Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00708/2018 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre Remotely by Skype for Business On 29 October 2020	**Decision & Reasons Promulgated On 03 December 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Gunn instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. This determination sets out the decision of the Upper Tribunal re-making the decision under Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC) following my decision sent on 13 September 2019 that the First-tier Tribunal (Judge L Murray) materially erred in law in dismissing the appellant's appeal under Art 15(c).

3. The appellant is a citizen of Iraq who comes from Kirkuk City. He was born on 25 September 1988. He arrived in the United Kingdom on 6 January 2009 and, the following day, he claimed asylum. The Secretary of State refused that claim on 28 July 2009 and his subsequent appeal was dismissed on 22 September 2009.

4. The appellant made further submissions which were refused on 19 January 2011 and 27 May 2016. His application for judicial review, in relation to the latter decision, was rejected on 6 January 2017. A further refusal followed on 8 March 2017 and again his application for judicial review, challenging that decision, was rejected on 18 October 2017.

5. The appellant again made further submissions which were refused on 19 December 2017. The appellant appealed that decision which was dismissed by the First-tier Tribunal in a decision sent on 22 March 2018. That decision was, however, set aside by the Upper Tribunal on 8 November 2018 and the appeal was remitted to the First-tier Tribunal for a rehearing.

6. The hearing in the remitted appeal took place before Judge L Murray on 11 February 2019. In her determination, sent on 12 March 2019, Judge Murray dismissed the appellant's appeal on all grounds.

7. The appellant sought and was granted permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge Pedro) on 15 April 2019.

The Appeal in the Upper Tribunal

8. The appeal was initially heard by me in the Upper Tribunal on 1 August 2019. In my decision sent on 12 September 2019, I concluded that the First-tier Tribunal had erred in law in dismissing the appellant's appeal under Art 15(c). Indeed, that was conceded by the Secretary of State at the hearing. The decision to dismiss the appeal on asylum grounds stood. The appeal was adjourned for a further hearing to re-make the decision in respect of Art 15(c).

9. The appeal was eventually relisted at the Cardiff Civil Justice Centre on 29 October 2020. As a result of the COVID-19 crisis, the appeal was heard remotely by Skype for Business. I was based in the Cardiff Civil Justice Centre and Ms Gunn, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business.

10. In addition, the appellant and his sister ("SN") gave oral evidence remotely via Skype. The appellant's evidence was given with the assistance of an interpreter who also joined the hearing remotely.

11. I heard oral submissions from both representatives and Ms Gunn relied upon a detailed skeleton argument.

12. In addition, the appellant relied upon an up-to-date bundle of evidence including a psychiatric report from Dr Battersby dated 10 February 2020 and an expert report on Iraq by Professor Christoph Bluth dated 27 October 2020. Mr Howells did not object to the admission of the additional evidence in the bundle which had previously not been before the First-tier Tribunal and I admitted that evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The Appellant's Case

13. The appellant relied exclusively upon Art 15(c). Ms Gunn placed no reliance upon Art 8 of the ECHR.

14. In essence, Ms Gunn submitted that applying the 'sliding-scale' applicable to Art 15(c) and the country guidance decision of SMO & Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) ("SMO and Others") the appellant had established a real risk of serious harm arising from indiscriminate violence contrary to Art 15(c). She relied upon:

    (1) the security situation in Kirkuk City;

    (2) the psychiatric evidence concerning the appellant's mental health and his diagnosis of moderate post-traumatic stress disorder (PTSD) and moderate depressive disorder;

    (3) the lack of availability of medical treatment for mental health on return to Kirkuk City; and

    (4) the appellant having no support from family in Kirkuk City, as he had lost contact with his mother.

    Further, Ms Gunn contended that the appellant could not internally relocate to Baghdad (no other place of internal relocation was relied upon by Mr Howells) because he had no support there, it would be unreasonable to expect him to live in Baghdad given his circumstances and as a non-Arab (Kurd).

    It was accepted before me that the appellant has a CSID and would return with that document such that no risk arises in Iraq due its absence.

The Law

15. In relation to the appellant's humanitarian protection claim under Art 15(c) of the Qualification Directive, the appellant must establish that there are substantial grounds for believing that he is at real risk of serious harm as a result of a serious and individual threat to his life by reason of indiscriminate violence.

16. Paragraph 339O of the Immigration Rules (reflecting Art 8 of the Qualification Directive) is as follows:

> "339O (i) The Secretary of State will not make:
>
> (a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
>
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
>
> (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
>
> (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

17. There are two limbs:

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

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

18. The approach to 'reasonableness' and 'undue harshness' was analysed by the House of Lords in Januzi v SSHD [2006] UKHL 5 and AH (Sudan) v SSHD [2006] UKHL 49. The Court of Appeal provided a helpful summary of the law, drawing together the earlier cases, in AS (Afghanistan) v SSHD [2019] EWCA Civ 873. At [61] Underhill LJ (with whom King and Singh LJJ agreed) said:

> "61. I start by summarising the essential points, so far as relevant to this appeal, established by the authorities about the nature of the exercise required by article 8 of the Directive. I emphasise that this is not intended as a comprehensive analysis of all the issues raised by the authorities to which I have referred.
>
> (1) By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of article 15 of the Directive (which includes treatment which would be contrary to article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.
>
> (2) The ultimate question is whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, … it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so". That is the formulation of Lord Bingham in *Januzi*, repeated in *AH (Sudan)*. It pre-dates the Directive and is

not identically worded: in particular, the reference to whether relocation would be "unduly harsh" is not present in article 8 but derives from the UNHCR 2003 Guidelines (see *Januzi*, para. 20). But it was common ground before us that it states the test required by article 8 [of the Qualification Directive]. When in doubt it is to that question that tribunals should return.

