Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05425/2019

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 17 December 2020	**On: 06 January 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

BF
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, instructed by JKR Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant as an asylum applicant is granted anonymity throughout these

proceedings. No report of these proceedings (in whatever form) shall directly or indirectly identify the appellant. Failure to comply with this order could lead to a contempt of court.

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 12 August 1997. He left Iraq in April 2018 and arrived in the UK, clandestinely, on 2 November 2018.

2. The appellant claimed asylum on 6 November 2018. He claimed to be an Iraqi Kurd from Tapasawz village in Tuz, outside the IKR (Iraqi Kurdish Region) and to be at risk on return to Iraq from members of the PUK (Patriotic Union of Kurdistan) as a result of witnessing PUK supporters shooting and killing his neighbour on 5 January 2018 and reporting them to the police.

3. The appellant's claim was refused on 23 May 2019. The respondent considered that the appellant's claim to be at risk from the PUK was speculative and that the account he had given was inconsistent. The respondent considered that even if the appellant had a genuine subjective fear, that fear was not objectively well-founded as there was a sufficiency of protection available to him. The respondent considered that the appellant would be able to obtain a replacement CSID document and could enter and reside in the IKR. It was not accepted that he was at any risk on return and it was not accepted that his removal to Iraq would breach his human rights.

4. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Aujla. Judge Aujla did not find the appellant's claim to be a credible one. He did not accept the appellant's account of problems following the shooting of a neighbour by the PUK and did not accept that he would be at risk of persecution or ill-treatment on return to his locality. Neither did he accept the appellant's claim to have lost contact with his family in February 2019 and he concluded that he remained in contact with his family in Iraq. The judge considered that the appellant would be able to obtain a duplicate CSID at the Iraqi Embassy in the UK with information and documentation from his family, or alternatively he could apply for a CSID in Baghdad and travel back to the IKR with his family. He would not be at risk on return and his removal to Iraq would not breach his human rights. The judge accordingly dismissed the appeal on all grounds.

5. Permission to appeal to the Upper Tribunal was sought by the appellant on three grounds: that the judge materially erred in his country assessment by confusing the area from which the appellant originated; that the judge made unsustainable findings on credibility; and that the judge had disregarded evidence about the difficulties for the appellant in obtaining a CSID.

6. Following the grant of permission to appeal it was found by Upper Tribunal Judge Kebede, at a hearing on 12 February 2020, that the judge had made no errors in his adverse credibility findings, but that he had erred in law in his assessment of risk on return, as follows:

> **"Findings on the error of law**
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> 11. I am in agreement with Ms Isherwood that the judge's adverse credibility findings were open to him on the evidence available. I find no merit in Ms Jaquiss's submission that his findings were infected by his confusion between the IKR and the KRI. Ms Jaquiss's challenge to the judge's adverse finding on the appellant's lack of knowledge about his neighbour's political background was on the basis that that had never been put to him. She submitted further that the judge was wrong to find that the appellant's claim about the political dimension to the incident was "wild and speculative", when that was based upon information he received after the incident. However, it seems to me that the judge gave detailed consideration to the matter and was perfectly entitled to conclude that the appellant had failed to give any proper explanation as to why he believed the incident was a political killing. The appellant plainly had plenty of opportunity at his interview to provide such an explanation and he did not need to be asked specifically why he was aware that the shooting was political. The judge properly found the appellant's response to the questions asked about the incident to be vague, he gave detailed and cogent reasons at [31] for considering the appellant's account of the incident to be lacking in credibility and he was perfectly entitled to draw the adverse conclusions that he did in that regard.
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> 12. Likewise, I disagree with Ms Jaquiss's submission challenging the judge's findings about the appellant's contact with his family. She submitted that the judge had not listened to the appellant's evidence as he did not say that he had had no contact with his family since coming to the UK. However, the judge clearly had full regard to the appellant's evidence which he considered in detail at [32]. He was fully aware of the appellant's evidence that he had contact with his family at the time he came here and that his claim was to have lost contact in February 2019, but he did not accept that the appellant would have been unaware of any of his family members' telephone numbers other than his father's and therefore did not accept his claim to have lost all contact with his family after February 2019. That was a conclusion which was entirely open to him on the evidence before him and it seems to me that the challenge in the grounds in that respect is simply a disagreement.
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> 13. It is also relevant to note that the judge gave further reasons for doubting the credibility of the appellant's claim at [30], noting inconsistencies in the accounts given at different points in the proceedings about his movements subsequent to the incident of 5 January 2018. Neither the grounds nor Ms Jaquiss's submissions addressed or challenged that finding and indeed the judge was entitled to draw the adverse conclusions that he did in that regard. Accordingly I find no merit in the challenge in the grounds to the judge's adverse credibility findings and I consider that he was fully and properly entitled to conclude

that the appellant had fabricated his claim and that he would he would be at no risk on return to Iraq on that basis.

