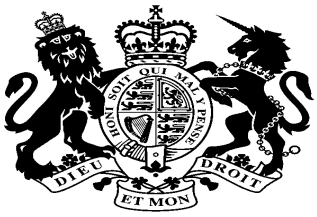

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03760/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Thursday 5 March 2020	**On Thursday 23 April 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

H S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity direction was not made by the First-tier Tribunal Judge, the appeal involves a protection claim and a minor child. Accordingly, it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.

Representation:
For the Appellant: Mr D Jones, Counsel instructed by Sutovic & Hartigan
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 13 August 2019, I found an error of law in the decision of First-Tier Tribunal Judge O'Hagan itself promulgated on 3 June 2019 dismissing the Appellant's appeal against the Secretary of State's decision dated 9 January 2018 refusing his protection claim. I therefore set aside Judge O'Hagan's decision and gave directions for the re-making of the decision. In particular, I indicated that I would not decide this appeal until after the handing down of the decision in the pending country guidance case of SMO and others, which delay would enable the gathering of updated medical evidence in relation to, in particular, the Appellant's son [O]. My error of law decision is appended to this decision for ease of reference.

2. The decision in the country guidance case is now reported as SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ("SMO and Others"). I refer to the guidance given in that decision so far as relevant below.

3. The factual background in this appeal is set out in my error of law decision and I do not need to repeat it. As I pointed out at [1] of my earlier decision, the Appellant and his family have been granted discretionary leave to remain based on their Article 8 rights, and so the only issue which remains is his appeal on protection grounds.

LEGAL BACKGROUND AND ISSUES

4. The Appellant does not contend that he is entitled to refugee status. As such, the legal position is confined to Article 15(c) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualification Directive") and humanitarian protection pursuant to Article 15(b) of that directive. The Appellant also contends that his removal would breach Article 3 ECHR.

5. Article 15 of the Qualification Directive provides as follows:

> "Serious harm consists of
>
> (a) Death penalty or execution
>
> (b) Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin
>
> (c) Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"

As is evident from that definition, Article 15(b) overlaps with Article 3 ECHR.

6. It is for the Appellant to establish that there are substantial grounds for believing that he will face treatment contrary to either Article 15 of the Qualification Directive or Article 3 ECHR on return.

7. I emphasise that it remains open to the Appellant to seek to make out his case on those grounds notwithstanding that removal is not at this stage threatened because he and his family have been granted leave to remain on Article 8 grounds.

8. As to the way in which the law applies to this case, I set out the issues which I have to re-determine at [19] of my earlier decision. Those issues were re-organised and refined following initial discussions at the hearing (to which I refer below) as follows:

> Issue One: Whether the Appellant and his family would have, or within a reasonable time would be able to obtain a Civil Status Identity Document ("CSID");
>
> Issue Two: Where in Iraq the Appellant and his family would be able to live;
>
> Issue Three: Whether removal to the Appellant's home area would breach Article 3 ECHR;
>
> Issue Four: Whether, if internal relocation were required to avoid risk in home area, it would be unduly harsh for the Appellant and his family to relocate to IKR.

9. The most recent country guidance which applies is that given in SMO and Others which reads as follows so far as relevant to this appeal:

> ***"A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE***
>
> *1. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
>
> *2. …*
>
> *3. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*

4. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.

5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:

- *Opposition to or criticism of the GOI, the KRG or local security actors;*
- *Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
- *LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
- *Humanitarian or medical staff and those associated with Western organisations or security forces;*
- *Women and children without genuine family support; and*
- *Individuals with disabilities.*

6. The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.

8. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

9. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ

1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.

10. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

C. CIVIL STATUS IDENTITY DOCUMENTATION

11. The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.

12. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.

13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.

14. …

15. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.

16. …

D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

17. Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the

feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.

18. Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.

19. Relocation to Baghdad. …

E. IRAQI KURDISH REGION

20. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

Kurds

21. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

22. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

23. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to

travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

24. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

25. …

26. …

27. For Kurds without the assistance of family in the IKR the accommodation options are limited:

> *(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
>
> *(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;*
>
> *(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
>
> *(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*

28. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

> *(i) …;*
>
> *(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
>
> *(iii) P cannot work without a CSID or INID;*
>
> *(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the*

> *region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
>
> *(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
>
> *(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.*
>
> *Non-Kurdish Returnees*
>
> *29. …*
>
> ***F. EXISTING COUNTRY GUIDANCE DECISIONS***
>
> *30. This decision replaces all existing country guidance on Iraq."*

10. I was also referred to the Tribunal's decision in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) ("AA (Iraq)"). Although SMO and Others replaces all existing country guidance, the Tribunal's decision in AA (Iraq) underpins some of the Tribunal's decision in SMO and Others and is relevant to it.

SUBMISSIONS AND EVIDENCE

11. In accordance with the directions given in my earlier decision, on 17 January 2020, the Appellant filed a position statement setting out his position on the issues which I outlined at [19] of my previous decision. Mr Kotas apologised at the outset for the Respondent's failure to comply with directions which was due to administrative oversight. Mr Kotas therefore outlined the Respondent's position orally at the outset and Mr Jones also replied in summary.

12. In essence, the Respondent says that the Appellant and his family would be returned to Baghdad and that he would be able to obtain a CSID before he returns. Using that, the Appellant and his family would be able to return to their home area within the Kirkuk governorate or the IKR. So far as the Respondent is concerned, the question is therefore whether there is an enhanced risk under Article 15(c) of the Qualification Directive in the Appellant's home area and/or whether it would be unduly harsh for the Appellant and his family to relocate to the IKR.

13. Mr Kotas helpfully indicated that the medical evidence was not disputed and that it was also accepted by the Respondent that the Appellant's family had left Iraq. The only evidential issue related to the Appellant's ability to obtain a CSID. In that regard, Mr Jones pointed out that the Appellant had dealt with this issue in his witness statement (to which I come below) – he has asked for one, but the Iraqi authorities have declined to issue one because the Appellant is unable to provide sufficient documentation to identify himself as an Iraqi.

