Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10152/2017

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 12th November 2018	**On 26th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. Schwenk, instructed by All Nations Legal Services (Doncaster)
For the Respondent: Mr. Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction has previously been made by F*t*T Judge McAll. Although no application is made before me, the appeal concerns a claim for asylum and international protection and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. AA is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is an Iraqi national. He is said to have left Iraq in October 2007 and he claims to have entered the UK on 5th November 2007. He claimed asylum on 22nd November 2007. His claim was refused by the respondent on 14th January 2008 and his appeal against that decision was dismissed by F*t*T Judge MacDonald for the reasons set out in a decision promulgated on 17th March 2008. I shall return to that decision in due course. The appellant then made applications for an EEA Residence Card. The first of those applications was refused on 20th August 2013, and the second was refused on 16 May 2014. In August 2014, the appellant made an application for leave to remain as a stateless person, but that application was withdrawn on 11th September 2014. On 17th September 2014, the appellant made further submissions to the respondent and by a decision dated 19th September 2017, the respondent again refused the appellant's application for asylum and humanitarian protection.

3. The appellant's appeal against that decision was heard by F*t*T Judge McAll in November 2017 and was dismissed for the reasons set out in a decision promulgated on 23rd November 2017. The appellant was granted permission to appeal to the Upper Tribunal, and for the reasons set out in a decision of Upper Tribunal Judge Chalkley, the decision of F*t*T Judge McAll was set aside. At paragraph [11] of his decision, Upper Tribunal Judge Chalkley states:

> "At paragraph 44 the Judge made a finding that he accepted the appellant's claim that he is in a genuine relationship with his wife, or partner. That is a finding that shall stand but the remaining part of the determination shall be set aside …"

4. The appeal was retained in the Upper Tribunal and comes before me to remake the decision. I proceed on the basis that there was an error of law in the decision of the F*t*T Judge and that the only finding of the F*t*T Judge that is preserved, is that the appellant is in a genuine relationship with his wife or partner. At the conclusion of the hearing before me, I reserved my decision. I said that I would give my decision in writing. This I now do.

The decision of F*t*T Judge MacDonald promulgated on 17th March 2008

5. As there has been a previous determination by an F*t*T Judge, the **Devaseelam** principles, which were approved by the Court of Appeal in **Djebbar v Secretary of State for the Home Department [2004] EWCA Civ 804** apply.

6. The evidence before F*t*T Judge MacDonald was set out at paragraphs [6] to [26] of his decision. The findings and conclusions of F*t*T Judge MacDonald are set out at paragraphs [37] to [50] of his decision. I have carefully considered all of the matters set out but for present purposes, it is sufficient to note the following findings:

> "38. Having considered all the evidence I find that the appellant's account was littered with inconsistencies and implausibilities. Although the core of his account was basically straightforward, he appeared to be unable to give a consistent account of the events which he said caused him to leave Iraq.

…

47. In conclusion and considering all the evidence in the round, I am satisfied on the evidence before me that the appellant has fabricated his claim in its entirety. There is evidence to suggest that the appellant was motivated to come to the United Kingdom for economic reasons. This is because the appellant has referred in his evidence to his disappointment at the quality of the accommodation he has received and his desire to attend college and be looked after. He complained that he no longer was being paid.

48. I make an adverse credibility finding under the provisions of Section 8 of the 2004 Act because of the appellant clearly sought to mislead the immigration authorities on arrival in the United Kingdom by pretending that he was under the age of 18. I am satisfied that the age assessment tests carried out by the respondent show conclusively that the appellant has not been truthful about his age and that he is in fact an adult and liable to be treated as such. I also make an adverse credibility finding because of the appellant's unsatisfactory explanation as to the delay in why he claimed asylum after arriving in the United Kingdom.

49. I am satisfied on the evidence before me that the appellant faces no risk on return to Iraq as a failed asylum seeker. I am satisfied that there would be no bar to him returning to Kirkuk where he would be able to live with his mother who still resides there, and who, if I understand the appellants evidence correctly, still receives income from shops and property which she owns in that city.

…"

The hearing before me on 12th November 2018

7. At the outset, Mr Schwenk confirmed on behalf of the appellant that he does not challenge, or seek to go behind any of the findings previously made by F*t*T Judge MacDonald as to the core of the appellant's account. The parties agree that the issue for me to determine is the risk upon return now.

