Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07166/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Remotely by Skype for Business** **On 26 November 2020**	**Decision & Reasons Promulgated** **On 16 December 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H I H
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Mr D Evans instructed by Asylum Justice

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (HIH). A failure to comply with this direction could lead to Contempt of Court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. This determination comprises the decision of the Upper Tribunal remaking the decision in respect of the appellant's asylum claim and his claim under Art 3 of the ECHR following my decision sent on 28 August 2020 that the First-tier Tribunal (Judge Rhys-Davies) materially erred in law in dismissing the appellant's appeal on asylum grounds and under Art 3 of the ECHR.

4. The appellant is a citizen of Iraq who comes from Galabat in the Diyala governorate. He was born on 10 February 1992 and is of Kurdish ethnicity.

5. He arrived in the United Kingdom clandestinely on 2 November 2018. He was arrested and claimed asylum on that date. On 16 July 2019, the Secretary of State refused the appellant's applications for asylum, humanitarian protection and under the ECHR.

6. The appellant appealed to the First-tier Tribunal. The appeal was heard on 28 October 2019 by Judge Rhys-Davies. He accepted the appellant's asylum claim based upon a risk from Hashd al-Shaabi in his home area. Further, the judge found that the appellant could not internally relocate to the IKR as he would have no family or support network there.

7. The Secretary of State sought permission to appeal which was granted by the First-tier Tribunal (Judge Woodcraft) on 30 December 2019.

8. The appeal was initially listed before me on 23 July 2020. In my decision, sent on 28 August 2020, I allowed the Secretary of State's appeal to the extent that it challenged the judge's finding that it would be unreasonable or unduly harsh for the appellant to internally relocate to the IKR. The appeal was adjourned in order to re-make the decision in the UT.

The Resumed Hearing

9. The resumed hearing was re-listed at Cardiff Civil Justice Centre on 26 November 2020. As a result of the COVID-19 crisis, the appeal was heard remotely by Skype for Business. I was based in the Cardiff Civil Justice Centre in court and Mr Evans, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business.

10. In addition, the appellant joined the hearing by Skype and gave oral evidence through an interpreter who also joined the hearing by Skype.

11. In addition to the oral evidence from the appellant, the appellant relied upon an updated witness statement dated 27 August 2020. In advance of the hearing, Mr Howells indicated that there were two up-to-date CPINs, "Internal Relocation, Civil Documentation and Returns, Iraq" (June 2020) and "Security and Humanitarian

Situation, Iraq" (May 2020). In the result, neither of those documents was referred to in the submissions. Without objection from either party, those documents were, nevertheless, admitted under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The Issues

12. It was common ground between the parties that the sole outstanding issue was whether the appellant could reasonably and without undue harshness internally relocate to the IKR.

13. A number of preserved findings arose from Judge Rhys-Davies' decision:

    (i) The appellant is at real risk of persecution from Hashd al-Shaabi in his home area because of his ethnicity.

    (ii) There is not a reasonable likelihood that he would obtain a sufficiency of protection in his home area.

    (iii) Although the appellant is not at risk of persecution in Kirkuk (where his family has moved), there is a real risk of serious harm arising from indiscriminate violence contrary to Art 15(c) of the Qualification Directive in Kirkuk city.

    (iv) The appellant would be able to obtain a sufficiency of protection from his persecutors in the IKR.

    (v) The appellant has family in Kirkuk whom he could contact and who could obtain a CSID card for him.

14. It was also common ground between the parties that the issue of internal relocation turned upon one factual issue. That factual issue, in effect, rested on the credibility of the appellant and an assessment of his evidence. The appellant's evidence is that he has a maternal and paternal uncle who live in the IKR but he (and his other family in Iraq) have lost contact with his uncles and he would not be able to contact them in order to provide him support if he were to live in the IKR.

15. In his submissions, Mr Howells accepted that if the appellant would not have the support of an uncle in the IKR then it would be unreasonable or unduly harsh to expect him to relocate there in the light of paras (27) and (28) of the headnote in SMO and Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC). By contrast, Mr Howells submitted that if the appellant could rely on an uncle for support then it would not be unduly harsh or unreasonable to expect him to relocate to the IKR and he relied on paras (26) and (28) of SMO and Others.