(3) The test so stated is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge – this being the ratio of *Januzi*). It requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (*AH (Sudan)*, para. 13). This is the same as Lady Hale's description of the necessary assessment as "holistic" (*AH (Sudan)* paras. 27-28).

(4) One way of approaching that assessment is to ask whether in the safe haven the applicant can lead "a relatively normal life without facing undue hardship … in the context of the country concerned". That language derives from the UNHCR Guidelines and is quoted by Lord Bingham with approval in *Januzi* (para. 20) and also used by Lord Hope (para. 47); but it does not appear in the Directive or in Lord Bingham's formulation of the test, and it should not be treated as a substitute for the latter. Rather, it is a valuable way of approaching the reasonableness analysis – "one touchstone", as Lord Brown puts it (*AH (Sudan)* para. 42). Its value is because if a person is able to lead in the safe haven a life which is relatively normal for people in the context of his or her own country, it will be reasonable to expect them to stay there (*AH (Sudan)*, para. 47).

(5) It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. That is part of what is decided by *Januzi* itself, and the passages quoted at paras. 34 and 35 above reinforce it. It is also vividly illustrated by the outcome of *AH (Sudan)*, where the House of Lords upheld the decision of the AIT that it was reasonable for Darfuri refugees to be expected to relocate to the camps or squatter slums of Khartoum. That may seem inconsistent with the suggested approach of asking whether the applicant would be able lead a "relatively normal life" in the safe haven; but the reconciliation lies in the qualification "in the context of the country concerned".

(6) Point (5) does not mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly harsh: this is the point emphasised by Lady Hale in *AH (Sudan)* and is exemplified by *AA (Uganda)*.

(7) The UNHCR Guidelines contain a full discussion of factors relevant to the reasonableness analysis. These are described by Lord Bingham as "valuable" and partly quoted by him (*Januzi* para. 20); and at para. 20 of her opinion in *AH (Sudan)* Lady Hale endorses a submission made in that case by UNHCR which summarises the factors in question. A decision-maker must consider those factors, so far as material, in each case (though it does

not follow that everything said in the detailed discussion in the Guidelines is authoritative).

(8) The assessment must in each case be conducted by reference to the reasonableness of relocation for the particular individual."

Preserved Findings

19. A number of findings made by Judge Murray are preserved.

    (1) The appellant's father, who worked as a chef within an oil company where many Americans worked in Kirkuk City, was killed as part of a terrorist attack either directly targeted at him or as an innocent bystander.

    (2) The appellant was present when that attack took place but it was not established that the terrorists who caused his father's death, despite the appellant's genuine fear, had any interest in persecuting him on return. A death threat addressed to the appellant, which had been found in the garden of a friend of the appellant's mother, was found not to be a reliable document.

    (3) The appellant's mother has remained in Kirkuk City since the appellant's departure.

20. It was on the basis of those findings that Judge Murray dismissed the appellant's appeal on asylum grounds which was unchallenged.

The Oral Evidence

The Appellant

21. At the hearing, the appellant gave oral evidence through an interpreter. Before Judge Murray, the appellant had been accepted as a vulnerable witness. Although that issue was not specifically drawn to my attention, I was conscious during the course of the appellant's evidence that he was a vulnerable witness (on the basis of the mental health evidence) and I sought to give the appellant opportunities for breaks if he needed them. In fact, he did not wish to have any breaks. I am, nevertheless, acutely aware that during his evidence, the appellant often had difficulty appreciating what was being asked of him and, in many of his answers, simply replied that he did not know, what was being asked of him was a long time ago and he did not remember. I formed the clear impression that this style of answer was genuine and not an attempt to prevaricate or avoid answering a difficult or unwanted question.

22. In his evidence, the appellant adopted his statement of 27 February 2020. In that statement, at para 12, he said:

> "I have no contact with my mum. She is old now and has hearing problems. The last I knew she was living with friends as she did not want to live alone after I left Iraq".

23. Ms Gunn asked the appellant about that evidence and when he had last had contact with his mother. He replied that he did not remember, it was many, many years ago.

24. In cross-examination, the appellant was asked questions about a number of issues concerning his circumstances.

25. He confirmed that the family home was in the city of Kirkuk. The appellant said that his mother had sold the family home after he had left Iraq. She had moved in with a friend. He did not know the friend's name or address. It was in a different area in Kirkuk City and he could not remember the exact address. He was asked about when he last had contact with his mother, he said that he could not remember but it was a long time ago. He said contact had been by phone. It was a long time ago and he did not know anything about her now. He said he could not remember whether he rang her or she rang him. When asked whether his sister was in contact with their mother, he said he did not know. When asked whether he had asked his sister about this, he said "not really, no". He said that he thought his sister had lost contact with his mother. He was asked why he should be believed given that the judge had previously not found the document relied upon by him as showing a terrorist threat to be reliable. The appellant said he should be believed because we (meaning he and his sister) do not have contact with his mother.

