Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06321/2019

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 12 February 2020	**On 3 March 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C. Boyle, instructed on behalf of the Appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant with permission, appeals against the decision of the First-tier Tribunal (Judge Fisher) (hereinafter referred to as the "FtTJ") who, in a determination promulgated on the 1st April 2019, dismissed his claim for protection.

The factual background:

3. The background to the Appellant's protection claim is set out in the determination of the FtTJ at paragraphs 1-8 and in the decision letter of the Secretary of State issued on 24 May 2019.

4. The Appellant is a national of Iraq. He entered the United Kingdom on 14 April 2016 and made an application for asylum and/or humanitarian protection. The basis of his claim was that he had left Iraq because he had been kidnapped by two men in September 2015 due to his father's position in the peshmerga. It was asserted that they were working for Daesh due to their appearance. He was hit and kicked and then he managed to escape from the car.

5. He did not report the incident to the authorities as he was unwell. He told his father who did make a report to the security services. The appellant had no further problems in Iraq following the incident. The family did not receive any threats in Iraq.

6. The appellant claimed that his father would be the main target of Daesh due to his role but confirmed that he had never been threatened directly by them.

7. The appellant left Iraq on 23 September 2015 and travelled through several countries until his arrival in the United Kingdom.

8. The decision letter considered that he did not have a genuine subjective fear on return to Iraq. It was not accepted that he had come to the adverse attention to Daesh and kidnapped by them due to his father's employment. The decision letter considered the CG decision of AA (Article15 (c) Iraq CG [2015] UKUT 544 but reached the conclusion that the appellant had failed to demonstrate that he did not already possess Iraqi ID documents or that he could not reacquire them either by having them sent to him in the UK or collect them on return to Iraq. It was considered feasible he could approach the authorities in Baghdad to obtain his CSI or any other identity documents that he may require on return to Iraq if unable to approach the authorities in the home province. It was considered that as he was a relatively young healthy adult male and spoke Kurdish Sorani, he could return to xxx where Daesh were not in control and are not present. He confirmed that he held a civil ID card which he left in Iraq and therefore he could apply for a CSID father document centre in his home region or via the embassy in Baghdad. It would not be unreasonable for him to return to the home area in xx, Erbil.

9. The appeal came before the first-tier Tribunal before FtTJ Jones. In a decision promulgated on 27 April 2017, the FTTJ dismissed his appeal. It had been argued on behalf of the appellant that it would not be safe for him to return and live anywhere in Iraq including the IKR as nowhere would be out of reach of Islamic groups. Whilst his father had protection as a result of his status, he would be at risk of harm from

ISIS. The FtTJ accepted that there had been an attempt to kidnap the appellant and that he had escaped but did not accept that he had taken his bed for three days or that when he did seek help on behalf of the authorities they declined to help him on the basis that too much time had gone by (see paragraphs 45 and 46). He accepted that his father was a very high ranking man and presumably an influential individual and rejected his account because of the passage of time nothing further could be done. Furthermore, he did not accept that he was kidnapped by ISIS but that it was from others to extort some favour or payment. In the alternative, even taking the claim at its highest in that it was ISIS who had sought to kidnap him and was in fear, the FTTJ found that there was sufficiency of protection.

10. As to return to Iraq, there was some discussion about the place of return but the judge concluded that if return was to Baghdad it would be a simple matter for the appellant to obtain a passport to enter the IKR and that given his background he would not be therefore any length of time. He therefore dismissed the appeal.

11. Following that decision further submissions were lodged on behalf of the appellant on 18 September 2018. The respondent treated them as a fresh claim but refused those submissions in a decision letter dated 24 May 2019.

12. In the decision letter the respondent took into account further documentation provided by the appellant (set out at paragraphs 6 – 25 which included medical evidence as to the appellant's condition). The respondent applied the principles in Devaseelan and set out the findings of fact made by the First-tier Tribunal judge. It noted that the basis of his claim was that he continued to maintain his fear upon return to Iraq from ISIS who had kidnapped him as a result of his father's position as a high-ranking officer in the ministry and it was claimed that it would be unreasonable and unduly harsh for him to relocate to the IKR.