14. Mr Kotas also submitted that the Appellant would be able to work on return as he has in the past. His family had a business in Iraq. Mr Jones pointed out that the Appellant's ability to work in the future was hampered by the Appellant's medical condition and that of his son.

15. Following that exchange, it was agreed by both parties that the hearing could proceed on submissions alone and without hearing oral evidence. Insofar as it is necessary for me to refer to the written evidence, I have before me a consolidated bundle from the Appellant (filed on 10 January 2020) to which I refer as [AB/xx], a supplementary bundle filed in accordance with my earlier decision to which I refer as [ABS/xx] and a bundle of case-law and country evidence filed by the Appellant to which I refer as [ABC/xx].

Issue One

16. Mr Kotas drew my attention to [383] of the decision in SMO and others, dealing with the obtaining of a CSID from the UK. That endorses the position set out at [173] to [177] of the guidance in AA (Iraq). The factual position is summarised at [177] of that decision as follows:

> "In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the second that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring."

17. Mr Kotas accepted that there is some tension between that summary and what is said at [173] as follows:

> "173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "*Consular section of the Iraqi Embassy in London*", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, *inter alia*, by "*any form of official document in support of the applicant's identity*" and the application form must be signed by "*the head of the family, or the legal guardian or representative to verify the truth of its contents.*" He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "*follow up on the progress of the application.*"

18. In relation to whether the Appellant could be expected to know his volume and page reference in order to provide those, Mr Kotas directed my attention to [391] and [392] of SMO and Others as follows:

> "391. We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual's volume and page reference in the civil register. These details appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. It was suggested in a report from the British Embassy in Baghdad, quoted at 6.1.9 of the Internal Relocation CPIN of February 2019, that "[a]ll Iraqi nationals will know or be able to easily obtain this information". We find the former assertion entirely unsurprising. The volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. We do not lose sight of the fact that there remain a significant number of people in Iraq who are undocumented. We do not consider that problem to be attributable to a difficulty with recalling the relevant information. It is instead attributable to the closure – until comparatively recently – of the local CSA offices at which people were required to obtain replacement documents and to their reluctance to return to those areas from a place of relocation.
>
> 392. There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. As is clear from AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back."

19. On the facts of this case, as Mr Kotas pointed out, the Appellant returned to Iraq and has worked there. It was not suggested that he worked in the black economy and must therefore have been there working legally and have been documented. He was also married in Iraq and would probably have a marriage certificate containing some if not all of the relevant details.

20. Mr Kotas also made the point that the Appellant would be returned on a laissez passer. He drew my attention to what is said about the status of a laissez passer at [375] of SMO and Others as follows:

> "… an individual must simply be able to establish their nationality in order to obtain a Laissez Passer. In the absence of documentation, an Iraqi national can request family members in Iraq to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or, failing that 'legal procedures will then be started to prove the Iraqi nationality of the failed asylum seeker through a list of questions in relation to their life in Iraq'. These details are checked against Iraqi records, and once verified the individual will be issued with a document enabling the individual to return to Iraq. Dr Fatah goes on to state in his report that the website of the Iraqi Ministry of Foreign Affairs states that the resulting document is valid for six months and that it 'permits a single entry into Iraq'."

On the basis of that evidence, even if the Appellant had no official document, the Iraqi authorities in the UK would interview him and it could be expected that he would be given a laissez passer. With that and knowledge of his family details, he would be able to get a CSID. It would, said Mr Kotas, be incongruent if the authorities would issue a laissez passer to enable the Appellant to enter Iraq as one of its nationals and yet deny him a CSID in that identity.

21. In response, Mr Jones relied heavily on the tension between the evidence recounted at [173] of AA (Iraq) and the summary of the overall evidence at [177]. As he pointed out, Dr Fatah's evidence as set out at [173] was broadly accepted and preferred to that of the Respondent. He drew my attention in particular to [176] of AA (Iraq) which states as follows:

> "There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad.
>
> > 'In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqis abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality.'"

He also pointed out that the ambiguity created by the words "and/or" in [177] of AA (Iraq) was removed by the guidance in SMO and Others (see [13] of the headnote cited at [9] above).

22. As such, said Mr Jones, the Appellant faces the following obstacles to the obtaining of a CSID from within the UK. First, he has no passport or other form of identity document. Second, he requires the signature of the head of family or another representative to verify the truth of the application, but he has no family in Iraq as the Respondent accepts. He has no person who can act as proxy in Iraq.

23. Mr Jones submitted that the position was aggravated by the fact that the Appellant comes from one of the former contested areas (Kirkuk) and

documentation would continue to be a problem due to general instability in such areas.

24. Mr Jones also pointed out that the Appellant would not be able to obtain a passport from the Iraqi authorities in London to enable him to obtain a CSID. The Appellant's solicitor, Ms Tori Sicher, has provided a witness statement at [AB/29] onwards which deals with this. She deals in her statement with the position of other Iraqi nationals who she has represented. I do not need to refer to their details. Of relevance to the point at issue here, she says this:

> "46. … a number of my clients have attended the Iraqi Embassy in London to try and redocument themselves. They have all been told that without any Iraqi documentation this Embassy cannot assist. Most were not provided with anything in writing confirming this. However, one of my clients was and I exhibit it to my statement."

25. The exhibit is a document dated 6 August 2019 issued by the Embassy of the Republic of Iraq, London which is unsigned but bears an official stamp. It reads as follows:

> "Instructions on who to apply for Iraqi passport series A:
>
> 1 – Iraqi Civil Card …, has to be less than 15 years old.
>
> 2 – Iraqi Nationality Card …
>
> 3 – Photographs (2)
>
> 4 – Attendance in person when applying and receiving the passport at the Iraqi Consulate in London.
>
> Without these requirements an application for an Iraqi passport cannot be made…"

The Appellant has also now produced a letter from the Iraqi Embassy in relation to the Appellant which confirms the above.