8. The parties agree that the appellant is from Kirkuk, a contested area. It is common ground that notwithstanding the decision of F*t*T Judge MacDonald, the Country Guidance now in place establishes that the intensity of the armed conflict in the so-called "contested areas", is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. The parties agree that although the appellant may not be able to return to Kirkuk, there remains the issue of internal relocation to Baghdad and the IKR.

The evidence

9. In preparation for the hearing before the F*t*T previously, both parties had filed documents. The appellant had filed a bundle under cover of a letter dated 2nd November 2017 comprising of some 294 pages, including a witness statement made

by the appellant and a statement made by his partner. Under cover of a letter dated 3rd September 2018, the appellant's representatives filed and served a further short bundle comprising of 10 pages. That bundle included supplementary witness statement made by the appellant. On behalf of the appellant I also received a skeleton argument settled by Mr Schwenk dated 7th September 2018.

10. In making my decision, I have carefully considered all of the documents submitted by the parties, even if they are not specifically mentioned in the decision. I made a record of proceedings and I therefore do not intend to repeat all the evidence but shall refer to the most salient parts of the evidence before me, as relevant to the issues before me.

11. I heard evidence from the appellant and his partner. The appellant was assisted by an interpreter, Mr O Hassan and gave evidence in Kurdish (Sorani). The appellant and the interpreter both exchanged a few words and the interpreter confirmed to me that he understood the appellant, and the appellant understood him.

12. Subject to two corrections, the appellant adopted his witness statement dated 27th October 2017 as being true and correct. First, the appellant confirmed that he had moved address in the last two weeks and corrected his address. Second, the appellant confirmed that his date of birth is 25th January 1990 and not 1989 as set out in the statement. The appellant stated that he had previously been disbelieved about his date of birth, and so he just gave the date of birth that had been adopted. Subject to the correction of his date of birth in his second statement, again to 25th January 1990, the appellant also adopted the content of his statement dated 3rd September 2018, as being true and correct.

13. The appellant confirms that when he lived in Kirkuk, he had an ID card. In his oral evidence, the appellant claimed that when he left Iraq, he was in possession of his ID card. He stated that when he was in Turkey, he sent it back to his family using the agent because he had been told by the agent that he should not have an ID card. He gave his ID card to the 'people smugglers' to send back to his family. The appellant stated that they returned the ID card to his mother. When asked by Mr Schwenk where his ID card is now, the appellant stated that it had been seized at Sulaymania airport and that he cannot now get it back. He was asked how the ID card had come to be seized, and he replied that he had come to know someone in Doncaster, who had agreed to bring the ID card back to the appellant. However, when that individual tried to bring the ID card back, the individual had been detained at Sulaymania for 3 nights, and the ID card had been seized.

14. In his witness statement of 27th October 2017, the appellant claims that in 2012, he wanted to marry his girlfriend in a register office in the UK. He was told that he needed to have ID before he could get married. One of his friends from the UK was going back to Iraq for a holiday. The appellant asked his friend to bring some documents back for him. The appellant called his mother to get the documents ready, and she arranged for them to be taken to Sulaymaniyah where the appellant's friend

was staying, by car. The appellant's friend collected the appellant's ID card and a copy of the appellant's rations card. When the appellant's friend was on his way back to the UK, he was at Sulaymaniyah airport and was stopped. They checked through his bags and found the appellant's documents. The appellant claims that his friend was sent to prison for four days, and the appellant's documents were never returned.

15. The appellant confirmed that he last spoke to his maternal uncle in Erbil a very long time ago. He could not remember when, and claimed that he is unable to contact him now because he no longer has the phone number. He claimed that he had last had contact with his mother when she was living in a Camp about a year ago, and he has been unable to contact her because "her phone is switched off".

16. In his supplementary witness statement dated 3rd September 2018, the appellant states that on 30th August 2018 he attended the Iraqi Consulate in Manchester. He explained that he needed an ID Card or passport, and he was told that before one could be issued, he would need to provide at least a copy of his ID card or passport. He was told that without proof of his ID, he could not be given an ID document.

