IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002225

First-tier Tribunal No: PA/52876/2021
IA/07857/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 December 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

TRH
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Vokes, Counsel instructed by Halliday Reeves, Solicitors
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 30 November 2023

Order Regarding Anonymity

The First Tier Tribunal made an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

We make such order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Procedural History

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal on 26 May 2021 of his asylum claim.

2. The immigration history of the appellant, which is set out in the letter from the respondent to the appellant dated 26 May 2021 (the 'RL') in which the reasons for refusal of the appellant's asylum claim are set out, was not disputed before us. In para 1 of the RL it is stated that the appellant claimed to have come to the UK in 2002, and he returned voluntarily to Iraq in 2005. He left Iraq again in 2008, and travelled to Hungary, via Turkey, and claimed asylum there. He then travelled to Denmark, and went by ship to Finland, where he claimed asylum in Turku. He remained there for 6 months, and returned to Turkey voluntarily when he was told by the authorities in Finland that he would be returned to Hungary. He arrived back in Hungary and was fingerprinted again, where he for 18 months and then went to France, where he contacted the International Organisation for Migration who arranged a flight back to Iraq on 28 September 2010. He remained at his home in Tuz Khurmatu until 24 September 2015, and then decided to flee for a third time, and he claims to have arrived in the UK clandestinely in December 2015. He claimed asylum on 10 December 2015. This claim was refused by the respondent on 16 August 2018, and his appeal against that decision dismissed by First-tier Tribunal Judge Buckwell (the Judge Buckwell) in a decision promulgated on 16 October 2018. The appellant's applications for permission to appeal were refused, and he was appeal rights exhausted on 3 January 2019.

3. The appellant then made further submissions to the respondent on 15 January 2020, which were treated as a fresh claim and refused on 26 May 2021. His appeal against this decision was dismissed by First-tier Tribunal Judge Chohan, and this decision was set aside by the Upper Tribunal with findings of fact preserved in relation to the appellant's sur place activities. It now comes before us as a resumed hearing to enable us to substitute a decision to either allow or dismiss the appeal.

4. In relation to the appellant's sur place activities Judge Chohan found:

> "3. The appellant's original claim was based on a risk on return to Iraq due to his imputed political opinion as it was claimed that his father had been a part of the Baath party. In respect of the appellant's latest submissions to the respondent, the appellant claims that his sur place activities would put him at risk on return to Iraq. However, in the appellant's document entitled, 'Case Summary', "It is conceded that there is insufficient new evidence to demonstrate that the Appellant is at risk of persecution on the basis of his father's Baathist past." The Case Statement goes on to state, "It is conceded that the evidence of the Appellant's political activities do not demonstrate a significant political profile likely to lead to adverse attention from the Iraqi authorities or militia on return to Iraq. However it is submitted that this evidence does demonstrate the Appellant is opposed to the Iraq regime, including the militia groups."
>
> 7. ….The appellant's claim is that he would be at risk on return to Iraq from the authorities and the Shia militia. In support of his claim, the appellant gave evidence to the effect that he attended a demonstration in March 2020, although in his witness statement he states it is 2019. The appellant confirmed during his oral evidence that he is not a member of any political organisation. Furthermore, the appellant claims that he has uploaded posts onto Facebook which would put him at risk. However, Mr Aigbokie quite rightly

> pointed out that the appellant has produced no evidence of the Facebook posts. Indeed, Mr Vokes acknowledged that there was no such evidence. It is important to note, as pointed out above, that according to the appellant's case statement and as confirmed by Mr Vokes, the appellant's sur place activities do not demonstrate a significant political profile that would attract the adverse attention of the Iraqi authorities or the militia. Mr Vokes submitted that the sur place activities showed that the appellant was opposed to the Iraqi regime and the militia. As such, it is difficult to understand how the appellant meets the requirements of the Refugee Convention. Even if it were to be accepted that the ground is political opinion, in view of the concessions made on behalf of the appellant, I find it difficult to accept that he would be at risk on return in respect of his sur place activities."