13. The decision letter considered the various police records and translations of the documents from 2017 but reached the conclusion that it had not been explained how his father was originally unable to make a report as it was too late but was then able to make a report over a year after the alleged offence took place. Notwithstanding the matters raised about the documentation, the respondent took the view that the report did not confirm that ISIS were behind the attempted kidnap as claimed but had documented a report that had been made by his father.

14. The respondent to set out the country materials and the CPIN dated November 2018 and consideration was also to the country guidance decisions in AA (Article15 (c) Iraq CG [2015] KUT 544 as amended by the Court of Appeal in AA Iraq v SSHD[2017] EWCA Civ 944 and AAH (Iraqi Kurds-internal relocation) CG [2018] UKUT 0212. Specific consideration was given to documentation and feasibility of return. Taking into account the factors identified in the case law and country materials, it was noted that he had confirmed that he was from Kirkuk but that the objective information confirmed the security situation in Kirkuk did not engage Article15 (c) and that he had not provided evidence that his family had approached any government department in Iraq to obtain a CSID card on his behalf. He had therefore failed to provide evidence that he made attempts to obtain documentation

either through family members in Iraq or via the Iraqi embassy in the UK. As he was not from an area that engaged Article15 (c) and he had family who could be given power of attorney to obtain a CSID card on his behalf, he would be able to obtain one before return to Iraq or on his return. It was concluded that he had the opportunity to depart directly to Erbil and that upon securing his CSID he could make the onward journey to Kirkuk. The decision letter also referred to his medical circumstances at paragraphs 138 – 186 but concluded that the conditions the appellant had were not sufficiently serious to reach the high threshold required for a breach of Article3. His claim was therefore dismissed on all grounds.

15. The appellant lodged grounds of appeal against that decision. The appeal against that decision came before the FtTJ in August 2019 and in the decision promulgated on 29th August 2019 his appeal was dismissed.

16. The FtTJ set out his findings of fact at paragraphs 14-19. They can be summarised as follows:

    (a) He took as his starting point the findings of fact made by FtTJ Jones that there had been an endeavour to kidnap him after which he escaped. He recorded that the appellants father's rank and position had been accepted but that the claim that he had been kidnapped by ISIS was speculative.

    (b) As regards the new documentary evidence which consisted of a complaint made in 2017 by the appellant's father following the kidnapping and the action taken on that complaint, the judge rejected the submission that the appellant had any continuing problems. The judge found that the kidnapping was said to have occurred in September 2015 but that the authorities had not been prepared to register a complaint as his father had been too late in doing so, even though was any three days later. The judge found that there was no explanation as to how he would have been able to file a complaint over a year later. He noted that the documents only referred to threats made against the appellant and no reference to any kidnapping. There was no satisfactory evidence to show that ISIS were involved.

    (c) At its highest, he considered that they demonstrated that the authorities were willing and able to offer a sufficiency of protection. He observed that no arrests are made as it was simply impossible to identify those involved.

    (d) The judge rejected the submission that the authorities were unable to offer protection. The judge found that whilst they were unable to make an arrest as the perpetrators was unknown; it did not show that they were unable to provide a sufficiency of protection.

    (e) For those reasons, he was not persuaded that the new evidence led to any departure from the findings previously made by FtTJ Jones and that the new evidence supported the findings in terms of sufficiency of protection.

17. At paragraphs 17 – 19 the judge considered the circumstances relating to Kirkuk as the appellant had said that his CSID and his passport were issued there. The judge concluded at [17] that time had moved on since the height of the conflict and having

considered the decision in R (on the application of Amin) v SSHD [2017] EWHC 2417, that the respondent was entitled to take the position that Kirkuk was no longer a contested area and that there was nothing to suggest that the appellant could not obtain a CSID from the Kirkuk civil affairs office. The judge applied the decision in AA (Iraq) v SSHD [2017] EWCA Civ 944 and that a relative, friend or lawyer could be given the power of attorney to obtain a CSID on behalf of an Iraqi citizen whose CSID had been lost or had elapsed. He recorded the evidence given by Dr Fatah who described the process of giving a power of attorney to a lawyer in Iraq as "commonplace". As the appellant had a friend in Iraq who was a lawyer, he could see no reason why the appellant could not arrange for that friend to act as a proxy and to obtain a new CSID for him. According to the case law, such proxy did not need to be a member of the applicant's paternal family. Thus, even if the appellant had lost contact with his family, the judge was satisfied that he could obtain documentation from his friend.