17. In cross-examination, the appellant confirmed that his mother had a mobile telephone that he would use to speak to her, but it is now switched off. The appellant stated that his mother was living in a camp, in Ranya, near Erbil and within the IKR. He stated that he has tried contacting the camp authorities but was unsuccessful. When asked whether he had tried to contact the Kurdish authorities to see if they could assist in putting the appellant in contact with his mother, he replied that he did not think they would be willing to do that. He accepted that he had not tried. He also accepted that he had not tried to make contact with his family through the Red Cross or Red Crescent. The appellant stated that when he previously lived in Doncaster there was a Kurdish community that he could meet with in a café, and that could assist him, but he does not now have access to that community since he moved to Southport. He does not socialise with the Kurdish community in the same way that he did previously. The appellant confirmed that he had recently attended the Iraqi Consulate but they could not do anything to provide him with documents. He did not ask them to help trace his mother. It was put to the appellant that he does not seem to be very worried about having lost contact with his mother. He replied that he is concerned, but there is nothing he can do. He accepted that it is true that he could contact the authorities, but had not done so.

18. By way of clarification, I asked the appellant how he knew that his ID card had been returned by the agents, to his family. The appellant replied that when he arrived in the UK, the agents had asked the appellant's mother for a large amount of money, and they had given her the ID card. He had been told about this in 2012, when he spoke to his mother asking her to send the ID card to him. She had told the appellant that when she had paid the money, the agents had given the ID card to her.

19. I referred the appellant to the answers that he gave in his screening interview. In answer to question 7.36, when asked whether he has his own National Identity Card

and where it is now, the appellant had stated that the had left it in Turkey. The appellant stated that he did not tell the officer that it had been sent back to his mother by the people smugglers because he was very young at the time and he was too scared to give details about the people smugglers. He explained that it was his mother who had found the people smugglers that assisted him leave, and she was therefore in contact with them, and they knew where she would be.

20. In re-examination, the appellant confirmed that he had been too scared to mention anything about the people smuggles during the screening interview in 2007, because "you are told that you must not give people any details because it is illegal work". The appellant said that he was scared that if he gave their details, they would find the appellant at some time in the future, and he would have to pay the price.

21. The appellant's partner, "MR" was then called to give evidence. She adopted her witness statement dated 27th October 2017 that is to be found at pages [18] to [19] of the appellant's bundle as being true and correct. She confirmed that she has been in the UK since 2010, and started working in 2010 at [~] in Southport. At the time was also studying at Southport College. She finished studying in 2014. Between 2010 and 2013 she had worked part time, and since 2013, she has maintained a full time job.

22. MR stated that in 2013 she had two jobs. During the day, she worked at the [~] and in the evenings, she worked in a Spanish restaurant. At this time she was also studying at Southport College. When she finished college in 2014, she got a full time job in a Polish Shop, [~], and she continued working in the evenings at the Spanish restaurant. In February 2016 she moved from Southport to Doncaster to look after the mother, and in June 2016 she started working through an Agency. In April 2017 she started working as a Quality Controller for [~] and since August 2018 she has been working for two GP's in the NHS, as a translator, secretary and receptionist.

23. MR confirmed that she has a number of family members in the UK, including her parents, two sisters and some aunts and uncles. They all live in Southport, and it is a close family. MR explained that her mother lives only one street away, and that she sees her mother every day.

24. In cross-examination, MR was asked about the appellant's relationship with his own family in Iraq. She confirmed that the appellant has mentioned his mother who she understands is living in a Camp. MR stated that she had been told that by the appellant, about a year ago, and that the appellant had tried to contact his mother by calling the telephone number that he has.

25. In reaching my decision, I remind myself that the burden of proof rests upon the appellant to show that at the date of the hearing before me, he has a well-founded fear of persecution within the meaning of article 1A(2) of the Convention and Protocol relating to the Status of Refugees. It is for the appellant to show that there are substantial grounds for believing that he meets the requirements of the

Qualification Regulations and that he is entitled to protection in accordance with paragraph 339C of the Immigration Rules. That is to be determined objectively, in the light of the circumstances existing in Iraq. The appellant must discharge the burden of proof upon him, to the lower standard. This lower standard of proof can be expressed as a 'reasonable likelihood', 'a real risk' or a 'serious possibility'.

