Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10303/2019**

THE IMMIGRATION ACTS

Heard at Bradford IAC	**Decision & Reasons Promulgated**
On 15 September 2021	**On 21 September 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

M R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M. Cleghorn, instructed on behalf of the Appellant.
For the Respondent: Mr M. Diwnycz, 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.

Introduction:

1. In a decision promulgated on 14 July 2021 I gave my reasons for reaching the decision that there was a material error of law in the decision of the FtTJ promulgated on 30 November 2020.

2. At a hearing on 9 July 2021 Ms Everett, Senior Presenting Officer, conceded on behalf of the respondent that the decision of the FtTJ disclosed the making of an error on a point of law and that the decision should be set aside. In a decision promulgated on 14 July I set out why I agreed with the concession made by the respondent. The relevant part of my decision is replicated below.

> "34. Having had the opportunity to discuss the issues, the parties were able to reach agreement and as set out in the Rule 24 response it was conceded that there was a material error of law in the FtTJ's decision on the basis that the judge gave no reasons or inadequate reasons for not accepting the appellant's claim that he would be at risk of harm from the paternal uncles and the family members. Ms Everett referred to the acceptance by the judge of a large part of the appellant's claim which he had found to be credible but that in reaching his decision had not taken into account the nuances of honour-based crime and the risk from the family members and that this error fed into the factual assessment also in terms of relocation in the IKR. Whilst the judge referred to the cousins in the IKR they appeared to be paternal cousins.
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> 35. Having considered the submissions of the parties including the written representations, I am satisfied that the FtTJ erred in law in the way set out in the grounds of challenge and the submissions of the advocates.
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> 36. The FtTJ had accepted a large part of the appellant's claim concerning the events in Iraq and which had at its core the land dispute involving the named Arab tribe and his family relatives. Whilst the FtTJ accepted the death of the appellant's father and cousin at the hands of the tribe and accepted that there was a dispute which fell within a blood feud (at [23]) he did not accept the other part of the feud concerning his family and his claim to not wish to fight. Both advocates agree that the FtTJ did not give any reasons for reaching this conclusion other than he would have expected him to have contacted his maternal uncle. The FtTJ considered that his failure to contact the red cross for five years undermined his factual account. However the appellant's evidence was that he had not been in contact with his uncle since 2016 and had arrived in the UK in 2018 an therefore FtTJ was incorrect about the period of time, and this affected the credibility assessment of this part of his claim.
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> 37. The grounds also set out other issues that relate to internal relocation; it has been accepted by the FtTJ that there would be an insufficiency of protection for him in Mosul. In light of the error relating to the assessment of risk from family members (and those who were said to

be resident in the IKR) the advocates agree that the error also affected the consideration of this issue.

38. For those reasons the decision of the FtTJ involved the making of an error on a point of law and the decision is set aside.

39. For the avoidance of doubt the factual findings made by the FtTJ in respect of the core of his factual claim were not challenged by the respondent. Therefore the factual findings of the FtTJ shall remain as preserved findings. Both advocates agreed that the following facts will be preserved.

40. They are as follows:

    1. the appellant is an Iraqi national of Kurdish ethnicity from Mosul.

    2. The appellant left Iraq in 2008 because of a dispute over some land with an Arab family and returned voluntarily to Iraq because his family had reached agreement with the Arab family that he could keep the land (at [15]).

    3. The appellant was involved in a land dispute with the Delam tribe who were supported by Daesh (at [17]).

    4. A meeting took place to resolve the dispute and the mechanism was mediation with elders (at [17]).

    5. On 18 May 2015 the appellant's father and cousin were shot by clan members and was told this by his uncle and cousins.

    6. There is insufficiency of protection in Mosul (at [26]).”

3. This is the remaking of the decision concerning the appellant's appeal against the respondent's decision dated 10 October 2019, refusing his protection and human rights claims.

The background:

4. The appellant is a national of Iraq of Kurdish ethnicity from Mosul who claimed asylum in the United Kingdom on 18 May 2018.He had first left Iraq in September 2008 and travelled to Norway where he claimed asylum. His claim was refused, and he remained there for 4 years before being deported back to Iraq.

