



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04802/2016

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 12 February 2020

Decision & Reasons Promulgated  
On 3 March 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

RH  
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Cleghorn, Counsel instructed on behalf of the Appellant

For the Respondent: Ms Petterson, Senior Presenting Officer

**DECISION AND DIRECTIONS**

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Background:

2. The Appellant is a citizen of Iraq of Kurdish ethnicity. He left Iraq on the 25<sup>th</sup> November 2015 and after travelling through several countries, he arrived in the UK and claimed asylum on the 10<sup>th</sup> December 2015. In a decision issued on the 29 April 2016, the Secretary of State refused his protection claim.
3. The appeal against that decision came before the First-tier Tribunal on the 28<sup>th</sup> November 2016 and in the decision promulgated on 4<sup>th</sup> January 2017 his appeal was dismissed. Permission to appeal that decision was sought and granted and on the 20<sup>th</sup> June 2017 a Deputy Upper Tribunal Judge allowed the appeal and set aside the decision of the FtTJ.
4. The appeal was remitted, and it came before the First-tier Tribunal (Judge Duff) on the 18<sup>th</sup> October 2017 for a second time. In a decision promulgated on the 19<sup>th</sup> October the judge dismissed his appeal. The Appellant sought permission to appeal that decision and it was granted on renewal by Upper Tribunal Judge Coker on the 15<sup>th</sup> May 2018.
5. Following a hearing, and in a decision promulgated on the 9<sup>th</sup> August 2018, the Upper Tribunal set out why the decision of the FtTJ involved the making of an error on a point of law and the decision was set aside to be remade in the Upper Tribunal.
6. Given the nature of the error of law, it was deemed necessary to hear further evidence and make the necessary further findings of fact and hear submissions from the parties in the light of the current country evidence and the country guidance decisions and any further evidence placed before the Tribunal.
7. As the findings made by the Judge relating to events in Iraq were not challenged in the grounds and the findings at paragraphs 22-29 in the decision of FtTJ Duff were to be preserved findings of fact. Accordingly, and in the interests of a fair and just disposal of the Appellant's claim, I was satisfied that it was appropriate for the Upper Tribunal to remake the decision in accordance with the directions sent out to the parties.
8. Thus, the matter was listed for re-making in the light of the further evidence and the latest CG decision in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).
9. This decision should be read alongside the decisions of the Upper Tribunal promulgated on the 9 August 2018, the decision of the 3 January 2019 and 19 July 2019.

The factual background:

10. The background to the Appellant's protection claim is set out in the determination of the FtTJ at paragraphs 1 - 6 and paragraphs 9-14 and in the decision letter of the Secretary of State issued on 29<sup>th</sup> April 2016.

11. The Appellant lived with his parents in xxxxx, an area of Kirkuk. He attended school but this was interrupted by having to assist his uncle who worked in an orchard. He worked with him for some time but then he joined the Iraqi army as a driver and bodyguard. He had some basic training, around his ability to drive and became a bodyguard to a man named X who was in a senior position in the Iraqi army. After he had been working in the army for some time, on 17 November 2015 the Appellant was driving his vehicle when it was stopped by number of armed men who told the Appellant that he had to work for them and they wanted him to poison food that he was required to transport and give it to the soldiers.
12. The Appellant went to the base which he worked and informed X about what had happened, and X sent a group of people to the place where the Appellant had been stopped, but the men were no longer there. X told the Appellant that he should watch himself as X could not provide him with any security.
13. In the light of those events the Appellant was concerned about his safety and, on return to his home, told his parents about what had happened and then went his paternal uncle's house where he remained for a short while before arrangements were made for him to leave Iraq, which he did on 25 November 2015. He was taken by an agent to Iran and then on to Turkey and from there, in a series of lorries to the UK.
14. The basis of his claim was that if he returned to his home area, he would be sought out by those persons and harmed by them. Thus, he would be targeted by non-state actors from whom the state would be unable to protect him.
15. In a decision letter dated 29<sup>th</sup> April 2016 the Respondent refused his claim for asylum. It was accepted that he was a national of Iraq of Kurdish ethnicity (paragraph 9) but his account of events in Iraq was not accepted. In particular, that it was implausible that a group of unknown armed men would ask him to work them without telling him who they were or which group they were part of. Furthermore, the claim was vague, and he had no idea who it was who threatened him and therefore the account of being threatened by unknown men on 17 November 2015 was rejected. Other aspects of his account were rejected (see paragraphs 11 - 12). Whilst he had not specifically claimed that he feared return as a result of deserting from the army, the Respondent made reference to the objective country material and that even if he did leave the army it was not accepted that he would be court-martialled. The decision letter made reference to sufficiency of protection at paragraphs 16 - 19.
16. The Secretary of State considered that in the alternative he could internally relocate to a different part of Iraq (Baghdad) and consideration was given to whether he was able to relocate to the Kurdish region of Iraq ("IKR"). There was no reference to the country guidance case of *AA (Article 15 (c) (Rev 2) [2015] UKUT 544* in the decision letter but reference was made to the country information and the CIG.