Findings and Conclusion

26. The appellant stated in both of his witness statements, that his date of birth is 25th January 1989. That was corrected when he adopted his witness statements before me, and the appellant now maintains that he was born on 25th January 1990 as he had previously claimed. For the avoidance of any doubt, there is nothing before me that undermines the finding made by F*t*T Judge MacDonald previously, and noted at paragraph [48] of his decision, that the appellant has not been truthful about his age, and was an adult.

27. In reaching my decision, I have had regard to the relevant country guidance. AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, confirmed that there is a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising *inter alia* Kirkuk, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.

28. As I have set out previously, it is common ground between the parties that the issue for me to determine is the risk upon return now, noting that the appellant is from Kirkuk, a contested area. Although the respondent accepts that the appellant may not be able to return to Kirkuk, I must consider whether the appellant can relocate elsewhere in Iraq. To that end, insofar as is relevant, the Court of Appeal in AA (Iraq), provided the following guidance:

> "**B. Documentation and Feasibility of Return (Excluding IKR)**
>
> 5. 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.
>
> 6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.
>
> 7. 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.

8. 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. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

D. Internal Relocation Within Iraq (Other Than the IKR)

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

(a) whether P has a CSID or will be able to obtain one (see Part C above);

(b) whether P can speak Arabic (those who cannot are less likely to find employment);

(c) whether P has family members or friends in Baghdad able to accommodate him;

(d) whether P is a lone female (women face greater difficulties than men in finding employment);

(e) whether P can find a sponsor to access a hotel room or rent accommodation;

(f) whether P is from a minority community;

(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c)."

29. In AAH (Iraqi Kurds – internal relocation) Iraq CG [UKUT 212 (IAC), the Upper Tribunal supplemented Section C of the guidance given by the Court of Appeal in AA (Iraq) with the following guidance:

"1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad.

ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would

face very significant obstacles in that officials may refuse to deal with her case at all."

30. Insofar as return to the IKR is concerned, section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) was replaced in AAH with the following guidance:

"1. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

2. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

3. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

4. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

5. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.

6. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

7. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

8. For those without the assistance of family in the IKR the accommodation options are limited:

   (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

   (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

   (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

   (iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

9. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

   (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

   (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

   (iii) P cannot work without a CSID;

   (iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

   (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

   (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers."

31. Although the appellant was found by F*t*T Judge MacDonald to have given inconsistent and contradictory evidence as to where he had lived in Iraq, the respondent does not challenge the applicant's claim that his last place of residence was in Kirkuk. In the respondent's decision of 19th September 2017, the respondent confirms, at paragraph [22], that the appellant will not be removed to Kirkuk. As someone who is not a former resident of the Iraqi Kurdish Region ("IKR"), the return of the appellant will be to Baghdad. The Country Guidance confirms that the Iraqi authorities will only allow an Iraqi national entry if they are in possession of a current or expired passport or a laissez passer. In his screening interview, the appellant stated *[Q.7.1 & Q.7.21]* that he has never held a national passport. There is nothing to suggest that the appellant is in possession of a current or expired Iraqi passport, and I find on the lower standard of proof that the appellant is not now in possession of a current or expired Iraqi passport. However, in accordance with the Country Guidance as confirmed by the Court of Appeal in AA Iraq, an international protection claim 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 simply because return is not currently feasible on account of a lack of any of those documents.

32. The appellant is an Iraqi national of Kurdish origin, and I must therefore consider whether the appellant has originals or copies of his Civil Status ID ("CSID"), or will be able to obtain one, reasonably soon after arrival in Iraq.

33. Even on the lower standard of proof, I reject the appellant's claim that he does not have an ID card. Like F*t*T Judge MacDonald previously, I do not find the appellant to be a credible witness.

34. The appellant claims that when he lived in Kirkuk, he had an ID card. He claimed in his oral evidence, that when he left Iraq, he was in possession of his ID card. He claims that he no longer has that ID card because it was returned to his mother, and that when he attempted to have it returned to him via a friend that had travelled to Iraq, the ID card and a rations card belonging to the appellant were confiscated at Sulaymania airport.

