



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002006

First-tier Tribunal No: PA/54866/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 August 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

AAR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor Advocate

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 8 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

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

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself, although there were frequent interruptions to the hearing as Mr Mohzam had chosen to attend from a conference room in a civil justice centre which had regular tannoy announcements, during which the

hearing had to be paused until we could again hear Mr Mohzam's submissions. That was not an appropriate location from which to attend and should not be repeated. All papers were all available electronically.

2. In a decision promulgated on 3 July 2023, an error of law was found in the decision of First-tier Tribunal Judge McClure promulgated on 13 April 2022 in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 21 September 2021 was dismissed. The decision of the First-tier Tribunal was set aside with preserved findings of fact (set out below) and this is the decision remaking the appeal on two specific issues, (i) whether the Appellant would be at risk on return to his home area using the sliding scale assessment set out in SMO, KSP and IM (Article 15(c):identity documents (CG) [2019] UKUT 00400 (IAC) for the purposes of Article 15(c) of the Qualification Directive; and (ii) whether the Appellant could internally relocate to the IKR (known interchangeably as the KRI). The error of law decision is appended to this decision.
3. The Appellant is a national of Iraq, who arrived in the United Kingdom on 14 March 2017 and claimed asylum on 18 March 2017. His claim was on the basis that he would be at risk on return to Iraq from ISIS as he had refused to help members of ISIS by giving them money or working for them. The claim was also that the Appellant's father had been similarly threatened and refused to help ISIS and two weeks later his body had been dumped in the yard of their house. The Appellant's initial claim was refused on 5 August 2019 and the appeal against refusal was dismissed by First-tier Tribunal Judge Lewis on 8 October 2019, with the Appellant being refused permission to appeal by the First-tier Tribunal and the Upper Tribunal and he was appeal rights exhausted on 19 December 2019.
4. First-tier Tribunal Judge Lewis dismissed the Appellant's asylum claim essentially on the basis of adverse credibility findings given that there were significant inconsistencies in his claim which were not properly addressed, as well as being inconsistent with the modus operandi of ISIS. In relation to humanitarian protection, the then current country guidance was set out in AAH (Iraqi Kurds – Internal relocation) Iraq CG [2018] UKUT 00012 (IAC) that the Appellant's home area in Salah Al-din Province engaged Article 15(c) of the Qualification Directive such that he could not be returned there. However, it was found that the Appellant could relocate to the KRI as he would not be at risk there and has his CSID card such that he could access employment and housing, also that he has family in Iraq including a brother-in-law. The Appellant's claim that he would be at risk elsewhere in Iraq because his father worked for the Ba'ath party was wholly rejected. The appeal was dismissed on family and private life grounds under Article 8 of the European Convention on Human Rights.
5. On 14 October 2020, the Appellant made further submissions, based on there being a risk on return to Iraq due to his imputed political opinion and from ISIS who he claims to have previously threatened him. The new documentary evidence relied upon initially consisted of four untranslated documents. The Appellant also claimed to be at risk on return to his home area in Salah Al-din on the basis of the security and humanitarian situation there.
6. In the Respondent's refusal of the further submissions, the previous findings of First-tier Tribunal Judge Lewis were relied upon, save that there was no longer an Article 15(c) risk in the Appellant's home area such that he could safely return there without any breach of the Qualification Directive or Article 3 of the European Convention on Human Rights. The Appellant was a healthy single

male, with no political profile and no known health conditions such that holistically, the Appellant would not face a heightened risk of indiscriminate violence on his return to home area. The Appellant has his CSID card.

7. In relation to internal relocation, the Respondent's position by reference to SMO and the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns (June 2020) was that it was reasonable for a Kurd to return and live in the KRI. The Appellant would be granted entry at the IKR border and subject to security screening and registration with the local mukhtar, he would be permitted to enter and reside. The Appellant has family in Iraq from whom he would receive sufficient assistance, he would be able to work with his CSID card, speaks the local language and would be able to apply for the voluntary returns package which would assist him in reestablishing himself. It was not accepted that the Appellant would be forced to live in an IDP camp or critical shelter arrangement.

8. The preserved findings of fact from the decision of First-tier Tribunal Judge McClure are as follows (removing the sentence in which an error of law was found):

35. Whilst the appellant has sought to rely upon his previous basis of claim, the issue is whether the evidence now adduced relating to the death of his father is such as to bring into question the findings of fact previously made.

36. The death of the father is not specifically found not to be true. The previous judge uses the chronology of event starting with the death of the father to point out inconsistencies in the appellant account. In that respect it has to be noted that originally the appellant stated that the death of his father, his and his mother's abduction and the killing of his father occurred in March 2015 [screening interview]. The date for the events changes and the judge points out that the appellant's account cannot be reconciled. The date of the father's death does not alter that the chronology of events could not be reconciled.

37. Judge Lewis had pointed out that the appellant had originally stated that he took CCTV footage to the police of the abduction of his father, then denied knowing anything about the CCTV footage and then claimed his father had taken footage to the police. Such could not be true if the father was abducted and then killed. Equally the footage of Isis members passing the shop was inconsistent with the account the appellant gave originally.

38. The appellant has also been inconsistent as to whether he has family members in Iraq, in one instance referring to a brother-in-law and then claiming that he has no family members.

39. The judge also pointed out the implausibility of the appellant's claim that Isis having killed the father without warning gave the appellant at least two warnings as to what they would do if he did not work for them or did not pay them money. Again I see no reason why that finding of fact is brought into question.

40. Having considered the new evidence adduced relating to the death of the appellant's father I do not find that such is sufficient to bring into question the findings of fact made by Judge Lewis with regard to the core elements of the appellant's account. The documents do not undermine the findings of fact made by Judge Lewis.

41. Mr Chapwangia sought to argue that the appellant would now be at risk because he had enquired about the death of his father and the members of Isis responsible would seek to silence the appellant if he returned. If Isis wished to silence the appellant they had ample opportunity to do so when the appellant reported the matter to the police. If the appellant had reported the matter to the police I do not see that Isis would merely call at the shop and demand that the appellant work for them or demand money from the appellant. They had ample opportunity to silence the appellant after the death was reported to the police and before the appellant left Iraq, but did not do so. Isis would not merely attend on two occasions and make demands and threats.