5. The appellant left Iraq for a 2nd time on 25 August 2015 via Germany and France before arriving in the UK on 9 May 2018. He claimed asylum on 18 May 2018 with his wife and two children as his dependents.

6. The basis of his claim concerned a land dispute. The appellant's father and 3 brothers inherited a piece of land from their grandfather and at the beginning of July 2015, an Arab clan supporting Daesh took possession of the land.

7. Following talks and negotiations with the clan so that they could claim the land back, but they were not able to do so.

8. In 2015 the appellant's father and cousin was shot and killed by the Arab clan. Following the funeral the appellant's uncles called a meeting and stated that the appellant needed to take up arms and fight for the land and take revenge for the killing of his father and cousin. 3 days after the funeral the appellant's cousins went to the shops and members of the Arab clan shot at him. His cousin was driving, and he was able to escape by vehicle.

9. The appellant claimed that he was at risk from his family because his uncle had stated anyone who refused to fight would be killed. The appellant refused to take up arms and left the area travelling to his maternal uncle's house. After 3 days his maternal uncle's friend helped him leave Iraq.

10. Therefore the basis of his claim was that he would be killed by the Arab clan as a result of the land dispute, and he also feared the paternal uncles and family would kill him because he refused to take up arms and fight.

11. In a decision letter dated 10 October 2019 the respondent refused his claim. It was accepted that he was an Iraqi national of Kurdish ethnicity, but his factual claim was refused. The respondent rejected the appellant's account of their being a land dispute and any subsequent problems that he had with the Arab clan or with his family relatives. The respondent also considered that taking the claim at its highest, he would not be at risk on return because there was sufficient protection provided by the authorities in Iraq (at [49]) but in the alternative would be able to internally relocate.

12. The respondent gave consideration to *AA (article 15 (c) Iraq CG* [2015] UKUT 544 as amended by the Court of Appeal in the case of *AA (Iraq) v SSHD* [2017] EWCA Civ 944 and the CG decision in *AAH (Iraqi Kurds- internal relocation) Iraq CG* UKUT 00212 which was set out in the decision letter from paragraph 50.

13. At paragraph 68 consideration was given to the CPIN Iraq: internal relocation, civil documentation, returns version dated February 2019.

14. Based on the CG decision and the CPIN the respondent stated that the appellant would be able to approach the appropriate agencies and have the assistance needed to have the documentation renewed and that in any event as his factual claim had not been accepted, he could return to his home area.

15. In the alternative the issue of internal relocation was set out at paragraphs 66 – 80 and that noted that his fear was returning to Mosul but that he had not expressed a fear of other regions in Iraq.

16. Thus it was considered if unable to return to his home area he could relocate to Erbil or Sulaymaniyah. This was on the basis that the family members and the Arab clan did not have the power and influence to locate the appellant; he spoke Kurdish Sorani and had skills that he could utilise and gain lawful employment. He demonstrated an ability to adapt by attempting to establish a new life in the UK. Furthermore to mitigate any hardship he would be eligible

on return to a voluntary payment if he decided to return to Iraq voluntarily. It was not unreasonable or unduly harsh to expect him to return to the IKR. His claim was therefore refused. The appeal came before the FtT on 6 November 2020.

17. The factual findings made by the FtTJ are set out at paragraphs 23 – 34. They can be summarised as follows. The judge accepted his account concerning the events in 2008 that he left because of a dispute over some land within the family and that he had travelled to Norway where he remained for 4 years and that his claim had been rejected. The judge accepted that he had returned voluntarily to Iraq because his family had reached agreement with the Arab family that he could keep the land.

18. As to the dispute between the appellant and the Arab tribe, the judge found that it was plausible that meetings took place to resolve the dispute and that it was usual for such disputes to be mediated by the elders. The judge found that that was consistent with the external evidence of the 2020 CPIN, Iraq, blood feuds which described the reconciliation processes. The judge found that was also consistent with the resolution of the previous land dispute in 2008. The judge therefore accepted that part of the appellant's case.

19. The judge also accepted that the account given by the appellant about the land dispute was plausible in the context of the lawless situation in Mosul. In the light of the lack of challenge to the appellant's evidence concerning the death of his father and cousin, the judge accepted that his claim that his father and cousin was shot and killed by clan members was credible (at [18]).