26. Those documents only indicate the position as to the obtaining of a passport and not a CSID. Mr Jones submitted though that there was no indication that the Iraqi authorities would be any more flexible in relation to the issuing of a CSID.

27. The Appellant's evidence surrounding the documentation issue is set out at [26] of his statement dated 10 October 2018 as follows ([AB/14]):

> "26. Since we got leave I had a letter from the Home Office saying if you want to have a passport you have to go to the Iraqi Authorities in London to ask for a passport as we won't give you a travel document. If you have a reason you have to put it in why you cannot get a travel document. I

> went to the Embassy. I asked about applying for an Iraqi passport, but they told me that I had to have Iraqi documents, the National Identity document, and the other is Iraqi Naturalisation identity document. I told them that I did not have them. They said they cannot issue any passport to people who do not have these. They said that is the only way. I asked for a letter to confirm they could not issue me with a passport but they refused to do it. They said they can't as they do not know who I am. I showed them the BRP but they said only if I have an Iraqi identity card could they issue me with a letter or an Iraqi passport."

The Iraqi authorities in the UK have since provided the Appellant with a letter in the same form as that to which I have already referred.

28. In relation to Mr Kotas' submission regarding the analogy between the issue of a laissez passer and a CSID, Mr Jones said that this was unsustainable. He pointed out that if the Iraqi authorities were generally willing and able to issue a CSID to anyone issued a laissez passer then there would be evidence that they do so (as the obtaining of a CSID tends to be a sticking point in many such appeals). There is no evidence that they are willing to do so. The evidence is that the laissez passer is a document of an entirely different order (see in particular what is said at [12] of the guidance in SMO and Others). A laissez passer is worthless other than as a document to permit return to Iraq.

29. Mr Jones accepted that the position might be different if the Appellant had an official document establishing his identity. Even then, though, as Mr Jones pointed out, what is said in AA (Iraq) indicates that the consular authorities in the UK have to make contact with the authorities in Iraq and the Appellant has no family there to act as a proxy to "follow up on the progress of the application".

30. For those reasons, Mr Jones submitted that I could not be satisfied that the Appellant would be documented on return to Iraq. He would return without a CSID. It is not suggested that he and his family could relocate to live in Baghdad. They would be vulnerable from the point of leaving the airport. In the absence of proper documentation, the family would be detained by the authorities and held until a family member could turn up with an official document. Since the Appellant is accepted not to have any family members in Iraq, that could not happen. Neither could the Appellant and his family travel onwards to the IKR without a CSID. Accordingly, the Appellant and his family would be at risk on return to Iraq.

Issues Two and Three

31. In light of the way in which these two issues were argued, it is appropriate to take them together.

32. Based on what is said at [30] to [32] of SMO and Others, Mr Kotas submitted that the Appellant can return to Kirkuk. The evidence about the humanitarian

problems in Kirkuk is set out at [155] of that decision. My attention was also drawn to what is said at [251] to [257] of SMO and Others about developments in that area.

33. As Mr Kotas pointed out, it is not clear whether the Appellant's wife and children are dependents in this appeal. If they are not, then I have to consider the position of the Appellant returning alone. However, whether they are or not, the issue is whether any of the enhanced risk factors set out in SMO and Others apply. Those factors which the appellants in those cases suggested should apply as set out at [293] of the decision were condensed by the Tribunal at [313] and [314] of the decision (as encapsulated at [4] and [5] of the headnote).

34. Mr Kotas submitted that Westernisation could not be said to be a general risk factor (based on what is said at [310] and [311] of SMO and Others). In any event, there was no evidence as to the extent of the Appellant's Westernisation. It was confirmed that the Appellant's daughter is aged nineteen but there are no statements from the Appellant's wife or children which suggest that they are at particular risk on this account.

35. Turning then to the medical conditions of the Appellant and his son, Mr Kotas accepted that disability was a factor relevant to return ([312] to [315] of SMO and Others). However, he submitted that their health issues were controlled with medication. [O]'s condition could not be said to be so chronic as to amount to a disability.

36. As such, Mr Kotas submitted that the Appellant had not shown that Article 15(c) is satisfied. Insofar as the Appellant relies on Article 3 ECHR in relation to conditions on return, Mr Kotas pointed out that N v United Kingdom (2008) 49 EHRR 39 remains binding authority on this issue (see also [322] of SMO and Others confirming that position). If I reach the point of considering this issue, it would be on the basis that the Appellant could obtain a CSID and therefore would be documented. On that basis, Mr Kotas submitted that the Appellant could obtain medical treatment and could work. Mr Kotas drew my attention to [331] and [332] of SMO and Others which reads as follows:

> "331. Nevertheless, we remind ourselves that the threshold is that in N v UK and we accept the respondent's submission that the cumulative difficulties faced by a healthy, documented male returning to their place of origin in the formerly contested areas do not cross that threshold. Such an individual would be able to access food through the PDS or other humanitarian assistance programmes. They would have access to the limited employment options available. There is some primary healthcare available there. The risks of food insecurity and water scarcity, together with the risks from disease and unexploded ordnance, even in the worst affected areas and even in respect of those who would be required to live in a critical shelter arrangement, do not reach the high threshold required for us to conclude that there is a general risk of conditions which breach Article 3 ECHR, or engage Article 15(b) QD. A healthy, documented male

> returning to a home area in the formerly contested areas, therefore, will not generally be able to establish that theirs is a very exceptional case where the humanitarian grounds against removal are sufficiently compelling to require such protection.
>
> 332. It is imperative to recall that the minimum level of severity required by Article 3 is relative and depends on all the circumstances of the case, including the duration of the treatment, its physical and mental effects and the sex, age and state of health of the individual concerned: Saadi v Italy (2009) 49 EHRR 30. Although it is clear to us that a documented, healthy male would not, on return to a home area in the formerly contested areas, encounter conditions in breach of Article 3 ECHR, additional vulnerabilities including those considered under the 'sliding scale' of Article 15(c) might conceivably combine to cross the N v UK threshold. In considering any such submission, decision makers will nevertheless wish to recall that that the combination of factors in Said, including mental health problems and a lack of family support, offset by clan support and remittances from the UK, were held by the Court of Appeal to be so short of the N v UK threshold that remittal to the Upper Tribunal would serve no purpose: [32]-[33] refers."