42. In the present circumstances the appellant only sought to enquire about his father's death to support his claim in the UK. I see no reason why any member of Isis should know of such or if the appellant returned to Iraq to be in a position to know of such or in a position to seek to silence the appellant. I find that there is no reason why this appellant would be in any different position from other civilians in his home area. [sentence removed in accordance with the error of law decision]

43. On the basis of the evidence I find that such does not bring into question the findings of fact made by Judge Lewis including the finding with regard to the CSID card.

44. The appellant has indicated that he was not involved in politics prior to leaving Iraq. The appellant has participated in demonstrations and posted material on the internet critical of both the Iraqi government and the IKR regime. The appellant has indicated that he only attended school for 2 years and that he cannot read or write. In the circumstances the appellant is merely reposting material from other sources. The appellant would be able to delete such. Having regard to the credibility issues raised and having considered the evidence I find that the appellant does not have a genuine political opinion adverse to either the Iraqi government or the IKR.

45. I find that the appellant has been seeking to create a public profile and seeking to create a basis of claiming asylum rather than genuinely representing his political beliefs.

46. In that regard I am however aware that it is the motives and reactions of potential persecutors that is material. [the Danian point]. I find in that respect that the appellant could delete his facebook posts without anyone in Iraq being aware of such. I similarly find that there is no basis for finding that the appellant's participation in demonstration should or would come to the attention of the authorities in either the Iraq government area or in the IKR. I find that the appellant would be able to return to his home area or in the IKR. I find that the appellant would be able to return to his home area without any risk to him arising. I do not find that the appellant genuinely holds political views adverse to either the Iraq government or the IKR. I find that the appellant would not be politically active if returned to Iraq and would not be at risk either because of his activities in the UK or for any other reason.

Country Guidance

9. The current country guidance is set out in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) which so far as relevant to the two issues in this appeal, states as follows in the headnote:

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 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 an 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.*

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, that may deter prospective employers.*

The Appellant's evidence

10. The Appellant's claim, so far as relevant to the remaining issues under appeal, is set out in his written statement signed and dated 25 January 2022. He claims his life would be at risk on return to Iraq because or from (i) Isis for refusing their demands and fleeing the country; (ii) he would be destitute on return with no

family in Iraq; (iii) in Tuz Khurmatu because Daesh (ISIS) is still present there; (iv) he has no Iraqi ID documents and no means to retrieve them as his father has been killed and he does not know the whereabouts of his family; (v) he can not relocate elsewhere in Kurdistan as he will be suspected of being aligned with Daesh; and (vi) he can not relocate to Baghdad as a Kurd who does not speak Arabic. He adds that he fears persecution from the Iraqi authorities and communities because of his religious beliefs.

11. In relation to family, the Appellant states that he did not have any siblings, only his mother and father and corrected the reference to a brother-in-law in his screening interview but this has not been considered. The Appellant is unaware of any extended family and was separated from his mother in Turkey and has not been able to trace her since through the Red Cross.
12. The Appellant states that he can not relocate elsewhere in Iraq because of his father's work for the Ba'ath party against the Kurdish parties for which he would be seen as a traitor. He has no family support and would not have any tribal support either because of his father's connections. He could not relocate without his ID documents and can not retrieve them from family or obtain a replacement.
13. The Appellant did not provide any updated written statement for this latest hearing, nor did he submit any further background country evidence. The Appellant did not attend the hearing in the Upper Tribunal such that there was no further oral evidence.

The hearing

14. On behalf of the Appellant, Mr Mohzam submitted that the Appellant would be at risk on return to his home area on the basis of his ethnicity and religion and also because he had been outside of Iraq since 2017. In particular he relied on the passages below from SMO [2019] which record the evidence given to the Upper Tribunal about the Salah al-Din Governorate.

Salah al-Din Governorate

77. *Salah al-Din lies directly to the north west of Baghdad. It has a population of over 1.5 million. Tikrit city is the capital of the governorate and was the birthplace of Saddam Hussein. It is considered an important centre of power for the Sunni Arabs. They are the predominant ethnic group but Shia Muslims, Turkmen and Kurds also live there.*
78. *ISIL captured the Tooz district in the summer of 2014. It also seized control of the oil town of Baiji in the north and the capital Tikrit. Other cities in the governorate withstood attacks and were unconquered. It was the first governorate in which control was regained from ISIL, with the insurgents removed from most of the key population centres by mid 2015. 130,000 IDPs returned in July 2015 and a further 360,000 returned by December 2016, almost all of whom were Sunni Arab. There were higher rates of violence after the removal of ISIL, however, including abduction and killing and the destruction and deprivation of property. This was largely attributed to the PMU.*
79. *The governorate also suffered in the wake of the Kurdish Independence Referendum. The ethnically mixed city of Tuz Khurmatu, which lies just to the south of Kirkuk governorate, witnessed significant clashes between Peshmerga and ISF forces. On 16 October 2017, serious fighting between*

the two sides saw the death of 50 civilians as well as the looting of property by the local population. Heavy weaponry was used in densely populated areas in that month and in the months which followed and civilians were killed and wounded as a result. An estimated 35,000 people fled the city in the face of this violence and intimidation from Turkmen armed groups. Predominantly Kurdish residents were targeted in these actions, and in looting by other residents of the city. This was thought to be retaliation by the Turkmen population for perceived marginalisation by the KRG government. When the Kurds were expelled from Tuz Khurmato in the aftermath of the Referendum, the city was taken over by one of the most senior commanders in the Badr Organisation, one of the most powerful Shia militia. He has reportedly developed a personal militia with the local Turkmen Shia, who are reportedly involved in looting, arms and drugs trafficking. Displacement and civilian casualties continue to occur in the area due to conflict between armed actors in the region, including the comparatively recently formed White Flag group.