16. Mr Evans submitted that if the appellant is found to be credible and his evidence accepted that he was unable to contact and therefore obtain support from his uncles in the IKR, then internal relocation would not be reasonably open to him. However,

he accepted that if the appellant could rely on an uncle in the IKR for support, then internal relocation would probably not be unreasonable and would not be unduly harsh.

17. Both representatives' submissions focused on the appellant's evidence given orally at the hearing and in his asylum interview and witness statements. The submissions focused upon the appellant's credibility.

The Law

18. In relation to the appellant's asylum claim, it is accepted that the appellant is at real risk of persecution in his home area where he would be unable to obtain a sufficiency of protection. It follows, therefore, that in his home area he would be exposed to a real risk of serious ill-treatment contrary to Art 3 of the ECHR.

19. The issue is one of internal relocation and, it is only suggested, to the IKR.

20. Paragraph 399O of the Immigration Rules (reflecting Art 8 of the Qualification Directive) is as follows:

> "399O(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."

21. There are two limbs:

    (a) will the appellant be exposed to a real risk of serious harm in the place of proposed internal relocation (here the IKR)?; and

    (b) if not, will it be unreasonable (or unduly harsh) for the appellant to live in the place of proposed relocation (here the IKR)?

22. This appeal is only concerned with limb (b).

23. The approach to 'reasonableness' and 'unduly harsh' was analysed by the House of Lords in Januzi v SSHD [2006] UKHL 5 and AH (Sudan) v SSHD [2006] UKHL 49.

The Court of Appeal provided a helpful summary of the law, drawing together the earlier cases, in AS (Afghanistan) v SSHD [2019] EWCA Civ 873. At [61] Underhill LJ (with whom King and Singh LJJ agreed) said this:

> "61. I start by summarising the essential points, so far as relevant to this appeal, established by the authorities about the nature of the exercise required by article 8 of the Directive. I emphasise that this is not intended as a comprehensive analysis of all the issues raised by the authorities to which I have referred.
>
> (1) By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of article 15 of the Directive (which includes treatment which would be contrary to article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.
> (2) The ultimate question is whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, … it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so". That is the formulation of Lord Bingham in *Januzi*, repeated in *AH (Sudan)*. It pre-dates the Directive and is not identically worded: in particular, the reference to whether relocation would be "unduly harsh" is not present in article 8 but derives from the UNHCR 2003 Guidelines (see *Januzi*, para. 20). But it was common ground before us that it states the test required by article 8 [of the Qualification Directive]. When in doubt it is to that question that tribunals should return.
> (3) The test so stated is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge – this being the ratio of *Januzi*). It requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (*AH (Sudan)*, para. 13). This is the same as Lady Hale's description of the necessary assessment as "holistic" (*AH (Sudan)* paras. 27-28).
> (4) One way of approaching that assessment is to ask whether in the safe haven the applicant can lead "a relatively normal life without facing undue hardship … in the context of the country concerned". That language derives from the UNHCR Guidelines and is quoted by Lord Bingham with approval in *Januzi* (para. 20) and also used by Lord Hope (para. 47); but it does not appear in the Directive or in Lord Bingham's formulation of the test, and it should not be treated as a substitute for the latter. Rather, it is a valuable way of approaching the reasonableness analysis – "one touchstone", as Lord Brown puts it (*AH (Sudan)* para. 42). Its value is because if a person is able to lead in the safe haven a life which is relatively normal for people in the context of his or her own country, it will be reasonable to expect them to stay there (*AH (Sudan)*, para. 47).
> (5) It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. That is part of what is decided by *Januzi* itself, and the passages quoted at paras. 34 and 35 above reinforce it. It is also vividly illustrated by the outcome of *AH (Sudan)*, where the House of Lords upheld the decision of the AIT that it was reasonable for Darfuri refugees to be expected to relocate to the camps or squatter slums of Khartoum. That may seem inconsistent with the suggested approach of asking whether the applicant would be able lead a "relatively normal life" in the safe haven; but the reconciliation lies in the qualification "in the context of the country concerned".
> (6) Point (5) does not mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly

> harsh: this is the point emphasised by Lady Hale in *AH (Sudan)* and is exemplified by *AA (Uganda)*.
> (7) The UNHCR Guidelines contain a full discussion of factors relevant to the reasonableness analysis. These are described by Lord Bingham as "valuable" and partly quoted by him (*Januzi* para. 20); and at para. 20 of her opinion in *AH (Sudan)* Lady Hale endorses a submission made in that case by UNHCR which summarises the factors in question. A decision-maker must consider those factors, so far as material, in each case (though it does not follow that everything said in the detailed discussion in the Guidelines is authoritative).
> (8) The assessment must in each case be conducted by reference to the reasonableness of relocation for the particular individual."