5. The issues to be decided at this resumed hearing, as set out in the error of law decision are whether:

    a. There is risk to the appellant on return to the home area;
    b. The appellant is able to access his identity documents; and
    c. He is able to relocate within Iraq.

6. Our assessment is on the basis of preserved findings that the authorities in Iraq will have no adverse interest in in appellant as a result of his sur place activities. It is also on the basis that the findings of fact made by Judge Buckwell (hereinafter the Judge) will be the starting point for our findings of fact pursuant to Devaseelan.

The hearing

7. We had before us a consolidated paginated digital bundle of 280 pages, within which we had a skeleton argument (SA) submitted on behalf of the appellant. Within this, reference was made to the findings of fact by the Judge, and it is stated:

> 5. (The Appellant) claimed asylum on the 10 December 2015 which was refused on the 13 November 2018. It was accepted by the Respondent that the Appellant was an Iraq Kurd from Tuz Khurmatu and that Tuz Khurmatu had been attacked by both ISIS and Hashd Al Shaabi. It was also accepted the Appellant did not have a CSID [AB/40]. However, the Respondent was of the view that Tuz Khurmatu was no longer a contested area and so the country guidance of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 should no longer be followed. Therefore, the Appellant could return to Tuz Khurmatu or relocate. The Respondent found he could acquire a new CSID either from the Iraqi Embassy, with the assistance of family or friends or via the National Status Court in Baghdad.
>
> 6. His appeal was dismissed on the 16 October 2018. Unusually, the judge made no findings in respect of the Respondents decision to depart from the extant country guidance case at the time of AA Iraq. The judge determined that there was no evidence to depart from the previous judges findings in 2003 that there was no risk to the Appellant because of his father. In addition, there was no evidence he would be targeted by militia as a result of being Kurdish and a Sunni Muslim. The judge found it implausible that he would have lost contact with his family and found the Appellant could obtain appropriate identification document in order to effect his removal from Iraq.

8. It is confirmed in the SA that the further submissions made on 5 January 2020 relied on new evidence, this being evidence of attendance at a protest outside the Iraqi Embassy, a letter from Mr AA attesting that the appellant's father was a Baath Party member, and objective evidence of the general security situation in Iraq.

9. In relation to the three issues identified in the error of law decision, it is submitted that there is a risk of serious harm to people of Kurdish ethnicity in Tuz Khurmatu, as identified in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT (SMO1), which also identified the risk factors which would be apply to the appellant; and our attention was drawn to paras 445, 80 and 263. It is also submitted that the appellant was at enhanced risk of serious harm on return to Tuz Khurmatu as identified in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00100 (IAC) (SMO2). The risk factors identified as applying to the appellant are that:

    - He is opposed to local security actors (local militia);
    - He is a member of a national, ethnic or religious group (Kurdish) which is either in the minority in the area in question, or not in de facto control of that area;
    - He has lived outside of Iraq for significant periods since 2002 and considers himself to be a Westernised individual.
    - He may also be considered as wealthy based on the previous judges' findings.

10. In relation to the second issue identified, it is submitted in the SA that there is a risk of serious harm to the appellant if he is returned to Iraq without a CSID and that (a) his family members have been missing due to the widespread violence against Kurds since 2017, a claim supported by objective evidence confirming that tens of thousands of Kurds were displaced, their homes and businesses looted and burnt in 2017, which is when the appellant claims to have lost contact with his family. He has made credible attempts to trace his family through the Red Cross, who then stopped offering the tracing service. He sought the assistance of two friends, who searched for his family on family trips to Iraq without success so even if the appellant's CSID were in the possession of his family, he is no longer able to obtain this from them because of loss of contact; (b) he can no longer obtain a replacement CSID because the new style INID has been rolled out in his home area; the Country Policy and Information Note Iraq; Internal relocation, civil documentation and returns July 2022 (CPIN), Annex D, does not list Tuz Khurmatu as an area where the CSID is still available, and he would therefore have to attend at the local Civil Status Affairs (CSA) office in Tuz Khurmatu to obtain his INID, which would require overland travel from the point of entry, and there is a risk of Article 3 harm in the absence of a CSID as confirmed in SMO2 at headnote 11.

