IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006264
First-tier Tribunal No:
PA/51212/2022
IA/03675/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A A D
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Radford, Counsel instructed by Pickup and Scott Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on Thursday 1 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (AAD) 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

BACKGROUND

1. By a decision promulgated on 12 December 2023, the Tribunal (myself and Deputy Upper Tribunal Judge Jarvis) found an error of

law in the decision of First-tier Tribunal Judge Freer dated 21 November 2022 allowing the Appellant's appeal on humanitarian protection and human rights grounds but dismissing it on asylum grounds. The error of law decision is appended hereto for ease of reference.

2. The Respondent's decision under appeal is dated 18 March 2022. It refused the Appellant's protection and human rights claim. Those claims were made in the context of a decision to remove the Appellant to Iraq.

3. Although the Tribunal found an error of law in Judge Freer's decision, we did not set aside the entire decision. In consequence of the errors found, we set aside the allowing of the appeal on humanitarian protection grounds as well as the Judge's finding that there would be very significant obstacles to the Appellant's integration in Iraq. We set aside paragraphs [56] to [62] of Judge Freer's decision. We preserved the dismissal of the Appellant's individual protection claim and the findings made at [36] to [55] of Judge Freer's decision.

4. It was agreed at the hearing before me that, as the Appellant had not filed any further witness statement and in light of the preservation of Judge Freer's findings in relation to the protection claim, it was not necessary for me to hear evidence from the Appellant. It was agreed that the hearing would proceed on submissions only. I have read the evidence but refer only to that which is relevant to the issues I have to determine.

5. I had before me the Appellant's and Respondent's bundles before the First-tier Tribunal (hereafter [AB/xx] and [RB/xx] respectively) and an indexed bundle of additional documents for the hearing before me running to 85 pages (internal numbering) to which I refer as [B/xx]. I also had a skeleton argument from Ms Radford.

6. Having heard submissions from Ms Radford and Ms Isherwood, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

THE PRESERVED FINDINGS

7. Paragraphs [36] to [55] of Judge Freer's decision are mainly concerned with the Appellant's protection claim. The dismissal of the Appellant's individual claim was upheld by this Tribunal's error of law decision.

8. There are however certain findings within that section of the decision which are potentially relevant to the issues which remain. At [44] of his decision, Judge Freer found that it was most likely that the Appellant's family members remain in Iraq. He did not accept that the Appellant had lost contact with those family members ([47]). It followed from those findings that "the family can easily put

the CSID into the hands of [the Appellant] and he will not have prolonged identification delays on return to his country, for which direct flights are available into the KRI" ([50]).

9. In relation to the Appellant's sur place activities, Judge Freer made the following findings:

> "52. The Facebook evidence and demonstration evidence is strikingly weak. It is not shown that A has received any threats on Facebook or that the KRI authorities or militias monitor Facebook. Likewise, it is not shown that attendance at demonstrations for Kurdish people will cause any difficulty at all in the KRI, which is administered by and for Kurdish people. It is simply an illogical argument. There is no claim made that the PMF have seen this evidence. It leads nowhere in the legal case. No reference was made directly in closing by A's advocate. I have as invited taken account of the case law, which of course on its face relates to another country."

10. Judge Freer concluded, in relation to risk that "[t]here is no threat shown by credible evidence from the PMF or the two kinds of sur place activities, which are not accepted as risky for this Appellant" ([54]).

THE ISSUES

11. The issues are agreed as being whether the removal of the Appellant would breach Article 15(c) of the Qualification Directive ("Article 15(c)") and/or the Appellant's Article 3 and/or Article 8 rights in light of the preserved findings at [36] to [55] of Judge Freer's decision. Those relate to a return to the Appellant's home area of Kirkuk (which is a former contested area) and there is therefore an additional issue in relation to whether the Appellant can be expected to internally relocate to the Kurdish Region of Iraq ("KRI"). I take each of those in turn in what follows.

DISCUSSION AND FINDINGS

Article 15(c)

12. Article 15(c) is concerned with whether there is a "[s]erious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". The burden of demonstrating such risk lies with the Appellant.

13. Ms Radford placed reliance on the guidance given in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ("SMO 2019"). She submitted that, in this regard, there had been no change made by the guidance given in SMO & KSP (Civil status documentation; article 15) CG [2022] UKUT 110 (IAC) ("SMO 2022").

