Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04986/2019**

THE IMMIGRATION ACTS

Heard by way of a hybrid hearing	**Decision & Reasons Promulgated**
On 10 September 2021	**On 20 October 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

S M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Hussain, instructed on behalf of the Appellant.
For the Respondent: Mr C. Bates, Senior Presenting Officer

DECISION AND REASONS

Introduction:
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant, a citizen of Iraq, appeals with permission against the decision of the First-tier Tribunal (Judge Saffer) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 11 December 2019.

2. Permission to appeal that decision was sought and on 21 January 2020 permission was granted by FtTJ Scott-Baker.

3. An initial hearing took place by way of a remote hearing on the 7 July 2021 with both advocates. As Mr Hussain did not have a copy of the large bundle of materials, the appeal was adjourned part heard. The resumed hearing took place on 10 September 2021, by means of a hybrid hearing which has been consented to and not objected to by the parties. The appellant did not have any facilities to take part in a remote hearing and requested to attend the hearing centre where an interpreter was made available. The advocates attended remotely via Microsoft teams, and I was present at court as was the appellant and the court interpreter. There were no issues regarding sound. There were some difficulties with Mr Hussain joining the hearing and his video camera would not work. He requested to use the audio medium as an alternative and in light of his request, I was satisfied that this was method that could be utilised. Mr Hussain did not seek an adjournment and submitted that he would be able to provide his legal submissions using this method. I was that satisfied both advocates were able to make their respective cases by the chosen means and that the appellant was able to understand the proceedings with the assistance of the interpreter who confirmed that the appellant was able to understand him and vice versa.

4. For the purposes of the hearing, the tribunal had a copy of the appellant's bundle that was before the FtTJ, the grounds and grant of permission and the decision of the FtTJ. The Tribunal also had a copy of the respondent's bundle including a copy of the response to an information request Iraq: mental health.

5. I further note that a medical report dated 18/8/21 from the appellant's GP was sent to the tribunal in an email dated 3/9/21. It provided an update as to the appellant's medical condition and his mental health. It was not accompanied by any rule 15(2A) application. It was not referred to during the hearing and in any event it was not material that was before the FtTJ who had considered the medical evidence as it stood and as summarised at [23]. The report would be relevant on any remaking, should a material error of law be found.

The background:

6. The appellant is a citizen of Iraq from Hajiawa in the IKR. The background of his claim is set out in the decision of the FtTJ at paragraphs [12]-[23] and the decision letter of the respondent.

7. When the appellant was in Iraq to worked as a general nurse. On 7 April 2018 the appellant met a woman called X after she joined the hospital. X lived in Hajiawa. They got to know each other and began a relationship 4 months after their 1st meeting. No one knew about the relationship until he asked for her hand in marriage on 22 September 2018. On this date X's brother told the appellant that she was promised to someone else and that he needed to speak to his family in law. The man that she had been promised to marry was in prison.

8. After 2 days her brother phoned the appellant and told him that the family would not allow him to marry X. The relationship continued and his family and X's family had no problem with the relationship.

9. On 20 October 2018 the appellant asked for her hand in marriage for a 2nd time. The appellant sent his family and other relatives on this occasion. The family of X and the father of the family who X had been promised to refused the 2nd proposal. The appellant and X continued to see each other following the 2nd proposal. Her sister's father-in-law said that if the marriage went ahead, he would take his daughter back. The appellant did not go to this meeting. He still saw X at work, and they talked in his car.

10. They had no problems between 20 October and 5 November.

11. On 1 November 2018 the appellant and X decided to leave Hajiawa. The appellant claimed that no one knew that they were leaving and on 5 November 2018 the appellant and X left and travelled to Erbil. They remained there for a period of 9 days. The appellant worked in a hospital for 4 days whilst in Erbil. The appellant's brother said that his family and X were threatened. X had received a threatening call from her brother. The appellant went to the security services in Erbil who said that as he was a Goran supporter he could not be protected if he did not join the KDP. The appellant's friend made arrangements for them to leave.

12. The appellant and X left Erbil on 14 November 2018 and travelled to Turkey and did so illegally. He did not require an ID card or a passport. The appellant claims to have been detained for 5 days and he was told that X was placed on a lorry on 23 November 2018. The appellant left Turkey in a lorry on 25 November 2018. The appellant arrived in the United Kingdom clandestinely on the 3 December 2018 and on 4 December 2018 made a claim for asylum.