26. He was asked about his maternal uncle in Baghdad who had funded his journey to the UK. It was pointed out that in his interview he had said that an agent had been paid $10,000. The appellant said that "to be honest, I don't remember exactly how much he gave". He was asked when he last had contact with his uncle and he said that he had not had contact with him since he had left Iraq. He was asked why, if his uncle had been so concerned about him previously, there had been no contact. The appellant said that when he left he don't know what happened to him. He said that he had had no contact since he came to the UK. It was put to him that the truth was that he had contact with both his mother and his uncle but the appellant replied that he did not have any contact with them. He said he would like to contact them but his uncle has disappeared, what can he do.

27. The appellant was asked questions about work both in Iraq and the UK. As regards work in Iraq, he agreed that he had helped his father as a chef. In the UK, his attention was drawn to a number of letters in the bundle which, it was put to him, said he was doing voluntary work as a barber. The letters are at G1 and H1 of the respondent's bundle. The appellant said that he was not working in a job or as a professional barber. Rather he was helping out at a church where he cut hair. He said that he had not been a barber in Iraq, the church had taught him how to cook and cut hair and if it was being suggested that he was working as a barber, then that was a mistake.

28. The appellant was also asked about what languages he spoke. He said that Kurdish was his mother tongue but he had learnt Arabic in school. He was asked whether he had translated from Arabic in the UK. He said that he had not. In church he had helped Kurdish people with English with such things as dates of birth, names, things like that. When he was asked why in the letter at H1 it was said that he had assisted the writer in her advocacy work and had "regularly translated from Sorani or Arabic", the appellant said that he had translated small things but no more.

29. The appellant was asked about his mental health and said that he was currently taking his medication. He said that he used to have counselling and therapy but that had finished. He could not remember when he last had counselling or therapy.

30. The appellant was asked whether his sister was in contact with anyone in Iraq and he said he did not know. He said he had not asked her about that. He said that he thought she had been back to Iraq on holiday since she first came to the UK in 2004 but he did not know. He did not know where she had gone and did not know whether she saw family or friends. He was asked whether, if he returned to Iraq, his sister would send him money and he said he did not think so. She had children and her own family in the UK and she could not cope with funding his life. He said she helped him in the UK but not with much money, she did buy him clothes and tickets and she came to see him.

31. As regards his uncle in Baghdad, he did not accept that he was in contact with his uncle and that he could not go to live in Baghdad where the situation was bad and that he had lived in the UK for twelve years.

32. There was no re-examination.

The Appellant's Sister - "SN"

33. The appellant's sister, SN, gave oral evidence in which she adopted her statement of 27 October 2020.

34. In cross-examination, SN was asked about her mother in Kirkuk Cty. She was asked whether it was her evidence that her mother had moved out of the house in Kirkuk but that she did not know what had happened to her. SN replied that she did not know, she did not have any family there and she did not know what had happened to her mother. She was asked whether she was in contact with her mother and she said she had not been in contact for two years. It was put to SN that the appellant had said that the family home had been sold, SN replied that it had been sold when her father had died. Her mother had sold it and had told them that she had done so. It was put to SN that in para 9 of her witness statement, she had said that she did not know what had happened to the house; in response she said she did not know "to be honest". She said she did not know whether her mother had left the family home in Kirkuk. She said she had last been in contact with her two years ago. She had kept calling her but the phone did not ring. When she was last in contact, SN said, that her mother was in a friend's home and she gave the name of that friend but she did not know the address. It was in the city but she did not write it down. She said she had tried a few times to phone her mother, on her mobile, but it did not ring so she had stopped.

35. SN was asked about an email (at U10 of the bundle) in which she had said it was very hard to keep in contact with her mother; it was very hard to talk to her. Why had she not said that she had last been in contact with her mother sometime before. (In answer to my later question, SN confirmed that she had written this email prior

to the UT hearing in 2019). SN replied that she had no contact with her mother, the phone did not ring.

36. SN also confirmed that she was not in contact with her uncle in Baghdad. She also said that the appellant was not in contact with their uncle. She had not been in contact with her uncle since she had been in the UK. She said that she was not in contact with anyone in Iraq.

37. SN said that she had a British passport and she had come to the UK in 2004. She said that she had been back to Iraq since she got her British passport. Initially, when asked how many times, she said she could not remember and when she was asked roughly how many times, she said she did not want to give the wrong answer but maybe three times. The last time was last summer when she went to Erbil. She said that she had been to Erbil on the previous occasions, she had gone there for a visit, for tourism. She said she did not have family there.

38. SN was asked whether she financially supported her brother and she said that she did. She said she could continue to do so. When asked whether she could continue to do that if he returned to Iraq, she said she could not send money, she did not know how. It was easy for her in the UK but how was she going to support him there. It was suggested to her that it could be done through transfer agencies but she replied she did not know. She said she supported him in the UK emotionally as he was alone. When it was put to her that she would not allow the appellant to be destitute in Iraq, she replied that she could not help him if he was there.

