Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00510/2020**

THE IMMIGRATION ACTS

Remote Hearing by Skype **Decision & Reasons Promulgated**
On 23rd March 2021 **On 26 April 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

A M
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F Ahmad, instructed by Hanson Law Ltd
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity
An anonymity direction was made by the First-tier Tribunal ("FtT"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, AM is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

1. The hearing of the appeal before me on 23rd March 2021 took the form of a remote hearing using skype for business. Neither party objected. The appellant joined the hearing from the offices of his solicitors. The representatives were able to see and hear me and each other throughout the hearing. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would have been if the parties had attended the hearing together. I am satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The background

2. The appellant is a national of Iraq. He arrived in the United Kingdom in January 2016 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 24th June 2016. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Housego for reasons set out in a decision promulgated on 16th January 2017. Because it is relevant to the appellant's claim for international protection, it is useful to begin by referring to the claim made by the appellant in 2017. The appellant's claim is summarised at paragraphs [27] to [30] of the decision of Judge Housego:

> "27. The account of the appellant contained in his asylum interview and witness statement, correcting the asylum interview, is as follows. His brother is a fighter in the Peshmerga. His brother has posted many images on Facebook of him with ISIS fighters he has killed and posted jokes at their expense. Facebook ultimately took down his page. The

> appellant reposted one of those images on 15 July 2015 [A:11]. Before his brother's Facebook page was taken down his brother received threats, through Facebook, from ISIS. He, the appellant, was also at risk from ISIS, both because his brother was a Peshmerga fighter, and because of this one post. His risk came either or both from people coming into Kirkuk from ISIS held areas, and ISIS sympathisers within Kirkuk.
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> 28. The appellant is also generally at risk in Kirkuk from ISIS activity. It was generally a dangerous place in which to live.
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> 29. The appellant was also at risk from the Barzani and Talibani families. These were hugely influential and powerful families. Since 2010 he had been posting entries on Facebook critical of them. They had a way of dealing with political opponents which involved disappearance and death.
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> 30. In mid-2015 he had been in the market when there had been a demonstration against the death of a journalist some two years before. This journalist had, he said, been killed by the Barzani. The authorities arrived and suppressed the demonstration. Sympathisers to the Barzani told the authorities of his name, and so he was at risk from the Barzani or their agents. He was also at risk from the Talibani family, another influential family…."

3. The appellant gave evidence at the hearing of his appeal before Judge Housego. The findings and conclusions of Judge Housego are set out at paragraphs [91] to [105] of his decision. Judge Housego found the appellant's evidence was not credible or plausible in any respect. He noted the oral evidence given was marred by persistent evasion of the question asked. At paragraph [97] he said:

> "The appellant comes from Kirkuk. That is now a safe place notwithstanding one large incident in the recent past…. even if the appellant (whose parents and 2 siblings remain in Kirkuk) considered it dangerous he could go to Erbil. His evidence was that he washed cars and then sold fruit in the market. He could find work in Erbil. He has no difficulty at all in relocation within the KRG."

4. In further submissions made by the appellant in October 2019, the appellant maintained that he would be at risk upon return to Iraq, and in particular, claimed that he is unable to return to Iraq due to his imputed political opinion and is sur place activities on social media during his time in the UK. His claim was refused by the respondent for reasons set out in a decision dated 27th December 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Dixon for reasons set out in a decision promulgated on 15th October 2020.

The decision of First-tier Tribunal Judge Dixon

5. At paragraph [2] of his decision, Judge Dixon summarised the claim now made by the appellant. The appellant gave evidence at the hearing of his appeal as set out in paragraphs [10] to [16] of the decision. The findings and conclusions are set out at paragraphs [30] to [47] of the decision.

6. Like Judge Housego before, Judge Dixon also found the appellant not to be a credible witness. Judge Dixon again had the opportunity of hearing the appellant give evidence, and to observe his evidence being tested in cross-examination. He rejected the appellant's claim that he has taken extensive and ongoing efforts to contact his family via Facebook. He found the appellant is in contact with his family or a is able to be in contact with them, and that is the real reason why the appellant did not furnish evidence regarding his efforts to trace his family. Judge Dixon found there to be a significant discrepancy in the appellant's evidence regarding the appellant's CSID. He also rejected the appellant's claim made in oral evidence of a threat made towards him in 2016 or 2017 from the Barzani and Talibani family. Judge Dixon noted the appellant is from Kirkuk, a formerly contested area, and in light of the most recent country guidance as set out in SMO & Others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), he found the appellant does not face a risk of suffering serious harm if returned there.

