IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006650

First-tier Tribunal No: PA/52114/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th February 2024

Before

UPPER TRIBUNAL JUDGE REEDS
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HJM
(anonymity order made)

Respondent

Representation:
For the Appellant: Ms Young a Senior Home Office Presenting Officer
For the Respondent: Mrs Brakaj a Solicitor

Heard at Phoenix House (Bradford) on 3 January 2024

Order Regarding Anonymity

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

No-one shall publish or reveal any information, including the name or address of HJM, likely to lead members of the public to identify HJM. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission, against the determination of the First-tier Tribunal (Judge Forster) promulgated on 10 January 2022. By its decision, the Tribunal allowed HJM's appeal on protection grounds against the Secretary of State's decision dated 24 April 2021 to refuse his protection and human rights claim.

2. The FtTJ made an anonymity order. No grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. For ease of reference with the First-tier Tribunal, we shall hereafter refer to HJM as the Appellant, and to the Secretary of State as the Respondent.

4. The Appellant was born on 18 June 1998 (not 1999 as stated in the Judge's decision at [4]). He is a Kurdish citizen of Iraq.

5. The Appellant's claim is summarised in [4] of the decision in that;

> "he worked in a coffee shop in Ranya (in the Sulaymaniyah Governorate in the IKR). He was approached by two men who he believed were from either the PUK or the KDP. They asked him to put poison in a customer's drink. The Appellant refused and reported the matter to the police. The men were arrested but later released, and after this the Appellant received threats. He sought to relocate but the threats continued and he left Iraq as a result. Since then, the Appellant has lost contact with his family. He fears to return to Iraq."

6. The refusal is summarised in [5] of the decision in that the Respondent;

> "accepts that the Appellant is from Iraq but rejects his claim that he was asked to poison one of his customers. The Respondent says the Appellant's account is not plausible and that he has given different versions of events. The Respondent relies on s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004."

The Respondent's grounds seeking permission to appeal

7. The written grounds assert that:

> "1. ... a) ... the Judge errs at [2] of the determination where he acknowledges the respondent's review but then declines to take the same into account and proceeds on the basis of the respondent's refusal decision alone (see also [5] of the determination).
> b) The Tribunal will be aware that a hearing (under s.82) is not a review of the home office [decision in the] refusal letter.
> c) The Judge at [23] declines to consider either internal relocation or sufficiency of protection despite these inherent parts of the convention being raised by the respondent at [6] – [7] of the respondent's review…
> d) The Judge at [24] holds that the Appellants claim of loss of contact with his family was not directly challenged by the Respondent. It is submitted that this is incorrect as it was challenged at [36] of the refusal. The Judge also fails to consider written submissions uploaded to the CCD platform on the 08/12/2021 to be explicitly relied upon at the hearing, these made further argument about the availability of documentation and the availability of voluntary return to Iraq…
> 2. ... a) …the Judge fails to provide adequate reasoning at [20]-[21] of the determination or elsewhere.
> b) Whilst it is accepted that the Judge does not have to rehearse every detail there is a failure to provide adequate reasons for accepting the account and why the conflicts in evidence were resolved in the Appellant's favour. When talking in broad terms of issues at the interview the Judge says at [20] that '*This appears to explain some inconsistencies*…' which, with respect, only claims that some inconsistencies were explained.
> c) Notwithstanding this the Judge concludes at [21] that '*There are some differences in what the Appellant said*…' which suggests that discrepancies remain.
> d) …no adequate reasons are given as to which inconsistencies were explained and which remain and why they do not undermine the claim [and lead to the conclusion the Appellant is a credible witness].

e) … the Judge also fails to resolve matters of plausibility as raised at [30], [35] & [36].
f) … the Judge fails to apply section 8 of the 2004 Act (raised at [38]-[41] of the refusal) when applying the standard of proof and so fails to conduct a global assessment of credibility.
g) At [23] the Judge holds that '*those with political influence have the ability to corrupt the system*' and then '*he will be denied state protection*'. The Appellant's claim was that it was those he claimed to fear who had been subject to arrest and detention by the authorities. In this context the Judge has failed to provide any explanation of who might have political influence and what that influence might be particularly given it failed to obviously assist those the Appellant claims to fear...".

Permission to appeal

8. Permission was granted by First-tier Tribunal Judge Chinweze on 1 March 2022 who stated:

"1. The judge did not take the respondent's review decision into account because the respondent had not sent a representative to the hearing, despite submitting that the appellant's credibility needed to be tested, (paragraph 2). However, the respondent made clear in the review decision that the grounds for refusal were maintained. In paragraphs 5 and 6 of her review decision the respondent made submissions about the appellant's credibility. In paragraphs 8 to 11 she made further points about the country guidance case of *SMO, KSP & IM (article 15(c), identity documents) Iraq CG[2019] UKUT 400 (IAC)*.
2. The contents of the review decision were material to the appellant's claim for protection and arguably should have been considered by the judge before he made his decision.
3. At paragraph 23 the judge found that the appellate would not be able to avail himself of the assistance of the Iraqi authorities because the men he had reported to the police had been released and country background information confirmed corruption is endemic in Iraq institutions. The judge does not make any finding as to whether the men were released on bail pending further investigation or released because of the corruption of the authorities. Nor does he identify the background information he relied on in support of his conclusion that corruption was endemic in Iraq.
4. At paragraph 24, the judge found that the appellant's assertion that he had lost contact with his family in Iraq had not been challenged by the respondent. However, in paragraph 36 of her refusal decision the respondent asserted that it was not plausible the appellant had lost contact with his family in Iraq, as he had been in contact with them in Turkey en - route to the UK.
5. It is arguable that the judge erred in law by failing to make findings on material matters and providing inadequate reasons for his conclusion that the appellant would not benefit from the protection of the authorities on return to Iraq."

