



**First-tier Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/02397/2020**

**THE IMMIGRATION ACTS**

**Heard in Bradford, via CVP  
On 11 January 2021**

**Decisions & Reasons Promulgated  
On 21<sup>st</sup> January 2021**

**Before**

**JUDGE PICKERING**

**OF THE FIRST TIER TRIBUNAL**

**Between**

**MBK (Iraq)**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

For the Appellant: Ms McIlvern, of counsel

For the Respondent: Ms Hopkinson, a Home Office Presenting Officer

1. The appellant is an Iraqi national who was born in Iran on 12 December 1995 but has lived in Iraq from a young age. He is from Hawija in Kirkuk.

2. In approximately October 2016, the appellant fled Iraq and arrived in the UK on 14 December 2016. He claimed asylum the following day.
3. The appellant's application for asylum was refused in a letter dated 20 August 2017. The appellant made further submissions dated 26 February 2018. These were refused in a letter dated 21 February 2020.
4. This gave a right of appeal under section 82 (1) of the Nationality Immigration and Asylum Act 2002 ('the 2002 Act').

### **The appellant's account**

5. The appellant is an Iraqi national of Kurdish ethnicity who lived in Hawija, Kirkuk. He has three brothers and two sisters. One sister is a British Citizen, residing in the UK.
6. In 2015, Islamic State of Iraq and Syria (ISIS) took control of Hawija. The appellant says that he was approached, with other young men to join ISIS. He refused. He believes that this was in October 2016, approximately one week before he fled Iraq.
7. The appellant passed through other safe countries such as Italy and France on his way to the UK. The appellant was fingerprinted in Italy. He did not claim asylum as he was under the control of the agent.
8. The appellant is not in possession of his civil status identity card (CSID). He last recalled having it in Iraq. He does not know his page and book number.
9. Since being in the UK, the appellant has lost contact with his family in Iraq. Prior to this he learned that his brothers fled Iraq and he does not know their whereabouts.

### **The respondent's case**

10. The respondent accepts that the appellant is an Iraqi national, from Hawija. It is accepted that the appellant's account of ISIS in Hawija is plausible.
11. The respondent does not accept that the appellant had problems with ISIS because of inconsistencies in his account. The appellant says he was approached by ISIS. On one hand he said it was the start of 2016 around January or February time. On the other hand he said it was later in the year approximately October 2016.

12. The fact that the appellant had not claimed asylum in Italy was also said to damage his credibility (see section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004).
13. The respondent did not consider that the appellant was at real risk of persecution, even if he were credible in his account, as ISIS were no longer in Hawija.
14. The respondent considered that there was an internal relocation alternative available to the appellant. It was said that he could relocate to the Independent Kurdish Region (IKR).
15. The respondent took the view that the appellant could contact his family in Iraq to obtain his original CSID, or he could obtain a replacement.

### **Legal Framework**

16. The appellant appealed against the decision of the respondent on the basis that he is a refugee and that return would breach his human rights (section 84 (1) of the 2002 Act).
17. It is for the appellant to show that he meets the definition in Article 1 (A) (2) of the UN Convention Relating to the Status of Refugees 1951 ('the 1951 Convention').
18. The requirements for a grant of humanitarian protection are set out in paragraph 339C of the Immigration Rules. So far as material these are that:

*(ii) they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;*

*(iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country*

19. "Serious harm" is defined in paragraph 339CA of the Immigration Rules, namely:

*(i) the death penalty or execution;*

*(ii) unlawful killing;*

*(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or*

*(iv) serious and individual threat to a civilian's life or person by*

*reason of indiscriminate violence in situations of international or internal armed conflict.*

20. 339CA (iii) has the same mean as Article 3 of the ECHR.
21. The appellant bears the burden of establishing his claim. The standard is a low one. It is sometimes expressed as a reasonable degree of likelihood.
22. I have directed myself to the relevant jurisprudence which is *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)*.

### **The hearing**

#### *Documents*

23. The parties relied on the following documentary evidence:
- A Home Office Bundle, dated 4 August 2020 [RB];
  - A Respondent's Review, dated November 2020;
  - A determination of Judge Caswell, dated 19 September 2018;
  - An Appellant's Bundle, undated [AB];
  - An Appellant's Skeleton Argument [ASA];

#### *Issues*

24. There is no issue that the appellant is an Iraqi national of Kurdish ethnicity from Hawija. It was fairly accepted by Ms Hopkinson, in light of the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns Version 11.0 June 2020 (CPIN), that the appellant would be returned to Baghdad and that he would have difficulties redocumenting in the UK.
25. The factual issues to be resolved are:
- a. Was the appellant approached by ISIS;
  - b. Is the appellant in contact with his family in Iraq;
  - c. Is it reasonably likely that the appellant is not in possession of his CSID;
  - d. Is it reasonably likely that the appellant could obtain his replacement CSID in Iraq;
  - e. Can the appellant internally relocate.

