apart from the inconsistent evidence as to whether he ran a stall at the Refugee camp selling biscuits and sweets, his evidence that he left the family home and village in the way that he claims, with $3500, is wholly incredible. He had previously claimed $3500 was his brother's money and the money was given to the appellant to enable him to come to the UK, but the appellant was a minor at the time. In his oral evidence before me he claimed that when they heard ISIS approach on 8 August 2014, his father had given him $3500 in cash to keep. Even putting aside the internal inconsistency in his evidence, it is simply incredible that [SQ] was able to leave with $3500 in cash in the way that he describes. [SQ] claims the family were at home together on 8 August 2014 when ISIS arrived. The men were separated from the women. No proper explanation has ever been offered by [SQ] as to how he and the appellant came to be separated from the other male members of the family, including the appellant's father. The claim that [SQ] was beaten and injured as he claims, handcuffed, and was still able to escape from ISIS with $3500 in his pants, whilst being fired at, is wholly incredible. I reject the claim made by [SQ] that he was given the $3500 by his father when ISIS attacked the family home. As Judge Rowlands said before, [SQ] has been unable to explain how the $3500 was still available bearing in mind the way in which the appellant and [SQ] claim the village and family home was attacked, and the way in which they claim they escaped.

34. I have considered the document relied upon by the appellant from Erbil Bahrka Refugee Camp, dated 16 June 2012. It is now well established that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.

35. In his statement dated 9 March 2022, the appellant claims the document was sent to him by [TS]. The appellant claims they were in the camp for only one month or so, and the document confirms they had lived there. The letter, a translation of which is at [Part B/page 25] of the consolidated bundle appears to refer to the appellant and [SQ] although it states an additional surname. The letter simply states; *"they came to the camp on 09.08.14 – they were refugees in Bahrka Camp but they are no longer in the camp and we don't have any information about them".*

36. There is a translation of what appears at the back of the letter at [Part B/page 25]. No explanation is provided as to why that information is endorsed on the back of the document, and not with the other information contained on the face of the letter. It is unclear why the letter would say

that the appellant and [SQ] had come to the camp on 09.08.2014 and claim they are no longer in the camp and no further information is known about them, when on the reverse of the letter, quite separately, it is claimed that they had remained in the camp for one month and they had left the area on 09/09/2014. On the face of it, the letter is consistent with the initial claim made by the appellant that after they fled the village during the night, they were first taken by the Peshmerga to the Camp in Erbil, before being taken to the hospital. However the claim made in the document that they had stayed in the camp for one month and left on 9 September 2014 is at odds with the appellant's evidence before me that they had lived in the camp for about two months. It is equally at odds with the evidence of [SQ] that they had remained at the camp until May 20016 as I have already set out. It is entirely at odds with the claim previously made by [SQ] that he had spent five month in hospital after the attack on the family home on 8 August 2014, before being taken to the refugee camp. Having considered the evidence in the round, I do not accept the letter relied upon by the appellant is reliable evidence upon which I can attach anything other than little weight.

37. Standing back, I do not accept the appellant fled Zahra Khatun in the way and for the reasons he claims. The appellant may well have spent some time in Erbil prior to his departure from Iraq, but I do not accept that he lived as a displaced person in a refugee camp in the way that he claims, or that he was forced to leave the camp because an arrest warrant had been issued. There is nothing in the evidence before me that undermines the findings and conclusions reached by Judge Rowlands and Judge Shergill previously. The inconsistencies in the core of the account relied upon by [SQ] regarding the events of 8 August 2014 and what happened thereafter, are already set out in the decision of Judge Rowlands. In fact, the evidence before me served only to re-enforce the findings previously reached that the appellant and [SQ] are not credible as to the core of the account they rely upon. Having considered the evidence before me, I am driven to the same conclusion as Judge Rowlands previously that the appellant and [SQ] are economic migrants who had prepared for their trip to the UK.