7. At paragraph [45] of his decision, Judge Dixon considered whether the appellant would be at risk upon return arising from his *sur place* activities and in particular posts made on a Facebook account. He was not persuaded, even to the lower standard, at [45(a)], that the posts relate to the appellant. He went on to find, at [45(b)] that in any event, the Facebook posts do not assist the appellant. He noted there is no evidence of anything adverse going the appellant's way as a result of the Facebook posts and no evidence of his being monitored or of the posts bringing him to the attention of anyone in any way. Judge Dixon noted

the appellant has no profile and the likelihood is that, at most, the posts would be regarded as somebody making broadly political statements on social media.

8. Notwithstanding the finding that the appellant would not be at risk upon return to Kirkuk, Judge Dixon found that the appellant could in any event, internally relocate. He noted the appellant is a young, fit and healthy male who has shown considerable fortitude in travelling to the United Kingdom. He found the appellant has the support of his family and was able to find work in the past. At paragraph [47], Judge Dixon concluded:

> "The appellant has advanced nothing which changes the findings of Judge Housego. Indeed, as pointed out above, his credibility has been further damaged by his own evidence. His assertions of being without family to whom he could turn are hollow and incredible. I find that the appellant could obtain documentation if he has forgotten the necessary details: he has the support of family available to him to assist with regards to this."

The appeal before me

9. The appellant advances six grounds of appeal. Permission to appeal was granted by First-tier Tribunal Judge Shaerf on 26th November 2020.

Ground 1: *The IJ is assuming a fact*

10. The appellant claims Judge Dixon erred in rejecting the appellant's claim that he has only recently become aware of the Red Cross, by erroneously focusing upon the length of time the appellant has been in the UK and the history in this case. The appellant's evidence was that he has been to the Red Cross, and although Judge Dixon noted there is no requirement for an asylum seeker to corroborate his account, Judge Dixon found, at [35], that the appellant has not provided any evidence of his having contacted the Red Cross.

11. At paragraph [10] of his decision, Judge Dixon noted the appellant's evidence in chief that he has attended the Red Cross. At paragraph [11], Judge Dixon refers to the appellant's evidence in cross-examination that he had contacted the British Red Cross before the lockdown. The

appellant confirmed that that was the first time that he had contacted the Red Cross and claimed that he did not have information about that organisation and had only been informed of them recently.

12. The assessment of credibility may involve an assessment of the plausibility or the apparent reasonableness or truthfulness of what has been said. The assessment can involve a judgement as to the likelihood of something having happened based on evidence and or inferences. In my judgment, Judge Dixon was entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible, as long as the reasons withstand scrutiny. Judge Dixon noted, at [34], that there is no requirement for corroboration in asylum claims, but if evidence is relevant and available, it should be produced. In TK (Burundi), the Court of Appeal noted there is a lower standard in asylum claims, but if there is no good reason why the evidence that should be available is not produced, the judge is entitled to take that into account in the assessment of the credibility of the account.

13. It was in my judgement undoubtedly open to Judge Dixon to conclude that the appellant's claim that he has only recently become aware of the Red Cross lacks credibility, and to reject his claim that he was not aware of that organisation previously for the reasons given in his decision. The first ground of appeal lacks merit and I reject it.

Ground 2; *The IJ erred in law*

14. The appellant claims Judge Dixon's finding that the appellant has not taken steps to locate his family in Iraq is without any evidential foundation, and the appellant's evidence was that he had contacted the Red Cross. He claims it was not open to Judge Dixon to reject the appellant's claim simply because of the other adverse credibility findings made against the appellant. The appellant accepts that previous adverse credibility findings justify caution, but, he claims, they do not create a presumption that future evidence by the same witness will be rejected as incredible.