18. As to the appellant's assertion that he had contacted the consulate in Manchester, the judge reached the conclusion at [17] that it was not surprising that the staff were unable to assist him, given that the contact was "solely telephonic".

19. At [19] he concluded that the appellant could return to the xxx, Erbil area where he had been living prior to his departure from the country and for most of his life. He had demonstrated his resourcefulness in being able to travel to the UK. He took into account the material in his interview that he had been working in a restaurant before he came to the UK and the judge found that he would have some experience of employment which would assist him on return. The judge rejected any submission that he would face mistrust by prospective employers. The judge found that given his father's previous high-ranking role in the Peshmerga, that would not apply to this appellant. He took into account the appellant's medical history and his treatment but that the evidence related to a period from 2016 – 2017 and there was no further up-to-date material. Whilst the appellant was being treated also for anxiety and depression, the appellant's evidence in the bundle (CPIN at page 184) demonstrated that treatment would be available in Iraq even if it were not to the same standard. He was therefore not satisfied that the appellant's health issues would not impact upon his ability to return and relocate if necessary.

20. At [19] the judge considered the issue again of humanitarian protection. He returned to the question in the as to whether there was cogent evidence which would justify him in departing from the existing country guidance given in AA (Iraq) and reached the conclusion that there was such evidence which he went on to identify. The judge went on to conclude "in any event, as I have already observed, I am satisfied that the appellant could relocate to the Erbil/xx area where he was living prior to his departure. In all the circumstances, he cannot qualify for a grant of subsidiary protection

21. There was no claim made on Article3 as a free-standing ground nor any Article8 grounds (see [20]). He therefore dismissed the appeal on all grounds.

22. Permission to appeal that decision was sought and granted and on the 13th May 2019 by FtTJ Swaney.

23. The appeal was therefore listed before the Upper Tribunal. Mr Boyle, who did not appear before the FtTJ, appeared on behalf of the appellant and Ms Petterson, senior presenting officer, appeared on behalf of the respondent.

GROUND 1:

24. Mr Boyle relied upon the written grounds in which it was asserted that the FtTJ erred in law in his assessment of the humanitarian protection claim in respect of Kirkuk and that it was fundamentally flawed. Firstly, it is said that the test of "strong and cogent evidence" had not been met and secondly, it is asserted that the judge failed to have proper regard to the objective material.

25. In support of that submission he referred the Tribunal to pages 150 – 151 of the appellant's bundle which was an extract from the CPIN November 2018. In particular, he referred to paragraph 2.3.6 which stated that 80% of those in humanitarian need are in Ninewah, Kirkuk and Anbar (46% are in Ninewah alone) and 2.3.8 that food, employment and medical care are the top three humanitarian needs in nearly all governorates. He also made reference to paragraph 2.3.10 that as self August 2018 nearly 4 million people had returned to their home areas, a continuing upward trend, particularly to Ninewah, Kirkuk, Anbar and Saleh al-Din, explained by improvements in the security situation, although there is some secondary displacement. Return trends are stable in Baghdad, Diyala and Erbil. He also referred the Tribunal to the EASO report (p178) which referred to the position of Kirkuk and the extract that was copied into the written grounds at page 178 which made reference to ISIL no longer controlling a territory in the Kirkuk governorate but retained pockets of fighters especially in Hawija and the Hamerrin mountains. There was also reference to the position of Kirkuk in the first 10 months of 2018 as ISIS's most prolific attack location (reference Michael Knights a specialist of security issues) although further on according to land info, the level of security incidents and violence was still relatively high although the situation was "somehow improving". Mr Boyle did not refer the Tribunal to any other parts of the report save that his general submission was that "severe conditions existed in Kirkuk".

26. He further submitted that the FtTJ did not grapple with the issue save for his assessment at paragraph 18 of his decision. He later conceded that paragraph 19 also addressed the issue of humanitarian protection but he submitted that it did not identify a significant or durable change in the conditions of Kirkuk.

27. Ms Petterson on behalf of the respondent submitted that there was no error of law in the FtTJ's decision. She submitted at [17) the FtTJ referred to the decision in R (Amin) which considered the CG decision in the context of the changes in Kirkuk. Whilst it was a decision of the administrative court, the FtTJ was entitled to take into account that decision in assessing whether to depart from the CG in AA(Iraq).

