



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10957/2018

**THE IMMIGRATION ACTS**

At: Manchester Civil Justice Centre  
On: 2<sup>nd</sup> March 2020 and 25<sup>th</sup> May 2021

Decision & Reasons Promulgated  
On 25<sup>th</sup> June 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

DMA  
(anonymity order made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Sadiq, Adams Solicitors  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iraq. He appeals against the decision of the Respondent dated 31<sup>st</sup> August 2018 to refuse to grant him protection.
2. The basis of the Appellant's claim is that he has a well-founded fear of persecution in Iraq for reasons of his political opinion. The Appellant is an artist who in 2018 staged an exhibition in Liverpool incorporating the writings of Kurdish journalists who had been killed as a result of their work. Around the

time that this exhibition was staged, three things happened that caused the Appellant to fear for his life if he returned to Iraq. The first was that on the 29<sup>th</sup> March 2018 the Appellant received a call on his mobile telephone from a man identifying himself as Rahman. Rahman threatened to kill him. This call was accompanied by further abusive text messages and voicemails left over the messaging app Viber. The second thing that happened was that in April 2018 the Appellant's home in Iraq received a visit from some men. The Appellant's mother was at home at the time and she reported to the Appellant that she believed the men to be from either the PUK or KDP: she deduced this from the fact that they refused to introduce themselves and carried a weapon. Finally, the Appellant started to receive messages from a journalist at a KDP-run television station. One of the questions the journalist had for him was about when he was going to return home. This accumulation of events around the same time as his exhibition in Liverpool led the Appellant to form the view that they were all connected. He believes that the authorities in the Independent Kurdish Region are opposed to his work and that someone wants him dead or otherwise silenced. He fears for his life in the IKR, and submits that as a Kurd there are no reasonable internal flight alternatives for him anywhere else in Iraq.

3. The First-tier Tribunal did not find the claimed threats to the Appellant to be credible, or the overall account to be plausible. It dismissed the appeal.
4. Following a hearing on the 2<sup>nd</sup> March 2020 I set that decision aside. In a decision dated the 11<sup>th</sup> March 2020 I gave detailed reasons why. The errors of law in the First-tier Tribunal decision can be summarised as essentially errors of fact, and a failure to take material evidence into account, compounded by procedural unfairness in that the Appellant was not given an opportunity to address the points that had concerned the Tribunal. For instance, the Tribunal weighed against the Appellant its belief that he did not have a return ticket booked home. This was an error, because he did. The Tribunal weighed against the Appellant the lack of explanation as to how Rahman was able to find his telephone number: this failed to take account of the fact that this telephone number appeared on the Appellant's open Facebook page. Further adverse inference was drawn from the lack of threats arising from an exhibition staged in Iraq: this was again a misunderstanding of the evidence on the part of the judge, because in fact that exhibition never went ahead, the gallery owner having expressed concern about the potential consequences if it did. The First-tier Tribunal found all of these adverse points, weighed cumulatively, to be fatal to the Appellant's case. All of them could have been resolved in the Appellant's favour, had he or his Counsel had the opportunity to address the Tribunal's concerns.
5. Immediately following my written decision setting the decision of the First-tier Tribunal aside the United Kingdom went into lockdown necessitated by the Covid-19 pandemic. Unfortunately this led to a significant delay in listing,

which is to be regretted. At the hearing on the 25<sup>th</sup> May 2021 I was however able to hear the Appellant give oral evidence, and the helpful submissions of both representatives on how the decision should be 're-made'. I reserved my decision, which I now give.