Rule 24 notice

9. There was no rule 24 notice.

Appellant's skeleton argument for the Upper Tribunal

10. It was asserted that;

"4. The grounds of appeal assert the FTj failed to take into account certain information or resolve conflicts of fact or opinion. It is noted that the FTj did not consider internal relocation although this was raised in the respondent review. However it is of note the reasons for refusal did not raise the issue of internal relocation. The respondent has sought to raise this at a very late stage in any event and in a very brief manner with the short assertion that there is no evidence those

he fears would have the means to locate him throughout Iraq. There is nothing further on that issue, and this is difficult to reconcile with the appellant's claim that they were part of a wide group and were able to make threats to him. There is very little evidence of what the respondent's position is on this point in light of this not being raised in the RfR and raised very briefly in the respondents review after the submission of the appellant's bundle. It is of note that it is accepted the appellant does not have access to documentation and would therefore need to return to his home area in any event. It is still unknown what the respondent wishes to raise in relation to the ability to relocate in these circumstances, and it is argued there is no error but even if an error were established this is not material.

5. The respondent states that the FJT erred in finding that the appellant had lost contact with his family as this was in dispute at paragraph 36 of the decision. Paragraph 36 states that as he was in contact with them in Turkey it is not credible that he does not still have the contact details. However the appellant does not state he has lost the contact details. He states he attempted to call the number he has for them but this does not connect. No issue is taken by the respondent with this explanation.

6. It is also stated the Judge failed to consider the additional information uploaded to CCD. This is background information and is not specific to this case. Nothing is highlighted to state what ought to have been considered that is contradictory to those findings.

7.It is stated the judge has failed to give adequate reasons. SSHD seeks to disagree with the findings made, however the FTJ has made findings and given reasons for those findings. SSHD did not attend to test the evidence. The review of the decision simply states that they put the A to proof on his witness statement. They then failed to attend the hearing in order to do so. The FTJ was therefore left with limited reasons why credibility was not accepted.

8. As such it is argued that the grounds are a disagreement with the decision following a hearing to which SSHD elected not to attend or make any details case specific submissions. It is argued no error of law or material error is established."

The hearing before the Upper Tribunal

11. At the hearing the Respondent was represented by Ms Young, Senior Presenting Officer and the Appellant by Mrs Brakaj. We heard oral submissions from each of the advocates which we summarise as follows.

The submissions made on behalf of the Respondent

12. Regarding Ground 1 (a and b), the lack of representation at the hearing does not mean that the Respondent's evidence cannot be considered. The Review and Written Submissions had been uploaded 13 days before the hearing. The Review at [7] deals with internal relocation, at [8 to 10] with SMO, and at [11] with documentation. The Written Submissions relate to the documentation to facilitate return, provided an update on Country Guidance that had changed, and gave more detail than the Refusal Letter had given. It related specifically to this Appellant. The Respondent should not penalised for not sending a representative. The Judge has not assessed all the evidence and given adequate reasoning on the issues in dispute.

13. Regarding Ground 1 (c), the Judge did not grapple with internal relocation or sufficiency of protection and only considered the refusal letter on these issues.

14. Regarding Ground 1 (d), the Judge erred in saying in [24] that the Appellant's evidence "…that he has lost contact with his family in Iraq …was not directly challenged by the Respondent" as this was specifically challenged in [36 and 45] of the refusal letter.

15. Regarding Ground 2 (a to e), the decision reads as if having no Presenting Officer at the hearing means that there is no challenge to the evidence. Inconsistencies were raised in [28 to 37] of the refusal letter. The question numbers from within the interview record were identified. At [28] the issues related to whether the men had been to the coffee shop before, and which political party they were in. At [29] the discrepancy related to how many times he had met the men between the interview and Personal Information Questionnaire. At [30] the discrepancy related to whether he refused when asked to poison the man then or later and what their motives were. At [31] the discrepancy related to whether he approached the police once or more than once. At [32 to 33] the discrepancy related to whether he was threatened before or after the men's release. At [34] the evidence regarding what the Appellant did after the incident was summarised. At [36] the evidence regarding the Appellant leaving Iraq was summarised and the evidence regarding a lack of family contact was challenged. The review and written submissions made no concessions on the issues. It is unclear from the Judge's decision at [20 and 21] which inconsistencies were accepted or rejected. The Judge referred to the Appellant not understanding some questions. The interview record records where clarification was sought. At the end of the interview, the interviewing officer explained the next steps, and said that they would send a transcript to him and hold it for 10 working days for amendments. The interview record identifies that the Appellant had a legal representative. The Judge has not considered all the evidence. The Appellant had the opportunity to submit amendments to the interview record. This is highly relevant when looking at the evidence and when dealing with issues of interpreting.

