



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02641/2019**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 25th August 2022**

**Decision & Reasons Promulgated
On the 12th October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SM

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam instructed by Freedom Solicitors.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** In a determination promulgated on 31st May 2019 First-tier Tribunal Judge Borsada dismissed the appellant's appeal on all grounds.
- 2.** The appellant is a citizen of Iraq of Kurdish ethnicity who previously lived in Tuz Khurmatu. Judge Borsada records in his determination that this was in the IKR whereas at the error of law hearing before Deputy Upper Tribunal Judge Mahmood ('the Deputy Judge') it was conceded by Mr Mills, Senior Home Office Presenting Officer, that that city is in fact within the government-controlled area.

3. Judge Borsada dismissed the appellant's claim in relation to events in Iraq that he claimed caused him to flee and formed the basis of his claim for international protection, as lacking credibility. The challenge to the manner in which Judge Borsada assessed the evidence and conclusions reached in relation to the core of the claim were rejected by the Deputy Judge.
4. Material error of law in the decision of Judge Borsada was found for the reasons set out at [14] of the decision of the Deputy Judge which is in the following terms:
 14. I return to the issue in respect of the assessment of the country guidance case of **AAH (Iraqi Kurds - Internal Relocation) Iraq CG UKUT 00212 (IAC)**. The material error of law stems from where the Appellant hails in Iraq. As I have explained, that has only just been brought to my attention today. It may well be that the Judge would have decided the case differently had it been brought to his attention. Specifically what I am referring to is the location from which the Appellant hails is outside of the IKR but that it had previously been assumed that the Appellant's home area was from within the IKR. The judge had therefore made the findings that he did at paragraph 13. As I have explained, the very fair way in which Mr Mills has presented the Secretary of State's case means that the issue should in fact have been assessed in line with what would occur if the Appellant was returned first or to Baghdad. In my judgement it is imperative that further analysis is undertaken. I had been keen to do that today, but upon hearing the submissions of both parties as to whether that could occur today, it would appear not. The rival submissions initially were that Mr Howard submitted that the case ought to be remitted to the First-tier Tribunal for that to occur. Mr Mills ultimately suggested that there would indeed need to be further evidence. In my judgement and having assessed the matter, I conclude that it is necessary for there to be further evidence and for the Appellant to be given the opportunity to present his case in respect of the **AAH** considerations. The case will remain here in the Upper Tribunal for that to be done.
5. The decision of the Deputy Judge is dated 30 December 2019 and the re-listing of the appeal was impacted by the Covid -19 pandemic and related lockdown and awaiting the promulgation of the further country guidance case relating to Iraq.
6. That case has been promulgated and is now the only applicable country guidance case for Iraq. It has been reported as SMO &KSP [2022] UKUT 00110 (IAC).
7. A further development is the publication by the Secretary of State of her up-to-date CPIN relating to returns and documentation, for Iraq dated July 2022. In that document the Secretary of State confirms that enforced returns are now to any airport within Iraq including the IKR.
8. It is not disputed that the appellant, as an Iraqi Kurd, will be able to obtain a laissez passer within the UK which he can be used to return him directly to the IKR, likely to be to the airport in Sulamaniyah, which he will be able to arrive at and pass through without experiencing any difficulties.

9. It was not disputed before me that the local CSA office in Tuz Khurmatu no longer issues CSID and only now issues the biometric INID, or that the appellant would need to have access to his original CSID to enable him to pass through checkpoints which he may experience on the border between the IKR and the government-controlled area of Iraq.
10. The appellant's case is based on two claims the first being that he does not have access to his CSID and secondly that he will face a real risk on return as a result of his sur place activities. It was accepted by Mr Islam that if I find in the appellant's favour on the first issue there would be no need to make separate findings on the second head of claim.

Discussion

11. It was not made out before me, nor submitted, that the appellant's home area is any longer a contested area or a place which by reason of the situation appertaining in that area alone the appellant would face a real risk.
12. In relation to the issue of the CSID, the appellant's position is set out in the documents filed for the purposes of this appeal.
13. An application made pursuant to rule 15(2A) the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit an up-to-date statement of the appellant, evidence of sur place activities, and objective evidence, was granted to enable a full assessment of all outstanding issues.
14. In his witness statement dated 10 August 2022, in relation to the issue of return and redocumentation, the appellant wrote:
 7. Return and Redocumentation when I arrived in the UK I was directed to go to Hasan Solicitors in Birmingham. I instructed them and gave them my Iraqi CSID card when I received it. They said they would send it to the Home Office for me. I do not know whether they did this or not as I have not seen my CSID card again. Later, I changed my solicitor and instructed Fountain Solicitors. They helped me to complete my SEF and to get my case ready. In the SEF, they have mentioned that my ID card has been handed to my previous solicitors to send to the Home Office. I exhibit herewith marked SM 1 a copy of my SEF. The information is on page 12.
 8. My current solicitor has written to both of my previous solicitors and the Home Office to try to locate the CSID card. I exhibit herewith marked SM 2 the letters sent by my solicitor. Unfortunately, the Home Office of not replied to confirm they have the original CSID. Neither of the previous solicitors have the original CSID. I exhibit herewith marked SM 3 the responses received from them.
 9. I therefore do not currently have possession of valid identity documents and the reasons stated below, cannot get new documents.
15. The appellant was cross examined by Mr Williams in relation to his claims concerning documentation. The appellant confirmed that it was