80. *As with other parts of the formerly contested areas, armed groups proliferate in the region, consisting of official Iraqi forces and police; PMUs; and other militia representing the ethnic groups in the governorate. There is a proliferation of militias and armed groups that are not under government control.*
81. *In his first report, Dr Fatah states that Salah al Din has been the centre of many insurgent attacks since 2003 and that it was second only to Baghdad in December 2017. He cites examples of abductions and attacks in 2018 but endorses the view expressed in the Musings on Iraq blog that ISIL might be reducing activity in this governorate as it focuses on Diyala and Kirkuk. Nevertheless, there remain small-scale attacks perpetrated by cells of fighters. Some attacks by sleeper cells have taken place in Tikrit.*
82. *Dr Fatah notes the importance of Baiji city to the oil industry, in that it houses the largest oil refinery in the country. It took months of battles to reclaim Baiji and much assistance was provided to the ISF by the PMUs. The city is still troubled by issues surrounding the oil industry. IDPs have been slow to return due to insecurity and the PMU directives. ISIL have planted roadside bombs in the area and the ISF has recently intensified efforts to locate and destroy the remaining ISIL presence.*
83. *Dr Fatah considers civilians to be at 'some risk of indiscriminate attacks by insurgent groups' in Salah al Din. Security forces and village chiefs are at particular risk of being targeted by ISIL or other armed groups. There have also been reports of kidnappings by Shia militia groups. Dr Fatah then gives 37 examples of security incidents during the period. Many of these incidents relate to the detection of ISIL cells and equipment, rather than actions by ISIL against the civilian population or the security apparatus. The remaining entries, however, relate to the use of small arms and explosive devices by ISIL and unidentified armed groups against authority and security figures and, to a lessening extent, the civilian population.*
84. *In response to written questions from the respondent, Dr Fatah stated that the fight against ISIL in Salah al Din had led to a reduction in its military capabilities but that it was necessary to look at the root causes for its support. In Salah al Din, in particular, there was growing Sunni alienation*

caused by the imposition of Shia rule (by the PMUs) over the governorate. Civilians remained at some risk of indiscriminate attacks in the region although ISIL were now conducting more targeted operations. They continued to have access to weapons, as the discovery of weapons caches showed.

85. Examined by Mr Knafler about the situation in Salah al Din, Dr Fatah stated that Tuz Khurmato was said to be the most dangerous place. The Kurds were being 'kicked out' and the insurgency was quite high. Those in charge would not allow a Kurdish (PUK) flag to be flown when it had been placed on a statue; it was taken down and replaced with an Iraqi flag.
86. Examined by Mr Bazini, Dr Fatah stated that ISIL had not occupied much of this governorate, which was the Sunni heartland or 'Sunni Triangle'. They were able to find support in the area, however, and could be very effective.
87. In cross-examination, Dr Fatah was asked by Mr Thomann about Tuz Khurmato. He said that the Kurds had ruled the area before 2017 and had partitioned the communities. When the city came back under central government control, the residents were disillusioned and there was violence. He agreed that some people had returned but this was from the first wave. Considering the governorate as a whole, he considered the ISIL presence to be akin to Diyala. They had an insurgency and they selected their targets. It was correct to assert, as in the Landinfo report, that their operations were limited by the PMU and that there were pockets of fighters remaining. They no longer did mass attacks, hence the decrease in the casualty figures. It was mostly people in the security forces who were targeted but civilians who were queuing at a checkpoint might also be killed if the checkpoint was attacked.
88. Dr Fatah was asked about a statement made by Michael Knights in December 2018, suggesting that the decrease in ISIL's activity in Salah al Din might be due to the pressure from the partnership between the Shia and Sunni PMUs, which could have led ISIL to reinvest its resources in other areas. He agreed that this might be the case but the proliferation of the PMUs was not seen by the community as a positive thing. They regarded the PMUs as mercenaries who had been paid to form a paramilitary group. What was needed was to bring the Sunnis into the peace process. Asked about Tuz Khurmato, Dr Fatah agreed that it was a particular centre of violence in 2018 and it was suggested to him by Mr Thomann that there had been little violence in 2019. He stated that it was actually a very small area. The tensions were mostly of an ethnic nature, and were not security incidents as such.
89. Re-examined by Mr Bazini, Dr Fatah confirmed that the population of Salah al Din was in the region of 1.6 million and that more than three quarters of a million people were recognised as being in need. He considered what was going on Salah al Din as revenge by the Shia militia against the Sunnis and the Kurds, as demonstrated by the fact that the name of a university had been changed. The PMU was not like the police; they are not educated and are hard-line, sectarian people who had responded to a fatwa. Iran relied on them and had trained them. They had narrow political and religious views. They had not forgiven the Sunnis and they did not like the Kurds.