28. She further submitted that the FtTJ had regard to all the material before him and that he was not required to rehearse every single matter and set out all of the material he

placed weight on. At [19] he referred to the material relied upon by the appellant which included the EASO report and considered it also in the light of the CPIN.

29. She submitted that whilst Mr Boyle had referred to the issue of humanitarian need by reference to the extracts set out in the grounds, that this did not by itself equate to an Article15 (c) risk to the general population. She submitted that the CPIN 2018 referred to the security situation changing and referred to paragraphs 2.3.30 which set out that since 2005 Daesh's territorial control and collapsed and their operational capability had significantly degraded. The Iraqi government officially declared victory against Daesh in December 2017 and that whilst the threat had not disappeared entirely, the group were confined to small pockets and that the conflict of change in nature from the open conflict to periodic asymmetric attacks. At 2.3.31 that the Iraqi security forces and the Shia militia and the Kurdish Peshmerga had re-establish control over most of Iraq territory and that the security incidents, the fatalities and injuries had significantly declined across all governorates and were 10 times lower than they were in mid-2014. At 2.3.33 it was recorded that since 2015 displacement is significantly declined and that there had been a significant increase in people returning to their homes. She also referred to page 3 of the EASO report which it said there were a limited number of areas where ISIS still had some sway. Accordingly, she submitted, the FTTJ was entitled to place weight on that material and to reach the conclusion that he did.

30. I remind myself that I can only interfere with the decision of a FtTJ if it is demonstrated that he made a decision which involved the making of an error on a point of law. Ground 1 relates to the issue of departing from the country guidance.

31. The test to be applied when considering whether to depart from country guidance is set out in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 Lord Justice Stanley Burnton said this:

> "45. There are simply not the resources for a detailed and reliable determination of conditions in foreign countries to be made on an individual basis on each decision on the application or appeal of persons seeking protection. There are far too many such cases, as is demonstrated by the Secretary of State's use of charter flights to accommodate the large numbers of returnees to countries such as Afghanistan and Iraq. Neither those representing those seeking protections nor the Secretary of State herself have the resources for the detailed, lengthy and costly investigation of conditions on return that is appropriate, given the potential risk to the returnees, in every case. Even if the resources were available, it would be wasteful to have such an investigation, involving much the same evidence, in every case. There would also be a risk of inconsistent decisions, a consideration that is particularly important in the present context since it follows from a decision that one person requires protection, if correct, that a person in the same situation who has been returned may have risked or suffered ill treatment or worse.
>
> 46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of

> return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
>
> 47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so."

32. The Upper Tribunal elaborated upon this test in the subsequent decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) [at Â§72]: [We] recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable.

33. Having carefully consider the competing submissions of the advocates in the light of the material before the FtTJ and his decision, I am satisfied that the FtTJ did not fall into error. The FtTJ was clearly aware of the CG in AA (Article15(c)) Iraq CG [2015] UKUT 544 (IAC) which had held that Kirkuk was a contested area which reached the Article15(c) threshold. The volatility of the situation in those areas, the number of displaced persons and the tactics of warfare used, meant that an individual simply by virtue of his or her presence in such an area would be at a real risk of suffering harm of the type identified in Article15 (c) of the Qualification Directive.

34. AA (Article15(c)) Iraq CG [2015] UKUT 544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, confirmed that there was 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.

35. However, it is plain that he was aware of the correct test to apply in deciding whether there was sufficient material upon which he could rely to depart from that guidance and properly directed himself to that at [19]. I am satisfied that the FtTJ considered the background material relied upon which was set out in the appellant's bundle which included the respondent's CPIN of November 2018 at [18] and [19] and also the EASO report to which he had been referred (see [19]). On his analysis he found that Kirkuk was no longer a contested area and that it was feasible for the appellant to return to Kirkuk. At [19] the judge expressly considered the issue of humanitarian protection. He had previously set out at paragraph [18] the High court decision in Amin He returned to the question in the as to whether there was cogent evidence which would justify him in departing from the existing country guidance given in AA (Iraq). He referred to the EASO report at page 174 in the appellant's bundle and the key passage index at page 302 – 303. He contrasted this with the material in the CPIN at paragraphs 2.3.10 (page 151 of the appellant's bundle) that 4 million people had returned to their home areas, including Kirkuk, which was explained by improvements in the security situation. He reached the conclusion that the EASO report at page 178 confirmed that ISIS was no longer in control of any territory, although it retained attack cells. He returned to the decision in Amin and having considered the evidence as a whole reached the conclusion that he was

persuaded that there were "good grounds for departing from the existing country guidance on the basis of the evidence which I have highlighted".

