Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06644/2019**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On the 13 July 2022	**On the 13 September 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

M N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L. Brakaj, instructed on behalf of the appellant.
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction:

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues and in the light of the sensitive evidence relating to his mental health. Neither party sought for the direction to be discharged or sought to argue that it is inappropriate to continue the order. 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. This direction applies both to the appellant and to

© CROWN COPYRIGHT 2022

the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. This is the remaking of the appellant's appeal following the decision of Upper Tribunal Judge Pickup promulgated on 1 July 2021 setting aside the decision of the First-tier Tribunal as involving the making of a material error of law. On the 20 April 2022, a transfer order was made as it was not practicable for the original tribunal to complete the hearing and directed that the appeal be heard by a differently constituted Tribunal.

2. UTJ Pickup found that the only error of law related to the issue of redocumentation and that all other findings of fact should be preserved, including the finding that the appellant remains in contact with his family so that the remaking of the decision should be limited to the sole issue of documentation for return to Iraq in the light of the preserved findings.

The background:

3. The appellant is a national of Iraq of Kurdish ethnicity from Kirkuk. He has a lengthy immigration history.

4. He claims to have arrived in the United Kingdom on 24 May 2004 claimed asylum a day later.

5. The application was refused, and the appeal came before Judge Sacks at a hearing on 3 December 2004. The basis of his fear of returning to Iraq related to the existence of a blood feud because he was being held responsible for the death of his brother-in-law. It had been claimed that threats had been made against his life by his brother-in-law's brother and their family and they were so powerful they had persuaded the authorities to issue a warrant for his arrest. The appellant's case was that he would not be able to live in any other part of Iraq as the family were very powerful and had members in both the security forces and the police force and that his picture would have been circulated throughout Iraq and this would be in danger of being arrested and apprehended.

6. Judge Sacks dismissed the appeal. His factual findings are set out at paragraphs [49]-[51] and summarised as follows:

    (1) the arrest warrant had not been provided nor the judge been advised as to how the appellant had the information that such a warrant was existence.

    (2) If a warrant had been issued by the Kurdish authorities for the purpose of investigating a capital offence and the appellant was expected by virtue of the fact that he had fled Kirkuk, the appellant therefore feared prosecution rather than persecution.

    (3) The judge found that there was no evidence to justify a finding that if the appellant were returned to Kirkuk and a

warrant was existent and he would be arrested that he would not receive a fair trial at the hands of the authorities.

(4) There was state protection available in light of the appellant's evidence that he had complained to the police of the threats made against him and the police arrested S and detained him for 5 days and then released him on bail.

(5) As the appellant's account that he had scars to his head and back as a result of the fight, there was no medical evidence to confirm any injuries.

(6) The appellant was able to live in Erbil without any difficulties and there was no evidence that any of the family he feared came to seek him and therefore internal relocation was a reasonable alternative.

(7) Whilst the appellant may well have problems within Kirkuk because of the family feud that has arisen, there was no evidence that the feudal danger that the appellant claimed to persist extended beyond the reasonable boundaries of Kirkuk. Therefore even if the appellant's fears were genuine as claimed, he would be to relocate to another part of Iraq.

7. An application for reconsideration was refused and the appellant was considered to have exhausted his appeal right by 4 March 2005.

8. On 30 October 2007, he was convicted of a number of offences in the magistrates court, including 2 offences of common assault, criminal damage and breach of the peace.

9. On 23 October 2009, he was sentenced to 30 months imprisonment at the Crown Court for possession of a bladed instrument, having been convicted of that offence by the jury. He was given notice of the intention to make a deportation order against him, in response to which he made submissions and protection grounds. However those submissions were refused, and a deportation order was signed on 29 March 2012.

10. The appellant exercised his right of appeal at a hearing on 26 June 2012 before the panel (Judge Hollingworth and a non -legal member). At the appeal hearing he represented himself. The appellant's claim was that his brother had died in 2007 being killed in an explosion in Kirkuk. This involved the appellant because a man with whom he been in conflict with previously was involved. There had been a funeral, but the appellant did not attend. Other family members did, his mother, brothers and other relatives were still in Kirkuk at the same address. It was recorded at [21] that he had last been in contact with his mother approximately 2 weeks prior to the appeal. When asked if other family members experience threats due to the appellant's position, he appeared to answer no on the basis that as he was in the United Kingdom there was no need to approach anyone else.

11. Whilst the panel upheld the respondent's certificate pursuant to section 72, the panel set out their findings of fact in relation to the asylum/protection claim at paragraphs [44]-[52]. They noted that the starting point was the determination of the FtT in 2004 and that whilst the appellant advanced the same reasons as before there was no evidence for revisiting any of the findings of fact. As to the only new event which related to the death of his brother in 2007, the panel found that there was no evidence as to his death or the funeral notwithstanding the appellant continued to be in regular contact with his mother as recently as 2 weeks before the appeal. The panel therefore did not accept that the appellant proved the death of his brother took place in 2007. In the event that they were to be wrong about that, they found that there was insufficient evidence to show that his brother's death could be linked to the appellant's fears. The panel found that the appellant could return to Kirkuk where his mother, elder brother and other extended family members were living and with whom he was in contact with. Family members were considered to be able to provide him with accommodation and support in the short term and that the appellant could seek state protection or relocate if necessary.

12. As FtTJ Fisher noted at paragraph [10] at the hearing in 2012 the appellant complained of depression and sleep problems although he admitted that medication would be available in Kirkuk. There were no article 8 considerations raised at that time.

13. Permission to appeal the decision was granted solely on the basis in relation to the issue of the existence, timing and status of an appeal against conviction. Whilst permission to appeal was granted, the Upper Tribunal concluded that there was no error of law, and the appellant was once more considered to have exhausted his appeal rights on 3 June 2013.

14. There then followed a series of further submissions which were refused and an appeal against the last of them was heard by First-tier Tribunal Judge Manchester on 10 November 2016. Judge Manchester allowed the appeal on article 8 grounds in a decision promulgated on 19 January 2017.

15. The issues were set out as follows:

    (1) the appellant to remain living in the UK following the dismissal of his initial asylum claim they believed it would face persecution on return to Iraq due to the ongoing family feud.

    (2) Since being in the UK had developed significant mental health problems are set out in the reports of Dr D for which he was receiving treatment in the form of access to mental health care medication and that there was a lack of specialist mental health care in Iraq and little support to him on return.

    (3) The appellant was in a relationship with a British national.

(4) He had a strong private life family been in the UK for nearly 13 years and having no family, safety or home to return to in Iraq.

(5) In respect of the criminal conviction which he had been able to successfully appeal in part, did not establish that he posed an ongoing risk to the public.

(6) He was from Kirkuk which was accepted as a contested area.

16. The FtTJ set out his findings of fact an assessment of the evidence at paragraphs [41 – 70].

17. It was noted that Counsel did not seek to rely on any Refugee Convention claim although the appellant continued to raise this as an issue in his evidence by reference to the risks associated with the claimed blood feud. The FtTJ therefore considered that he should deal with that issue by considering the earlier decisions reached applying the decision in Devaseelan. At paragraph [44] he set out that it was found that whilst the appellant might well have problems within Kirkuk because of the family feud that had arisen between him and the family, there was no evidence to satisfy the judge that the feud all the dangers alleged from it extended beyond the reasonable boundaries of Kirkuk nor the power of the family would extend beyond those boundaries. In any event his fear of persecution did not engage a Convention reason. It was noted that those findings were confirmed by the Tribunal in the 2nd decision where the issue of the appellant's subsequent claim that his brother had been killed in 2007 and this was linked the blood feud was found not to be supported by sufficient evidence.

18. Consequently the judge found at [45] that there was no further evidence produced before him on behalf of the appellant regarding the alleged blood feud and that as Kirkuk was a contested area, his claim that he would suffer serious harm on account of an alleged blood feud had been settled by the 1st and 2nd decisions and it had not been established that he was entitled to refugee status or to the grant of humanitarian protection on that basis.

19. The FtTJ noted that when considering the issue of the grant of humanitarian protection, the present security and humanitarian situation within the country and the appellant's mental health had deteriorated since the decision in 2017 however one finding was unaffected by that deterioration and that was in respect of the certification under section 72 (see paragraph 46-47). The FtTJ saw no reason to depart from the findings made in the 2017 decision about the nature of the offence for which he been convicted and thus he was excluded from the grant of humanitarian protection (at [48]).