90. *Mr Bazini asked about ISIL's doctrinal control of areas in Salah al Din. He referred Dr Fatah to the EASO report (see below) and asked about the areas which were under ISIL's control in Salah al-Din. He stated that Baiji was very important because it generated electricity for the region but the areas in question were just villages. It was significant, Dr Fatah stated, that ISIL felt able to ask for donations (zaqat) in some areas of the governorate, as this meant that they felt they were sufficiently significant to do so. The EASO report suggested that there was significant damage to the infrastructure, poverty and forcible eviction. Dr Fatah stated that life had been unbearable under ISIL and that there was a continuing problem with infrastructure but there was a sectarian interest in this persisting.*
91. *Like Dr Fatah, the EASO report highlights the proliferation of armed groups in Salah al Din and the sectarian tensions in the governorate. Most checkpoints are controlled by the militia, together with a variety of security forces like the Federal Police and Counter Terrorism Forces, most of whom do not communicate with each other. The EASO report refers to the sectarian tensions in the area having been exacerbated by the execution by ISIL of 1700 Shia recruits in an army camp near Tikrit. This had led to ongoing retaliatory attacks against the Sunni community. A mass grave, thought to contain the bodies of some 157 cadets from the camp, was discovered in March 2018. Unlike in other areas, there were few Sunni tribal groups who had mobilised their support to the PMU forces, and this was attributable to the Sunni mistrust of the Shia forces.*
92. *EASO reported that the Institute for the Study of War ("ISW") stated in October 2018 and January 2019 that ISIL had established a small control zone north of Baiji in Salah al Din. In January 2019, ISIL was said to have 'doctrinal control' over terrain in the Makhoul Mountains of rural Baiji District. Numerous indicators of social control had been observed including prisons, judicial proceedings, training camps and organised worship. Also in the Shirqat and Tuz Districts ISW were of the opinion that ISIL exerted a great deal of physical and psychological pressure over populations even if it did not meet the definition of doctrinal control. In those areas there were abandoned villages, the destruction of agricultural products and infrastructure, repeated raids and assassinations which targeted the local social hierarchy. The civilian population could not rely upon the security services for adequate protection. The Hamrin mountain range also extends through this area, and ISIL had used it to create 'vast rural cave and tunnel complexes with weapon depots and foodstuffs, providing a logistical lifeline stretching from Diyala to Kirkuk via Salah al Din. There were thought to be between 150-200 militants operating in the areas between Salah al Din and Diyala. The former Minister for the Interior suggested in July 2018 that ISIL controlled some 75 villages in Kirkuk, Diyala and Salah al-Din. White Flag militants also operated in the area, tapping oil from pipelines in and around Tuz Khurmato and the main Kirkuk-Baghdad highway.*
93. *The UNAMI figures for the governorate showed a steady decline in the casualty figures from 2014 (2833 civilians killed or injured) to 2018 (104 killed or injured). According to IBC, it was the governorate with the fourth highest intensity, recording 10.05 civilian deaths per 100,000 in 2018, representing a marked drop from the 2017 figure of 28.05 per 100,000. The IBC recorded 69 security incidents in 2018, involving 152 civilian deaths, down from 83 incidents involving 424 civilian deaths in 2017. Most*

incidents involved gunfire (36.2%), IEDs (29%) and executions (27.5%). Suicide attacks and shelling made up only 4.3% and 1.4% respectively.

94. Michael Knights considered that ISIL had weakened its campaign in Salah al Din in 2018, with a drop from 84 attacks per month in 2017 to 14.2 per month in 2018. The overall scale of the local insurgency was small. As was put to Dr Fatah in oral evidence, this was thought by Michael Knights to be attributable to the presence of Shia and Sunni PMU in the area. The EASO report then continued by reviewing the nature of the incidents experienced throughout the year in 2018, including attacks on local security services and some attacks against the local civilian population. EASO considered there to be a resurgence of ISIL in the Hamrin mountain range, which was a destabilising factor for the governorate. Security sweeps had proven ineffective and the main problem was the lack of government presence in the local areas. In Hawija, Kirkuk and Tuz Khurmato, eye witnesses stated that ISIL had been roaming villages during the day, asking for zaqat or demanding information about the whereabouts of government forces. The security vacuum in Tuz Khurmato was an area of particular concern.
95. More than 238,000 individuals were displaced from within Salah al Din, the majority of whom were displaced within the governorate. Nearly 600,000 individuals had returned, mostly from within the governorate but some had returned from Kirkuk and Erbil. 68% of displaced individuals had returned. 764,000 individuals were in need, according to UNOCHA. Returnees were affected by security issues and faced some degree of harsh conditions upon return. There were also particularly high levels of infrastructure damage. As in other parts of the formerly contested areas, there were reports of forced and premature returns. Those who were perceived to be associated with extremists were at risk of forcible eviction on return to their homes and others had been unable to return home. These people were confined to camps and were poorly treated in the camps, with reports of food and ID documents being refused and sexual violence. The PMUs in the area controlled the highways and there were regular checkpoints. Fake checkpoints had been set up by ISIL.
96. The final entry for the Musings on Iraq blog for Salah al Din records:

Finally, in Salahaddin there were four incidents including a [mukhtar's house](#) being hit by an IED, and then another going off when the Iraqi forces responded. [Balad Air Base](#) was also hit by a mortar. Balad is where the Iraqi air force has its F-16 fighters. This range of attacks highlights the major activities of IS as it rebuilds. It is challenging the local security forces. It is intimidating the residents in rural areas, attacking their mayors, threatening them into paying taxes so the organization can put its finances back together, and driving people out of more and more towns so those areas can be converted into bases. This is a major goal of IS because it has to train its new cadres after its massive losses during its defeats in Syria and Iraq. The government has not adequately responded to this growing threat as local politicians and parliamentarians are constantly complaining. That's because the Mahdi government has no security, rebuilding or reconciliation policy in the post-conflict regions of Iraq. This is not a priority and is allowing IS to make a comeback much faster than the last time.