13. The basis of his claim was that X's family and the other man's family would kill them. The appellant feared her 2 brothers and parents who live in Hajiawa. Her father is a teacher, and her mother is a housewife one brother is a banker and the

other is jobless. The man she was promised to kill someone and has 2 years of his prison sentence left. The man sister is married to X's brother.

14. As to his family circumstances, his parents, sister and 2 brothers live in Hajiawa. He saw them last on 5 November 2018. They no longer speak as X is missing and his brother was very upset about it when he was told. The appellant did not want to contact them because it would cause his family problems. He has 11 aunts and uncles in Hajiawa but is not in contact with any of them. In his evidence before the FtTJ he said his extended family lived all over the IKR. X's family live in Hajiawa but they have relatives and acquaintances in all areas of the IKR. The appellant assumed she has relatives who work for the police as they work in all aspects of life.

15. He has contacted the Red Cross to try and locate X on 25 December 2018. The Red Cross confirmed that he had registered a search for X on 26 April and 23 July 2019.

16. In his evidence, he claimed that he could not relocate to Erbil or Dohuk as he was approached to work for the intelligence services.

17. He could not relocate to Sulamaniyah as he would need to register with the mayor who may inform her family.

18. He could not relocate to Baghdad as he has no family there and does not speak Arabic he is also a Sunni Muslim and of Kurdish ethnicity.

The decision of the respondent:

19. The respondent in a decision taken on 16 May 2019 refused his protection and human rights claim.

20. The respondent accepted that he was an Iraqi national who lived in Hajiawa located in the IKR. As to the factual account given, the respondent accepted his account that he had a relationship with X, and this had led to problems after his marriage proposal. It was accepted that the appellant had demonstrated a genuine subjective fear on return to Iraq but that the fear was not objectively well-founded because it was not accepted that he would be at risk from X's family and the other family that X was promised to on return to Iraq. The appellant could also internally relocate within the IKR.

21. The reasons given for reaching that conclusion was that from the evidence given by the appellant X's family did not have the power, influence, the means or ability to find the appellant or harm him on return to Iraq. It was noted that her family did not have a problem with his relationship with X and he did not experience any problems with the relationship. In his interview he claimed, "her family fully trusted me" and "they were happy, they didn't have any problems" (questions 4972). It was only until the father of the other family told X's brother that he would take his wife away from him that the appellant's family did not accept the marriage proposals. He was able to continue communicating with X following his marriage proposals. It was therefore not considered on return that he would be at risk from X's family.

22. Whilst the appellant feared the man who had been promised to X, he would not be at risk from him or his family as he was currently serving a prison sentence and therefore did not have the means or ability to harming on return. Even when the prison sentence had ended, based on the appellant's evidence he had not demonstrated that this man knew who he was or would recognise him on return to Iraq following his release from prison.

23. As regards the risk from this man's family, based on the evidence of the appellant given he had not demonstrated this man's family knew who he was or would have the motivation, means or ability to harm him on return. Whilst they lived in Hajiawa, and he had seen this man's father when asked if his family knew who he was or had seen or spoken to him the appellant stated, "I assume they know me because I asked X's hand in marriage twice" (asylum interview question 66 – 69). The respondent considered that was based on his own speculation and that he would not be at risk from this man's family on return.

24. Consideration was given to whether there was sufficiency of protection available in Iraq and whether internal relocation was available to him. In this context consideration was given to the CG decision of AA (article 15 (c) Iraq [2015] UKUT 544 as amended by the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944 and AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212. Consideration was also given to the Country Policy and Information Note, Iraq: internal relocation, civil documentation and returns version 9.0 February 2019.

25. The respondent noted that the appellant came to the UK undocumented. The appellant claimed that he had no time to take his CSID card when leaving Iraq. However he already stated that he was aware of his plans to leave his home area on 1 November 2018 and left on 5 November 2018 and that it was considered that he had not provided a reason explanation as to why he did not bring his passport and CSID with him when he left his home area.

26. It was further noted that he stated that his CSID card was left with his family in Iraq and when asked if he could not obtain it from his family he said, "I'm telling if I go back I will be killed and now they will kill me because I lost X".