24. In SMO and Others, the Upper Tribunal dealt with returns by Kurds to the IKR at paras (20)–(28) of the headnote.

25. In this appeal, as a result of Judge Rhys-Davies' preserved finding, the appellant will have a valid CSID and so can safely return to Iraq and travel to the IKR (see paras (21)–(25) of the headnote in SMO and Others).

26. At para (26) of the headnote, the UT recognised that it was unlikely to be "unduly harsh" for a Kurd with family members living in the IKR to relocate there:

> "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."

27. For Kurds without assistance from family in the IKR the position was fact-sensitive taking into account a number of factors as set out in paras (27)–(28) of the headnote in SMO and Others as follows:

> "27. 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.

28. 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, that may deter prospective employers."

The Appellant's Evidence

The Witness Statements

28. In his first witness statement dated 24 October 2019, which the appellant adopted in his oral evidence, the appellant said this about his family in Iraq. The appellant's account is that his mother and sister lived with his brother-in-law in Kirkuk city where they had fled following the threats from Hashd al-Shaabi. At para 19 the appellant said:

> "I have lost all contact with my family, I have not spoken to them at all and I fear that my brother is dead".

29. Then at para 20 he said this:

> "It is impossible for me to move to the Iraqi Kurdistan Region. I have never even been there in my life. I do not know anyone there and I do not have any form of education to be able to survive".

30. In his more recent statement, dated 27 August 2020, the appellant dealt in some detail with his family in Iraq:

> "1. I wish to further elaborate on why I am unable to return to the IKR, and specifically, why I cannot contact my uncles. I can confirm that I have never been asked to comment on my relationship with my uncles in detail, neither by the Home Office or my current and previous representatives.

2. I do not have contact information for my uncles, and neither do my other immediate family. This stems from a dispute we had with them after my father died in 2005.

3. After my father died, there was the issue of money, and how it should be distributed. Sadly, my uncles took the money without consulting my mother on the basis that they thought they deserved it more than her. My mother would try to plead with them that they cannot take all of the money, but they did not listen.

4. I think the last time we had any contact with them was sometime between 2005–08. I am not sure exactly when, but whenever it was between those years, the contact was not of a pleasant nature. The money issue completely split apart our family, and after that my uncles ceased contacting us and we them.

5. I believe they still live in or around the IKR, that is because they have always lived in Kurdistan, not because I have any particular contact details or addresses. I do not know how we would even get back in contact with them as like I said, my mother has not spoken to them for over a decade.

6. Even if I was able to somehow find their contact details and visit them, I am certain they would not help me. They have not reached out to us, despite them taking the money that was owed to us, for over a decade. As is often the case around issues of money and inheritance in Kurdistan, this can cause considerable tension and conflict.

7. There is the potential that if I were to contact them and ask for their help, they would assume I'm trying to get the money, or going to ask for money. I can imagine that at the very least, there would be an argument, as in any case, we are not on good terms considering what has happened.

8. If I were to be returned to the IKR, I would be alone, without any connections or support. The family that I do have there, my uncles, would not help me and there is a very real risk, due to money being involved, that they will see me as a threat. This is even if I were able to contact/locate them, as we have not been in contact with them for over a decade".

Oral Evidence

31. In his oral evidence, the appellant adopted both statements. He was not asked any further questions in examination-in-chief and there was no re-examination.

32. In cross-examination, the appellant confirmed that he was not in contact with his mother, his brother, his sister or brother-in-law in Iraq. He said he had had no contact with them since he left Kurdistan. He said he had no contact with anybody in Iraq since he had left. He said that when he left Iraq his mother and sister were living in his brother-in-law's house in Kirkuk. He had no information about his brother.

33. The appellant confirmed that he had lived in his brother-in-law's house on a couple of occasions totalling six months. He said that he did not know the address and that there were no addresses "in Kurdistan". He said he only knew the name of the city. When asked why he said there were no addresses in Kirkuk, he said you can refer to an area and his brother-in-law lived in an area called "Shorijah". He was asked how

it was people could send and receive post in Kirkuk if there were no addresses and he replied that there were no such postal addresses "in Kurdistan", just the area.