14. In relation to Kirkuk, which is the Appellant's area of origin, I accept that is so. At [A3-5] of the headnote of both SMO 2019 and SMO

2022, the following guidance is given in relation to an Article 15(c) risk of return to this governorate (so far as potentially relevant):

> "3. The situation in the Formerly Contested Areas (the governorates of … Kirkuk …) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, 'sliding scale' assessment to which the following matters are relevant.
> 4. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.
> 5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:
> · Opposition to or criticism of the GOI, the KRG or local security actors;
> · Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
> · LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
> …"

15. Dealing with the point made at [A3] of the guidance in SMO 2019, Ms Radford pointed to the ethnic mix and upheaval suffered in Kirkuk. There was a history of opposition to and criticism of the Government of Iraq, the Kurdish Authorities and local security actors. The Governorate had changed hands several times. The Tribunal had accepted in SMO 2019 that there was a continued ISIL presence, particularly in the rural areas, and that attacks continued (albeit the threat was lessened by Popular Mobilisation Units – "PMUs"). PMUs had however heightened internal tensions. Civilians were caught up in the violence.

16. Of course, what is said (at [251] to [257] of SMO 2019) is now several years out of date. In any event, Ms Radford accepted that the Tribunal there found no Article 15(c) risk to an ordinary civilian. Her submissions therefore focussed on what she said were the relevant personal characteristics of the Appellant which would put him at enhanced risk.

17. The first point made is that the Appellant has been critical of the al-Hashd ash-Sha'bi Popular Mobilisation Forces ("PMF") also known as the People's Mobilization Committee (PMC) and the PMUs. Although Ms Radford accepted that the Appellant's individual claim based on a "run in" with those forces had been rejected, she said that there had

been no finding that the Appellant has not been critical of those forces whilst in the UK. My attention was drawn to the evidence about the Appellant's sur place activities at [AB/9-11] and background evidence at [B/15, 78,79 and 81].

18. The evidence of the Appellant's sur place activities was described by Judge Freer as "weak". I concur with that assessment of the limited Facebook posts at [AB/9-11] and the evidence of the Appellant in his witness statement at [AB/5] as follows:

> "7. I would also mentioned [sic] that I have been attending demonstrations in London in the United Kingdom which are against Hashd al Shaabi and I think I would be at risk of harm from them for that reason if I was forced to return to Iraq and that Hashd al Shaabi still have power in Iraq and they are responsible for abuses of power and I would not have any protection from them."

19. Judge Freer also found that the Appellant's criticism would not come to the attention of those organisations or the authorities in KRI. The Appellant relies in this regard on background evidence at [B/15, 78, 79 and 81]. Whilst the extracts relied upon may show that the PMUs and PMF have some power and influence in certain areas in Iraq and the Kurdish region, the only evidence of any action taken against protesters is one article at [B/81] which refers to an incident in September 2023 where the Iraqi Security Forces opened fire on protesters in Kirkuk amid ethnic tensions stirred by the proposed handover of a building in Kirkuk to the KDP. The article refers to the authorities having ordered an investigation into the incident.

20. There is no evidence relied upon by the Appellant which shows that his (limited) sur place activities would come to the attention of the PMUs, PMF or PMC nor that they would be motivated to take any action against him even if they were aware of his activities.

21. The only other factor relied upon is the Appellant's time out of Iraq and his age when he left. It is said that, due to his age when he left and his unfamiliarity with the situation in Kirkuk, he would be at an enhanced risk. I was not directed to any evidence in support of that submission. There is no category based on age within the guidance in SMO 2019. I do not accept that the Appellant would be at enhanced risk due to his age when he left. I accept that the situation in Kirkuk may well be very different from that which pertained when he left. I have however preserved the findings made by Judge Freer that the Appellant has family remaining in Iraq who could help him adjust.

22. The Appellant is therefore in the same position as any other ordinary civilian. He has failed to show that he would be at risk of serious harm as a result of indiscriminate violence in Kirkuk.

Article 3 ECHR

23. As a result of my conclusions regarding Article 15(c), I do not need to consider the Appellant's case advanced on the basis of risk of ill-treatment or violence on return.

24. However, Article 3 ECHR is also relevant in the context of the documentation issue and the humanitarian situation which the Appellant may face on return.

25. Dealing first with documentation, I have preserved Judge Freer's finding that the Appellant would have access to his CSID via his family members who Judge Freer found remain in Iraq.

26. However, the documentation issue has moved on as a result of the findings in SMO 2022. In short summary, the CSID is being replaced by an Iraqi National Identity Document ("INID"). Whilst the Tribunal found that both CSIDs and INIDs remain valid, a replacement CSID will not be issued in locations which have transferred to the INID system. An individual cannot obtain a replacement CSID via the embassy in the UK for areas which have converted to the INID system. In order to obtain an INID, the individual must present himself at the Civil Status Affairs ("CSA") office where he is registered in order to enrol biometrics.