20. In relation to Article 3, the FtTJ stated that there had been events since the date of the 2017 decision that had occurred namely the deterioration of the situation in Iraq and the appellant's mental health. In relation to the

latter, the judge considered the report of Dr D in the assessment in 2015 that he had recurrent depressive disorder with the severity classes moderate to severe which represented a modest improvement since the earlier assessment in June 2014 due to the administration of medication. He also demonstrated evidence of mood congruent psychotic symptoms suggesting the onset of auditory hallucinations resulting in paranoid delusions. The FtTJ accepted that the appellant had significant mental illness which had been prescribed medication including antipsychotic medication. The FtTJ considered the country materials and in particular the displacement of civilians (3.4 million since January 2014 particularly within the contested governorates including Kirkuk. The judge referred to the difficulties that an IDP from a contested area would face in accessing identity documentation is confirmed by the UT at paragraph 187 of the country guidance case of AA (at [53]).

21. The FtTJ found that whatever difficulties may be faced by an IDP without significant mental health problems, it was unarguable that the appellant with his difficulties will be likely to have greater difficulty which would in turn adversely impact on his ability to act as medication and professional support even if the latter were available given the strain on healthcare resources in Iraq. The judge considered the expert report of Dr Fatah (at [55]) regarding the problems for healthcare and mental health care as to the causation of his mental health problems. The judge considered that it was accepted in the 1st decision that he may well have a subjective fear of harm flowing from the blood feud even if that fear were not well-founded outside of Kirkuk and this would continue to provide the circumstances where his mental health would likely to deteriorate without access to appropriate medication treatment.

22. At [58] the FtTJ considered the issue of" potential availability of family support". The judge recorded the submission made by the presenting officer that his claim that he last had contact with his family 18 months ago and that they had fled to Turkey to escape from ISIS was inconsistent with the report of Dr D which recorded the appellant saying at interview in November 2015 that he was happy when speaking to relatives on the phone. The judge stated that "I accept that there is some doubt about the appellant's claim about the lack of contact with his family, but this does not in my view mean that there would be any meaningful family support available to him on return to Iraq."

23. The judge considered the country evidence regarding the vast number of people fled the contested areas and the problems faced by IDP's and the issue of social stigma surrounding mental health and that patients who could live at home (at [59]).

24. In conclusion the FtTJ found that the appellant had a significant mental illness for which he was receiving treatment in the UK and that there was a real risk given the state of healthcare in Iraq, the issues regarding his lack of identification documentation and his own vulnerability that the appellant would not be able to access appropriate treatment in Iraq even if

it were available and that this would most likely causes depression, anxiety and paranoid psychosis to deteriorate further. Additionally, the humanitarian problems that are faced by IDP's in Iraq generally would be likely to be magnified in the appellant's case given his vulnerability and the social stigma attached to mental health (at [60]).

25. The judge found that the appellant's case in N and that there was insufficient evidence to show that it will result in a serious, rapid and irreversible deterioration resulting in intense suffering following the decision in Paposhvili v Belgium. He therefore dismissed the appeal on Article 3 grounds.

26. In respect of Article 8, the FtTJ noted that whilst the appellant claimed to be in a relationship with a partner, the lady did not attend the hearing and there was no evidence, in statement or letter form. Judge took into account that he had been resident in the UK since 2004 but it had not been lawful for the whole of that time, nor could it be considered to be most of his life given that he was 21 years of age when he arrived. As to the very compelling circumstances, the judge stated that in respect of the appellant's mental health, his vulnerability and the risk to his mental health that it would face on return to Iraq given humanitarian and security situation that existed there was a high threshold of Article 3 not been reached, those factors were in his view likely to breach the appellant's Article 8 rights in relation to the right to respect his physical and moral integrity. The appeal was therefore allowed on Article 8 grounds.

27. The respondent sought permission to appeal and was granted permission on 8 February 2017 on the basis it was arguable that the judge had erred in his approach to the Article 8 appeal have dismissed the Article 3 appeal because the relevant high threshold not been met. It was also arguable that the appeal be allowed on the basis of an impermissible comparison between health services available in Iraq and those available in the UK.

28. The appeal came before Deputy Upper Tribunal Judge Holmes. It was noted that no rule 24 response had been issued on behalf of the appellant, no cross appeal had been lodged and no application made to adduce further evidence.

29. Deputy Upper Tribunal Judge Holmes found that there was an error of law, and he re-made the decision, dismissing the article 8 claim.

30. The deputy UTJ set out the issues determined by Judge Manchester noting that it had not been argued that the appellant faced the risk of harm to Baghdad simply as a Sunni Kurd (at paragraph [9]-[10]) and that the only risk of serious harm identified by the appellant arose out of the blood feud which had been rejected as untrue and had identified no other risk of persecution for a refugee Convention reason (at [11]). the judge noted that whilst he had argued that Kirkuk remained at the date of the hearing in November 2016 one of the areas subject to a state of internal armed conflict, the tribunal was not alerted by either party to the August 2016

COI report that this was once true of Kirkuk it was no longer the position generally by the date of the hearing (at [12]). However nothing turned on it because the judge was bound to take as its starting point the conclusions of the Tribunal in 2012 as confirmed in 2013 that the appellant was excluded from a grant of humanitarian protection as a result of the operation of section 72 of the 2002 act following his sentence to a term of imprisonment and having failed to rebut the presumption. The deputy UTJ noted that neither party suggested that the Judge made any error in reaching that conclusion.

31. It was further noted at paragraph [14] that as a result of the available evidence on the issue of the Iraqi identity documents held by the appellant and his ability to obtain the issue further documents the judge went on to conclude that the appellant's return to Iraq was not feasible. Thus the humanitarian protection ground of appeal that was advanced before the FTT was dismissed.

32. As to article 3, the claim based upon the blood feud was rejected and the 2nd limb related to his mental health in the foreseeable consequences of cessation or interruption to the treatment he enjoyed in the UK. That was also rejected following an analysis of the medical evidence. The judge accepted the appellant did suffer from a significant mental illness for which he was receiving treatment and that there was a real risk given the state of healthcare in Iraq and his lack of documentation in his vulnerability that he would be unable to access appropriate treatment in Iraq even if it were available. An inability to access treatment upon return would be likely to cause his health to deteriorate and additionally the humanitarian problems faced by IDP's will be magnified given his vulnerability and social stigma attached to mental illness. Nevertheless on the evidence it was concluded that the appellant's position did not pass the high Article 3 threshold because any deterioration would not be serious, rapid and irreversible, resulting in intense suffering. The deputy UTJ noted that neither party suggested the judge had made any errors in reaching that conclusion.

33. The deputy UTJ then consider the Article 8 claim and that there was no other basis advanced before the judge upon which the appellant claimed to have a "family life," in the UK. Thus the article 8 claim could only succeed under the right to respect for his "private life". The DUTJ considered the nature of his private life but was satisfied that the appellant had "entirely failed in his evidence before the FtT to identify in the proper level of detail its nature" and that there was "no material therefore upon which the judge could have concluded that it had any particular substance be on the treatment he was receiving for his mental health." In reality, his private life was limited to his mere presence in the UK for 13 years and the medical treatment to continue to receive from time to time his mental health in the form of prescribed medication which he took.

34. As to the medical evidence the DUTJ set this out at paragraphs [27]-[31]. The judge noted that there was no criticism made by the FtTJ as to the approach taken by the doctor as to the information available and that the respondent did not seek before him to criticise the FtTJ's thorough analysis of the medical evidence was placed before him.

35. The DUTJ went on to consider article 8 in the context of health grounds and the relevant jurisprudence at that time and in his analysis reached the conclusion that once in article 3 claim based on health grounds it failed, and article 8 claim based on health grounds could not succeed without some separate or additional factual element sufficient to engage article 8. Thus a claim based simply upon the inadequacy of the medical facilities available in the country return was bound to fail. Thus the acknowledged failure of the judge to make reference to the jurisprudence demonstrates the error of law in approach to the article 8 claim. The judge therefore set it aside and remade the decision on article 8 grounds on the basis of the unchallenged findings of fact. The DUTJ accepted that article 8 was engaged as a result of his "private life" although it was difficult to identify any aspect that beyond his mental health and medication that he was prescribed that illness, coupled with his 13 year residence in the UK. The judge took into account that it had been formed following illegal entry and that he had always been in the UK unlawfully. In light of the unchallenged findings that this is a particular serious crime and that he constituted a danger to the community, the public interest requires deportation. It was not a case in which the offending was a feature of the illness one in which the treatment the appellant is accepted as remove the risk of further offending. Having taken account of the case law in MM (Zimbabwe) and Bensaid, the Judge was satisfied that the article 8 appeal should be dismissed.