37. Mr Jones accepted that the position on return in Kirkuk based on the decision in SMO and Others had been fairly summarised by Mr Kotas but drew my attention also to Dr Fatah's evidence as summarised at [26] of the decision which makes clear that it is the Iraqi authorities who are presently in control of Kirkuk and that it is being managed by the Shia Militia. That is relevant to how the Appellant would fare in that area as an Iraqi Kurd. The process of Arabisation of Kurdish areas is he says confirmed by the article at [ABC/223-224].

38. Based on what is recorded at [251] to [257] of SMO and Others, although Mr Jones did not submit that there was a risk from ISIL in Kirkuk itself, he said that there was still a general risk in the area.

39. As to Westernisation, although Mr Jones accepted that, based on [311] of SMO and Others, he could not say that there was a general risk on this account, that had to be read in the context of [309] of SMO and Others which draws attention to the risk of kidnapping of those returning from the West who might be perceived as wealthy. He submitted that there remained some risk particularly where a person had been absent for a protracted period. The risk was not based on presentation but vulnerability. He also submitted, in any event, that disability was a relevant factor and that all factors had to be considered in the round.

40. As to the Appellant's ability to work and support himself and his family, that would turn to some extent on whether his medical condition amounts to a disability. The Respondent has accepted the medical evidence. The severity of the Appellant's medical condition is not therefore contested. The nature and extent of the Appellant's condition is set out at [15] to [20] of his statement

dated 10 October 2018 ([AB/11-12]). He suffers from chronic cluster headaches. He gets those headaches between four and seven times per day. He says his medication is frequently changed in order to find one which works. He takes nearly thirty tablets a day and sometimes has to take "oxygen in a cylinder" (by which he may mean an inhaler based on the description). He sometimes needs an injection. He is regularly monitored by a team of doctors for side effects based on his medication.

41. As Mr Jones submitted, and I accept, what is there described is a severe neurological problem for which the Appellant is receiving extensive and experimental treatment. Mr Jones also pointed out that the Appellant's doctor in the UK had to petition the UK Government to enable him to prescribe the medication in the UK due to its cost. Accordingly, he would not be able to obtain the medication on return to Iraq (and see on this point the Respondent's Country Policy and Information Note entitled "Iraq: Medical and healthcare issues (May 2019)" at [ABC/208] – "the CPIN").

42. In relation to Article 3 ECHR, Mr Jones accepted that N v United Kingdom is binding on me in this regard and sets a high threshold. In this case, it is accepted that the Appellant lacks family support and that support would be critical for accommodation and support if the Appellant is unable to work. That was particularly so given that the Appellant would not be returning alone and that one of his children also has vulnerabilities.

43. In this regard, my attention was drawn to a letter dated 4 November 2019 at [AB/47] which confirms that [O] has been diagnosed with autism spectrum disorder and one dated 29 August 2019 which indicates that he has a "recurrent reflux". [O] is the subject of a care plan ([AB/64-69]) and is receiving speech therapy. The evidence indicates that [O] is currently operating at a level about two years below his age. The Appellant's witness statement indicates that [O] has a lack of awareness of risk and has to be constantly monitored even within the relatively safe confines of the UK. The position would be far worse in Iraq.

44. Mr Jones also drew my attention to what is said in the CPIN at [ABC/197] concerning the cost of psycho-social support services including autism and an article at [AB/172] which indicates that there is only one centre in Erbil for treatment of children with autism which can currently care for only 32 children whereas there are 1,000 children in that area with the condition. There was no evidence that the position was any better in Kirkuk.

45. In short summary, Mr Jones submitted that based on the combination of the foregoing factors, there was an enhanced risk on return meeting the relevant threshold and/or that return to that area would breach Article 15(b) of the Qualification Directive/ Article 3 ECHR.

Issue Four

46. As Mr Jones pointed out, if I conclude that the Appellant is able to reach Kirkuk and that he is not at enhanced risk in that area, then relocation to IKR is not relevant. If, however, the issue does arise for determination, Mr Jones submitted that it would be unduly harsh for the Appellant and his family to relocate to IKR. He drew my attention to Section E of the headnote in SMO and Others. He pointed out that the Appellant would have no family support on return and has no ties in IKR. His residence there is historic (dating back to 1995 to 2003) although I note from the other evidence that his wife is from Erbil. He also submitted that the authorities in IKR might not admit the Appellant (based on another of the Respondent's CPINs dated February 2019 at [ABC/164]).

47. Mr Kotas drew my attention in particular to [23] of the headnote in SMO and Others. He accepted that, since the Appellant has no family in Iraq, his accommodation options in IKR would be limited. However, he would be able to rent. He pointed out that the Appellant would be entitled to £1500 as part of the assisted voluntary returns programme. The evidence is that unemployment in this area stands at 70%. Mr Kotas accepted of course that the Appellant would not be able to work without a CSID but if I reach the point of having to decide this issue, the assumption is that the Appellant would be documented. He accepted that the Appellant might need to earn more if returning with his family. However, the Appellant has worked in the past and has experience from the UK. His medical condition is controlled in the UK. Even though there would be a cost associated with that medication, the Appellant had not shown that it was not available.

48. Mr Kotas submitted that it was not unreasonable or unduly harsh for the Appellant to relocate to the IKR. However, he accepted that if I were to find that the Appellant would not find work and therefore accommodation in the IKR, it would be unduly harsh for him to relocate.