16. Regarding Ground 2 (f), Section 8 was not considered. It should have been. It was raised in the refusal letter at [38-41].

17. Ground 2 (g) refers back to [6] of the Review. The Respondent was entitled to raise further issues at the review stage. It was not late as it was uploaded on 8 December 2021 which was 13 days before the First-tier Tribunal hearing. Regarding [6] of the Appellant's skeleton argument submitted for this hearing, the additional information in the Respondent's Written Submissions for the hearing in the First-tier Tribunal that was uploaded on 8 December 2021 was not background information but related specifically to this Appellant.

The submissions made on behalf of the Appellant

18. Mrs Brakaj submitted that the issue of credibility was only raised in the refusal letter. The Review was drafted on the basis there would be a Presenting Officer at the hearing who would make submissions. As none

attended, there were no oral submissions. The Judge had little to go on except for what was in the refusal letter.

19. Time was given at end of the interview for amendments to be submitted but this was not raised in the refusal letter. It was not an issue before the Judge as interpreting was not dealt with by the Respondent.

20. The Appellant had submitted a witness statement dated and uploaded on 20 October 2021. The Respondent said he would put the Appellant to proof but did not attend. There can be no criticism of the Judge.

21. The Judge noted the misunderstandings in the interview record. Different dialects were referred to in the Appellant's statement. It was open to the Judge to conclude that on the issues on how often the Appellant was approached and when things happened he had given a broadly consistent account. The Judge assessed the evidence, the refusal, and the responses, and found in the Appellant's favour. The Grounds are simply a disagreement with the Judge's decision. The reader can understand why the Judge reached the conclusions he did. The discrepancies and inconsistences do not undermine the claim.

22. Not each paragraph in the refusal letter notes something incredible. The Judge dealt with [28, 29, and 30] of the refusal letter, and [31, 32 and 33] of the refusal letter just recount evidence. It is hard to see what point the Respondent is making in [34] of the refusal letter. No specific issue is raised in [35] of the refusal letter which simply refers to the plausibility of the threat. The Appellant's skeleton argument at [6] deals with [36] of the refusal letter which is just a plausibility point and is dealt with in the Appellant's statement at [10]. The Judge therefore dealt with credibility.

23. The Respondent was not penalised for not attending. The Respondent did not deal with issues in the bundle and the Judge cannot be faulted for not dealing with issues not before him.

24. Regarding sufficiency of protection, this was dealt with in the decision. The men had been arrested and released. The men were linked to a political party. It was an issue of credibility. The Review was brief and vague on this. The issue was raised late in the day. It is hard to know what issue was raised in [7] of the Review which refers back to [35] of the refusal letter which refers to the plausibility of how the men would find him, but [35] of the refusal letter does not deal with whether they have the ability to locate him. The Appellant was credible regarding what happened, albeit he is not sure what their political links were. The Appellant had given evidence as to why the men were released at [8] in his statement. He had CCTV evidence regarding the threat. The Judge identified where he had found the Appellant to be credible. It is unclear and confusing as to what the Respondent was arguing before the Judge.

25. The Judge dealt with sufficiency of protection and internal relocation. The Appellant's skeleton argument explained that the Appellant does not have a CSID. He would have to return to his home area. Internal

relocation was not argued as a possibility with clarity by the Respondent. The Appellant said he had tried to call his family regarding his CSID but this did not work. The Respondent does not deal with this. The Appellant said he lost contact details. It was open to the Judge to find the Appellant credible.

26. Regarding the reason for the men's release, this was dealt with in the interview at questions 108, 115, 122 and 142.

27. Regarding Section 8, the Judge did not refer to this in his findings but was clearly aware of the Appellant's travel as he detailed it in [3] of the decision, and of the Appellant claiming asylum after his arrest as he referred to this in [5] of the decision. The Judge globally assessed the evidence. This was not a borderline case where Section 8 is determinative. It may have more relevance if it was a borderline case. The Judge noted that the Respondent relied upon Section 8 at [5] of the decision and must have turned his mind to it.

The First-tier Tribunal decision of 10 January 2022

28. In order to assess the grounds of challenge and the submissions made in response it is necessary to set out the relevant parts of the FtTJ's decision.

29. Judge Forster made the following initial observations in addition to the summaries of the parties positions referred to in [5 and 6] above:

> "2. The Respondent states in the Review conducted on 15 November 2021 that the Appellant's credibility needs to be tested at a hearing, but she is not represented today. The Appellant's credibility is the primary issue in the case. The Respondent sent an email late on the afternoon before the hearing to say that there would be no presenting officer but no explanation for this was offered. This is not satisfactory. I proceed on the basis of the Respondent's refusal decision alone.
> 3. As stated in the decision letter: the Appellant left Iraq in about June or July 2019 and travelled (sic) though Turkey and Greece, staying there for six months, and other European countries before arriving in the UK in a lorry. He claimed asylum on 23 January 2020 after he was arrested."

30. Judge Forster set out the legal framework between paragraphs [6-9] of his decision and there is no dispute between the parties that this was incorrectly stated.