34. The appellant said that his brother-in-law did not have a landline telephone but that he did have a mobile. However, when asked if he knew the number, the appellant said he did not. He was asked why and he said that at that time only his mother had a mobile phone and that he was an illiterate person. His brother-in-law's number was saved in his mother's mobile phone. He was asked whether he had had a mobile phone in Iraq; he replied "not really" but that sometimes he had his mother's mobile phone. He was asked whether he had a mobile phone in the UK and he said that he did have one. He was asked why, if he was illiterate, he was able to have a phone in the UK but not in Iraq. He said that he used a mobile phone in the UK and that he learnt English from some sites which were saved by friends on his phone.

35. The appellant was asked about an answer he gave at para 6.2 of his screening interview where he was asked whether he would be able to obtain a police report from Iraq and that he had said that he would be able to do so but how could he have said this if there were no addresses for his family and he did not know any phone numbers. The appellant agreed that he had said that and that he had thought he would be able to obtain the report but that when he found out he had no contact details or phone numbers he was not able to do so. He said he was new in the country and when he thought about the matter he realised he could not do that.

36. The appellant was asked about the questionnaire he had completed with his solicitors about six months after he arrived in the UK. He said he remembered completing it. He was asked why at page 11 of 19 he had said that his "mother and sister were still in Kirkuk" and how did he know that if he was not in contact with them. The appellant replied that he had not said that. He had said he had no information about them but that they were in Kirkuk when he left.

37. The appellant was asked whether he had made any attempt to contact relatives in Iraq from the UK. He said he wished he was able to do that but his mother was of an age when she did not understand the internet and that was true for his sister and brother-in-law as well. He said that he had had help from a friend to connect to the hearing today. He had not been able to do it himself. He was asked whether he had tried to trace his family through the Red Cross and he said "not really" but he went on to say that friends had approached the Iraqi Embassy but they could not help.

38. The appellant was asked about his brother-in-law who had paid an agent to help him come to the UK. He agreed that he was close to his brother-in-law who had been arrested instead of him. He said that he had helped the appellant to leave Kurdistan when his brother-in-law realised it was unsafe. When asked whether his brother-in-law would want to know if he reached the UK safely, and know how the appellant was doing, he said "yes obviously" and that he had probably tried but his brother-in-law had not arranged his exit; he had done that through a friend in Kirkuk.

39. The appellant agreed that he had a maternal and paternal uncle living in the IKR but he was not sure where. He said that his maternal uncle was in the Peshmerga. His paternal uncle, with whom he had not had contact for a long time, was, as far as he was aware, a driver. The appellant was asked about his answers in his asylum interview (Q8) where he had said that the employment of his uncles was the other way around; his paternal uncle was in the Peshmerga and his maternal uncle was a taxi driver. The appellant's explanation was that he had panicked and that he was fasting on that day and very tired. The interview had been delayed and he had made a mistake. It was pointed out to him that his solicitors had, after the interview, contacted the Home Office to correct some of his answers. They had not corrected his answer to Q8 in his asylum interview. He said there must have been a mistake and that he had taken two of his friends to interpret.

40. He was asked whether he had received any news about his uncles after he lost contact between 2005 and 2008. He said that everything he knew he had heard from his mother. From 2008 they had disappeared and there had been no further contact. The appellant confirmed that he could not obtain the support of either of his uncles as he had no means of contacting them. He said that his uncles had taken everything from his father. He said his father had had land and they sold it after his father died. He did not know whether the land was in his father's name because he was a child then. The only thing he knew is that they sold the land and they took everything, they took the money.

41. The appellant was asked about his earlier evidence in which he had said that the family had four farms. He was asked how that was consistent with him saying that his uncles had taken everything. He said that the land in the villages was not good and it was not worth them trying to get it.

42. The appellant was asked about his answer in his asylum interview (Q66) that his father and paternal uncle had a conflict but that he had not mentioned the family dispute until his recent statement. He said that he always mentioned that dispute which was when his father was alive. There was nothing said about the family dispute because nobody had asked him about it. He was asked why he had mentioned the conflict with the paternal uncle but had not mentioned the conflict with the maternal uncle and, again, he said no one asked him to mention that either.