15. This ground too, lacks any merit. Judge Dixon refers to the appellant's evidence in chief regarding the steps he claims to have taken to establish contact with his family at paragraph [10] of the decision. The appellant's evidence was probed in cross-examination as set out in paragraph [11] of the decision. Paragraphs [33] to [36] of the decision must be read together. Contrary to what is said in the grounds of appeal Judge Dixon considered the appellant's evidence that he has taken steps to contact his family both via Facebook and by contacting the Red Cross. The reasons set out by Judge Dixon for rejecting the appellant's claims are adequately set out in paragraphs [33] and [35] in particular. Having considered the evidence before the Tribunal it was open to Judge Dixon to find that the appellant has not taken steps to contact his family for the reasons set out in his decision, taken together with the adverse credibility findings previously made by Judge Housego. The reasons given by Judge Dixon in his decision for rejecting the appellant's claim are rooted in the evidence that was before the Tribunal. It was open to Judge Dixon to find that the appellant is in contact with his family or is able to be in contact with them and that this is the real reason why he has not furnished evidence of the steps taken to trace his family.

Ground 3: *The IJ is second guessing what someone would have done*

16. The appellant claims that at paragraph [37] of his decision, in referring to a significant discrepancy regarding the identity documents available to the appellant, Judge Dixon erroneously assumed that during interview, it is likely that the interviewer would have asked the appellant about identity documents beyond his passport, given the crucial importance of identity documents in Iraq.

17. This ground is misconceived. At paragraphs [15] and [16] of his decision, Judge Dixon recorded the answers given by the appellant to questions quite properly put by the judge regarding the inconsistencies in the evidence before the Tribunal regarding the appellant's CSID. At paragraph [37], Judge Dixon was plainly considering the explanation

given by the appellant in his oral evidence that he was asked about his passport when interviewed, and that he had not been referring to his CSID card. Judge Dixon rejected that explanation and noted the interview record is clear and it is likely that the interviewer would have asked him about identity beyond his passport. It is undoubtedly correct that the interview record is clear.

18. The appellant is plainly aware of the difference between his passport and a CSID. In his screening interview (Q.1.7), the appellant was asked whether he has any evidence to confirm his identity. He said that his ID Cards are in Iraq, and that he held a passport. He was then asked (Q.1.8) where his passport is, and he explained that he had travelled to Turkey with his passport but lost it in Turkey. In the subsequent asylum interview completed on 6th June 2016, the appellant was asked (Q.3) about documents that would be available if he were able to get in contact with his family. He again said that he had lost his passport but also went on to refer to his 'Civil Status Card' and said that he could not promise if his family have it or not. In answer to (Q.64 to 74) the appellant said that he used his passport to travel to Turkey and that his passport was taken off him in Turkey by an agent. I note that this is at odds with his previous claim that he lost his passport in Turkey. In any event, at (Q.74), the interviewer asked; *"You say you had an Iraqi passport, did you have any other ID cards?".* The appellant answered; *"I had Civil State ID Card. Unfortunately I lost that"*. It is clear that Judge Dixon did not make an assumption that the interviewer would have asked him about identity beyond his passport. The interview record demonstrates that the appellant was asked whether he had any other ID cards. It is unfortunate that the author of the grounds failed to consider the interview record before advancing a wholly and meritorious ground.

Ground 4: *The IJ fails to make a finding*

19. The appellant claims Judge Dixon failed to provide any reasons for rejecting the appellant's account that he received threats from the

Barzani and Talibani family in 2016 – 2017. There is no merit to this ground at all. The appellant's claim that he would be at risk upon return to Iraq from the Barzani family and the Talibani family was previously rejected by Judge Housego. At paragraph [13], Judge Dixon recorded the appellant's evidence that the last time he had received threats from the families was in 2016 or 2017. Given the very limited nature of the evidence before Judge Dixon it was undoubtedly open to him to describe the evidence as "wafer thin", and to find that there have been no such threats for the reasons set out at paragraph [40].

Ground 5: *The IJ failed to apply the CG case and consider internal relocation correctly*

20. The appellant claims Judge Dixon failed to apply the relevant country guidance and adequately address whether the appellant can internally relocate. The appellant claims Judge Dixon did not address where it is that the appellant can relocate to. Furthermore, the appellant claims Judge Dixon does not make a finding as to how the appellant can obtain a CSID card.

21. In section C of the headnotes in the country guidance decision in SMO & Others, the Upper Tribunal considered the need for a CSID or INID to enable an individual to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. The Tribunal noted that 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.

22. At paragraphs [44] and [45] of his decision Judge Dixon referred to the country guidance set out in SMO & Others. He noted the appellant is from Kirkuk and found the appellant does not face a risk of suffering

serious harm if returned there. It was undoubtedly open to him to reach that conclusion on the basis of the evidence before the Tribunal, including the background material and the findings made. Judge Dixon found, at [36], that the appellant is in contact with his family, or is able to be in contact with them. He found, at [47], that the appellant could obtain the relevant documentation and if he has forgotten the necessary details, and he has the support of family available to him to assist with regards to this.