36. On 8 June 2017 permission to appeal to the Court of Appeal was sought but permission was refused and on 23 February 2018 permission to appeal to the Court of Appeal was refused.

37. Further submissions were made on the 7 August 2018, 22 August 2018 and 19 September 2018. On 18 December 2018 he was served with a section 120 notice including a one-stop warning. On 10 January 2019 further representations were received.

38. The further submissions were refused for the reasons set out in the respondent's decision letter dated 5 July 2019.

39. The decision letter set out set out the appellant's immigration history and Section 72 of the 2002 Act noting that the findings were upheld in a decision dated 19 January 2017 and nothing in the submissions had been provided to depart from the finding or rebut the presumption.

40. As to the consideration of the protection claim, the basis of claim was set out at paragraph 36, that he left Iraq because of a family feud, and he feared for his life. He previously held Iraqi ID and birth certificate, but this

was left in Iraq that he was a Sunni Muslim and could not return to Iraq on account of this. He could not return to Iraq due to the prevailing country situation and because he did not have a travel document or a CSID card or any family support network in Iraq.

41. The respondent set out the earlier decisions made by the tribunal at paragraph 37 – 43, taking into account that in his original protection claim it was stated he could not return to his home area due to a blood feud and that in the appeal hearings dismissed in 2012 and upheld in 2013 it was found that he would not be at risk in this respect I would be able to return to Iraq. No further evidence been submitted to depart from those findings.

42. As to the claim made in relation to the security situation, the respondent referred to the case law of AA (Iraq) and AAH (Iraq) and that whilst it was noted that AA (Iraq) stated that there were some areas to a person could not be returned, the current objective information set out in the decision letter led to a departure from the findings in AA (Iraq) that any areas of Iraq engaged the high threshold of article 15 (c). Whilst it was acknowledged that Iraq was still suffering from internal armed conflict, ISIS's territorial control is significantly diminished. In light of the country material cited in the decision letter it was considered that there were strong grounds supported by cogent evidence depart from the assessment in AA (Iraq) that any areas of Iraq engaged a high threshold of article 15 (c). Consequently it was considered there was no longer a high level of indiscriminate violence anywhere in Iraq such that substantial grounds exist for believing that the appellant only by being present there, would face a real risk which threatened his life.

43. As to his personal circumstances as a Sunni Muslim, the decision letter set out the country guidance decision in BA (returns to Baghdad) Iraq CG[2017] UKUT and the CPIN Iraq: Sunni (Arab) Muslims dated June 2017. Having considered those, it was concluded that the submissions did not show any evidence that being an ordinary Sunni Kurd he would come to adverse attention that would cause him serious harm. Whilst it was noted that Sunni men may be targeted in some situations, it is not considered that the treatment of Sunnis by the state and other nonstate actors is sufficient to amount to persecution or serious harm.

44. It was considered also that Kirkuk was no longer a contested area and therefore he would not be required to relocate.

45. In terms of the feasibility of return, it was considered in line with AA (Iraq) and that a protection claim could not succeed by reference to any alleged risk of harm arising from the absence of a document. Whilst it was accepted that there was no travel document for him to return, this does not mean that he could not obtain one. At paragraph [64] it was set out that the appellant stated he had no documentation or CSID card and had no support network in Iraq would be unable to return.

46. The respondent considered the decision in AA (Iraq) and the CPIN Iraq internal relocation dated February 2019 and a letter from the Iraqi embassy dated 2 October 2018 confirming their central records of civil status record held in Baghdad could be accessed.

47. It was concluded that there was a process in place for him to obtain a CSID whilst in the UK, and that the current CG and a letter from the Iraqi embassy confirmed returning to an area outside Baghdad is possible without a CSID by travelling onward using a laisser passer (see paragraphs 68 – 71 of the decision letter).

48. At paragraph 72, the appellant's personal statement dated 4 June 2004 was recorded that he claimed to have 3 brothers and 2 sisters in Iraq and that he worked for his brother in a shop then arranged and paid for him to leave Iraq. It also had an uncle and family living in Kirkuk. In 2011 he gave his parents details and stated that his mother lived in Kirkuk as his father was deceased. In a questionnaire completed in 2013 he gave his parents details and confirm they lived in Kirkuk.

49. At paragraph 73, the decision letter cited the appeal hearing dismissed in 2012 which found that the appellant had not demonstrated that his brother had died in the circumstances claimed, and that he could return to Kirkuk where his extended family lived

50. At paragraphs 74- 76 the decision letter cited the appeal dismissed in 2017 at paragraph 58, and that given what was stated it was not accepted that his brother in Iraq had died and that he had family in Iraq who could support him on return. It was considered that he had maintained contact with his family over several years leaving Iraq and I provided no evidence that he was no longer in contact this family or of their current whereabouts or that he made any efforts to locate them or had been unable to do so despite his claims. It was therefore not accepted that he would have no support on return to Iraq.

51. At paragraph 79, the respondent set out that whilst the passage of time had been acknowledged since the last decision, he had not provided any evidence of his family members believed to be in Iraq were no longer there or that he had made efforts through official channels and been unable to locate them. It was considered that in line with the decision of AAH (Iraq) he had male family members in Kirkuk to assist him in applying for a CSID and there was a process for obtaining assistance through the protection assistance and reintegration centre. He could obtain a CSID either in the UK or in Iraq and there were support networks could assist him to establish himself and help in obtaining documentation in Iraq. It was reasonable for him to obtain a CSID.

52. In respect of article 3 (medical) this was considered between paragraphs 87 – 94. It was concluded that the appellant would not be at real risk that is returned to Iraq result in a breach of article 3.

53. Paragraphs 95 – 101 set out why the appellant could not qualify for humanitarian protection but also why he was excluded under paragraph 339C (iv) of the Immigration Rules.

54. Article 8 was considered between paragraphs 103 – 117. It was noted at paragraph 107 that he did not claim to have any children in the United Kingdom. As to family life with a partner it was stated at paragraph 109 that he did not claim to have a partner. The rest of the decision concerned his private life. It was not considered that there would be any significant obstacle to his integration to Iraq having been born and raised in that country having spent his formative years there.

55. It was considered that there were no very compelling circumstances between paragraphs 118 – 126. Consideration was also given to whether it would be appropriate to revoke the deportation order made but having set out the applicable framework and having considered the submissions made in support of revoking the order, it was considered that he did not qualify for leave to remain on a basis and there were no grounds upon which to revoke the order.

56. He appellant exercised his right of appeal, and the hearing came before FtTJ Fisher on 10 February 2021. The FtTJ recorded that in the light of a psychiatric report the appellant was unfit to give evidence and accordingly it had been agreed by the parties at the appeal would proceed by way of a consideration of the documentary evidence and submissions only. The appellant also indicated he did not wish to observe the hearing (see para.2)

57. FtTJ Fisher summarised the earlier decisions made. At paragraph [12] he recorded that the appellant's legal representative sought to advance the appeal before him on asylum, humanitarian protection and human rights grounds specifically that the appellant would be at risk on return, that he could not relocate, that his account disclosed a Refugee Convention reason (that he was a member of the PSG) and that he was not excluded from the Convention. Furthermore if he were not excluded from humanitarian protection, his claim was based on the same factual matrix as his claim under Article 3(documentation). He was also invited to find that return would breach article 3 on medical grounds. Finally, he was invited to find that the removal would breach Article 8 on private and family life grounds.

58. The FtTJ began his decision by considering the Section 72 certificate and at paragraph [14] set out his reasons why he was satisfied that it was a particularly serious crime as the panel found in June 2012. At paragraph [15] the judge gave his reasons as to why the appellant had failed to rebut the presumption and therefore he must dismiss the appeal on asylum grounds under section 72 (10) (b). He found that even if the appeal had not been certified, there was no additional evidence before him that was before Judge Sacks in 2004 or before the panel in 2012 and stated, "I

would have found it settled primarily that the appellant could seek state protection or, in the alternative, that he could relocate if necessary."