43. The appellant was asked about his asylum interview (Q66) when he said that his paternal uncle lived in Jalawla and his maternal uncle in Kirkuk and how did he know that at the time of his asylum interview. He said he was not sure where they lived. He heard this from his mother. If he knew where they lived he would try to speak to them and ask them to support him. He was asked why, in his asylum interview, he referred to his uncles in the present tense and that this showed he was in contact with them or knew where they were at the time. He replied that he had never said he was in contact with them and that at the time of his asylum interview he had said that he heard these things from his mother. The appellant denied that he had invented the family dispute and that at the asylum interview he was not asked about the dispute between his father and uncles. The appellant said that his father

died in 2005 and that his uncles had taken everything. "They left us and we didn't know anything about them".

44. The appellant accepted that he had no mental health issues but physically he did have a problem with his knee caused in Iraq by Hashd al-Shaabi. He agreed that he was a farmer in Iraq. He said that he had been told by a college in the UK that they did not have space for him and he was waiting for a reply to an email from them. He said that he was not aware that if he voluntarily returned to Iraq he could apply for a £1,500 grant. He said that even if he had the money he could not go back because his life was not safe.

The Submissions

45. As I have already indicated, it was common ground between the representatives that the factual issue, namely whether the appellant would be able to contact his uncles in the IKR to support him, turned on the credibility of the appellant.

The Respondent

46. Mr Howells submitted that the appellant claims were not credible that he had not been in contact with his immediate family – his mother, brother, sister and brother-in-law – for four years and that he was not to be able to contact them. He invited me to reject the appellant's evidence on this issue.

47. First, Mr Howells submitted that the appellant's brother-in-law had paid for his journey to the UK which showed that he cared for the appellant and that it was most unlikely that he would have no contact with the appellant in the UK.

48. Secondly, the appellant had stayed with his brother-in-law in Kirkuk for six months over several occasions and it was likely that he knew his address. Mr Howells submitted that the appellant's claim that there were no addresses in Kirkuk lacked credibility. There was no document of any attempt to contact his relatives including through the Red Cross. He had left his family in Kirkuk which is a major city.

49. Thirdly, Mr Howells relied upon the fact that in his screening interview the appellant had said that he would be able to obtain a police report. This indicated that when he arrived in the UK he had contact details of his family in Iraq and was able to contact them. Yet, he now claimed he had no way of contacting his family. Mr Howells pointed out that his representatives completed a questionnaire with the appellant and on this form (at page 11 of 19) the appellant had stated his mother and sister were still in Kirkuk. This also, Mr Howells submitted, indicated that the appellant was in contact with relatives after arriving in the UK contrary to what he now claimed.

50. Fourthly, relying on [392] of SMO and Others, Mr Howells submitted that the UT had noted that Iraq was a collectivist society where the family is all important. Although this was said in the context of obtaining details of an individual's entry in

the "Family Book", it also applied to a general contract between Iraqis in the UK and Iraq.

51. Fifthly, Mr Howells submitted it was likely that the appellant's mother would have the contact details of his two uncles in the IKR. Consequently, if he was in contact with (or could re-establish contact with) his immediate family, he should be able to find out contact details of his uncles.

52. Sixthly, Mr Howells invited me to reject the appellant's account of why he had lost contact with his uncles somewhere between 2005 and 2008 because they had taken all his father's money after his death in 2005.

53. Mr Howells pointed out the inconsistency in the appellant's evidence in his asylum interview and now as to the employment of his uncles. He had switched their employment as being a Peshmerga and taxi driver in his evidence. Further, in his asylum interview he had stated where each uncle was but today he could not say where they were.

54. Further, the appellant had not mentioned the family dispute until his statement for this hearing. That was about two years after his asylum application. It was now, of course, the main issue whether he could rely on his uncles for support. In his asylum interview, the appellant had not referred to the family dispute in the way that he now did. All he had said was that his father, when he was alive, had a dispute with his paternal uncle (see Q66).

55. Further, Mr Howells relied on the fact that the appellant said in his recent statement that his uncles had taken all his family's money. But, in his oral evidence, he had said they had taken everything including the land. That was inconsistent with his evidence, as part of his asylum claim, that his family had owned four farms and one of those had been taken by the Hashd al-Shaabi.

