



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001949

First-tier Tribunal No: PA/51423/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th January 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

AAA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel, instructed by Parker Rhodes Hickmotts
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 7 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. In a decision promulgated on 9 August 2023 I found an error of law in the decision of First-tier Tribunal Judge Lodato promulgated on 18 November 2021 in

which the Appellant's appeal against the Responent's decision to refuse his protection and human rights claim dated 11 March 2021 was dismissed. As a result, the decision of the First-tier Tribunal was set aside, with preserved findings of fact on all matters save for that in paragraph 45 and for a further hearing on the discrete issue as to whether the Appellant has, or has access to his CSID card and if not, whether he would be able to redocument within a reasonable period on return to Iraq. A copy of the error of law decision is annexed.

3. The Appellant is a national of Iraq, from New Halabja in the KRI, born on 1 January 1999, who arrived in the United Kingdom on 15 September 2017 and claimed asylum the following day having been encountered by the authorities. The Appellant claimed to be at risk on return on the basis that he was a gay man of Kurdish ethnicity. The Appellant's initial claim to be a child was rejected and he was treated as an adult.
4. The Respondent refused the Appellant's application primarily on credibility grounds. It was not accepted that the Appellant was gay, nor that he would be at risk on return as a gay man nor as a Kurd. In relation to identity documents, the Respondent recorded that the Appellant had a CSID card but said that it had been taken by an agent in Turkey, but in any event the Appellant had family support on return to Iraq and would be able to obtain a replacement. The human rights claims were all refused.
5. The preserved findings of fact from the First-tier Tribunal are that the Appellant is not gay and was not at risk on return due to his sexuality or for any other reason. In terms of overall assessment of the Appellant, the following was found:

"44. Considering the overall evidential picture, I was left with a profound sense of unease about whether the appellant was a truthful witness. His various accounts seemed to shift and change over time in relation to matters of central importance to the core of his claim for asylum. Where detail might be expected, there were only outlines. The supporting material carried little weight. I had no confidence in the appellant's evidence, and he did not come close to establishing the facts necessary to discharge his burden of proof."

The appeal

Applicable law

6. The relevant country guidance for the purposes of this appeal is contained in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) which, so far as relevant, states:

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.*

The witness evidence

7. The Appellant has submitted two written statements, dated 22 June 2021 and 12 September 2023. So far as relevant to the issue remaining in this appeal, in his first written statement, the Appellant stated that he is not in contact with anyone in Iraq and has not been since he was in Turkey in 2017; further that he would not be able to contact anyone to help him obtain a replacement CSID.
8. In this second statement, the Appellant stated that his brother-in-law helped to facilitate an agent for him to leave Iraq. He travelled internally to Baghdad and from there flew with the agent to Turkey. The Appellant had his passport and CSID with him for the initial part of the journey, but these were taken by a new agent who met him outside the airport. The Appellant's phone was also taken at this point. The Appellant states he has not seen the documents since, can not get them back and is not in contact with anyone in Iraq to help him obtain replacement documents.
9. The Appellant attended the oral hearing, confirmed his details, adopted his written statements and gave oral evidence through a court appointed Kurdish-Sorani interpreter. In cross-examination he confirmed that he was from New Halabja and the nearest airport to there is Sulaymaniya. The Appellant was helped by his sister and brother-in-law to leave Iraq but they would not assist him on return because he is gay and would also be killed on return for that reason. The Appellant also has an uncle and cousins in Kurdistan who would not accept or help him for the same reason. The Appellant stated that the agent took the Appellant's passport from him in Turkey, contrary to his screening interview that stated he left it in Kurdistan.
10. I asked the Appellant some supplementary questions. He stated that when he was helped to leave Iraq mainly by his brother-in-law, his brother-in-law knew the reason why he was leaving was because he claimed to be gay. When asked why he would help him leave but not on return, the Appellant stated that he has other relatives in Iraq and would be killed on return, his own family have no more involvement with him and do not accept him. The Appellant confirmed that there was no other reason why his family members would not help him, other than because of his claimed homosexuality and did not directly answer the question of whether his family would assist him if he were not gay, answering only that this is the reason why he escaped Iraq.

