



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11260/2019**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On 2 September 2022**

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

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**DS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G. Patel, Counsel instructed on behalf of the appellant.
For the Respondent: Ms Young, 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. 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

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 Plimmer promulgated on 17 November 2020 setting aside the decision of the First-tier Tribunal as involving the making of a material error of law.
2. On the 16 July 2021 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.
3. The appeal was listed before Upper Tribunal Judge Pickup on 18 August 2021 however at the hearing there was an application made on behalf of the parties to stay the appeal behind the decision of SMO(2). As a result he adjourned the proceedings on that basis and the appeal was to be relisted. UTJ Pickup listed the appeal for a case management hearing which did not proceed. A CMRH was subsequently held and following the promulgation of SMO(2) the appeal was listed.

The background:

4. The appellant is a national of Iraq of Kurdish ethnicity from Sulaymaniyah. On 14-15 July 2015 the appellant was at work delivering vegetables for his employer (hereinafter referred to as "H") between Sulaymaniyah and Duhok. The road was blocked, and he was stopped by 6 or 7 members of ISIS. Other vehicles had also been stopped. They spoke to him in Arabic and told to get out of the vehicle. The appellant has a scar on his left thumb from when ISIS stabbed him with a knife while he was attempting to get his ID out of his pocket. They took him into the open field with the other drivers. They were beaten with electric cables. He became unconscious after 10 minutes. After 8 hours he woke when they poured water over him. They took him to another field and fed them. He managed to escape from ISIS whereby he reached a village where people helped him. He called his family. .
5. After 2 days he explained to H what had happened. He was told he had to pay \$40,000 for the vehicle. He told H he had no money as he was just a driver. H demanded the money from him for the loss of the vehicle every 2 to 3 days. H was involved with the PUK, who had their support and knew politicians. H threatened that he would kill if he did not pay.
6. On 20 July 2015 H came to his house. The appellant's brother looks like him. He opened the door was shot in the head. H had killed his brother by mistake whilst looking for the appellant. The appellant ran outside and saw H go inside his car. He reported it to the authorities. They issued a warrant for H who went into hiding. The appellant was scared as a result of the influence of H and therefore could not internally relocate. His family had

moved 3 times. They told him that H had come to the house looking for him.

7. The appellant left Iraq on 1 August 2015 travelling to Turkey using his own passport. The passport was lost in Greece. He travelled through countries before claiming asylum in Germany where he had been fingerprinted. He was in Germany for 8 or 9 months and entered the United Kingdom via France and Belgium.
8. The appellant made a claim for asylum on 22 March 2017. The respondent refused the claim in a decision taken on 1 November 2019.
9. The respondent accepted that the appellant was a national of Iraq of Kurdish ethnicity and from the IKR. It was not accepted that he had been abducted by ISIS, nor was it accepted that he had been threatened by his former employer.
10. When undertaking an assessment of future fear or risk, the respondent concluded that it was not accepted that he had a genuine subjective fear on return to Iraq but if it was accepted, in the alternative the respondent considered that the appellant could internally re-locate.
11. The respondent set out in relation to fear of ISIS, but that the country information available demonstrated that ISIS had been expelled from Iraq (paragraphs 55 - 57).
12. As to internal relocation, it was stated that H was a nonstate agent and he failed to demonstrate that he either had the power or influence to locate him throughout Iraq or to pursue him. He had not demonstrated that H had any connection with the PUK, and his family had relocated within the IKR. It was therefore considered reasonable that he could relocate somewhere else in the IKR. As to the feasibility of return the respondent set out the country guidance applicable in AA (Iraq) [2017]EWCA Civ 944 and AAH(Iraqi Kurds - internal relocation)[2018]JUKUT 00212. It was noted that there were regular flights from Baghdad to the IKR and that he would only be in Baghdad for a transit period and therefore would not need to leave.
13. As to how he could obtain as documents, it was noted that he stated he did not have his CSID card as it was taken from him. The respondent applied the decision in AA (Iraq) however it was noted that as the material facts regarding fleeing Iraq could be rejected it was not accepted that he was no longer in possession of his passport and CSID. In the alternative, he was in contact with his sister and if he did not have access to his CSID card any family members would be providing with the relevant information he needed to present to the Iraqi consulate to obtain a replacement.
14. It was further considered that he could move from Baghdad to the IKR (paragraph 79 -81) and that he could internally relocate.