20. The judge therefore concluded that he accepted the appellant's claim about the land dispute with his family members of the tribe and that was consistent with falling within the definition of a blood feud as referenced in the respondent's CPIN at paragraph 4.1.2 but that he had not established this is a Convention ground but that it was sufficient to engage articles 2 and 3 (at [23 – 24].

21. As to the appellant's fear of the tribe, the judge found that they were nonstate actors and that by reference to the country materials and applying the principles in Horvath, there would be insufficient protection for the appellant because of the local nature of the dispute and the involvement of the large Arab tribe.

22. The FtTJ did not accept that he would be at risk from his family relatives and having considered the country background material in light of the CG decisions, reached the conclusion that he could internally relocate to the IKR.

23. The FtTJ dismissed his appeal.

24. The appellant sought permission to appeal that decision and permission was granted by FtTJ Grant on 18 December 2020. In a decision promulgated on 14 July 2021, it was conceded on behalf the respondent the decision of the FTT J

involve the making of an error in point of law. The reasons given for that decision are set out earlier.

The remaking of the decision:

25. The hearing took place on 17 September 2021, by means of a face-to-face hearing with the appellant giving oral evidence with the assistance of a Kurdish Sorani interpreter. I am satisfied that the interpreter and the appellant were both able to understand each other and no problems relating to interpretation of the evidence was identified by any party at the hearing.

The evidence:

26. I heard oral evidence from the appellant. In addition I was provided with a copy of the appellant's bundle which consisted of the documents relied upon for the purposes of the hearing. There was also a supplementary bundle of documentation provided prior to the hearing by electronic means and a paper copy was also sent. This included in it a witness statement on behalf of the appellant and also an expert report from Dr Fatah. I also had a copy of the respondent's bundle .

27. At the outset of his evidence the appellant stated that the witness statement in the bundle dated 17/8/21 and signed by him contained errors. When asked about this by his counsel he stated that there must have been something wrong with the interpretation. As a result Ms Cleghorn read the witness statement to him in its entirety. The appellant indicated the areas where there were errors. Firstly at paragraph 2 that he wished to amend the place the CSID was registered stating it should read "old Mosul and Al-Raesel Qwr". The 2nd alteration was at paragraph 14 where he wished to add in "France". Save for those 2 amendments the appellant adopted his witness statement as his evidence in chief. There was no further questions asked of the appellant.

28. In cross-examination, he was asked about the request made to the German authorities for his CSID (page 22 of the bundle). He could not say when the request had been made by his solicitors but that his solicitor had said that this had been sent to the German authorities.

29. It was suggested to him that the information in the email contained insufficient information in it for the German authorities to identify the documents stating that it only had his name and that of his wife, but no other details had been provided.

30. When asked if there had been any response from the German authorities, the appellant stated that there had been no reply.

31. When asked if he could remember details of the information in his CSID the appellant stated that he could not remember any of the details only his name

and date of birth and that the reference numbers on the document were "very long numbers" and he could not remember them.

32. When asked if the German authorities had given him a receipt for the documents taken by them, the appellant stated that they did not and that he did not remain in Germany but left and then went to France.

33. As to contact with relatives and friends since he arrived in the UK, the appellant stated that he had no contact with any family in Iraq. He confirmed that the Red Cross had provided no results since his picture had been placed on the database in 2020.

34. No further questions were asked in cross-examination.

35. By way of clarification, the appellant was asked about what he had said in interview (question 59) that he had a copy of his CSID in the UK. The appellant said that he had a copy of his CSID and that he was told that when he came back to provide his fingerprints he should hand over the photocopy of the CSID to the Home Office. Therefore 2 days after the interview and when he attended to give fingerprints he handed over those documents to the Home Office.

36. He was asked about the Delam tribe and if they lived in the IKR? The appellant stated that they live almost everywhere that but as he had never been to the IKR he did not know. When asked which clan he feared from the Delam tribe the appellant stated, "I fear the Delam tribe". When asked which particular clan, the appellant stated, "they only have one name Delam tribe, that's it."

37. When asked about the occupations of his paternal uncles he said he had 3; the 1st 1 sold cars, 2nd 1 bought houses in the 3rd 1 was mechanically repaired cars.