26. Both parties agreed that the previous findings of Judge Caswell did not assist me, as although a starting point her decision was not relevant to the issues in the instant appeal. The case before her was presented on the basis of Article 8 only.

27. Ms McIlveen confirmed that arguments were advanced under the Refugee Convention, 15c of the Qualification Directive and Article 3 of the ECHR.
28. Both parties agreed, that applying *SMO*, if I were to find, that the appellant was not in possession of a CSID and that he could not obtain one within a reasonable timescale of arriving in Baghdad, this would mean he would be subject to treatment contrary to Article 3 (*SMO* §317).

*Oral evidence*

29. The appellant gave evidence with the assistance of a Sorani interpreter. Both the appellant and the interpreter confirmed that they understood one another.
30. The hearing was recorded and I also kept a typed note of the evidence provided by the appellant and the submissions made to me by the parties.
31. Following closing submissions from both parties I reserved my decision.

**Findings of fact and reasons**

32. I have reached my findings of fact only after considering all the evidence, applying the lower standard. Although my references to the evidence are selective, when giving reasons for my decision, I have considered all the evidence in the round in arriving at my conclusions.
33. There is no dispute that the appellant is an Iraqi Kurd from Hawija. I find these matters proven, to the required standard.
34. I find that the appellant's credibility is statutorily damaged under the 2004 Act on the basis that he did not claim asylum in Italy. I will consider the extent to which, in the round, with the rest of the evidence.

*Was the appellant approached by ISIS*

35. There is no dispute that the appellant is from Hawija. It is also accepted by the respondent, that the appellant's account of living under ISIS, in Hawija was consistent with the background information [RB p.35]. Given that the appellant is a single man of fighting age, it appears plausible, within the country context that he may be an individual who would be approached by ISIS.
36. That said, I have some difficulties with the appellant's evidence of being approached by ISIS. Whilst he has been broadly consistent in the chronology of his account, that he was approached and then

approximately a week later he left Iraq, he has not been consistent in the dates given. On one hand the appellant said in his asylum interview record (AIR) that he was approached at the beginning of 2016 [RB p56] and on the other hand said that it was later in the year around September/October 2016 [RB p.62].

37. The appellant's evidence is that he made a mistake in his interview and it was October 2016. The appellant says that the reason he made the mistake was because he was confused. The appellant says that the interviewing officer pressurised him for the date and was asked the question six times.
38. The appellant clarified in oral evidence what he meant by being asked the question six times. He explained that the question was asked in a number of different ways.. It is apparent looking at the AIR as a whole, that the interviewing officer did on a number of occasions seek to clarify the appellant's account. I accept that the appellant may have perceived this as being asked the same question on repeated occasions. However, there is nothing reflected in the AIR that he was pressurised for a date nor was there any evidence contained within either bundle of representations being made, post interview to that affect.
39. Standing back, I accept that the appellant may have been confused and/or nervous at the AIR, but in the absence of any evidence, I do not accept that he was pressured by the interviewing officer to give a date. Whilst I have some doubts accepting the totality of the appellant's explanation for the answer given at question 83 AIR, I do accept that when looking at his evidence in the round, the mention of the January/February 2016 looks like a misunderstanding/mistake on his part. It is the only occasion on which this date is given and the rest of the evidence given in the AIR points towards the October 2016 date. Put another way, I am prepared to give the appellant the benefit of the doubt and accept to the lower standard that there was a reasonable degree of likelihood that the appellant was approached by ISIS as claimed.
40. The respondent raised an inconsistency about the appellant's evidence as to whether he had a passport or not. I did not consider this material to the issues I needed to determine. The appellant says he misunderstood the question at his Screening Interview (SI) in that he thought he was being asked about any identity documents. As the alleged inconsistency was not put to him in the AIR, I am prepared to give the appellant the benefit of the doubt and accept that it was a misunderstanding.
41. I find, to the lower standard that the appellant was approached by ISIS.

*Is the appellant in contact with his family in Iraq*

42. I find that there is a reasonable degree of likelihood that the appellant has lost contact with his family.
43. I was troubled by the fact that the appellant's sister had not provided a witness statement nor did she give evidence, particularly as the appellant is living with her. However, it is uncontroversial that Kirkuk and more specifically Hawija have been the location of an internal armed conflict (SMO §8 also see §29, 30, 32, 40 and 251) which has resulted in a high number of deaths, casualties and population displacement. Hawija was described as "ruined" by Dr Fatah in SMO (SMO §30). Within that country context, there is, in my judgment at least reasonable degree of likelihood that the appellant has lost contact with his family.

*Is it reasonably likely that the appellant is not in possession of his CSID*

44. I accept that there is a reasonable degree of likelihood that the appellant is not in possession of his CSID. The appellant's evidence has consistently been that he does not know the whereabouts of his CSID but he believes it to be at home in Iraq. When considered in the round, with the rest of his evidence, I can see no cogent reason why I should reject this aspect of his account.
45. During my assessment of the appellant's credibility I have considered the point raised under section 8 of the 2004 and whilst I found that the appellant's credibility was damaged, it was not damaged to such an extent that it caused me to reach a different conclusion as to his credibility.