27. The appellant has his parents, 2 brothers, one sister, one maternal uncle 5 maternal aunt is, 3 paternal uncles and 2 paternal aunt is living in his home area in the IKR. The respondent stated in his interview that he was no longer in contact with his family and did not try to contact them whilst in the UK. He last saw them on 5 November 2018 but claimed that he had spoken his brother once after his screening interview.

28. The respondent considered that the appellant had not demonstrated or evidenced that his family had threatened him or would kill him on return to Iraq. It was considered reasonable that he could establish contact with his brother on return to Iraq. Furthermore, it was considered reasonable for him to regain contact with his family on return in order for them to give him his CSID card and voucher him in Iraq

to confirm his identity and for them to help them obtain a replacement CSID if he did not have his original document.

29. The appellant had friends in his home area and a very close friend in Erbil with whom he stayed for 9 days and through his role as an ICU manager was able to find employment. Thus he had a friend who was able to willing to help him not only obtain his old CSID card but would vouch for him on return to Iraq. He previously worked at several hospitals in the IKR and that there were employees and friends of hospitals who could vouch for him and help him obtain a replacement CSID card.

30. In the alternative if he needed to travel via Baghdad in order to return to the IKR he would not experience any problems. His family or friends could travel to Baghdad to meet him and provide either his current CSID card or voucher him in order to obtain a new CSID card. His journey to the IKR would be unaffected. The respondent did not accept that he had evidenced any claim to have attended at the Iraqi embassy to obtain replacement documentation and relied upon the decision in AA (Iraq) that he would be able to obtain a CSID in the UK.

31. The respondent considered the issue of sufficiency of protection from paragraphs 109-120 of the decision letter. It was considered that the appellant had failed to demonstrate that the authorities in the IKR would be unable or unwilling to offer him protection in his home area. It had not been accepted that the family of S and the other family had any influence within the police or the authorities in the IKR and there was no evidence to indicate that he would be unable to seek protection from the police in Hajiawa. Reference was made to the information request Iraq: Peshmerga 28 December 2018's (at paragraph 13) and the US State Department report for 2018 Iraq. When looking at the external evidence the respondent noted that the IKR had a police force that the appellant would be able to access on return. Furthermore the Kurdistan Ministry of interior would investigate abuse within the police and have published reports on this issue. Despite sources citing they lack resources and investigators to pursue or potential corruption case, there had been some developments such as the launch of "Ximat". Therefore if the appellant experienced any problems with the police he could take it further and they would be investigated by the Kurdistan Ministry of the Interior.

32. The respondent therefore concluded that his fear on return was based on threats of persecution from nonstate agents and he had not demonstrated that they would be able to have any influence over the state. The background country evidence demonstrated avenues of redress available and that he should have utilised before seeking international protection. Based on the country material it was believed that the authorities in Iraq would be able to provide the appellant with effective protection as set out in Horvath.

33. The respondent considered the issue of internal relocation at paragraphs 121 – 110. It was noted that it would not be unreasonable to expect him to return to another part of Iraq, notably another part of the IKR. In relation to the area of Sulaymaniyah he said that he would be found there because most of X's relatives are living there.

However when questioned further he claimed it was her mother's relatives there and that he had not met any of them. Therefore it was considered they would be unaware of who he was on relocation, and it was therefore considered he could internally relocate to Sulamaniyah. The appellant had also previously relocated within the IKR by remaining in Erbil for 9 days. It was also noted that since AAH was promulgated there were direct flights from the UK to both Erbil and Sulaymaniyah.

34. The application was therefore refused.

35. The appeal came before the FtT on 27 November 2019.

36. The FtTJ considered the protection appeal in the light of the country guidance of AA (Iraq) [2015] UKUT 00544. The FtTJ noted that honour killings occurred in the IKR and that men are occasionally the victims of such violence and that it is more prevalent in smaller towns and rural areas and that there are no shelters for men in the IKR. The judge also considered the medical evidence in the report of Dr Wilson that the appellant had a major depressive disorder. The judge considered that there was inpatient and outpatient hospital treatment in the IKR including psychotherapy and medication for conditions including depression by reference to the background material (at [28]).

37. The FtTJ accepted that the appellant was a potential male victim of an honour crime, and this fell within a particular social group (at [28]). He accepted that it was reasonably likely that X's family would still have an adverse interest in him, and he accepted that X fled with him, but they became separated when he was briefly jailed in Turkey. The judge noted that he had "insufficient information to make any finding as to where she is as there is no evidence the Red Cross have been able to locate her" (at [30]).

