Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/02235/2012

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 2nd and 23rd September, 2013	**On 24th October 2013**

Before

Upper Tribunal Judge Chalkley

Between

A S M

(ANNONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Boyle Assistant Solicitor with Halliday Reed Solicitors (on 2.9. 2013 and 23.9.2013)
For the Respondent: Mr P Mangion, Home Office Presenting Officer (on 2.9.2013)
Mr C Dewison, Home Office Presenting Officer (23.9.2013)

DETERMINATION AND REASONS

1. The appellant is a citizen of Iraq born on 1st January, 1982. He appealed to the First-tier Tribunal against the decision of the respondent, taken on 6th January, 2012, to make him the subject of a deportation order.

Immigration History

2. The appellant arrived in the United Kingdom on 9th April, 2003 and applied for asylum on arrival. His application was considered and refused on 29th July, 2004. The appellant did not appeal that decision.

3. Unfortunately, the Secretary of State did nothing to remove the appellant.

4. The appellant's personal history and the circumstances leading up to the making of an appeal are complicated and set out at some length in the determination of a panel (First-tier Tribunal Judge Sacks, sitting with Dr T Okitikpi) of the First Tier Tribunal. For completeness, a copy of their determination ("the First-tier panel's determination") is set out in Appendix A.

5. On behalf of the appellant it was accepted that the panel of the First-tier Tribunal accurately set out in clause 1 of its determination, the appellant's convictions and the sentences imposed on him.

6. The appellant challenged the panel's decision and Upper Tribunal Judge Perkins granted permission to appeal to the Upper Tribunal on 22nd May, 2012. In granting permission, Upper Tribunal Judge Perkins also gave directions to the respondent.

7. Unfortunately, the Secretary of State failed to comply with those directions. As a result, Upper Tribunal Judge Perkins set aside the decision of the panel of the First-tier Tribunal, having found that it contained an error of law. Upper Tribunal Judge Perkins' reasons, in which he quotes from his permission to appeal dated 22nd May, 2012, is set out at Appendix B of this determination.

8. It was also accepted on behalf of the Appellant by Mr Boyle and on behalf of the respondent by Mr Dewison that the findings of the panel of the First-tier Tribunal set out at paragraph 47 were unaffected by the error found by Upper Tribunal Judge Perkins and should stand. They agreed that the only issue before me was the appellant's Article 8 claim.

The Hearing on 2nd September 2012

9. At the hearing on 2nd September, 2012, I started hearing oral evidence form the appellant. During the course of his oral evidence he accepted that his immigration history and his record of convictions and sentences set out by the panel of the First-tier Tribunal at pages 2 and 3 of his determination were correct.

10. It transpired that the appellant was due to appear at a Magistrates' Court on 20th September, 2013. As a result I adjourned the hearing until 23rd September. At the hearing before me on 23rd September, 2013, it was again confirmed that I was only concerned with the appellant's Article 8 family and private life rights and that the findings of fact arrived at by the panel of the First-tier Tribunal were to stand and were affected by the errors of law identified by Upper Tier Judge Perkins. None of the findings of fact had been challenged by or on behalf of the appellant.

Oral Evidence of the Appellant

11. The appellant was called and confirmed his full names, date of birth and address. He and the interpreter confirmed that they understood each other.

Evidence-in-Chief

12. The appellant was shown a statement dated 12th March, 2012. He identified his signature at the end of it. He was then shown a statement dated 5th June, 2012 and again identified his signature at the end of it.

13. The appellant confirmed that both these statements were true and accurate in all respects, that they had both been read to him in his own language and that he did not wish to alter or correct anything in them. He repeated that the statements were correct.

14. I warned the appellant that he was about to be invited by his solicitor to adopt, as part of his evidence before me, the contents of the two witness statements. I explained that he was free to adopt, as part of his evidence, anything he wished to but that before he did adopt the statements he should satisfy himself that they were true and accurate in all respects and did not require any alteration or correction. I explained to him that the reason for this was that if, when later being cross-examined on his evidence, the appellant were to contradict anything contained within the statements, then that might cause me to believe that he was not telling the truth. If I believed that he was not telling the truth then there was a danger that he may damage his appeal.

15. The appellant confirmed that he understood the warning and told me that he wished to adopt the statements.

Cross-examination

16. The appellant confirmed that he lived at his current address with his girlfriend's, R W, father, Mr W and brother. She lives at XXX Street, North Shields with her two children, R and K. K was born on 23rd June, 2013. R moved to the address at XXX Street, North Shields in 2013 and before that she lived at YYY Gardens for almost six months. Prior to that she had lived in Teignmouth at TTT Avenue with her mother. She left her mother because her child had grown up and she wanted to live independently.

17. The appellant told me that he had lived at his current address for between five and seven years. He had been in a relationship with R since 28 April 2007. When she had been living with her mother in TTT Avenue the appellant also lived there. He lived there for some six or seven months.

18. R moved to XXX Street, North Shields in 2013. The appellant did not move there because he is currently on bail and his bail address is the address where he currently

lives. His girlfriend's father has a three bedroom house and because her brother also lives with her father there is no room for R and the two children.

19. The appellant said that his relationship had never broken down since 2007.

20. When he lived with R and her mother, the police had never been called to her house.

21. Neither R nor her mother had ever made any allegations to the police about the appellant.

22. The appellant confirmed that he had been to a police station and that false allegations had been made against him. This was in Newcastle on 20th September. He stayed in the police station for one night but then in court he was found not guilty.

23. The appellant was again asked whether he had ever been to a police station to complain that false allegations had been made against him. He told me that he had not.

24. The appellant explained that he had been arrested on suspicion of an offence but was subsequently found not guilty. The offence involved chasing someone in a park but at the time the offence was supposed to have happened he was in his house. He was found not guilty.

25. The appellant told me that he was not aware of anyone making statements against him.

26. The appellant agreed with Mr Dewison that he was a good role model for his son R.

27. It was then pointed out to the appellant that according to the panel of the First-tier Tribunal (paragraph 47(c) of the determination), the appellant had deceived both his girlfriend, R and her father, Mr W.

28. The appellant told me he did not. He said, "I don't know what you're talking about. It's kind of complicated."

29. The appellant was asked if he recalled an incident when he was driving a Mercedes van and was stopped by the police and he gave them a false name. He said that he remembered being stopped by the police but told me that he gave them his home office ID card. He denied having provided false identification to a police officer.

30. The appellant was then asked about the Home Office "legacy process". He replied that he had been told by people including his immigration solicitor that his case was being considered under the legacy process.

31. Mr Dewison pointed out to the appellant that since he had criminal convictions he did not qualify for consideration under the legacy process. The appellant said that he had not been told he could not qualify. He had been in the United Kingdom for nearly ten years.

32. The appellant said that although he had been driving whilst uninsured and disqualified he had never given anyone any wrong information.

33. The appellant was then asked if he had ever been to a police station and complained about having been dragged out of a car at gunpoint by police officers. The appellant replied that he had never been to a police station.

34. The question was put to him again and he replied that at 8 o'clock one evening he left his house to buy some food to eat on Westgate Road. He was in a friend's car at the time. The car parked and then two police range rover vehicles turned up and police officers, who were armed, made him get out of a vehicle. The police told the appellant that someone had reported that he or the driver of the vehicle was in possession of a firearm. The police searched the appellant and the vehicle and then apologised.

35. This took place earlier in 2013. The appellant was not taken to the police station.

36. The appellant explained that he had complained to the police. He and his father-in-law went to the police station and they saw a high-ranking officer. This officer told them to go home and explained that their complaint would be investigated but he has not heard anything further.

37. The appellant complained that the police should have told him what had happened but had not done so.

38. The appellant was then asked by Mr Dewison whether he had gone to the police station and complained about false allegations having been made about him. At this stage the appellant told me that he did not understand the interpreter. He said that he and the interpreter did not understand each other. He told me that it was his right to have the hearing adjourned.

39. I explained to the appellant that I was satisfied that he and the interpreter did clearly understand each other and that I would ask that the question be put to him again. It was suggested that he should listen carefully to the question before he answered it. Mr Dewison again asked the appellant if he had ever been to a police station and made a complaint that someone had made false allegations against him. The appellant told me that he wished to use the lavatory. I told him that he could not do so at that point. He said that he had explained previously that he and Mr W had gone to the police station and met a high-ranking police officer who they had talked to about armed police stopping him. He said that he had still not heard anything back from the police. The appellant said he did not have a problem with anybody.

40. The appellant said that he was given £15 a week by a church in Newcastle and got by wearing second hand clothes. He said that Mr W also helps him with money.

41. I adjourned the hearing for a five minute break.

42. On resuming the hearing the appellant confirmed that Mr W had offered to help the appellant start up his own business once he is able to work. He said that Mr W knows that the appellant is a good mechanic because he has fixed Mr W's car once or twice. Mr W is a taxi driver.