59. As to humanitarian protection Judge Fisher noted that it was advanced on the basis of the lack of documentation although the appellant claimed that Kirkuk remained unsafe and that he would be at risk as an individual who was westernised and there were problems for those of Kurdish ethnicity. The FtTJ noted that the respondent had submitted that he was excluded from the grant of humanitarian protection under paragraph 339D of the Rules. The judge Fisher relied on the findings set out in the earlier part of his decision thus the appellant was excluded from humanitarian protection.

60. However at paragraph [18] the FtTJ stated that in the event that he had found in the appellant's favour, the UT in SMO (article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 found that the intensity of the internal armed conflict in certain parts of Iraq was not such that, as a general matter, there were substantial grounds for believing that any civilian return there would be at article 15 (c) risk. Applying the sliding scale as the appellant originates from Kirkuk, he has no actual perceived association with ISIL, and "I am not persuaded that he is any more westernised than most Iraqi citizens. It has previously been indicated that he speaks Kurdish Sorani and that he would be able to demonstrate that he had recently returned from the UK. I would not have concluded that he was eligible for subsidiary protection on the basis of the country conditions, and I propose that at my conclusions on documentation below. However, I should stress that my primary finding was that the appellant is excluded from the grant of humanitarian protection."

61. As to his human rights claim, the judge recorded that it was advanced on the basis of a lack of documentation and the appellant's health issues. The Judge noted that he was excluded from the Refugee Convention, and he considered it settled that the appellant could seek state protection or relocate and in those circumstances there was no real risk of a breach of Article 3 due to a blood feud. In relation to his mental health issues they were considered in November 2016 as considered by Judge Manchester and that there was no evidence to show any significant changes since then. The FtTJ recorded that the evidence of Dr D had said that the recurrent depressive disorder within a severe episode at the time of the report. The subsequent report of Dr E described as moderate to severe. The FtTJ considered that Judge Manchester correctly directed himself to the decision in Paposhvili now endorsed by the Supreme Court in AM (Zimbabwe) regarding the threshold of Article 3 health cases.

62. At paragraph [20], the FtTJ considered the background evidence in the appellant's bundle but found that he was "not persuaded that it assists" and that Ms Brakaj did not address him on it at all. The judge noted that paragraph 15 1.3 of the CPIN (p84AB) states that although mental health care practitioners struggle to meet overwhelming needs of limited resources, there are 80 practising psychologists in Iraq and Iraqi Kurdistan

working alongside a limited number of psychiatrists. Paragraph 15.1.5 reported that MSF sent its own teams qualified doctors, psychologists and counsellors to provide vital care and support moderate to severe cases including PTSD, depression, schizophrenia and severe anxiety. The FtTJ considered Dr E's report which indicated the appellant's GP currently manages his mental disorder and there was no satisfactory evidence the appellant had little support in the community. The judge felt unable to attach significant weight to paragraph 8.3.1 of Dr E's report where he referred to the likelihood that the appellant's current mental state is likely to suffer if he were to be removed as it would not have access to necessary treatment, support or safety, as the basis of that comment was entirely unclear and, it appeared to the judge largely based on the appellant's account to him which has already been discounted by the Tribunal. According to paragraph 6.1 the appellant denied any active suicidal ideation or plans. The judge accepted that the same level of care the appellant enjoyed in the UK would not be available in Iraq, but that was not the appropriate test.

63. At paragraph [21] the judge noted that the issue of support from the appellant's family is linked to both the Article 3 mental health claim and the question of documentation. It records that in paragraph 3 of his July 2020 witness statement, the appellant said that he had last spoken to anyone in his family when ISIS came to Kirkuk, and he describes situation is very bad. FtTJ Fisher stated "he has already been disbelieved by this tribunal by the jury in the Crown Court. He produced no evidence for the Red Cross to confirm that he had asked trace family. I am far from satisfied that he is not in contact with family members in Iraq who could offer him at least some support on return. They could also assisted with documentation. Alternatively, he could apply for a 1957 registration documents in the UK which would assist him to obtain replacement documents on return. In all circumstances, I dismiss the appeal on Article 3 grounds."

64. At paragraph [22] the judge referred to the appellant's Article 8 claim, finding that the appellant was not in a relationship with the mother of his son born in 2019. The judge accepted that he was the child's father as there was DNA evidence. The sJudge considered the appellant's claim that he was seeing his son twice per week and through video calls most days, but the judge found that there were 2 factors that were striking. Firstly, there was no supporting evidence from his former partner to confirm the nature of the relationship and the judge was satisfied that it would be reasonable to expect to see such evidence of the relationship between the appellant and his son was subsisting. The judge found that there was nothing to suggest that the appellant and his former partner were not on sufficient good terms to prevent it from doing so. Secondly, there were no references in Dr E's report to the appellant having any contact with his son. Although some texts and photographs were provided in the course of the proceedings, they were not dated. The judge placed weight on his previous dishonesty and that it led him to approach the evidence with caution and to look for support before accepting it. The judge concluded

that “on scant evidence before me, I simply cannot be satisfied that he enjoys a subsisting parental relationship with his child.”

65. At paragraph 23 the FtTJ considered his private life. The judge concluded that there were no very compelling circumstances, and that in all the circumstances he was satisfied the decision was proportionate on Article 8 grounds and there would be no justification for revoking the deportation order.

66. Permission to appeal that decision was sought and on 6 April 2019 permission was granted by FtTJ Scott-Baker. There was delay thereafter as a result of the pandemic and the covid restrictions that were then in place. It was listed for a remote hearing on 1 July 2021.

67. In decision promulgated on the 2 July 2021 UTJ Pickup found an error of law in the decision of the FtTJ for the reasons set out in his decision as annexed to this decision.

68. UTJ Pickup set out his conclusions at paragraphs 9 -11 as follows:

> “9. Having carefully considered both sets of submissions, I find that the conclusion of the first-tier Tribunal that the appellant will be able to return to Iraq with either a CSID or a 1957 document is inadequately reasoned. In essence, the only reasoning that is set out at [21) of the decision, whether judge found that his family “could offer him at least some support on return. They could also assisted with documentation. Alternatively, he could apply for 1957 registration document from the UK which would assist him to obtain replacement documents on return.”
>
> 10. The judge does not make it clear to where it is expected the appellant will return, but it has to be assumed that return would be to Kirkuk. The judge does not address the INID issue for return to Kirkuk, does not state whether it is found that the appellant’s family have his CSID to provide to him, or how they would be able to obtain a replacement, given the implementation of the INID terminals in Kirkuk. According to the June 2020 CPIN, without a CSID or INID, the appellant will be unable to travel to Kirkuk and he will not be able to obtain a replacement CSID in the UK, or by proxy from Kirkuk. These are all issues with which the judge failed to grapple or to provide adequate reasoning for the findings made.
>
> 11. In the circumstances and for the reasons set out above, I find a material error of law in the decision of the First-tier Tribunal, so that it must be set aside to be remade. However, as I am satisfied that the only error relates to the issue would reap documentation, all of the finding should be preserved, including that the appellant remains in contact with his family, so that the remaking of the decision shall be limited to the sole issue of documentation for return to Iraq against the preserved findings. I am satisfied that this is a matter that can and ought to be resolved in a continuation hearing in the Upper Tribunal.”

69. UTJ Pickup also gave directions for the remaking noting that it was not anticipated that any oral evidence would be required, and the appeal

would proceed by way of submissions only. On the 20 April 2022, a transfer order was made as it was not practicable for the original tribunal to complete the hearing and directed that the appeal be heard by a differently constituted Tribunal.

70. The matter comes back before the Upper Tribunal now to remake the decision.

The resumed hearing:

71. The resumed hearing took place on 13 July 2022 by way of a face to face hearing. The appellant was represented by Ms Brakaj, solicitor advocate and the respondent by Mr Diwnycz, Senior Presenting Officer.

72. There was no up-to-date bundle on behalf of the appellant, but the tribunal had the previous bundle before the FtT. By way of an email, further documents were sent including a witness statement dated 14 June 2022, annexed to it a letter from a solicitor, copy letters from friends dated 1 July 2022, 30 June 2022 and a copy prescription for mirtazapine medication.