### **The Evidence**

6. The Appellant claimed asylum in the UK on the 4<sup>th</sup> April 2018. The evidence before me relating to the Appellant's personal circumstances falls into three parts:
  - i) Written evidence, consisting of note taken by an immigration officer at the screening interview conducted on the 14<sup>th</sup> April 2018, his undated asylum interview, and three witness statements signed respectively on the 10<sup>th</sup> October 2018, 18<sup>th</sup> November 2019 and the 18<sup>th</sup> May 2021
  - ii) Corroborating documents including evidence of the Appellant's career in art, newspaper reports about the journalists whose murders featured in his work, threats received by text message and contact from the Kurdish TV station
  - iii) Testimony at hearing
7. The Appellant is a Kurd from Sulaymaniyah. As a young man he became interested in art because of an elder brother who was then an art student. In 1996 he was enrolled at the Institute of Fine Arts in Iraq and he graduated from university in 2005. In 2008 the Iraqi Ministry of Higher Education awarded him a scholarship to pursue post-graduate studies in the United Kingdom. The Appellant obtained a UK student visa in November 2007 and this was successively extended until November 2013, during which time the Appellant attended the University of Cardiff. He returned to Iraq in October 2013 in order to take up a position as a lecturer in fine art at the University of Sulaymaniyah. He explains that although the Ministry had further offered to fund doctoral studies in the UK he decided to take up the job offer at the University because it was a good opportunity for him.
8. In his oral evidence the Appellant explained how despite his early training in fine art, his work has moved away from painting over the years and he now works as a conceptual artist, primarily through installations. Although the Appellant does not describe himself as an activist, his work is often political in theme. He has explored issues around the failure of the Kurdish leadership, the Kurdish diaspora and corruption. His final Masters exhibition, staged in Cardiff in 2011, for instance questioned the competency of Jalal Talabani and other Kurdish politicians through devices such as the deconstruction of

traditional Kurdish slippers. He is currently working on a piece based on Carl André's 'Equivalent VIII' ('Bricks'). Instead of a pile of bricks, the structure will be made of journals containing the writing of Kurdish artists and journalists; viewers will be invited to take a journal with them until at the end of the exhibition the pile will be gone. The words will have been disseminated, but there will be nothing left to show for it. The Appellant therefore follows the long tradition of art in the middle east where political commentary, for safety reasons, is often offered obliquely.

9. The Appellant's work has not always been subtle. At the hearing he explained how his message has on occasion been overt. Where appropriate, he has taken measures to protect himself and his family against the consequences of that. For instance in his 2011 Cardiff exhibition direct references to Jalal Talabani were omitted from the images that he posted of the exhibition on Facebook. Although he was in the UK at the time he was conscious that his family were still in Iraq and he did not want to cause them problems. This tension, between wanting to express himself, but wanting to keep out of trouble, has always been present in the Appellant's career.
10. The exhibition at the heart of this claim did not start life as an installation to be seen in Liverpool. The original idea was very different, and based on the chosen location of the piece. There is a building in Sulaymaniyah which was, in Saddam Hussain's time, an interrogation centre, and the rooms in the basement were previously cells where political detainees were held and tortured: that building is now a museum/art gallery called the Amna Souraka. Photographs of this building, and the Appellant preparing for his exhibition, can be found in the Respondent's bundle. The walls of the interrogation cells were adorned with graffiti by their inmates. The Appellant's concept was to use this space to reflect the ongoing 'imprisonment' of Iraqi Kurds with a reference to the lack of freedom of expression in the IKR. He wanted to take the words of three Kurdish journalists who had been murdered - Sardasht Osman, Kawa Garmiyani and Sorani Mama Hama - and write them out in the style of the detainees' graffiti. This would then be projected onto the cell walls. As well as highlighting the murders of the men, the piece would raise questions about whether Iraqi Kurds are now actually free, and on the continuity of oppression between Saddam's time and today. The location is particularly evocative not just because it was formerly a prison, but because the museum and art it houses today reflects the Kurdish struggle for freedom.
11. As a conceptual artist the Appellant spends a considerable amount of time thinking about an idea, but possibly not very long actually implementing it. At the time that he was preparing for the Sulaymaniyah exhibition he approached some friends of his who were employed at the gallery, and they agreed to stage his installation. Then, approximately two weeks before it was due to open they told him that he needed to seek formal permission from the gallery owner/manager, which the Appellant did. The Appellant explained that this

man knew that he intended to put on a show there, but not, at that stage its content. He had no reason to be concerned, however: the Appellant believes that his position at the university would have reassured the man that there would be nothing particularly controversial in the work.