39. There was no re-examination.

The Submissions

The Respondent

40. Mr Howells invited me to make a number of further factual findings based upon the evidence I had heard.

41. Mr Howells invited me to find that the appellant would have a support network on return, in the sense that he had not established he had lost contact with his mother or uncle. He relied on the fact that Judge Murray had made some adverse findings against the appellant, including the reliability of a letter left in the garden of a friend of his mother's threatening him. He submitted that if there was no specific threat from ISIS, the appellant's mother had no reason to move from her home although, Mr Howells accepted, that for cultural reasons she might have moved to live with a friend following the death of her husband, the appellant's father.

42. Mr Howells relied on a number of credibility issues arising from the oral evidence. First, he said that the appellant had said that his mother had sold the family home after he left; he had said that both before Judge Murray and in his evidence before me. However, the appellant's sister said in her evidence that it was not sold (at least initially) and then she had said it was sold. There was a change in her evidence.

Secondly, the appellant's sister also changed her evidence about contact with their mother. In her oral evidence, she had said that she had not had contact with her mother for about two years but in the email, sent prior to the August 2019 hearing (at U10) she did not mention that. The letter seemed to suggest there was contact but difficulties in maintaining it. Thirdly, the evidence of the appellant and his sister about contact with their mother was vague and lacking in detail.

43. He invited me to find that neither the appellant or his sister were telling the truth that they had lost contact with their mother. In relation to their uncle, Mr Howells submitted that the uncle had paid $10,000 but the appellant also said he had had no contact with him since he left Iraq. That, Mr Howells submitted, was most unlikely.

44. As regards support, Mr Howells submitted that if the evidence was correct that the appellant's mother had sold the family home, there was a possibility of other sources of income beyond the pension which it was said she received. Likewise, the appellant's sister was currently financially supporting him in the UK and she had given no cogent reason why that support could not continue if he returned to Iraq. Also, given that his uncle in Iraq had spent $10,000 to pay for his trip to the UK, he was likely to be relatively well-to-do. Mr Howells invited me to find that the appellant would have the emotional support of his mother (in Kirkuk City) and his uncle (in Baghdad) and also financial support from them and his sister in the UK.

45. Whilst accepting that the appellant has health problems, PTSD and depressive disorder of moderate severity, and that the provision of mental health facilities was limited in Iraq, Mr Howells submitted that there was nevertheless some mental health provision available; it was not completely absent. Mr Howells pointed out that it did not appear to be part of the claim that his current medication was not available and Professor Bluth in his expert report, did not make such a claim. There was also no claim that the appellant was a suicide risk.

46. Mr Howells submitted that the appellant would not be a person returning with no skills or job. He had studied classics at school, he had worked as a chef with his father in Iraq and, although he disputed it, two letters said that he had done some voluntary work in the UK including as a barber. He spoke Kurdish and had been taught in Arabic, and had acquired a competence in English whilst in the UK.

47. Mr Howells submitted that following SMO & Others, there was no general Art 15(c) risk in Kirkuk City. He referred me to the evidence at [25]–[50] and the analysis of the UT at [251]–[257].

48. Mr Howells submitted that, on the basis of the 'sliding-scale' assessment the appellant was relying upon the security situation in Kirkuk, and his personal characteristics, namely his mental health, that he had a disability and no support network. Mr Howells invited me to find on the basis of the evidence that these factors were not established and did not demonstrate a real risk of indiscriminate violence to the appellant.

49. Mr Howells submitted there was no issue concerning any risk arising on return for the appellant due to a lack of a CSID as it was accepted that he had a CSID which had been provided to the Home Office.

50. Finally, in relation to internal relocation, Mr Howells accepted that the only option relied on was return to Baghdad. He submitted that the appellant had an uncle in Baghdad, he was competent in Arabic having been taught in Arabic at school and had done some translation in the UK. He referred me to [425(48)] of SMO & Others and invited me to find that the appellant had external support in the form of a maternal uncle and that it would be reasonable for him to live in Baghdad.

The Appellant

51. Ms Gunn relied upon her skeleton argument which she developed, in the light of the evidence, in her oral submissions.

52. First, she relied upon SMO & Others and, in particular, the 'sliding-scale' assessment identified as applicable to an Art 15(c) claim in Iraq. She relied upon the security situation in Kirkuk set out in the evidence in SMO & Others at [252] and onwards. In addition, she relied upon the report of Professor Bluth and, in particular, two passages in his report where he said that: "It remains the case that violence in Kirkuk is endemic" (W21), and also where he commented that the security situation in Kirkuk was compounded by escalating political unrest in Baghdad (in late 2011) which was preventing the federal government taking steps to improve security in Kirkuk (W24).

53. Further, Ms Gunn relied upon a report of the Iraq Humanitarian Fund, "iMMAP – Iraq Humanitarian Response: ISIS Sleeper Cells Activities amid the COVID-19 Pandemic" (at V216) noting that:

> "From January to August 2020, ISIS caused 292 incidents taking place mainly in Diyala, followed by Anbar, Kirkuk, Salah al-Din, Mosul, Erbil, and Baghdad, which experienced fewer incidents compared to other provinces".