15. The appellant appealed that decision, and it came before the FtT. In a decision promulgated on 5 August 2020, the FtTJ considered the background evidence that ISI S were active in parts of the IKR in 2015. The FtTJ accepted that it was reasonably likely that the appellant ran into an ISIS roadblock whilst delivering produce, that he was ill-treated and escaped. However the FtTJ did not accept that it was likely that he was employed by H, nor had the appellant established any adverse interest in him of his family from H, or that H had the influence as claimed. The judge was satisfied that his family could assist him so that a new passport and CSID could be issued for him to be able to return either to Baghdad or the IKR and that if returned to Baghdad he could safely returned as he would have the required documents. The appeal was therefore dismissed.
16. Permission to appeal that decision was sought and on 25 August 2020 permission was granted by FtTJ Adio. 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 17 November 2020.
17. In decision promulgated on the 25 November UTJ Plimmer found an error of law in the decision of the FtTJ for the reasons set out in her decision as annexed to this decision.
18. UTJ Plimmer set out her conclusions at paragraphs 6-8 as follows:

“6. Although the FtTJ’s decision is carefully drafted in many respects, I accept Ms Khan’s submission that the application of the lower standard of proof at [36 – 38] is confused and erroneous. As the grounds of appeal submit, the FTT has inverted the standard of proof. By way of example, instead of determining whether the appellant’s claim that H confused A (his brother) for him as they looked alike was reasonably likely, at [36] the FTT concluded that it was “reasonably likely H would be able to tell them apart.” The erroneous inversion of the standard of proof is repeated at [37] and [38]. In short, the FTT erroneously apply the lower standard of proof to the directly opposing scenario to that relied upon by the appellant. Mr Howells accepted that it was unfortunate that the FTT used the wording he did, but the errors were merely careless and not indicative of the material misdirection when the decision is read as a whole. I accept that when reaching the overall adverse conclusions that [40] and [41] the FtT properly apply the correct lower standard of proof. In my judgement, this does not save the earlier incorrect inversion of the applicable lower standard of proof. The FTT did not make one error that repeated the inversion of the standard of proof against the appellant on at least 3 occasions. As Ms Khan observed, when making the positive findings of fact at [25] to [33], the FTT made no error in the application of the lower standard of proof. This is to be contrasted with his later adverse findings, which were underpinned by Ms applications of the lower standard of proof. The correct application of the standard of proof is a fundamental requirement in the determination of an asylum appeal. In my judgement the FTT’s inversion of the standard of proof appreciate the factual findings in relation to this part of the appellant’s account, the reasons I have already provided.

7. It follows that the conclusion on credibility in relation to the 2nd half of the appellant's account is vitiated by an error of law and unsafe. Mr Howells accepted that the 1st half of the FTT's findings in relation to his treatment by ISIS could be preserved. I agree that this comprised a discrete part of the FTT's reasoning and was not infected by the later errors of law.

8. I have had regard to para 7.2 of the relevant senior Pres practice statement and the submissions of the representative. Although they will need to be some cross examination, the nature and extent of the factual findings are limited because I have preserved the findings at [25] to [33] of the FTT's decision. In all the circumstances I have decided that this is an appropriate case to be remade in the Upper Tribunal."

19. Directions for the remaking were subsequently given by the Upper Tribunal.
20. The matter comes back before the Upper Tribunal now to remake the decision. The factual findings preserved by UTJ Plimmer are those set out at paragraphs [25]-[33] of the FtT's decision (see paragraph 8 of UTJ Plimmer's decision).