38. When asked to provide details of his wife's family, he said that they lived in Mosul. He did not know they were still there as he did not have contact with them because since they left there had been "big trouble" and the only contact that he'd had was in 2016 with his maternal uncle. He said his wife did not speak to her family members because after they left Daesh invaded Mosul by the time that happened they had lost contact with the family relatives.

39. Both advocates were given the opportunity to ask any further questions arising out of those clarification questions, but no further questions were asked of the appellant.

40. That completed the oral evidence.

The submissions:

41. I then heard submissions from each of the advocates.

42. Mr Diwnycz, in behalf of the respondent submitted that the decision letter was now of some age although some of the matters raised in it were still current.

43. He identified 2 areas of the evidence. Firstly, he submitted there was a paucity of information provided to the German authorities as set out in the email at page 22. The email had no details as to when it was sent, and the details provided to the German authorities would not assist them to ascertain whether they had the CSID of the appellant and his wife. Given the lack of vital information that they had provided to the German authorities in that email it is not surprising that it did not take matters further. It was a half-hearted approach and does not appear to have been followed up. Therefore little weight could be given to this as an effective or dispositive enquiry of the German authorities.

44. The 2nd point he wished to make referred to the report of Dr Fatah, and that at section 7 at paragraph 75, Dr Fatah had confirmed that there were facilities for issuing INID's but that CSID's may still be issued. It was therefore submitted that the appellant's relatives and the maternal side or his wife's relatives could send documents to enable the appellant and his wife to redocument themselves.

45. As to the appellant's evidence and his lack of recall of the details on his CSID, Mr Diwnycz submitted that SMO was still good law and that most Iraqis will still remember those details absent any special reasons and as there were no special reasons provided by this appellant, it could be taken that he would remember those relevant details.

46. As to risk of harm from the from the Delam tribe he referred the tribunal to Paragraph 80 of the expert report and that Dr Fatah was of the view that it would not be accurate to present the entire tribe, which has millions of members, is pursuing the appellant, rather one or more clans within the tribe may wish to seek upon him. It was submitted that that was a "conditional conclusion" that they "may wish to seek him" and as such was a mere possibility and did not amount to a reasonable likelihood.

47. Dealing with the issue of internal relocation, Mr Diwnycz submitted that it would be open to the appellant and his family members to relocate outside of Mosul to the IKR. However, this would be contingent on the appellant having documentation (see CPIN June 2020). He confirmed that it was still the position that enforced returns would be to Baghdad airport.

48. Ms Cleghorn on behalf of the appellant submitted that in relation to the enquiry made with the German authorities, , by reference to a decision MJ v SSHD (2013) 799, the Home Office were obliged to verify and authenticate documents and that once the Home Office have information they have a duty to undertake enquiries. In the alternative, in a case where the Secretary of State had a relationship with the other European governments, they have the ability to make those enquiries themselves. The Secretary of State therefore could have undertaken those enquiries with the German authorities given that they had the right information but had not done so.

49. Ms Cleghorn referred the tribunal to the preserved findings of fact (as set out earlier in the decision). It was accepted that the appellant was from Mosul and that his account of being in fear of the Delam tribe had been accepted by the FtTJ and it was further accepted that there was insufficiency of protection for the appellant in Mosul. Thus she submitted that the appellant had been found credible and plausible in all respects save upon the issue of whether the paternal family members would turn on him for not assisting them following the death of the family relatives.

50. In this context Ms Cleghorn submitted that the country information set out in the respondent's CPIN relating to blood feuds (dated February 2020) provided some background to the appellant's claim as it gave a history of how blood feuds start. She referred the tribunal to paragraphs 1.2.1, 2.4.2 and 2.4.3 in support of her submission that the appellant if he did not avenge the blood feud would be at risk of an honour-based killing. She submitted that the appellant would become a target from his own family members for honour-based reasons. Reference was then made to the CPIN dated March 2021 dealing with honour-based violence and particular reference made to paragraphs 1.2.1, 2.4.3 and 2.5.2. Ms Cleghorn submitted that the appellant's evidence which was that he refused to take part with any further revenge for the murder of his family relatives and had run away supported the risk of harm from honour-based violence. She therefore submitted that he would be at risk of harm in Mosul not only from the Delam tribe but also from the family relatives.