38. As to risk from X's family, the judge did not accept that they could be classified as state agents of persecution as there was insufficient cogent evidence that they were part of, or linked in any way to, or acting on behalf of the state, as the appellant had simply speculated as to her extended family's occupations, and the immediate family had no such links (at [31]).

39. The judge rejected his account that he was asked to join the KDP as a condition of providing protection stating that he was not pointed to any background evidence that this would be required. The judge also rejected his account that he was asked to join the intelligence services as the appellant had not mentioned this in interview and the judge was satisfied that his subsequent mention of it was simply a fabrication to bolster his claim (at [32]).

40. The judge found that there was no reasonable likelihood that her family would know that he had returned to Iraq as there was no cogent evidence that they had links to the state, he was able to work in Erbil for 4 days and stay there for 9 days without her family becoming aware, and there was no cogent evidence that they were made aware by the police that he had approached them (at [33]).

41. The judge found that there was adequate state protection available, and a functioning police force given the background evidence as the man to whom X was promised was in jail and the appellant felt able to approach the police.

42. As to return to Iraq and the issue of documentation, the judge concluded at [35] that he would be able to obtain a CSID replacement and would be able to return directly to the IKR without having to go to Baghdad as the judge did not accept that his brother would simply cut him off as he had no issue with the relationship, his friend who helped him escape had already assisted in the judge stated "I have no reason to doubt he would do so again as that is what friends do, and her family would not be reasonably likely to find out of an approach to the local civil registry given the lack of state involvement or contacts."

43. As to internal relocation, at [36] the judge concluded that it would not be unreasonable or unduly harsh to expect him to internally relocate within the IKR away from Hajiawa for the following reasons. He does not know any of her family who live in Sulamaniyah. It is not reasonably likely that the mayor would inform the family as the appellant does not know where any of them live and it is unclear how he could provide sufficient information to the mayor for him/her to be able to locate them. The judge found that he could reach Sulamaniyah, Erbil or Dohuk safely. The appellant would be able to work, to speak the language and he was from the majority religion and could access treatment and support for his mental health issues. The judge noted that Dr Wilson had no expertise on the provision of services in the IKR.

44. The judge therefore dismissed his appeal on protection grounds and on articles 3 and 8.

45. The appellant sought permission to appeal that decision and permission was granted by FtTJ Scott-Baker on 21 January 2020 for the following reasons:

> "The grounds seek to reargue the appellant's claim. However the gist of the claim was that the appellant feared that he would be a victim of honour killings from his partner's family on return. The respondent accepted this fear is genuine but subjective and not objectively made out.
>
> At [30] the judge accepted that the family would still have an adverse interest in the appellant and at [31] found that the family could not be considered estate agents, but no finding was made as to whether the family could be considered as nonstate agents.
>
> Further the judge made no reference to the background materials before him in the appellant's bundle on the issue of honour killings relating to both men and women. The judge failed to consider the totality of the evidence before him and whilst the grounds are somewhat imprecise the finding that the appellant is returnable to Iraq and is not at risk of an honour crime may arguably amount to an error of law as the judgement does not contain findings on the totality of the evidence before the judge. Permission is granted."

The submissions of the parties:

46. Mr Hussain on behalf of the appellant relied upon the written grounds.

47. In the submissions that he made on 7 July 2021 Mr Hussain submitted that there were 3 issues, firstly the judge did not consider whether the family of X were non-state agents, secondly whether relocation was possible with the appellant having no documentation and that even if he could locate, the judge had not considered whether he could live a normal life in the IKR.

48. He submitted that the finding of sufficiency of protection was not sustainable and that the appellant had a relationship outside of marriage.

49. When looking at the country guidance case at the time of the hearing namely AA (Iraq) the tribunal stated that return would be to Baghdad (see 156 – 160). He submitted that he acknowledged that the grounds of challenge did not raise the issue of AA (Iraq), but it was relevant, and it was not clear how the judge reached the finding that he could be directly returned to the IKR. The place of return was not clear.

50. He submitted that if he could return to the IKR the FtTJ was required to provide reasons as to how that could be achieved.