DISCUSSION AND CONCLUSIONS

49. In relation to the first issue, I accept that there is a tension between [173] and [177] of the decision in AA (Iraq). The latter suggests that it is possible to obtain a CSID from within the UK using only the details of the book and page number for an applicant's family registration details. I accept that if this were the only requirement, the Appellant would not be able to show that he could not meet that requirement. As Mr Kotas submitted and I accept, it is not likely that the Appellant does not know that information. After all, he returned to Iraq in 2005 and lived there again for three years. He was married in Iraq and would have needed details for the marriage. As Dr Fatah told the Tribunal in AA (Iraq), "having a marriage certificate may be useful as it would contain data found in the family records" ([175]).

50. However, the Tribunal in AA (Iraq) did not reject Dr Fatah's evidence about the process and requirements for the obtaining of a CSID in the UK as set out at [173] of the decision. As Mr Jones pointed out, and I accept, the Tribunal in SMO and Others did not repeat the "and/or" formulation which appears in the summary at [177] of AA (Iraq); it indicated that whether a person could obtain a replacement CSID "depends on the documentation available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq" [my emphasis] ([13] of the headnote). According to Dr Fatah's evidence in AA (Iraq), the documentation which is required is "an expired or current Iraqi passport". The Appellant has neither.

51. I also accept on the evidence produced by the Appellant that he is unable to obtain a passport from the Iraqi authorities in the UK. In order to obtain a passport, he would need either a civil card or a nationality card. He obviously does not have a civil card and there is no evidence to show that he has any other nationality card. His evidence about his attempts to obtain a passport is not challenged.

52. Although I can see a certain amount of sense in Mr Kotas' submission that the Iraqi authorities ought to issue a CSID if they are sufficiently satisfied that an individual is Iraqi in order to issue a laissez passer, there is, as Mr Jones pointed out, no evidence that the Iraqi authorities are willing to be flexible when it comes to the issue of a CSID. The evidence indicates that they are not particularly flexible about the issue of a passport and that lack of flexibility may well be indicative of their unwillingness to issue a CSID. There is no evidence that the process as outlined by Dr Fatah in AA (Iraq) has changed in any way.

53. For those reasons, I am satisfied that the Appellant is unable to obtain a CSID before returning to Iraq. Mr Kotas did not submit that he would be able to obtain one within a reasonable time of return to Iraq. Mr Kotas accepted that, if I were to find that the Appellant is unable to obtain a CSID prior to return then the Appellant is entitled to succeed. In that regard, I record what is said at [317] of SMO and Others:

> "The starting point for our consideration [of Article 3 ECHR/Article 15(b) of the Qualification Directive] must be the respondent's repetition, at [150] of her closing submissions, of her concession in previous cases that 'it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR'..."

54. In light of that conclusion, I do not strictly need to deal with the other three issues. However, I make some observations about those for completeness. In so doing, I make an assumption, contrary to my conclusion in relation to the first issue, that the Appellant would be able to obtain a CSID before his return as otherwise he would not be able to return at all.

55. Dealing first with the position on return to Kirkuk, I would not have accepted that the Appellant is at enhanced risk on return to that area. It is not suggested that he has or ever had any association with ISIL. Kirkuk is not an area in which there is any active ISIS presence and in any event the Appellant is not said to fall into any of the risk categories set out at [4] of the headnote in SMO and Others.

56. In relation to the other personal characteristics relevant to the Article 15(c) issue, I do not accept that there is any enhanced risk based on the Appellant's Westernisation. I have no evidence as to the nature and extent to which he has adapted to Western culture. There is no evidence to show that he is wealthy and would be at risk of kidnapping on that account. I do not accept that he is vulnerable for that reason.

57. The issue of whether the Appellant would be at enhanced risk due to a disability has to be assessed in light of what the Tribunal says in SMO and Others about the source of that risk at [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 health care and a higher risk of violence, particularly against those with mental illness."

58. Whilst the medical condition of the Appellant and his son falls for consideration in the context of humanitarian protection, I do not accept that what is said at [312] applies to either of their conditions.

59. For those reasons, I would not have found in the Appellant's favour on the Article 15(c) issue. I conclude that the Appellant is not at enhanced risk in his home area.

60. Turning then to the position in relation to humanitarian protection, I have regard to what is said by the Tribunal at [6] of its headnote in SMO and Others. In general, the conditions are not of a sufficient severity to reach the high threshold of Article 3 ECHR or to necessitate subsidiary protection under Article 15(b) of the Qualification Directive. However, whether the threshold is met depends on the personal circumstances of the individual concerned.

61. As I have already noted, the Respondent's position if the Appellant does not have a CSID or the possibility of obtaining one within a reasonable time (as I have concluded is the position here) is that return would breach Article 3 ECHR. I therefore emphasise that in my consideration of Article 3 ECHR at this stage, I am assuming that the Appellant could obtain a CSID contrary to that conclusion and would therefore be documented.

62. The Tribunal in SMO and Others indicated at [321] of its decision that if a person has or is able to obtain a CSID "and has family upon whom he can rely

for meaningful support", it would be "generally unlikely" that the conditions on return would breach either Article 15(b) of the Qualification Directive or Article 3 ECHR. Of course, in this case, it is accepted by the Respondent that the Appellant does not have family in Iraq to provide any support.

63. Although the Tribunal in SMO and Others did not conclude that the humanitarian situation is so severe as to generally meet the relevant thresholds, there is no doubt, having regard in particular to what is said at [325] to [327] of the decision that the conditions are very difficult and challenging.

64. Turning then to what is said at [331] and [332] of the decision, the primary position is that of a "healthy, documented male". For these purposes, assuming that the Appellant would be documented, it cannot be said that the Appellant is healthy; far from it. The evidence shows that he has a serious condition which requires a great deal of medication and monitoring.