51. Ms Cleghorn then dealt with the issue of internal relocation. In this context she submitted the only realistic option would be that of the IKR. She submitted that the appellant and his family members made a journey across Europe at a time when his wife was sick and that it is not reasonably likely that he would persisted with such a journey if he could have relocated elsewhere. She invited the tribunal to accept that he had no family that he could contact on the paternal side and that the issue of documentation indicates that it is patrilineal. Whilst he had a maternal uncle he would not be able to assist in documentation and in any event he has had no contact with the appellant. She submitted that that was consistent with the country material dealing with the events in Mosul in 2016 where Daesh had been fighting in that area.

52. Ms Cleghorn referred the tribunal to the decision of AAH. The following points were made:

    (1) The appellant has no current documentation.

    (2) The civil registry is in an area formerly held by ISIS.

    (3) The appellant cannot return to Mosul as he would be at risk and therefore any period in that area would place him and his family members at risk.

    (4) He has no contact with any male members of his family.

    (5) He has no education (see question 19 of the interview).

(6) The appellant would not be able to board a flight from Baghdad without documentation and the nationality certificate he had was left in Mosul.

(7) The CSID is in Germany.

(8) The decision in AAH makes it clear that without assistance from family in the IKR options are limited and here it is unlikely that the family would be able to find anywhere to live given that they have 2 children and have no funds to rent and where there is a high unemployment rate. The appellant cannot work without a CSID, and nepotism is found to be an important factor for employment.

(9) Suspicion would be raise as he comes to an area formerly held by ISI S.

(10) The appellant's wife has some mental health problems, and the appellant has a problem with his back.

53. Ms Cleghorn submitted that the CG decision of AAH recognised that the appellant could not live in the IKR without registration and therefore it would be unduly harsh for him to relocate to the IKR taking into account that he has 2 children and the duty under section 55 but also on the documentation position alone.

54. As to the tribe, while she accepted that it was a big tribe, Iraq is a tribal society and that it is possible that at some point the Delam tribe may find out where the appellant would be.

55. Lastly she submitted, the June 2020 CPIN made it clear that it would not be possible for the appellant to obtain an INID outside Iraq and that he would not be able to go to Mosul as it was accepted he would be at risk there. Equally he would not be able to obtain a CSID in Mosul for the same reason. Ms Cleghorn therefore invited me to allow the appeal.

56. At the conclusion of the submissions I reserved my decision. I am grateful to the careful submissions made by each of the advocates.

Analysis of the evidence:

57. In reaching my assessment, I bear in mind that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that there are substantial grounds for believing that there is a real risk of serious harm on return. The appellant bears the burden of substantiating the primary facts of his protection claim. The standard is a reasonable degree of likelihood. The burden and standard of proof applies to the factual matters in issue in this appeal.

58. I begin my assessment from the findings of fact that were preserved from the decision of the FtTJ.

59. The appellant is a national of Iraq and is of Kurdish ethnicity. In 2008, the appellant bought a piece of land. Following this, the appellant was threatened by an Arab family on the basis that he had no right to the land. The appellant left Iraq and claimed asylum in Norway where the claim was refused. He then returned to Iraq.

60. On a later date, the appellant's father and his 3 brothers inherited a piece of land in Mosul from his grandfather. At the beginning of 2015 the Delam tribe took possession of the land. The appellant's father and 3 brothers tried to negotiate with the Arab tribe to claim back the land however they would not return it. The FtTJ found that whilst the turmoil in Mosul may have strengthened the tribe's position, it was plausible that the meeting took place to resolve the dispute. This was consistent with the country background evidence set out in the 2020 CPIN; Iraq blood feuds and the reconciliation process described.

61. Following this, when checking the land the appellant's father and family members found that the tribe had begun building on it.

62. On 18 August 2015 the appellant's father and cousin were shot by members of the Delam tribe. The judge accepted that this had taken place.

63. Therefore in light of those preserved findings, it was accepted that the appellant had been involved in a dispute concerning land between members of his family and members of the Delam tribe which was consistent with the country background evidence (at [23]). In this context also the judge found that in Mosul the appellant would not have any sufficiency of protection because of the local nature of the dispute and the involvement of the Delam tribe.

64. It has not been disputed by Mr Diwnycz that in light of that factual assessment that the appellant has demonstrated a reasonable likelihood that he would be at risk of serious harm if he returned to his home area in Iraq.