51. At the hearing on the 10 September 2021, Mr Hussain submitted that the FtTJ did not address the issues on documentation. In the witness statement of the appellant he stated that he had no CSID and that he could not relocate to the IKR because of a clandestine affair. Mr Hussain submitted that he repeated and relied upon the earlier point that he had made that it had not been determined how he would get to the IKR and that direct returns would require pre-clearing. This would be a return to an area where he feared the authorities and the family and effectively it would be a return to a place of persecution.

52. He submitted that the only possible place of relocation would be Baghdad and has he has no documentation or likely to obtain documents from his family. There is a document in the bundle to say that he is trying to find his family but has not been able to. The family would face pressure from the society because he had transgressed moral codes and that he would face retaliation.

53. Mr Hussain referred the tribunal to the relevant country material in the appellant's bundle in the Danish Immigration Service, KRI: women and men in honour related conflicts He referred the tribunal to page 51; extramarital relationships are seen as unacceptable in the KRI, and people are aware that they take a severe risk by doing so. In the cities the attitudes towards premarital relations are mild compared to the more conservative rural areas. At page 57 honour crimes are unreported and that the appellant's family were not able to help him. Relying on page 52 he submitted that the position with men is not dissimilar to women and that the appellant would be exposed and would not have protection and did not have the ability to relocate.

54. Mr Hussain submitted the country material was consistent with the appellant's evidence that he has no family and was not in contact with his family and that the authorities would not interfere as this was a "tribal matter". The judge having accepted the relationship should have considered that he would not be able to

relocate within the IKR in those circumstances. Therefore the decision should be set aside with the positive findings preserved.

55. Mr Bates on behalf of the respondent relied on the Rule 24 response dated 12 May 2020.

56. That stated that the grounds at paragraphs (a-d) argued that the judge failed to make positive findings that the appellant will be at risk from his partner's family and that both men and women could be subject of "honour killings". The respondent submitted that the judge did not accept that the family of the partners family had any influence beyond their home area and could not be expected to know if the appellant returned to Erbil where he had stayed and worked prior to leaving the IKR.

57. The point made in the grant of permission that the judge had failed to consider whether the partners family could be considered "non-state agents" is immaterial as the judge made a finding that they had no influence beyond their home village.

58. As to paragraphs f, g and h of the grounds they argue the appellant cannot relocate; that the partners family are of high rank and the appellant is entitled to protection. Those points are simply disagreements with the conclusions of the judge that the partners family are not of high influence and that internal relocation is open to the appellant. The judge did not accept the appellant's claim that he could not obtain protection from the authorities in the IKR, nor did he accept that the appellant's family would not assist him in obtaining documentation. In any event the judge found that if the appellant's family could not assist, the appellant had stayed with a friend in Erbil who could be asked to assist him again.

59. In his oral submissions Mr Bates referred to the country background evidence relied upon by Mr Hussain. At page 52 it referred to honour crimes being "overwhelmingly perpetrated by male family members against female relatives, although occasionally males are also the victims of such violence." He submitted that this clearly pointed to a greater risk coming from the family, but the appellant was not the female, and the judge did not accept that he would be at risk from his family and had not put forward any arguments as to why he could not obtain his CSID. At paragraphs 12 – 13, the FtTJ found that his documents were with his family and that at the time of the screening interview he was in contact with his brother. Whilst he claimed to have lost contact with his family the judge found at paragraph [35] that he had an ability to contact his family and therefore there was no need for a replacement CSID. The judge found that it was not reasonably likely that his brother had cut him off and this was a "key issue". The appellant's own family did not have a problem with relationship and therefore were not likely to turn their back on him nor would his brother.

60. At page 51 of the background material it stated that in the city's attitudes towards premarital relations are mild compared to the more conservative rural areas and there had been "a change among youths was perceived in terms of sexual

relationships in the sense they can choose their own spouse, especially in the cities and among educated families."

61. He further submitted that the background material also supported the judge's findings at p51 and that sources disagreed on whether honour killings are widespread and that there were different attitudes in the cities rather than the rural areas.

62. Mr Bates submitted that whilst the judge found there was a risk from her family he also found that he was not a risk from his own family and therefore there was no reason why he would not be able to approach his family so that they could send him his CSID.