36. There is no dispute that cogent reasons must be given for a departure from Country Guidance as Mr Boyle has submitted. However, in my judgment the FtTJ considered whether there was fresh evidence to justify such a departure.

37. The evidence relied on was set out in the decision letter and reference was made to the CPIN, which was also exhibited in the appellant's bundle. The CPIN drew on multiple sources of background material and country information to found its conclusion that Kirkuk is no longer afflicted by high levels of violence such as to make return there a general risk contrary to Article15(c) of the Qualification Directive. That CPIN set out that ISIS was no longer in control and that there were only sporadic incidents of violence. The material set out in the grounds and referred to by Mr Boyle (see paragrphs 2.3.6 and 2.3.8 refers to humanitarian need but this needs to be viewed in the context of all the evidence.

38. At paragraph 17 the FtTJ noted that in R(on the application of Amin) v SSHD [2017] EWHC 2417 , Sir Ross Cranston had found that Kirkuk is no longer a contested area, and that although there are apparently still dangers there, that is nothing like the position as when AA was decided. There is no error of law in taking into account this decision and it was not the case that the FtTJ did so in isolation from the other evidence that was before him.

39. In KK (Sri Lanka) [2019] EWCA Civ 172, that a judge had not erred in her approach when concluding that new evidence, including a Country Information and Guidance report, justified a departure from an earlier country guidance case when assessing the risks of returning an asylum seeker to Sri Lanka. The Court of Appeal confirmed that the Judge was not required to go through each section of the report in her determination, or to set out a list of positive and negative factors from it.

40. Consequently, I have reached the conclusion that it was open to the FtTJ to conclude that Kirkuk was no longer a contested area. There is no error in that approach.

Ground 2:

41. The written grounds set out that the FtTJ failed to adequate consider the appellant's position in respect of relocation to Erbil/xxx. it expressly states, "the appellant does not originate from this area so the IJ was required to carry out an assessment of reasonableness under the country guidance caselaw of AAH".

42. In his oral submissions Mr Boyle submitted that there was no analysis of this issue. When asked to identify the area that the appellant had lived in prior to his entry into the United Kingdom and for most of his life, Mr Boyle stated that that was in xxx/Erbil which was in the IKR.

43. Ms Petterson submitted that the area identified by the FtTJ was in fact his home area which was in the IKR and therefore someone who originated from the IKR would be able to return there. She submitted that the FtTJ made clear findings as to his ability

to return there and taking into account his father's high-ranking role in the Peshmerga and at [18] the FtTJ reached the conclusion that as he was of Kurdish ethnicity he could live in that area. There was evidence that the appellant still had contact with his family in the IKR as demonstrated by the documents that had been sent from Iraq including a police report which referred to his father living in Erbil. As the findings set out, the FtTJ did not accept that he was estranged from his family members thus it was open to him to conclude that he could return to the IKR.

44. Mr Boyle by way of reply submitted that the decision letter referred to relocation to the IKR and therefore it was necessary for the judge to consider relocation in the context of the criteria set out in AAH.

45. As to the possibility of relocation to the IKR, the Country Guidance then applicable and before the FtTJ stated as follows:

> "E. IRAQI KURDISH REGION
>
> 17. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.
>
> 18. 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, Article3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
>
> 19. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
>
> 20. 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.
>
> 21. 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.
>
> 22. 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.

23. 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.

24. 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.

25. 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.

46. Having considered the submissions as set out above, I am satisfied that there is no error of law in the FtTJ's decision that was material to the outcome in his assessment that the appellant could return to the xx/Erbil area which is in the IKR. Whilst there seems to be some confusion as to his home area, in my judgment the grounds are wrong where it is stated that the appellant does not originate from the IKR. The evidence before the FtTJ was that he was born in Kirkuk but that he had been living for most of his life in the IKR where his parents and siblings also resided and where his father held the post of a high-ranking official in the ministry. In his evidence, he clarified how long he had lived in the IKR and he stated, "I have always lived in xxx" (at Q 21). He later identified the place of his father's employment which was also in the xxx which is in the IKR. This was accepted by the FtTJ who referred to the appellant having left the IKR before he entered the UK.