in 2016 that he claims he gave his CSID to Hasan Solicitors. It was put to the appellant that at the previous hearing before Judge Borsada he had claimed he had his CSID, and the Judge had made a finding to that effect. The appellant's reply was to claim that he has always said that his CSID is with his solicitor.

- 16.** When the appellant was asked by Mr Williams whether his case previously was that he had the document but that he was now claiming to have lost it, the appellant claimed that he had never changed his evidence although then stated there could have been a misunderstanding if he had been asked if he had his ID card here as the answer would have been "yes", but that he did not have it in his possession.
- 17.** There was no re-examination.
- 18.** I accept the claim that the appellant handed his CSID to his previous representatives when they requested the same is implausible. A full reading of the SEF form shows that what is claimed is that the previous solicitors asked for the same and sent a copy of the document to the Home Office.
- 19.** Mr Williams confirmed that if the original document had been sent it would have been retained by the Secretary of State in a specific folder on her system, but his enquiries showed that no such document had been retained. Mr Williams also confirmed that if only a copy had been sent it would not have been retained in the original documents folder, as it was not an original document, which explains why there was no copy there.
- 20.** I accept that Hasan Solicitors do not have the original CSID as once they had copied the same it is not implausible that they handed the original back to the appellant. The difficulty that they faced when enquiries were made of them is that they no longer have a file for the appellant as it was transferred to Fountain Solicitors.
- 21.** It is not implausible that Fountain Solicitor do not have the CSID as it was not sent to them by Hasan Solicitors, which it is not unreasonable to have thought they would have done with the other papers if they had the CSID.
- 22.** The true answer to this question requires further consideration of the decision of Judge Borsada. At [6(vii)] Judge Borsada recorded one of the submissions made to him by the Secretary of State's representative part of which reads "*.. The appellant had also admitted to having a CSID card and given this and the presence of close family members in Kurdistan it was possible for him to return there and to live a normal life...*"
- 23.** At [7(vi)] Judge Borsada records part of the submissions made on the appellant's behalf by Mr Howard "*... there was also much to this appellant's credit in the way he gave his evidence for instance the appellant had candidly admitted that he did possess a CSID card which was a very good indication of truthfulness in circumstances in which such an admission was not necessarily helpful to the appellant's overall claim for asylum...*"

- 24.** Judge Borsada's findings are summed up at [13] of his decision where in relation to the issue of documentation he writes: *"more generally I note the case of AA and that given he has close family to return to in Kurdistan and is also in possession of his CSID I see no reason why he could not safely return to that region of Iraq at the current time. In isolation the fact that he admitted to having his CSID is not sufficient for me to find in his favour on the issue of credibility given the myriad of other very good reasons I have for doubting him."*
- 25.** The reason for such a finding and the reference to the appellant's admission can be seen from the record of the evidence kept by Judge Borsada. The appellant was asked about ID identity documents for himself for Iraq for which it is recorded that he replied that his CSID was with him in the UK. He was then asked whether it was in his possession to which it is recorded he answered, "at home - yes".
- 26.** The appellant was asked whether he had produced the document to the Home Office to which the appellant is noted to have claimed that his solicitors copied it to give it to the Home Office, which supports the information referred to above.
- 27.** I find the submissions made by the appellant's previous representative, the Presenting Officer, and the finding of Judge Borsada in relation to this matter, all flow directly from the appellant's own admission in his evidence.
- 28.** I find there is merit in the submission of Mr Williams that the appellant, having realised that such an admission may undermine his claim to be allowed to remain in the United Kingdom, has now changed his account.
- 29.** The appellant was given due credit for telling the truth by his own representative before the First-tier Tribunal, but I now find that no such credit can be given in relation to the evidence given before the Upper Tribunal. The appellant's oral evidence claiming that he had never changed his account is clearly not true. Whilst the evidence regarding the provision of the CSID to Hasan Solicitors and its copying to the Home Office is likely to be true, his evidence given before the First-tier Tribunal fully explains why none of his previous representatives or the Home Office have the original document, which is because the appellant himself has it.
- 30.** I find that the appellant has not established that he does not have access to the required documentation to enable him to travel from the IKR to his home area.
- 31.** I find that the appellant demonstrated a lack of credibility in his evidence relating to his CSID which mirrors the finding by Judge Borsada of the willingness of the appellant to not tell the truth in an effort to remain in the United Kingdom.
- 32.** I move on to consider the second aspect of the appellant's appeal. In his witness statement the appellant claims he has been politically active in the UK against the Iraqi and Kurdish governments and Shia Militia. He claims to have been actively campaigning in his social media (Facebook) and to have attended political demonstrations. He has provided within his bundle screen prints of his Facebook account