27. At the time of the evidence before the Tribunal in SMO 2022, some parts of Kirkuk had not transferred to the INID system. It was agreed by the Respondent however that in order to ascertain the up-to-date situation he would make enquiries in relation to local areas where this was an issue in an appeal. I have no information about the position in the Appellant's local area. The Respondent's decision under appeal proceeds on the basis that the Appellant would need a CSID to return to his home area and would be able to obtain one whilst in the UK via his family members remaining in Iraq. The Appellant accepts that he had a CSID and given the preserved findings, he could obtain that from his family prior to return and use that on his return until he was able to obtain an INID in person (assuming that the CSA office in his home area has moved to the INID system).

28. Notwithstanding that access to documentation, the Appellant continues to rely on the humanitarian situation in a claim under Article 3 ECHR. He points to the findings of the Tribunal in SMO 2019 in this regard. In SMO 2019, the Tribunal concluded that notwithstanding the quite dire living conditions in Iraq, those were unlikely to give rise to a risk of a breach of Article 3 ECHR. The Tribunal however concluded that personal circumstances require individualised assessment. That conclusion is reiterated in SMO 2022.

29. The Appellant relies on his personal circumstances, in particular regarding the lack of employment opportunities and accommodation. He submits that as someone with no work

experience or vocational skills who has been outside Iraq for four years, he would be at risk of destitution and serious harm.

30. The Tribunal dealt with the humanitarian situation in Iraq at [325-329] of SMO 2019. Of particular note is the finding that the poverty rate in former contested areas did not reduce after the conflict and that young people are one of the categories most affected by the high unemployment rate. Nevertheless, the Tribunal at [331] accepted the Respondent's submission that "the cumulative difficulties faced by a healthy, documented male returning to their place of origin in the formerly contested areas do not cross [the Article 3] threshold". In addition, the preserved findings include that the Appellant has family members still in Iraq who could assist him at the very least with accommodation whilst he seeks employment.

31. Ms Isherwood directed my attention to section 8 of the CPIN entitled "Iraq: Humanitarian Situation" (version 2.0 dated 23 May 2023) at [B/48] and to updated background evidence suggesting that the Iraqi economy is now growing due to the upturn in oil prices. She reminded me that the Appellant's father was said to be an active businessman in the oil industry.

32. In light of the preserved findings, coupled with the findings in SMO 2019 regarding the humanitarian situation, even taking into account the personal circumstances of the Appellant, I do not accept that return of the Appellant to Iraq would breach his Article 3 rights. He has family in Iraq who could assist him. He is not from a poor background and his father is or was an active businessperson in an area of business said to now be doing well.

Internal Relocation

33. I have found that the Appellant would be able to return to his home area without risk, that he has family still in Iraq and that he would be able to obtain his existing CSID via his family members in Iraq in order to travel to that area if returned to Baghdad (or indeed KRI).

34. For that reason, internal relocation does not arise. In case I am wrong in any of my previous findings, however, I also consider the alternative of the Appellant relocating to the KRI as an Iraqi of Kurdish ethnicity.

35. In SMO 2019 (repeated in SMO 2022) the Tribunal found that persons in possession of a CSID would be able to travel from Baghdad to KRI by land or air. There are also direct flights from the UK to KRI.

36. There was some discussion at the hearing about the possibility of forcible returns directly to KRI. Ms Isherwood submitted that this possibility exists. Ms Radford disputed this. Whilst I accept that SMO22 is not clear whether direct flights to KRI include the possibility of forcible returns, given the preserved findings and that the Appellant could obtain his CSID via his family members

remaining in Iraq whilst he is in the UK, it is not necessary for me to resolve that issue. Furthermore, the Appellant could if he wished voluntarily return to the KRI.

37. I accept however as Ms Radford submitted, that there is no evidence that the Appellant's family are in the KRI. Whilst it might be possible for them to relocate to that area with the Appellant on return that is speculative.

38. The Appellant would therefore be returning to KRI as a young man unfamiliar with that area and alone. I accept that without family support, the findings of the Tribunal in SMO 2022 suggest that the Appellant would have to find his own accommodation. Renting accommodation would cost around $300-400 per month. The Appellant would be in receipt of money from the UK Government in the sum of £1500. However, that would only last for a few months.

39. The issue then becomes one of whether the Appellant could secure employment. Ms Isherwood accepted that the latest statistic regarding the unemployment rate for Iraqi internally displaced persons in KRI remains that of 70% (taken from SMO 2022). The Appellant would, on preserved findings, have a CSID to enable him to access the labour market. However, without family support, he would not be able to call on the patronage which is said to underlie many of the employment prospects. Further, as an unskilled worker, he would be at greater disadvantage. I accept the submission that, in the KRI, the Appellant would be significantly disadvantaged by his age, lack of work experience and lack of family support.