54. She also relied on an article from the Middle East Institute, "ISIS's dramatic escalation in Syria and Iraq" noting an increase by:

> "At least 69 percent in April 2020 (171 attacks), a marked increase that comes amid US military withdrawals from remote but strategically key posts in Iraq, the arrival and challenges posed by COVID-19 to the region, and continuing political stagnation in Baghdad".

55. And, further (at V222) that :

> "The most dramatic recent escalation in ISIS activity has come in Iraq, where the group has especially increased attacks in Kirkuk (by as much as 200 percent) and Diyala (with near-daily attacks)".

56. Further, Ms Gunn relied upon the 'personal characteristics' of the appellant. She relied on the medical/psychiatric evidence that the appellant suffered from PTSD and depressive disorder of moderate severity as reported by Dr Battersby (at U33).

There was no evidence that health facilities were available to the appellant. She relied upon Dr Battersby's opinion that the appellant's antidepressant medication should be increased and that he would require about six months of therapy. She also relied upon Dr Battersby's concerns that there would be an impact upon the appellant's mental health if he were returned to Iraq and was unable to see his sister and her children. She relied upon Dr Battersby's view that it was "highly likely" that "without her support the severity of his mental health problems would increase" (U41).

57. In relation to availability of mental health treatment, Ms Gunn relied upon a number of background documents which she set out at para 56 of her skeleton argument: the Report of the Special Rapporteur on the human rights of internally displaced persons, "visit to Iraq" (13 May 2020) (at V45) noting the lack of access to healthcare at specialist mental health and psycho-social support services for those who have experienced traumatic events was "mostly absent". In addition, she relied on the EASO, "Country guidance: Iraq Guidance Note and Common Analysis" (June 2019) (at V148 and V147) where it is reported:

> "With regard to mental health, it has been reported that there are huge needs and the available services do not meet the demand. Challenges to the mental health system in Iraq include the lack of funding and infrastructure, limited number of mental health professionals, location of services, and they are often too far away for people to travel, as well as stigma".

58. The report also states (at V147) that:

> "Persons with disabilities face a wide array of social discrimination. The prevailing perception among the public is to treat persons with disabilities as charity. According to UNAMI, persons with disabilities 'face common experiences of often multiple, intersecting and aggravated forms of discrimination which hinder, prevent or impair their full enjoyment of their rights and their full and equal participation in all aspects of society'. ... Adults and children with disabilities are at a higher risk of violence than non-disabled, and those with mental illnesses could be particularly vulnerable".

59. Ms Gunn also relied upon the CPIN, "Iraq: Medical and healthcare issues" (May 2019) which, in summary, concluded that there were "very limited psycho-social support services" and that these were "mostly offered by private institutes, although at a cost that is prohibitive for most families" (see para 15.1.1). Further, the CPIN said that in 2007 there were only "80 practicing psychologists in Iraq and Iraqi Kurdistan" (see para 15.1.3).

60. Ms Gunn also relied upon the report of Professor Bluth that "health infrastructure in Iraq is at a very low level even by regional standards" (at W5), noting the current level of psychiatrists was four per million residents (W10); that there is a stigma associated with mental illness (W12); a shortage of health services particularly as a result of the COVID-19 crisis (W12) and that (at W19):

> "The appellant is highly unlikely to receive the consistent long-term treatment required for his condition and is at serious risk that is further aggravated by the

> lack of support for and discrimination towards people with disabilities in his home region as well as the high level of violence that is still prevalent in North Iraq".

61. Ms Gunn invited me to make a factual finding, based on the appellant's evidence and that of his sister, that he would have no family support network if he returned to Iraq. She invited me to find that the appellant had lost contact with his mother but that, even if that were not the case, his mother, given her age and circumstances, was not in a position to provide support. She pointed out that, whilst Judge Murray had not accepted everything that the appellant had said, she had accepted his underlying claim. She submitted that the appellant and his sister's evidence was consistent on a number of aspects. His sister had not changed her evidence on whether the family house had been sold, but she had been asked what had happened to the family home, the general question, and had only said it has been sold when it was specifically put to her that that was what the appellant had said. There was nothing inconsistent between the appellant and his sister on this issue.

62. Further, as regards the evidence of SN concerning her having lost contact with their mother, there was nothing inconsistent in her email (at U10) dating from a period prior to the August 2019 hearing, and her oral evidence, that she had lost contact with her mother two years earlier. She had simply been saying that it was difficult to contact her mother in the email which was the case.

63. Ms Gunn submitted that both the appellant and his sister were consistent in stating that they had had no contact with their uncle in Baghdad.

64. Further, in assessing the appellant's evidence, Ms Gunn invited me to take into account the medical evidence and that it was clearly the case that he had trouble answering specific questions.

65. Ms Gunn invited me to find that there was no evidence to support the availability of the proceeds of the family house being sold being available to support the appellant on return. Ms Gunn pointed out that the appellant's mother was elderly and lived with family friends. As regards support from the appellant's sister in the UK, Ms Gunn submitted that she had given a credible reason why she could not do this.