Contact with family and ID Documentation

38. Judge Shergill previously rejected the claim that the appellant has no contact with his family in Iraq, albeit he found that it is likely the appellant's family are likely to be in Erbil. He found the appellant could seek the assistance of his various family members to provide him with his CSID or the details required for a replacement. The decision of Judge Shergill is nothing more than a starting point and to some extent, the conclusions that he reached have been overtaken by the subsequent finding that has been preserved, that the appellant and his family are from the village of Zahra Khatun, in the former contested area of Mosul in the Nineweh governorate.

39. When he made his own claim for international protection, at a screening interview on 4 June 2018 the appellant claimed that he would be killed by the same people who killed his parents. I accept the evidence of the

appellant that he was not claiming that his parents had been killed, but was assuming that they had been killed because he has had no contact with them. On closer reading *(Q.4.1)*, during the screening interview the appellant was asked how he knew his parents were killed. He said that he lived in Kurdistan for two years and there was no news of them. He explained that he knows ISIS has killed lots of people.

40. I do not accept the appellant and [SQ] fled the family home in Zahra Khatun on 8 August 2014 in the way that they claim and I find that is an account that has been fabricated to support a claim for international protection, when they are in fact economic migrants. I find that they were able to leave Iraq and the cost of the journey was funded by saving accumulated by the family, that included $3500 provided to the appellant by his father. He was not separated from his parents and siblings for the reasons he claims and I find, to the lower standard, that the appellant's family remain in Zahra Khatun.

41. I have considered the evidence of the appellant and [SQ] as to the steps they have taken through the Red Cross to trace their family. In paragraph [392] of SMO, KSP & IM (Article 15(c); identity documents)(CG) [2019] UKUT 00400 (IAC) "SMO & Others", the Tribunal noted that Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Given the background material, it is contrary to common sense and experience of human behaviour that the appellant and [SQ] would simply have had no contact with their immediate family after they left the family home and left Iraq. The family lived together in Zahra Khatun and the appellant's father had provide the appellant with a substantial cash sum. The appellant's family will have been concerned about the appellant and the appellant and [SQ] will have been concerned about them. Even to the lower standard, I do not accept the appellant and [SQ] would not have maintained contact with their family, but have maintained contact with another acquaintance in Iraq, such as [TS], particularly when there is a high prevalence of mobile telephone usage amongst the adult population in Iraq.

42. True it is that the appellant and [SQ] have now contacted the Red Cross. I have before me a copy of a letter sent by the Red Cross to the appellant dated 24 August 2021 confirming information has been uploaded to the 'Trace the Face' database. Even applying the lower standard, I do not accept the appellant's evidence that he has no contact with his family. I find he has throughout remained in contact with them. The referral to the Red Cross and the absence of a successful trace of the appellant's family is not sufficient for me to conclude that the appellant has lost contact with his family as he claims. The appellant has plainly provided some information to the Red Cross but there is no evidence before me of the information the appellant has provided about his family.

43. Overall, the evidence of the appellant and [SQ] that they do not know the whereabouts of their family and the attempts that they have made to maintain or establish contact with them is vague. There is in my judgment

no evidence before me of the appellant making any meaningful attempt to establish contact with his immediate family. He does not need to if, as I find, he has remained in contact with them throughout. I have considered the referral made to the Red Cross in the round, with all the other evidence before me. The referral is in my judgement made superficially by two individuals who I have found not to be credible, and who I find have fabricated an account of events to support a claim for asylum. The reference to the Red Cross is yet a further attempt to bolster what has become an increasingly unreliable claim with the passage of time to overcome the weakness identified in their claims. Even to the lower standard, I am not satisfied that the appellant has lost contact with his parents, and siblings as he claims. I reject the claim made by the appellant and [SQ] that they have had no on-going contact with their family.

44. The appellant accepts, and I find that he had a CSID when he was in Iraq. His evidence is that his CSID was at home when he left Zahra Khatun.