The preserved factual findings of the FtTJ:

17. As set out, there had been no challenge made in the grounds to the factual findings concerning the events in Iraq. They were preserved for the purpose of re-making the decision.
18. The judge set out his findings of fact at paragraphs 22 – 29. He gave several reasons as to why he rejected the Appellant’s factual account as to the events that the Appellant stated had occurred in Iraq. Those findings are reproduced below:

“23. I do not accept the basic account put forward by the Appellant about his being stopped and threatened by unknown men whilst acting as an Army driver. I considered that the Appellant probably was employed in the army in some capacity at some stage as the photographs that appear in the Appellant’s bundle and which (the expert) described as “good quality, colour scans” would appear to be genuine and I regard the suggestion by the presenting officer, made in cross-examination, that the Appellant has somehow managed to stage those photographs in order to support his claim as being fanciful. In light of all the evidence I consider that it is likely that it was brief employment. I find that the Appellant has not deserted from the army.

24. The fact that the Appellant has, at some stage, had some employment with the army is not, of itself, any support his claim to have been stopped and threatened by unknown armed men and I find there was such significant contradictions in the varying accounts of the Appellant has given and gave before me that I am compelled to reject the account that he has given.

25. The first significant contradiction in the Appellant’s account is as to the amount of time that he spent employed in the army. His witness statement is entirely specific and states that on 7 August 2013 he joined the military and it was on 17 November 2015 that he was threatened by the armed men. That statement was signed and dated on 29 July 2016. When the Appellant came to give his evidence and was asked how long he had been in the army and worked as a driver and bodyguard for X he said he could not remember. He was pressed about the matter but continue to say that he could not remember how long. Ultimately, seeking clarification of matter, I asked him to give the best estimate he could – whether it was days, weeks, months or years – and he said that he thought it was about six or seven months. If, as the Appellant’s witness statement states, the Appellant was employed in the army for a period of 27 months that is not something which could or would be forgotten, in the absence of a traumatic event such as a head injury or debilitating illness. A person might not be able to give an absolutely precise answer but would inevitably know that it was for a period of about two years. The fact that the Appellant was so hesitant in giving any answer and then gave the estimate of 6 to 7 months is highly suggestive of his having forgotten, through the effluxion of time, what he had said in his original statement and attempting not to contradict himself.

26. The Appellant also gave conflicting accounts of the position of X. In his interview (question 44) is said that his rank was Brigadier. In his statement describes him as Brigadier General. In his oral evidence he described him as a Colonel. If those contradiction stood alone than they would not carry a great deal of weight and would not do great damage to the account of the Appellant since

there might be room for some error in the translation of ranks or no precise equivalence between ranks in the Iraqi army and the UK army, but put alongside the other inconsistencies, they are of significance. The Appellant's evidence about military training that he received was also somewhat unsatisfactory in that, despite repeated questioning, he was rather evasive as to what that entailed and when asked if he had received any weapons training he said that was not necessary as "everyone in Iraq knows how to shoot, every house has a gun." It was only when clarification of that was sort that he said that he had some basic weapons training. Furthermore, he was unable to say what the military base he was working at was called or if it had a name, stating only that it was "regiment two". This contrasted with the statement in which he said that the military base was at xxx.

27. However the greatest and most striking contradictions were in his description of his being stopped and threatened by the armed men. His statement is quite clear. He stated that he was on his way to the military base when I was stopped by 4-5 unknown men. Later in his statement he said that – in relation to their demands – that "he would think about it" (in order to escape the situation). In his oral evidence the Appellant said that there were three men. He also said that he was on his way from regiment two to Kirkuk (i.e. in the opposite direction to that described in his statement) and that his response to the men was that he agreed to their demands and, in order to convince the men of his willingness, so that it would carry out what they wished.