40. I accept therefore that, were this to be the only option, it would be unduly harsh to expect the Appellant to relocate to KRI. However, I have found that return to Kirkuk would not amount to a breach of Article 15(c) nor of Article 3 ECHR. He can therefore return to that area.

Article 8 ECHR - Paragraph 276ADE(1)(vi) of the Immigration Rules ("Paragraph 276ADE(1)(vi)")

41. The Appellant submits in the event of return to Kirkuk, he would face very significant obstacles to integration contrary to Paragraph 276ADE(1)(vi). I am reminded of the observations of Sales LJ (as he then was) in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 as follows ([14]):

> "In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be

> made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

42. This is not a case involving a foreign criminal and section 117C Nationality, Immigration and Asylum Act 2002 does not apply. Nonetheless, the wording of the test under Paragraph 276ADE(1)(vi) is the same and calls for the same evaluative assessment. I remind myself also that the test requires the Appellant to show not only that there may be obstacles to his integration but that those be "very significant". That is therefore a high threshold.

43. The Appellant relies on the same issues as relied upon in support of his argument under the headings of Article 15(c) and Article 3 ECHR.

44. Whilst I accept that there remains some risk of violence in Kirkuk and that ethnic tensions exist, I have found that those do not disclose a risk of serious harm. Whilst the Appellant may face some obstacles in the sense of understanding how the society now works in Kirkuk after the conflict and faced with that risk of violence from time to time, I cannot accept that the evidence shows that the obstacles would be very significant. I once again remind myself of the preserved finding that the Appellant has family who would be able to support him on return.

45. I have accepted that the living conditions are difficult but found that they do not breach Article 3 ECHR. Moreover, the Appellant would be supported by his family.

46. The Appellant lived in Kirkuk until the age of seventeen. He would be familiar with society there generally. He speaks the language and would be able to rely on his family members to assist with reintegration into the community. Whilst he may find it difficult to source employment initially due to a lack of work experience and vocational skills, he could look to his family members for assistance. He is a healthy, able-bodied young man who is resourceful and resilient (as he has shown by his journey to the UK and adaptation to a country with which he was unfamiliar).

47. I do not accept therefore that the Appellant would face very significant obstacles to integration on return to Kirkuk. I have already found that he could not be expected to relocate to the KRI.

48. The Appellant does not rely on his Article 8 rights more generally but I have considered this for completeness. There is little evidence of a private life built up in the UK with which removal would interfere. Such private life as he has built up has been whilst here with precarious status. He has been in the UK for only about four years.

As a failed asylum seeker (on my previous findings) the maintenance of effective immigration control is in the public interest and in favour of removal.

49. Balancing the interference with the Appellant's private life against the public interest in removal, I conclude that the Appellant's removal would be proportionate. There is no breach of Article 8 ECHR.

CONCLUSION

50. The Appellant's appeal was dismissed on asylum grounds by the First-tier Tribunal and that conclusion was preserved. Return of the Appellant to his home area of Kirkuk would not give rise to a breach of Article 15(c) or Articles 3 or 8 ECHR. He can therefore return to that area and would be able to do so using his existing CSID which he could obtain from his family in Iraq. Had I found that the Appellant would be at risk in his home area, I would have accepted that it would be unduly harsh to expect him to relocate to KRI. However, given my findings regarding return to Kirkuk, the Appellant's appeal fails.

NOTICE OF DECISION

The Appellant's appeal is dismissed on protection, Article 15(c), Article 3 (including humanitarian protection) and Article 8 ECHR grounds.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 March 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006264

First-tier Tribunal No: PA/51212/2022
IA/03675/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....12/12/23...

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A D
[ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Ms S McKenzie, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Pickup and Scott Solicitors

Heard at Field House on Thursday 30 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (AAD) 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

BACKGROUND

1. This is an appeal brought by the Secretary of State for the Home Department. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Freer dated 21 November 2022 ("the Decision") allowing the Appellant's appeal on humanitarian protection and human rights grounds but dismissing it on asylum grounds. The Respondent's decision under appeal is dated 18 March 2022. It refused the Appellant's protection and human rights claim. Those claims were made in the context of a decision to remove the Appellant to Iraq.

2. The Appellant is an Iraqi Kurd from Kirkuk. His individual protection claim centres on the job of his father who is said to have sold oil to power generators but also to the Popular Mobilization Forces ("PMF"). The Appellant says that he helped his father in this job and, in December 2019, he and his father were caught up in a shoot-out. His father drove away but the family then fled from Iraq fearing for their safety. The Appellant says that he lost contact with his family en route to the UK. Judge Freer did not accept as credible this aspect of the Appellant's claim for reasons given at [36] to [51] of the Decision.