65. As the Tribunal goes on to say at [332] of SMO and Others, it is therefore necessary to consider "additional vulnerabilities" which include those listed as relevant to Article 15(c) of the Qualification Directive. As I have already concluded, those factors do not apply here. The additional considerations in this case are the Appellant's own medical condition, that of his young son, [O], the fact that the Appellant would be returning with his family and that he and his family would have no support from other family members in order to provide for their accommodation or upkeep.

66. The Appellant is not registered disabled. He is able to work in the UK (see [14] of his statement at [AB/11]). I recognise that this is with the benefit of medication which, even if available, is likely to be very costly in Iraq. The medical evidence does not indicate what are the underlying causes of the Appellant's condition nor what would happen if he was not receiving the medication which is currently prescribed. Although there is no evidence that the medication is not available, the evidence is that the medication is very expensive even in the UK (to the extent that those treating the Appellant have had to petition the government to authorise prescription of it). The Appellant's treatment is also experimental. The Appellant's evidence is that he gets debilitating headaches if the medication is not working and I accept that this would be likely to affect his ability to work. That would be likely to impact in turn on his ability to accommodate, support and maintain himself and his family.

67. I also accept that [O]'s progress is likely to be impacted if he were removed to Iraq. The evidence is that he was on a care plan between July 2018 and May 2019. He is said to have "severe language and communication difficulties which affect his expressive and receptive language and his ability to communicate effectively". The indication in the most recent evidence about this (4 November 2019 at [AB/47]) is that [O] is likely to need speech and language therapy until he is at least aged seven. He is currently aged five years.

68. Taking that medical evidence into account, alongside the evidence that the Appellant would be unlikely to be able to work to accommodate and support his family if the medication and monitoring which he currently receives were removed and in the absence of any form of support from other family members, I conclude that removal would breach Article 3 ECHR.

69. Having reached those conclusions, on the second and third issue, I do not need to deal with the fourth issue of relocation. My conclusion regarding return to the Appellant's home area is based not on any enhanced risk there but on the conditions which the Appellant and his family would face. The situation would be, if anything, worse if the Appellant and his family were to go to IKR rather than their home area. They have no ties to that area save for historic ties based on the Appellant's residence (and that the Appellant's wife comes from Erbil but no longer has family there). I do not accept, based on what is said in SMO and Others, that the Appellant and his family would be turned away from the IKR. However, the conditions would not be any better given my conclusion that the Appellant would be unable to work to any meaningful extent in order to accommodate and support his family given his medical condition and in the absence of the medication which he currently receives which, even in the UK, is costly.

70. In summary, therefore, I accept that removal of the Appellant to Iraq would breach Article 3 ECHR based on his lack of a CSID and inability to obtain one within a reasonable period following return. I also accept that due to the Appellant's medical condition, inability to work if not medicated and therefore inability to accommodate and support his family, coupled with the lack of support from other quarters as well as the medical condition of his son, removal to the Appellant's home area, even if he were documented, would be contrary to Article 3 ECHR. I do not however accept that the Appellant would be at enhanced risk on return to his home area of Kirkuk.

DECISION

Removal of the Appellant to Iraq would breach his human rights (Article 3 ECHR). I therefore allow the appeal.

Signed  Dated: 2 April 2020

Upper Tribunal Judge Smith

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03760/2018

THE IMMIGRATION ACTS

Heard at Field House
On Thursday 8 August 2019

Determination Promulgated

……13 August 2019 ……

Before

UPPER TRIBUNAL JUDGE SMITH

Between

H S
(Anonymity direction made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity direction was not made by the First-tier Tribunal Judge, the appeal involves a protection claim and a minor child. Accordingly, it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.

Representation:
For the Appellant: Mr T Royston, Counsel instructed by Sutovic & Hartigan
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-Tier Tribunal Judge O'Hagan promulgated on 3 June 2019 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 9 January 2018 refusing his protection claim. The Appellant and his family have been granted discretionary leave to remain based on their Article 8 rights, but he remains entitled to appeal against the decision refusing his protection claim.

2. The Appellant is a national of Iraq of Kurdish ethnicity. He first came to the UK on 3 February 2005 and claimed asylum. His claim was refused, and he appealed. His appeal was on that occasion dismissed by Immigration Judge Mrs CES Andrew. The Appellant then returned to Iraq with his family but left again in May 2008. He travelled to Sweden and it was established that he had previously claimed asylum in the UK and he and his family were returned to the UK on 4 September 2008 whereupon he claimed asylum again. His claim was again refused and his appeal on that occasion came before Immigration Judge Astle who again dismissed it.

3. Judge O'Hagan followed the previous asylum decisions in relation to the specific threat which the Appellant claimed, as the Judge was bound to do in the absence of any change in circumstances or evidence (see [48] to [52] of the Decision). Those paragraphs are not challenged. The issues which Judge O'Hagan had to determine were to where the Appellant and his family could return (on the hypothesis that they would be returned) and whether the Appellant and his family possess or could obtain CSIDs to enable them to return. Insofar as the destination of return was not the place from where they emanated, the Judge also had to consider the option of internal relocation and whether it would be unduly harsh for the Appellant and his family to relocate. Since the Appellant's grounds to a large extent focus on findings which it is said that the Judge failed to make, it is appropriate to deal with the Judge's reasoning when I come to the detail below rather than to attempt to summarise what the Judge found.

4. The Appellant raises four grounds. First, he says that the Judge failed to apply the country guidance set out in AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944 ("AA (Iraq)") in relation to whether Kirkuk is a contested area to which Article 15(c) of the Qualification Directive applies. Second, he says that the Judge has failed to make findings in relation to whether the Appellant has or could obtain a CSID within a reasonable time. Third, he says that the Judge has failed to take into account the medical condition, in particular of the Appellant's son [O] when considering whether it would be unduly harsh for the family to relocate within Iraq. Fourth, it is argued that the

Judge failed to make any finding on the Appellant's argument that he would not be permitted to reside in the IKR.