28. If it occurred, an event such as that described by the Appellant would be about as significant and memorable as any could be. I make allowance for the fact that an event such as that would inevitably be traumatic and the trauma can affect the laying down of memories, but the contradiction set out above – in particular the contrast between 4-5 men and three men in the direction of travel, whether going to the base or to Kirkuk-are, in my judgement, of such significance that they are indicative of forgotten elements in a constructed account rather than explicable on the basis of minor details of a true event being forgotten or confused.

29. I am therefore driven to the conclusion that the Appellant's basic account of the event which lies at the heart of this claim is false and is invented in order to bolster a claim for asylum."

#### Further evidence:

19. For the purposes of remaking the decision, the appellant gave oral evidence on some of the outstanding issues. It principally related to whether he had any ongoing contact with his family. Whilst that evidence had been given at an earlier hearing, it had been set out in full in the decision and directions of the 19 July 2019. I reproduce this below. In the interim, no further witness statement had been filed to address any remaining issues and Ms Cleghorn confirmed that it was not necessary for any further oral evidence to be given. Ms Petterson did not seek to ask any further questions and both advocates were content to proceed on the basis of the evidence as it stood and for it be considered in the light of the country information and the most recent CG of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).

20. I shall set out below the evidence of the appellant. He gave evidence with the assistance of an interpreter in the Kurdish Sorani language. There were no difficulties with the appellant understanding interpreter all the interpreter understanding the appellant and no issues were raised by either of the advocates relating to the interpretation of the evidence.
21. In his oral evidence he confirmed the contents of a witness statement filed with the Tribunal dated 11 December 2018 (see page 46AB). In that witness statement he set out his place of birth in Kirkuk, his educational history and the events which led him to leave Iraq. At paragraph 13 of the witness statement, he referred to travelling to his paternal uncle's house in Kirkuk where he stayed between 17<sup>th</sup> - 20<sup>th</sup> of November 2015 and both his uncle and father made arrangements with an agent to him to leave the country.
22. At paragraph 16 of his witness statement, he set out the last time he had contact with his paternal uncle was two years ago and that he no longer had contact with anyone in Iraq. The witness statement sets out that his uncle had informed him that his parents were still living in the same area of Iraq, but he was not told if there had been any problems. Even if there had been, he stated that he would not have been told because it would have upset him.
23. At paragraph 27 of that witness statement, he set out that he had no family in Baghdad or in the KRG. That he did not speak Arabic and that he was a Sunni Kurd. He referred to having identity documents with him when he left Iraq but that the agent had taken them from him.
24. He also confirmed the contents of a more recent witness statement dated 5 April 2019. In that witness statement he set out that he had contacted his uncle twice and had asked about his parents but did not have any contact with them. He stated that they did not have a mobile phone or a landline. At paragraph 3, he stated that he has since lost contact with his uncle although he had his mobile number it no longer works and that he had tried on numerous occasions to dial the number, but it was not in use.
25. At paragraph 4 of the witness statement he referred to having been to the British Red Cross and that he had been interviewed by them. He did not have any further information and he was waiting to hear whether they had found out anything further about his family.
26. He was asked no further questions in evidence in chief.
27. In cross-examination he was asked about previous contact with his uncle and he confirmed that he had been in contact with his uncle as set out at paragraph 16 of his witness statement dated July 2016. He confirmed that the last time it had contact was at the end of 2016. He was asked when he had last contacted his uncle and he stated that it was after 16 October 2017 and he had not contacted him after that date because the phone had been switched off. He referred to the telephone number that he had put in his witness statement.