43. The appellant was asked how he spent his time and what proportion of his time he spent with his children. He explained that R went to nursery three times a week. It was his responsibility to prepare R in the morning with his mother and to take him to the nursery and sometimes in the afternoon he collected R. The appellant told me that he also took R to the park, to the Metro Centre and to a Kurdish restaurant.

44. During his time with R he has never been aware of entering into a different relationship with another man. The appellant does not own a car of his own. He did have a car some two or three years ago when one of his friends bought a car for him.

45. There was no re-examination.

46. In order to clarify the appellant's evidence I asked the appellant two questions in response to which the appellant said that when he moved to the United Kingdom he was not aware of the law. He did not drive a car at that time and now he no longer has use for a car. He lived permanently with his girlfriend at her mother's home when she lived there but his clothes were still at TTT Avenue.

Oral Evidence of R

47. I then heard oral evidence from R. She confirmed her address, date of birth and nationality. She was shown her statement dated 12th March, 2012. She confirmed that she had read it before she signed it and that it was true and accurate. I repeated the warning to her that I had earlier given to the appellant. She told me that she understood the warning and wished to adopt her statement.

Cross-examination

48. The witness explained that she lives with her children, R and K, in a house which is rented privately. She cannot live with the appellant at her father's home because it only has three bedrooms and her brother and father lives there with the appellant. K was born on 23rd June, 2013 and the appellant is his father.

49. The witness produced the birth certificate for K, a copy of which appears at Appendix of this determination.

50. The witness explained that she had registered the birth last week because she had to take the appellant with her. She had first gone to register the birth some five or six weeks earlier but in registering it she had left out the appellant's name. She had left out the appellant's name because the appellant was not with her at the time. She

denied that she had not been prepared to explain who the father was when she first went to register the birth.

51. Mr Dewison asked the appellant if the police had ever come to the home. The witness explained that last year her mother had rung the police because the appellant wanted to take R out and at the same time she and her mother wanted to take R out. An argument ensued and her mother rang the police. The police told them to sort the matter out themselves. The witness said that it only happened once.

52. The appellant had lived at her mother's house for two years at TTT Avenue.

53. Somebody accused the appellant of chasing and attacking him. The witness explained that she had known this person from school. He is a racist. She has never had a relationship with this person and he is not the father of K.

54. The witness's mother comes to the home and helps out the witness with the children and also takes R out. Her father also helps her out but not as much as her mother.

55. The witness told me that she gives the appellant money as does her father and he also receives money from the Refugee Service. The witness explained that the appellant had told her that the police had accused him of driving whilst disqualified.

56. The witness explained that she was not prepared to go and live in Iraq.

57. She was asked by Mr Dewison whether she and the appellant had any plans to marry. She explained that there was no reason for them to marry. They had no plans about getting married. She said that she may get married at some time in the future but there was no reason to now and she and the appellant had no plans. She told me that she did wish to stay with the appellant and live with him permanently.

Re-examination

59. The witness explained that she was not aware of any offences having been committed by the appellant since his last conviction. She agreed with her solicitor that she had various tattoos on her arms, one of which was the appellant's name and the other was in Arabic.

59. The appellant told me that she and the appellant could live together at her father's house before her brother moved back with her father about a month ago but she prefers to have her own place. She pays half the rent and receives housing benefit.

60. In answer to a question put to her by her solicitor, the appellant confirmed that her father lives some two or three streets away from her.

Oral evidence of Mr W

Evidence in chief

61. I then heard oral evidence from Mr W who confirmed his full names, date of birth and nationality. He was also shown a statement dated 12th March, 2012 and he identified his signature on it. He confirmed that it was true and accurate in all respects and that he wished to adopt it.

Cross examination

62. In answer to questions put to him by Mr Dewison, Mr W confirmed that he withdrew a recognisance he had given for the appellant's bail because his wife wanted items for her home. He spent several thousand pounds on various items for her. That was the only reason he withdrew recognisance.

63. In 2008 the appellant came to live with him at his home. He lived there with his son. The appellant has never been violent. R lived with her mother in a one-bedroom flat at TTT Avenue.

64. The appellant has been living with Mr W for some five years and Mr W gives him money occasionally.

65. When asked how he felt about her daughter striking up a relationship with the appellant, he explained that he did not like the idea of the appellant being with his daughter but no one would have been good enough for his daughter.

66. The witness was asked whether he remembered an occasion when the appellant was stopped from driving a van. Mr W said there was an incident when some Turkish people pulled out a knife on the appellant at a Turkish restaurant. Mr W received a telephone call and he went to the restaurant followed by the police. He had to stop these Turkish people from stabbing the appellant. The police were called but they did nothing about it. This was a few months ago.

67. The witness was again asked whether he recalled an incident when the appellant was stopped from driving a van. Mr W said that he could not remember this incident.

68. Mr W agreed that he had gone to a police station with the appellant and met with an inspector. The witness complained about people making allegations. The inspector told them that he would personally note any calls made to the police about the appellant. Things had been said about the appellant which were not true.

69. There was an occasion when the police came to Mr W's home and kicked in the front door. They told Mr W to mind his own business and they had got the appellant and handcuffed him and took him away. He was released the following day. He was supposed to have attacked someone but it was all lies.

70. Mr W said that he went on another occasion to complain to the police about having stopped him when they received a complaint about him having a firearm.

71. Mr W told me that his former wife, together with R and "another lad" made false statements about the appellant, according to information he had been given by the police.

72. Mr W explained that his former wife had made up several complaints about the appellant to the police. One related to a kidnapping. The appellant had been told by the police that his daughter, R, also made up a statement complaining about the appellant.

73. Mr W explained that he would support his daughter if the appellant were deported but of course he would rather him being allowed to stay and work. Mr W said that he would help the appellant if he wanted to open a garage.

74. In answer to questions put by me, in order to clarify the witness's evidence, the witness told me that the appellant did not drive. He does not live with R because she wants her own property and the appellant is bailed to live with him.

Submissions

75. Mr Dewison relied on the refusal notice. He explained that the appellant had no leave to remain in the United Kingdom. He has repeatedly attempted to deceive people. Mr W clearly believes that the appellant is a reformed character but it is necessary to consider the evidence. The appellant and R still did not live together and Mr W no longer acts as the appellant's surety. K's birth was registered by R but with the name of his father left blank. It has now been registered but, submitted Mr Dewison the reason it has been registered with the appellant as the father is in order to assist the appeal.

76. Even Mr W has confirmed that his daughter made statements against the appellant to the police about an incident in the park.

77. The respondent of course accepts that the best interests of the children must be given careful consideration and ordinarily they should of course remain with their parents. At the moment they live with their mother. That is her choice. Mr Dewison suggested that the appeal really comes down to one question, is it proportionate to allow a recidivist to remain in the United Kingdom where he has a propensity for driving whilst uninsured. The appellant clearly has a capacity for not telling the truth.

78. This is an appeal against an order made under Section 3(1) of the 1971 Act. Mr Dewison submitted that the appellant's removal would be entirely proportionate given the duty of the Secretary of State to protect the public.

79. The appellant's solicitor told me that the appellant has a "worryingly high number of convictions". However the evidence clearly demonstrated that there was family life

between the appellant and R and between him and his children. He referred me to the decision of the European Court in *Onur v United Kingdom* 27319/07 and in particular at paragraph 57. Mr Boyle pointed out that the appellant's offending did not involve violence or drugs and was not concerned with sexual offences. The appellant has now been out of trouble for some time. He now has two children and in the ordinary course of events it is right that they should be brought up by two parents. The parents do not live together at the moment but the reasons for that have been explained. The appellant lives with R's father in his house and she lives on her own in accommodation for which she receives housing benefit. She is a young woman who wants to have a home of her own in which she can bring up her children. She does not want to go and share a home with her father. The parties live close to each other; Mr W's home is only two or three streets away from R's home. The appellant spends time with her and the children and gave evidence that he assists with R.

80. Mr Boyle suggested that the appellant does now have a belated understanding of what is required of him if he is to be permitted to remain in the United Kingdom. He invites me to allow the appeal.

81. The decision of the respondent which the appellant appealed was a decision to make a deportation order dated 6th January, 2012. In the notice the respondent said:-

> "On 11th October, 2011, at Newcastle-upon-Tyne Crown Court you were convicted of driving whilst disqualified, resting or obstructing a constable and failing to surrender to custody. In view of these convictions, the Secretary of State deems it conducive to the public good to make a deportation order against you. The Secretary of State has therefore decided to make an order by virtue of Section 3 (5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) requiring you to leave the United Kingdom and prohibiting you from re-entering while the order is in force."

82. It appears that in the accompanying letter giving reasons for concluding that the appellant should be deported the Secretary of State referred to the appellant having made an application for asylum. The letter then explained why the appellant's application for asylum was refused. In the appellant's grounds of appeal, the appellant claimed that his removal would be contrary to his rights under Article 8. It was also asserted that his rights under Articles 2 and 3 would be breached by his removal.

83. The panel of the First-tier Tribunal, in rather confused but unchallenged findings at paragraph 46 of their determination, did not accept the appellant's claim since the appellant's Article 8 claim was based on the same factual matrix as his asylum claim that was also dismissed. It was not argued before me that the appellant could succeed under the Immigration Rules.

84. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for respect for a person's private and family life, their home and correspondence. The appellant has to show that the subject matter of the Article 8 subsists and that the decision of the respondent will interfere with it. If he does so, it is for the respondent to show that the decision is in accordance with the

law, that it is one of the legitimate purposes set out in Article 8(2) in this case for the economic well-being of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others, and that it is necessary in a democratic society, which means that it must be proportionate.

85. At paragraph 17 of *Razgar v Secretary of State for the Home Department* [2004] UKHL 27, Lord Bingham of Cornhill said this:

> "17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

86. I am satisfied that the appellant does enjoy a family life with the sponsor and the respondent's decision does amount to an interference with it. I believe that such interference does have consequences of such gravity as potentially to engage the operation of Article 8; the threshold for which is not especially high (*see paragraph 28 of the judgement of Sedley LJ in AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801).

87. In the leading case of *Huang* [2007] UKHL 11, [2007] 2AC 167 Lord Bingham said at paragraph 20:

> "In an article 8 case where this question [i.e. the question of proportionality] is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices to the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8. If the answer to this question is affirmative, the refusal is unlawful and the authority must so decide."

88. The interference is in accordance with the law and is necessary in a democratic society for the economic well-being of the country for the prevention of disorder or

crime and for the protection of the rights and freedoms of others; the question is whether or not interference is proportionate. I have to bear in mind in considering the appellant's Article 8 appeal the fact that there is only one family life and that it is necessary to look at the family as a whole and to regard each affected family member as a fiction (*see Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39). I must also have regard to the best interests of the appellant's children in the way required by paragraph 29 of the judgements in *ZH (Tanzania)* [2011] UKSC 4. There are no considerations inherently more significant that the best interests of the children who are both British citizens.

89. Before considering the appellant's Article 8 appeal further it is necessary for me to make findings of fact.

90. I am grateful to the representatives for confirming that the findings at paragraph 47 of the determination of the panel of the First-tier Tribunal stand.

91. The panel were clearly not impressed by the appellant and found that he lacked all credibility, was a persistent offender and on the evidence before them they were not satisfied that he had in any way rehabilitated himself or attempted to reform his ways.

92. In some important respects I am inclined to agree with the First-tier Tribunal. The appellant is not a man whose word can be trusted. I believe that he will say almost anything if he believes that it suits his purpose. I have several reasons for reaching this conclusion:-

(a) The appellant claimed that he lived at the address in TTT Avenue, with the appellant, for some six or seven months when R lived with her mother. Earlier he had explained that R moved to her current address in 2013 and before that had lived for six months at an address in YYY Gardens. Before that she lived with her mother. According to R, the appellant lived at his mother's house for a couple of years. When I pointed out to the appellant that he had claimed to live with R's father for between five and seven years and had also lived with R's mother for six or seven months the appellant replied that he had lived "permanently at my girlfriend's mum's house but my clothes were in" Mr W's home. This is just one example of the appellant's inability to be honest in answering questions. I am perfectly satisfied that this had absolutely nothing to do with him not understanding the interpreter or the interpreter not understanding him.

(b) The appellant was asked very simply whether, at the time he lived with R and she was living with her mother, the police were called to the home. He denied it. He was then asked whether R or her mother had ever made any allegations against him and again he denied this. The appellant was then asked if he had ever been to a police station and alleged that false allegations had been made against him. The appellant's initial response was to explain that false allegations had been made which resulted in him being acquitted of charges,

but when the question was again put he said, "no I have never been to a police station and complained that false allegations had been made against me". The appellant was asked why he had recently attended court and he explained that he had been arrested on suspicion of an offence but had been found not guilty. It was for chasing somebody in a park but at the time he was at home. Mr Dewison then again asked whether the appellant had been aware of someone making false allegations about him and he replied that he was not.

However the appellant changed his evidence when later questions were put to him concerning his conviction for driving without insurance and obstructing a police officer in the course of his duty. The appellant continued to deny giving false details to a police officer and it was only when it was pointed out that a police report with attached statement from the police officer had earlier been submitted to the Tribunal and been considered by the panel of the First-tier Tribunal that the appellant indicated that he wanted an adjournment to go to the lavatory and complained that he did not understand the interpreter. He then told me about having been to the police station with Mr W and meeting a high-ranking police officer. I am perfectly well satisfied that the appellant's responses had absolutely nothing at all to do with him failing to understand the interpreter or the interpreter failing to understand the appellant. I believe that the appellant's claim that he could not understand the interpreter was an attempt to have the proceedings adjourned, because the appellant realised that he had been caught out giving incorrect answers to questions which had been put to him.

89. I believe that the appellant and R are in a long-term relationship and that as a result of that relationship they have two sons, R and K. I am prepared to accept R's evidence that she registered K some five or six weeks prior to the hearing at a time when she was unaccompanied by the appellant and for that reason had left K's father's details blank.

90. I have some difficulty in understanding quite why the appellant and R do not live together. I was told by the appellant and R that because the appellant had been bailed to R's father's address he had been told it would be sensible not to make any changes to that. I am afraid I find that explanation incomprehensible. Mr W had originally been a surety for the appellant but, with the agreement of the Tribunal Mr W had been released from his recognisance. There was no reason to believe that if an application had been made for the bail conditions to be amended so that he lived with R that this application would not be acceded to. The respondent would have no objection to the appellant living with his long-term partner and children. I also found it curious that R should insist on living on her own at an address, albeit only two or three streets away from where the appellant was living with her father. It would have been perfectly possible for R to go and live with the appellant at her father's accommodation prior to her brother returning to live with the appellant and her father, and yet she chose not to do so. I accept of course that any young woman would want to have her own home but it did strike me as particularly curious that they had done nothing more about seeking to live together as a family. I am satisfied, however, that family life does exist between them and of course it clearly

does exist between the appellant and his two children. I did not find R to be an entirely credible witness. I believe that she was deliberately hiding evidence relating to the appellant's recent court appearance from me.

91. I found Mr W to be an entirely credible witness. Understandably, he only wants the best for his daughter. Over the five years during which the appellant has been living with Mr W in his home, Mr W has had the unique opportunity to observe the appellant and make an assessment of his character. He believes that the appellant has seen the error of his ways and he is prepared to go to the lengths of assisting the appellant is setting up a business if the appellant is allowed to remain in the United Kingdom. I believe that Mr W and the appellant did go to the police and make complaints that false allegations were being made about the appellant and I believe that they were told by a police inspector that if any further allegations were logged he would examine them. I am prepared to accept that Mr W was told by the police that his former wife and his daughter had made allegations against the appellant. Whether indeed they had made allegations I do not know, but I am prepared to accept that Mr W was told by the police that they had. Clearly R's mother is less than sanguine about the relationship.

92. I am satisfied that the appellant clearly does enjoy a both a family and private life in the United Kingdom most of which is centred around his girlfriend, R and his children.

93. I am aware of course that the best interests and welfare of R and K are a primary consideration when making my decision.

94. I accept that it is of course in the best interests of any child to live and be with their parents. At the moment the children live with their mother and not with their parents jointly. I am aware of course that K is only a baby, R is still under 3. Undoubtedly R will have formed a close attachment to his father. I am prepared to accept that the appellant does play a key role in R's life and takes him to, and collects him from nursery and takes him out to the park and shopping.

95. In considering the question of proportionality of course one recognises that the Secretary of State has a duty to protect the public. The appellant has some seven convictions for driving whilst disqualified and driving whilst uninsured.

96. These are very serious offences reflected in the prison sentences which the appellant has served. The consequences for innocent members of the public being hit by a driver of a vehicle who has no third party motor insurance is clear. Driving a motor vehicle whilst disqualified, and with insurance, shows a total disregard for the law. I bear in mind the findings made by the panel of the First-tier Tribunal. Before me the appellant continued to deny that when stopped by the police he had given a false identity and he was clearly disturbed to realise that a copy of the officer's statement had been served on the First-tier Tribunal (by the appellant's own solicitor).

97. I bear in mind that the appellant has no right to be in the United Kingdom. Against this, of course, I accept that the appellant has been in the United Kingdom for almost ten years and during this time he has been unemployed and reliant on the generosity of charities and friends. The appellant spent his formative years in Iraq and I have no evidence at all to suggest that the appellant has been using his time in the United Kingdom constructively. He claims to have made enquiries about undertaking an English course and having been told that until his status is clarified he is not eligible to attend the course. I am told that he has not worked.

98. It is to the appellant's credit that since November 2011 he has not been convicted of any further offences.

99. Whilst noting that the offences of which the appellant was convicted (which include committing acts with intent to pervert the course of justice, failing to provide a specimen for analysis, using a false instrument and being drunk and disorderly), are all serious, they do not involve violence or drugs. When looked at cumulatively the appellant's convictions are appalling, but it is clear that during the period of the last two years the appellant has, to his credit, kept out of trouble. Mr W believes that the appellant has learnt his lesson. Mr W believes that the appellant should be given one last chance.