The documentary evidence

11. The primary documentary evidence now relied upon by the Appellant in relation to the remaining issue of documentation is an expert report of Dr Alan George dated 24 October 2023. Dr George sets out that the Appellant could return to Sulaymaniya or Erbil within the KRG or to Baghdad. ID documentation is essential in interactions with officials and crucial, in order to pass through police, military and militia checkpoints. He quotes from the UNHCR's 'Ability of Iraqis to Legally Access and Settle Durably in Proposed Areas of Relocation' dated November 2022 to the effect that an individual's ability to be admitted to a proposed area of relocation will require the individual to hold valid identity documentation (such as the CSID/UNID, nationality certificate, or passport). Security screenings remain in place at governate, district and city entrance checkpoints. To enter Dohuk governate, Erbil governate or Sulaymania governate from another part of the KRI, without restrictions, a person will need to present their CSID/UNID. To obtain a new INID, the Appellant would have to attend in person at his local CSA office in Halabja and without official documentation and

assistance from relatives, he would face daunting challenges to obtain a laissez passer and then an INID and in practice may be impossible for him to do so.

12. As to checkpoints in the KRI, Dr George stated that there are numerous checkpoints located at strategic points and provide links to and copies of maps showing a checkpoint outside Erbil international Airport and at the entrance to Sulaymaniya International Airport; as well as a police post at the northern entrance to Halabja and on the eastern outskirts of Sulaymaniya.
13. Dr George stated that if a person sought to pass a checkpoint without official ID documents, they would be stopped and detained pending further enquiries as to his identity and background. In accordance with SMO an individual would be at real risk of mistreatment or worse, particularly (but not exclusively) in Baghdad controlled Iraq where many checkpoints are manned by undisciplined militias.
14. In conclusion, Dr George stated that the Appellant may be unable to obtain Iraqi travel and ID documentation or would face immense difficulty in doing so; with a risk of being stopped, detained and maltreated or worse at a checkpoint.

Closing submissions on behalf of the Respondent

15. On behalf of the Respondent, Mr Tufan submitted that the Appellant has already been found not to be a credible witness and taking that into account as well as the discrepancy in his evidence about his passport, it is more likely than not that the Appellant still has his CSID card. In any event, even without his CSID, he would be removed to the KRI and admitted there as a Kurd from the region. Mr Tufan submitted that the Appellant could be met at the airport by a family member, given that two members of his family had previously helped him to leave the country and no credible reason was given as to why they would not assist him on return. The only possible issue for the Appellant is therefore what would happen at a checkpoint between the airport and his home area. There is no background country evidence to suggest that Shia militia control checkpoints in the KRI and nothing to show that a Kurd would be at risk at a checkpoint in the KRI. Once in his home area, the Appellant would be able to obtain an INID within a couple of weeks.

Closing submissions on behalf of the Appellant

16. On behalf of the Appellant, Mr Holmes made three key submissions. First, that the Appellant does not have his CSID card and his evidence to that effect was not challenged at any stage in the process before the oral hearing in the Upper Tribunal. The Appellant had not therefore previously put forward any positive case about this because it was not previously in issue. The Appellant's evidence has been consistent that his CSID and passport were handed to an agent in Turkey (save for one anomaly in the screening interview as to his passport) and that is reasonably likely to be true. It was submitted that there was no obvious reason to disbelieve the Appellant on this point given that it is common for illegal migrants to either dispose of their ID or for it to be taken by an agent; which was the reason for the introduction of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

17. Secondly, it is common ground now that the Appellant is not able to redocument himself in the United Kingdom and would have to attend in person his local INID office in Iraq to be issued with an INID.
18. Thirdly, it was submitted that the Appellant could not now redocument himself within a reasonable time period on return to Iraq. The closest point of return in Iraq to the Appellant's home area is to Sulaymania airport, about 90 minutes drive away. The Appellant would not be able to reach his home area, as per paragraph 3.6.7 of ... which states that those who return to Iraq or the KRI without a CSID or INID who would be required to travel internally to a CSA office in another area of Iraq or the KRI to obtain one, would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3. Mr Holmes submitted that the same conclusion was reached in SMO as to checkpoints and travel, which although focused on the journey from Baghdad to the KRI, did not exclude other checkpoints and there was one oblique reference to a checkpoint in the KRI. For these purposes, it was not essential to conclude that a particular checkpoint would be armed by any particular person, the only issue is whether a person would be reasonably likely to be able to redocument.
19. Mr Holmes confirmed that he did not advance that the Appellant would be at risk at any checkpoint in the KRI, only that he would be unable to pass through any checkpoint without an ID document and as such he could be held there potentially indefinitely or at least long enough not to be able to obtain an INID within a reasonable time.