The resumed hearing:

21. The resumed hearing took place on 2 September 2022 by way of a face to face hearing. The appellant was represented by Ms Patel, Counsel and the respondent by Ms Young, Senior Presenting Officer.
22. There was no up-to-date bundle on behalf of the appellant, but the tribunal had the previous bundle before the FtT. The respondent relied upon the original Home Office bundle which included the screening interview, interview record, and also Ms Young relied upon the respondent's' CPIN dated July 2022.
23. At the outset, Counsel on behalf of the appellant sought clarification of the position with the CSID. Ms Young, on behalf of the respondent stated that had been accepted by the previous presenting officer that the CSID had been taken by ISIS and this was set out in the note. Thus both parties accepted that there was an additional preserved finding that the appellant did not have a CSID as it was taken by ISIS.
24. The appellant gave evidence with the assistance of the court interpreter. At the outset of the hearing both the appellant and the interpreter confirmed that they could understand each other and there were no problems or difficulties identified during the hearing.
25. The appellant relied upon his witness statement dated 26/2/20 and this was adopted as his evidence in chief. He was referred to the photographs in the bundle, and he identified the first one as a photograph of his brother. When shown the photographs that had 2 people in it, he identified

himself and that the other person was his brother (wearing the Bob Dylan T-shirt). No further evidence in chief was given.

26. In cross examination, the appellant was asked about the photographs and when they were taken. The appellant stated they were taken a long time ago we could not remember the exact year. He said that his brother was younger than him.
27. He was asked about his family members. He stated that he had one sister and one brother. When asked when he last had contact the family the appellant said that it was before the pandemic. He said that he had not had contact since because when coronavirus arrived their mobile phones were shut down and he was not able to contact them. When asked when was the last time he tried to contact them on their mobile phone numbers, the appellant said that he tried a number of occasions to contact his family, but the phone numbers were not working. He said he changed his mobile number. He had been to the Red Cross and the Iraqi Consulate to trace them.
28. When asked when he went to the Red Cross, he said he went a few times during the period where coronavirus was active. The office was closed. He spoke to a lady there and took her details and spoke online and said they were trying to trace the family. He said it was a while ago that he had contact with the Red Cross.
29. The appellant was asked about his former employer in Iraq and how long he had worked for him? The appellant stated that he had worked for him for a few years but could not recall exactly how many years and that he would see him often when he was his employer. He agreed that the issues that he had with H went back to 2015. He was asked that if he returned 7 years later why would H still be interested in him? The appellant said that H was an influential man and that he was in fear of him and that also he was in fear of ISIS who had his identification document. He was asked how he knew that H had powerful connections in the PUK? The appellant said that he had been working with him and he had a huge business of the government as well and sometimes attended their meetings. The appellant was asked how he knew that H attended PUK meetings? The appellant said that he had been told by H. The appellant was referred to his interview where he stated that he had not been involved in politics in Iraq (question 127). The appellant confirmed that was the position. He was asked why would his employer telling that had been to PUK meetings. The appellant said that it was because he was working with H and that he would get cars transferred and he had said he was going to PUK meetings.
30. There were no further questions asked.

The submissions:

31. Ms Young made the following submissions on behalf of the respondent. She submitted that the matter to address was whether the appellant was

at risk from his former employer H and this issue was addressed in the decision letter at paragraphs 43 - 48.