100. I bear in mind that the appellant's children are entirely innocent of any blame. I also bear in mind that the appellant's relationship with R is of some 7 years duration. I also bear in mind that if the appellant were to be deported from the United Kingdom it is likely that he would be excluded for a minimum period of ten years, and possibly longer; I believe that effectively his family life with his wife and children will end. It might be possible that at some stage in the future when they are adults his children may seek to re-establish a family life with their father, but that would be no compensation for the years they have spent without him. I have concluded that the appellant's removal from the United Kingdom would, in the particular circumstances of this appeal, be disproportionate. **I allow the appellant's Article 8 appeal**.

Upper Tribunal Judge Chalkley

Anonymity

I made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

No report of these proceedings shall directly or indirectly identify the appellant or his family members. Failure to comply with this order could lead to a contempt of court.

Appendix A above referred to

IAC-AH-AL-V1

First-tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/02235/2012

THE IMMIGRATION ACTS

Heard at Kings Court North Shields
On 21st March 2012

Determination Promulgated

……

Before

JUDGE OF THE FIRST-TIER TRIBUNAL SACKS
DR T OKITIKPI

Between

A S M
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway
For the Respondent: Miss Bishop

DETERMINATION AND REASONS

1. Appellant's name is Mr A S M, he is a citizen of Iraq, and his date of birth is 1st January 1982.

The Appellant arrived in the United Kingdom on 9th April 2003 and applied for asylum upon arrival. His application was considered and refused on 29th July 2004. The Appellant did not appeal against this decision.

It is important to have regard to the Appellant's history and criminality since that date which is as follows:

Date	**Conviction**	**Sentence**
04.04.05	Driving whilst disqualified Using a vehicle whilst uninsured	Community punishment order of 80 hours Disqualified from driving
07.07.05	Breaching above community order	Fined £80
22.09.05	Driving whilst disqualified Using a vehicle whilst uninsured Using a vehicle with obscured window	2 months imprisonment Disqualified from driving for 2 years
05.06.06	Drunk and disorderly	Fined £50 Forced to pay costs of $43
03.11.06	Driving whilst disqualified Failing to provide analysis of breath Using a vehicle whilst uninsured	8 months imprisonment Disqualified from driving for an additional 2 years
29.08.07		Failed to report to UK BA
11.06.08	Failing to provide specimen for analysis Using a vehicle whilst uninsured Driving whilst disqualified	24 weeks imprisonment Disqualified from driving for 4 years Court recommended for deportation, rescinded on appeal
15.09.08	Using a false instrument Possessing a false registration card 2 counts of attempting to obtain a	Community order for 12 months Unpaid work requirement of 200 hours

	pecuniary advantage by deception Driving a vehicle with excess alcohol Using a vehicle whilst uninsured Driving whilst disqualified Resisting/obstructing a constable	
02.04.09	Committing acts with the intent to pervert the course of justice Driving whilst disqualified Using a vehicle whilst uninsured	9 months imprisonment Community order revoked
17.05.10	Using a vehicle whilst uninsured Driving whilst disqualified Failing to surrender to custody	Sentenced at a later date as he failed to surrender
11.10.11	Sentenced for offences committed on 17.05.10	17 weeks imprisonment in total
11.10.11	Driving whilst disqualified Resisting or obstructing a constable Using a vehicle whilst uninsured	4 months imprisonment

As to the conviction of 11th June 2008 it is noted that the court recommendation deportation was rescinded on appeal.

On 12th June 2009 we note the Appellant applied for a facilitated return scheme which was rejected on 21st July 2009.

On 16th June 2009 the Appellant met the criteria for conductive deportation as he was a non-EEA national and had been given an aggregate sentence of more than one year over the previous five years.

On 30th June 2009 the UKBA writes to the Appellant care of the Governor of HM Prison Durham asking him to advise the Appellant of his liability to deportation and asking him to give reasons why he should not be removed to Iraq. These documents are at H3 to H6 of the Respondent's bundle and the confirmation of conveyance is at H6 and this will be referred to in greater detail later in this determination as the Appellant in his oral evidence seeks to challenge that the signature on H6 is his.

The Appellant argues that he has been in a relationship with his British citizen partner R since 28th April 2007 and there is a child R born on 24th November 2010.

2. By way of further submissions the Appellant argues:

   (a) Protection under Article 8 of the ECHR by virtue of his relationship with R and his parentage of R.

   In support of this the Appellant has referred to the case law of **Chikwamba (FC) (Appellant) v Secretary of State for the Home Department**. **AB (Jamaica) v Secretary of State for the Home Department** and **Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39**.

   The Appellant has submitted statements from himself, his partner and her father regarding their relationship.

   The Appellant has submitted that he and his partner do not currently live together for supporting reasons.

   (b) The Appellant has submitted six photographs of himself and his partner.

   The Appellant has submitted a copy of his partner's British passport.

   The Appellant has also submitted in his further submissions form that he has received a letter from an extremist group threatening to kill him as a matter of honour over his relationship with a girl in Kirkuk. Members of the girl's family are in the extremist group. The letter was sent in 2009 but the Appellant's family did not know how to send it to him in the UK and accordingly a friend of the Appellant's went to Iraq for a visit and brought the letter back to the UK with him. The Appellant states that he did not bring it to the Home Office's attention in 2009 as he was unaware how to have it translated. The Appellant states that it will be impossible for him to return to Kirkuk because the extremists are determined to kill him. The Appellant has now submitted the letter with English translated dated 13th December 2009 from Akhwan Ansar Al-Sunna.

3. By a decision dated 6th January 2012 the Secretary of State refused the Appellant's claim for asylum under paragraph 336C of HC 395 (as amended) and on 6th January 2012 a decision was made to make a deportation order by virtue of Section 5(1) of the Immigration Act 1971.

4. The Appellant appeals against the decision on the grounds that he is a refugee under the Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 (the 2006 Regulations). The Appellant further claims humanitarian protection pursuant to paragraph 339C of the Immigration Rules and finally having regard to his relationship with R and his child R claims that to remove him from the UK would be a breach of his Article 8 rights in respect of both his private and family life.

5. The Appellant's right of appeal arises under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. The Appellant has available the grounds mentioned in Section 84 of the 2002 Act, and raised Section 84(1)(a): that the decision is not in accordance with the Immigration Rules, and Section 84(1)(g) that removal would be unlawful under the 2006 Regulations, and Section 6 of the Human Rights Act 1998 if he is returned to Iraq.

6. In determining this appeal, we have had regard to Section 85(1) of the 2002 Act, and in so doing have considered all avenues of appeal open to the Appellant.

7. The burden is on the Appellant to show as regards his asylum appeal that returning him will expose him to a real risk of an act of persecution for a reason set out in Regulation 6 of the 2006 Regulations: as regards his humanitarian protection appeal, that he has shown substantial grounds for believing he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules, or a real risk of a breach of his protected human rights.

8. We heard oral evidence from the Appellant and oral submissions from both representatives all of which are set out in the Record of Proceedings and all of which will be dealt with in greater detail later in this determination.

9. On the file was the original Home Office bundle, the documentation comprises the decision of the Secretary of State in the reasons for refusal letter dated 6th January 2012 and all matters before the Secretary of State upon which the decision was made. These are a matter of record on the file and we will not set them out further here.

10. For the hearing the Appellant put in a bundle containing:

    1. Schedule of Essential Reading;

    2. Chronology of Events;

    3. Skeleton Argument;

    4. Appellant's Statement (in Relation to his Deportation Matter);

    5. Witness Statement of Appellant's Partner R;

    6. Witness Statement of Mr W, Father of Appellant's Partner;

    7. Witness Statements in Support;

    8. Appellant's Son's Full Birth Certificate (UK);

    9. Appellant's Educational/Training Certificates (From HMP Durham);

    10. Notice of Intention to Issue a Deportation Order ;

    11. The Refusal of the Appellant's Initial Claim for Asylum (2004);

    12. Pre-Action Letter to UKBA of 12.08.2011 and Enclosures;

13. Representations to the UKBA of 25.09.2007;

14. Evidence Submitted with Further Representations of 20.07.2007;

15. Appellant's Representations to the UKBA of 17.08.2009;

16. Appellant's Further Representations to the UKBA of 20.07.2010;

17. UKBA Update to the Appellant's MP;

18. Letter from UKBA Confirming the Appellant's Case Being with the Legacy Department;

19. Halliday Reeves' Enquiry with the Most Recent Criminal Solicitors, 13.03.2012;

20. Response from Appellant's Former Solicitors (Re: Criminal Matter);

21. Halliday Reeves' Enquiry with First Known Criminal Solicitors (08.03.2012);

22. US Department of State, 2010 Country Reports on Human Rights Practices: Iraq, 08/04/2011;

23. Amnesty International, Annual Report 2011: Iraq, 13/05/2011;

24. Human Rights Watch, World Report 2012: Iraq, 22/01/2012;

25. **MK (deportation – foreign criminal – public interest) Gambia [2010] UKUT 281 (IAC);**

26. **Onur v The United Kingdom 27319/07;**

27. **Beoku-Betts (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2008] UKHL 39;**

28. **Chikwamba (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2008] UKHL 40;**

29. **ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4;**

30. Northumbria Police Charge Sheet – appended Police Report.

11. For the hearing the Respondent put in a supplementary bundle including:

(a) Appellant's certificate of convictions dated 7th July 2009;

(b) judge's sentencing remarks dated 2nd April 2009;

(c) decision in **R and Patricia Kluxen [2010] EWCA Crim 1081**;

(d) decision in **Rocky Gurung v Secretary of State for the Home Department [2012] EWCA Civ 62**;

(e) decision **Secretary of State for the Home Department and Shabaz Masih Pakistan [2012] UKUT 00046**;

(f) decision in **Ad Lee v Secretary of State for the Home Department [2011] EWCA Civ 348**;

(g) decision in **Sanade and Others (British children Zambrano – Dereci) [2012] UKUT 00048**.