31. Judge Forster made the following findings:

> "12. The parties agree that the primary issue is the Appellant's credibility.
> 13. At the screening interview on 24 January 2020 the Appellant stated that he was an assistant in a coffee shop (SCI 1.14) and had been threatened because of his job. He said that in March or April 2019 (later corrected to January or February), early in the morning, "two men came up to me and asked that I put something in a regular customer's coffee. I refused and reported it, they got arrested. I'm now getting threats, and my family, to withdraw my report. They say if I don't withdraw it, they will harm me and my family" (SCI 4.1).
> 14. In the Preliminary Information Questionnaire completed by the Appellant he stated that "I had a coffee shop and one of the Iranian Kurdish party members from KDPI would come into the shop. Two people came into the shop and asked me to poison this man. They approached me on more than one occasion in order to do

this. They would either come to the shop or would make these threats on the way to work as I was going to open the shop in the morning. I refused and as a result they started threatening me. I approached police twice but I had no proof. I made a report, they were arrested but they were released I advised the man who they wanted me to poison about this and then he stopped coming to the shop after that. At the point I told him they had approached me around 5-6 times. First, I reported this matter to the police and when they were released, I felt I needed to advise the person. When the group found out they started calling me on the phone and making threats. This happened in January/Feb last year".

15. The Respondent points to a number of differences between the accounts given by the Appellant.

16. At the asylum interview the Appellant stated that "I had a coffee shop, and those people came to my shop, and they asked me to do them a favour, to kill him" (AIR 8). He said that he had owned the shop for three years and that it is in the city centre, a ten-minute walk from where he lived (AIR 49 - 52).

17. Later in the interview, the Appellant said that he had not seen the two men who approached him before (AIR 88). He said that "before they used to come to me frequently from the beginning and late on, they asked me to do me a favour"(AIR 90). The Appellant was asked how many times he had met the men before they asked him to poison his customer and he said, "they used to come two to three days in advance… they wanted to get closer with me" (AIR 91). He stated that they asked him the first time they met to poison the man (AIR 93).

18. The Respondent was not represented at the hearing and therefore the Appellant's evidence given in his rebuttal statement and orally was not challenged. Ms Brackaj submitted that the Appellant had some difficulty when he was interviewed always understanding the questions he was asked, and that the interpreter sometimes did not translate his replies accurately. By way of example, at question 8 of the asylum interview, the interviewing officer had to clarify their question and again at question 17. Ms Brackaj submitted that I should look at the Appellant's evidence overall when I consider his credibility.

19. In his witness statement, the Appellant sought to clarify his evidence. He said that he was approached two or three times by the men and on the first occasion they told him that they wanted him to poison one of his customers. They did this more than once. The Appellant states that he thought about what he had been asked to do and he went to the police, but they would not investigate.

20. Overall, I find that the Appellant has given a consistent account of events. He worked in a coffee shop and was asked to put poison in a customer's drink. I accept that there were some difficulties at the interview when the Appellant did not understand some of the questions and the interviewer had to clarify things. The interpreter and the Appellant also had problems understanding each other. This appears to explain some inconsistencies about whether the Appellant owned the coffee shop or just worked there and the number of times she was approached by the men and asked to poison the customer.

21. There are some differences in what the Appellant said but I find that these do not undermine his claim when I look at the totality of his evidence. My assessment of the evidence is made to the lower standard of proof, and I find the Appellant's claim to be realistically possible.

Asylum

22. There are two elements to the test in Sivakumarum [1989] 1 ALL ER 193. First, is there credible testimony from the Appellant that he has a subjective fear of persecution? and second, is that fear objectively based? On the evidence before me, I find that the Appellant is a credible witness and I accept his evidence which is consistent with the background information about the political situation in Iraq. I find that the Appellant has demonstrated a reasonable degree of likelihood that he would be persecuted for his imputed political opinion and so he establishes a Convention ground for his asylum claim. I come to the same conclusion in respect of Articles 2 and 3 ECHR.

23. The refusal decision does not raise the issue of the Appellant's ability to relocate if he is found to be credible. I therefore proceed on the basis that having found the Appellant to be credible, he would not be able to safely relocate. On his evidence,

> the Appellant sought the protection of the authorities but received no assistance. The background information confirms that corruption is endemic in Iraqi institutions including the police and law enforcement agencies. Those with political influence have the ability to corrupt the system. On this basis, irrespective of the Appellant's ability to obtain the necessary documentation, he would be denied state protection.
> 24. The Appellant's evidence is that he left all his documentation, including his CSID, in Iraq. I find this to be credible because it is usual for agents to tell their "clients" to leave all paperwork behind. The Appellant's evidence is that he has lost contact with his family in Iraq and this assertion was not directly challenged by the Respondent. Without the assistance of family in Iraq, the Appellant would not have access to his original documentation. Unable to return safely, he would not be able to obtain an INID card. This would be of particular relevance if, as is usual, the Respondent intends to return the Appellant via Baghdad."

Discussion

32. In assessing the grounds, we acknowledge the need for appropriate restraint by interfering with the decision of the First-tier Tribunal Judge bearing in mind its task as a primary fact finder on the evidence before it and the allocation of weight to relevant factors and the overall evaluation of the appeal. Decisions are to be read sensibly and holistically; perfection might be an aspiration but not a necessity and there is no requirement of reasons for reasons. We are concerned with whether the Respondent can identify errors of law which could have had a material effect on the outcome and have been properly raised in these proceedings.