Findings and reasons

20. The sole issue in this case is whether the Appellant has his CSID, or would be able to obtain a new INID on return to Iraq within a reasonable period of time. The Appellant's case is that he no longer has any identity documents, these having been taken by the agent in Turkey (albeit he also said that the passport would be sent back and is in Kurdistan) and that he has no family support on return to Iraq to assist him with redocumentation on return.
21. As to whether the Appellant still has his documents, it is plausible that he took these with him from Iraq to be able to travel to Baghdad and then fly to Turkey (for which his CSID and passport would be required) and that these were then taken from him by the agent on arrival in Turkey. The Appellant has said that he was told his passport would be sent back to Kurdistan but he claims not to have had any contact with any of his family since his arrival in Turkey and therefore has not claimed one way or another whether this happened. It is therefore also plausible that his family in Iraq have the Appellant's documents. Whilst this part of the Appellant's claim is plausible, that has to be measured against the adverse credibility findings made against the Appellant in relation to the core of his claim, which was wholly rejected by the Respondent and the First-tier Tribunal. Those findings were unchallenged by the Appellant before the Upper Tribunal, however the Appellant continued to maintain the core of his claim in his evidence; which only further serves to damage his credibility. I find it no more than possible that the Appellant no longer has his CSID card, nor would he be able to obtain the same from family members.
22. In any event, whether or not the Appellant has his CSID (or passport) or whether he could be sent these by family members prior to his return to Iraq, I find that he

could obtain a new INID on return to Iraq within a reasonable period. This is for the following reasons.

23. First, the Appellant has stated in his substantive interview that he has a number of relatives, including male relatives in Iraq that all live in his home area of New Halabja. These include his father, sister and brother-in-law, one paternal uncle, two maternal uncles and two cousins. Although the Appellant states that he has not had contact with any of them since arriving in Turkey, he has not offered any explanation for this lack of contact beyond his claim to be at risk from them because he is gay. The Appellant's claim to be gay has been wholly rejected and he has been found not to be at risk on return from his family or the state for this reason. There is therefore no remaining reason as to why the Appellant is not or could not be in contact with his family. He has not at any point suggested he would not practically be able to get in touch with them even if he is not currently. Also taking into account the adverse credibility findings, I do not accept that the Appellant is either not in contact with his family nor that he would be unable to re-establish contact if needed.
24. Secondly, for similar reasons to those given above, there is no reason as to why the Appellant's family could not or would not assist him on return to Iraq. The Appellant stated that his sister and brother-in-law knew that his claim to be gay was the reason he wanted to leave Iraq and helped him do so by arranging an agent, thereby offering support regardless of his sexuality. There is no reason why they would not therefore offer further assistance on his return with the same knowledge. In any event, the Appellant's only reason given as to why his family would not assist him is because he is gay, and, as above, that part of his claim has been wholly rejected. The Appellant did not identify any other reason as to why no family members would support him on return and there was no suggestion that they would not practically be able to do so. I therefore find that the Appellant is likely to receive support from his family on return to Iraq.
25. Thirdly, the expert report from Dr George is only of limited assistance in these circumstances as it is predicated on the assumption that the Appellant has no relatives in Iraq with whom he is in contact and therefore no family support on return. The primary conclusions that the Appellant would face difficulty or be unable to redocument himself on return are on the basis that he would have no family support. The only point in the report at which family support was said to be immaterial was in respect of obtaining a replacement CSID by proxy and that was only because all CSA offices in Iraq are now issuing INID cards. There is no consideration by Dr George or whether the Appellant could pass through checkpoints with a family member who could confirm his identity and background (including, for example, through the use of family documents such as the 1957 Registration document) or whether he would still face mistreatment or detention even with family support. There is nothing in the report or the background evidence to suggest that the Appellant could not be assisted to safely pass through a checkpoint with a family member.
26. Fourthly, there is a lack of any background country evidence of who controls the one or two checkpoints that the Appellant may need to pass through if he returns to Sulyamania and travels to his home town. There is nothing to suggest that Shia militia, for example, control any checkpoints in the KRI. The evidence from Dr George shows a checkpoint at the airport, which it would be reasonable to expect would be controlled by KRI officials and a police checkpoint on the northern approach to the Appellant's home town, which would therefore also be

an official checkpoint as opposed to one operated by any militia. There is in any event nothing to suggest that a Kurd, on return to his home governate and home town, would be at risk at a checkpoint in that area. The Appellant would not have to pass between different administrative areas in Iraq, nor between the Government controlled area and the KRI (such as from Baghdad back to his home area) and would not be internally relocating within Iraq. These latter scenarios as the ones focused upon in both SMO (save for one reference to a single checkpoint in the KRI) and in the CPIN.