35. In his screening interview completed on 10th January 2008, shortly after his arrival in the UK, the appellant confirmed that his ID card had been issued to him in Kirkuk and he claimed that he had left it in Turkey. In his evidence before me, the appellant stated that he did not tell the officer that it had been sent back to his mother by the agent because he was very young at the time, and he was too scared to give details about the people smugglers. I reject that explanation. During the screening interview *[Q.7.17 to 7.21],* the appellant was asked about the agent used to arrange the trip to the UK. The appellant was asked for, and gave the name of the agent *[Q.7.18]*. Having been prepared to give the name of the agent, and confirming that the appellant had only met people working for the agent, it is not credible that the appellant would have been afraid to tell the interviewer that his ID documents had been returned to his mother by the agent.

36. The appellant's evidence is that it was not until 2012 that he was told by his mother that his ID Card had been returned to her by the agents. That is notwithstanding the appellant's evidence that the ID card was handed to the agent in 2007 when the appellant was in Turkey. It is not credible that the appellant would have waited until 2012 to make enquiries of whether his ID card had been returned to his mother.

37. The appellant claims that in 2012 he attempted to have the CSID document returned to him via a friend that had travelled to Iraq. That is a claim that is made by the appellant, and is one that is entirely unsupported. I accept that corroborative evidence is often difficult to provide, but here, the appellant claims that it was a friend of his from the UK that was going to Iraq for a holiday, that he sought the assistance of. There is no good reason why the appellant's friend, who on the appellant's account of events had been detained in Sulaymania for three nights when the documents were confiscated, could not have been called to give evidence to support the claim made by the appellant. Notwithstanding the fact that the appellant has moved from Doncaster, the appellant, who was well aware that he has previously been found not to be credible, provides no good explanation for failing to provide evidence that would be available to support his account that his friend had indeed travelled to Iraq, and was detained in Sulaymania as the appellant claims.

38. Furthermore, the appellant's claim that he had attempted to obtain his CSID card from his mother in 2012 is not a claim that formed part of the further submissions made by the appellant in September 2014. The further submissions that were relied upon by the appellant are set out in the respondent's decision of 19th September 2017. They are summarised at paragraphs [1] to [7] of that decision, and it is to be noted that the appellant made no reference to his attempts to obtain his CSID, and his claim that a friend of his had been detained when attempting to bring documents to the UK, for the appellant. The failure to refer to these events, that had occurred only two years before those further submissions were made, further undermines the appellant's credibility and his account of events.

39. Having carefully considered the evidence before me, I find that the appellant has access to his CSID and has fabricated this part of his claim, in an attempt to present a further obstacle to his return to Iraq. Even on the lower standard of proof, the appellant has failed to establish that he does not have the CSID or that he would not be able to obtain his original identity documents from his mother or extended family members who are now in Erbil. I find the appellant already has a CSID and a rations card, that can be obtained and sent to him. I find that the appellant most likely left the original documents with his mother when he left Iraq and that his mother or extended family members will be able to obtain and send these original documents to him.

40. Should it be necessary for the appellant to obtain a new CSID because his previous one has expired, on the lower standard, I am satisfied that the appellant has an expired CSID, and the process should therefore be straightforward.

41. The appellant states in his most recent statement that he has attended the Iraqi Consulate. I accept that the appellant may have attended the Iraqi Consulate on 30th August 2018 as he claims, but there is nothing before me to confirm anything that was said by those at the Iraqi Consulate. It is perhaps unsurprising that they would be unwilling to provide any document to an individual who simply claims to be an Iraqi national seeking some form of document. The appellant has taken no steps to try and obtain any supporting evidence or documents from his mother or other members of his family that remain in the IKR, that may be capable of supporting his identity to establish his entitlement to an ID document.