12. We will note that we have read and considered all the papers before me. Where we have been guided to certain passages in the objective material by a representative we have read these passages with especial care. However we read them in the context of the entire document. The whole of the documentation set out before us has assisted us in arriving at our conclusions.

The Appellant's Evidence

13. There is no dispute to the fact that the Appellant was refused asylum on 29th July 2004 for reasons that are set out in the reasons for refusal letter of the same date. We further note that the Appellant did not appeal that decision and within the reasons for refusal letter the issue of credibility was dealt as was the issue of internal relocation. We are aware of the guidance set out in the case of **Devaseelan** and that the findings within that letter of refusal are the starting point in respect of the asylum, humanitarian protection and Article 2 and 3 issues that are before us albeit that Mr Selway on behalf of the Appellant advises us that they are not being vigorously pursued. The only new evidence that has arisen since that decision in relation to these issues is the letter at I40 and I41 of the Respondent's bundle that the Appellant claims he received and which is a threat against his safety should he return to Iraq. We will deal with our findings with regard to this letter later in this determination.

14. Mr Selway does however confirm that the main thrust of the arguments before us today relate to the Appellant's Article 8 ECHR rights in respect of his private and family life and in particular having regard to the Appellant's relationship with R and their child R.

15. The Appellant gives evidence and adopts two statements which are dated 20th July 2010 and 12th March 2012.

16. The Appellant confirms his date of birth and states that his first language is Kurdish Sorani and he also speaks English. This matter proceeds without an interpreter and both Mr Selway, Miss Bishop and ourselves are satisfied that the Appellant is perfectly capable of giving his evidence in English. The Appellant states that he has been in the UK since the spring of 2003. He confirms an asylum application was rejected and confirms that he then makes an application for leave to remain, he is placed in the legacy department of the Home Office and his application was refused which he claims caused him significant frustration.

17. The Appellant states that he has been in a relationship with R since 28th April 2007 and confirms that they have a child R born on 24th November 2010. The Appellant

states that he is currently bailed to the address of Mr W who is R's father the address being TTT Avenue. Despite the fact that he and R live at different addresses the Appellant states that they spend most of their time together.

18. The Appellant does not challenge his history of criminality and states that he has apologised to his partner R and her father for his actions and for the trauma that he has put them through. He now wishes to establish life with R and his son R, he states that he is settled now in the UK and sees his future with R and R. He states that he and R are looking for a home of their own and the Appellant professes his desire to be a good partner to R and a father to R, he sees his future with them.

19. The Appellant accepts that he is not permitted to work but states that he would like to use his talents from having in Iraq worked in his father's car repair garage to do similar work in the UK.

20. The Appellant states that he is seeking to integrate into UK life and has enquired with Newcastle College for a course to improve his English. Whilst in custody the Appellant states that he was involved in food hygiene, first aid, health and safety, English and maths courses. He has not received any official certificates for completing these courses.

21. The Appellant refers to a wide network of friends in the UK and asks that we have regard to the handwritten letters that are within the bundles.

22. The Appellant argues that if he is removed to Iraq he will be separated from his partner and his son and is aware that he will be restricted in returning to the UK for a period of ten years. He does not see any possibility of his partner and son visiting him in Iraq or them being able to meet in a third safe country. The Appellant maintains that he is at risk in Iraq because of the reasons that caused him to claim asylum. The Appellant also refers to the continuing conflict in Iraq.

    The Appellant accepts that he applied for a facilitated return scheme on 12th June 2009 which was rejected on 21st June 2009.

23. The earliest statement of 20th July 2010 is somewhat historical in that matters have moved on since that statement but that statement does deal with how he meets R through mutual friends and how their relationship developed. He refers to the mutual interests that they have and the fact that he has been accepted by R's family and spends significant time with them. He refers to staying with R and her family from 17th August 2008 as he was homeless at the time and at the date of that statement R is pregnant but as stated matters have moved on.

24. We now turn to deal with the evidence that is presented at the hearing. The Appellant is then referred by Mr Selway to the letter at I40 and I41 of the Respondent's bundle. Asked how he obtained this letter the Appellant states that he received it from a friend some two to three years ago who had been to Kurdistan for a holiday and had obtained this letter from the Appellant's uncle. The Appellant does not know where his uncle got the letter from but believes it may have been from the police station in Kirkuk. The Appellant maintains that this letter confirms the risk that he is at if he is returned to Iraq.

The Appellant states that he has had no contact with any members of his family since he came to the UK, namely in 2003. He does not know why despite the problems identified in that letter occurring in 2003 the letter would not be sent until nearly seven years later, it is dated 13th December 2009.

As to why he cannot live in the Kurdish region of Iraq the Appellant refers to his previous problems in Iraq and the fact that his father and the family had been working for the regime of Saddam Hussein and his father had been killed by the Kurdish people. He maintains that Iraq is still in a state of conflict even though Saddam Hussein has been deposed.

25. As to his life in the UK the Appellant accepts that he has done wrong but argues that he has now changed and has a partner and a son that provide stability. Asked if he knew how many crimes he had committed the Appellant replies "a couple".

As to whether he has a driving licence the Appellant states that he passed the theory test in 2008.

As to his relationship with R he states that this started on 28th April 2007. She knows about his offences post 2008. He accepts that he did not advise her of his immigration status until six to seven months after their relationship developed. In June 2008 he was living at TTT Avenue. As to where he obtained the vehicles in which he committed the various offences the Appellant states that it was a friend's car, he states that R did not know he was driving the car and he had never driven R in a car. In September 2008 he was living at a NASS address in, Gateshead. As to the offence on 15th September 2008 R did not know it involved driving excess alcohol and driving while disqualified. As to why he continued driving despite being disqualified the Appellant states that one never got banned from driving in Iraq notwithstanding what offences were committed and he thought that this applied to the UK and it was equally safe for him to drive in the UK. Asked when he realised what a ban meant the Appellant states that he found this out in 2008. It is then put to the Appellant that he despite this continues to drive and the Appellant states that he was driving for money helping a friend taking a car to be repaired in Byker. The Appellant states that whilst he does not read English he does understand road signs and refers to his passing the theory part of the driving test.

26. With regard to driving with excess alcohol the Appellant confirmed that he knew this was wrong and as to the conviction for perverting the course of justice the Appellant states that he pleaded guilty. As to his arrest on 10th October 2011 the Appellant when asked with regard to the false name that he gives the police argues that he gave the name of Lukman Ali who was the owner of the vehicle. The Appellant does not accept that he gave his wrong name and date of birth.

27. The Appellant is then referred to documents H3 to H6 in the Respondent's bundle. In particular the Appellant is referred to H5 and H6 and the signature on H6 as to the confirmation of receipt of ICD0350. The Appellant states that he never received this document which advised him of his liability to deportation and then states that the signature on the document is not his. It is pointed out that this document has been in the hands of his solicitors as is evidenced by the fax header to the document which

refers to Halliday Reeves Solicitors, gives their telephone number and is dated 16th July 2009. The Appellant maintains that he never received this document and states that he only became aware of his liability to deportation on 6th January 2012 four days before his release from prison. As to his failure to report when on bail the Appellant challenges that he has ever been on bail and then states that on the occasion that he did not report he was in hospital in the Newcastle RVI in respect of a throat problem.

28. The Appellant is then asked why he commits offences when subject to a deportation order and again challenges that he ever received the deportation documents of 9th July 2009. As to why he is not currently living with R the Appellant states that he lives with R's father and she lives with her mother, they are divorced. His condition of residence is at R's father's address. They are currently applying for a council house. Further R is unemployed and has no means of supporting him. The Appellant receives support from R's father. He accepts that he has a history of criminality but argues that this is in the past and everything will change.

29. In answer to re-examination by Mr Selway it is put to the Appellant that whilst he is arguing that he has changed he has committed offences since R was born. The Appellant states that he is now living in a different place and has to change his life for the sake of R. He moved back to his current address because of the effect that him living with R and her mother was having on their housing benefit. He however does confirm that he still sees R every day, her date of birth is 6th July 1991, they met on 28th April 2007, she was fifteen years old at the time.