28. In cross-examination he confirmed what he had said in his earlier witness statement that after they had been problems in Iraq he went to stay with his paternal uncle. He was asked how far away his uncle lived for his parents' home. The appellant stated that it was "10 to 15 minutes by foot". He also confirmed that it was in the same village. When asked what his paternal uncle did for a living, he stated that he was a farmer, the same as his father. He was asked to explain why his uncle had a phone whereas he had stated that his father did not have one. He stated that because his parents were old, they did not know how to use a phone.
29. He was asked about his visit to the Red Cross in 2019 and he was asked whether he had contacted them since his last visit. The appellant said that he had not, and he had not provided any further information. It was suggested to him that he had not done anything since his witness statement was filed on the 6 April 2019. He was asked to explain why he had gone to the Red Cross in January 2019 but had not been there before that date. The appellant stated, "I don't know - my lawyer informed me of this I would not have gone if I had not been informed of this."
30. There was no re-examination.

The submissions:

31. Ms Petterson on behalf of the respondent submitted that the possibility of the appellant obtaining a replacement (or his original) CSID should be considered in the light of the preserved findings that he had not been credible in his account of events prior to leaving Iraq. The respondent further submits that the first time the appellant has made enquiries as to his family's whereabouts was in January 2019 and no evidence has been forthcoming as to what those enquiries were or any outcome.
32. Given the findings of the Upper Tribunal in Paragraphs 391 and 392 of the Country Guidance case about the importance of the CSID and the family book system in Iraq, that it is likely to only be a very small number of individuals who would not know, or readily have access to that information. The respondent submits that this is information that the appellant either has or could readily access.
33. In the circumstances it is submitted that the appellant is not someone who requires Protection against a potential breach of Article 3 of the ECHR
34. Ms Cleghorn relied upon her skeleton argument. She submitted that the Appellant's position, is that he has no contact with any family relatives. As the Shia militia are now in control of Kirkuk this will be an additional risk factor in light of his previous position in the army and that in terms of enhanced risk, he is likely to be treated with suspicion as he is from a conflict area. Given the presence of the Shia militia in Kirkuk, she submitted that it may well be that harm, even after the withdrawal of ISIS, has befallen his uncle and parents. It also explains why contact may fail especially in the aftermath of the referendum. It is therefore plausible that the Appellant has lost contact as explained.

35. In terms of documentation, he did not arrive in the UK with any documents and he cannot arrange, for his original documents to be sent, if they even still exist. The Appellant's only alternative is therefore to obtain a replacement document which, following the guidance from SMO, would not be possible as confirmed in the headnote of SMO. As noted, the Appellant is from Kirkuk. Kirkuk has rolled out the INID scheme (see new evidence). It is no longer possible for this Appellant to obtain a replacement CSID. He would need to travel to Kirkuk to obtain a replacement document which would be the INID as the CSID is being phased out.
36. In conclusion she submitted that it is clear then that he cannot obtain an INID by proxy in the UK before he leaves. He cannot obtain an INID from Baghdad. His only option is to obtain a replacement from Kirkuk which he can't do because that would involve a period in Baghdad without documentation during which he could not avoid and not avoid encountering conditions that would breach Article 3 ECHR. Equally, it is well settled he cannot travel overland without documentation due to the militia-controlled checkpoints. Therefore, as the Tribunal noted in relation to the first Appellant SMO. She therefore invited the Tribunal to allow the appeal under Article 3 ECHR.

The relevant CG:

37. In the most recent CG decision of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) the headnote reads as follows:
- 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. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
  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. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
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. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

#### **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. 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).*

#### **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. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
26. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
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) Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (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. *The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

#### **F. EXISTING COUNTRY GUIDANCE DECISIONS**

- 30. *This decision replaces all existing country guidance on Iraq.*

#### Analysis of the evidence:

- 38. There is no dispute that the appellant is an ethnic Kurd from Kirkuk. It is common ground that the area that he previously resided in is located between Hawija and the Hamrin mountains. It is also not in dispute that he left Iraq on the 25 November 2015.
- 39. The country information sets out the present position in that area as reflected in the country guidance decision at paragraphs 251 – 257. All of Kirkuk governorate is disputed between the GOI and the IKR. It is described as an ethnically diverse governorate which has seen a great deal of upheaval in recent decades. Kirkuk city was never taken by ISIL, although Hawija was, and was also one of the last places in Iraq to be liberated in October 2017. The battle for Hawija cause significant damage to its infrastructure. ISIL controls no territory as such in Kirkuk governorate, but it is certainly present and active, particularly in the areas surrounding Hawija and the Hamrin mountains. There are pockets of fighters in these areas. It is recorded that ISIL's main focus in Kirkuk is to attack specific targets, who are usually authority figures or those associated with the security services.
- 40. I confirm that I have considered the background evidence that refers to the present position in the Kirkuk governorate. No further evidence has been provided by the respondent.
- 41. Ms Petterson submits that the appellant has not been found to be a credible witness by the previous FtIJ concerning the events in Iraq and therefore it follows that his evidence relating to contact with relatives should equally be dismissed as being not credible evidence worthy of weight.