42. Having found that the appellant has a CSID or will be able to obtain one, reasonably soon after arrival in Iraq, I turn to the question of internal relocation. The Country Guidance establishes that as a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City. I have already found that the appellant has a CSID or will be able to obtain one. The appellant claims, and I accept, that he does not speak Arabic. That would not be implausible for an Iraqi Kurd from Kirkuk and he was not challenged about his inability to speak Arabic before me. The Country Guidance establishes that those who cannot speak Arabic, are less likely to find employment. The appellant has never resided in Baghdad and there is no evidence linking him to any family contact in Baghdad. The appellant accepts that his father may have had friends in Baghdad, but he does not know them. The appellant left Iraq in 2007 when he was 18 years old, and on the lower standard, I am prepared to accept that the appellant has no family members or friends in Baghdad, that would be able to accommodate him. Similarly given the lack of any connection to Baghdad, there is no evidence that he would be able to find a sponsor to access a hotel room or rent accommodation. The appellant is, as a Kurd, from a minority community, and is a Sunni Muslim. I accept the submission made by Mr Schwenk that the fact that the appellant is a Sunni Muslim, enhances the risk that he would be exposed to in Baghdad. The appellant will have access to initial support given to IDPs. Taking all these factors into account, I am satisfied that it would be unreasonable or unduly harsh to expect the appellant to relocate in Baghdad.

43. I do however find that it would be reasonable and not unduly harsh, to expect the appellant to relocate in the IKR. I note that there are currently no international flights to the IKR and that all returns from the United Kingdom are to Baghdad. The Tribunal confirmed in AAH that for an Iraqi national of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical, and can be made without a real risk of the individual suffering persecution, serious harm.

44. The appellant's evidence is that his mother was living in Kirkuk at the time that the appellant left Iraq, but she has since moved to Erbil in Kurdistan. He claims that she is living in a camp. The appellant's maternal uncle is also said to be living in Erbil with his family. The appellant has been in the UK since 2007 and even on his own account, he maintained contact with his mother. In his witness statement dated 27th

October 2017 he claims that his mother had moved to Erbil "around one month ago". That is, in or about September 2017. He claims in his statement that he is not close to his maternal uncle, but that his mother is in contact with him. In his evidence before me, the appellant confirmed that his mother had a mobile telephone and that he last spoke to her, about a year ago. He claims that her phone is now "switched off". I reject the appellant's evidence that he is no longer in contact with his mother and maternal uncle. The appellant's evidence about his contact with his mother and uncle was vague and unconvincing. It is simply incredible that the appellant would have been able to maintain contact with his mother for several years, and the contact between mother, and son would then simply stop because her phone is "switched off". It is incredible that even if his mother's phone was "switched off", the appellant has done very little to find and get in touch with his mother. It is equally incredible that the appellant no longer has the phone number for his maternal uncle, as he claims.

45. If the appellant is unable to leave the UK with his CSID, I am quite satisfied that the appellant's mother or maternal uncle members would bring his existing CSID or a replacement to the appellant, upon his arrival in Baghdad. The appellant's mother and maternal uncle remain in Erbil and, I have found, remain in contact with the appellant. I find that the appellant has a CSID or will be able to obtain one, reasonably soon after arrival in Iraq so that he could make the journey from Baghdad to the IKR, without a real risk of him suffering persecution, serious harm, or Article 3 ill treatment.

46. Once at the IKR border, the appellant, as is normal, would be granted entry to the territory, and subject to security screening, and registering his presence with the local mukhtar, the appellant would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is nothing in the evidence before me, or as to the profile of the appellant, that is capable of establishing that he would be at particular risk of ill-treatment during the security screening process. I remind myself that the appellant's account of the events that led to his departure from Iraq, were comprehensively rejected by F*t*T Judge MacDonald previously. There is nothing to suggest that the appellant would be perceived as coming from a family with a known association with ISIL, and in any event, he would to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory. Cultural norms would require that the family accommodate the appellant. When interviewed in 2008, the appellant claimed that his family was well off, and earned a rental income from shops. The appellant stated in interview *[Q.16]* that his mother had been supporting herself from the rent they were getting from shops. Although matters will have moved on since then, not least because the appellant's mother is now in Erbil, I am satisfied that the appellant will have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh.

47. It follows that in my judgment, the appeal cannot succeed on the basis of the Refugee Convention or on Humanitarian Protection grounds.

48. At to the appellant's Article 8 claim, F*t*T Judge McAll found that the appellant is in a genuine relationship with his partner, MR. That finding was preserved by Upper Tribunal Judge Chalkley.