66. In relation to the appellant being able to work, Ms Gunn submitted that the appellant's evidence of his work in the UK was entirely consistent, namely that he had volunteered at a church and had cut hair. The documentary evidence did not suggest that he had professional experience as a barber and that was all that the appellant was saying in his oral evidence. The documentary evidence was that he was helping out, rather than engaged professionally as a barber. Ms Gunn relied upon the medical evidence that the appellant would not be able to work in Iraq and would have no support network.

67. Ms Gunn submitted that taking all these matters into account on the 'sliding-scale', including the psychiatric evidence that he was unable to cope with day-to-day life,

the appellant had established that there would be an Art 15(c) risk to him on return to Kirkuk city.

68. In relation to internal relocation, Ms Gunn submitted that the appellant could not reasonably and without undue harshness internally relocate to Baghdad. She relied upon para (19) of the headnote in SMO & Others that those of Kurdish ethnicity were likely to require external support, i.e. a support network of members of their family, who would be willing and able to provide genuine support. Ms Gunn submitted that I should accept the evidence that the appellant has no contact with his uncle who would be able to provide a support network for him.

Discussion and Conclusions

69. As I have already said, the appellant's claim rests solely upon Art 15(c) of the Qualification Directive.

70. In SMO & Others, the UT recognised that there was no general risk of serious harm arising from indiscriminate violence in the Kirkuk governorate merely by an individual's presence there (see [425(30)].

71. Ms Gunn relied upon the 'sliding-scale' adopted in SMO & Others based upon the CJEU's decisions in Elgafaji v Staatssecretaris van Jutsitie (C-465/07) [2009] 2 CMLR 45 at [39] and Diakite v Commissaire général aux réfugiés et aux apatrides (C-285/12) [2014] 1 WLR 2477 at [31]. The UT said this (at [32]):

> "At [31] the Court [in Diakite] reaffirmed the view it expressed in Elgafaji at [39] that Article 15(c) also contains (what UNHCR has termed) a "sliding scale" such that "the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection." The Court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the "sliding-scale" notion."

72. The UT went on in [250(32)] to identify the 'sliding-scale' assessment as follows:

> "The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, 'sliding-scale' assessment to which the following matters are relevant."

73. At [425(33)] and [425(34)] the UT identified the relevant matters or personal characteristics which were to be taken into account in applying the 'sliding-scale' assessment. The only one relied upon in this appeal was the final bullet point in [425(34)] which was "individuals with disabilities".

74. The UT explained the basis for this factor in [312] as follows:

> "The inclusion of category (xvi) – persons with disabilities – is justifiably premised on a section of the EASO Report which records that there is sadly discrimination, inadequate provision of healthcare and a higher risk of violence, particularly against those with mental illness".

75. Ms Gunn placed reliance upon the EASO Report in her skeleton argument (at V147 and V148) as follows:

> "Persons with disabilities face a wide array of societal discrimination. The prevailing perception among the public is to treat persons with disabilities as charity. According to UNAMI, persons with disabilities 'face common experiences of often multiple, intersecting and aggravated forms of discrimination which hinder, prevent or impair their full enjoyment of their rights and their full and equal participation in all aspects of society'. This often leads to isolation of persons with disabilities and exacerbates negative psychological effects. Adults and children with disabilities are at a higher risk of violence than non-disabled, and those with mental illnesses could be particularly vulnerable."

And:

> "With regard to mental health, it has been reported that there are huge needs and the available services do not meet the demand. Challenges to the mental health system in Iraq include the lack of funding and infrastructure, limited number of mental health professionals, location of services, as they are often too far away for people to travel, as well as stigma."

76. Ms Gunn also relied upon the Report of the Special Rapporteur noting the lack of healthcare particularly in relation to mental health and psycho-social support services which were "mostly absent" and finally the CPIN Report of May 2019 stating that there were "very limited psycho-social support services" and these were "mostly offered by private institutions although at a cost that is prohibitive for most families". The evidence also shows that the level of psychiatric support is very low: including only four psychiatrists per one million residents and that a stigma is associated with mental illness (see Professor Bluth's report at W10 and W12 respectively). The position would appear to have worsened since the COVID-19 pandemic (see W12) and, in Professor Bluth's opinion, long-term treatment for the appellant is "highly unlikely" (see W19).

77. I did not understand Mr Howells to dispute the medical evidence concerning the appellant's mental health. Dr Battersby's report, which I accept, is helpful in this regard. She diagnoses the appellant as suffering from moderate PTSD and moderate depressive disorder. She reports that he is receiving antidepressants and that his treatment, together with other therapies, should continue, indeed antidepressant treatment should increase. She notes that the appellant's mental health is "currently poor despite having a lot of support in the UK" (see U42). She points out that he has difficulties coping and is "relatively poorly just in terms of basic everyday functioning in the UK" (see U42). She comments that on being returned to Iraq,

given his PTSD, that is likely to have a "significant negative impact on his mental health and highly likely to significantly increase the severity of his disorder" (see U43). It must, of course, be borne in mind that although Judge Murray did not accept that the appellant was being targeted by terrorists, his father was killed by terrorists either because he was targeted or an innocent bystander and the appellant witnessed those events. There is no reason to disbelieve the appellant's subjective fear, perhaps supported by his PTSD, arising from that very real event which happened to him in Iraq. He would, of course, be returning to Kirkuk City – the place where that event occurred. Dr Battersby notes (at U36) that the appellant

> "struggles with everyday tasks such as self-care, eating, shopping, being in busy places, having to leave if a place is busy/noisy. He describes sleeping very poorly and looks exhausted. His concentration is objectively very poor and he struggles to answer even quite simple questions e.g. about the rough ages of his sister's children".