12. In the run up to the exhibition opening, friends of the Appellant's dropped by to see the preparations. Once they realised the nature of the content some of them began, "in a perfectly friendly and helpful way" to raise concerns. They suggested that before opening the Appellant had better speak to the manager. As a result the Appellant paid the manager a visit the day before the exhibition was scheduled to open. He struck the Appellant as someone who understood art, and who had sympathy for what the Appellant was trying to do. He made it clear however that the work could cause him problems. Whilst a general commentary on freedom of expression might be OK this could put his - and the Appellant's - reputation, and safety, at risk. He asked that the Appellant change his exhibition; the Appellant refused; the manager then suggested that he cancel this exhibition and work on a less controversial one. The Appellant felt that the manager's next move would have been to prohibit the gallery from proceeding with the show. He therefore felt that he had no option but to cancel it himself.
13. The Appellant considered his options. Keen to stage the exhibition he made contact with various venues including in the USA, Italy and Germany. Not achieving success in getting to any of these places, he settled on coming back to the UK.
14. The installation was modified from its originally intended form when opened in Liverpool on the 28<sup>th</sup> March 2018. As the Appellant explained, this was because much of the message was to be found in the location, and if it was not to be seen in the Amna Souraka then it would change the meaning. The basic premise was however the same. The words of the journalists were written on the walls of the gallery. Some of the articles that the words were taken from appear in the Respondent's bundle. One speaks of death threats received by the writer; another is sarcastically entitled "I am love with Barazani's daughter" and speaks mockingly of all the benefits the writer might enjoy if he married into that family, including trips to Paris and Israeli guards. The exhibition was entitled 'Double Take' and photographs of the work are in the bundle. It was seen by 10-15 people on each of the first two days of opening.
15. The Appellant received the first threatening telephone call on the evening of the 29<sup>th</sup> March. A voice asked him to confirm his identity, and that proceeded to inform him that the material in the exhibition relating to Mahmoud Sangawi, and featured on Facebook, must be removed. The Appellant demanded to know who the caller was, and on what authority he was telling him to change his exhibition. The voice persisted. He said that it did not matter who he was, and that the Appellant should also take the words of Kawa Garmiyani out of

the piece. For context, it should be explained that Mahmoud Sangawi, described by the Appellant as the head of the PUK peshmerga, is widely believed to have been behind the murder of the journalist Kawa Garmiyani. It was the caller's specific reference to these two figures which led the Appellant to believe that the caller was working for Sangawi (at his interview the Appellant also names two other prominent Kurdish security officials whom he is particularly afraid of, but does not elaborate why: the head of PUK intelligence, Lahor Sheikh Jangi and Masrour Barzani who is in charge of KDP intelligence security). The Appellant tried to explain to the caller that the words he used were not his, and that he was simply replicating them in his piece. The caller ended the conversation with this: "I am not going to say anything further, this is my last word to you".

16. The number that the call had come from was logged on the Appellant's phone. He decided to text to ask who he was. The caller replied that his name was Rahman, confirmed that he did indeed work for Sangawi and then made the most explicit threat yet:

"Listen to me well and do not be foolish. My name is Rahman and I am with Mr Mahmoud. If you do not do what I told you, I will kill you as Kawa Garmiyani was killed. Do not think that I don't know your place; even I can send people over there"

(missed call)

"You were lucky yesterday. The place of the exhibition was closed otherwise you would have been stabbed there but just to make sure that you cannot get away...."

(I have taken these text from the translation of the screen shot itself, rather than the Appellant's summary of then at his interview).

17. After this, the Appellant explains, he became afraid. He was reluctant to return to the gallery in Liverpool because he was concerned that it might be being watched. He called the Merseyside police to ask for advice and they told him to check that the gallery had CCTV cameras, and that he should call 999 if he became concerned for his safety.
18. The next thing that happened was towards the end of April 2018. The Appellant was in London and he received a call from his mother, using the 'viber' app and her daughter's telephone. His mother told him that a few days earlier she had received a visit from three men. She said "they had a car similar to ours, the one that brother Ali bought you, it was a Nissan patrol". Two of these men came to the door and asked for the Appellant. The Appellant's mother wanted to know why they were asking: they told her they wanted to talk to him about something. She described the men as wearing traditional dress and that one of

them carried a gun. She told them that the Appellant was abroad and she did not know when he would be back. The Appellant reassured his mother that they were friends of his because he did not want her to worry.