11. As to issue three, it is submitted that relocation to other formerly contested areas and Baghdad is not reasonable because the appellant has no support structure in any of those areas and he is of a Kurdish minority. It is stated that SMO2 confirms at [24] that even where it is safe for an individual to relocate to a formerly contested area, it would not be feasible or reasonable without a prior connection to, or a support structure within the area in question. It is further submitted that without up to date identity documents, the appellant would be unlikely to be permitted to enter the IKR or to remain there permanently, there would be risk to him due to his political beliefs, and even if permitted to enter, lack of family support and identity documents would lead to difficulties in securing accommodation and employment resulting in real

risk that the appellant will have to resort to a critical shelter arrangement. It is stated that prospective employers would also be deterred as he comes from a formerly contested area and he will be treated with suspicion.

12. It is concluded in the SA at [19] that "The Appellant is at risk of persecution on the basis of his ethnicity if he returns to Iraq. Alternatively there is a risk of serious harm if he returns to Tuz Khurmatu or an Article 3 ECHR risk in the absence of a CSID. Relocation is not reasonable."

13. At the hearing, we heard evidence from the appellant and his two witnesses, Mr HA and Mr TA. They were assisted throughout by a Kurdish (Sorani) speaking interpreter. No issues were raised during the hearing in relation to interpretation; the appellant's and his witnesses' responses to the questions put to them were appropriate and there was no indication that they had not understood the questions put to them. We were satisfied that they were able to participate in the hearing.

14. In his evidence, the appellant confirmed that he had 6 children, two of whom were daughters, who were both married and had moved to Kirkuk after marriage. He stated that he last saw them when he was in Iraq, and had since tried, but failed, to make contact with them. He stated that his CSID card had been taken by the agent at the Turkish border and he did not know what the agent had done with it. He confirmed that his witnesses were both Kurdish but they were not from Tuz Khurmatu, and he had asked them to try and make contact with his family when they went to Iraq. He said that he did not ask his witnesses to take any photographs of any properties there and that he had a property in Iraq. It was put to him that when he gave evidence before the Judge, he stated that he had two properties in Iraq. The appellant stated that that was not correct, and that one property belonged to the government and was only given to him on a temporary basis. He confirmed that he had used google maps to try and locate his property in Tuz Khurmatu, but that the area had been taken over by Hasd Al Shabi, and the buildings had collapsed. He stated that both his witnesses confirmed that there was no property there now, just land. He stated that he did not have any photos of the land.

15. Mr HA, who confirmed during the hearing that he was from Said Sadiq, Sulaymaniyah where his family is, in his oral evidence confirmed the following: He went to Iraq on an annual basis but that the visit during which he went to Tuz Khurmatu for the appellant was an unscheduled visit because his (Mr HA's) father had passed away. He went first to Kirkuk and then from there to Tuz Khurmatu and he had been asked for his ID. He had been directed by the appellant as to where to go, which was the district of Hayy Al Sina. In his witness statement he had said that he was told by the Popular Mobilisation Forces (PMF) that the house had been destroyed. When asked if he had had any difficulty speaking to the PMF, he confirmed that he had not but also said that he did not talk to any forces, just the people in the area. It was put to him that he had stated in his witness statement that he had talked to the PMF and he respondent that he had only talked to civilians, that in fact Tuz Khurmatu is controlled by the PMF, that the civilians were part of it and supported it, and that he did not check their IDs. When asked if the people he spoke to were not Kurdish, he stated that Tuz Khurmatu was a multicultural city. He was asked again if the people he spoke to were Kurdish or not, he stated that he did not speak Arabic and there were Kurdish people there. When asked if the Kurdish people he spoke to were opposed to the PMF, he stated that he could not

confirm but it was obvious that all Iraq was controlled by one party. He confirmed that he did not take photographs of the appellant's property or 'go into details'; he was frustrated because he had gone to his father's funeral, and he had only met the appellant by chance. He confirmed that apart from his oral evidence, he did not have any other evidence of having gone to Tuz Khurmatu, that he had photographs of his father's grave and that he did not know that he would be asked for evidence. He confirmed that the appellant asked him to check his family '1st point he got known to him', and he had been asked by the appellant to let him know when he would be going to Iraq.