5. Permission was granted by First-tier Tribunal Judge Bibi on 4 July 2019 in the following terms so far as relevant:

> "… 2.The grounds assert in summary that the Judge materially erred in his findings. It was incumbent on the Judge to arrive on a finding of the facts in respect of the material matter. Mindful of the gravamen of the decision of the Upper Tribunal in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 it was arguably incumbent on the Judge to come to a finding whether the appellant can procure a CSID on his return to Iraq. Nowhere in the decision did the Judge address this issue or make a finding of fact.
>
> 3. An arguable error of law that has been identified which merits further consideration. There is a reasonable prospect that a different Tribunal would reach a different decision."

6. Although the grant relates to the second of the Appellant's grounds, Judge Bibi did not limit the grant of permission. Accordingly, all grounds are arguable. The matter comes before me to decide whether the Decision contains a material error of law and if so either to re-make it or remit the appeal to the First-tier Tribunal for re-making.

DISCUSSION AND CONCLUSIONS

7. Although the Respondent's Rule 24 response seeks to uphold the Decision in somewhat strident terms (describing the grounds as "opportunistic" and the grant of permission as "very generous to the appellant indeed"), having heard Mr Royston's oral submissions, Mr Walker conceded that the grounds did disclose an error of law in the Decision. I accepted that concession and can therefore be somewhat briefer than otherwise in my consideration of the grounds. However, in light of the discussions at the hearing concerning next steps, it is nevertheless necessary for me to say more about the grounds which make out the error of law and the issues which need to be re-determined.

8. Mr Royston's submissions were focussed on grounds two and three, in relation to the Judge's findings about the possibility of the Appellant obtaining a CSID and whether it would be unduly harsh for the family to relocate within Iraq. He did not however abandon the other two grounds. I can though deal with those quite shortly.

9. The first concerns the issue whether there remains an Article 15(c) risk in Kirkuk. The guidance in AA (Iraq) remains extant. There is a pending country guidance case in which judgment is awaited which may or may not alter the position (SMO, KSP and IM – PA/08722/2017, PA/09421/2017, PA/00142/2015: "SMO and others") but, as things stood before Judge O'Hagan, I accept that he was bound to follow AA (Iraq) absent cogent evidence of a change in the country conditions. I accept that, when asserting at [60] of the

Decision that the family could return to Kirkuk, the Judge has failed to identify the strong evidence permitting him to depart from the current country guidance. The Judge has recorded the competing submissions on this point at [31] and [37] of the Decision but has failed to refer to any evidence on which his finding at [60] is based.

10. I also accept that the Judge has not set out his reasoning behind the finding at [60] that the family could relocate to the IKR and has therefore failed to deal with the argument that the Appellant would not be permitted to reside in the IKR. The Appellant has previously lived in Erbil, but the Judge has not dealt with the Appellant's argument that he would not be permitted to do so again in the future.

11. For those reasons, grounds one and four are made out.

12. In relation to ground two, the Judge sets out the evidence in relation to the availability of a CSID at [55] and [56] of the Decision. The Appellant's case is that he does not have a CSID and has not been able to obtain one from the Iraqi Embassy in the UK.

13. There is no finding at [56] of the Decision whether it is accepted that the Appellant does not have a CSID. Perhaps the closest one comes to a finding on that point is at [59(ii)] where the Judge indicates that his primary finding is that "the appellant has not established that his CSID is no longer available". However, he does not provide any reason for rejecting the Appellant's evidence that he does not have a CSID. Doubt is placed on the Appellant's credibility at [56(ii)] but that appears to be related to his account that he could not obtain any documents from the Iraqi Embassy in the UK. As to that, the Judge says that he was unpersuaded by the Appellant's evidence that the Embassy staff were unhelpful. The Judge remarks that "if it were the case that the Iraqi embassy adopted the unhelpful approach he describes as a matter of general practice, it might be expected that there would be objective evidence that this is what generally the embassy does." The Judge goes on to say that he was not provided with such evidence.

14. The Appellant's second ground directs attention to what is recorded at [27] of the decision in AAH (Iraqi Kurds – internal relocation) (CG) [2018] UKUT 212 (IAC) ("AAH") concerning the evidence of Dr Fatah whose expertise was recognised at [91] of that decision. He is recorded as saying that in the course of his "regular dealings" with staff of the Iraqi Embassy in the UK, he had found them to be "generally very unhelpful". That tends to support the Appellant's account that he was unable to obtain a letter from that embassy confirming that he had attended there to try to get documents but that they were unable to assist.

15. The further question is whether the Appellant could obtain a CSID within a reasonable time following return to Iraq. In this regard, the Judge at [59(ii)] of

the Decision accepts evidence annexed to the February 2019 CPIN in the form of a letter from the Iraqi authorities to the effect that all civil records from elsewhere in Iraq are backed up in Baghdad. Based on that evidence, the Judge there concludes that "[i]t would not, therefore, be necessary for the appellant to return to his home town to obtain a new CSID if his old one is no longer available."

16. Mr Royston submitted that the letter from the Iraqi authorities does not indicate whether the records may be searched by an individual or what use can be made of the archive. He also directed my attention to the case of SS v Secretary of State for the Home Department [2019] EWHC 1402 (Admin) which is a decision on an application for judicial review, made by a Judge of the Administrative Court quashing the Secretary of State's decision that protection-based submissions did not amount to a fresh claim. I bear in mind that context which is very different to that of the Tribunal in an appeal where the Judge is considering all the evidence for himself. Nevertheless, the High Court Judge's conclusions that the letter on which Judge O'Hagan relies does "not amount to clear cogent evidence amounting to strong grounds to say that a CSID is now 'easily obtainable' in Iraq by a returnee" lends some support to the Appellant's grounds. As the Judge goes on to say, "[o]ne has to consider to what extent that could or should alter or amend the CG". There is no such consideration in the Decision and, accordingly, what is said in that judgment, is supportive of the Appellant's ground that Judge O'Hagan could not simply rely on the letter as being the strong evidence needed to displace the country guidance in AAH on this point.