14. However, I do find merit in the challenge to the judge's country assessment. Ms Isherwood did not make clear submissions to undermine the challenge in that respect. It seems that, in attempting to clarify the appellant's place of origin, in light of the errors he identified in the refusal decision and the appellant's own skeleton, the judge unfortunately added to the confusion himself. It appears that he was confused about the IKR, KRI and KAR, considering them to be different regions, whereas they were different names for the same region. In so doing, he considered the appellant's ability to return to Iraq and obtain the necessary documentation on a flawed basis and his findings in that respect cannot therefore be considered entirely reliable or sustainable. It may well be that that was not a material error on the basis of the country guidance available at the time, as the judge's findings on return to the IKR could arguably be taken as consistent with internal relocation to that region. However, in light of the more recent guidance in SMO which, albeit not available at the time of the judge's decision, was nevertheless heard before his decision and was thus based upon evidence and information existing at that time, it seems to me that the error has to be considered as material.

15. Accordingly, whilst I find no error of law in the judge's adverse credibility findings, I set aside the decision in relation to the assessment of risk on return. That decision must be re-made in the light of the most recent country guidance in SMO. The case will therefore be listed for a resumed hearing in the Upper Tribunal for consideration of the question of the appellant's ability to obtain the necessary civil status identity documentation and to return to his home area or to relocate to the IKR or elsewhere in Iraq. The judge's adverse credibility findings are preserved."

7. The following directions were made:

"Directions

1. No later than 7 days before the date of the resumed hearing, both parties are to file with the Upper Tribunal, and serve on the other party:

- a skeleton argument addressing the above issues, namely the appellant's ability to obtain the necessary civil status identity documentation and to return to his home area or to relocate to the IKR or elsewhere in Iraq in light of the most recent country guidance in SMO.

- any further evidence upon which they intend to rely at the hearing

2. It is assumed that the hearing will proceed on the basis of submissions only and therefore no interpreter will be booked unless a specific request is made."

8. In light of the need to take precautions against the spread of Covid-19, further directions were issued by Upper Tribunal Judge Keith for the onward disposal of the appeal.

9. The matter then came before us for a resumed, face-to-face, hearing.

Evidence

10. The appellant attended the hearing and gave oral evidence with the benefit of an interpreter. The appellant and the interpreter confirmed they understood one another. The appellant confirmed the truth of his witness statements of 18 March 2019 and 30 November 2020. In those witness statements he says that he is an ethnic Kurd from outside Iraqi Kurdistan, from the Tapa Sawz village, Tuz Khurmato district, Salahadeen (or Salah al Din) province. His native language is Kurdish Sorani. He does not speak Arabic. He was not challenged on this evidence by the Secretary of State. In answer to questions from the Secretary of State, the appellant said that he did not have a CSID or a copy of it in the UK. He said he had a CSID in Iraq, but he gave it to the agent who helped him to come to the UK and the agent did not give it back to him. The appellant did not ask for it back as he did not remain in contact with the agent. The appellant had not tried to obtain a CSID card since being in the UK. He said that his family used to have a Family Book in Iraq, but he did not recall the reference. He said that the last time he saw his family was when he was in Iraq, that he did have his father's phone number when he left Iraq but the last time they spoke was in February 2019 and since then his father's phone number had not worked. He said that he had contacted British Red Cross for assistance with locating his family, but they had been unable to assist because of the pandemic. He said he had no family or friends in UK.

Submissions

Ms Cunha for the Secretary of State invited us to find that as the appellant had previously had a CSID and a Family Book reference he could obtain a CSID while in the UK with assistance from his family, with whom she invited us to find he was still in contact, or could contact once the British Red Cross was able to provide assistance. She said that the Laissez Passer to enable the appellant to travel to Baghdad could be obtained by the Foreign Office taking into account details that he could provide and he would then be interviewed by the Iraqi authorities in the UK. She submitted that alternatively the appellant as a healthy young male who has demonstrated great fortitude in coming to the UK, he could on return simply remain in Baghdad, where the situation for Kurds has improved as is apparent from *SMO*. Alternatively, he could through his family in Iraq obtain a CSID. She submitted that, as an Iraqi Kurd from the Iraqi side he shared the characteristics of the Kurdish people in Baghdad.