19. A second visit to the family home is said to have taken place in early 2019. The Appellant's brother 'A' was at home when a group of men came looking for the Appellant. They were threatening and abusive. 'A' subsequently went to the police to make a report but as far as the Appellant is aware nothing has happened. The police will not now provide 'A' with confirmation that he made a complaint. The Appellant strongly believes that these men must be working with the authorities: "there is simply nobody else who would be seeking me out in the way that these people are". Observing that there was no attempt to conceal their intent, the Appellant describes this visit as "hugely threatening".
20. The Appellant's brother has provided a signed handwritten statement in Arabic confirming that this event took place. It, and a translation, are in the bundle, accompanied by a copy of his CSID. The event is said by 'A' to have taken place on the 17<sup>th</sup> January 2019, although it was not apparently communicated to the Appellant until into February. 'A' writes that after answering a knock at the door he was shoved with force back into the house by two very aggressive men who demanded to see his identity card. When he established that they were looking for the Appellant he told them that he is still in the UK. The men told him to tell the Appellant to come home straight away.
21. The final matter which caused the Appellant to fear for his safety was the way that communications developed with a journalist working for a KDP-owned broadcaster in the IKR (in the interview the station is referred to as '24': the Appellant has subsequently amended this record as he says it was someone from 'Rudaw' - he was confused because they are both run by the KDP). The reporter, a Ms Robinson, messaged him out of the blue on Facebook. Their exchange of messages is still on the Appellant's Facebook page. The relevant section has been printed and produced in evidence. The reporter begins by asking him about his art and said that it caught her attention. She asks if he will be home soon. He replies that he will be home on the 2<sup>nd</sup> April but points out that Rudaw does not cover his artwork as it is critical of the PUK/KDP. She replies "isn't it always good to challenge the norm?" . Messages that follow show the reporter to be asking the Appellant to meet her in Sulaymaniyah or Erbil; she asks him when he is arriving and where he will be staying and whether he intends to stage any more exhibitions in Iraq. After the Appellant appears to have stopped replying she sends two further messages to ask him when he will be back.
22. Asked to explain how he thinks that his work might have come to the attention of PUK security officials the Appellant had several ideas. His intention to stage the exhibition at the Amna Souraka had been known to quite a number of staff members, some of whom were linked to the PUK; a cameraman who had

worked on the projections and several of the Appellant's friends were aware of it; the events in both Sulaymaniyah and Liverpool had both been publicised on Facebook, and the Appellant's telephone number also appeared there. The event in Liverpool had been advertised locally and there was a sign outside the gallery.

23. Asked why he has not encountered problems before the Appellant states that his honest answer is he does not know. Although he has previously taken precautions (as in editing the footage of his Cardiff exhibition for Facebook) he had not thought that he was seriously at risk. However he now sees the threats made against him, and associated events, as being consistent with a tightening of restrictions upon freedom of expression since 2018.
24. In respect of matters potentially relevant to internal flight, the Appellant has never been to Baghdad, save to transit through the airport. He knows no one in the city. He claims to be able to speak basic Arabic. He is nominally Sunni but at the hearing acknowledged that he "does not really believe in it". The Appellant told me that he has no close friends or family outside of the IKR, save his brother who lives in Liverpool.

### **Country Background Information**

25. The parties invited me to read the Country Policy and Information Note *Iraq: Political Opinion in the Kurdistan Region of Iraq* dated August 2017. I have done so, mindful of two matters.
26. First, that the plausibility of this account was not placed in issue in the Respondent's reasons for refusal letter of the 31<sup>st</sup> August 2018, and neither the HOPO who appeared in the First-tier Tribunal, nor Mr Tan who appeared before me, argued the case on the basis that it was inconsistent with the country background material. It is further expressly accepted that the three journalists who have inspired the Appellant's art were murdered. For that reason Mr Sadiq had not, in his preparations, considered it necessary to produce extensive country reports. The parties both proceeded on the basis that the CPIN is generally supportive of the notion that someone who publicly criticises the political elite of the IKR (viz the Talabani and Barzani clans and their associates) could face persecution as a result.
27. The second preliminary point to be made is that in the hiatus between the hearing and the decision being written, a new CPIN has been published - *Iraq: Opposition to the government in the Kurdistan Region of Iraq (KRI)* (June 2021). I have also had regard to this latest information. Had the new CPIN contained anything markedly inconsistent with the material in the 2017 version, agreed by the parties to be an accurate reflection of the position in the IKR, I would have reverted to the parties and given them an opportunity to comment. I did not in



the end find that to be necessary, given that the Secretary of State has not disputed that there is repression against perceived political opponents in the media: the updated version is, in effect, more of the same.