15. In summary, Mr Mohzam submitted that the Appellant's home area is controlled by the PMU, the Shia militia and the Appellant would therefore find it difficult on return to pass through a checkpoint controlled by them. As a Sunni Kurd, he would be at risk from the Shia militia as he would be questioned about his allegiances, the length of time he had been away from Iraq and would either be prevented from entering his home area at all or would face harsh treatment if permitted in. There was no specific background country evidence identified in relation the risk at checkpoints for these reasons and the reliance on what would happen in the home area was based on mistrust between the Sunni Kurds and the Shia Muslims for historic reasons. Mr Mohzam accepted that there was no up to date background country information beyond that relied on in SMO in 2019.
16. As to internal relocation, it was submitted that this would be difficult for the Appellant to return to the IKR because he has no family there to support him. Mr Mohzam appeared to suggest that the Appellant's mother and father were both still in his home area given that the previous First-tier Tribunal did not accept his father was deceased, however I treat that submission with great caution as it appears contrary to the Appellant's claim and as there were no specific findings on whether the Appellant's father was alive or dead; only a more generic finding that the Appellant had family in Iraq including a brother-in-law. It was further submitted that the Appellant would have difficulty finding employment in the IKR and housing is expensive, such that without family support this would be unduly harsh.
17. On behalf of the Respondent, Ms Ahmed relied on the Respondent's reasons for refusal letter, review before the First-tier Tribunal, the country guidance in SMO [2022] which replaced all previous country guidance for Iraq and the preserved findings from the First-tier Tribunal, specifically that the Appellant would not be at risk on return from ISIS nor as a general civilian in his home area; and he does not have any genuinely held political views opposing the government in the IKR, nor would any sur place activities become known to the authorities or put him at risk.
18. As to the Appellant's ethnicity and religion, Ms Ahmed emphasised that the burden was on the Appellant to establish that he would be at risk on return for these reasons and there was simply no cogent or up to date evidence to suggest that he would be. The evidence before the Upper Tribunal in SMO [2019] has not been updated and showed that the Appellant's home area was predominantly Sunni Arabs, there were also Shia muslims, Turkmen and Kurds there. There was little in SMO [2022] as to Salah Al-Din Governate. The findings in SMO [2019] are contained in paragraphs 265 to 266 of the decision in which it was accepted that there was some evidence of coercive behaviour by ISIS but no general risk to civilians.
19. Ms Ahmed submitted that there was no background country information at all to suggest any evidence of Shia controlled checkpoints that the Appellant would encounter on return to his home area, nor that he would be questioned in circumstances where he has his CSID card and his length of absence from Iraq is not a recognised risk factor. The Appellant would be able to apply for support under the voluntary returns scheme.
20. Outside of the Appellant's ethnicity and religion, he has not claimed or shown that any of the other risk factors in the sliding scale assessment apply to him. There is even a lack of evidence that the Appellant's home area is under Shia control as at the date of hearing, by reference to the disputed territories set out

in section 10.2 of the Respondent's Country Policy and information note: opposition to the government in the Kurdistan Region of Iraq (KRI), Iraq, July 2023 or otherwise. Viewing all the matters holistically and cumulatively, the Appellant has not established that he is at risk on return to his home area.

21. In 2019, First-tier Tribunal Judge Lewis found that the Appellant could internally relocate to the IKR in paragraphs 42 to 47 of the decision. The Appellant had no connections with ISIS, no genuine political views, he has his CSID and would not be at risk on return there. The current position is confirmed in the CPIN referred to immediately above in paragraphs 3.1.1 and 3.1.2 that there is no risk to a person such as the Appellant on political grounds in the IKR.

Findings and reasons

22. The first issue in this appeal is whether the Appellant's return to his home area would be in breach of Article 15(c) of the Qualification Directive, by reference to the sliding scale risk assessment set out in paragraph 3 of the headnote to SMO [2022]. There are preserved findings of fact that the Appellant would not be at risk by reason of his being an ordinary civilian in his home area, nor would he be at risk from ISIS or on the basis of any political views or *sur place* activities. The only possible relevant factor for the Appellant is whether he would be returning to an area where he is a member of a national, ethnic or religious group which is in the minority in the area in question, or not in de facto control of that area. There is no claim or suggestion that he is an LGBTI individual, wealthy or westernised, nor that he is humanitarian or medical staff or associated with any western organisations or security forces, and he is a single male without any disability.
23. The Appellant is a Sunni Kurd and claims that his home area is under the control of Shia militia such that he would be at risk on return there. The findings in the Upper Tribunal in SMO in 2019 beginning at paragraph 262 were that the Salah al-Din Government was predominantly a Sunni governate, with only the easternmost section, including Tuz Khurmato being disputed between the government of Iraq and the IKR. It was found that Tuz Khurmato saw heavy violence in the aftermath of the Independence Referendum (in 2017), suffered serious damage and violence continued into 2018. The area was at that stage ruled by a powerful militia, with problems predominantly of an ethnic nature, with Kurds more likely to face difficulty from the controlling PMU and with Shia control most acutely felt. There two were examples of a Kurdish name and flag being removed.
24. In paragraph 266, it was found that the metrics for the governate were not indicative of a level of threat which engages Article 15(c) in general, with 152 recorded civilian deaths out of a population of more than 1.5 million in 2018 and a lower intensity of violence compared to other governates; although indirect forms of violence, including sectarian tensions persisting in Tuz Khurmato were taken into account. However, an ordinary civilian would not face such a high level of indiscriminate violence that there are substantial grounds of believing that he would, solely by being present there, face a real risk which threaten his life or person (with one exception not relevant to this Appellant as to a small area under ISIS control).
25. The evidence underlying these findings in paragraphs 77 to 96 focuses mainly on risk from ISIS and security incidents, although there is reference to displacement (mainly to elsewhere within the same governate) and later returnees as well as violence and targeting predominantly of Kurds in violence and looting in 2017

seen as retaliation from the independence referendum. The ethnic tensions are not referred to as security incidents as such and other than a reference to the death of 50 civilians in serious fighting in 2017 and perhaps some caught up in violence at checkpoints under attack; there is little information about specific incidents against Kurds and/or Sunni Muslims in Tuz Khurmato or the wider governate. There are no specific findings that Kurds and/or Sunni Muslims are at risk in Tuz Khurmato or the wider governate and nothing to suggest any routine targeting of those sections of the population at large.