73. The respondent relied upon the original Home Office bundle which included the screening interview, interview record, the decisions of the previous FtTJ including the last decision of FtTJ Fisher.

74. Ms Brakaj indicated that the appellant did not wish to be present at the hearing and would not be giving evidence as was the case before the FtT. There was no updated medical evidence, but the appellant's bundle contained the report of Dr D and Dr E. However he had filed a witness statement dated 14 June 2022 as set out above.

75. In that witness statement the appellant stated that he had a son but that he was no longer in a relationship with his mother and the relationship has been difficult at times. The appellant said that he had frequent contact with his son and was involved in his life. However he was concerned about his son's safety. He had instructed a family solicitor to help him make an application for custody.

76. As regards as mental health, it was stated that he remained on the same medication to assist and support as mental health. As regards his fear on returning to Iraq it remained unchanged but also that he feared that he would not be able to take his son with him.

Preliminary issues:

77. At the outset of the appeal Ms Brakaj confirmed that permission had not been granted on Article 8 grounds and that she recognised the limitations of this in respect of evidence now provided. She further confirmed that there had been no specific request made to the respondent concerning the INID rollout for the appellant's area. However in this case it had been identified that it was in Kirkuk. She identified that in the respondent's bundle there were documents and indicated his place of birth as Kirkuk

(see questionnaire completed 28/2/11) and the area in Kirkuk. It provided his mother's name and his father's name.

78. Mr Diwnycz stated that the place identified by the appellant did not appear to be in Kirkuk. Ms Brakaj indicated that from the earlier documentation stretching back to 2004 it had always been accepted on behalf of the respondent that the appellant's home area was in Kirkuk. The advocates were given time to discuss this matter between themselves and having done so, the parties agreed that it was accepted that the appellant's place of origin was Kirkuk.

The submissions:

79. Mr Diwnycz made the following submissions on behalf of the respondent. He relied upon the decision letter. He further submitted that the latest evidence that he had seen indicated that Kirkuk was a place which issued INID's and not CSID's. Therefore the appellant would not be able to apply for an INID without travelling to Kirkuk in person to register his biometrics.

80. However he submitted, he may still have his CSID as it would be in the possession of his family in Kirkuk, and they may be able to send it to him and meet him at Baghdad airport which would be the expected point of return.

81. Ms Brakaj made the following submissions. She referred to the decision of Upper Tribunal Judge Pickup and that he had set out that the findings of fact should be preserved including that the appellant remained in contact with his family. In this respect she submitted that the factual finding came from the decision of Judge Manchester at paragraph 58 which in turn referred to the doctors report (p 52 AB). She submitted that there was no finding on the factual matrix that he may have had contact with his family in 2015. The question of whether they had fled the area was not addressed in Judge Manchester's decision. There was nothing inconsistent with the background material that the appellant had left Kirkuk for Turkey. The only suggestion was that he stated that he still had contact with his family but when looking at the report of the doctor it did not say that they were safely living in Kirkuk. She submitted that this was relevant to the question of whether they had his original CSID which they had and whether they could send it to him or meet him at the point of return.

82. Ms Brakaj submitted that there was nothing in the evidence to point that this was a reasonable assumption to make.

83. As regards his history, the appellant has been in the United Kingdom since 2004. In his screening interview (1.2 A3) he stated that he had left his CSID at home therefore the appellant has been separated from his family for a lengthy period. She submitted the evidence suggested that many carried CSID cards with them, but many families needed to flee the area there is no indication that they would take their documentation. She submitted many IDP's were undocumented, and this was a major problem.

There is no indication that they would still retain the appellant's CSID or know where the document is.

84. She submitted that it was equally of note as to whether the family would be of limited assistance to him. Looking at the medical report of Dr D, the appellant's behaviour and engaging with 3rd parties is set out there. There was nothing to suggest the appellant had retained a close level of contact so that they would have the documents to provide them to him. She submitted that when looking holistically and looking at the upheaval in the area of Kirkuk it was reasonable to assume that they did not have the documents, nor would they have retained them.

85. Ms Brakaj submitted that the issue was therefore one of re-documentation. The appellant's home area is Kirkuk and when looking at the CG decision of SMO(2) paragraphs 51 – 54 refer to the digital INID system. Paragraphs 64 – 67 considered the areas where the CSID continued to be issued but that there was nothing to suggest that it covered all areas in Kirkuk and there was no indication that they had not installed an INID system in the appellant's area.

86. Ms Brakaj therefore submitted on that basis it would not be possible for the appellant to return to Kirkuk via Baghdad therefore his return would be a breach of Article 3 on that basis.

87. Ms Brakaj further submitted that there had been a substantial length of time since he had left Iraq and that he should not be returned on the basis that he may have such a document.

88. When Ms Brakaj was asked about the issue set out in the appellant's witness statement and the documentation from the 2 friends, she stated that there had been a change of circumstances and whilst there was a lack of evidence in relation to his son, proceedings were undergoing and if that were successful and there was a change of custody then there would be relevant to his removal. She submitted the question was whether he should stay in the UK for a short period to pursue the proceedings as there was a concern over the child's welfare. She accepted that there had been no permission granted in respect of Article 8, but she submitted that a recommendation could be made for a short period of leave.

Discussion:

89. In reaching my assessment, I bear in mind the appellant bears the burden of substantiating the primary facts of his claim. The standard is a reasonable degree of likelihood. The burden and standard of proof applies to the factual matters in issue in this appeal. Also that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that

there are substantial grounds for believing that there is a real risk of serious harm on return.

90. At this point I deal with the issue raised in the written evidence relating to the appellant's relationship with his son. The grounds of appeal to the Upper Tribunal against the decision of Judge Fisher did not seek to challenge his assessment of the Article 8 issues and which were set out at paragraph 22 of his decision. Upper Tribunal Judge Pickup set out his decision on error of law and confirmed that the remaking hearing was confined to the error of law he identified from the appellant's grounds which related to the issue of Article 3 and documentation/redocumentation. The previous decisions reached that the appellant was excluded from the Refugee Convention and from humanitarian protection was preserved.

91. The appellant's solicitors did not apply to reopen the Article 8 issues nor did they serve a rule 15 (2A) application for the evidence they sought to rely upon. Whilst it was accepted that the appellant was the father of T, the evidence as it stands does not demonstrate that the appellant has a genuine or subsisting parental relationship with a qualifying child and the evidence does not displace the findings set out at paragraph 22 of Judge Fisher's decision. Whilst there are 2 letters written by friends, neither of the authors of those letters attended court to give evidence. In the letter dated July 1, 2022, no details were given as to when the contact took place. Similarly the 2nd letter dated 30 June 2022 provides no detailed evidence. Neither letter provides any real detail in support of the evidence nor is there any supporting evidence from the social services in respect of the claim made. Whilst there is a letter attached the witness statement, again it provides no supporting evidence as to the relationship or the events. Reference is made to "I understand that my client has been seeing T regularly and there has been some involvement in relation to your care of the children by X social services" , but the contents of the letter provides no supporting evidence as to the assertions made including support from social services. Consequently there is no evidence that there are any proceedings ongoing which would justify a short period of leave as submitted by Ms Brakaj.

Article 3:

92. I am required to consider the circumstances of the appellant's home area, Kirkuk, at the date of the hearing. The assessment made in the decision letter in 2019 is out of date and does not take account of the CG decisions in either SMO (1) or SMO(2)and in some respects, the decision of FtTJ Fisher (who relied upon the 1957 document) has changed in light of the matters set out in the CG decision.

93. The current CG decision is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (hereinafter referred to as "SMO(2)").

94. The headnote of the CG decision is replicated below.

> ***A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE***
>
> *1. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
>
> *2. The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
>
> *3. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*
>
> *4. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government, or the security apparatus are likely to be at enhanced risk.*
>
> *5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*
>
> *(i) Opposition to or criticism of the GOI, the KRG or local security actors;*
>
> *(ii) Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
>
> *(iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
>
> *(iv) Humanitarian or medical staff and those associated with Western organisations or security forces;*

(v) Women and children without genuine family support; and

(vi) Individuals with disabilities.

6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. *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.*

8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

9. *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.*

10. *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. CIVIL STATUS IDENTITY DOCUMENTATION

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.*

12. *In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to*

individuals and their proxies upon production of the necessary information.