- and translations of selected posts. The appellant also claims to have attended two political demonstrations and to have provided photographs of his attending. He claims the demonstrations received media coverage from the Kurdish press and that many of the demonstrations filmed them on their mobile phones and shared posts about the demonstrations to raise awareness of the demonstrations and to encourage people to attend. The appellant claims that the authorities monitor social media sites to track opposition and criticism against them. The appellant claims he will be persecuted due to his activities if he goes back to Iraq because the Kurdish and Iraqi governments do not tolerate any criticism of them or their actions and will react violently and harshly against anyone who stands up to them.
- 33.** In his skeleton argument Mr Islam refer to the Supreme Judicial Council issuing a statement confirming the Order to create a Joint Committee to monitor social media sites to ensure adherence to the Penal Code and the Iraqi Constitution. This is said to have occurred in October 2021. The submission claims the Committee will monitor those sites which pose a threat to the public moral system, by spreading immorality and promoting destructive ideas contradict religion and moral commitments, as well as inciting sectarianism to achieve electoral gain.
- 34.** Mr Islam claims that arrests have already occurred with detention and convictions of several political activists and journalists in Kurdistan whose trials were found to be manifestly unfair by the Office of the United Nations High Commissioner the Human Rights on 22 December 2021.
- 35.** In terms of Facebook and sur place activities, the Upper Tribunal has provided guidance in the reported determination of XX (PJAK - sur place activities Facebook) Iran CG [2022] UKUT 00023 the head note of which reads:

The cases of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC); SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC); and HB (Kurds) Iran CG [2018] UKUT 00430 continue accurately to reflect the situation for returnees to Iran. That guidance is hereby supplemented on the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran.

Surveillance

1) There is a disparity between, on the one hand, the Iranian state's claims as to what it has been, or is, able to do to control or access the electronic data of its citizens who are in Iran or outside it; and on the other, its actual capabilities and extent of its actions. There is a stark gap in the evidence, beyond assertions by the Iranian government that Facebook accounts have been hacked and are being monitored. The evidence fails to show it is reasonably likely that the Iranian authorities are able to monitor, on a large scale, Facebook accounts. More focussed, ad hoc searches will necessarily be more labour-intensive and are therefore confined to individuals who are of significant adverse

interest. The risk that an individual is targeted will be a nuanced one. Whose Facebook accounts will be targeted, before they are deleted, will depend on a person's existing profile and where they fit onto a "social graph;" and the extent to which they or their social network may have their Facebook material accessed.

2) The likelihood of Facebook material being available to the Iranian authorities is affected by whether the person is or has been at any material time a person of significant interest, because if so, they are, in general, reasonably likely to have been the subject of targeted Facebook surveillance. In the case of such a person, this would mean that any additional risks that have arisen by creating a Facebook account containing material critical of, or otherwise inimical to, the Iranian authorities would not be mitigated by the closure of that account, as there is a real risk that the person would already have been the subject of targeted on-line surveillance, which is likely to have made the material known.

3) Where an Iranian national of any age returns to Iran, the fact of them not having a Facebook account, or having deleted an account, will not as such raise suspicions or concerns on the part of Iranian authorities.

4) A returnee from the UK to Iran who requires a laissez-passer or an emergency travel document (ETD) needs to complete an application form and submit it to the Iranian embassy in London. They are required to provide their address and telephone number, but not an email address or details of a social media account. While social media details are not asked for, the point of applying for an ETD is likely to be the first potential "pinch point," referred to in AB and Others (internet activity - state of evidence) Iran [2015] UKUT 00257 (IAC). It is not realistic to assume that internet searches will not be carried out until a person's arrival in Iran. Those applicants for ETDs provide an obvious pool of people, in respect of whom basic searches (such as open internet searches) are likely to be carried out.

Guidance on Facebook more generally

5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed.

6) The timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure.

Guidance on social media evidence generally

7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.

9) In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.