32. She submitted that the appellant's claim was that H was a powerful man with connections to the PUK but there was no background evidence to support these assertions that he was such a figure in Iraq and would not be able to trace the appellant or know that he had returned since the incident.
33. As to the preserved findings concerning the credibility of his account to have been beaten ill-treated by ISIS, this did not mean that the rest of his account was credible. The appellant was asked questions in cross examination regarding H and the account that he had powerful connections in the PUK, but his evidence did not establish that H had any powerful connections would be at risk from his former employer.
34. As to return to Iraq, on the preserved findings he would not be at risk of harm now in the IKR from ISIS as the situation had substantially changed (relying on SMO(2) had note 1).
35. As to documentation, SMO(2) at had note 7, the return of former residents will be to the IKR, and the appellant can return directly to his home area as he was a resident there and in line with the CPIN July 2022 paragraph 2.6.3. The appellant is able to return on a laissez passer (head note 7) directly to the IKR and travel to the CSA office and obtain an INID.
36. Ms Young referred to annex D of the CPIN and confirmed that the appellant's home area had converted to the INID system, and she did not seek to argue against that. She submitted that when considering the issue of whether the appellant was in contact with his family, when considering the evidence in the round and the credibility findings made. The appellant has worked in Iraq as a delivery driver therefore could return to obtain the necessary documentation.
37. Ms Young did not address Article 8 as it was confirmed by Ms Patel that that was not advanced.
38. Ms Patel made the following submissions. She submitted that the starting point were the preserved findings and that they show a link to a fear with H and because ISI S took the lorry his employer was unhappy with what ahd occurred. She referred to his witness statement from paragraph 19 onwards where reference had been made to the lorry and that it was worth US\$40,000 with approximately US\$3-US\$4000 in stock and that H his employer had blamed him for the huge financial loss. She submitted it was a substantial loss for the employer and that he had wanted the appellant to pay this and had threatened him. The threat had been followed up as he came to the appellant's house and killed his brother by mistake.
39. She submitted that the respondent and the decision letter questioned as to how H would mistake the appellant's brother for him. However this is

clarified in the appellant's witness statement at paragraph 19 where he gave a description of the conditions. It was night, and it was dark and that his brother looked like him. Ms Patel referred to the photographs and that there was a resemblance. She submitted that whilst the respondent did not accept the killing took place, such shootings did occur, and she referred to one having taken place recently in the UK. It was therefore plausible that the incident occurred.

40. Ms Patel submitted that the appellant gave credible answers regarding how the incident took place in his asylum interview and as regards the influence of H. She referred to question 141, where the appellant said that his family had moved 3 times. At question 146 he was asked how he knew that H was still interested in him or would know if he returned to Iraq, the appellant stated that H had targeted him and that he would not forget what had happened. His fear was of age and the fear was well-founded.
41. She submitted that the respondent's case was that the appellant had not proved the lower standard that H had any power or influence. However she submitted that did not mean the account was not plausible credible in the context of northern Iraq. There are people who are powerful and influential and the appellant's home area is ruled by the PUK. He was a wealthy businessman with the store and business ventures and the appellant have been told by H that he attended PUK meetings so that the business could operate. She submitted that he had been found to be plausible and credible in respect of the issue relating to ISIS and that he should be found to be credible concerning the fear from his employer.
42. She submitted that the points raised in the decision letter were minor. The appellant had set out in his screening interview the basis of his claim at paragraph 4.1, and that he did not seek to supplement this at a late stage and has been consistent in his account. This time interview took place 2 years 8 months later, but the appellant mentioned the basis of his claim his screening interview that he would be at serious harm from H and could not return.
43. Ms Patel referred to the issue of documentation and that the home area of the appellant has the INID system. She submitted that SMO (2) headnote 7 is identical to SMO(1) and that only voluntary returns are to the IKR. Therefore if the appellant feared serious harm from his employer he would not voluntarily return therefore the information in the CPIN is relevant. He has no contact with his family, and in any event he needs to be in person to obtain his INID. If required to obtain his INID from his home area he would be at risk of his former employer. As he would not be a voluntary returnee, he will be returned to Baghdad and without any form of documentation he could not get to his home area or any area of relocation.
44. As to sufficiency of protection, Ms Patel submitted that there would be no sufficiency of protection having reported the matter, but they did not arrest the individual concerned. As to internal relocation, as he does not have an INID, and it was not suggested that he could internally relocate to

Baghdad as a viable internal relocation area. Ms Young and her submissions accepted that it was not said that the appellant could safely relocate Baghdad or any other area in the government controlled Iraq.

Discussion:

45. 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.
46. Helpful guidance on the judicial analysis of credibility was provided in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 0049. The Upper Tribunal highlighted the dangers of overly focusing upon matters of plausibility or demeanour, especially where assessments are made about States and cultures unfamiliar to the judge, who will necessarily look at such matters through a UK – cultural lens. Sufficiency of detail, internal and external consistency, and plausibility provide a useful framework (but not a straitjacket) to assess credit ability in the round rather than affixing on a narrow dimension of the case to reach a broad finding of fact.
47. When considering the appellant's general credibility in the context of Paragraph 339 of the Immigration Rules and section 8 of the 2004 Act, section 8 is only an element to be considered in relation to the appellant's credibility and is not determinative.