45. The appellant's case is to be considered in light of the latest country guidance set out in SMO & Others II. As far as is relevant, the headnote states:

> ***A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE***
>
> 1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
> 2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
> 3. *The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*
> 4. *Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*
> 5. *The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to*

which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:

(i) Opposition to or criticism of the GOI, the KRG or local security actors;

(ii) Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;

(iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;

(iv) Humanitarian or medical staff and those associated with Western organisations or security forces;

(v) Women and children without genuine family support; and

(vi) Individuals with disabilities.

6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*

8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*

10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

C. CIVIL STATUS IDENTITY DOCUMENTATION

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.*

12. *In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.*

14. *Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*

15. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

16. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*

17. *A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.*

18. *Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.*

19. *There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.*

20. *The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.*

21. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*

22. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim."*

Application of the Country Guidance and Background Material to the facts found

46. To summarise, the appellant is from Zahra Khatun in the Nineweh governorate, a formerly contested area. The appellant's family remain in Iraq, in Zahra Khatun and the appellant has maintained contact with them since his arrival in the UK and is able to contact them. The appellant had a CSID when he left the family home in Zahra Khatun, and it was there when the appellant left Iraq.

47. The appellant had previously relied upon a generic expert report prepared by Nadje Al-Ali, a Professor of Gender Studies at the SOAS University of London dated 27 July 2015. Unsurprisingly, given the age of that report and the significant developments in Iraq as reflected in the

most recent country guidance, Mr Ul-Haq did not make further reference to that report.

48. Before addressing the country guidance, Mr Ul-Haq submits the security situation in Iraq remains fluid and the appellant fears an escalation in violence facing him on return to Iraq. To that end, Mr Ul-Haq refers to the CPIN, Iraq: Security Situation, November 2022, that indicates, at 2.4.8, that violence levels across Iraq have increased since the promulgation of SMO and Others II particularly in relation to the ongoing conflict between Turkey and the Kurdistan Workers' Party (PKK) in the north of Iraq. However the CPIN confirms the levels and intensity of the armed conflict are not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm leading to a breach of immigration rules 339C and 339CA(iv) . Nor is there evidence in the sources consulted in the note that the factors identified by Upper Tribunal that may elevate risk for an individual returning to a formerly contested area have significantly changed. As such, there are not 'very strong grounds supported by cogent evidence' to depart from the Upper Tribunal in SMO and Others II.

49. I note from the decision of the Upper Tribunal in SMO & Others II that although there continues to be an internal armed conflict in certain parts of Iraq involving government forces, various militia and the remnants of ISIL, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD. The situation in the formerly contested areas, including the Ninewah governorate is complex and whether the appellant can return to that areas requires a fact sensitive 'sliding-scale' assessment. I have found rejected the core of the appellant's claim and I find that he left Zahra Khatun and accompanied [SQ] to the UK as an economic migrant. He has no actual or perceived association with ISIL and he does not have any of the characteristics that are identified in paragraph [5] of the Headnote in SMO and Others II.

50. The appellant has a CSID in Iraq and there is no evidence to suggest that his CSID is not available to the appellant from his family who remain in Zahra Khatun and with whom I find, the appellant maintains contact. The question of obtaining a replacement does not therefore arise. There is no reason why the appellant cannot take immediate steps, with the assistance of his family to have his CSID sent to him here in the UK or why the appellant could not be met by his family or relatives, in Baghdad, with the CSID, within a reasonable time of the appellant's arrival to facilitate safe travel between Baghdad and Zahra Khatun. On the findings made, I reject the claim that the appellant will be at risk in making the journey from Baghdad to his home area and I find there will not be a breach of Article 3.

51. It follows that I dismiss the appeal on Asylum, humanitarian protection and Article 3 grounds.

52. No separate Article 8 claim is advanced before me.

Notice of Decision

53. The appeal is dismissed on all grounds.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
18 October 2023