28. The 2017 CPIN summarises the Secretary of State's policy position as follows:

"In general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI. Decision makers must, however, consider each case on its facts. Journalists/media workers and human rights defenders, particularly independent journalists who do not have the protection of either the KDP or the PUK, and those who write about certain subjects, including corruption, the lack of human rights in the region, women's rights and anything that could be construed as endangering the security of the region or public morality, and those critical (or perceived to be critical) of prominent figures in the KDP or associated organs such as the peshmerga are more likely to be at risk of mistreatment which may amount to persecution".

29. The 2017 CPIN goes on to cite evidence that journalists are "arrested on a regular basis" [10.1.1] and face imprisonment with impunity. Those most often targeted are those who expose corruption, and journalists who have specifically mentioned the family of the President in such articles have "lost their lives" [10.4.2].

30. These themes continue in the 2021 CPIN which details how journalists covering protests in 2020 have been accused by the government of being foreign spies [2.4.5], independent media outlets have been closed down and harassed [2.4.6] and their journalists subject to arrest and prosecution [11.2]. The CPIN further highlights the use of a new method to suppress freedom of speech: the Law of Misuse of Electronic Devices, aimed at shutting down online dissent. See for instance at [11.2.10]:

"KRG officials increased their use of lawsuits against journalists critical of the KRG, including applying laws such as the Law of Misuse of Electronic Devices instead of the IKR press law. In the first nine months of the year, KRG officials from various government offices filed eight independent lawsuits against freelance journalist Hemn Mamand after he posted content on Facebook critical of the KRG's COVID-19 response. Mamand was arrested twice, in March and again in April, and spent 34 days in detention on charges levied under the Law of Misuse of Electronic Devices."

31. The consequences of arrest for Mr Mamand, and generally for those who have criticised the authorities is explained under the heading 'Detention Conditions' at [11.4]:

11.4.1 The October 2020 report published by EMHRM looked at prison conditions and stated: ‘...Euro-Med Monitor’s team met Muhammad Maruf Nuri, the director of the anti-torture programme at the Arab World Center for Democratic Development. He stated:

“Having observed detention centers, we found that detainees are kept in places that lack the basic life requirements. Most detention centers keep detainees in rooms or warehouses -- places that don’t have the basic life requirements such as sunshine, heating, light, or bathrooms. In addition, in these centres, detainees are not provided with meals; instead, they have to buy food themselves although they are poor. This reflects the catastrophic situation in detention centers”

Euro-Med Monitor’s team met a group of detainees, who revealed the worsening situation inside these centers and how they lack the basic precautionary measures to prevent the spread of COVID19.

In an interview with, Hayman Mamend Had, a journalist and an activist, said:

“I was arrested twice during the COVID19 pandemic crisis. The first time was on March 10 2020, at 10:30 pm. About 20 security vehicles and 100 security personnel stormed my house to arrest me for criticizing the authorities’ performance in fighting the COVID19 pandemic. They used the pandemic as an excuse to impose restrictions on political activists amid the absence of proper handling of the economic situation.

I was detained at several security centers [for short periods of time] before I arrived at Al-Mahatta Central Prison on the Mosul Road in Erbil. During the deportation period, despite the COVID19 outbreak, there was no respect for health standards such as wearing masks, using sanitizers , social distancing where we were moved in an overcrowded vehicle. When I arrived, I was placed in a room measuring about 5x10 meters with 50 other prisoner convicted of serious felonies such as murder, rape, and, abuse. ...Throughout my detention, I was deprived of exposure to sunlight, causing me skin health problems which I still suffer from until now. Being a political prisoner, I was deprived of contacting my family unlike other prisoners.

On April 5 2020 I was released on bail. The next day at 1 am, however, security forces stormed my house and arrested me for

the second time in front my mother. Once again, I was detained in several detention centers then moved to Al-Mahatta prison with the same conditions I suffered from during the first arrest, despite the spread of the pandemic. I was denied contacting my family or being exposed to sunlight. On 28 April 2020 I was released on bail. In both times, I paid an amount of 30 million dinars (25,000\$ US). My bail bondsmen are daily subjected to harassment. Being threatened and arrested several times, in May, 2020, I left my city and went to Sulaymaniyah”.