Country Guidance:

48. 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).
49. The current CG decision is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (hereinafter referred to as “SMO(2)”).
50. 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.

51. The starting point of the assessment of the appeal are the factual findings made by the FtTJ which were preserved findings in accordance with the error of law decision and set out at paragraphs [25-33]. The appellant's account and the key to his claim was that he was abducted and ill-treated by ISIS who stole the lorry which was worth a considerable amount of money and then experienced serious issues with his employer including threats of harm followed by it being carried out whereby the appellant's brother was killed by mistake.
52. The FtTJ accepted that the appellant had given a credible account as to what had happened in Iraq and in respect of the events that occurred with ISIS.
53. It is important to consider the factual findings that were set out by the FtTJ. The FtTJ set his account against the background evidence and that ISIS were active in parts of the IKR at the time the appellant had claimed. He also rejected the respondent's case that the discrepancies relied on had any relevance and that the appellant had given a consistent account; "he recounted virtue the same evidence upon questioning and is to interviews and at the hearing of a period of 3 years..." The judge considered the explanation as to how he managed to take the particular route taken (paragraph 27) and rejected the point made by the respondent that his escape lacked credibility (see paragraph 29). The judge accepted the other elements of the appellant's case for the reasons set out at paragraphs [30 - 33]. The FtTJ therefore took into account that his evidence was consistent with the background evidence and that he remained consistent with the core of his account.
54. Both advocates have referred to those factual findings and the acceptance of the appellant's claim. Ms Young on behalf of the respondent submitted that it was possible to reject the 2nd part of his claim notwithstanding the acceptance of the 1st part of his claim. Ms Patel, in her submissions, argued that he had found credible in a key part of his claim and that it was linked to the 2nd part of his claim as it related to his employer. She submitted that he had given consistent accounts both in his screening interviews and substantive interviews and that that should be considered when reaching an assessment on the evidence.
55. As relevant to his general credibility, the appellant travelled through Austria and France both considered to be safe countries. He did not claim in Austria or France. He said he claimed asylum in Germany and once it was rejected travel to France. The appellant has not provided a reasonable explanation for that failure to take advantage of a reasonable opportunity

to make a claim in a safe country. This is a matter that counts against the appellant however it is not determinative of his claim.

56. Ms Young relied upon the matters set out in the decision letter between paragraphs 44 and 47. Dealing with the issue of the threats made to the appellant by his employer which on the appellant's account lead to his brother's death, there was no cross examination about the circumstances in which the incident took place and the appellant's evidence was that his employer had come to his house at night-time when it was dark. Ms Patel referred to the photographs that the appellant provided subsequent to the interview to show that his factual account was plausible. Whilst they are siblings, that does not necessarily mean that they will share the same facial/body characteristics. However, the photographs do show a striking resemblance when considering the circumstances in which the shooting took place, the description of it taking place at night when dark that the appellant's account that his employer mistook his brother him, is entirely plausible. Contrary to paragraph 44 of the decision letter, and against that factual background it is made clear how the appellant's employer mistook his brother for him.
57. The only other issue explored in evidence related to the position of his employer in the appellant's home area. The respondent in the decision letter considered that the appellant had not properly explained the level of power his employer had in the local area and that the appellant was unclear as to how we knew his employer was well-connected and had power in that area (see paragraph 46). In his interview, the appellant gave a description of his employer's position and that he was a man with big businesses with many employees and many drivers (see Q123). When asked if he had any links with political parties or senior political figures, the appellant's response was that his employer was involved with the PUK, and he had support (meaning "their" support) and that he knew he was political. When asked how he knew of his involvement the appellant replied that he did not know specifically but that he knew he was meeting PUK leaders and going to their meetings (Q125 - Q127). In cross-examination he was asked about how he knew his employer had attended such meetings. The appellant's evidence was consistent with the account given in his asylum interview that he knew he was attending meetings of PUK leaders. When asked in cross-examination how he knew, the appellant stated that he had been told by his employer. When the evidence is viewed together, the appellant's account is not unclear as to how we knew about his employer's status and background but that the appellant had identified that his employer had met PUK leaders and attended their meetings and that he knew about this because it employer told him this in view of the business arrangements.
58. The background evidence is that the Barzini family led KTP is based in Erbil and the Talabani family led PUK is based in the appellant's home area, and they have long dominated the position of the KR G (now known as the IKR). Whilst the IKR has had de facto autonomy since 1991 (made official in 2005), it still maintains the same dual administrative structure it had in