33. There are a number of grounds advanced on behalf of the Respondent and we do not take them in strict order.

34. Dealing with Ground 1 (a), there is no dispute that there was no Presenting Officer at the hearing. In relation to that ground, the relevant rules are contained within The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the procedure rules") as follows;

> "2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly…
> 4.—(1) Subject to the provisions of the [Tribunals, Courts and Enforcement Act 2007] and any other enactment, the Tribunal may regulate its own procedure…
> 12.—(1) Any document to be provided to the Tribunal or any person under these Rules, a practice direction or a direction must be— … (da) uploaded to the Tribunal's secure portal in a compatible file format;…
> 28. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal— (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) considers that it is in the interests of justice to proceed with the hearing."

35. MNM (Surendran guidelines for Adjudicators) (Kenya) [2000] UKIAT 00005 has an Annex entitled the "The Surendran Guidelines" which provides guidance on how a Judge should conduct proceedings where the Respondent is not represented the most relevant parts of which are;

> "2. ... The function of the adjudicator is to review the reasons given by the Home Office for refusing asylum within the context of the evidence before him and the submissions made on behalf of the appellant, and then come to his own conclusions

> as to whether or not the appeal should be allowed or dismissed. In doing so he must, of course, observe the correct burden and standard of proof.
> 3. Where an adjudicator is aware that the Home Office is not to be represented, he should take particular care to read all the papers in the bundle before him prior to the hearing ...
> 6... Where the Home Office does not appear the Home Office's argument and basis of refusal, as contained in the letter of refusal, is the Home Office's case purely and simply, subject to any other representations which the Home Office may make to the special adjudicator."

36. The Respondent was not present at the hearing. However the Respondent had submitted a Review and Written Submissions on 8 December 2021 which was 13 days before the hearing through the Tribunal's secure portal in line with the procedure rules. These contained arguments and evidence the Respondent wished the Judge to consider in line with [6] of the Surendran guidelines.

37. The Review at [6] deals with credibility and sufficiency of protection, at [7] with internal relocation, at [8] with humanitarian protection, at [9] with internal relocation, at [10] with risk on return, and at [11] with documentation within the framework of SMO.

> 6. A claims that he has been threatened by the people he fears since their release. It is considered that the people that A feared were aware of A after their release and they did not kill him. At its highest, A's perpetrators are sole non-state agents who by A's own account was able to report them to the police and they have been punished for their crime. It is submitted that should he encounter these men on return he would be able to seek the assistance of the police as he has done in the past before taking the difficult step to travel to the UK.
> 7. In conclusion, A has failed to demonstrate that they have either the interest, power or influence to locate him throughout his residential area or that they have influence throughout Iraq over the security forces (RB RFRL 9 para 35). Also, he has not demonstrated that his perpetrators would be able to trace him if he were to relocate to another area in Iraq as alleged. It is submitted that A continues to exaggerate a claim for asylum and humanitarian protection under the UNHCR Convention to frustrate his removal.
> 8. The R maintains the findings (RB 10-11). In line with the country guidance case of **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)** it is argued that any civilian returning to Iraq would, in general, not face a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c), with the exception of the small mountainous area north of Baiji in Salah al-Din which remains under Daesh control. It is therefore maintained that the A could therefore return to his home area near Ranya, Salamaniyah Iraq.
> 9. **SMO, KSP & IM** (Headnote section E 20) acknowledges that there are regular direct flights from the UK to the IKR, Iraq, where he can travel onto his home town if he wishes or he could internally relocate (RB SCR pg 23; RFRL 9 para 34). It is maintained in line with SMO, KSP & IM (paragraph 416) that as a male Sorani-Kurd of working age and good health internal relocation is viable option.
> 10. The Respondent submits that the A is someone who falls within the scope of SMO, KSP & IM. The above has therefore been considered in conjunction with A's personal circumstances it is not accepted that he has a risk on return on the basis his imputed political opinion. In the alternative, it has not been suggested that since he left his home area that he has been contacted by the people he fears. Therefore, any such future fears are deemed speculative.
> Whether return is feasible in light of the lack of documentation?
> 11. The grounds for refusal are maintained. The R maintains that A will be able to gain access to relevant documentation within a reasonable time frame. At the

outset, it is submitted that the onus is on the Appellant to show why he is unable to gain access to relevant documentation. In addition, it is pertinent to note that **SMO, KSP & IM (Headnote Section B para 9)** clearly finds that a lack of documentation should not form the basis of a grant of asylum and/or humanitarian protection. Should the Tribunal find A not credible, it would be for his family to send his original ID documents which must still exist back to him. It is submitted that the appellant has family members or contacts in Iraq to assist with the documentation process as stated above (RB RFRL 9 paras 36- 37)."