17. For those reasons, ground two is made out.

18. As to ground three, this relates to the medical condition of the Appellant and his son [O]. Judge O'Hagan sets out the medical evidence at [60] of the Decision. However, the Judge fails to refer to the most serious of [O]'s conditions namely that [O] is a beta thalassemia carrier. The effect of that condition is set out at [7] of the Appellant's witness statement at [AB/8]. The effect is a serious one which can be life threatening if not appropriately monitored. Mr Royston also pointed out that the Judge has failed to refer to [O]'s best interests. He accepted that best interests generally fall to be considered in the context of Article 8 which was not in play here but said that those interests remained relevant. The issue whether it would be "unduly harsh" for the family to relocate within Iraq is a separate one to whether it is reasonable for them to return to Iraq which is, it appears, the basis on which discretionary leave was granted. I accept that the Judge has failed to deal with [O]'s condition as a beta thalassemia carrier and has failed to have regard to the child's best interests. For those reasons, ground three is also made out.

19. For the above reasons, I accept that the Decision contains an error of law which is material and I set it aside. The issues which I have to re-determine are whether it is safe for the Appellant and his family to return to Iraq and if so to

what areas, to what place or places they would be permitted to return, whether they have or could obtain either in the UK or within a reasonable period following return a CSID and whether, if return would involve internal relocation, it would be unduly harsh for them to relocate.

20. As I have already noted, the Appellant's case has been dealt with on appeal on two previous occasions and any specific risk to him has not been accepted. It is not necessary for me to revisit those issues and for that reason, I preserve Judge O'Hagan's findings at [48] to [52] of the Decision.

NEXT STEPS

21. Mr Royston was content that the appeal should remain in this Tribunal for re-making. In fact, he was keen that it should do so. As he pointed out, there has been some delay in the determination of this appeal (Judge O'Hagan describes the history of it at [4] of the Decision as "long and unfortunate"). Although Mr Royston accepted based on what is said at [9] to [12] of the Decision that the fault for the four adjournments lay on the Appellant's side, none of those was due to the Appellant himself. Mr Royston was also keen that, if I could deal with the issues based only on the documentary evidence and without a further hearing, I should do so. He was particularly keen to avoid the Appellant having to attend to give evidence on a further occasion, the Appellant having now attended five hearings in all.

22. I observed and have already referred to the fact that there is a pending country guidance decision regarding Iraq which is currently awaiting determination (SMO and others). It has been heard. Mr Royston indicated that he did not wish the re-determination of this appeal to be delayed by the promulgation of the decision in that case. He was particularly anxious that this appeal should not be stayed for any lengthy period to await that determination. However, he accepted that this was a matter for me and that I should be permitted to make enquiries about the likely timing of the determination and the potential relevance of it. Having done so, I am satisfied that the re-making of the decision in this case should await the outcome of that country guidance case. The case concerned the current position in relation to contested areas in Iraq and the Tribunal was also presented with up-to-date evidence in relation to the availability of CSIDs which is now one of the central issues remaining in this case.

23. I am also not satisfied that I have sufficient evidence in relation to [O]'s medical condition and treatment available in Iraq. Mr Royston submitted that I did not need evidence in relation to treatment in Iraq because he said that it stood to reason that in an area only now emerging from occupation by enemy fighters, the medical facilities would be poor. That may be so. However, on the flip side, due to the fighting which has been going on until relatively recently, it may be that there are good facilities because such have been needed (particularly in areas near the fighting but unaffected by it). Nor am I entirely

clear from what is said in the Appellant's statement whether the access to medical facilities for [O] is to specialist facilities or to accident and emergency facilities only.

24. I would be greatly assisted by medical evidence in relation to [O] and any other evidence as to what his best interests require. At present, I only have the evidence in the Appellant's statements and some limited evidence from those treating [O] for his autism and other conditions, which evidence dates back to 2018. I note that at an earlier stage, there was a much weightier bundle of evidence and it is possible therefore that some of the evidence on this issue has been withdrawn from the appeal bundles. However, I would be assisted by up-to-date evidence, including if possible independent evidence about the nature and effects of beta-thalassemia. That evidence can be gathered in the period before the decision in SMO and others is issued and a hearing can be arranged as soon as possible after the country guidance decision is promulgated, with provision for the parties to file further evidence and submissions.

25. I do not propose to formally stay this appeal behind the country guidance case. However, that decision is likely to be pertinent to the issues which remain in this case and I do not consider it appropriate or in the interests of justice to determine this appeal on a basis which might shortly thereafter be affected by more recent country guidance. I have made provision for the hearing to be for half a day so that the Appellant may give oral evidence. Whilst I recognise that the Appellant may not wish to attend yet another hearing, I would find it helpful to be able to hear from him and, given the issue which remains about whether he has or could obtain a CSID and in relation to [O]s condition and treatment, I consider that oral evidence is likely to be required.

DECISION

I am satisfied that the Decision contains a material error of law. I set aside the decision of First-tier Tribunal Judge O'Hagan promulgated on 3 June 2019. I preserve paragraphs [45] to [52] of the Decision. I give the following directions for the re-making of the decision:

DIRECTIONS

1. **The appeal will be re-listed before UTJ Smith on the first available date after 28 days following the promulgation of the decision in SMO and others (PA/08722/2017, PA/09241/2017, PA/00142/2015). Time estimate for that hearing is three hours.**
2. **Within 14 days from the date when the decision in SMO and others is promulgated, the Appellant shall file with the Tribunal and serve on the**

Respondent a bundle of all the evidence, including any further evidence, on which he relies.

3. **Within 21 days from the date when the decision in SMO and others is promulgated, the parties shall file with the Tribunal and serve on the other party submissions in writing setting out their positions on the issues which remain for determination in this appeal.**

Signed Dated: 12 August 2019
Upper Tribunal Judge Smith

NOTIFICATION OF APPEAL RIGHTS

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

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

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

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

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

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