56. Mr Howells also relied on the appellant's answers in his asylum interview where he referred to his maternal uncle's occupation in the present tense but also said that his paternal uncle was still in the Peshmerga. That had been corrected, by an amending letter from the appellant's representatives after the interview, that he had been a member of the Peshmerga as long as the appellant could remember. There had been no other amendment to that evidence. Likewise (at Q66), the appellant had said that his uncles were in Jalawla and Kirkuk – both in the present tense - even though the appellant had claimed that he had lost contact with them for at least ten years. At Q67, the appellant had not mentioned that they had lost contact for at least ten years, but rather had said that he had not seen much of his paternal uncle since his father died.

57. Mr Howells submitted that it was in the appellant's interest to claim that he could not rely on his two uncles for support, given that the issue was now focused upon that if he returned to the IKR. He invited me to find that the appellant lacked credibility and to reject his evidence and to find that he could contact and would

have the support of at least one uncle in the IKR. His appeal should be dismissed under the Refugee Convention and Art 3 of the ECHR.

The Appellant

58. Mr Evans agreed that the factual issue effectively came down to the credibility of the appellant.

59. First, he reminded me that Judge Rhys-Davies had found the appellant to be credible in his evidence before the First-tier Tribunal.

60. Secondly, Mr Evans submitted that the appellant had been consistent about his lack of contact with relatives in the IKR and Iraq. That consistency had "flowed" up to this hearing.

61. Thirdly, Mr Evans relied on the fact that the appellant was illiterate, he had little education and his only work experience was farming. His illiteracy was important when considering why he cannot remember phone numbers of, for example, his mother or brother-in-law. It was not, he submitted, unreasonable or unlikely that a person in that situation would not be able to remember the numbers.

62. Fourthly, Mr Evans submitted that central to the appellant's claim was he had not had contact with his uncles since 2005–2008. He reminded me that the appellant does remember the last contact was unpleasant because of the dispute with his father. He submitted that it was clear that the knowledge of his uncles came from his mother and not his own knowledge. He submitted that it was not unreasonable for the appellant not to remember addresses given his illiteracy. Mr Evans also pointed out that when the appellant said, in his oral evidence, that there were no addresses he was talking about the IKR, not Iraq.

63. Fifthly, Mr Evans submitted that the appellant's evidence was in relation to his mother and sister that, when he had left Iraq, they were in Kirkuk. He submitted that the appellant genuinely believes that and does not know how to contact his uncles when he cannot get in contact with his mother. He has had no contact with his immediate family since he left Iraq. He has made attempts through friends at the embassy to do so, but without success. It was, Mr Evans submitted, clear from the appellant's evidence that his brother-in-law had entrusted a friend to arrange the appellant's exit from Iraq and that he (the appellant) was not aware whether his brother-in-law had tried to contact him as he had no contact with his brother-in-law.

64. Sixthly, in relation to his answer in his screening interview that he would be able to obtain a police report, the appellant had explained that, when he realised he had no contacts, that would be virtually impossible. It seems that it was his hope when he came to the UK that he would be able to do so.

65. Seventhly, as regards the appellant's answers in interview, Mr Evans submitted that I should not read anything into the use of present or past tenses, in particular given that the appellant's evidence was that there had been a misinterpretation.

66. Eighthly, as regards the appellant's failure to mention that his uncles had taken the family property after his father's death, Mr Evans submitted that the appellant had mentioned that there was "some kind of conflict" between his father and paternal uncle at Q66. There had been no further questions and the interviewer had moved on to another topic. The appellant had been clear (at Q67) that he had not had much contact with his paternal uncle after his father's death.

67. Finally, Mr Evans submitted that it was reasonably likely that the appellant would struggle to trace his uncles in the IKR and that would leave him without familial or family support in the IKR. Mr Evans invited me to accept the appellant's evidence that he would not be able to obtain the support of his uncles because of the dispute and that internal relocation to the IKR was, therefore, unreasonable and unduly harsh. He invited me to allow the appeal on that basis.

Discussion and Findings

68. In reaching my findings, I bear in mind that the standard of proof is the lower one applicable in international protection cases, namely a reasonable likelihood or real risk. The appellant bears the burden of establishing the underlying facts.

69. I also bear in mind that Judge Rhys-Davies, having heard the appellant give evidence at the First-tier Tribunal hearing, found the appellant to be credible and, in essence, accepted his account that gave rise to his asylum claim and claim under Art 3 of the ECHR.