13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.*

14. *Whether an individual will be able to obtain a replacement CSID whilst in the UK also depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*

15. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

16. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*

17. *A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.*

18. *Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.*

19. *There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.*

20. *The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family*

record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.

21. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*

22. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.*

D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

23. *Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.*

24. *Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.*

25. Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraqi Kurds – internal relocation) CG [2018] UKUT 212.

E. IRAQI KURDISH REGION

26. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

Kurds

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

28. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

29. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID 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.

30. 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 are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

31. *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.*

32. *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.*

33. *For Kurds 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.

34. *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 or INID;

(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, which may deter prospective employers.

Non-Kurdish Returnees

35. *The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

95. The starting point of my assessment of the appeal are the factual findings made by the FtTJ which were preserved findings in accordance with the error of law decision. They have been summarised in the earlier part of this decision. It is accepted on behalf of the appellant that the issue relates to Article 3 of the ECHR only.

96. The factual findings of FtTJ Sacks are set out at paragraphs [49]-[51] and summarised as follows. As to events in Iraq, and the claimed blood feud, the arrest warrant had not been provided nor the judge been advised as to how the appellant had the information that such a warrant was existence. If a warrant had been issued by the Kurdish authorities for the purpose of investigating a capital offence and the appellant was expected by virtue of the fact that he had fled Kirkuk, the appellant therefore feared prosecution rather than persecution.

97. The judge found that there was no evidence to justify a finding that if the appellant were returned to Kirkuk and a warrant was in existence that he would be arrested that he would not receive a fair trial at the hands of the authorities. There was state protection available in light of the appellant's evidence that he had complained to the police of the threats made against him and the police arrested S and detained him for 5 days and then released him on bail. The appellant was able to live in Erbil without any difficulties and there was no evidence that any of the family he feared

came to seek him and therefore internal relocation was a reasonable alternative. Whilst the appellant may well have problems within Kirkuk because of the family feud that had arisen, there was no evidence that the feud or danger that the appellant claimed to persist extended beyond the reasonable boundaries of Kirkuk. Therefore even if the appellant's fears were genuine as claimed, he would be able to relocate to another part of Iraq.

98. The decision of the panel (Judge Hollingworth and NLM) in 2012 is set out in their decision. Whilst the panel upheld the respondent's certificate pursuant to section 72, the panel set out their findings of fact in relation to the asylum/protection claim at paragraphs [44]-[52]. They noted that the starting point was the determination of the FtT in 2004 and that whilst the appellant advanced the same reasons as before, there was no evidence for revisiting any of the findings of fact. As to the only new event which related to the death of his brother in 2007, the panel found that there was no evidence as to his death or the funeral notwithstanding the appellant continued to be in regular contact with his mother as recently as 2 weeks before the appeal. The panel therefore did not accept that the appellant had proved the death of his brother took place in 2007. In the event that they were to be wrong about that, they found that there was insufficient evidence to show that his brother's death could be linked to the appellant's fears. The panel found that the appellant could return to Kirkuk where his mother, elder brother and other extended family members were living and with whom he was in contact with. Family members were considered to be able to provide him with accommodation and support in the short term and that the appellant could seek state protection or relocate if necessary.

99. The next factual findings were made by FtTJ Manchester. The FtTJ set out his findings of fact an assessment of the evidence at paragraphs [41 – 70].

100. It was noted that counsel did not seek to rely on any refugee Convention claim although the appellant continue to raise this as an issue in his evidence by reference to the risks associated with the claimant blood feud. The FtTJ therefore considered that he should deal with that issue by considering the earlier decisions reached applying the decision in Devaseelan. At paragraph [44] he set out that it was found that whilst the appellant might well have problems within Kirkuk because of the family feud that had arisen between him and the family, there was no evidence to satisfy the judge that the feud or the dangers alleged from it extended beyond the reasonable boundaries of Kirkuk nor the power of the family would extend beyond those boundaries. In any event his fear of persecution did not engage a Convention reason. It was noted that those findings were confirmed by the Tribunal in the 2nd decision where the issue of the appellant's subsequent claim that his brother been killed in 2007 and this was linked the blood feud was found not to be supported by sufficient evidence.

101. Consequently the judge found at [45] that there was no further evidence produced before him on behalf of the appellant regarding the alleged blood feud and that as Kirkuk was a contested area, his claim that he would suffer serious harm on account of an alleged blood feud had been settled by the 1st and 2nd decisions and he had not established that he was entitled to refugee status or to the grant of humanitarian protection on that basis.

102. At [58] the FtTJ considered the issue of" potential availability of family support". The judge recorded the submission made by the presenting officer that his claim that he last had contact with his family 18 months ago and that they had fled to Turkey to escape from ISIS was inconsistent with the report of Dr D which recorded the appellant saying at interview in November 2015 that he was happy when speaking to relatives on the phone. The judge stated that "I accept that there is some doubt about the appellant's claim about the lack of contact with his family, but this does not in my view mean that there would be any meaningful family support available to him on return to Iraq."

103. The relevant factual findings made by FtTJ Fisher have been set out earlier in this decision. I need not set that them out in their entirety again. FtTJ Fisher summarised the earlier decisions made. At paragraph [12] he recorded that the appellant's legal representative sought to advance the appeal before him on asylum, humanitarian protection and human rights grounds; specifically that the appellant would be at risk on return, that he could not relocate, that his account disclosed a Refugee Convention reason (that he was a member of the PSG), and that he was not excluded from the Convention. Furthermore if he were not excluded from humanitarian protection, his claim was based on the same factual matrix as his article 3 claim. He was also invited to find that return would breach article 3 on medical grounds. Finally, he was invited to find that the removal would breach article 8 on private and family life grounds.

104. The FtTJ began his decision by considering the Section 72 certificate and at paragraph [14]-15] set out his reasons. At paragraph [15] the judge gave his reasons as to why the appellant had failed to rebut the presumption and therefore he must dismiss the appeal on asylum grounds under section 72 (10) (b). He found that even if the appeal had not been certified, there was no additional evidence before him that was before Judge Sacks in 2004 or before the panel in 2012 and stated, "I would have found it settled primarily that the appellant could seek state protection or, in the alternative, that he could relocate if necessary."

105. As to humanitarian protection Judge Fisher noted that it was advanced on the basis of the lack of documentation although the appellant claimed that Kirkuk remained unsafe and that he would be at risk as an individual who was westernised and there were problems for those of Kurdish ethnicity. The FtTJ noted that the respondent had submitted that he was excluded from the grant of humanitarian protection under paragraph 339D of the Rules. The judge Fisher relied on the findings set out in the earlier part of

his decision thus the appellant was excluded from humanitarian protection.

106. However at paragraph [18] the FtTJ stated that in the event that he had found in the appellant's favour, the UT in SMO (article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 found that the intensity of the internal armed conflict in certain parts of Iraq was not such that, as a general matter, there were substantial grounds for believing that any civilian return there would be at article 15 (c) risk. Applying the sliding scale as the appellant originates from Kirkuk, he has no actual perceived association with ISIL, and "I am not persuaded that he is any more westernised than most Iraqi citizens. It has previously been indicated that he speaks Kurdish Sorani and that he would be able to demonstrate that he had recently returned from the UK. I would not have concluded that he was eligible for subsidiary protection on the basis of the country conditions, and I propose that at my conclusions on documentation below. However, I should stress that my primary finding was that the appellant is excluded from the grant of humanitarian protection."

107. As to his human rights claim, the judge recorded that it was advanced on the basis of a lack of documentation and the appellant's health issues. Judge noted that he was excluded from the Refugee Convention, and he considered it settled that the appellant could seek state protection or relocate in those circumstances there was no real risk of a breach of article 3 due to a blood feud. In relation to his mental health issues they were considered in November 2016 as considered by Judge Manchester and that there was no evidence to show any significant changes since then. The FtTJ recorded that the evidence of Dr D had said that the recurrent depressive disorder within a severe episode at the time of the report. The subsequent report of Dr E described as moderate to severe. The FtTJ considered that Judge Manchester correctly directed himself to the decision in Paposhvili now endorsed by the Supreme Court in AM (Zimbabwe) regarding the threshold of Article 3 health cases.