3. The Appellant also claims to be at risk due to his sur place activities. He says that he has attended demonstrations in London in front of the Kurdistan Consulate and the Iraqi Consulate. He says that his motivation was to protest against the conduct of the Iraqi Government against the Kurdish people. The Judge rejected this aspect of the Appellant's case at [52] of the Decision.

4. The Judge went on at [55] onwards to consider other risks which the Appellant might face due to the lack of documentation (Civil Status Identity Document – "CSID"). In so doing, he referred to the most recent country guidance (SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC)). The Judge found that, if necessary, the Appellant could internally relocate to somewhere other than Kirkuk ([56]). He also found that Kirkuk in 2022 was "not a contested area" ([57]).

5. However, in conclusion at [57] and in the following paragraphs, the Judge found that there was a serious risk of harm for other reasons based on the Appellant's human rights claim. He did so by reference to a Country Policy Information Note dated August 2022 entitled "Iraq: Humanitarian situation" ("the CPIN"). We will come below to the Judge's understanding of what is said in the CPIN. Based on that understanding, he found that there were very significant obstacles to the Appellant's integration in Iraq which would therefore satisfy paragraph 276ADE(1)(vi) of the Immigration Rules ("the Rules") ([61]). He concluded that removal would be contrary to Article 3 ECHR and paragraphs 339C and 339CA of the Rules.

6. The Respondent submits that the Judge has misdirected himself in law. The substance of the ground is that the Judge failed to give adequate reasons for his finding that there would be very significant obstacles to the Appellant's integration in Iraq, having regard to the Judge's findings that his family remained there and would be able to assist the Appellant in obtaining a document.

7. Permission to appeal was granted by First-tier Tribunal Judge Carolyn Scott on 30 December 2022 in the following terms so far as relevant:

> "..2. There is an arguable error of law. Whilst the Judge does state that the country information does reveal very significant obstacles to integration, and refers to paragraph 1.1. of the CPIN in this regard, she [sic] gives no further reasons for her [sic] findings. Further, whilst 1.1. of the CPIN states *'That the general humanitarian situation in Iraq is so severe that there are substantial grounds for believing that there is a risk of serious harm because conditions amount to torture or inhuman or degrading treatment…',* this is the section of the CPIN entitled '*Basis of claim'*. It is arguable that this section sets out the basis of an appellant's claim, rather than correctly reflecting the position of the respondent.
>
> 3. Permission to appeal is granted."

8. The Appellant did not cross-appeal in relation to the Judge's dismissal of his appeal on asylum grounds. Ms Radford said that this was because he was content to rest on the Judge's conclusion that he was entitled to humanitarian protection. He did not need refugee status even though it was accepted that this would be a preferential status.

9. However, on the day before the hearing, Ms Radford submitted a Rule 24 response ("the Rule 24 Reply") taking issue with the Judge's findings in relation to humanitarian protection and also asserting legal errors by way of procedural unfairness, misdirection in law and failure to consider the evidence in the round in relation to the dismissal of the appeal on asylum grounds.

10. The matter comes before us to decide whether the Decision contains an error of law. If we conclude that it does, we must then decide whether to set aside all or part of the Decision in consequence. If we do so, we must then go to on re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

11. We had before us a core bundle of documents relevant to the appeal and the Appellant's and Respondent's bundles before the First-tier Tribunal. We do not need to refer to any of the documents at this stage other than the CPIN.

DISCUSSION

The Respondent's appeal

12. It was pointed out to us that the basis of the grant of permission to appeal was not the way in which the Respondent's grounds were pleaded. We asked Ms McKenzie whether the Respondent was applying to amend his grounds in consequence. She confirmed that he was.

13. Having applied to do so and following Ms McKenzie's submissions, Ms Radford accepted that it was difficult to argue that the Judge had not misunderstood the CPIN. She also accepted that the Judge's misunderstanding might have infected his conclusion that there were very significant obstacles to the Appellant's integration in Iraq. She also pointed out that the Judge may have misunderstood the location of Kirkuk which she said was fundamental to the analysis in relation to humanitarian protection.

14. Ms Radford also submitted by reference to what was said in the Rule 24 Reply that the Judge had raised a number of points for the first time which could be answered by background evidence if the parties had the opportunity to deal with them. We address those latter points below as they are relevant to the Rule 24 Reply.