32. The only other materials to which I was referred in submissions was the 2018 US State Department Report and a series of articles. The USSD report adds little to the CPIN save that I note that it confirms as accurate the Appellant’s description of ‘24’ and ‘Rudaw’ as being KDP mouthpieces. The articles in the Appellant’s bundle deal with the murders of the aforementioned journalists. I note from these articles that other media figures have also been targeted for assassination, such as Shaswar Abdulwahid, the owner of a non-affiliated television station, and Dr Abdul Al-Sattar Tahir Sharif, an academic allegedly killed for his critique of the government’s failings over Kirkuk. The articles further confirm that that despite Mahmoud Sangawi being widely believed to be responsible for the killing at least of Kawa Garmayani, he was cleared of all charges in 2015. The prosecution had been based on the police recovery of threatening voicemails left on the journalist’s mobile phone.

### **Evaluation**

33. Having had the opportunity to hear the Appellant give his evidence I am wholly satisfied that he is a credible witness and that his factual assertions about events in the recent past are evidence capable of discharging the burden of proof to the lower standard. I make that finding because:
- i) The Appellant’s testimony was internally consistent (ie no significant contradictions between the oral and written accounts, no material discrepancies revealed in cross examination);
  - ii) His account is consistent with the country background evidence. The country background material does not, perhaps unsurprisingly, have anything to say about artists in particular. There are however numerous references to freedom of speech issues in Iraqi Kurdistan and of journalists in particular facing arrest, harassment, assault or even death. I am satisfied that the risk to the Appellant can properly be evaluated in light of those uncontested reports;

- iii) The evidence about the political motivation underlying the Appellant's art was cogent and compelling. I found his description of his conceptual work to be consistent with genuinely held anger towards the political elite in the IKR. The Appellant feels strongly that journalists should be able to report fearlessly on matters including governmental corruption. He believes that it was the willingness of the three journalists who featured in his piece to speak out against the authorities in the IKR which led to their murder. Whether or not the Appellant himself characterises these views as 'political', I am satisfied that the threats he has received, and the suppression of his work that has occurred so far, are because of his political opinion;
- iv) The Appellant's account further contained details which give the strong impression that this is recounting, rather than invention. See for instance the Appellant's mother's mention that the unknown visitors "had a car similar to ours, the one that brother Ali bought you, it was a Nissan patrol";
- v) The account is supported by documentary evidence including the written statement of the Appellant's brother, the Facebook printouts, the threatening text messages and the photographs.

34. I further note, although this played only a very small part in my deliberations, that the Appellant was employed by the Ministry of Higher Education as a Lecturer at the University of Sulaymaniyah when he left Iraq. He was offered financial sponsorship to travel to the UK in order to complete a PhD in the UK, an offer he turned down to take up this teaching position. He had a return ticket and is someone who has travelled extensively in and out of Iraq in the past. As such he does not have the typical profile of an "economic migrant" or someone who has the motivation to falsify a protection claim. In making that finding I have taken into account that the Appellant has also in the past been refused visas for the UK, and that his persistence would appear to indicate a desire to travel here, but I have balanced that against the fact that he decided to take the job in Iraq rather than remain here on a path to settlement, as he no doubt could have done had he extended his Tier 4 visa by accepting the PhD offer.

35. I am accordingly satisfied, on the lower standard, that the Appellant is telling the truth. Indeed much of the account has already been accepted by the Respondent. The question is whether the Appellant faces a real risk of harm should he return to Iraq.

36. It has been over two years since any direct threats have been made to the Appellant, either by 'Rahman' or by visits to his family home. Both of those events were, nonetheless, explicitly threatening to the Appellant. The messages of Rahman make clear that it is his art - and the political opposition it expresses

- that is considered to be the problem. The visits by armed men to the family home make clear what the proposed solution to that problem is. It appears from the country guidance material that there is a degree of freedom of expression permitted in the IKR, but that there is a line, drawn by the authorities, or more accurately senior political figures acting in their own self-interest, which should not be crossed. The Appellant had, until 2018, managed to stay on the right side of the line. 'Double Take' crossed it. Having had regard to the content of the piece I do not think it unduly speculative to say that it did so because it included text which openly challenged the Barazani and Talabani families in a provocative, and at times mocking way. The piece 'I am in love with Massoud Barzani's daughter' by murdered writer Sardasht Osman gives a flavour:

I am in love with the daughter of Massoud Barzani, the man who appears here and there and claims he is my president. I would like him to be my father-in-law and also I would like to be a brother-in-law with Nechirvan Barzani.