65. The final issue that remains is that relating to the risk from family relatives. The appellant's evidence is that following the funeral, the appellant's paternal uncles called a meeting, and the appellant was told he needed to take up arms and fight for the land and take revenge for the killings of his father and cousin. The appellant's evidence was that his uncle said that anyone who refused to fight would be killed and it was due to this that the appellant left Iraq as he did not take up arms and fight.

66. It is plain from the appellant's oral evidence given in interview that the appellant was not personally threatened by his uncle because the appellant had not told them that he would not fight (I refer to the interview questions at Q130, Q132,Q134).

67. I have therefore considered the appellant's claim in the context of the country background evidence. Ms Cleghorn has referred the tribunal to various

passages in 2 particular CPIN documents; one dealing with blood feuds and the other concerning honour violence. She submits that the appellant's evidence, which was accepted by the FtTJ as to the existent of blood feuds is consistent with the country materials.

68. At paragraph 1.2.1 blood feud is described as a "form of tribal dispute. For the purposes of this note a blood feud is a dispute between 2 families or tribes with a cycle of retaliatory violence in which each group fights or murders members of the other group according to an ancient code of honour and behaviour." At paragraph 2.4.2 the country material refers to those being involved in conflict with members of different tribes over matters such as disputes over land and that disputes can go on for many years and tribe members can inherit historic disputes. Finally at paragraph 2.4.3 it is stated that if a tribe member is murdered or injured, the males of the victims tribe are obliged to avenge this by killing someone in the perpetrators tribe triggering a blood feud.

69. Ms Cleghorn further submits that as a result of the blood feud, the appellant has an obligation to avenge the killing by killing someone in the perpetrators tribe relying upon paragraph 2.4.3 above and that as the appellant had fled Iraq not wanting to take part in the blood feud, it would put the appellant at risk of an honour-based killing. In support of this submission Ms Cleghorn relies upon the CPIN: "honour" crimes version 2.0 dated March 2021. She has referred the tribunal to paragraph 1.2.1 which describes an honour crime as "an act of violence or abuse, including killing, which has been or may be committed to protect or defend the honour of an individual, family and/or community for alleged or perceived breaches of the family and/or community's code of behaviour."

70. I observe that whilst reliance is placed upon this particular CPIN and that it refers to "honour" crimes may be committed against both men and women, the note that she relies upon is confined to "honour" crimes against women. Furthermore the information in this particular document does not refer or relate to the particular facts and circumstances of the appellant's claim. In particular paragraph 2.4.3 which was the paragraph Ms Cleghorn relied upon only provides generalised support in the sense that an honour crime might be committed by a relative as a punishment for family member because "they have gone against social or cultural norms or perceived to have damaged the family's reputation by their actions". The offences described do not refer to this appellant's circumstances although I accept this was not an exclusive list. At paragraph 2.5.2 reference is made to the Iraqi Penal Code and Article 409 that permits "honour" as a mitigation for crimes of violence committed against family members and the code allows for lenient punishments for "honour killings" on the grounds of provocation or if the accused had "honourable motives". No other passages in the CPIN's were brought to the tribunal's attention or reference made to the country materials in the appellant's bundle.

71. Having considered the passages relied upon and as set out above, I am not satisfied that there is a reasonable likelihood that the appellant would be at risk of harm from his paternal relatives as an honour killing. Whilst his account has is generally consistent with the country background evidence concerning the description of blood feuds and how they are carried out that does not mean that he is at risk of an honour killing. The appellant's evidence is that he had not told his family directly that he would not fight, and when he left his home he remained at his maternal uncle's home before leaving Iraq. If the paternal side of the family had wanted to cause harm to the extent that would kill him, they would have been able to do so when he was at his maternal uncle's home.

72. Having considered the evidence it its totality I am not satisfied that there is a reasonable likelihood that when the appellant left Iraq he did so in circumstances where he would be at risk of an honour killing. For the reasons set out, it is accepted from the FtTJ's preserved finding that he would be at risk from the Delam tribe in his home area.