70. In relation to that, I make the following points. I have also had the benefit of hearing the appellant give oral evidence and to assess his credibility directly on the focussed issues in this appeal now. Further, Judge Rhys-Davies did not accept all the appellant's evidence. He appears to have accepted, for instance, that the appellant could contact his relatives in Iraq to obtain a replacement CSID (see para 35 of his determination). Finally, and I will return to this matter shortly, the appellant did not raise in his written statement or oral evidence before Judge Rhys-Davies his explanation why his family had lost contact with his uncles and that he would not be able to contact them now, namely that following his father's death in 2005 his uncles had taken his father's money ("everything").

71. I also bear in mind in assessing the appellant's evidence that he has little education. He left school at an early age.

72. Mr Evans relied upon the consistency in the appellant's evidence up to the present hearing. Whilst that is, in general, correct, it does not detract from the fact that the appellant did not raise the explanation that he now makes as to why his family lost contact with both his uncles as a result of their taking his father's property when he died in 2005.

73. Mr Evans relied upon the fact that the appellant in his asylum interview (Q66) said that his paternal uncle "did not get on well with my father because they had some kind of conflict". That makes no mention of the appellant's other, maternal uncle.

Further, of course, it relates to "some kind of conflict" whilst the appellant's father was alive rather than a conflict which arose, on the appellant's evidence now, between his uncles and the appellant's family *after* his father's death. Whilst the appellant was not asked for any further explanation of that in his interview, which might explain why he gave no further evidence in his interview concerning that, it does not explain why he did not raise this issue at the hearing before Judge Rhys-Davies. His witness statement for that hearing made no reference to it and it was not raised in his oral evidence. Yet, before Judge Rhys-Davies the issue of whether he could contact his uncles was a live issue upon which, as in the hearing before me, was significant to the outcome of the appellant's asylum claim. I simply do not accept that if this part of his account as now raised was true, the appellant would not have mentioned that to his representatives so that it would have been raised in his written evidence or in his oral evidence before Judge Rhys-Davies. The appellant has offered no plausible explanation for his failure to raise this matter as part of his evidence in his earlier hearing. It was only raised for the present hearing in a further witness statement

74. Further, the appellant's evidence on this matter is not, in itself, consistent either internally or with his previous evidence. In his further written statement, the appellant says that his uncles took his father's "money" after his father's death. In his oral evidence before me, the appellant said that his uncles took "everything", including his father's land. When it was pointed out to him that he had previously claimed that, even though one farm had been occupied by the Hashd al-Shaabi, his family still had "three other farms", the appellant's explanation was, in essence, that only one of the farms was worth taking. I was left with the clear impression that the appellant had failed to realise that what he had said in his oral evidence was inconsistent with his earlier account as to his family's ownership of land and it seizure which was integral to his asylum claim. There is no suggestion that any of the land – namely the four farms which formed part of his asylum claim - were other than his father's. In my view, the appellant's explanation is unsatisfactory and fails to explain the inconsistency which, as a result of what he said in his oral evidence, became all too apparent. There is no explanation why his uncles would only sell one farm, leaving the appellant's family, with four other farms which were part of the appellant's evidence in his asylum claim.

75. Also, I do not accept the appellant's evidence attempting to explain why he has no knowledge of the whereabouts of his immediate family which he left in Kirkuk and his inability to contact them. His claim that there are "no addresses" that would allow him to contact his mother and sister and brother-in-law was unsupported by any background evidence that Kirkuk city does not have addresses to which post could be sent. Indeed, the appellant's explanation was by reference, not to Kirkuk city, but to "Kurdistan" of which Kirkuk city is not part. It is in central Iraq, not the IKR.

76. Likewise, the appellant's explanation that he does not know any mobile phone numbers, in particular of his brother-in-law, so as to contact him is, in my judgment, implausible. I have regard to the fact that the appellant has little education.

However, as the Upper Tribunal noted in [392] of SMO and Others, the use of mobile phones is high in Iraq. The appellant recognised that his brother-in-law had a mobile phone and that his mother had some access to it. Clearly, the appellant's brother-in-law is part of a close family since he has taken in the appellant's mother and, whilst the appellant was in Iraq, the appellant also. His brother-in-law also paid for the appellant to come to the UK, whether he did so personally or through an agent is largely irrelevant. Either way the closeness and concern of the brother-in-law for the appellant is demonstrated. I do not accept that the appellant would leave Iraq without having with him a record of his brother-in-law's mobile phone number as a means of contact between them when the appellant came to the UK. The appellant accepts that he uses a mobile phone in the UK, even if he did not have one in Iraq. Despite the appellant's educational background, I do not accept that the only way that he is able to use a mobile phone is through the assistance of his friends, as he claimed, providing him with sites saved on the phone to learn English. I do not accept that the appellant could not engage in the simple function of "dialling" a phone number in Iraq.