63. As to the issue of sufficiency of protection, the judge found that there was sufficiency of protection taken at its highest. He also considered the issue of internal relocation. Whilst it was argued that there was no finding that her family were non-state agents, it is plainly inferred from the findings of fact as the judge did not accept their family members had any reach or influence. The judge referred to this at paragraph 16 of his decision and that there was nothing to demonstrate that her family relatives did have any reach or influence outside the home area. The FtTJ also rejected that they would be able to influence state agents. When looking at internal relocation, the judge found that the risk would not extend through the IKR and that he had previously internally relocated to Erbil having worked in a hospital for 4 days. The factual finding that the family would not be out to locate him outside the home area was a finding open to him and there was nothing in the grounds to undermine that finding. No area in the IKR is uniform and is split between various governorates therefore the risk did not extend to all of the IKR.

64. Finally he submitted that taking the factual findings of the judge, the appellant had a problem in his local area but that he would be able to access his CSID. He would be able to relocate with his documents and obtain employment in Erbil. Therefore there was no error of law in his decision.

65. Mr Hussain by way of reply submitted that the different areas in the IKR depended on whoever was in charge and that honour-based violence is applicable throughout the IKR.

66. He submitted the question remained was that the judge did not grapple with whether the appellant could relocate and that remained unanswered.

67. Mr Hussain also refer the tribunal page 60 of the appellant's bundle and that men are victims in honour related conflicts in the IKR.

68. He therefore invited the tribunal to set aside the decision.

69. At the conclusion of the submissions, I reserved my decision which I now give.

Decision on error of law:

70. I have carefully considered the grounds of challenge. They do not appear to have been drafted by the appellant's legal representatives and reading them even in the most generous way, they fail to particularise any error of law in the decision of the FtTJ. In essence they assert that the "points of failure by the judge, that require consideration;

    (a) the appellant is a very high risk of being killed/murdered?

    (b) He will be brutally tortured and beaten to death.

    (c) This is a unique example of an honour crime, clearly admitted accepted by the judge

    (d) male victims are as much at risk as female victims who are victims of honour crimes

    (e)they are a family unit

    (f) the appellant actually qualified to leave again under discretionary or even humanitarian protection.

    (g) is clear that the appellant is an Iraqi citizen and is married an Iraqi national whose family has direct links and contacts with a high level.

    (h) internal relocation is no option

    (i) there are clear grounds to consider under article 8 and this is not being considered by the previous judges the client wanted. "

71. The grounds do not seek to identify by reference to the FtTJ's decision why it is said he erred in law. Nonetheless permission has been granted and the grant of permission identifies that it is arguable that there were no findings whether the family could be considered non-state agents, the judge made no reference to honour-based killings and the judge failed to consider the totality of the evidence. Mr Hussain in his oral submissions asserts additionally that the judge failed to properly consider the issues of internal relocation and the issue of documentation. I therefore address those issues.

72. The FtTJ accepted the appellant's factual account as to the events in Iraq and that he had a relationship with a woman named as "X" and that he had made a marriage proposal to her which had led to problems in Iraq and with him leaving that country with her. The judge accepted that as a result it was reasonably likely that the family of X would still have an adverse interest in him in the home area (at [30]).

73. Based on the factual assessment made, the FtTJ plainly accepted that the appellant would be at risk in his home area from the family of X. However as

identified by Mr Bates, the factual findings of the FtTJ did not accept that the appellant would be at risk from his own family members. The FtTJ was entitled to find on the evidence before him that the appellant had a large extended family in Iraq including his parents, siblings and paternal and maternal uncles and aunts (relying on questions 10, 11, 18, 19). Additionally, the appellant's evidence was that he had informed his brother why he left Iraq and that his brother's response was "no problem" indicating that his brother was not against him leaving Iraq for the circumstances in which he did. The judge's finding was that the appellant's brother would not cut him off as he had had no issue with a relationship with X. Consequently, the judge was entitled to find that the appellant would not be at risk of his own family.

74. Whilst Mr Hussain made reference to the country background materials, and by reference to one report which was the Danish immigration service report, the FtTJ plainly had regard to that material at paragraph [28]. Whilst he summarised it in relatively brief terms, the judge accepted that honour killings occurred in the IKR and expressly found that men are occasionally the victims of such violence. He found it was more prevalent in smaller towns and rural areas and that there were no shelters for men in the IKR. That summary is consistent with the background evidence that Mr Hussain has referred the tribunal to. In any event and as set out above the judge accepted that part of the appellant's factual claim relating to his relationship with X and that as a result that her family had an adverse interest in him. This was consistent with the summary of the background material at [28].