78. Dr Battersby also notes that his prognosis for "further improvement is poor" because of the persistence of his disorder and any additional stresses "would be likely to increase the severity of his symptoms" (see U36). My own assessment of the appellant whilst he was giving evidence was that, entirely genuinely, he was unable to fully address questions precisely the way Dr Battersby comments in her report.

79. Ms Gunn invited me to accept the appellant's evidence, and that of his sister, that they have lost contact with their mother in Kirkuk City. I accept that evidence. The appellant's evidence was consistent that he had lost contact with his mother and that was also the oral evidence of the appellant's sister. I do not read the email from the appellant's sister, written before the August 2019 hearing, so as to undermine the genuineness of her evidence. Whilst it is true that she does not say that she has lost contact with her mother, she identifies the very factors which, in her oral evidence, supported her evidence that she had lost contact with her mother. Those were that it was difficult to contact her because she did not answer her phone or it did not ring.

80. I accept Ms Gunn's submissions that their evidence was largely internally consistent and consistent between them in relation to such matters as what, if any, contact they continue to have with their mother or their uncle in Iraq.

81. I do not accept Mr Howells' submission that it was "most unlikely" that the appellant would lose contact with his uncle simply because he had been able to pay for his trip to the UK. That was, after all, twelve years ago in any event.

82. I accept Ms Gunn's submission that the appellant's sister's evidence concerning whether the family home was sold in Kirkuk city was, in itself, suspicious and from which I should infer that she was not telling me the truth. It was, after all, always the appellant's evidence that the house had been sold. Having heard his sister give evidence, I am satisfied that although she did not initially say the house had been sold, when the question was clarified for her (on the basis of what the appellant had said) she answered that the house had been sold. At least, that is the thrust of her evidence. It is, as Mr Howells accepted, at least plausible that the appellant's mother

would not live alone in Kirkuk city after the death of her husband (the appellant's father) and that it is entirely plausible that she would leave the family home and, as both the appellant and his sister say in evidence, go to live with a friend in Kirkuk city.

83. I also accept the evidence of the appellant's sister that she provides some financial support for the appellant in the UK and, on the basis of her oral evidence, that at present she does not know how she would provide that support if he returned to Iraq. However, it may well be that faced with the reality of the appellant in Iraq, the appellant's sister would find the means (for example, through money transfer agencies) to support him in Iraq at least to the same extent that she provides financial support in the UK.

84. As regards the appellant's ability to work, I accept his evidence (which is not inconsistent with what was said in the letters relied upon by Mr Howells) that he has voluntarily worked as a barber in the UK and, of course, he worked with his father who was a chef in Kirkuk before his father was killed. However, the appellant's ability to work will, in my judgment, be affected by his mental health problems. As Dr Battersby recognises in her evidence, the appellant has problems in this country of coping with everyday tasks which would include work. Working to support himself is not the same as the voluntary work he provides at his church. As she notes, the appellant's mental health is likely to decline (rather than get better) in Iraq and so the issue will only become more problematic.

85. I accept the evidence, such that it is before me, that there is very limited treatment available for mental health in Iraq. I have set it out above. Mr Howells accepted it was limited but not that there was a complete absence. The evidence is that facilities and personnel are very thin on the ground indeed. Professor Bluth's evidence was that there are only currently "four psychiatrists per a million residents" (see W10). Further, "even fewer people are trained in the related mental health professions including psychological counselling" (see W10). The evidence of Dr Battersby is that the appellant requires both treatment and therapy or counselling. I accept that evidence despite the fact that the appellant's therapy and counselling, which he previously received in the UK, has currently ceased.

86. Therefore, applying the 'sliding-scale' assessment I make the following findings.

87. I accept that there is some evidence postdating SMO & Others concerning an increased level of indiscriminate violence in Iraq, including in Kirkuk (see paras 53-55 above). I note the evidence of Professor Bluth and the background evidence relied upon by Ms Gunn at paras 49 and 50 of her skeleton argument. It may well be that it is an over-statement for Professor Bluth to say that "violence in Kirkuk is endemic". That was certainly not the view of the Upper Tribunal in SMO & Others at the end of 2019. The up-to-date evidence identifies that ISIS caused "292 incidents" across a number of governorates in Iraq. The Middle East Institute Report refers to an increase by ISIS of armed activities by at least 69 percent in April 2020 or 171 attacks. That appears to relate to the whole of Iraq. The report also refers to "increased

attacks in Kirkuk (by as much as 200 percent)". I did not understand Ms Gunn to suggest that this evidence would entitle me to depart from SMO & Others as to the general risk to civilians per se. In itself, it comes nowhere close to providing "very strong grounds supported by cogent evidence" (see SG (Iraq) v SSHD [2012] EWCA Civ 940 at [47]). There is, in my judgment, no Art 15(c) in general to civilians in Kirkuk City.