16. Mr TA confirmed that he too was from Sulaymaniyah, that he had never visited Tuz Khurmatu prior to going there at the appellant's request, and that he had gone there with his own brother. He confirmed that he had not taken any photographs of the appellant's home. When asked how he knew it was the right property, he stated that the appellant gave him the address, and he asked people in the area. When asked if the people he spoke to were Kurdish, he stated that it was mixed but the neighbours were Kurdish. He stated that it was obvious that the house was not there, and the neighbours did not know what had happened to the appellant's family. He confirmed that he did not have any problems with the PMF whilst he was in Tuz Khurmatu.

17. On conclusion of the evidence, we also heard submissions from Mr Bates and Mr Vokes, which we will refer to below.

Decision and reasons

18. The starting point for our findings of fact on the three issues identified is the decision of the Judge. He notes that the grounds of appeal were a claimed fear of persecution in Iraq due to imputed political opinion, specifically his fear of the Iraqi government, Daesh and Hashd Al Shabi, and that as a Sunni Muslim Kurd the appellant also feared persecution with reference to his religion, race and nationality [16]. In the alternative, the appellant claimed humanitarian protection as he feared that he would be killed as a victim of indiscriminate violence in Iraq [17].

*The Judge states that "The credibility of the Appellant is critical in this appeal" [64] and that:

> "66. The circumstances which pertain to the Appellant are somewhat unusual. They differ from circumstances which are placed before this Tribunal in most protection claims. That difference is that the Appellant left Iraq and sought status outside his home country on three separate occasions. As is clear from the evidence presented the first occasion was when the Appellant came to this country in 2002 during the time of Saddam Hussein. He returned voluntarily after Adjudicator Lloyd, in her determination promulgated on 1 December 2003, had found the Appellant not to be credible as to the main elements and core of his claim. Her reasons are set out at paragraphs 21 to 25 of her determination. It was also found that the Appellant would not in any event be at risk due to country circumstances then prevailing in Iraq following the fall of Saddam Hussein. As to the person elements of the Appellant's claim, the credibility findings are significant. In particular it was not accepted by Adjudicator Lloyd that the Appellant had a genuine fear based upon links to the Ba'ath Party. The issue relating to his father having reported two men from the Dawie tribe in the early 1990s did not result in repercussions. The Appellant in the claim which is now before me on appeal states that in fact they were from Zangana tribe."

19. The Judge referred, for the purposes of Devaseelan, to the findings of a previous Immigration Adjudicator in relation to an asylum claim the appellant made when he came to the UK in 2002. The Adjudicator dismissed the appellant's appeal in 2005, and the Adjudicator's decision was not overturned on appeal. The appellant returned to Iraq after the change of government in 2005, but also because his appeal had been dismissed.

20. The Judge records at [5] that the appellant stated that because ISIS had moved to the locality and began killing Kurds and bombing the area, he left Iraq for the third time, that the appellant had expressed a fear of returning to Iraq due to the presence of Daesh/ISIS and a militia group named as Hasd Al-Shabi and that he also expressed a fear as a member of a particular social group relating to decisions by his father which led to the execution of two people within a particular family. The appellant also told the Judge that his home town was under threat from ISIS and that he had spoken to his family the night that he left and that they were planning to leave the following night and travel to the IKR but that he did not know if they had [30]. He stated that he could not go the IKR because it was not safe for him because of a decision by his father to report two individuals, who were part of the Zangana tribe who were powerful in the IKR, to Saddam Hussein's regime [33].

    The Judge noted at [8] that the respondent accepted the appellant's nationality and Kurdish ethnicity, that he came from Tuz Khurmatu within the province of Salahudin, and that Daesh/ISIS had attacked the appellant's home locality, but not that he might face difficulties on return to Iraq due to the previous actions or decision taken by his father. It was also noted by the Judge that the respondent did not consider that the appellant would be entitled to protection on the basis of the circumstances within the Province of Salah al-Din [12], and that he would be removed via Baghdad, that internal relocation would be available to the appellant and that that relocation to Erbil or any other part of the IKR would be feasible [13].