30. R is then called to give evidence on behalf of the Appellant and she adopts two statements dated 13th July 2010 and 12th March 2012 respectively. She confirms her date of birth and the fact that she is a British citizen and that she met the Appellant on 28th April 2007 through mutual friends. They began their relationship from that date and she confirms that the Appellant moved into her parents' home on 17th August 2008 because he was homeless. He lived with her parents for one year, it was suggested that the Appellant who had just come out of prison at that point move to the witness's address until he found a place of his own. She states that they have mutual interests and spend most of their time together. He is the father of R.

The witness states that her parents are divorced and she lives with her mother at TTT Avenue, and the Appellant lives at his current address with her father. She states that they are currently looking for a home together.

She refers to the effect the deportation order has had upon the Appellant and the relationship she enjoys with him. Whilst he was in prison they would visit every week along with her father Mr W. She refers to them having been together for nearly five years and as to the love and affection that they have for each other and their wish to have more family. She refers to both their wishes to have a job, she accepts that the Appellant has committed offences but believes that he wishes to draw a line under his past and to live a normal life with her and R.

She states that the effect of deportation will be devastating on her and it will mean permanent separation. She is aware that the Appellant will not be able to return to

the UK for ten years and states that she would not be able to go to Iraq because of the cultural differences and the danger that exists on a day-to-day basis within Iraq. She does not believe it would be safe for R or in his best interests to relocate in Iraq. She states that R if the Appellant is deported will grow up without a father figure. By way of supplemental questions the witness states that she did not know about the Appellant's criminal background when they met and when she is told about his background she is only told about matters from 2007/2008 onwards. She is not told about his earlier criminality and only finds this out when she is at court with him on bail application.

31. As to why they are living apart the witness states that her mother and her are on benefits and these would be affected if the Appellant is in the household. In any event the Appellant's bail conditions as to residence are at her father's home. There is a spare room there. She was aged 18 when she became pregnant. She states that she wishes to permanently live with the Appellant in their own home and is applying for a council house. She is sure that she is not being used by the Appellant merely to establish his immigration status.

32. In answer to cross-examination the witness states that she first finds out that the Appellant has no legal status in the UK in 2008/2009. He said he was waiting a decision on his asylum claim. When she became aware that it had been refused she was still prepared to support him. She becomes aware of his driving offences in 2007/2008, she was aware that he was not allowed to drive and has no explanation as to why he continues driving. She states that her father spoke to him in 2008 with regard to his continuing to drive, she accepts that he ignored his advice. She accepts that she has been in a car with him on a couple of occasions. She did visit him in prison and in 2009 she states that he telephoned her after he was served with a notice of deportation. She is at this point shown document H6 in the Respondent's bundle and states that the signature "looks like his signature".

    She has no knowledge why he continues to offend, she does not know where he obtained the cars from or why he was driving. She did not know that in October 2011 he gave false identity details to the police when stopped.

    As to his contact with his family she states that he speaks to his mother in Iraq on occasions, she does not know the last time he spoke but either his mother rings him or he rings his mother. She does not believe that he is using her as a means to remain in the UK. She states that they have a stable relationship, they have had a child together and been together for five years. As to why she does not live with him at TTT Avenue she states that conditions are squashed as her father and brother aged 19 live there although it is a three bedroomed house. She states that she will be devastated if the Appellant was returned to Iraq.

33. In answer to re-examination by Mr Selway she states that the Appellant is a good father, R refers to him as "daddy" and the Appellant baths, feeds, changes nappies and plays with R. She states that she sleeps at his home maybe for 50% of any week. If he is returned to Iraq she states that she will miss him significantly and it will be hard on both herself and R. She has had no other relationships since she met the Appellant.

34. Mr W is then called to give evidence on behalf of the Appellant and he formally adopts his statement of 12th March 2012. He confirms that he is a British citizen and is employed as a taxi driver. He is the surety in respect of the Appellant's bail and the address the Appellant is bailed to is his address. He is the father of R and has known the Appellant since 2007. He states that they enjoy a strong relationship. In 2008 the Appellant comes to live at their address. He is aware of the problems that the Appellant had had following his criminality, he states that he talked to the Appellant who indicated that he wished to put his past behind him. Since his last release from prison the Appellant has lived with him and he refers to seeing the Appellant every day and refers to him as a caring and trustworthy person and a good father to R and is heavily involved in his upbringing. He states that he has spent significant time with the Appellant since he is released from prison and refers to him as a changed person. He considers that the effect of deportation will be devastating upon R and R and will deprive R of a father. He also is concerned for the Appellant's safety because of the situation within Iraq. He would be reluctant to allow his daughter and R to visit the Appellant in Iraq because of the state of conflict.

35. By way of supplemental questions the witness states that he found out about the Appellant's criminality over time and in about 2008. He has been to court with him on a number of occasions. He is a taxi driver and prior to that was employed for fourteen years as a court bailiff. He has a good relationship with R but is not happy as to the Appellant's previous criminality. He has tried to speak to the Appellant and advised him of what he is doing and tried to change his ways. He was aware that the Appellant was banned from driving in 2009 and at that time told him that he should not and that he could not drive vehicles. He however argues that he could not be with the Appellant all the time. He believes the Appellant has now learnt his lesson.

36. In answer to cross-examination from Miss Bishop the witness states that he first knew the Appellant's immigration status in 2007 and was not happy about the situation. He is aware that the Appellant is in contact with his mother, they each phone each other. As to whether the Appellant is using his daughter R to gain status in the UK the witness states that no one wishes their daughter to be used in such a way but he believes now that because of the long standing relationship they are a unit and becoming stronger.

37. In 2009 he was aware of the service on the Appellant of the notice of deportation. The fact that the Appellant despite this continued to commit offences did upset him and told him on more than once to desist from his ways. He does not know where the Appellant got vehicles from but is aware that he has a friend who has a repair yard.

    He is asked whether he is aware that in October 2011 the Appellant gave a false identity when stopped by the police. The witness responds by saying that this is not the case and the Appellant merely identifies the owner of the van and then says

    "Do you believe the police all the time?".

Asked why R is not living with him the witness states that he is divorced, R lives with her mother and the son lives with the witness. He states that R is quite welcome to come and live with him and the door is open to her all of the time.

38. In answer to re-examination from Mr Selway the witness states that he lives in a three bedroomed house and could juggle things around to accommodate R. He is aware that she wants her own home. She is living with her mother with R but believes he eventually wishes to live with the Appellant. He refers to the Appellant as a quite good father and refers to R sleeping on "odd nights" up to two nights a week. He would not mind R and the Appellant sharing a bed. As to the Appellant's involvement with R the Appellant takes him out in the pram, feeds him, plays with him and changes his nappies.

Respondent's Submissions

39. Miss Bishop relies upon the reasons for refusal letter and considers that it is appropriate to deport the Appellant and that the deportation has been initiated by the Secretary of State under Section 35A of the Immigration Act. She refers to the case of **Kluxen** and in particular paragraph 34 thereof.

With regard to the 2004 refusal there is nothing new today that would identify the Appellant being at risk on return. We are referred to the case of **SM** which deals with internal relocation. As to the letter which the Appellant claims to have received via a friend from his uncle the case of **Tanveer Ahmed** must be applied.

40. It is accepted that the Appellant because of the time he has spent in the UK and the relationship that he has with R and his son R has developed both a private and a family life. However the proportionality exercise must be carried out and the case of **AR Pakistan** applies and we are referred to this case where again there was the interests of a child to be taken into account. In this case the Appellant is a persistent offender where there is no indication that over the past he has attempted to change his pattern of behaviour. Indeed there is evidence at this hearing that the Appellant has been deceitful to the Tribunal and evidence that his deceit to R and Mr W and indeed to the police has continued. The Appellant has denied in 2009 being aware of his liability to deportation despite the evidence from both R, Mr W and indeed from his own solicitors that they were aware of it. The Appellant it is argued has been convicted of serious offences including the offence of perverting the course of justice. Clearly neither R or Mr W have had any influence on him as he has committed these offences during the period that he lives with R and continues his association with her and lives in the same home as Mr W. Clearly Mr W's employment as a taxi driver would make him aware of the seriousness of the driving offences. R is not in a position to support the Appellant who is it is argued a prolific offender and has continued his history of deceit and deception up to the very evidence that he gives before this Tribunal. There are no exceptional circumstances identified in this appeal.

Appellant's Submissions

41. Mr Selway relies upon the skeleton argument and asks that we have regard to the fact that the Appellant has developed a family life with R and R and that the best

interests of the child fall to be considered. The majority of the Appellant's offending relates to traffic offences and it has always been impossible for him to obtain a driving licence and insurance which has been hard for the Appellant bearing in mind that he has brought up in an environment that involves vehicles and he has wished to maintain this lifestyle in the UK.