49. On behalf of the appellant, Mr Schwenk submits that the applicant can satisfy the requirements of paragraph EX.1.(b) of Appendix FM. That is, the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK. He submits that the appellant and MR could not live together in Iraq. He submits that the applicant meets the requirements of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") because for the purposes of Regulation 8, the appellant is an 'Extended family member' of MR. It is said that the appellant is the partner of, and in a durable relationship with an EEA national. That is, Mr Schwenk submits, an exceptional circumstance and that the facts here, provide compelling reasons for the grant of leave to remain in the UK on Article 8 grounds.

50. Regulation 15 of the EEA Regulations confirms that an EEA national who has resided in the UK in accordance with the Regulations for a continuous period of five years, acquires the right to reside in the UK permanently. MR is a national of Poland and I accept her evidence that she has lived in the UK since July 2010. I accept her evidence that she started working in 2010 and that she has remained employed in a number of jobs during her time in the UK. Mr Diwnycz did not challenge the evidence of MR regarding her employment history and there is a wealth of evidence before me in the form of wage slips confirming the employment history outlined by MR in her evidence before me. I find that MR has resided in the UK in accordance with the EEA Regulations for a continuous period of five years, and has acquired the right to reside in the UK permanently.

51. I must therefore consider whether there are insurmountable obstacles to family life between the appellant and MR continuing outside the UK. In her witness statement dated 27th October 2017, MR confirms, at paragraph [8], that if the appellant had to leave the UK, she would go with him, but she does not want to. MR confirms that she is able to speak some Kurdish, but not very well. She is concerned that as a Christian, she would be unable to live freely in Iraq. I accept her evidence that her family live in the UK and that it is a close family.

52. The correct approach to the "insurmountable obstacles" test in EX.1, must be examined in the light of the Supreme Court's decision in R (Agyarko) -v- SSHD [2017] UKSC 11, which considered the meaning and application of the "insurmountable obstacles" test in EX.1 to Appendix FM. In Ayarko, the appellants had each entered the UK as visitors and had overstayed after their limited leave to enter had expired. They had each formed relationships with British citizens. Neither had children from the relationships. Their applications for leave to remain were refused by the SSHD on the grounds that they failed to satisfy the requirement in the

Immigration Rules Appendix FM s.EX.1(b) that there be insurmountable obstacles preventing them from continuing their relationships outside the UK, and there were no exceptional circumstances under Article 8.

53. Lord Reed gave the only judgment of the Court, and at [42], her referred to the decision of the Grand Chamber in Jeunesse -v- The Netherlands (2014) 60 EHRR 17. He noted at [43], that the European court intends the words "insurmountable obstacles" to be understood in a practical and realistic sense, rather than as referring solely to obstacles which make it literally impossible for the family to live together in the country of origin of the non-national concerned but recognised that the court's application of it indicates that it is a stringent test. Lord Reed's consideration of the domestic position is to be found at paragraphs [44] to [45] of the judgment. He confirmed that interpreting the expression in the same sense as in the Strasbourg case law, leave to remain would not normally be granted in cases where an applicant for leave to remain under the partner route was in the UK in breach of immigration laws, unless the applicant or their partner would face very serious difficulties in continuing their family life together outside the UK, which could not be overcome or would entail very serious hardship. Lord Reed noted, at [54] to [57], that the European court has said that, in cases concerned with precarious family life, it is "likely" only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8.

54. I have already found that it would not be unduly harsh for the appellant to return to the IKR where he has family. Although no specific reference was made to the background material before me, I have carefully considered the 'Country Information and Guidance Iraq: Religious minorities' published by the Home Office in August 2016. The section dealing with religious minority groups, at [4.2.1] to [4.2.3] in particular, provides information about Christians in Iraq. It is noted that there has been a significant decline in the number of Christians living in Iraq. It is noted that in the wake of the US-led invasion, community members were targeted for their religious differences as well as their perceived ties to the West, resulting in a large exodus of Christians from the country as refugees. It is said that only around 350,000 Christians are still based in Iraq, mostly in Baghdad, Mosul and the Ninewa plain, Kirkuk, Basra as well as the three governorates in the Iraqi Kurdish Region. Insofar as the position in the IKR is concerned, the report states:

> 'Kurdistan Regional Government (KRG)
>
> 7.2.1 The Internal Displacement Monitoring Centre (IDMC) noted in its June 2015 report that the Kurdistan Region of Iraq (KRI) is historically a haven for religious minorities. The UNHCR Position Paper on Returns observed that religious minorities were generally admitted to the KRI, despite the increasing access restrictions for other groups. The US Commission report observed: 'Since 2014, the semi-autonomous Kurdistan region and its government (KRG) have played a significant role in providing a safe haven for religious minority communities fleeing ISIL's advancements and attacks.'. On 1 March 2016, the

> Kurdistan Regional Government (KRG)'s foreign affairs department quoted Izsak-Ndiaye Rita, UN Special Rapporteur on minority issues: "What the KRG has done for minorities and different ethnic and religious groups who have fled to this region is very well appreciated and recognized internationally.".'