21. The findings of the Judge are:

> 71. I find that the Appellant has failed, even to the lower standard, to establish that he would be at risk on return. There is no evidence of weight to show that any past link which his father had with the Ba'ath Party would now place the Appellant in danger. Indeed, that was found to be the position as long ago as 2003 in the determination of Adjudicator Lloyd. I do not believe that any evidence now brought forward by the Appellant establishes that he would face a heightened risk on return, even taking into account the terms of his amended evidence with respect to the tribal ethnicity of the two individuals who were subject to a report by his late father which led to their stated execution. At paragraph 7 of her determination Adjudicator Lloyd sets out the basis of the claim made by the Appellant to the Home Office with respect to the actions of his father. I have referred already to the clear findings made by Adjudicator Lloyd in her determination.
>
> 72. In the evidence before me the Appellant set out considerable details in relation to his previous departures from Iraq. However he failed to indicate that he had been subject to any personal threats prior to his most recent departure from Iraq and it is of course in particular the circumstances relating to his current claimed fear which are most relevant to my considerations. I do however take account of the Appellant's immigration history overall. It is appropriate to apply section 8 of the 2004 Act in the assessment of credibility

in that respect. The Appellant did not pursue asylum claims in other EU member states.

73. I find it very surprising that the Appellant appears not to have been able to have any contact with his wife or other family members since he left Iraq. It is also surprising that the Appellant states that he had left it to his wife to make a decision as to where she and the children would go on departing from Iraq, when he took a separate decision to go to Turkey. That frankly does not strike me as plausible, particularly in the circumstances where the Appellant said that due to his financial stability he would have been in a position to afford the costs of taking his wife and children with him. The Appellant went to some length to emphasise his wealth, including stating his ownership of two properties. At the hearing he also said, in contradiction, that they had not had sufficient funds to permit them all to travel to Turkey.

74. As I was reminded by Mr Malcolm, the Appellant, as a part of his evidence, stressed that he wished to study in this country. He added that he wants to bring his family to this country. It is presumed he was referring to his wife and all six children in that respect. The Appellant has not established that he left Iraq as a result of any direct threats or as a result of claimed past ill-treatment, torture or persecution in Iraq. I find his stated fears to be either historic or unwarranted and in any event without merit. The Appellant said that groups such as ISIS do not make individual threats but he maintained that as an ethnic Kurd who is a Sunni Muslim, generic threats faced him. Based on the evidence which the Appellant presented, I do not accept that.

75. As to whether the Appellant may return to Iraq or relocate within the IKR, on the evidence the Appellant had previously held appropriate documentation, including a CSID, a passport and a certificate of nationality. He believes that his family are still within Iraq (or the IKR). The Appellant has previously returned to Iraq twice on a voluntary basis. I find that the Appellant would be able to obtain appropriate documentation to enable his removal to Iraq and that he would have the opportunity to seek to relocate within the area governed by the federal authorities or to seek admission to the IKR. That would be a decision for the Appellant to take.

76. I have no doubt whatsoever that the Appellant is an economic migrant. His stated wealth probably explains how he was able previously to undertake lengthy journeys through a large number of member states of the European Union, although of course I accept that he returned to Iraq on two occasions.

22. Would the appellant be at risk in his home area? We note from SMO1 at [20] there is reference to the evidence of Dr Fatah, in which he states that Salah al-Din is volatile, and that in Tuz Khurmatu displacement and civilian casualties are occurring due to the conflict between the “White Flags” group, the Kurdish Liberation Army, and the PMU forces (referred to by Mr HA as the PMF). It is also stated that Tuz Khurmatu is the “most violent, most divided place in the country” due to there being “so many layers of conflict” which creates an unstable situation due to the presence of various armed groups in addition to ethno-sectarian violence. Civilians, however, were stated to be “at some risk of indiscriminate attack by insurgent groups”, rather than the targeted attacks by ISIS and other armed groups. It was accepted by the Upper Tribunal at [263] that the problems that remain is Salah al-Din are essentially ethnic in nature, with the Kurds in that area more likely to face difficulty from the controlling PMU, and that this was one of the governates in which there was particular resentment to the presence of Shia militia because it was formerly the seat of Sunni power in the country. Mr Vokes submitted that the anecdotal

evidence of the appellant's witnesses that they had not experience difficulties in Tuz Khurmatu was not enough to suggest that no difficulties existed there.