108. At paragraph [21] the judge noted that the issue of support from the appellant's family as linked to both the Article 3 mental health claim and the question of documentation. It records that in paragraph 3 of his July 2020 witness statement, the appellant said that he had last spoken to anyone in his family when ISIS came to Kirkuk, and he describes situation is very bad. FtTJ Fisher stated "he has already been disbelieved by this tribunal by the jury in the Crown Court. He produced no evidence for the Red Cross to confirm that he had asked trace family. I am far from satisfied that he is not in contact with family members in Iraq who could offer him at least some support on return. They could also assisted with documentation. Alternatively, he could apply for a 1957 registration documents in the UK which would assist him to obtain replacement documents on return. In all circumstances, I dismiss the appeal on Article 3 grounds."

109. At paragraph [22] the judge referred to the appellant's Article 8 claim, finding that the appellant was not in a relationship with the mother of his son born in 2019. The judge accepted that he was the child's father as there was DNA evidence. Judge considered the appellant's claim that he was seeing his son twice per week and through video calls most days, but the judge found that there were 2 factors that were striking. Firstly, there was no supporting evidence from his former partner to confirm the nature of the relationship and the judge was satisfied that it would be reasonable to expect to see such evidence of the relationship between the appellant and his son was subsisting. The judge found that there was nothing to suggest that the appellant and his former partner were not on sufficient good terms to prevent it from doing so. Secondly, there were no references in Dr E's report to the appellant having any contact with his son. Although some texts and photographs were provided in the course of the proceedings, they were not dated. The judge placed weight on his previous dishonesty and that it led him to approach the evidence with caution and to look for support before accepting it. The judge concluded that "on scant evidence before me, I simply cannot be satisfied that he enjoys a subsisting parental relationship with his child."

<u>The assessment of documentation /redocumentation:</u>

110. Turning to the assessment of the issues of documentation and /or redocumentation, it is necessary to set out the appellant's home area. Whilst Mr Diwnycz appeared to be stating that the appellant's home area was not in Kirkuk, although no evidence was presented to support that submission, the parties subsequently agreed that the Tribunal should proceed on the basis that is home area is in Kirkuk. It is of significance that since the appellant entered the UK in 2004 he has always maintained that this is his home area. Furthermore, the respondent has proceeded on this basis throughout the various decisions reached in respect of his claim.

111. It has not been in dispute at this hearing that the appellant does not have any documentation. In the screening interviews that took place in 2004 the appellant stated he had an ID card and his birth certificate in Kirkuk (see Q1.23) and at 1.27 he referred to all his "ID cards" being left behind in Kirkuk.

112. UTJ Pickup found that the only error of law related to the issue of redocumentation and that all other findings should be preserved, including that the appellant remains in contact with his family so that the remaking of the decision should be limited to the sole issue of documentation for return to Iraq against the preserved findings (see paragraph 11 of the error of law decision).

113. The issue of documentation or redocumentation relates to the appellant's ability to obtain information and documentation from his home area in Iraq and from his family members.

114. The previous factual findings made in 2004 demonstrate that when the appellant left Iraq he had 3 brothers, 2 sisters, his parents and reference is made to an uncle. The FtTJ in 2004 did not make any factual findings about those family relatives but the appellant's evidence did not state at that time that his family were no longer in Kirkuk.

115. In 2011, the screening interview form referred to his father being deceased and his mother in Kirkuk.

116. In the decision of Judge Hollingworth (in 2012) it was asserted on behalf of the appellant that his brother had died in 2007 in an explosion in Kirkuk. The panel did not find that there was sufficient evidence to demonstrate that his brother had died in 2007 (at [50]). The panel also recorded that the appellant had identified that his mother, brother and other relatives were in Kirkuk at the same home address (at paragraph 14). And at paragraph 21 the panel recorded the appellant's evidence that he was last in contact with his mother 2 weeks before the appeal. As the appeal was heard on 20 June 2012, it is likely that on the appellant's own evidence he had contact early June 2012. The panel therefore found that the appellant could return to Kirkuk where extended family live in and with whom him he had been in contact with.

117. At the hearing before FtTJ Manchester in November 2016, it was the appellant's claim that he last had contact with his family 18 months previously and that they had fled to Turkey to escape ISIS. Judge Manchester set out the following at paragraph 58 of his decision:

> "58. There is of course the issue of the potential availability of family support. In this connection, (PO) pointed out that the appellant's claim that he had last had contact with his family 18 months ago and that they had fled to Turkey to escape the clutches of ISIS was inconsistent with Dr D's report which recorded the appellant saying at interview in November 2015 that he was happy when speaking to relatives on the phone. I accept that there is some doubt about the appellant's claim about the lack of contact with his family, but this does not in my view mean that there would be any meaningful family support available to him on return to Iraq."

118. The report of Dr D recorded at page 8 of the report (p52AB) "I asked whether anything made him laugh. He said, "when I speak to my elder brother and relatives on the phone I feel happy." Later on in the report it is recorded that the appellant spoke about the distress of events in Iraq and Syria .

119. In this context I note the submission made by Ms Brakaj at the error of law hearing. It had been argued at paragraph 8 that the judge failed to take the previous findings of Judge Manchester as the starting point and failed to justify departing from those findings. UTJ Pickup set out at paragraph 5 that the Judge had set out the previous findings made, and that Judge Hollingworth (the 2012 decision) found that the appellant could return to Kirkuk where his mother, elder brother and other family members were

living. UTJ Pickup referred to the contents of paragraph 58. At paragraph 6 of the error of law decision, UTJ Pickup rejected as a mis construal of Judge Manchester's findings the submission made that the judge had found that the appellant had no family contact. UTJ Pickup reached the conclusion that when paragraph 58 was considered carefully, the finding about family was made in the context of the factors set out at paragraph 59 about inadequate family support for those with mental health issues and in the context of stigma and ostracization . UT Judge Pickup was satisfied that there was no finding that the appellant was not in contact with his family. In the alternative, UTJ Pickup found that it was open to FtTJ Fisher to conclude that the appellant remained in contact with his family which was not inconsistent with the Devaseelan principles.

120. Ms Brakaj did not seek to reargue that point but made a different point that there was no finding of fact on the factual matrix that the appellant may have had contact with his family but the question of whether the family members had fled the home area due to ISIS had not been addressed. Ms Brakaj submitted that the appellant's account was not inconsistent with the background evidence concerning Kirkuk at that time. Furthermore the evidence of the doctor did not refer to where the family were living or that they were safely in Kirkuk. Mr Diwnycz did not make any submissions about this issue.

121. I therefore given careful consideration to it in the context of factual findings that I have set out above and the preserved findings. There has been no further assessment of the whereabouts of the appellant's family members since the decision made in 2012 (Judge Hollingworth). When the appeal was before Judge Manchester, the only finding that was made is that at paragraph 58 as recorded above. The judge appeared to be in doubt as to whether there was contact with family members.

122. FtTJ Fisher did not hear any further oral evidence in 2021. He referred to the appellant's evidence set out in his witness statement dated July 2020 paragraph 3 (see paragraph 21 of his decision). It was recorded there that the appellant said that he had last spoken to anyone in his family when ISIS came to Kirkuk, and he described the situation is very bad. That referred to the earlier evidence given by the appellant at the hearing before Judge Manchester.

123. FtTJ Fisher found at paragraph 21 that the appellant had already been disbelieved by the Tribunal and the Crown Court, that he produced no evidence of the Red Cross to confirm that he tried to trace his family and therefore found "I am far from satisfied that he is not in contact with family members in Iraq who could offer in at least some support on return."

124. When reaching his finding at paragraph 21, FtTJ Fisher was entitled to rely on the appellant's past claims and that he had not been believed by Judges of the FTT on his protection claim and relating to other issues, such as whether he had a parental relationship. The fact that he has not been

believed in relation to his factual claim is not conclusive of the issue (see the decision of Uddin v SSHD [2020] EWCA Civ 338 at paragraph 11 and the reference made to the conventional warning given (known as a "Lucas direction" that a person may be untruthful about one matter without necessarily being untruthful about other matters). I note that Judge Manchester considered that he was in some doubt as to whether he was in contact with family members and Judge Fisher was far from satisfied that he had no contact with family members in Iraq. However neither judge made any finding of fact as to where the family members were located and whether as the appellant claimed they had fled Kirkuk as a result of the actions of ISIS.