If I become Massoud Barzani's son-in-law, we would spend our honeymoon in Paris and also we would visit our uncle's mansion in America. I would move my house from one of the poorest areas in Erbil to Sari Rash where it would be protected by American guard dogs and Israeli bodyguards.

I would make my father become the Minister of Peshmerga. He had been Peshmerga in September revolution, but he now has no pension because he is no longer a member of Kurdistan Democratic Party.

I would make my unlucky baby brother, who recently finished university but is now unemployed and looking to leave Kurdistan, chief of my special forces.

My sister who has been too embarrassed to go to the bazaar to shop, could drive all the expensive cars just as Barzani's daughters do.

For my mother, who is diabetic and has high blood pressure and heart problems but who is not able to afford treatment outside Kurdistan, I would hire a couple Italian doctors to treat her in the comfort of her own house.

For my uncles, I would open few offices and departments and they, along with all my nieces and nephews would become high generals, officers, and commanders.

All my friends said Saro, let it go and give it up for otherwise you will get yourself killed. The family of Mulla Mustafa Barzani can kill anyone they want, and they surely will.

I told them I did not commit blasphemy and I swear to the dagger of

Mustafa Idris Barzani that my father had spent 3 nights with him on the same mountain and so why not say those things? Massoud Barzani claimed himself that he is a president, and I would ask him how many times he has visited Erbil and Sulaimaniyah in the last 18 years?

My problem is this man, Massoud Barzani, is so tribal that so arrogant that he does not recognize anybody from even the other side of Sari Rash. With a few clicks, I can find out more about any leaders' wives in the world but I have no idea who my mother-in-law would be and what she looks like.

I have no idea who I should take with me to ask Massoud Barzani to give me his blessing to marry his daughter. From the beginning, I thought I should take with me few religious figures, some respectful old men and some old Peshmerga, but one of my journalist friends told me that I should find some Saddam collaborators and those who participated in the Anfal operation with Saddam because they are all around Massoud now and he likes them. Another friend suggested that I should go to one of news conferences of Nechirvan Barzani and make friends with him and ask him to do me a favor. However, if he doesn't help, then I can ask Dashne because she meets them frequently and might help out.

37. Osman here takes aim not only at corruption, and tribalism, but charges outright betrayal, highlighting the suffering of the ordinary people, and perhaps most painful of all, that the Kurdish leadership are collaborating with their former enemies in the Ba'athist regime. Shortly after his piece was first published Osman started to receive threatening telephone calls. He was then abducted from outside the College of Art in Erbil, where he was a student. His body was found a few days later in Mosul. He had been handcuffed and shot in the head. In choosing works like this as the centrepiece of his installation, the Appellant has, it would seem, been marked out as someone who has crossed the line. I find it likely that the threats have stopped more recently simply because the authorities understand that he has not returned to Kurdistan. Having had regard to the country background material I am satisfied that there would, if he returned to Kurdistan, be a renewed interest in ensuring that he stays silent. This leads me to consider another aspect of this case: if the Appellant does choose to stay silent upon return, and thereby hope to remain on the right side of the line, does that infringe one of his core rights?
38. In HJ (Iran)(FC) v Secretary of State for the Home Department [2010] the Supreme Court laid out a framework for consideration of where discretion on the part of the individual fitted into the refugee protection framework. At §82 of the judgment Lord Rodger sets out a series of questions to be asked in respect of someone who claims a fear of persecution because of their sexual orientation. Here I apply that framework to this case, and a fear of persecution for political belief.
39. The first question is whether the Appellant does in fact hold political beliefs. The Secretary of State has focused on the fact that at interview the Appellant

demurred from the suggestion that he was an 'activist'. Having had regard to the evidence before me, and in particular the Appellant's detailed and cogent oral evidence, I have no hesitation in finding the Appellant's work to be political in nature, however he might characterise it himself. Some pieces are more nuanced than others – the deconstructed slippers speaking to the Kurdish diaspora – but the work that is at the centre of this appeal is, as set out above, overtly critical of the authorities in the IKR.