*Is it reasonably likely that the appellant could obtain his replacement CSID*

46. I do not consider it reasonably likely that the appellant can obtain a replacement CSID in the UK. My reasoning is two fold. Firstly, the requirements of the redocumentation process are onerous (SMO §383) and I do not consider that the appellant will be able to fulfil them. Secondly, the respondent's CPIN (2.6.16) recognises that it is not likely that an individual will be able to obtain replacement documents in the UK.
47. I also do not find it reasonably likely that the appellant would be able to obtain a replacement CSID in Iraq within a reasonable timescale. In terms of obtaining a replacement CSID, the expectation is that the appellant will travel to his home governorate (SMO §345, 385). A CSID is required to leave Baghdad International Airport and to progress through the numerous checkpoints that exist on the roads beyond the airport (SMO §347, 348, 349). As the appellant would be returning to Iraq without a CSID, I do not consider it reasonable likely that he would be able to leave the airport and/or progress to his home area in an attempt to redocument.

48. I have asked myself, for completeness (in light of my findings about lack of family contact) whether the appellant could use a proxy to obtain a replacement CSID. However, I have concluded that this would not be possible on the basis of the views expressed in *SMO* and specifically the likelihood of using a proxy having significantly reduced due to the introduction of the INID (*SMO* §425 (45)).
49. In effect the appellant will be stranded in Baghdad as he would be without a CSID.

*Can the appellant internally relocate*

50. The issue of internal relocation, in light of my findings about the appellant's lack of documentation and ability to obtain a replacement prior to and/or within a reasonable timescale on return to Iraq, means that issue of internal relocation falls away. This is because he would not be able to leave the airport either by land or board an onward flight.
51. The CPIN raises the possibility of an appellant using a 1957 Registration Document in the alternative, however I am not persuaded by this point. *SMO* is clear that only a CSID will suffice (*SMO* §384).

*Application of my findings of fact to the law*

52. Turning to my application of the Refugee Convention first, I do not find that the appellant is at real risk of persecution on the basis of the findings that I have made. I have directed myself to the personal characteristics highlighted within *SMO* at paragraph 313 and 314. Whilst I recognise these are discussed in the context of the sliding scale analysis of Article 15 (c), I also note that at paragraph 292 of *SMO* that the tribunal acknowledged the overlap between the sliding scale of 15c and the Refugee Convention.
53. I do not find that the appellant would be at real risk on return to Hawija as he does not possess any of the characteristics outlined within *SMO* that would suggest he would be at risk. I am also mindful of the evidence given in *SMO* that ISIS were not in control of Hawija any longer (*SMO* §36, 41) albeit I accept that there were concerns expressed that there were areas surrounding Hawija in which they were active (*SMO* §252). That in itself was not sufficient to persuade me that the appellant was at real risk on return to his home area.
54. I do not find that the appellant has demonstrated that he is at risk of indiscriminate violence on the basis of his presence alone in Kirkuk. I have come to this conclusion on an application of the guidance set out in *SMO* (*SMO* §257, 285). I have also asked myself, whether in light of the



appellant's personal circumstances, this would place him at risk of indiscriminate violence (what is known as the 'sliding scale'). However, I am not persuaded, that the personal circumstances of the appellant place him at such a risk. I have directed myself to the country information contained within the appellant's bundle, however, there is nothing sufficiently cogent to persuade me to depart from the conclusions of *SMO* in respect of a 15c risk more generally and/or on the sliding scale. The evidence before the Tribunal in *SMO* was infinitely more detailed and the Tribunal had the benefit of the expert evidence of Dr Fatah.

55. However, in light of my findings, that the appellant is not in possession of his CSID and that he could not obtain a replacement within a reasonable timescale, means the appellant would be placed at risk of his rights under Article 3 being breach (*SMO* §317)

### **Decision**

The appeal is dismissed on asylum grounds.<sup>[L]<sub>SEP</sub></sup>

The appeal is dismissed on humanitarian protection grounds.

The appeal is allowed on human rights grounds.

### **Order regarding anonymity**

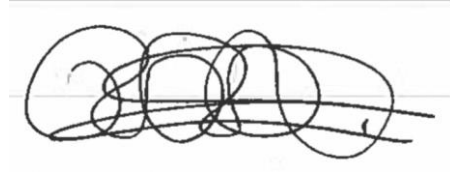
Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

the appellant or any member of the appellant's family. This order applies both to the appellant and to the respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date: 15 January 2021

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RA PICKERING

Judge of the First-tier Tribunal

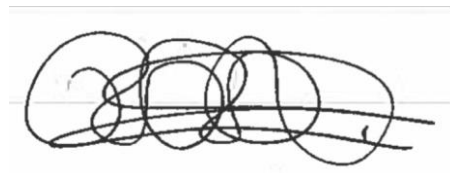
To the respondent

**Fee award**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 15 January 2021

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, enclosed in a thin rectangular border.

RA PICKERING