23. After an extensive review of all the background evidence, the Upper Tribunal in SMO1 confirmed:

> 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:
>
> - Opposition to or criticism of the GOI, the KRG or local security actors;
> - 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;
> - LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
> - Humanitarian or medical staff and those associated with Western organisations or security forces;
> - Women and children without genuine family support; and
> - 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.

24. Mr Vokes did not refer us to any more recent background evidence in relation to Salah al-Din or Tuz Khurmatu. We note the background evidence in the appellant's bundle. However, the articles from AB/49 onwards pre-date SMO1 and SMO2. In assessing the situation in Tuz Khurmatu, we take into account the evidence provided in relation to Salah al-Din province at [77- 96] SMO1. We note particularly that whilst it is clear that difficulties still exist for the Kurdish population in Tuz Khurmatu, 238,000 individuals were displaced in Salah al-Din, and that 68% of displaced individuals had returned [96].

25. Applying the SMO1 guidance, we will consider the risk factors that, in the SA, are stated to apply to the appellant. As to the first, in relation to opposition to the authorities, there is no evidence, other than the appellant's own evidence, of opposition to the Government of Iraq, the Kurdish Regional Government or local security forces in his home area. It was a preserved finding that the appellant's sur place activities would not put him at risk on return.

26. It was submitted in the SA that the appellant has lived outside Iraq for significant periods since 2002 and considers himself to be a westernised individual. However, this did not prevent him from returning to Iraq between 2005 and 2010 when it suited him, and from being able to live there as part of the Iraqi population. We find that this factor does not add weight to the appellant's claim.

27. It was also submitted in the SA that he may also be considered to be wealthy based on the previous Judge's findings. On the contrary, we find that if the appellant's property has indeed been destroyed, he would be in the same position as other returnees. There would be nothing about the appellant that would be distinguishable from any other returnee.

28. This leaves the appellant's ethnicity and religion. However, again there is nothing that would distinguish him from other Kurdish Sunni returnees who would harbour resentment towards the controlling PMF forces or any evidence before us to suggest that he would be particularly targeted by insurgent groups. We find that he would not be at risk in his home area.

29. However, even if we were to find that the appellant is at risk in his home area, we would need to go on to make findings on whether or not he could relocate, which requires a consideration of whether or not he can access his identity documents. Mr Vokes submitted that the appellant's evidence was that he had lost touch with his family around 2017, and that this was credible given objective evidence in relation to Tuz Khurmatu at the time. He also submitted that the appellant had stated that he had given his CSID to the agent, no doubt so that the agent could use it again, and there was no evidence that the agent had returned it to the appellant's family. He also submitted that the evidence of the appellant's witnesses that his property in Tuz Khurmatu was destroyed is also credible given the situation there in 2017. He further submitted that even if his family had his CSID, and he was in contact with them, it did not mean that they had the means to travel to the airport to meet him.

30. Mr Bates submitted that the CSID was an important document, and the only evidence we had was from the appellant that it had been taken by the agent and this was not credible. He also submitted that the evidence provided of the appellant's attempts to gain contact with his family via the Red Cross added little weight to the appellant's claim because their efforts depended on the information provided to them, and that the Red Cross also states within its letters that they do not want the letters to be used for legal purposes. He further submitted that the evidence of the appellant's witnesses did not add weight to the appellant's claim that his property had been destroyed; there was no photographic evidence of the site.

31. We note that it was accepted in the RL by the respondent that the appellant is not in possession of his CSID. The position taken by the appellant before the

Judge in 2018 was that he did not have a CSID and it was taken by the agent [45], and that he had had lost contact with his family and so could not get a replacement card [59]. His position was also that he believed that his family were still in Iraq [75].