26. There is no up to date background country evidence relied on by the Appellant at all, such that it is entirely unclear as to whether the violence and tensions in the immediate aftermath of the independent referendum in 2017 and which continued into 2018 are still present in 2023 or whether the Shia militia are even still in control of Tuz Khurmato at the present time. Given that there was a specific event which prompted earlier tensions and violence, it is difficult to predict with any certainty or even to the lower standard applicable in protection claims, whether those issues continue into 2023 or not. There is simply no evidence at all either way.
27. Taking a holistic view of all the possible relevant factors set out in paragraph 3 of the headnote to SMO and the lack of up to date background evidence, I do not find that the Appellant has established, even to the lower burden of proof, that he would be at risk on return of indiscriminate violence in his home area now on account of his ethnicity and/or religion. There is an almost complete lack of evidence as to the situation there in 2023, even to the extent that it is not clear who is in control of Tuz Khurmato. Even considering the position in 2019, the limited evidence before the Upper Tribunal in SMO went little further than showing ethnic tensions and a specific period of unrest and violence in the immediate aftermath of the independence reference in late 2017 (albeit with targeting of Kurds in particular). There is little to suggest even at that point that any Kurd and/or Sunni Muslim would be at general risk of indiscriminate violence to reach the required threshold under Article 15(c) requiring substantial grounds for believing that the Appellant would, on account of his being a Sunni Kurd, face such a high level of indiscriminate violence that he would face a real risk threatening his life or person. The limited figures quoted in SMO in 2019 did not establish a high level of indiscriminate violence in a city the size of Tuz Khurmato for those of Kurdish and/or Sunni background, over and above the lack of general risk to an ordinary civilian. There was no finding to that effect in the country guidance itself.
28. There is no separate background evidence or anything in SMO to support Mr Mohzam's claim that the Appellant would be at risk at a checkpoint either of being refused entry to his home area or because of his ethnicity/religion or length of time out of Iraq. The country guidance is clear that a risk arises at checkpoints if a person does not have a CSID (or other ID document such as an INID), but this Appellant has his CSID so that does not arise. There were some references in the evidence before the Upper Tribunal in SMO of civilians being caught up in violence if they were at a checkpoint which came under attack, which was not sufficient to reach the Article 15(c) threshold, but not otherwise. I find the submission was made without any evidential foundation and the Appellant has not established any risk to him at any checkpoint. There is similarly no basis for the suggestion that the Appellant would not be permitted to re-enter his home area.

29. For these reasons, I do not find that the Appellant would face a risk contrary to Article 15(c) of the Qualification Directive on return to his home area of Tuz Khurmato and even less so to the wider home governate of Salah Al-Din. In any event, for the reasons set out below, internal relocation to the IKR would not be unduly harsh.
30. The second issue is as to whether it would be unduly harsh for the Appellant to internally relocate to the IKR. It was found in 2019 that it would not, and the principles in *Devaseelan* apply to this finding. The Appellant has not relied on any further evidence submitted to the Respondent, in the course of his appeal before the First-tier Tribunal or before the Upper Tribunal which addresses this point. However, there is now country guidance not available at the time of the previous hearing in SMO (both cases) as to relevant considerations for internal relocation for Kurds to the IKR which has now replaced that in AAH at the time of the first appeal. I note that the country guidance in this respect is substantively the same such that the earlier Tribunal finding stands without any further evidence being relied upon, but I undertake a fresh assessment for completeness.
31. The Appellant relies mainly on a lack of family support in the IKR, difficulty in finding employment and expensive accommodation as reasons why it would be unduly harsh for him to relocate to the IKR. He has also continued to rely on being at risk there because his father had Ba'ath party connections, but that claim was wholly rejected by the First-tier Tribunal in 2019 and no new evidence has been submitted such that the finding stands.
32. I do not find that there are any likely risks or issues for the Appellant getting to or being admitted to the IKR in accordance with paragraphs 27 to 31 of the headnote to SMO [2022]. He has his CSID card and could return either directly to the IKR or via Baghdad without difficulty and there is no reason why he would not be granted entry. As a recent arrival from the United Kingdom, the Appellant would be able to dispel any concerns of coming from an area associated with ISIS and there is no family association that would arise during the security screening process.
33. As to conditions within the IKR, I accept that the Appellant does not have family members there who could provide support within the IKR. Whilst Mr Mohzam appeared to accept that the Appellant's parents were in Tuz Khurmato, that is outside the IKR and the finding that he has a brother-in-law in Iraq did not identify where in Iraq he was. Whilst there may be family support elsewhere in Iraq, it seems unlikely that there is any in the IKR and the Appellant's friend there would not be expected to support him as a matter of a cultural norm in the same way family would.
34. The issue is therefore in accordance with paragraph 33 and 34 of the headnote in SMO [2022], the Appellant would be able to find accommodation and employment in the IKR. With regards to accommodation, without a family member to accommodate him the options are relatively limited wto a private apartment costing between \$300 and \$400 per month or a 'critical shelter arrangement' (which would be unduly harsh). When considering access to basic necessities, I take into account that the Appellant can apply for a grant under the voluntary returns scheme which could give him access to £1500 to establish himself and provide for initial accommodation and necessities. There is also the possibility of some level of financial support from family elsewhere in Iraq and ongoing earnings from employment.

35. It is acknowledged that there is a high rate of unemployment in the IKR, but the Appellant is a single male with a CSID who has a limited level of education, but experience working in a shop in Iraq and has no language barriers. The Appellant has no family connections in the IKR, but does have a friend whose father was willing to travel to Tuz Khurmato for him to obtain documents about his father, which suggests that there may be some connection that the Appellant could call upon to make a introductions to a prospective employer and vouch for him. Whilst these matters are fairly balanced, I do not find overall that the Appellant has established that he would be unable to secure employment in the IKR. Mr Mohzam referred to this only as being 'difficult' for the Appellant which falls far short of the test for whether it would be unduly harsh.
36. Considering all of the matters in the round, I find that the Appellant would be able to safely get to the IKR (either directly or via Baghdad) and be admitted entry and residence without any risk to him. The Appellant can apply for the voluntary returns scheme and use that money to help establish himself initially in the IKR with accommodation, as well as possible support from a friend in the IKR to obtain employment and from family elsewhere in Iraq for some financial or general support to ensure continued access to accommodation and basic necessities on an ongoing basis. In the alternative to a return to his home area (which would as I have found above be safe), internal relocation would not be unduly harsh to the IKR.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law, such that the decision was set aside in the appended decision.

The appeal is remade as follows:

The appeal is dismissed on asylum grounds.

The appeal is dismissed on humanitarian protection grounds.