42. The relevance of the background material is that it sets out the background to the issue of continuing contact with relatives in Iraq and the appellant's ability to obtain documentation. Whilst his evidence was not found to be credible in relation to events in Iraq, that does not mean that his evidence as to contact with relatives should be dismissed solely on that basis.
43. It is the appellant's evidence that his uncle, who had made arrangements for him to leave Iraq along with his father, did so in November 2015 and that he last had contact with him in 2016. He has had no direct contact with his uncle or his father as the mobile number he had no longer works and that was the only means of contact between them.
44. I have set his evidence against the country materials and having done so I am satisfied that it is reasonably likely that the appellant has lost contact with his uncle and his father in Kirkuk. It is common ground that he is an only child and therefore it is not suggested that he had any contact with siblings in Iraq. On the appellant's own evidence, he has had no contact directly with his family since he left Kirkuk in 2015 and last spoke to his uncle in 2016. The background materials demonstrate that at the time he last resided there, the area was under the control of ISIL. It is not inherently improbable when set against that background material that the appellant has lost contact with his family relatives. As Ms Cleghorn submits whilst the present position is that ISIL has been driven out of Kirkuk governorate itself, there has been large-scale displacement of its inhabitants and given the length of time since he left Iraq, I am satisfied that it is reasonable likely that he has lost contact with them. Dr Fatah's evidence in SMO is recorded as:

*The KRG and the GOI remain locked in disagreement over the Disputed Territories, and about Kirkuk in particular. Disputes over the right to export oil from the IKR only serve to increase the tension. Iraq itself held elections in May 2018 and Adil Abdul-Mahdi became Prime Minister, although his position is a difficult one, since it was only earned by consent from all political blocs. The security situation is complicated by the presence of Shia militia known as the Popular Mobilisation Forces or Units ("PMF" or "PMU") in the country. The most powerful of these militias have ties to Iran and whilst they have technically been under Baghdad's control since 2016, they answer to their Iranian sponsors. Dr Fatah opines that the current level of insecurity in Iraq is rooted in a number of socio-political circumstances. He identifies sectarian and tribal divisions, poverty, the loss of command and structure in the army.*

The Tribunal also noted:

*Since control over Kirkuk was taken back from the peshmerga in the aftermath of the Kurdish Independence Referendum, the whole governorate is controlled by the ISF, with a significant presence of PMU militia. We also accept the evidence given by Dr Fatah about the effect of the PMU in Kirkuk governorate. Whilst they lessen the threat from ISIL in the region, they have also brought renewed sectarian tension, for instance by renaming Sunni sites with Shia names. The fact that Kirkuk remains a Disputed Territory also contributes to the uncertainty experienced by residents of the Governorate [256].*

45. The competing power sources set out in the material and referred to in the decision of SMO and the continued fluidity of the situation supports the plausibility of his account. Whilst he has taken steps to contact the Red Cross there is no evidence from

them as to the outcome of any enquiries. That evidence does not support or undermine his account. Whilst it is submitted that he did not make the enquiries until January 2019, I do not find that that necessarily counts against him.