38. The Respondent's written submissions relate to the documentation to facilitate return, provided an update on Country Guidance that had changed, and gave more detail than the Refusal Letter had given. It related specifically to this Appellant. The Written submissions were that;

(1) Iraqi nationals can obtain a replacement CSID by proxy whilst in the UK from the Ministry of Interior in Iraq as referred to in SMO at [390],

(2) even if the Appellant is unaware of the page and book number for his family registration he can still obtain a CSID following the guidance given in AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC) and endorsed in SMO,

(3) If the Appellant were to establish that he has no existing CSID available to him and claims that the office responsible for issuing her CSID no longer issues them for whatever reason then the Respondent would expect to see some specific evidence in support of that as set out in [395] of SMO,

(4) The Appellant is from the IKR and should he choose to return voluntarily a laisser passer may be issued after an interview with the Iraqi Embassy in London,

(5) in the absence of any risk, the Appellant can reasonably be expected to return voluntarily to the IKR and avoid any complications that might arise if his return were to be enforced to Baghdad,

(6) the Appellant has not made any formal or bona fide applications to the Iraqi or United Kingdom authorities for assistance in returning voluntarily to Iraq, see MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289,

(7) returning voluntarily may also entitle the Appellant to financial assistance if he were accepted for The Voluntary Returns Scheme, as mentioned in SMO, at [27 (iv)] of the headnote and AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC) at [9(iv)] of the headnote, and

(8) the Appellant can reasonably return voluntarily to the IKR even if he is not in possession of a CSID (or INID) and after arrival he can obtain one with his family's assistance if need be.

39. The fact that the Review was drafted on the basis there would be a Presenting Officer at the hearing who would make submissions does not obviate the need for the Judge to have considered all the evidence and written submissions placed before him on those material issues. Those issues not only identified issues of credibility (to which we shall return)

but also the issues allied to this such as sufficiency of protection and internal relocation with the associated issue of return in the context of the documentation necessary and contact with family members.

40. Where the FtTJ stated at paragraph [2] that he proceeded on the basis of the decision alone, this had the effect of excluding relevant material and legal arguments advanced on behalf of the Respondent and contrary to paragraph 6 of the Surendran Guidelines and is a material error of law.

41. This is linked to Ground 1 b). The right of appeal is set out in Section 82 Nationality, Immigration and Asylum Act 2002;

> Section 82 (1)A person ("P") may appeal to the Tribunal where—
> (a) the Secretary of State has decided to refuse a protection claim made by P,
> (b) the Secretary of State has decided to refuse a human rights claim made by P, or
> (c) the Secretary of State has decided to revoke P's protection status.
> (2) For the purposes of this Part—
> (a) a "protection claim" is a claim made by a person ("P") that removal of P from the United Kingdom—
> (i) would breach the United Kingdom's obligations under the Refugee Convention, or
> (ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
> (b) P's protection claim is refused if the Secretary of State makes one or more of the following decisions—
> (i) that removal of P from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention;
> (ii) that removal of P from the United Kingdom would not breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;…

42. It was not argued by Mrs Brakaj that the appeal was limited to a review of the Respondent's decision. The decision identifies the legal framework including the burden and standard of proof at [6 to 9] of the decision. We are satisfied that the Judge was aware he was considering an appeal rather than a review of the Respondent's decision. The issue for us to consider is the materiality of the limitation of the evidence and submissions within that appeal.

43. We turn to the grounds which challenge the assessment of credibility which are set out in relation to Ground 2 a) to d). The grounds identify the specific issues set out in the refusal letter at paragraphs [28 to 36]. To assess the grounds we identify here the Respondent's credibility issues as set out in the refusal letter and the evidence that was before the Judge for determination in relation to those issues.

44. At [28] of the refusal letter the issues related to whether the men had been to the coffee shop before, and which political party they were in. The Appellant deals with these issues in his interview at questions 8, 88, 90, 116, 106, 102, and 103.

45. Within his PIQ he said *I had a coffee shop and one of the Iranian Kurdish party members from KDPI would come into the shop. Two people came into the shop and asked me to poison this man."* At his interview when asked *"In what way are they powerful?"* he replied at questions 116, 106, 102, 103 and 122.

46. The Judge identifies differences at paragraphs [16 and 17] of his decision, and clarification through the Appellant's oral evidence in [19]. He noted at [18] that the possible reason given for the inconsistent evidence was due to interpretation and/or understanding the questions asked. The FtTJ's assessment of the inconsistencies identified in the decision letter are set out between [20 – 21]. However as identified in the Respondent's grounds and submissions, in stating at [20] that "This appears to explain some inconsistencies about whether the Appellant owned the coffee shop or just worked there and the number of times (sic) she was approached by the men and asked to poison the customer" the Judge does not engage with the discrepancy over which political party they were in or the plausibility of being asked to poison someone without trying to build a rapport with him first.

47. The FtTJ went on to find at paragraph [21] that there were "some differences in what the appellant said" but that they did not undermine his claim when looking at the totality of the evidence.

48. We have considered those findings in light of the issues raised in the grounds. At [29] of the refusal letter the discrepancy related to how many times he had met the men between the interview record and Personal Information Questionnaire.

49. In relation to these matters he stated in his PIQ he said;

> *"They approached me on more than one occasion in order to do this. They would either come to the shop or would make these threats on the way to work as I was going to open the shop in the morning."*

and deals with these issues in his interview at questions 88, 90, and 145.