88. I have, however, to take into account the appellant's relevant personal characteristics relied upon.

89. I carry forward my findings above based on the evidence of the appellant and SN, the expert reports and the background documents. I accept that the appellant suffers from mental health problems including PTSD and depressive disorder of moderate severity. I accept Dr Battersby's opinion that the appellant requires medication in the form of antidepressants and therapy and counselling. I also accept her evidence that, even in the UK, he is unable to cope with basic everyday functioning. I accept her opinion that his condition is likely to deteriorate in Iraq when he will not have the support of his sister and, of course, he will return to the place where the attack and death of his father (which he witnessed) occurred. Further, I accept the evidence of the appellant and, indeed, his sister that they have lost contact with their mother. I accept that she has left the family home, probably having sold it, and moved to a friend's home in Kirkuk city. I do not accept, however, that on return the appellant would not be able to reconnect with his mother. His sister knows the name of the friend and, it is at least possible, that the appellant would be able to find his mother in Kirkuk City. However, even if he were to find her, I accept that he would not have living accommodation with her, as the family home has probably been sold, and as regards support she is herself elderly and is likely to be unable to give sustained emotional and other support that the appellant requires given his mental health problems in particular. I accept that the appellant will have real difficulties in financially supporting himself in Kirkuk City because, despite his skills as a barber or chef (both of which he has done), his mental health problems, deteriorating as they would do in Dr Battersby's opinion, will make it unlikely that he could hold down any work. However, I do accept that the appellant's sister would likely find the means to send some financial support to him as she provides to him in the UK. Although she may not know how to do that now, I am satisfied she would be able to find the mechanism for sending money to Iraq if he were to return.

90. I bear in mind what was said by the Upper Tribunal in SMO & Others at [312], referring to the EASO Report, that there is "sadly discrimination, inadequate provision of healthcare and a higher risk of violence, particularly against those with mental illness". That is, in my judgment, the position in which the appellant would find himself in Kirkuk City if he returned there and even if he was able to make contact with his mother. The limited availability of treatment and therapy for his mental health condition is likely to exacerbate his PTSD and depressive disorder from which he suffers in the UK. In my judgment, his mental illness is likely to lead to discrimination and, as the Upper Tribunal accepted on the basis of the evidence, a higher risk of violence towards him.

91. Taking those matters into account together, there is an increased risk of the appellant being targeted because of his condition.

92. Applying the 'sliding-scale', having regard to the appellant's circumstances in Kirkuk City, the implications for his mental health on return and the problems he would face in supporting and accommodating himself (even if his mother can be traced and some money send from the UK by his sister), I am satisfied that the appellant has established a real risk of serious harm contrary to Art 15(c) on his return to Kirkuk City.

93. That then leaves the issue of whether the appellant could internally relocate to Baghdad. At [425(48)], the UT in SMO & Others said this in relation to relocation to Baghdad:

> "*Relocation to Baghdad.* Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq)."

94. The appellant, of course, will continue to suffer from mental health difficulties. Again, I carry forward my earlier findings in relation to the appellant's mental health and other personal circumstances. He will be a single non-Arab of Kurdish ethnicity in Baghdad. I accept that he does speak some Arabic which will be of assistance. Nevertheless, his ability to support himself, given his mental health problems, remains a problem having regard to Dr Battersby's view that his mental health creates problems for him dealing with everyday tasks in the UK and that that situation can only become worse on return. He is, in my judgment, a person who has "specific vulnerabilities" on return. In my judgment, he will have no family support in Baghdad. I accept his evidence and that of his sister – which was consistent throughout on this issue – that neither has contact with the appellant's maternal uncle in Baghdad. The appellant said he has had no contact since he came to the UK twelve years ago and his sister has had no contact since she came to the UK in 2004. I find that there is likely that he lost contact with, and will not be able to contact on return, his uncle in Baghdad. Financial support from the appellant's sister will, of course, provide some material support. However, he will be without any emotional or other social support in Baghdad, given his vulnerabilities and what is said in [425(48)] of SMO & Others, I am satisfied that it would be unreasonable or unduly harsh for him to relocate and live in Baghdad.

95. For these reasons, I am satisfied that the appellant has established a real risk of serious harm contrary to Art 15(c) in his home area (namely Kirkuk City) and that it

would not be reasonable (and would be unduly harsh) for him internally to relocate to Baghdad. The appellant has established that his return to Iraq would breach Art 15(c) of the Qualification Directive and that he is entitled to humanitarian protection.

Decision

96. The decision of the First-tier Tribunal to dismiss the appellant's appeal under Art 15(c) was set aside by my decision sent on 13 September 2019.

97. I re-make the decision allowing the appellant's appeal under Art 15(c) of the Qualification Directive.

98. Judge Murray's decision to dismiss the appellant's appeal on asylum grounds stands.

99. No reliance was placed upon Art 8.

Signed

Andrew Grubb

Judge of the Upper Tribunal
25 November 2020