40. The next question to be asked is whether someone who openly expressed political views like that in Kurdistan would be liable to persecution. I accept the position taken in the 2017 CPIN that not everyone who expresses a contrary political view in Kurdistan faces persecution (see my §28 above). The Secretary of State nevertheless agrees that independent voices who write about certain subjects, in particular corruption or the lack of human rights in the region, are more likely to face serious harm. The CPIN, and articles provided by the Appellant, demonstrate that those serious harms include being arrested on a "regular basis", being held in inhuman and degrading conditions, facing conviction and imprisonment under laws designed to suppress free speech, and at worst, for those who mention the family of the President, death. I am accordingly satisfied that those who openly express such opinions in Iraqi Kurdistan do face persecution.
41. The next question posed by Lord Rodger is to consider what the applicant would do if he returned to his country of origin. I have no doubt that the Appellant would continue to express himself through art, and that he cannot be expected to abandon that career: Secretary of State v MSM (Somalia) [2016] EWCA Civ 715. I note however that the Appellant has in the past modified his work, or the reporting of it, to 'play it safe'. Examples of political expression that have emerged in the evidence before me include his belief that the elites represented by the KDP/PUK leadership are corrupt failures (Cardiff) and that journalists are killed in Kurdistan for speaking truth to power (Sulaymaniyah). In both of these instances the Appellant has either chosen to censor his own work, or the reporting of it, in order to protect either himself or his family. In the former instance by editing images on Facebook, and in the latter by abandoning the exhibition in the Amna Souraka. Having heard his evidence I am in little doubt that the Appellant has been left extremely shaken by the threats he has received, and he is genuinely afraid. In fact he acknowledges in his witness statement that he has desisted from producing any further political work at present because he remains concerned for his safety, and more importantly for that of his family remaining in Sulaymaniyah. I therefore conclude that if the Appellant were to return to the IKR he would likely deliberately conceal his true political beliefs.
42. The final HJ question is why the Appellant would do so. As Lord Rodger explains, it is no answer to a claim under the Refugee Convention to expect the claimant to simply comply with the aims of the persecutor:

To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.

43. I accept without reservation that if the Appellant felt able to openly express his true political opinion he would do so. The only reason that he would censor his own work would be because he is seeking to avoid persecution of the kind suffered by Sardasht Osman, Kawa Garmiyani and Sorani Mama Hama. It follows that he has a well founded fear of persecution in Iraqi Kurdistan.
44. At the hearing I raised the matter of internal flight. The refusal letter does address the question, but rather confusingly concludes that it would be reasonable to expect the Appellant to relocate to Sulaymaniyah, which is of course his home town. Beyond that the letter simply asserts that the Appellant could live in Iraq. Mr Tan was unable to point to any particular location where the Secretary of State might regard as reasonable for a person internally displaced from the IKR by a threat of persecution, but simply adopted the stance in the refusal letter.
45. In view of my findings on the application of the HJ (Iran) principle I do not find internal flight to be a reasonable alternative in this case. ‘Rahman’ and his associates have already demonstrated an adverse interest in the Appellant for work he has undertaken in Liverpool. In those circumstances I am satisfied that the Appellant would continue to face the same risk wherever he lived in Iraq: he would continue to edit his own work for fear of persecution wherever he is in that country. Even if that were not the case, it is on the evidence before me not reasonable to expect this nominally Sunni Kurd to relocate to Arab, GOI controlled Iraq. He knows no one outside of the IKR, and has never been to Iraq proper save to transit in Baghdad airport. He has no connections there to call upon and although he claims to speak ‘basic’ Arabic it is difficult to see how he could safely establish himself and obtain employment etc: see headnote 19 of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).

### **Anonymity Order**

46. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:



“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decision**

47. The decision of the First-tier Tribunal is set aside.
48. There is an order for anonymity.
49. The decision in the appeal is remade as follows: the appeal is allowed on protection grounds.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, stylized font.

Upper Tribunal Judge Bruce  
22<sup>nd</sup> June 2021