125. When considering a factual assessment of this issue there has been little supporting evidence from the appellant since the 2020 witness statement which referred to the family members having fled Kirkuk for Turkey and that he had tried calling his elder brother however the phone was switched off and that he had tried many times to contact him but was unable to do so. There is no evidence that he is sought to trace the family by the Red Cross despite the claim made in the witness statement of paragraph 3. Nonetheless the last time that the appellant was found to have contact with family members was in or about 2014/2015.

126. Ms Brakaj referred to the country evidence. Whilst SMO(1) has now been replaced by the CG decision of SMO (2), at paragraphs 21 – 50 the Upper Tribunal set out the evidence taken from the country materials reflecting the position in Kirkuk and the conditions in that area since 2003. It is recorded that Kirkuk city lies approximately 150 miles north of Baghdad and gives its name to the governorate of which it is the capital. It is a disputed territory and is highly desirable due to the presence of oil reserves. Insurgent groups including ISIS and its predecessor have been active in the area since 2003. It routinely recorded high levels of violence (paragraph 25).

127. As to its history, the tribunal set out evidence from the EASO report at section 2.4. The Tribunal recorded that like Dr Fatah, the EASO report emphasised the ethnic diversity of Kirkuk and the long standing struggle over the control of the governorate. It records the International crisis group stating that the area has experienced "the worst turbulence" in recent years. ISIL took over the region around Hawija when the Iraqi army collapsed in 2014. The PUK moved in and controlled Kirkuk city between 2014 and 2017, during which time there was a stand-off between ISIL and the pensioner, with repeated clashes along the southern and western parts of the city. ISIL controlled Hawija until it was expelled in 2017. From Hawija district, ISI and carried out attacks against the Kirkuk governorate 2014. The area has seen significant displacement throughout the period (at paragraph 41).

128. ISIL was removed from Hawija by the ISF and the PMU's in early October 2017. In retaliation for the Kurdish independence referendum, Kirkuk city was retaken from the PUK pressure by the ISF and the PMU's. According to

the KRG, the departure of the Peshmerga in October 2017 was reported to have left a security vacuum in parts of Kirkuk, Diyala and Salah al-Din. This has allowed ISIL to operate there and to prepare attacks. Other sources suggested that the security situation in Kirkuk had improved after October 2017, although the situation was said to be fragile and complex. The intensity of the violence in Kirkuk was characterised as "medium-high." The two-week long offensive against ISIL in summer 2018 had led to a significant decline in the number of attacks but ISIL cells were not completely uprooted from Kirkuk and attacks continued(paragraph 45).

129. It is further recorded that Kirkuk hosts a significant number of IDP's albeit that the number reduced from 180,000 individuals in December 2017 108,000 individuals in December 2018. The majority come from within the governorate. 75% of displaced families from Kirkuk city have returned.

130. The appellant's evidence concerning his family members is consistent with what is known in his home area. Notwithstanding the previous factual findings that have been made in relation to the appellant and the adverse findings of fact made concerning his asylum claim, which I take account of as evidence undermining his general credibility, I am satisfied that his claim concerning what had happened to his relatives is plausible in the context of the background material. Whilst he may have had contact with them previously, which was a finding properly made by the earlier FtTJ in 2012, and that he had made reference to having contact with them in 2015, which is the last known time that contact was recorded between the appellant and his family members, there is a reasonable likelihood that they were not in Kirkuk at the time he had contact with them.

131. In terms of documentation, it is common ground that the appellant does not have any documentation with him in the United Kingdom. In the screening interviews that took place in 2004 the appellant stated he had an ID card and his birth certificate in Kirkuk (see Q1.23) and at 1.27 he referred to all his "ID cards" being left behind in Kirkuk. He referred to never having been issued with a passport.

132. As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the respondent's position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID may be at risk of enduring conditions contrary to Article 3 of the ECHR.

133. The issue surrounding the documents required to return to Iraq and to survive in that country have played a prominent part in the country guidance cases thus far decided. Those documents are referred to as the Civil Status Identity Card ("CSID"), the Iraqi Nationality Certificate (INC) and the public distribution system ("PDS") card/ food ration card and the new digital identification document known as Iraqi National Identity Document ("INID)." Reference is also made to the 1957 Registration Document (see paragraphs 115 -137 of SMO(2)).

134. The importance of the CSID was set out in the previous CG decisions as it is required to access financial assistance, employment, education and housing etc. it was described as an “essential document for life in Iraq” (at [39] AA (Iraq) [2017]).

135. It has been emphasised in the previous country guidance decisions that an intensely fact sensitive enquiry is necessary as to whether an individual would be able to obtain a replacement CSID and the possession of other documents and the location of the civil registry office and the availability of other male family relatives were all relevant considerations.

136. Ms Brakaj submitted that the country materials (in the CG decision) referred to the problems of IDP’s who had lost documents. At paragraph 365 of SMO(1) reference is made to the evidence of Dr Fatah and that CSA offices had been destroyed and many people had been displaced without their documentation. The UNHCR had recognised the severity of the problem describing undocumented individuals as being in a “legal limbo” and that they had assisted 2500 Iraqis whose documents had been lost and destroyed.

137. It is therefore necessary to consider the CG of SMO (2). At paragraph 60 the Upper Tribunal considered that CSID’s continued to be available at the Iraqi embassy but only for individuals who are registered at a CSA office which has not been transferred to the digital INID system. However if the individual is registered at a place where the INID has been rolled out, they would not be able to apply for a CSID in Iraq or in the UK. If the INID has not been rolled out in the place of registration, an appellant could apply for a CSID in Iraq, in person or by proxy, or from the UK using the intermediary facility provided by the embassy (see paragraph 61).

138. The question is whether CSID’s continue to be issued in the appellant’s home area. The UT in SMO (2) expressed the view at paragraph 65 that they did not know whether any of the CSA offices listed had installed an INID terminal referring to those areas set out at paragraph 64. It was further noted that the respondent had not adduced evidence about the specific locations which continued to issue CSID’s (see paragraph 66 and 67). However it was the respondent who would be able to ascertain whether a given CSA office still issued the CSID’s and would be prepared to make enquiries (see paragraph 67).

139. Ms Brakaj submitted that in light of those paragraphs, the areas set out at paragraph 64 as still issuing CSID’s could not be relied on. Mr Diwnycz referred to the position that in Kirkuk they were issuing INID’s.

140. It is the position of the respondent (as set out in a general letter referring to requests made under paragraph 144 of SMO (2)) having identified that the only areas that still issue the CSID are parts of Mosul and the surrounding area of Nineveh and the rest issue the INID. Thus in Kirkuk they are issuing the INID.

141. Therefore applying the CG decision to the appellant's circumstances, the appellant's return will be to Baghdad. He would be returned with a laisser passer, but the document would not allow him entry into Iraq, nor would it enable onward travel as it is confiscated on arrival (see paragraph 18). An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there.

142. The appellant does not have a CSID or INID and he will not be able to obtain a CSID in the UK as he has no documents available to him. On the evidence before this Tribunal even if he is in contact with his family relatives, the last known contact being in or about 2015, or even if he retains some level of contact, that contact will not assist him as it is reasonably likely that they are no longer in Kirkuk. The appellant's evidence that they left Kirkuk is supported by the objective material notwithstanding the other adverse credibility findings made generally. The material demonstrates that as a result of displacement many documents were lost or destroyed. Even in the event of the appellant remaining in contact with his family relatives, it is likely that they would not have retained his documents given he left Iraq in 2004.

143. The appellant's home area in Kirkuk issues INID documents. To obtain one, he would be required to personally attend the CSA office to enrol his biometrics. In light of the country guidance decision in the context of the appellant's claim, the only avenue open to him is to travel to Kirkuk and register his biometrics for an INID. The CG decision makes clear that he would not be able to travel from Baghdad, the place of return, without being at risk of Article 3 ill-treatment as set out in the CG decision of SMO (2). As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the respondent's position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID/INID may be at risk of enduring conditions contrary to Article 3 of the ECHR.

144. The appeal is therefore allowed on Article 3 grounds.

Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside; the appeal is to be remade as follows: the appeal is allowed on Article 3 grounds.

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 his family members. 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: 6 September 2022

Upper Tribunal Judge Reeds