32. Our starting point is that the Judge, who found the appellant lacking in credibility in relation to the details of his asylum claim, found it implausible that the appellant would have lost contact with his family [73] and found that he would be able to obtain appropriate documentation to enable him to travel within Iraq or the IKR [75].

33. We note that the evidence given by the appellant to the Judge was that in 2014 ISIS were taking control of towns and cities, that there was significant fear and that people were being murdered on a daily basis. He also stated that he had his wife and children to look after and that he would not have left them behind "unless the circumstances had been bad" [41]. We know from background evidence that it was in 2014 that ISIS started taking over towns and cities, and we find it implausible that even when the appellant left in September 2015, at a time that he stated he left because circumstances were bad, he (by his own evidence a wealthy man) would leave his wife and children in circumstances that were "bad", or that he would leave it to his wife to decide where she and the children would go when departing from Iraq [73]. We also note that his evidence before Judge Buckwell was that he "… had lost contact with his family members. He said that he had spoken to them the night he left Iraq and that they were planning to leave the following night and travel to the IKR. He travelled at night and did not know if they went to the IKR" [30]. This does not suggest that he lost contact with them in 2017, as stated in the SA and as submitted by Mr Vokes, but in 2015. We note also that he claimed that he could not go to the IKR because he was not safe there, and that this part of his claim was rejected by the Judge, so there was nothing that would have prevented him from going to the IKR at the time with his family.

34. We know that the CSID is an important document. We also know that the appellant is not averse to returning to Iraq, for whatever reason, when it suits him. We find that it is implausible that he would risk complete loss of his CSID, thereby taking away from him the ability to return to Iraq. If he left it in Iraq, it is likely to be with his family, and it is likely that his family left their home in Tuz Khurmatu for the IKR at the same time as the appellant left, if not sooner. Given the ability of families to keep in touch by mobile phone, we do not find it plausible that the Appellant has lost touch with his family. Whilst the appellant's family may well not be in Tuz Khurmatu, it is not accepted that the appellant does not know where they are.

35. We accept that the appellant's witnesses acted on the information that the appellant gave them, and returned to his home area, in the same way that the Red Cross can only act on information supplied to them. Mr Bates submitted, and we accept, that even if the appellant had left his wife and children in Tuz Khurmatu when he left Iraq, which we do not accept is plausible, it does not mean that his daughters do not know where his wife and children are. He stated that he last had contact with his two daughters when he left Iraq, that he had tried to make contact but had not been able to. There is no evidence before us that he had asked either of his witnesses, one of whom went first to Kirkuk and then to Tuz Khurmatu, to try and contact his daughters.

36. We find that the appellant has not discharged the burden of proof for us to find that he is not in contact with his family and that they do not have his CSID. We find that that document is available to him, that he can be returned to Iraq via Erbil or Sulaymaniyah airport, and that his family can meet him there. This would enable him to travel to Tuz Khurmatu to obtain an INID. We do not accept that the appellant's family would not have the means to meet him at the airport, particularly as the appellant emphasised before Judge Buckwell that he was a wealthy man with two properties. We bear in mind that he now says that he only had one property, that that information was not correctly recorded and that the property was from the government and had been taken back by the government. However, that is not what he told the Judge and not what is recorded in his decision. We find that this is an attempt by the appellant to change the facts to strengthen his claim.

37. As to issue 3, we find that the appellant is in a position to relocate to the IKR pursuant to SMO1. As a Sunni Kurd, he would be permitted to enter the IKR and reside without further impediment (headnote 24). There is no evidence before us that the appellant would face any ill-treatment at the airport (headnote 25). He would not be without family assistance because all his family reside in Iraq (headnote 27), and by his own evidence the Appellant is a wealthy man, and the appellant does not fall into any of the categories set out in headnote 28.,

38. To recap, we find that the appellant has not established, to the lower standard of proof, that he would be at risk in his home area. We find that the appellant has not established that he has lost contact with his family, who are likely to have his CSID. We also find that the appellant can relocate to the IKR.

Notice of Decision

39. We remake the decision and dismiss appellant's appeal on all grounds.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 December 2023