42. As to the issue of proportionality R will be left fatherless for a period of ten years and R will be without the support of her partner. The conviction for deception relates to the Appellant giving false names to the police. The offences he has committed are it is argued to the lower end of the scale. If the Appellant is allowed to stay in the UK Mr Selway argues that he would be then clear to apply for a driving licence and the demon that he has on his back would disappear and any driving would not involve the commission of offences.

43. With regard to the case of **AR** this was a Court of Appeal decision which has been superseded by the case of **ZH (Tanzania) v SSHD [2011] UKSC 4** and Section 55 of the Borders, Citizenship and Immigration Act.

44. It is accepted by Mr Selway that the Appellant has lied both to his partner R, her father Mr W and the court today. However this must be viewed against the fact that the child will be significantly affected if the Appellant is returned to Iraq. The Appellant has presented as a good father who has a hands-on role in R's welfare. If he is removed from the UK he will be prevented from returning for a period of ten years and there is little prospect of the Appellant and his partner being able to meet in a safe country. Hopefully the Appellant will be able to sort himself out, get a valid driving licence and work in a garage where he will be able to re-establish himself and earn money to support both himself, R and R and we are asked to allow this appeal.

Findings as to Credibility and Fact

45. We only make a finding on credibility after taking great care, having considered all the evidence and having carefully studied all the documents and considered all the authorities and all other material provided to us.

46. Dealing firstly with the additional evidence that the Appellant has produced relating to the asylum, humanitarian protection and human rights appeals we are aware of the principles in **Devaseelan** and that the starting point in respect of our consideration of any evidence relating to these issues must the original refusal of asylum as previously referred to which was not the subject of an appeal. We do not find the Appellant's explanation as to how he acquires this letter or indeed how he becomes aware of its existence as being credible. Further we do not find it credible that six years after the claimed problems, all of a sudden the Appellant would receive this letter which is dated 13th December 2009. It is not a letter from any government or police authority within Iraq, it is merely a letter asking the Appellant to join Ansar Al-Sunna. We do not find either the Appellant's explanation for how he comes to be in possession of this letter or the actual content of the letter to be in any way credible and we therefore do not find that this letter of itself would justify a reconsideration of the original asylum, humanitarian protection and human rights decisions or us

departing or altering the decisions which we find must stand there being no fresh evidence of compelling circumstances that would justify it being reconsidered.

47. Dealing now with the Appellant's character we have earlier in this determination set out a schedule of the Appellant's criminality. There is a clear history of the Appellant being a persistent offender. He has between 2005 and October 2011 had a complete and utter disregard for the laws of the UK and has persistently driven in the full knowledge that he has no valid licence or insurance or any right to drive. He has then persistently driven while disqualified and when apprehended in October 2011 clearly attempted to deceive the authorities by giving a false name and address. We do not accept as did the courts that the Appellant was not at fault as he gave the address of the registered owner of the vehicle. We are satisfied as were the courts that this was another attempt by the Appellant to evade responsibility for his actions. The Appellant has flagrantly used vehicles when he was aware of the fact that he was disqualified from driving and we find unacceptable the Appellant's excuse that he continues driving on the basis that in Iraq one never is banned from driving regardless of what offences one commits and therefore he considered that the same applied to the UK.

The Appellant was fully aware of the significance of a ban from driving. R and Mr W had both told him in no uncertain terms what a ban from driving meant and clearly they had little influence over him in that despite these warnings he ignored them and continued to drive.

The Appellant has not only had a disregard for the driving laws of this country but has also over an extended period of time attempted to deceive this Tribunal, the police and in particular those who placed their trust in him namely R and Mr W. These deceptions involve:

(a) Withholding from R and Mr W the full history of his offending prior to his becoming involved with R.

(b) The Appellant's evidence with regard to the deportation order served upon him on 9th July 2009. In his evidence before the Tribunal the Appellant claims to know nothing of this document yet according to R it bears his signature and there is clear evidence of it having been served upon him by P Bates an officer of HM Prison in Durham. Further both R and Mr W are aware of the existence of this document and the fact that the Appellant was liable to deportation as a result of that document and indeed Halliday Reeves Solicitors were aware of it as the document forms part of documents that they faxed on 16th July 2009. The Appellant's persistence in his argument that he knows nothing of this document is clearly a deceit that the Appellant seeks to make no only to this court but also to R and Mr W. Their surprise at not knowing about the Appellant's claim not to have known about the existence of this deportation order at the hearing was noted by the Tribunal.

(c) The Appellant has further attempted to deceive both R and Mr W with regard to the offence he committed on 10th November 2011. He has attempted to convince them that he did nothing wrong when he gave the name of the

registered owner of the vehicle on his apprehension. There is clear evidence within the summary of police charge sheet and police report that when the Appellant was stopped he gives his own name as Lukman Ali and his own date of birth as 7th January 1983. We prefer the evidence of the police officers to that of the Appellant and indeed Mr W and are satisfied that there has been a clear attempt by the Appellant to deceive on this occasion.

(d) Despite the claims that the Appellant is a changed person this is not supported by the persistent lies and deceits that he has shown both to this Tribunal, those that assist him and to most importantly R and his surety Mr W. The claims that the Appellant is a changed person and is rehabilitating himself is not consistent with his actions and the argument that the Appellant now he has a child has changed because of the responsibility he owes his child is again not borne out by the fact that he commits offences after the birth of this child. He has failed to heed warnings from Mr W and R and the fact that he is a changed person and intends to rehabilitate himself and the future is not one that is persuasive to us. This Appellant has a history of reoffending, deceit and deception and we can find no basis to come to a conclusion that the Appellant that appears before us is a changed person and his history of reoffending is in the past. He has a history of flaunting the law and having a total disregard for it and indeed this is a comment that is recorded in the court documents from Newcastle Magistrates' Court who on committing the Appellant to prison for four months on 11th October 2011 commented:

> "Offence so serious because the defendant has a flagrant disregard for court orders because danger to public because offence was aggravated by the defendant's record of previous offending".

(e) We therefore find as a fact on the evidence that has been presented to us that this Appellant lacks all credibility, is a persistent offender and we find on the evidence as a fact that there is no evidence that he has in any way rehabilitated himself or attempted to reform his ways.

48. We now turn to deal with the consideration of whether deportation is the appropriate course of action in the Appellant's case.

We have had regard to the liability to deportation and the reasons presented both within the documentation and within the arguments presented to us at the hearing in support of the arguments by the Appellant that deportation is not appropriate.

We have had regard to the persistent reoffending that the Appellant has committed over the period covered by the schedule which appears earlier within this determination. In making our decision with regard to deportation the type and frequency of the offending is an important consideration together with the need to protect the public. In addition we accept that we must view the Appellant's personal circumstances including the relationship he has with R and R his child and so far as the child is concerned we recognise the duty to safeguard the welfare of children enshrined in Section 55 of the Borders, Citizenship and Immigration Act 2009 referred to in the case of **ZH Tanzania** where the interests of the child must be a

primary consideration in making the decision. We however equally are entitled in accordance with that duty to take into account other factors as well which may justify deportation.

49. We are aware of the test that we must follow as set out in the case of **Razgar** namely the five stage test and we remind ourselves of that five stage test which is:

    (a) whether the Appellant has established a family or private life in the UK;

    (b) whether the decision to remove the Appellant would result in an interference with the Appellant's right to family and private life and if so whether that interference is;

        in accordance with the law;

        in pursuit of one of the principle aims listed in Article 8(2); and

        proportionate in pursuit of the permissible aims.

50. We note the Appellant is 29 years of age, has been in the UK since 2003, is in a relationship with R and there is a child, R, born in the UK. It is noted as previously stated the Appellant has a series of convictions since his arrival in the UK. We have no knowledge of whether he has ever been employed.

51. We accept that the Appellant because of the very fact that he has been in the UK since 2003 has established a private life despite the period spent in prison and the absence of any evidence that he has been engaged in any employment or education during this period. A private life must have developed by virtue of the very time spent in the UK.

52. In view of the fact that we now accept that the Appellant has established both a family and private life in the UK we must recognise that any decision to deport the Appellant would result in an interference with his right to family and private life under Article 8 of the ECHR. Therefore it follows that we must consider whether the level of interference with the Appellant's right to family and private life is in accordance with the law and in pursuit of one of the legitimate aims under Article 8(2) of the ECHR and remain proportionate within the terms of Article 8(2).

53. In assessing whether the interference with private and family life is proportionate we have given consideration to all the evidence and factors identified to us. We have considered and had regard to Section 55 of the UK Borders and Citizenship Act 2009 and the case of **ZH Tanzania** which as previously stated means that the best interests and welfare of the child Rare a primary consideration when making this decision and we accept that it would be in the best interests of the child for both parents to remain in the UK. However we must view this as regards the fact that the best interests of the child are not a "trump card" which outweighs all other factors which clearly must be taken into consideration.

54. We accept that the best interest of any child is to be with both parents. However given the fact that the Appellant has a history of persistent and ongoing offending

and having regard to the deceit and deception that he has perpetrated on this court, his solicitors and in particular R and Mr W we are satisfied on the evidence that the best interests of this child is outweighed in this case. The case of **ZH Tanzania** did not involve criminal matters and therefore can be distinguished from this case bearing in mind the Appellant has been engaged persistently in criminality for almost the entire duration of the time he has been present in the UK and has clearly ignored all the warnings and advice that have been given to him by those who claim to care for him namely R and Mr W.