In the light of the preserved adverse credibility findings, Ms Jaquiss quite properly did not address us again on the appellant's asylum claim, but argued that the appellant's humanitarian protection and human rights claims should succeed. Ms Jaquiss submitted that the appellant could not be returned to Iraq because, applying the country guidance in *SMO*, he was not a person who could obtain the necessary CSID document and he would accordingly be at risk of treatment in breach of Article 3 of the ECHR on return. She submitted, first, that it would not be possible for the Secretary of State to obtain a Laissez Passer for the appellant in the UK because according to paragraphs 2.6.23-24 of the Secretary of State's *Country Policy and Information Note: Iraq: Internal relocation, civil documentation and returns* (June 2020), as at April 2020, there was no requirement for interview for a Failed Asylum Seeker, but they would need to hold one of a number of identity documents (including a CSID), none of which the appellant has, before they would issue a Laissez Passer.

She further submitted that even if a Laissez Passer could be obtained without a CSID, he could still not be returned to Iraq because he would need a CSID in order to survive there. He would not be able to obtain a replacement in Baghdad and therefore, in accordance with *SMO,* he would need to obtain a CSID from his local office in Tuz. However, he could not do that as he could not travel from Baghdad without a CSID and his family could not obtain it for him 'by proxy' because the situation of conflict in the appellant's local area means it is not reasonably likely that this could be done (applying paragraph 14 of the headnote in *SMO*). Neither could he obtain a replacement CSID in the UK because he was not in possession of any documents establishing his identity. Finally, she submitted that he could not in any event return to his home area because the conflict situation in the area would mean that returning the appellant to that area would give rise to a real risk of a breach of Article 15(c) of the Qualification Directive or Article 3.

Discussion and Findings

11. Although Ms Jaquiss invites us to start with the question of whether a Laissez Passer could be obtained for the appellant from the Iraqi authorities in the UK, we do not consider that to be the proper starting point. Whether the necessary documents can be obtained to enable the appellant to be removed from the UK is a practical question that goes to the issue of whether it will ultimately be possible for the Secretary of State to remove the appellant from the UK if his current claim is unsuccessful and he does not make arrangements to return voluntarily; it is not a matter that goes to the merits of his humanitarian protection or human rights claims: see *HF (Iraq) and Others v Secretary of State for the Home Department* [2013] EWCA Civ 1276 at paragraphs 99-101 per Elias LJ with whom Fulford LJ and Maurice Kay LJ agreed and paragraph 9 of the headnote in *SMO*). In any event, we note from paragraph 375 of *SMO* that there is an interview process whereby a Laissez Passer may be obtained without documents.

12. Applying the country guidance in *SMO*, the issues for us to decide are therefore:

i. Whether it is reasonably likely that the appellant will be able to obtain a CSID while in the UK or from Baghdad (if returned), either himself or with the assistance of his family;
ii. If he can obtain a CSID, whether the situation of conflict in the appellant's home area is such that conditions on return would be reasonably likely to breach Article 3 of the ECHR and/or Article 15(c) of the Qualification Directive;
iii. If so, or if he cannot obtain a CSID, whether he could reasonably be expected to relocate to (or remain) in Baghdad.

13. As to the first issue (whether the appellant can obtain a CSID either in the UK or on return to Baghdad), the relevant part of the guidance from the headnote in *SMO* is as follows:

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.
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> 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.

14. The question for us in the appellant's case is therefore whether it is reasonably likely (to the lower standard of proof) that he does not have available to him the volume and page reference of the entry in the Family Book in Iraq so that it is reasonably likely that he will on return be without a CSID and therefore at risk of treatment in breach of Article 3 if he seeks to travel from Baghdad.