The appeal is dismissed on human rights grounds.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th August 2023

APPENDIX



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002006

First-tier Tribunal No: PA/54866/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

AAR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor Advocate from CB Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 22 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge McClure promulgated on 13 April 2022, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 21 September 2021 was dismissed.
3. The Appellant is a national of Iraq, who arrived in the United Kingdom on 14 March 2017 and claimed asylum on 18 March 2017. That application was refused on 5 August 2019 and the appeal against refusal was dismissed on 8 October 2019, with the Appellant being appeal rights exhausted on 19 December 2019. The appeal was dismissed mainly on the basis that the Appellant was not credible, there was no risk to him on return as claimed and that he had his CSID and family in Iraq. It was accepted that there was an Article 15(c) risk in the Appellant's home area but that he could internally relocate to Erbil in the KRI.
4. On 14 October 2020, the Appellant made further submissions, based on there being a risk on return to Iraq due to his imputed political opinion and from ISIS who he claims to have previously threatened him. The new documentary evidence relied upon initially consisted of four untranslated documents. The Appellant also claimed to be at risk on return to his home area in Salah Al-din on the basis of the security and humanitarian situation there.
5. The Respondent refused the application on the basis that the new documents were untranslated and there was no explanation as to what they were or their relevance. The findings in the previous appeal were relied upon as standing, save that there was no longer an Article 15(c) risk in the Appellant's home area. The Respondent considered that the Appellant had his CSID and family in Iraq who could assist with redocumentation if necessary; further that in any event there was the option of internal relocation. The Appellant had not established any family life in the United Kingdom and did not meet the requirements of the Immigration Rules for a grant of leave to remain on private life grounds.
6. Judge McClure dismissed the appeal in a decision promulgated on 22 April 2022 on all grounds including on the Appellant's claim only made in the course of his appeal that he was at risk on return because he had been protesting against the government in Iraq and in the IKR. In essence, the new evidence relied upon was not found to bring into question the previous findings on the core of the Appellant's claim and the Appellant did not have a genuine political opinion such that his facebook account could be deleted and he would not come to the adverse attention of anyone in Iraq or the IKR. Further, there was no evidence to alter the previous findings that the Appellant had his CSID. Overall, the Appellant could return to his home area based on the then current country guidance in SMO, KSP and IM (Article 15(c):identity documents (CG) [2019] UKUT 00400 (IAC).

The appeal

7. The Appellant appeals on two grounds. First, that the First-tier Tribunal materially erred in law in failing to properly consider the risk to the Appellant in his home area in accordance with the sliding scale assessment set out in SMO. The Appellant is Kurdish and a Sunni Muslim, but his home area is now under Shia control and he has been out of Iraq since 2016; which he submits places him at risk. Secondly, that the First-tier Tribunal materially erred in law in failing to consider whether internal relocation to the IKR would be unduly harsh for the Appellant, in particular there was no consideration of employment, family support or accommodation.
8. At the oral hearing, Mr Mohzam relied upon the written grounds of appeal. In relation to the Appellant's home area, it was submitted that although in paragraph 25 (the second one of that number in the decision, the formatting having gone awry) there was some consideration of the Appellant's home area, there was not a sufficient consideration of the evidence about Salah Al-Din set out in paragraphs 87 to 91 of SMO showing that it was under PMU control, that the University's name had been changed and that there were problems for Kurds and Sunni Muslims there. It was accepted that there was no direct reliance on the sliding scale assessment on behalf of the Appellant before the First-tier Tribunal, it was by implication relied upon given the submissions on the security situation and it having been described in SMO as having a 'security vacuum', albeit more in relation to the risk from ISIS than by reference to any personal characteristics of the Appellant more generally. Similarly, there was nothing directly in the Appellant's written statement that dealt with these issues.
9. The submissions on behalf of the Respondent were in this case somewhat confused as to whether any errors in the First-tier Tribunal decision were accepted or not. At the outset, Ms Cunha referred to the schedule of issues before the First-tier Tribunal as set out in the Appellant's skeleton argument; which focused on the risk in the home area from ISIS rather than any more general Article 15(c) risk and reiterated the unchallenged findings in relation to the earlier appeal decision, that the Appellant had his CSID and that he had no adverse political opinion that would place him at risk on return. At first it was submitted that there was no error of law on the basis of any failure to carry out a sliding scale assessment because the Appellant had not put his case that way before the First-tier Tribunal; then that it was accepted that the Appellant could potentially be at risk in his home area on the basis of his ethnicity and finally then accepted that there was an error of law on the first ground but it was not material because the Appellant could internally relocate to the IKR.
10. On the second ground of appeal, it was submitted that there was no error of law in the Tribunal's assessment of internal relocation and for that reason alone the Appellant's appeal must fail.

Findings and reasons

97. In relation to both grounds of appeal, the context of what was relied upon by the Appellant before the First-tier Tribunal is important; as well as the country guidance that was then in place (although it is, for present purposes, substantively the same now as it was then, with only some amendments in relation to ID cards which are not relevant on the unchallenged facts of this appeal).