27. Fifthly, in any event, Mr Holmes confirmed in submissions that it was not the Appellant's case that he would be mistreated at a checkpoint on return to his home area, but only that he would be detained at one for a sufficiently long period that he would not be able to redocument within a reasonable time. There is however again nothing in the background country evidence, expert report or SMO to suggest that the Appellant would be detained indefinitely at a checkpoint for lack of a CSID or INID, or even for a period of weeks or months such that he would face a real risk of a breach of Article 3 at a checkpoint as that in itself would prevent him from being able to redocument within a reasonable time. There is further nothing to suggest that such a sufficiently lengthy detention would happen at all with family support to confirm his identity and background.
28. Sixthly, the Appellant has not claimed and there is nothing to suggest that he does not have the required information to obtain a new INID from his local CSA office.
29. For these reasons, the Appellant has not established that he would not be able to return to his home town of New Halabja via Sulaymania and obtain a new INID from his local CSA office within a reasonable time period. The Appellant has a relatively short journey of around 90 minutes, with at most two checkpoints between the airport and his home town and likely family assistance on return who could travel with him from the airport to confirm his identity and background. In these circumstances, even to the lower standard of proof, there is no real risk that this journey would result in the Appellant being detained (or mistreated) at a checkpoint for such a long period that he would not be able to attend his local CSA office to obtain a new INID within a reasonable time; contrary to Article 3 of the European Convention on Human Rights.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such was necessary to set aside the decision.

The appeal is remade as follows:

The appeal is dismissed on protection grounds.
The appeal is dismissed on human rights grounds.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27th December 2023

ANNEX



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001949

First-tier Tribunal No: PA/51423/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**AAA
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes of Counsel, instructed by Parker Rhodes Hickmotts

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 6 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Lodato promulgated on 18 November 2021, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 11 March 2021 was dismissed.
3. The Appellant is a national of Iraq, born on 1 January 1999, who arrived in the United Kingdom on 15 September 2017 and claimed the asylum the following day having been encountered and arrested by the authorities here. The Appellant's claim was based on being a gay man of Kuridsh ethnicity who would be at risk on return to Iraq on the basis of his sexuality. The Appellant initially claimed to be a child but this was not accepted and he was treated as an adult.
4. The Respondent refused the application on the basis that the Appellant's claim was not credible. In particular his account was vague, incoherent, lacking in detail and internally inconsistent. It was not accepted that the Appellant was gay nor that he would be at risk on return to Iraq for that reason or as a Kurd. In relation to identity documents, the Respondent recorded that the Appellant had a CSID card but said it had been taken by the agent in Turkey, however there was a lack of evidence that he could not obtain a replacement and he had family support on return to Iraq. There was no Article 15(c) risk to the Appellant and no breach of Articles 3 and/or 8 of the European Convention on Human Rights as the Appellant did not meet the high threshold for medical claims, had not established family life in the United Kingdom and did not meet the requirements of paragraph 276ADE of the Immigration Rules for a grant of leave to remain on private life grounds.
5. Judge Lodato dismissed the appeal in a decision promulgated on 18 November 2021 on all grounds. The Appellant was not found to be credible, his claim and evidence containing inconsistencies as well as being vague and evasive. The conclusion in relation to the Appellant's identity documents is given in paragraph 45 of the decision as follows:

"The only basis on which I could find in his favour in relation to the issue of documentation would be if I found his account about the loss of his documents to be credible. For the reasons outlined above, I have resoundingly rejected his credibility as a witness. His word alone does not permit me to conclude that he is no longer in possession, or constructive possession through family members in Iraq, of the identification documents that would be needed to travel within Iraq after arriving in Baghdad. Once back in his home area, he could use those documents to re-establish himself with the assistance of his family network. At the risk of stating the obvious, given the conclusions I have reached about the credibility of his claims to be homosexual, he would not be at risk for this reason."

The appeal

6. The Appellant appeals on the grounds that the First-tier Tribunal erred in law first, by failing to have regard to the Respondent's position in relation to identity documents being that the Appellant would be able to re-document in the United Kingdom or by proxy in Iraq and that it was common ground that the Appellant did not have his CSID. The First-tier Tribunal went behind that common position in finding that the Appellant had or had access to a CSID. Secondly, for failing to give adequate reasons for rejecting the Appellant's unchallenged evidence that he had given his CSID to an agent in Turkey, a matter that was inherently probable and the Appellant was not on notice to address the point further.