15. *SMO* holds that although most Iraqi citizens will recall the Family Book reference, the information can also be obtained from relatives on the father's side. In this case, the appellant accepts that his family did have such a page reference, but he claims not to be able to recall it. We are prepared to accept that the appellant genuinely cannot recall this information as he was not challenged on this point by the Secretary of State. However, in any event, we find that the appellant could obtain this information from his relatives. In this respect, the finding of the First-Tier Tribunal that it was not credible that the appellant had not been in contact with his family since February 2019 was preserved by the Upper Tribunal on appeal, and we have heard no evidence at this hearing that would cause us to revisit that finding. The appellant in this hearing simply repeated the evidence he had given before the First-Tier Tribunal in this respect. It follows that since the appellant did previously have a CSID and a Family Book reference, and since it has been found as a matter of fact that he is in contact with his family, applying the guidance in *SMO* it is reasonably likely that he will be able to obtain a replacement CSID while in the UK.

16. Alternatively, if we are wrong about the above, then we find that the appellant would be able to obtain a CSID with the assistance of his family once he had arrived in Baghdad. In this respect, the effect of the guidance in *SMO* is that the appellant would need his family to attend his local CSA office in order to obtain a replacement document. In *SMO* it was found that all CSA offices have re-opened, but whether a member of his family would be able to obtain a replacement CSID would depend on whether records in that particular CSA office have been destroyed by the conflict with ISIL (paragraph 14), and on whether that particular local office has introduced the INID system (paragraph 16). On these points, the effect of *SMO* is that

we are to assume that a CSID can still be obtained from a local office unless the individual appellant establishes on the lower standard that they cannot obtain a CSID by the use of a proxy, whether from the UK or on arrival in Baghdad: see paragraph 389. The appellant has not adduced such evidence. The appellant has only introduced general evidence about the level of conflict in the appellant's home area. There is no evidence about what effect that has had on the availability of replacement CSIDs in the appellant's home area. It follows that, applying *SMO*, and the established factual finding that the appellant is in contact with his family, we must find that the appellant will be able to obtain a replacement CSID by proxy from Baghdad. Or, at least, there is sufficient likelihood of that so that it is not reasonably likely that the appellant will be unable to obtain a CSID and thus be at risk on return.

17. We now turn to the second issue, whether the situation of conflict in the appellant's home area is such that conditions on return would be reasonably likely to breach Article 3 of the ECHR and/or Article 15(c) of the Qualification Directive. In *SMO* it was held that the general intensity of the continuing conflict in Iraq was not such as to give rise to a real risk of breach of Article 15(c). However, Ms Jaquiss submits that it was in *SMO* accepted as arguable that an ethnic Kurd from Tuz Kurmato might face risk on return there, it being an area with particular ethno-sectarian conflict, and that the Tribunal must apply a fact-sensitive, sliding-scale assessment in relation to the appellant's personal characteristics and the conditions of the area in question. She referred in this regard to paragraph 332 of *SMO.* Paragraph 332 does not, however, say quite what Ms Jaquiss says it does, nor does it have the significance that she attaches to it.

18. First, paragraph 332 is in the section of *SMO* dealing with Article 15(b) (inhuman or degrading treatment) of the Qualification Directive, not Article 15(c) (threat to life through indiscriminate violence/armed conflict). By this point in the judgment, the Upper Tribunal had already concluded (at paragraph 285) that even in the worst-affected governorate in Iraq (Ninewa) the intensity of the violence in 2018 was not indicative of a general level of threat which engages Article 15(c) and that *"The evidence clearly shows that the degree of indiscriminate violence characterising the current armed conflict taking place in Baghdad, Diyala, Kirkuk, Ninewah, Salah Al-Din* [the appellant's region] *and Anbar is not at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of a threat to his life or person."* The Upper Tribunal then went on (at paragraph 291) to hold that, nonetheless, an individualised assessment must be made as required by Article 4(3)(c) of the Qualification Directive to consider whether an individual applicant might be able to show that he is specifically affected by reason of factors particular to his personal circumstances – the *'sliding scale'* to which Ms Jaquiss refers.

19. The Upper Tribunal then considered a range of potential personal circumstances, before concluding that the following matters would be

relevant to the sliding-scale assessment (headnote, paragraphs 4-5; reflecting paragraphs 313-314 of the judgment):

> 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.
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> 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:
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> - 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.