98. The Appellant's skeleton argument before the First-tier Tribunal focused on the Appellant's claims to be at risk from ISIS and due to his political opinion having been demonstrating and protesting against the governments in Iraq and Kurdistan from within the United Kingdom. This was reflected in the schedule of issues which were (i) Is the Appellant at risk with ISIS? (ii) Is the Appellant at risk of persecution due to his political activity in the UK? (iii) Is there a feasible option for internal relocation in Iraq? (iv) Can the Appellant obtain state protection in Iraq.
99. In relation to the risk from ISIS, the Appellant's skeleton argument highlighted paragraphs 83, 85, 86 and 92 of SMO specifically in relation to ISIS, kidnappings by Shia militia groups, damaged infrastructure, raids, assassinations and that the civilian population could not rely upon the security services for adequate protection (against ISIS) as there is a security vacuum in the Appellant's home area.
100. In relation to internal relocation, the Appellant's skeleton argument refers only to whether the Appellant is documented, in possession of an INID or CSID and is not in contact with any family in Iraq to assist him; and repeats the risk from ISIS if the Appellant had to return to his home area to redocument himself. Further, in relation to state protection, the skeleton argument states only that the Appellant fears the state authorities in Kurdistan because of his political opinion.
101. In his written statement, the Appellant states that he at risk on return to Iraq from ISIS and in particular his home area is not safe; he will be destitute without any family in Iraq; does not have his Iraqi ID documents and no means to retrieve them; unable to relocate to Kurdistan because he would be suspected of being identified with ISIS and unable to relocate to Baghdad as a Sunni Kurd who does not speak Arabic. In paragraph 9 the Appellant states that he fears persecution from the Iraqi authorities and the community because of his religious beliefs.
102. It is fairly clear from what is set out above, and in essence accepted by Mr Mohzam at the oral hearing, that the Appellant did not specifically rely on any matters outside of a claimed risk from ISIS and the general security situation in his home area (upon neither of which he was successful and neither finding has been challenged). The only relevant factor in terms of the sliding scale assessment that could potentially arise on the facts in this appeal is the Appellant's ethnicity and religion, being a Kurdish Sunni Muslim whose home area is now under Shia control; he has none of the other associations or personal characteristics that may affect the assessment. This is not however something specifically drawn to the attention of the Tribunal or expressly relied upon.
103. In this context, it is not surprising that the First-tier Tribunal focused on the Appellant's claimed risk on return, finding that he would not be at risk from ISIS, as a general civilian or due to any *sur place* activities. The First-tier Tribunal refers to the country guidance in SMO in paragraphs 24 to 28 of the decision, including the conclusion that living conditions in Iraq are unlikely to give rise to a breach of Article 3 of the European Convention on Human Rights or a breach of Article 15(b) of the Qualification Directive and the requirements for identification. In paragraph 25 there is specific reference to paragraphs 262 and 263 of SMO which deal with the area of Salah al-Din and Tuz Khurnatu, with ISIL activities concentrated on security and authority figures and the conclusion that there is no Article 15(c) risk to an ordinary civilian.

104. By reference to these sections, the First-tier Tribunal found in paragraph 42 that, *“there is no reason why this appellant would be in any different position from other civilians in his home area. Given the paragraphs from SMO referred to I find that the appellant could now return to his home area and would not have to relocate.”*
105. On the basis of the finding that there was no risk on return to the Appellant in his home area, there is no express consideration of whether internal relocation would be unduly harsh; beyond the reference in paragraph 13 to the earlier Tribunal decision in which it was found that the Appellant could internally relate to Erbil in the KRI and the general conclusion in paragraph 43 that, *“On the basis of the evidence I find that such does not bring into question the findings of fact made by Judge Lewis, including the finding with regard to the CSID.”*
106. Although the Tribunal’s discussion and findings are entirely consistent with the way the appeal was put by and on behalf of the Appellant, I find in this case that it was an error of law not to apply the country guidance in relation to formerly contested areas and in failing to make an assessment using the sliding scale assessment; even if there was only one potential relevant factor. There is reference in SMO to evidence before the Upper Tribunal of primarily ethnic tensions in the Appellant’s home area and the Appellant specifically claimed an Article 15(c) risk, as opposed to the mixed quotes relating to Article 3 and Article 15(b) of the Qualification Directive. The headnote in SMO however also includes the following:

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 an 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.*

107. On the evidence available to the First-tier Tribunal and in the context of clear country guidance, it was an error of law not to have made an individual assessment of risk to the Appellant in his home area in accordance with paragraphs 3 to 5 of the headnote in SMO, set out above. However, the Appellant's solicitors could and should have specifically relied on these matters and drawn them to the attention of the First-tier Tribunal which could reasonably be expected to have prevented the need for this onward appeal at all. The process of setting out in a schedule the issues in an appeal is precisely for this purpose to ensure that all contested issues are addressed by the Tribunal at first instance, rather than belatedly through an onward appeal to the Upper Tribunal.
108. For these reasons the First-tier Tribunal's decision did involve the making of a material error of law and as such, must be set aside, to the extent that there needs to be further consideration of any risk to the Appellant on return to his home area following the sliding scale assessment. There are a number of unchallenged findings in the decision which can therefore appropriately be preserved, which are those in paragraphs 34 to 46, excluding the final sentence in paragraph 42. These include that:
- the Appellant is not at risk on return to his home area from ISIS;
 - the Appellant is not at risk of indiscriminate violence contrary to Article 15(c) as a general civilian in his home area;
 - the Appellant has no genuinely held political views adverse to either the Iraq government or the IKR;
 - the Appellant would delete his facebook account and would not come to the adverse attention of the authorities for any political views;
 - the Appellant would not be politically active if returned to Iraq;
 - the Appellant has his CSID card;
 - there is no breach of Article 8 of the European Convention on Human Rights.
109. The second ground of appeal becomes relevant as a consequence of the first ground of appeal, in that as there was an error in the assessment of risk to home area, it was consequentially potentially an error to fail to consider internal relocation. Although there is an earlier appeal Tribunal finding that the Appellant could internally relocate, which at least implicitly was accepted by Judge McClure (the only point having been made by the Appellant against this as an option being his *sur place* activity, which was not accepted to create any risk) this will need to be assessed afresh in the re-making of this appeal if it is found that there is a risk in the home area. If there is no risk to the Appellant on return to his home area, then there will again be no need to consider internal relocation.
110. At the hearing, I discussed with the representatives the possible form of any further consideration if a material error of law was found. Mr Mohzam indicated that there would not need to be any further witness evidence from the Appellant and the appeal could be determined by way of written or oral submissions. Ms Cunha noted that a new CPIN was expected imminently about documentation in Iraq and internal relocation to the IKR which may be relevant to any re-making if published in time.
111. The appeal can in my view appropriately be dealt with by way of an oral hearing hearing limited to submissions by both parties on the issues of the Appellant's

risk on return to home area and internal relocation to the IKR. Directions are given below for this.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal (with the preserved findings set out above).

Directions

1. The hearing to be relisted before UTJ Jackson by remote video means with a time estimate of 1.5 hours. No interpreter required.
2. Any further evidence upon which the Appellant wishes to rely is to be filed and served no later than 14 days before the relisted hearing.
3. Any further evidence upon which the Respondent wishes to rely is to be filed and served no later than 7 days before the relisted hearing.
4. The previous appeal determination of First-Tier Tribunal Judge Lewis, promulgated on 8 October 2019, ref: PA/07831/2019 to be filed and served by the parties no later than 14 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th June 2023