55. We are aware of the case of **Ad Lee v Secretary of State for the Home Department [2011] EWCA Civ 348**. Paragraph 17 of that decision is relevant where it states:

> "He contends that it prioritises the case for deportation and considers only whether the impact on the family is so great as to outweigh it when it ought to be approaching the issue in the opposite order prioritising R's interests and asking whether they are outweighed by the case for deportation. It seems to us at least in the present this is a matter of form not substance. Provided both the child's interests and the case for deportation have been properly appraised the question whether one outweighs the other can be approached from either direction."

We confirm that we have properly considered what is in the best interests of the child when assessing the proportionality in this matter. We cannot ignore the fact that the Appellant has spent a significant period in prison since the birth of Rand therefore the time that he has spent with him has clearly not been all of his life. R was born on 24th November 2010. The Appellant spent a period in prison post 11th October 2011 and therefore was away from R for a significant period of his development. The Appellant does not live in the same household as R despite the fact that Mr W in his evidence before us stated:

> "My daughter is quite welcome to come and live with me the door is open all the time".

Despite this open door R has continued to live with her mother and has not set up home with the Appellant. We further cannot ignore that despite all the evidence that has been presented to us none of the witnesses have ever mentioned the word "engagement" or "marriage". There is no suggestion that R and the Appellant are engaged nor is there any mention of plans to marry in the future. Further we find it significant that R's mother has neither attended the court or given a statement in support of the Appellant and her daughter's relationship. We consider that these factors are significant in our assessment of whether there is the strength of private and family life between the Appellant and R as claimed.

56. We further confirm that since we have accepted that the Appellant has established a degree of family life in the UK we must consider the case of **Beoku-Betts v SSHD [2008]** and the impact deportation would have on the family life. The parties are not living as a unit, there has been no talk of engagement or marriage and the prospect of living together is not immediate, it is in the future. There is no evidence of any application for a council house. Whilst we accept that there will be a level of

interference we must bear in mind that the parties have continued their relationship in the light of the Appellant's precarious immigration position.

57. We have also had regard to the decision in **Omotunde (best interests Zambrano applied – Razgar) Nigeria [2011] UKUT 00247** and in particular paragraph 35 of that decision where the court held:

> "We recognise that there can be a public interest in deporting both those who are personally dangerous or a persistent threat to public order and others whose offending may be a single instance, but its nature and seriousness make deportation appropriate as a mark of public disapproval and the protection of public order by the deterrent effect on others."

Having considered all the evidence that has been presented to us and having regard to the Appellant's persistent and long lasting criminality and the deceit and deception that he has perpetrated which is referred to in detail within this determination we are satisfied that the Appellant's actions bring him within the case law contained within the decision of **Omotunde** and renders his deportation in all the circumstances proportionate.

58. The Appellant spent his formative years in Iraq and it is not unreasonable we find for him to be able to readapt to life in Iraq after deportation.

59. With regard to the length of time the Appellant has been in the UK he has during the whole of this time embarked upon acts of criminality and has always since the refusal of his asylum claim had no basis for remaining in the UK. We therefore do not accept having regard to these factors that the length of residence presents a compelling argument against deportation.

60. Whilst we accept that the deportation will result in an interference with both the Appellant's private and family life we cannot ignore that modern means of communication will allow contact to continue even at a distance. It is established in the evidence that the Appellant does have family in Iraq. Despite his evidence to the contrary that he has had no contact with his family in Iraq there is clear evidence from both R and Mr W that the Appellant has been in contact with his mother by telephone, both she telephoning him and he telephoning her. This is yet another deceit and deception that the Appellant has attempted to perpetrate on this Tribunal. We have no hesitation having regard to the evidence that has been presented to us in arriving at the conclusion that this Appellant is not credible and arrive at that conclusion having regard to his persistent offending, his deceit, deception of this court, those that represent him and those that have put faith in him namely R and Mr W.

We have given full and careful consideration to all the facts of the Appellant's case in accordance with paragraph 364 of the Immigration Rules (as amended). The presumption is that the public interest favours deportation. We are satisfied that deportation is for all the reasons set out within this determination proportionate and would not be contrary to the United Kingdom's obligations under the European Convention on Human Rights.

Asylum

Law and Conclusions

61. The 2006 Regulations refer to the definition of a refugee within Article 1A of the Geneva Convention as someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.

62. Given the conclusions that we have arrived at within our findings as to credibility and fact, we are satisfied that the Appellant has not discharged the burden of proof to establish that he is a refugee. We come to the conclusion that the Appellant's removal would not cause the United Kingdom to be in breach of its obligations under the 2006 Regulations.

Humanitarian Protection

Decision on the Claim for Humanitarian Protection

63. Given the factual conclusions above, we find that the Appellant has not shown substantial grounds for believing that he will face a real risk of serious harm in Iraq. Therefore, we come to the conclusion that the Appellant's removal would not be a breach of paragraph 339C of the Immigration Rules.

Human Rights

64. The Appellant within the papers has submitted that his human rights under the Geneva Convention are engaged.

65. Under Article 3 we have to decide whether there is a breach of the prohibition on torture or inhuman or degrading treatment or punishment. We have subsumed into our conclusions of this Article our assessment under Article 2 on the right of life. Both rights are absolute.

66. We have examined the arguments put forward in support of this submission, but in the light of the facts as established, we find the Appellant has not established that there is a real risk that he would suffer inhuman or degrading treatment in breach of Article 3 if he returned to Iraq.

67. For the reasons set out within this determination we are satisfied that it would not be disproportionate in all the circumstances to remove the Appellant to Iraq and therefore we are satisfied that any interference in his family and private life is proportionate and in pursuit of the legitimate aims of maintaining an effective immigration control and therefore there is no breach of Article 8 found in respect of the Appellant's private and family life.

68. In light of the above conclusions, we find that the decision appealed against would not cause the United Kingdom to be in breach of the law or its obligations under the 1950 Convention.

Decision

We dismiss the appeal on asylum grounds.

We dismiss the appeal on humanitarian protection grounds.

We dismiss the appeal on human rights grounds.

We dismiss the appeal in respect of the revocation of the deportation order.

No anonymity order is made.

Signed Date 9/4/2012

Judge Sacks

Judge of the First-tier Tribunal

Appendix B above referred to

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/02235/2012

THE IMMIGRATION ACTS

Decided Without a Hearing at Field House On 7 May 2013 **Determination Promulgated**

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

A S M

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

REASON FOR FINDING ERROR OF LAW SO THAT THE DECISION OF THE FIRST-TIER TRIBUNAL IS SET ASIDE

AND

DIRECTIONS

1. The appellant is a citizen of Iraq who was born on 1 January 1982 and so now 31 years old. He appealed to the First-tier Tribunal against a decision of the respondent on 6 January 2012 to make him the subject of a deportation order. It is his case that he is a refugee or otherwise entitled to international protection and that removing him contravenes the United Kingdom's obligations under the European Convention on Human Rights.

2. I gave permission to appeal on 22 May 2012 when I said:

> "I give permission to appeal on each ground but my main concern is that it is arguable that the First-tier Tribunal (First-tier Tribunal Judge Sacks and Dr T Okitikpi) did not have proper regard to the rights of the appellant's son (D of B 24/11/2010). /In particular it is arguable that the Tribunal made no clear finding about the degree of contact that the appellant and his son previously enjoyed and

how their relationship might reasonably be expected to develop if the appellant remains in the United Kingdom."

3. I also gave directions where I said:

> "In addition to its obligations under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the respondent must, no later than one month after receiving these Directions, serve on the appellant in the Upper Tribunal a Note confirming that she agrees that the First-tier Tribunal erred in its approach to the appellant's case under Article 8 of the European Convention on Human Rights and indicating in outline how the error can be made good or explaining how the determination is sound. If the respondent does not comply with this direction the Upper Tribunal is likely to find that the First-tier Tribunal erred in law and to set aside its directions to dismiss the appeal on human rights grounds."

4. The respondent has not complied with this Direction.

5. In the circumstances I am satisfied the appeal ought to be set aside for that reason and it is set aside and I give further directions for the proper progress of this appeal in the Upper Tribunal:

Directions

1. This appeal shall be heard again in the Upper Tribunal and shall be concerned solely with the compatibility of the decision with the United Kingdom's obligations under Article 8 of the European Convention on Human Rights.

2. Without regard to material that the parties might think is before the Tribunal no later than fourteen days after receipt of these directions the appellant shall serve on the respondent and the Tribunal a paginated bundle containing all material on which he seeks to rely in pursuance of his claim that removal would be contrary to the United Kingdom's obligations under Article 8 of the European Convention on Human Rights including witness statements drawn to stand as evidence-in-chief without the need for further questions dealing with the present circumstances of the appellant and his son.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 23 May 2013