20. Of the above characteristics, the only one potentially relevant to the appellant is that he is an ethnic Kurd, and Kurds are in a minority in Iraq as a whole and in the Salah al Din governorate from which the appellant comes (see paragraph 262 of *SMO*). However, it is apparent from paragraph 300 of SMO that it does not follow that Kurds will be at particular risk in that region. In that regard too, it is necessary to carry out a contextual evaluation rather than a make any presumption as the Upper Tribunal explained in that paragraph (emphasis added):

> 300. Members of religious and minority ethnic groups are considered by the UNHCR to be likely to be in need of international refugee protection in areas where ISIL retains a presence. As we have underlined throughout this decision, we emphasise our appreciation of UNHCR's unique position and expertise in such matters. There is some danger in applying too broad a brush in trying to describe this cohort, however. The first danger is in the use of the word 'minority' in the context of Iraq. As we have endeavoured to explain, the ethno-religious demography of Iraq is varied by region. Whilst Sunni Arabs are in the minority across the country as a whole, for example, there are areas in which they comprise the majority. The same might also be said in respect of the Kurds. **The second difficulty is to assume or potentially to assume that an ethnic group is at a disadvantage because it is statistically in the minority in a particular area. Whilst such an assumption might have been proper in the past, the proliferation of the PMUs has altered the balance of power in particular areas, often to the detriment of**

> **the majority.** It was a familiar theme in Dr Fatah's written and oral evidence, for example, that the Shia militia had in certain areas renamed buildings and taken down Kurdish symbols. **The third danger is in treating the presence or absence of ISIL from an area as a binary concept. As we have explained at some length above, ISIL retains a presence in a number of areas but the size and influence of that presence, and ISIL's levels of activity, vary significantly. Whenever it is submitted that an individual is at enhanced risk on this basis, therefore, it is necessary to evaluate the submission with particular care, with reference to the composition of the area in question, the local balance of power and the extent of ISIL activity in the area in question. With respect to the UNHCR, we consider it too simplistic to state that religious or ethnic minorities are likely to be at increased risk in areas in which ISIL retains a presence. Membership of an ethnic or religious minority may increase the risk to an individual but a contextual evaluation rather than a presumption is required.**

21. In this case, therefore, what needs to be evaluated is whether the appellant is at enhanced risk in Salah al Din as a Kurd, having regard to the composition of the area in question, the local balance of power and the extent of ISIL activity in the area in question. We do not consider that any of the evidence that the appellant has adduced on this appeal comes close to demonstrating that. Much of the new evidence goes to conditions generally in the region (and thus to matters in respect of which the country guidance in *SMO* is binding unless and until revised in another country guidance case). Some of it concerns the city of Tuz Khurmatu and therefore is not relevant to the appellant who comes from a village outside of the city. The only evidence that Ms Jaquiss points to in relation to ethnic tensions and risks to Kurds specifically (paragraph 19 of her skeleton argument) pre-dates the guidance in *SMO* and thus cannot assist in shedding light on any particular risk to Kurds in Salah-al-Din arising since that decision. In any event, it does not go beyond the risks to Kurds that were already considered and taken into account in *SMO* when the Upper Tribunal decided that there was no generalised risk of breach of Article 15(c) (we have in particular had regard in this respect to the Upper Tribunal's findings in relation to the Salah al Din governorate at paragraphs 262-267).

22. Ms Jaquiss also points (paragraph 18 of her skeleton argument) to evidence of economic conditions generally. This evidence is relevant to Article 15(b) of the Qualification Directive and not Article 15(c). However, in relation to Article 15(b), paragraph 332 of *SMO* on which Ms Jaquiss seeks to rely in fact provides a complete and binding answer in this case. What paragraph 332 says is (emphasis added):

> 332. It is imperative to recall that the minimum level of severity required by Article 3 is relative and depends on all the circumstances of the case, including the duration of the treatment, its physical and mental effects and the sex, age and state of health of the individual concerned: Saadi v Italy (2009) 49 EHRR 30. **Although it is clear to us that a documented, healthy male would not, on return to a home area in the formerly contested areas, encounter conditions in breach of Article 3 ECHR**, additional vulnerabilities including those considered under the 'siding scale' of Article 15(c) might conceivably combine to cross the N v UK threshold. In considering any such submission, decision makers will nevertheless wish to recall that that the combination of factors in Said, including mental health problems and a lack of family support, offset by clan support

> and remittances from the UK, were held by the Court of Appeal to be so short of the N v UK threshold that remittal to the Upper Tribunal would serve no purpose: [32]-[33] refers.