55. The background material establishes that although there has been a decline in the number of Christians in Iraq, there remains a Christian community in the IKR. There is no evidence before me that Christians in general are persecuted in the IKR for practising their faith and the fact that MR is a Christian, is not in itself sufficient for me to find that there are insurmountable obstacles to family life between the appellant and MR continuing outside the UK, in the IKR.

56. Having considered the evidence of MR and even accepting as I do, that she has a close relationship with her family in the UK, I do not accept that there are insurmountable obstacles preventing the appellant and MR from continuing their relationships outside the UK.

57. The fact that the appellant is unable to establish an entitlement to remain in the UK on Article 8 grounds under Appendix FM and paragraph 276ADE of the Immigration Rules is not the end of the matter. Mr Schwenk submits the appellant is an 'Extended family member' of MR, and is in a durable relationship with an EEA national. He submits that is an exceptional circumstance, and a compelling reason for the grant of leave to remain in the UK on Article 8 grounds.

58. I find that the appellant enjoys family life with MR. I also find that the decision to refuse the appellant leave to remain may have consequences of such gravity as potentially to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved.

59. I have carefully considered the claim that the appellant is an "extended family member" because he is in a durable relationship with MR in accordance with the definition of extended family member in the EEA Regulations. However, the EEA Regulations draw a distinction between the rights of 'family members' and 'extended family members'. Unlike full family members, who, under Regulation 18(1), have a right to receive a residence card, extended family members have no such right but only an entitlement to require the SSHD to exercise his discretion and, in so doing, the respondent would have to "undertake an extensive examination of the personal circumstances of the applicant" before issuing such residence card. Importantly, an extended family member can only be issued with a residence card on the basis of his durable relationship with an EEA national if the respondent has undertaken "an extensive examination of the personal circumstances of the applicant". That can only happen after an application for a residence card is made. The further submissions that were advanced by the appellant did not refer to his relationship with MR and,

unsurprisingly, the SSHD did not consider whether any discretion vested in him should be exercised in favour of the appellant on the grounds that he is in a durable relationship with an EEA national. It is not open to the Tribunal to exercise the discretion conferred on the respondent. In my judgement, the fact that the appellant may be able to establish that he is in a durable relationship, when taken together with my findings set out previously, is not such as to make his removal from the UK disproportionate to the legitimate aim. If he has an entitlement to a residence card under the EEA Regulations, he is entitled to make that application to the respondent.

60. I remind myself that the appellant's appeal before F*t*T Judge MacDonald was dismissed on 17th March 2008 and the appellant had exhausted his right of appeal by 27th March 2008. He remained in the United Kingdom unlawfully and his relationship with MR commenced and has developed since 2012. I accept that MR and the appellant would prefer to continue their relationship together in the UK. I can well understand that MR, would, as she states in her statement, not want to go to Iraq, but that does not equate to an entitlement to continue the relationship in the UK on Article 8 grounds. In the end, she accepts that if the appellant has to leave, she will go with him. Having considered all of the evidence, I conclude that the removal of the appellant from the UK disproportionate to the legitimate aim.

61. I therefore dismiss the appeal on asylum grounds, humanitarian protection grounds and also on human rights grounds. (Article 8 of the European Convention on Human Rights).

NOTICE OF DECISION

62. The appellant's appeals on asylum grounds, humanitarian protection and Article 8 of the European Convention on Human Rights are dismissed.

Signed Date 16th January 2019

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

I have dismissed the appeal. In any event, as no fee is paid or payable, there can be no fee award.

Signed Date 16th January 2019

Deputy Upper Tribunal Judge Mandalia