75. As to the issue sufficiency of protection, the judge reached the conclusion from the background evidence that there was state protection available and that there was a functioning police force in the IKR. I have not been directed to any country materials dealing with the issue of sufficiency of protection during this hearing and I observe that the respondent set out its case on this issue at paragraphs 109 – 120. In that assessment the country background materials refer to the Danish Immigration Service report and the police structures in the IKR and the US State Department report dated 2018 (at paragraph 121 of the decision letter). The respondent concluded that the IKR did have a police force that was functioning, and that the appellant could access this on return. The judge found that the appellant had demonstrated that he could access state protection by approaching the police (see paragraph 18 in conjunction with paragraph 34).

76. The issue raised by the grant of permission relied upon by Mr Hussain is that the FtTJ did not consider whether the family of X could be considered as non-state agents. Having considered the submissions made by the parties and in the light of the decision, I am satisfied that the judge did not fall into error. On reading the decision, it is plain that he properly considered the profile of the members of X's family in accordance with the evidence. The appellant's evidence was that X's parents were a teacher and a housewife, a brother was a

banker, and the other was jobless (at [16]). The judge did not accept from the evidence before him that the family members of X could be considered as "state agents of persecution" as there was insufficient cogent evidence that they were part of or linked in any way or acting on behalf of the state. The judge expressly found at [31] that the appellant's evidence was "speculation" concerning the extended family and that X's immediate family had no such links.

77. I accept the submission made by Mr Bates that it is plain from this finding that they were not state agents of persecution that the only reasonable inference was that they were non-state agents. Based on the factual findings made by the judge they were not individuals of any influence or power outside the home area. Thus even if they were non-state agents, the judge had found that they had no influence outside their home area and therefore the appellant would not be at risk if he relocated to another part of the IKR.

78. I now turn to the issue of internal relocation. The factual findings made by the FtTJ, which I am satisfied were open to him on the evidence before him, was that the fear of X's family was in the local home area. The position in relation to the IKR was reflected in the background country materials are set out in the decision letter at paragraph 113 and in the decisions of AA (Iraq) and AAH, which were before the FtTJ. The IKR has 3 governorates, Dohuk, Sulamaniyah and Erbil. The 2 dominant parties in the IKR are the KDP and the PUK. The IKR has its own internal security forces and both the KDP and the PUK control several additional militia forces referred to as the "Peshmerga". They also have their own intelligence services; the Zanyari (PUK) and the Paratin (KDP) see decision letter at paragraph 113).

79. The factual assessment of the reasonableness of internal relocation made by the FtTJ can be summarised as follows:-

    1. The appellant would not be at risk from the authorities in the IKR; the judge rejected his account of being asked to join the KDP on condition of providing protection (at [32]).
    2. The appellant sought protection from the authorities in the IKR previously when in Erbil and outside his home area (paragraph 19 and paragraph [34]).
    3. The family of X had no links with the state and had no power or influence outside of the home area (see paragraphs [31) and [33) and would not know that he had returned to Iraq.
    4. The appellant had been able to demonstrate a safe relocation to Erbil by living for a period of 9 days there, 4 of which were spent working in a hospital.

5. There was no evidence to satisfy the judge that he was at risk of harm when in Erbil (at [33]).
6. It would not be unreasonable or unduly harsh to relocate within the IKR for the reasons set out at paragraph [36]. The appellant did not know any of the family who he said lived in Sulamaniyah. It was not reasonably likely that the mayor would inform her family as the appellant did not know where any of them lived and it was unclear how we could get sufficient information to the mayor to be able to locate them. He could reasonably relocate to Sulamaniyah, Erbil or Dohuk. He can work, speak the language, is from the majority religion and would be able to access treatment and support for his mental health issues. The judge observed that the medical report provided on his behalf indicated no expertise as to the provision of services in the IKR.

80. Neither the grounds nor the submissions engage with those factual findings, and I accept the submission made on behalf the respondent that taken together the risk of the family of X which did not extend beyond the local area, their lack of influence and power had not demonstrated that the appellant could not safely relocate nor that it was unreasonable or unduly harsh to do so. The key finding was that the appellant had previously relocated to Erbil where he lived in safety (at [33]). For those reasons, there is no error of law demonstrated in the FtTJ's assessment of relocation.