47. In the light of the findings of fact made by the FtTJ which are not the subject of challenge in the grounds, the appellant was not found to be risk of harm or persecution on return to his home area which was xx/Erbil in the IKR. The FtTJ did not depart from the finding of the previous judge which accepted that whilst there had been an endeavour to kidnap him, the appellant's father was a high-ranking member of the Peshmerga and that they was sufficiency of protection for him. Consequently, on the factual situation as found, the issue of relocation did not apply.

48. Even if it did, the FtTJ gave adequate and sustainable reasons in accordance with the CG as to why he could return to the IKR which was set out at paragraph 18. The judge did take into account that he had lived there prior to his departure and on his own factual background he had lived in the IKR for most of his life. The country guidance decision refers to family relatives living in the IKR. In this context the FtTJ was not satisfied that the appellant had lost contact with his family. For the purposes of the hearing, he had provided documentation that was said to originate from the IKR. Whilst the judge did not necessarily except the contents of those documents, there was evidence before the judge that he had been in contact with others in the IKR for those documents to be provided. One of those documents refers to his father living in the IKR. That being the case, it would not be necessary for the appellant to live alone or be considered as an IDP but to live with his family.

49. However, in the alternative at [18] the FTT J took into account his employment skills and that he had worked in a restaurant previously (also the appellant's own evidence was that he had been at the University and was therefore educated). The judge was invited to take into account that he came from an area previously held by ISIS. However, that could not be the position factually for the reasons set out above. However, in any event the FtTJ rejected that submission correctly in my judgement because the appellant's father held a high-ranking position in the Peshmerga who were opposed to ISIS. The FtTJ also considered the appellant's medical condition and did so in the context of the objective material and reached the conclusion that treatment would be available on return. The grounds do not take issue with that factual assessment either.

50. The FtTJ had also considered the issue of documentation at [17]. No submissions have been made as to any asserted error in the conclusions reached in that paragraph.

51. As explained by the Court of Appeal in *AA (Iraq) v SSHD* [2017] EWCA Civ 944 "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 fail and 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 agents to assist . return have been exhausted; it is reasonably likely that P will still have no CSID.

52. On the evidence before the FtTJ the appellant can provide details of the CSID card. In his interview he confirmed that he had a personal ID card on his phone and the other documents were in Kurdistan. The FtTJ at [17] also reached the conclusion that even if his CSID had been lost or elapsed, a relative, friend or lawyer could be given the power of attorney to obtain a CSID on behalf of an Iraqi citizen. The judge took into account that the appellant had stated that he had a friend who was a lawyer and thus the FtTJ concluded there was no reason why he could not arrange for that friend to act as his proxy to obtain a new CSID for him if it were required.

53. Consequently, the judge considered that the appellant would be able to obtain a CSID within a reasonable timeframe if in Iraq. Looking at *AAH*, the guidance states that:

> 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.*

54. The FtTJ concluded that he could obtain a replacement CSID in Iraq based on his own factual circumstances. It was therefore open to the FtTJ to reach the conclusion that it had not been made out to the required standard that the appellant would not be able to obtain a replacement CSID.

Conclusion:

55. In summary, the FtTJ gave adequate and sustainable reasons for reaching his conclusion that there was cogent evidence before him which entitled him to depart from the country guidance then in force in relation to Kirkuk. For the reasons that I have set out above, the appellant's home area was not in fact Kirkuk but the IKR.

56. Even if the FtTJ was wrong to depart from the country guidance, any error of law in that respect could not be material because I am satisfied that ground 2 is not made out as there is no error of law in his decision to consider return to the IKR on this particular appellant's factual circumstances and which I am satisfied is consistent with the country guidance then in force before the FtTJ.

57. The assessment made was one reasonably open to the FtTJ on the evidence, both oral and documentary, and I am not satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law. The decision to dismiss the appeal shall stand.

Notice of Decision

58. The decision of the FtTJ did not involve the making of an error on a point of law; the appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 14/2/2020

Upper Tribunal Judge Reeds