23. In view of the finding made by judge Dixon that the appellant can safely return to Kirkuk, the question of internal relocation did not arise. However, Judge Dixon found the appellant can relocate even if there were a real risk in Kirkuk. Although I accept Judge Dixon does not expressly refer to internal relocation to Erbil or the IKR, that in my judgement is immaterial. At paragraph [42] of the respondent's decision dated 9th January 2020, the respondent said that upon obtaining a Laissez Passer or a new Iraqi passport the appellant would be able to return to Iraq from the UK. The respondent said that the appellant would be able to take a flight from the UK to Baghdad and then take an internal flight to Kirkuk to live with his family. At paragraph [43], the respondent said that alternatively, the appellant could arrange for a family member to meet him at Baghdad airport and he could make the journey from Baghdad to Kirkuk by land. As the appellant would have the relevant documentation, he should not face any difficulties passing through the numerous checkpoints along the way. Judge Housego had previously stated that the appellant can internally relocate to Erbil. It is my judgement clear that Judge Dixon had internal relocation to the IKR in mind. It follows that in my judgment there is no merit to this ground of appeal.

Ground 6; *The IJ fails to give the benefit of the doubt*

24. Finally, the appellant claims Judge Dixon erroneously fails to give the appellant the benefit of the doubt when considering whether the

Facebook posts/pages relied upon by the appellant, related to the appellant's Facebook account, having acknowledged the merits of the submissions made by the appellant's counsel. The appellant claims that in any event the appellant's name features at the bottom of each of the Facebook pages, and that establishes the extracts from the Facebook pages related to a Facebook account in the name of the appellant.

25. Judge Dixon refers to the appellant's evidence regarding his Facebook account(s) at paragraphs [10] to [12] of his decision. The appellant's evidence in the end appears to have been that he has had two Facebook accounts. The first one had been reported and had been closed. He said that he has another account on Facebook where he is expressing his attitudes towards the regime. At paragraph [12] of the decision, Judge Dixon records the appellant's evidence in cross-examination regarding the lack of translations and his evidence to support his claim of the Facebook account being monitored.

26. In my judgement the difficulty with the appellant's claim in this respect is that at paragraph [45(b)] of his decision Judge Dixon found that in any event, the appellant's reliance upon the Facebook posts do not assist him. Thus, although Judge Dixon was not persuaded that the posts related to the appellant, he did nevertheless consider whether the appellant's sur place activities would put at risk upon return. The appellant does not challenge the findings made by Judge Dixon at paragraph [45(b)] of the decision that there is no evidence of anything adverse coming the appellant's way as a result of the Facebook posts and no evidence of his being monitored or of the posts bringing the appellant to the attention of anyone in any other way. The appellant does not challenge the finding that he has no profile, and the likelihood is that, at most, the posts would be regarded as someone making broadly political statements on social media. Judge Dixon accepted the analysis set out in the respondent's decision that the Facebook activity, even if accepted, would not in itself place the appellant at risk. Even if the Facebook posts are from a Facebook account in the name of the

appellant the appellant had not established that such posts have come to the attention of the Kurdish political parties, and even if they did, there is no real risk of him being targeted directly as a result on the evidence presented.

27. In my judgement, the decision of Judge Dixon should not be read by reference to specific paragraphs alone, but by reading the decision as a whole. The judge was required to consider whether the appellant was a credible witness before reaching an overall decision. He did so and in my judgment it was open to the judge to reject the claims made by the appellant after carrying out a careful analysis of the evidence which included consideration of the findings previously made, the screening and asylum interviews, and the evidence of the appellant himself.

28. In my judgement Judge Dixon carried out a careful consideration of the evidence in the round and reached overall conclusions that were open to him. The grounds amount to nothing more than a disagreement with the findings and conclusions reached and I am satisfied that there is no material error of law in the way the grounds assert.

29. It follows that I am satisfied that Judge Dixon did not make an error on a point of law and the decision of the FtT stands. The appeal is dismissed.

Notice of Decision

30. The appeal is dismissed. The decision of First-tier Tribunal Judge Dixon promulgated on 15th October 2020 stands.

V. Mandalia

Upper Tribunal Judge Mandalia **12th April 2021**