81. The remaining issue is not one particular raised in the grounds either but has been relied upon by Mr Hussain. This relates to the issue of documentation. He submits that the judge failed to consider whether the appellant could reach the IKR as he had no documentation.

82. Again, whilst the decision of the FtTJ is in relatively brief terms, the judge made factual findings were consistent with the CG decisions before him and referred to at [28] and in the decision letter. The judge found at paragraph [35] that he was satisfied that the appellant could obtain his CSID card or in the alternative a replacement. Having found that the appellant was not at risk of harm from his own family and that his brother would not "cut him off" (at [35]) it was open to the judge to conclude that the appellant's family could send the relevant documentation to him whilst in the UK. The evidence before the tribunal was that he left the documents with his family. Whilst the appellant claims to have lost contact with the family, the judge was entitled to take into account that he would be able to contact his brother. Alternatively the judge found that on the appellant's own evidence, he would be able to obtain the assistance of his friend who had helped him leave Iraq (at paragraph [35]). Those factual findings were consistent with the CG decisions then in force at the time the judge heard the appeal in November 2019.

83. As explained by the Court of Appeal in *AA (Iraq) v SSHD* [2017] EWCA Civ 944 "A CSID is generally required in order for an Iraqi to access financial assistance from the authorities, employment, education, housing and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to fail and face a real risk of destitution amounting to serious harm if by the time any funds provided to P by the Secretary of State or agents to assist . return have been exhausted; it is reasonably likely that P will still have no CSID.

84. There is no dispute that at the time of the hearing the extant CG decision was that of *AA (Iraq)* [2017] but also AAH which had been promulgated on 26 June 2018 and which supplemented the guidance given in *AA (Iraq)* by reference to the issue of internal relocation for Iraqi citizens of Kurdish ethnicity. As to the possibility of relocation to the IKR, the Country Guidance then applicable and before the FtTJ stated as follows:

" E. IRAQI KURDISH REGION

17. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

18. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

19. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

20. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport 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.

21. 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 is no sponsorship requirement for Kurds.

22. 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.

23. 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.

24. For those 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.

25. 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;

(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.

85. Consequently, the judge considered that the appellant would be able to obtain a CSID within a reasonable timeframe if in Iraq. The FtTJ concluded that he could obtain his own CSID which was with his family and thus would not need to obtain a replacement CSID. However even if he were required to obtain replacement in Iraq based on his own factual circumstances and the evidence, it was open to the FtTJ to reach the conclusion that it had not been made out to the required standard that the appellant would not be able to obtain a replacement CSID via the assistance he could obtain from his brother or in the alternative from his friend. As the decision letter set out, the appellant's evidence was that he had worked previously for the government services in a hospital and that they would have the requisite information concerning his background which could be utilised in obtaining the necessary information for a CSID.

86. At [36] the FtTJ succinctly summarised the reasons why he reached the conclusion that it would not be unreasonable or unduly harsh to expect the appellant to internally relocate within the IKR away from the home area. The judge took into account his factual findings that the appellant would not be at risk from X's family members who had no influence or power that extended outside their home area. The appellant does not know any of X's family who live in Sulamaniyah and that it was not really likely that the mayor would inform her family that he was living in the area of the appellant does not know where any of them live and that it was unclear how we could provide sufficient information to the mayor for that person to locate them. The judge took into account that he spoke Kurdish Sorani, , he would be able to work having had a background in nursing, he was from the majority Sunni religion and that he would be able to access treatment and support for his mental health issues which the judge had summarised at [23] and which was consistent with the country background materials in the response to an information request Iraq: mental health in the KRI. Alternatively, the FtTJ was entitled to place weight upon the appellant's earlier relocation to Erbil where he was able to remain in safety and undertook work in a hospital there and where he had the assistance of friends.

87. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreement about the factual findings made particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and he plainly did so, giving adequate reasons for his decision.

88. Consequently having considered the grounds of challenge in the context of the submissions made by Mr Hussain, for the reasons I have given the grounds do not demonstrate any material error of law in the decision of the FtTJ. The decision shall stand.

Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision of the FtTJ shall stand.

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 his family members. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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Signed

Date: 27/9 / 2021

Upper Tribunal Judge Reeds