the 1990s. The 2 parties have been criticised for putting the interests of their family, tribe and party allegiance above the interests of Iraqi Kurds. The KTP and the PUK have their own security units and Peshmerga units.

59. Whilst it is submitted on behalf of the respondent that there was no background evidence to support the appellant's claim that he was a powerful man, that does not mean that the appellant's evidence should not be given some weight in the assessment of his factual claim. As set out above and relied upon by Ms Patel, the appellant had been found to have given a credible account regarding the events in Iraq relating to ISIS, his abduction and ill-treatment at their hands in the light of it being consistent with the background evidence and consistency given in his account. Whilst that does not necessarily mean that the rest of his account should be accepted, the appellant has given a plausible and consistent account concerning the status of his employer, his relationships with those in power in his home area namely the PUK and that he was threatened with serious harm which led to the mistaken killing of his brother. I therefore accept the appellant's account as to the events that occurred in Iraq which led him to leave. Given the links that his employer has to the PUK, and against the factual background that the appellant had reported him to the authorities, but the arrest warrant had not been acted upon, it is not reasonably likely that he would be offered any protection sufficient to ensure his well-being and safety.
60. It has not been shown that the appellant's former employer H would have any influence throughout the IKR but the links with the PUK will be sufficient to demonstrate to the lower standard of a reasonable likelihood that if the appellant returned to his home area, and in the light of the last threat made to the appellant that he would be at real risk of harm. The event in question did take place some time ago but the lapse in time does not mean that the risk has diminished. The appellant has given evidence that family members have moved their home address and whilst they appear to have remained in the area administered by the PUK, the appellant is in a different position to that of his family members as the person held responsible. It has therefore been demonstrated that it is reasonably likely that the appellant will be at risk of serious harm on return to his home area.
61. As to internal relocation, Rule 339O, which is included in part 11 of the Immigration Rules, deals with the possibility of "Internal relocation". It states:
- "(i) The Secretary of State will not make:
 - (a) a grant of refugee status if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country;
 - or
 - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm,

and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

62. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [\[2006\] UKHL 5](#), [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:
- "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."
63. The issue identified by the parties relates to the assessment of the issues of documentation and /or redocumentation, and it is necessary to consider this in the light of the evidence and the CG decision.
64. In terms of documentation, it is common ground that the appellant does not have any documentation with him in the United Kingdom.
65. 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.
66. 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)).
67. 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]).
68. 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).

69. 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 provided 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).
70. It is the position of the respondent as stated by Ms Young that the CPIN: Iraq, internal relocation, civil documentation returns dated July 2022 at Annex D states that the IKR have moved to the INID system.
71. It is further stated in the CPIN that Kurds who do not originate from the IKR can relocate as the available information suggests ethnic Kurds can enter. However the available evidence notes that an INID/CSID are required to pass through checkpoints and be admitted to the KRI and only those who are documented or could obtain their original or replacement document would be able to enter the IKR (see paragraph 2.8.11).
72. The appellant does not have a CSID or INID and the appellant's home area 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 his home area and register his biometrics for an INID to enable him to relocate. As this would require the appellant to return to his home area, a place where he would be at risk of serious harm, it follows that it is unreasonable or unduly harsh to expect the appellant to relocate to another area in the IKR if he was required to obtain his document by returning to a place where he be at risk of serious harm.
73. The appeal is therefore allowed on humanitarian protection grounds or in the alternative, 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 humanitarian protection and/or 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: 10/10/22

Upper Tribunal Judge Reeds