50. The PIQ was completed on 1 July 2020 with the help of his Solicitor and was signed and submitted by her on his behalf. It is not a document that requires or request short answers. Indeed at the end of the section on the form headed "Your reasons for claiming asylum in the UK" it states "Please use additional sheets if required". It is not the screening interview which took place on 24 January 2020. The Judge did not engage with this discrepancy other than through the general observation of interpreting and understanding issues referred to in [18 to 20] of the decision.

51. At [30] of the refusal letter the discrepancy related to whether he refused when asked to poison the man then or later, and what their motives were. The Appellant deals with these issues in his interview at questions 89 to 92, 95, and 107.

52. In his PIQ he said;

> *"I refused and as a result they started threatening me. I approached the police twice but I had no proof."*

53. The Judge does not engage with this discrepancy or explain why it is implausible in him waiting until the next day to report the incident to the police other than through the general observation of interpreting and understanding issues referred to in [18 to 20] of the decision.

54. At [31] of the decision letter the discrepancy related to whether he approached the police once or more than once. The Appellant deals with these issues in his interview at questions 96, 98, and 144, and in his PIQ as referred to above in [52].

55. The Judge did not engage in his decision with this discrepancy other than through the general observation of interpreting and understanding issues referred to in [18 to 20] of the decision. It was incumbent in the Judge to deal with discrepancies in the evidence relied on by the Respondent and to give reasons for his findings to enable both parties to understand how he reached the decision.

56. At [32 to 33] the discrepancy related to whether he was threatened before or after the men's release. The Appellant deals with these issues in his interview at questions 109 to 111, 113, and 115 to 117, 119 and 121.

57. The Judge did not engage with this discrepancy other than through the general observation of interpreting and understanding issues referred to in [18 to 20] of the decision.

58. In relation to the issues of what the Appellant did after the incident and the plausibility of not reporting the matters to the police, the Judge said at [23];

> "…On his evidence, the Appellant sought the protection of the authorities but received no assistance. The background information confirms that corruption is endemic in Iraqi institutions including the police and law enforcement agencies. Those with political influence have the ability to corrupt the system. On this basis, irrespective of the Appellant's ability to obtain the necessary documentation, he would be denied state protection"

59. At [34] of the refusal letter the Respondent summarised the evidence regarding what the Appellant did after the incident and at [35] challenged the plausibility of him not reporting the threats to the police. The Appellant deals with these issues in his interview at questions 124 to 126, 26, 21, 138, 131, and 135 and in his PIQ where he said "*I approached the police twice but I had no proof. I made a report, they were arrested but they were released."* The Judge did not address these issues or make any finding as to whether state protection would be available in these circumstances.

60. In summary in relation to Grounds 2a) to 2d), the review and written submissions made no concessions on the issues identified above. It is unclear from the Judge's decision at [20 and 21] which inconsistencies were accepted or rejected. The Judge referred to the submissions made on behalf of the Appellant on the basis of the Appellant not understanding some questions. However he made those findings without considering the evidence on the issue. The interview record records where clarification was sought. At the end of the interview, the interviewing officer explained the next steps, and said that they would send a transcript to him and hold it for 10 working days for amendments. The interview record identifies that the Appellant had a legal representative. The Judge has not considered all the evidence. The

Appellant had the opportunity to submit amendments to the interview record. This is highly relevant when looking at the evidence and when dealing with issues of interpreting. This lack of engagement with the evidence and the Respondent's submissions amounts to a material error of law.

61. In relation to Ground 2 e) we have already set out the issues raised in paragraphs [30] and [35] of the refusal letter at [51-53, and 59-60] above which we will not simply repeat.

62. In relation to Ground 2 f), Section 8 (1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 states that;

> "In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies."

63. The refusal letter between [38 and 41] set out why the Respondent asserted his behaviour engages Section 8.

64. We note JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878 at [21] that;

> "Section 8 …is no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility. If there was a tendency for tribunals simply to ignore these matters when assessing credibility, they were in error. It is necessary to take account of them. However, at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts. I do not consider the section prevents that finding in an appropriate case... Where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact-finder."

65. We further note AC (Morocco) [2023] CSOH 5 which stated that Section 8 is not a prescriptive direction, and a global assessment of credibility which should not unduly concentrate on minutiae to the detriment of considering the wider picture continues to be required.

66. The Judge identified in [5] of the decision (see above [6]) that the Respondent relied upon section 8, and in [3] of the decision (see above [29]) he set out the Appellant's immigration history. However, nowhere in the findings does he make reference to that or to identify what impact or relevance it has if any on the credibility issues he was required to determine. We accept the Respondent's submission that this is an error of law, and its materiality is also demonstrated as it formed part of the overall credibility assessment although we accept it would not have been determinative on its own.

67. We return to the grounds of challenge. In relation to Ground 1 c), this is a challenge to the FtTJ's decision and in particular paragraph [23] when read with paragraph [2], where the Judge stated he would proceed on the basis of the refusal decision alone. We have already concluded

that the FtTJ erred in law by seeking to exclude from consideration issues of sufficiency of protection and internal relocation. Given our assessment of the errors made in relation to the assessment of credibility, the errors relating to the failure to address the issues of sufficiency of protection and internal relocation are material.