15. The part of the Decision which is relevant to the Respondent's appeal and to the Judge's conclusions in relation to humanitarian protection and human rights grounds appears at [57] to [62] as follows:

> "**Humanitarian protection**
>
> 57. There is no random violence shown. Kirkuk is not a contested area in 2022. However, I find that there is a risk of serious harm for other reasons lying outside the Refugee Convention, as set out in the following section of findings.
>
> **Findings: Human Rights (Articles 3 and 8 ECHR)**
>
> 58. There is a separate human rights claim and I will make these findings of fact for that.
>
> 59. There is stated in the relevant CPIN to be *a severe general humanitarian situation* in Iraq. Article 3 ECHR is satisfied on the basis of the contents of paragraph 1.1 of the CPIN updated on 15 August 2022, from which that last sentence is quoted. The map at 5.2.2 shows about 100,000 people in need at Kirkuk. For the record, the advocates did not refer me to the effect of the humanitarian situation on Article 3 specifically and there was no discussion in Court of paragraph 1.1 of the CPIN. I have made this finding of my own volition alone. Those provisions post-dated the refusal decision. I emphasise that this CPIN is the Home Office's publication and thus it is reasonable to rely on it when it runs counter to their own decision.
>
> 60. However, I find that for Article 8 purposes, there are no family members in the UK and the private life enjoyed here has been of very short duration. This appeal pre-dates the introduction of 'Appendix Private Life' so I need to consider the former sub-paragraph 276ADE(1) of the Rules, notably:
>
> *'(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into*

> *the country to which he would have to go if required to leave the UK.'*
>
> 61. I find that A does satisfy the sub-paragraph 276ADE of the Rules because the country information does reveal such 'very significant obstacles to integration'. In so finding, I have taken into account every relevant sub-paragraph of section 117B of the 2002 Act (as amended) which sets out the public interest criteria on Article 8.
>
> 62. The decision was not in accordance with section 6 of the Human Rights Act 1998, by reason of the severe humanitarian situation in Iraq, and refusal would be contrary to Article 3 ECHR and paragraphs 339C and 339CA of the Immigration Rules."

16. We turn then to the CPIN. As Judge Scott observed when granting permission, paragraph 1.1 of the CPIN is an introduction with the heading "Basis of claim". Whilst it does include the reference which Judge Freer has taken from it, therefore, it does not indicate any acceptance by the Respondent nor confirmation that a severe general humanitarian situation exists in Iraq. In fact, if one turns to the very next page at [2.4.1], under the heading "Risk" the Respondent makes his position very clear as follows:

> "Humanitarian conditions are, in general, not likely to be so severe as to result in a breach of paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the European Convention on Human Rights (ECHR). However, decision makers must consider each case on its merits. There may be cases where a combination of circumstances means that a person will face such a breach."

17. We observe for completeness that, whilst the map at [5.2.2] does appear to show about 100,000 people in need in the Kirkuk area at the date thereof (March 2022), the table which follows it (which forms part of the same evidence) refers to "in-camp IDPs", "out of camp IDPs" and "returnees" and groups them by sex, age and disability. The map therefore has to be considered in that context rather than in isolation.

18. Dealing first with the Respondent's appeal, we have concluded that it is appropriate to permit the Respondent to amend his grounds. It was common ground that the CPIN on which the Judge relied was not put in evidence by either party and the Judge raised this of his own volition (as is accepted by the Judge at [59]). On grounds of procedural unfairness alone, that would be sufficient for us to consider the Respondent's amended ground to be arguable.

19. The Judge's misreading of the CPIN also shows why it is undesirable for a Judge to rely on evidence which was not produced before him and on which he heard no submissions. The passage cited is not evidence of there being a severe general humanitarian situation. It is merely a summary of the basis of such claims. The Respondent accepts in the CPIN that there may be cases where there is a humanitarian risk based on a combination of individual risk factors but expressly rejects there being evidence of a general situation.

20. The Judge did not consider whether such factors existed for this Appellant because he misread the CPIN and did not therefore consider the case based on the correct evidence.

21. For all those reasons, we permit the Respondent's amendment to his grounds. We accept that the grounds as amended are made out and we accept Ms Radford's concession that the Judge's conclusions both as to there being very significant obstacles to integration in Iraq and that the Appellant should succeed on humanitarian grounds are flawed. Accordingly, we set aside [57] to [62] of the Decision.

The Rule 24 Reply

22. We move on to consider whether it is appropriate to set aside any other part of the Decision.

23. We drew Ms Radford's attention to the Tribunal's guidance in Smith (appealable decisions; PTA requirements; anonymity) [2019] UKUT 216 ("Smith"). The relevant part of the guidance in Smith is as follows:

> "(2) If an appellant's appeal before the First-tier Tribunal succeeds on some grounds and fails on other grounds, the appellant will not be required to apply for permission to appeal to the Upper Tribunal in respect of any ground on which he or she failed, so long as a determination of that ground in the appellant's favour would not have conferred on the appellant any material (ie tangible) benefit, compared with the benefit flowing from the ground or grounds on which the appellant was successful in the First-tier Tribunal.
> (3) In the event that the respondent to the appeal before the First-tier Tribunal obtains permission to appeal against that Tribunal's decision regarding the grounds upon which the First-tier Tribunal found in favour of the appellant, then, ordinarily, the appellant will be able to rely upon rule 24(3)(e) of the 2008 Rules in order to argue in a response that the appellant should succeed on the grounds on which he or she was unsuccessful in the First-tier Tribunal. Any such response must be filed and served in accordance with those Rules and the Upper Tribunal's directions.
> (4) If permission to appeal is required, any application for permission should be made to the First-tier Tribunal in accordance with rule 33 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, within the time limits there set out. This includes cases where the appellant has succeeded on some grounds but failed on others, in respect of which a material benefit would flow (see (2) above).
> 5. There is, however, no jurisdictional fetter on the Upper Tribunal entertaining an application for permission to appeal, even though the condition contained in rule 21(2)(b) of the 2008 Rules has not been met, in that the First-tier Tribunal has not refused (wholly or partly), or has not refused to admit, an application for permission to appeal made to that Tribunal. Rule 7(2)(a) of the 2008 Rules permits the Upper Tribunal to waive any failure to comply with a requirement of the Rules. The guidance in EG and NG (UT rule 17: withdrawal; rule 24: Scope) Ethiopia [2013] UKUT 143 (IAC) is otherwise confirmed.

> 6. The Upper Tribunal is, nevertheless, very unlikely to be sympathetic to a request that it should invoke rule 7(2)(a), where a party (A), who could and should have applied for permission to appeal to the First-tier Tribunal against an adverse decision of that Tribunal, seeks to challenge that decision only after the other party has been given permission to appeal against a decision in the same proceedings which was in favour of A."

24. We take that guidance in order as it applies to the instant case.

25. Ms Radford submitted first that the Respondent's grounds took issue only with the allowing of the appeal on Article 8 ECHR grounds. She pointed out that it was only in the grant of permission to appeal that an arguable error had been identified in relation to the humanitarian protection/ Article 3 ECHR conclusions. Since the Respondent had not sought to amend his grounds until the hearing before us, she submitted that it was not incumbent on the Appellant to raise any challenge in relation to this aspect before he had done so.

26. Ms Radford also said that the Appellant had been content to rest on the conclusions as to humanitarian protection and Article 3 ECHR. He did not need to apply for permission to appeal against the Judge's dismissal of his appeal on asylum grounds. In her submissions, Ms Radford categorised this as a challenge to the finding that there was no Convention reason. If we have understood that submission correctly, in our estimation, that is a mis-categorisation of the Judge's findings. The Judge rejected the entirety of the Appellant's individual protection claim both as to what occurred in Iraq and based on his sur place activities as not credible. If the Appellant did not accept those findings, and the conclusion that his appeal on asylum grounds should fail, he ought to have sought permission to appeal. A conclusion that an individual should be recognised as a refugee is of course a materially more beneficial status than a conclusion that he is entitled to humanitarian protection.

27. Even if the Appellant did not consider it necessary to seek permission to appeal in relation to the Judge's dismissal of the appeal on asylum grounds, if he sought to uphold the Judge's allowing of his appeal on humanitarian protection grounds, he should have raised this in the Rule 24 Reply which should have been filed and served no later than one month after the grant of permission to appeal was sent. In this case, that was on 30 December 2022. The Rule 24 Reply was not filed and served until 29 November 2023, therefore nearly ten months late.

28. We accept that the Respondent's grounds of appeal did not take issue directly with the allowing of the appeal on humanitarian protection grounds and that no application was made to amend grounds until the hearing before us. However, it was obvious from the grant of permission to appeal that this was an issue which this Tribunal was going to have to consider. If the Appellant sought to uphold the Decision in relation to the humanitarian protection/ Article 3 ECHR

conclusions, therefore, that should have been raised in a response which should have been filed and served at a much earlier stage.

29. We accept however that we have a discretion to permit a late application for permission to appeal. We have a discretion to allow the Appellant to raise grounds of appeal even where those have not been the subject of a formal application for permission to appeal to either the First-tier Tribunal or to this Tribunal.

30. We have not received any explanation or any adequate explanation for the delay in raising the grounds put forward in the Rule 24 Reply nor any explanation for the lateness of that response. We did not receive any explanation or adequate explanation as to why the Appellant did not seek to challenge the dismissal of his appeal on asylum grounds by way of an application for permission to appeal if he was dissatisfied with that outcome.

31. However, out of an abundance of caution and mindful of the fact that the Respondent did not apply to amend his grounds until the hearing before us, we have considered whether it is appropriate to allow the Appellant to raise all or any of the grounds pleaded in the Rule 24 Reply.