46. Notwithstanding the adverse credibility findings made by the FtTJ relating to events in Iraq, when the evidence is viewed in the round, I am satisfied that it is reasonably likely that he has lost all contact with his relatives in Iraq and that he has no present information as to their current whereabouts.
47. As to the availability of documentation, his evidence was that upon arrival in the UK he had given his documentation to the agent. This is not been the subject of any evidential challenge and it is therefore not in dispute that the appellant has no current documentation as to his identity or otherwise in his possession.
48. Turning to the question of Article 15(c), the position relating to Kirkuk is set out at paragraphs 251-261. Ms Cleghorn did not seek to challenge that assessment by the provision of further country materials.
49. The Upper Tribunal in SMO set out its general conclusion at paragraphs 282 – 289 that the evidence before them indicated that the situation in the formerly contested areas and the Baghdad belt is fundamentally different from that which obtained in 2015. The UT set out the changes in the respective areas and that the evidence showed that the degree of indiscriminate violence characterising the current armed conflict taking place in those formerly contested areas (Baghdad, Diyala, Kirkuk, Ninewah, Salah Al-Din and Anbar) is not at such a high level that substantial grounds have been shown for believing that any civilian returning there would, solely on account of his presence there, face a real risk of a threat to his life or person. The Tribunal was satisfied that the changes were “well-established and durable” and that the previous country guidance in AA (Iraq) required revision in accordance with that conclusion.
50. The only exception was the area north of Baiji (see paragraph 286). It is not the position that this particular appellant is from that area.
51. Ms Cleghorn submits that the appellant falls within one of the enhanced risk categories identified by the Upper Tribunal at paragraphs 290 onwards. As set out in the country materials, the position relating to Kirkuk is that it is in control of the Shia militia. Whilst the appellant is a Sunni Kurd, I do not reach the conclusion from the general evidence that he would be at risk or be in any enhanced risk category on account of being a Sunni Muslim. Indeed, Ms Cleghorn does not make that submission.
52. It is submitted on behalf of the appellant that this appellant falls within the enhanced risk category due to his previous position in the Iraqi army. Whilst the previous findings of the FtTJ make it plain that he did not accept that the appellant had given a credible account as to his length and service or his role in the military, it did not seem to be in dispute that the appellant had been employed as a driver in the army although he had no significant role other than that.

53. The decision in SMO at paragraph 299 sets out that those who are perceived to be opposed to the KRG may be at an enhanced risk on return to the territory controlled by those bodies. While the Tribunal did not give a detailed analysis of this, the Tribunal referred to credible reports of journalists critical of the KRG encountering difficulties. There is no evidence that the appellant has been critical of the KRG in that way or that his employment as a driver in the Iraqi army would lead to any such perception.
54. The conclusion reached at paragraph 313 is that those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. Secondly, in those areas in which ISIL retain an active presence, those who have a current personal association with the local or national government, or the security apparatus are likely to be at enhanced risk.
55. The appellant has no actual or perceived association with ISIL. It has not been demonstrated by any country materials that the appellant's home area or village is one where ISIL have an active presence and therefore his work as a driver in the Iraqi army has not been shown to place him in any category of enhanced risk. At paragraph 314 there is reference to the personal characteristics relevant to the sliding scale analysis required by Article 15 (c) and refers to "opposition to or criticism of the GOI, the KRG or local security actors". There is no evidence before the Tribunal that the appellant has been critical of the GOI or the KRG and that simply by being a driver would not lead to any such perception. I prefer the submission made by Ms Patterson that the appellant's personal characteristics which solely relate to him having once been employed as a driver in the Iraqi army does not, without more place him in an enhanced risk category. He therefore cannot succeed on asylum grounds or under Article 15 (c).
56. I now turn to the assessment under Article 3 of the ECHR. As reflected at paragraph 317 of SMO, the respondent's position is that 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 of the ECHR.
57. The Tribunal at paragraph 331 concluded that the position for a healthy, documented male returnee to their place of origin in the formerly contested areas, does not cross the threshold for a breach of Article 3. The appellant does not fall within the categories referred to at paragraph 332. However, this the particular factual circumstance relevant to this appellant is that he is undocumented.
58. The issue surrounding the documents required to return to Iraq and to survive in that country have played a prominent part in the country guidance cases thus far decided. Those documents are referred to as the Civil Status Identity Card ("CSID"), the Iraqi Nationality Certificate (INC) and the public distribution system ("PDS") card/ food ration card. There is now reference to a new digital identification document known as Iraqi National Identity Document ("INID").