77. Mr Howells placed some reliance upon specific answers given by the appellant in his asylum interview. He relied upon the change in the appellant's evidence, between the asylum interview and his oral evidence, as to which of his uncles was a taxi driver and which was in the Peshmerga. He also relied upon the specific use of tenses in the appellant's asylum interview when he referred to his maternal uncle as being a taxi driver (in the present tense) and his paternal uncle being a member of the Peshmerga (in the past tense). He also relied on the fact that the appellant said that his paternal uncle was in Jalawla and his maternal uncle in Kirkuk both in the present tense. That was said, despite the fact that the appellant claimed that he had lost contact with them (as had his family) for at least ten years. Mr Howells also relied on the fact that the appellant's legal representatives in a letter to the Home Office following the interview (dated 13 May 2019 at Annex C of the respondent's bundle) corrected certain answers but none of these in any material way.

78. Whilst Mr Howells' submissions on these issues are, in my view, potentially consistent with my conclusion that the appellant's account on the matter in issue now is not to be accepted, in themselves they would not lead me to reach that conclusion. They are relatively minor discrepancies and may be explicable by the tense used in translation.

79. More telling is the appellant's answer in his screening interview (at paras 6.2 and 6.3) that he might be able to obtain a police report. If it was, as it has always previously been, the appellant's case that he had no means of contacting his immediate family or uncles, it would be wholly incongruous of him to state that he could obtain a police report from Iraq and, as Mr Howells submitted, the answer given by the appellant in his screening interview was not contradicted in the questionnaire submitted, about five months which did not seek to correct any misapprehension by the appellant. Indeed, at page 11 of 19 of the questionnaire the appellant informed the Home Office that his "mother and sister still in Kirkuk" suggesting that he was aware of their

current situation, despite his claim that he has not been in contact (and does not have the means of contacting) his family in Iraq since he left.

80. For these reasons, I reject the central parts of the appellant's evidence that he has lost contact with his family in Kirkuk where they remain. I do not accept that his family in Iraq has lost contact with his uncles in the IKR as a result of a falling out in the family over property taken by the appellant's uncles after his father's death in 2005.

81. In my judgment, there is a reasonable likelihood that the appellant has retained the ability to contact his immediate family in Kirkuk city. That family includes his mother, his sister and brother-in-law. I do not accept that the appellant's family lost contact with his two uncles who live in the IKR (on the appellant's evidence) as a result of a family dispute arising after the death of his father. I bear in mind the background evidence, and what was said in SMO and Others at [392], about the collectivist society in Iraq and the importance of family and family connections. I find that the appellant is reasonably likely to be able to contact by telephone or otherwise, for example by post, his immediate family in Kirkuk city and, even if he does not currently know where his uncles live in the IKR or have their contact details, I am satisfied that his immediate family will be able to provide him with those contact details which they retain. In particular, the brother of the appellant's mother is one of the uncles in the IKR.

82. Given that I do not accept that there has been any dispute between the appellant's immediate family and his two uncles, I am satisfied that his uncles would be in a position to accommodate and support the appellant in the IKR.

83. Mr Evans accepted that on those findings, it would probably be reasonable and not unduly harsh for the appellant to internally relocate to the IKR. He made no submissions to support a contrary finding.

84. Having regard to paras (27) and (28) of the headnote in SMO and Others, I am satisfied that the appellant, who would have access to a replacement CSID, to accommodation and support from his uncles together with their "patronage" and potential nepotism, could live in the IKR, for as long as necessary, with family support until such time that the appellant becomes self-sufficient through work. I also bear in mind the voluntary repatriation payment available for the UK Government.

85. For these reasons, I am satisfied that the appellant can reasonably be expected to internally relocate to the IKR. On that basis, his claims for asylum and under Art 3 of the ECHR do not succeed.

Decision

86. For the reasons set out in my decision of 30 July 2020 the decision of the First-tier Tribunal to allow the appellant's appeal on asylum grounds and under Art 3 of the ECHR involved the making of an error of law. That decision was set aside.

87. I re-make the decision dismissing the appellant's appeal on asylum and humanitarian protection grounds and under Art 3 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
7 December 2020©