- 36.** I note from the material provided that the translations of the posts is selective, and that although the appellant offered sight of the whole account this is of little value if it is written in Kurdish or a language other than English, that those permitted access to the appellant's account appeared to be 'friends' rather than 'public', and that the appellant has not disclosed the evidence showing a person's location or access to Facebook or a full timeline of social media activities, and therefore had not demonstrated that the material that has been provided has not been manipulated in any way by changing the page source data. The failure of the appellant to provide the type of evidence required to enable a decision maker to assess whether any risk arises from the Facebook account means this is a case in which limited weight can be placed upon the material provided, which on its own has little evidential value.
- 37.** It is also the case that notwithstanding the appellant making reference to developments in Iraq concerning the monitoring of social media sites there is insufficient evidence to show that the authorities in Iraq are able to monitor accounts outside the country. As Mr Williams submitted, it appears Iran has a more sophisticated system but that was not found to be able to monitor all social media posts in XX.
- 38.** The appellant has failed to establish that he is likely to have come to the attention of the authorities in Iraq, either government-controlled or the IKR, as a result of his Facebook activities or that those he fears can

or have accessed his or any other Facebook account that will create a real risk for him.

39. In relation to his attendance at demonstrations; the leading case on that remains BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) the headnote of which reads:

1 *Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.*

2 (a) *Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.*

(b) *There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country guidance case of **SB** (risk on return -illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.*

(c) *There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.*

3 *It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed.*

4 *The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:*

(i) Nature of sur place activity

- *Theme of demonstrations - what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?*
- *Role in demonstrations and political profile - can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive*

(e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime>

- *Extent of participation – has the person attended one or two demonstrations or is he a regular participant?*
- *Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?*

(ii) Identification risk

- *Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?*
- *Regime’s capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?*

(iii) Factors triggering inquiry/action on return

- *Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?*
- *Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?*

(iv) Consequences of identification

- *Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?*

(v) Identification risk on return

- *Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?*

40. That is a case that, again, refers to Iran and it is not made out that the procedure at the point of return to the IKR is the same as that experienced by returnees to Teheran.
41. The general proposition that regard had to be had to the level of involvement of an individual as well as any political activity which the individual might have been involved in before coming to the UK is equally applicable. In this case there is no evidence the appellant was involved in adverse political activity in Iraq.
42. The appellant has provided photographs showing he attended a couple of demonstrations which he stated were outside the embassy of the government of Iraq in the UK. The appellant will be being returned to the IKR, a region in which he has family as found

previously, and in relation to which it was not established it was unreasonable for him to relocate if he does not wish to go back to his home area.

43. The appellant's role in the demonstrations does not appear to be as a leader or mobiliser but simply a member of the crowd and the photographs taken of the appellant holding a poster or banner show him with his back to the front of the embassy building where what he is holding is unlikely to be seen.
44. The appellant accepts that it is unlikely that the demonstration would have attracted attention in the UK.
45. The appellant has provided insufficient evidence to warrant a finding that the authorities would have undertaken detailed surveillance of the demonstration sufficient to create a real risk and it is not made out they have facial recognition software or human resources to fit names to faces in the crowd.
46. As noted above, the appellant has no adverse profile as a committed opponent or someone with a significant political profile or any basis for claiming he is of any interest to the authorities.
47. I do not find the appellant has established he faces any real risk on return as a result of his sur pace activity sufficient to warrant a grant of international protection on that basis.
48. I also do not find the appellant has made out that what he reflects in his Facebook or on the posters at the embassy reflect a genuinely held political belief in opposition to those he mentions. The appellant has been found to have lied for the purposes of trying to secure a right to remain in the United Kingdom on more than one occasion. It is arguable that there are differences in the fundamental beliefs between those within the government of Iraq, the Kurdish authorities, and the Shia militia, yet the appellant claims that he is opposed to all three organisations. I find that what this evidence demonstrates is clearly another attempt by the appellant to fabricate evidence in support of the claim which is not genuine. I am aware that the authority in Danian clearly shows that even if a person's activities are disingenuous they may still be entitled to international protection depending on how their activities are perceived by the authorities on return, but do not find that the appellant has established any credible real risk based upon what he has done to date.
49. As the appellant has not established he has the necessary profile to create a credible real risk and I find his attendance at demonstrations do not represented a genuinely held adverse political view or otherwise, I find it will not contravene the HJ (Iran) principle for the appellant to delete his social media profile and his Facebook account. It has not been made out the authorities in Iraq have the ability to recover a closed account, an issue considered in XX.
50. Having carefully considered all the available material in this appeal, I find the appellant has failed to discharge the burden of proof upon him to the required standard to show he is entitled to a grant of international protection or for leave to remain on any other basis.

- 51.** The appellant is no more than a failed asylum seeker who has been found to lack credibility, who is in possession of his CSID, and who can be returned safely to Iraq.

Decision

- 52. I dismiss the appeal.**

Anonymity.

- 53.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Deputy Upper Tribunal Judge Mahmood made such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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.

Signed.....
Upper Tribunal Judge Hanson

Dated 26 August 2022