59. The importance of the CSID was set out in the decision of AA (Iraq) as it is required to access financial assistance, employment, education and housing etc. it was described as an “essential document for life in Iraq” (at [39] AA (Iraq) [2017]).
60. It has been emphasised in the previous country guidance decisions that an intensely fact sensitive enquiry is necessary as to whether an individual would be able to obtain a replacement CSID and the possession of other documents and the location of the civil registry office and the availability of other male family relatives were all relevant considerations.
61. When applied to this appellant, the appellant is undocumented and does not have a passport nor does he have CSID or any identity documentation. I have found that this appellant has no contact with any male relatives in Iraqi and therefore he cannot arrange for the original documentation to be sent to him, even supposing that they exist in the light of the displacement and previous conditions in his home area in Iraq.
62. I have therefore considered whether he can obtain a replacement document to enable him to return to Iraq, either to his home area or to relocate.
63. The headnote in SMO sets out that the returns are via Baghdad and that an Iraqi national will only be able to enter Iraq if in possession of a passport or a laissez passer. A CSID or INID is needed to work or travel within Iraq without encountering treatment or conditions which are contrary to Article 3 and a passport is not a sufficient document for internal travel.
64. As to obtaining a CSID from Baghdad, an individual returnee who is not from Baghdad, which is the position of this appellant, is not likely to be able to obtain a replacement document or to do so in a reasonable time. The central archive and the facilities for IDP’s are not likely to provide assistance for an undocumented returnee. The appellant would not be able to board a domestic flight beyond Baghdad or to the IKR without either a CSID or INID or invalid passport.
65. Ms Petterson submits that the appellant can obtain a CSID. She submits that he would know the entry in the family book and the details necessary to obtain a CSID because he would have provided those details in applying to join the military even with his limited education. It is not been suggested that he has any difficulties with his memory. In the alternative, she submits he could ask a family member to bring the documents to the airport in Baghdad.
66. When considering whether the appellant can access documentation, it must be seen in the light of the finding made that he has no current contact with family relatives in Iraq therefore he cannot obtain documents from those family members to assist him in providing evidence of his identity or to produce any documents.
67. As to whether the appellant recalls any entry in the family book, I take into account what is said in SMO that given the importance of that information most Iraqi citizens will recall it. Whilst Ms Clegg on submits that the appellant has had little education,

there is no evidence before me that he has ever been asked he can recall the details contained in such a document or what is on his own document. The Tribunal in SMO did not say how they reach the conclusion that someone could be expected to remember such details save that they were important matters to an Iraqi citizen.

68. However, the appellant would not be up to obtain a replacement document in Baghdad as he is not from there and the archives will not provide him with assistance.
69. I accept the submission made by Ms Cleghorn that the evidence in respect of Kirkuk has now been clarified and that the CAD in Kirkuk no longer issues old CSID cards and that it now issues the new national unified card which requires the presence of the appellant at the office in Kirkuk for his fingerprinting and iris scan ( see document Iraq; centre and south biweekly protection update August 2017 at page 3). This is consistent with the material referred to in the decision of SMO, where reference was made to the documentation and that the likelihood of obtaining a replacement identity document by use of proxy (whether from the UK or on return to Iraq) has been reduced due to the introduction of the new INID system. The Tribunal recognises that offices where INID terminals have been placed would not be able to issue such a document by way of proxy.
70. I accept the submission made by Ms Cleghorn that the material demonstrates that the appellant would not be able to leave the airport at Baghdad without a CSID or valid INID. The Tribunal recorded the evidence which they describe as “uncontested” that a failure to produce a CSID or, in the environs of the airport a valid passport, will be likely result in detention until the authorities could be satisfied and individuals identity. An internal flight to the IKR is possible but an individual would need either a valid passport or a CSID.
71. It has not been explained in the submissions made on behalf of the respondent how the appellant can obtain an INID although I recognise that the burden is upon the appellant to demonstrate the factual circumstances. When drawing those matters together and in the light of the particular factual circumstances of this appellant, I am satisfied that the evidence demonstrates that it is no longer possible for the appellant to obtain a replacement CSID and that to obtain the relevant document which would be the INID he would be required to return to Kirkuk. He cannot obtain an INID by way of proxy before he leaves and also cannot obtain one from Baghdad. Whilst it may be said he could obtain a replacement with the help of family members; the appellant has no contact with his family members in order to assist him. He could not remain in Baghdad as he does not speak Arabic and has no family support or connections in that area and could not travel overland without documentation due to the militia -controlled checkpoints as set out in SMO.
72. For those reasons I have reached the conclusion that his appeal succeeds under Article 3 of the ECHR.

**Notice of Decision**

73. The decision of the FtTJ involved the making of an error on a point of law; the appeal is remade as follows; the appeal is allowed on Article 3 of the ECHR.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 13/2/2020

Upper Tribunal Judge Reeds