23. Since the appellant would be a healthy male returning to his home area who is (or will be) documented, his return will not breach Article 3 ECHR or Article 15(b) of the Qualification Directive. His only potential 'additional vulnerability' is that he is a Kurd, but there is no evidence that Kurds are any more at risk than any other group from the kind of economic problems relied on by the appellant.

24. In the light of our findings on the first two issues, we do not need to consider the third issue, but for completeness we record our findings with regard to the possibility of the appellant relocating to Baghdad. Ms Jaquiss did not advance any argument to counter Ms Cunha's submission that the appellant could reasonably be expected to relocate to Baghdad. However, we find that if the appellant is documented, he could reasonably be expect to relocate to Baghdad, but if he is not documented (i.e. if we are wrong on the first issue), then relocation is not an option.

25. In this respect, *SMO* holds that the guidance in *AA (Iraq)* (set out in Annex A to *SMO*) is still relevant. Paragraphs 10 and 11 of the guidance in *AA (Iraq)* provide:

> 10. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.
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> 11. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:
> (a) whether P has a CSID or will be able to obtain one (see Part C above);
> (b) whether P can speak Arabic (those who cannot are less likely to find employment);
> (c) whether P has family members or friends in Baghdad able to accommodate him;
> (d) whether P is a lone female (women face greater difficulties than men in finding employment);
> (e) whether P can find a sponsor to access a hotel room or rent accommodation;
> (f) whether P is from a minority community;
> (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

26. Paragraph 414 of *SMO* further explains that:

> In order to reside in Baghdad, an individual from the Formerly Contested Areas will require security clearance and "two sponsors from the neighbourhood in which they intend to reside as well as a support letter from the local mukhtar". We have little evidence about the operation of those requirements in practice and are compelled to draw our own inferences. When considering the feasibility of an individual complying with these requirements, we think that the position in Baghdad is very likely to be different from the position in the Formerly Contested Areas or the Disputed Territories. The security situation in those areas is decidedly more tense than it is in Baghdad, in which security and freedom of movement is such that the Green Zone has opened to the public. There is some evidence of IDP camps around Baghdad being closed and some evidence of individuals from areas formerly controlled by ISIL being pressured to return to those areas (the UNHCR letter of 25 April 2019 refers, for example). But there is nothing before us to suggest that a documented individual of working age who is returned to the capital, potentially with a grant under

> the Voluntary Returns Scheme, would be unable to secure two sponsors and a support letter from the local mukhtar of the area in which they propose to reside. Were there any such problem, we would have expected there to be more evidence of people in this category being refused residence in Baghdad. The UNHCR in particular does not refer to any such difficulties, and the evidence presented to us about Baghdad does not reflect the extensive concern over secondary displacement which has been voiced in respect of other areas.

27. That finding makes the likelihood of obtaining a sponsor for residence in Baghdad dependent on the individual being 'documented'. Accordingly, if the appellant has or obtains a CSID (as we have found he is likely to be able to), he would likely also be able to access accommodation. As a failed asylum seeker, he would likely also qualify for support with food from the Public Distribution System (see paragraph 329 of *SMO*). While he is likely to have difficulty finding employment given that there is no evidence that he has family members or friends in Baghdad, does not speak Arabic, and is from a minority community, we find that it would not be unduly harsh for the appellant to relocate to Baghdad if we are right about the likelihood of him being able to obtain a CSID. If he cannot obtain a CSID, however, we consider that it would be unreasonably harsh to expect him to relocate to Baghdad because, while he would likely still obtain assistance with food, *SMO* indicates that it is unlikely he would obtain a sponsor for accommodation and it would be very difficult for him to obtain employment given the aforementioned factors. In the preceding country guidance case of *AAH (Iraqi Kurds)* [2018] UKUT 212 it was held (paragraph 98) that an ethnic Kurd without a CSID and no family members in Baghdad could not reasonably be expected to relocate to Baghdad and it does not appear to us that anything in *SMO* means that position has changed (albeit that *SMO* sets out a slightly different multi-factorial list to consider).

28. It follows from our reasons above that the appellant's humanitarian protection and human rights claims must fail. His asylum claim was rejected by the First-Tier Tribunal on the basis of adverse credibility findings and has not been renewed on appeal.

DECISION

29. The original Tribunal was found to have made an error of law and the decision was set aside. We re-make the decision by dismissing the appellant's appeal on all grounds.

Signed H Stout
Deputy Upper Tribunal Judge Stout Dated: 21 December 2020