32. We begin with those issues which relate only to the Appellant's asylum claim. Those are at [A], [C], and [D].

33. In relation to [A], we accept that the Judge has wrongly recorded the Respondent's position at [8] of the Decision in relation to section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. We also accept that at [42] of the Decision the Judge does take into account the Appellant's failure to claim asylum en route to the UK. We accept that the Judge says that this damages the Appellant's credibility but the Judge also makes clear that it is "not a conclusive point".

34. We have carefully read the Judge's findings in relation to the credibility of the Appellant's individual protection claim at [36] to [51] of the Decision. We acknowledge that many of those findings are not the same or even similar to the reasons given by the Respondent for rejecting the claim.

35. However, those findings have to be read with the rest of the Decision and in particular what the Judge says at [36] of the Decision regarding his acceptance of many of the Respondent's reasons for refusing the claim. This section of the Decision therefore has to be read also in the context of the Respondent's submissions at [26] to [31] of the Decision.

36. Furthermore, the Judge gives reasons other than those challenged in [C] of the Rule 24 Reply. By way of example, although the Rule 24 Reply takes issue with the Judge's description at [37] of the Decision as the claim being "a borrowed account", the Judge goes on to explain

why he considers the claim to be inconsistent with the relationship which the Appellant's father is said to have had with the PMF. Other of the findings were open to the Judge for the reasons he gave (for example that there is a failure to explain how the Appellant's father could drive forward and shoot backwards whilst escaping the shoot-out) ([40]). We accept that other of the findings may be questionable (for example about there being flammable fuel at the location of the shoot-out – [39]).

37. We do not have any evidence about what issues were or were not raised with the parties by the Judge. However, read as a whole, and even assuming that the points which the Rule 24 Reply says were not raised were not put in issue, we have reached the conclusion that there are ample findings which are not challenged and not open to challenge to justify the Judge's conclusions about the credibility of the Appellant's account.

38. We do not accept either that the Judge's finding about the Appellant's family at [50] of the Decision is open to challenge ([D] of the Rule 24 Reply). That finding has to be read in conjunction with the finding at [47] of the Decision which, whilst brief, was open to the Judge (and is not challenged in the Rule 24 Reply).

39. As is clear from the guidance in Smith, if the Appellant wished to challenge the Judge's conclusion in relation to his asylum claim (as distinct from the conclusions in relation to humanitarian protection/ Article 3 ECHR), he should have sought permission to appeal in this regard. As we have already noted, we have no explanation for his failure to do so.

40. For those reasons, we do not set aside the findings at [36] to [55] (inclusive) of the Decision or the dismissal of the appeal on asylum grounds.

41. We do accept that the Judge may have misunderstood the location of Kirkuk as is submitted at [B] of the Rule 24 Reply. That is potentially relevant to the issue of internal relocation (which we observe however is not an issue given the asylum findings as to risk) but also to humanitarian protection and Article 3 ECHR which are issues to be re-determined.

42. In case internal relocation is for any reason relevant, and given our acceptance that the Judge has misunderstood the location of Kirkuk, we also therefore set aside [56] of the Decision.

43. The point at [E] of the Rule 24 Reply is also concerned with humanitarian protection. However, it also challenges the finding at [50] of the Decision which we have found was open to the Judge in relation to the asylum claim (see above).

44. Ms Radford invited us to remit the appeal to the First-tier Tribunal if we decided in the Appellant's favour the points raised in the Rule 24

Reply. Since we have rejected the majority of the Appellant's case in that regard, we see no reason to remit the appeal. We therefore retain the appeal for re-making in this Tribunal.

CONCLUSION

45. The Judge has made an error of law when determining the humanitarian protection and human rights grounds. For the reasons given above, we set aside the findings at [56] to [62] of the Decision and the allowing of the appeal on humanitarian protection and human rights grounds. We preserve the Judge's findings at [36] to [55] of the Decision and the Judge's dismissal of the appeal on asylum grounds.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Freer dated 21 November 2022 involves the making of an error of law. We set aside [56] to [62] of the Decision and the allowing of the appeal on humanitarian protection and human rights grounds. We preserve the findings at [36] to [55] of the Decision and the dismissal of the appeal on asylum grounds. We make the following directions for the rehearing of this appeal:

DIRECTIONS

1. **Within 28 days from the date when this decision is sent, the parties shall file with the Tribunal and serve on each other any further evidence on which they wish to rely at the resumed hearing in relation to the remaining issues.**

2. **The re-hearing of this appeal is to be listed before UTJ Smith for a face-to-face hearing on the first available date after 35 days from the sending of this decision, time estimate ½ day. If an interpreter is required, the Appellant's solicitors are to notify the Tribunal within 14 days from the date when this decision is sent.**

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 December 2023