7. At the oral hearing, Mr Holmes relied on the grounds of appeal and confirmed that there was no challenge to the findings in relation to the Appellant's claim on sexuality grounds. Mr Holmes referred to the Appellant's consistent position since his asylum interview that his CSID had been given to an agent in Turkey after he had passed through the airport. The Respondent's reasons for refusal letter records the Appellant's claim in the same way and in paragraphs 63 to 65 focused on the lack of evidence that the Appellant would not be able to obtain a replacement CSID, finding that he could do so and in paragraph 67 referring to returning directly to the IKR or via Baghdad using a new CSID card. The Respondent's review before the First-tier Tribunal again referred only to re-documentation, without any direct challenge to the Appellant's claim that his CSID had been lost in Turkey.
8. The First-tier Tribunal's decision records the Appellant's case in paragraph 16 that he has not been in contact with anyone in Iraq since 2017 so he was unable to make the necessary arrangements to obtain a replacement CSID card and in submissions on his behalf, in paragraph 24 that the Appellant now had no prospect of securing documentation in the United Kingdom and the sole question was whether he could achieve re-documentation within a reasonable time after return to Iraq as it was unlikely that a proxy could now be used. In paragraph 31, the Respondent's position was recorded that the Appellant was not at risk on return to Iraq where his family could assist him in the process of gathering the necessary documents.
9. At paragraph 33 of the decision, the Judge refers to a second ground that, *"having handed his identity documents to his agent when in Turkey, he can no longer secure the documents necessary to travel and function in Iraq. ..."*.
10. Mr Brown's submission was that the Respondent had never challenged the Appellant's claim not to be in possession of his CSID, only ever referring to re-documentation. Further, the Appellant's claim was consistent with the fact that it is commonplace for migrants to hand over ID documents to agents or to dispose of/destroy documents to protect their position and prevent removal, a problem addressed by section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. In circumstances where the Appellant has been found to have entirely fabricated his account, it was submitted that it was all the more likely that the Appellant had given his document to an agent or otherwise disposed of it.
11. On behalf of the Respondent, Mr Melvin relied on the rule 24 notice and his skeleton argument. He submitted that given the adverse credibility findings of the First-tier Tribunal, it was open to the Judge to conclude that he had not been truthful about giving his CSID card to an agent in Turkey. The Respondent's reasons for refusal letter was silent as to whether it was accepted that the Appellant had his CSID and only addressed the issue of whether he could in any event re-document. In this case, silence did not amount to acceptance of the Appellant's claim, particularly when the core of the Appellant's claim had been rejected in its entirety. At the time of the decision, it was open to the Judge to find that either the Appellant had his CSID card or he could obtain a new one with the assistance of his family members in Iraq.

Findings and reasons

30. Whilst in this case the Respondent has never expressly accepted that the Appellant handed his CSID card to an agent in Turkey, this was not directly challenged either, with the sole focus throughout as to the Appellant's ability to redocument. In these circumstances, I find an error of law in the First-tier Tribunal's decision in finding, contrary to the position of the parties focusing on redocumentation, that the Appellant had possession or constructive possession (though a family member) of his CSID card solely on the basis of other negative credibility findings. The adverse credibility findings against the Appellant as to the core of his claim do not assist him, but do not necessarily provide a complete answer to his claim on this discrete point as to documentation, such that the error can not be said to be immaterial.
31. In these circumstances, I set aside the decision of the First-tier Tribunal to allow a further hearing only on the discrete point as to whether the Appellant has, or has access to his CSID card and if not, whether he would be able to redocument within a reasonable period on return to Iraq. Whether that would in any event place the Appellant at any kind of risk on return in terms of Article 3 of the European Convention on Human Rights is likely to depend on whether the Respondent proposes to remove the Appellant to Baghdad or whether he can return directly to the IKR. As this is a discrete issue, all findings of fact in the decision of the First-tier Tribunal except those in paragraph 45 are preserved.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions

1. The appeal to be relisted on the first available date before UTJ Jackson for a video hearing, with a time estimate of 1 hour. The Appellant's solicitors to confirm if the Appellant is to give oral evidence and if so, whether an interpreter is required.
2. Any further evidence upon which the Appellant wishes to rely to be filed and served no later than 14 days before the relisted hearing. If the Appellant is to give oral evidence, an up to date written statement is required to stand as evidence in chief.
3. Any further evidence upon which the Respondent wishes to rely to be filed and served no later than 7 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th July 2023