68. The relevant paragraphs in the refusal letter are [35 and 43] which we set out below;

> "35. Given the severity of the threats you claim you received, it lacks plausibility you did not report this to the police as you did not know for certain the two men were politically affiliated…
> 42. As stated in paragraph 28 to 37 above, your claim has not been accepted. This means that it is not accepted that you will face a risk of persecution or real risk of serious harm on return to Iraq because it has not been established you have a genuine subjective fear of the two men who asked you to poison the drink of a customer."

69. The Respondent's case on this issue was set in the Review (as uploaded on 8 December 2021);

> "6. A claims that he has been threatened by the people he fears since their release. It is considered that the people that A feared were aware of A after their release and they did not kill him. At its highest, A's perpetrators are sole non-state agents who by A's own account was able to report them to the police and they have been punished for their crime. It is submitted that should he encounter these men on return he would be able to seek the assistance of the police as he has done in the past before taking the difficult step to travel to the UK.
> 7. In conclusion, A has failed to demonstrate that they have either the interest, power or influence to locate him throughout his residential area or that they have influence throughout Iraq over the security forces (RB RFRL 9 para 35). Also, he has not demonstrated that his perpetrators would be able to trace him if he were to relocate to another area in Iraq as alleged. It is submitted that A continues to exaggerate a claim for asylum and humanitarian protection under the UNHCR Convention to frustrate his removal."

70. It is accepted in the Appellant's skeleton argument that the Judge "did not consider internal relocation although this was raised in the respondent review". The reasons for refusal did not raise the issue of internal relocation as the primary claim to be at risk from anyone had been rejected. It did consider the Appellant's ability to return to Iraq and to travel home. The Respondent raised the internal relocation and sufficiency of protection issues in the Review in [6 and 7] which was uploaded 13 days before the hearing. No application to adjourn the hearing was made to enable further time for this issue to be considered, if it was considered that more time was required. Despite the issues being raised and there being no Presenting Officer, they were issues before the Judge and it was incumbent upon him to engage with them.

71. Having assessed the grounds of challenge in the light of the Judge's decision we are satisfied that the Judge made no finding as to the men the Appellant claimed to fear being part of a wider group. The Judge found at [23] that "Those with political influence have the ability to corrupt the system" and then 'he will be denied state protection'. The Appellant's claim was that it was those he claimed to fear who had been subject to arrest and

detention by the authorities. However despite the finding that the Appellant was credible, the FtTJ does not make any finding as to what influence or political linkage if any the men had, or consider why if they had influence the police would investigate the matter and arrest them as alleged. In this context the Judge failed to provide any explanation of who might have political influence and what that influence might be, particularly as it was raised by the Respondent. This amounts to a material error of law.

72. When looking at the decision, we are satisfied that the Judge failed to make any or any adequate findings on the influence or political linkage, if any, the men had, or consider why if they had influence the police would investigate the matter and arrest them as alleged as explained above (see Respondent's grounds paragraphs [2(a) and (g)]).

73. Those were the factual issues identified by the Respondent relating to the core of the account and relating to the issue of sufficiency of protection (as set out in the review at paragraph [6 – 7]) which were not adequately addressed by the FtTJ in his decison.

74. We now turn to Ground 1 d) which relates to paragraph [24] of the FtTJ's decision which relates to contact with his family. This was addressed in the refusal letter at [36] and [45] as follows;

> "36. … As you had contact with your family in Turkey, it lacks plausibility that you would no longer have any contact details for them since being in the UK",

and at paragraph [45] "it is considered that you are able to contact them"

75. The Appellant deals with these issues in his interview at questions 19 and 20.

76. The Judge's finding at [24] of the decision that "The Appellant's evidence is that he has lost contact with his family in Iraq and this assertion was not directly challenged by the Respondent" is factually in error as it does not engage with [36] of the refusal letter which was a direct challenge to the assertion that he had lost contact with his family.

77. We have considered the submissions made by Mrs Brakaj concerning the assessment of credibility but for the reasons set out we find that the Judge failed to make adequate findings on the matters raised earlier including the influence or political linkage if any the men had, or consider why if they had influence the police would investigate the matter and arrest them as alleged. Whilst the Appellant's skeleton argument asserted that the Appellant does not have a CSID, the Judge did not adequately engage with the disputed evidence regarding the Appellant's ability to liaise with his family and hence be able to be redocumented as explained above in [76]. The Judge did not deal adequately with sufficiency of protection or internal relocation which amounts to an error of law material to the outcome and assessment of the overall claim.

78. Having reached those conclusions we are satisfied that the Respondent's grounds are made out and that the FtTJ 's decision involve

the making of an error on a point of law. As to the remaking of the decision it was submitted by Ms Young that if we determine that there was a material error of law that turned on credibility, the appeal should be remitted to the First-tier Tribunal for a de novo hearing. Mrs Brakaj agreed. We are satisfied that as the credibility assessment was fundamentally flawed by a failure to engage with the issues identified by the Respondent relating to credibility and plausibility and a failure to make findings on issues in contention, and therefore the credibility assessment cannot stand. We set aside the decision and remit the appeal to the First-tier Tribunal for a de novo hearing not before Judge Forster.

Notice of Decision

79. The decision of the FtTJ involved the making of material errors of law. We set aside that decision. The appeal is remitted to the First-tier Tribunal for a de novo hearing of all issues with no findings preserved.

Laurence Saffer
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 February 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.