73. I now turn to the factual findings as to contact with family members in Iraq. The appellant's evidence is that he has not been in contact with his family since he left Iraq and the last contact was with his maternal uncle in 2016. When assessing the evidence of attempts made by the appellant to contact family members, it has taken a number of years to make enquiries with the Red Cross having only initiated this in 2020. I take that as an adverse factor. However the present evidence is that there has been no response to those tracing enquiries undertaken. Whilst I do not accept that he was at risk of an honour killing, the appellant left his paternal relatives to deal with the blood feud and I would not expect the appellant to be in contact with the paternal side of the family given the circumstances in which he left Iraq.

74. I have therefore set the appellant's account of losing contact with his family members in light of the country background evidence that relates to his home area of Mosul. In SMO the circumstances of Mosul (in the Ninewa governorate) are described between paragraphs 51 – 76. Mosul was taken by ISIS in June 2014 and the attacks displaced nearly 1 million people in the following months. It remained the capital of ISI S from July 2014 until July 2017 when Mosul was taken from ISIS by the ISF and the coalition forces in July 2017. The battle of Western Mosul was described as "particularly fierce" and much of the city was destroyed. Mosul was described as being "razed to the ground" (at paragraph 61 of SMO). Additionally Mosul was described as having been mostly destroyed and that structures in the city were either not standing or unsafe (paragraph 66 SMO). In paragraph 258 the Upper Tribunal concluded that the majority of the city's population of 1.5 million had left and not returned.

75. There has been little or no real challenge to the appellant's evidence concerning his account of having lost contact with his family members. Having considered the issue in the light of the country materials and the appellant's evidence and having weighed in the balance as an adverse factor against him that his efforts

to re-establish contact were taken at a late stage, I consider that in the light of the circumstances described above and the displacement of the inhabitants of the city that it is reasonably likely that the appellant has lost touch with his maternal relatives. His evidence is consistent with what is known of the circumstances of his home area. This would also apply to his paternal relatives.

76. I now turn to the issue of documentation. The appellant presently does not have any of his relevant documentation. The evidence before the FtTJ and this tribunal has not been entirely satisfactory. As to the appellant's CSID, initially the appellant stated in an interview that his CSID had been taken from him in Germany (see question 55) but that he had copies of his CSID and that of his wife (see question 59). Before the FTT the judge recorded the appellant's evidence at paragraph [32] that the appellant had given a copy to his solicitors. However the judge recorded "Ms Cleghorn made enquiries of the solicitors were informed that they did not have the document." Before the Upper Tribunal, the appellant was asked to clarify what had happened. He stated that following the interview he was told that when he returned to give his fingerprints et cetera he should hand over the photocopy of the CSID to the Home Office. He said that he returned 2 days later after the interview and gave them the photocopy of the CSID.

77. Thus the appellant said that he had given the copy of the CSID's to his solicitor before the FtTJ, but it is said now that he had given them to the Home Office. Whilst this appeared to be contradictory, Ms Cleghorn provided an explanation of the state of affairs and that what was set out at paragraph [32] of the FtTJ's decision was correct and that the solicitors did not have it. Furthermore she recalled that the solicitors said that the appellant had told them that he had given it to the Home Office, but no contemporaneous note been made and therefore she could not provide any evidence of this.

78. Mr Diwnycz checked the electronic file could find no trace or mention of it and no one has been able to identify what had happened to the copy documents, where they are or even if they do remain in existence.

79. I would have expected that the Home Office would have provided copies of those documents in their bundle. All that is recorded in the decision letter is that set out at paragraph [52], but that does not refer to the document's whereabouts.

80. I therefore reach the conclusion of the present evidence that there are no copy documents available for the appellant and his wife.

81. I now turn to the factual findings relating to the original CSID document. The appellant's evidence is that this was retained by the German authorities a number of years ago. The decision letter at paragraph [52] refers to the appellant having previously held a CSID which he stated the German authorities had taken from him. It is not suggested by the respondent that the

appellant could obtain it from the authorities but that "there are options available for you to have your CSID reissued" (at paragraph [52]). The evidence before the FtTJ was that he had not asked for it to be returned since his arrival in the UK.

82. Since the hearing the appellant's solicitors have provided evidence that they have contacted the German authorities by email for the return of the document and exhibited a copy of the email at page 22 of the appellant's bundle. The content of the email gives the appellant's name and that of his wife and that they claimed asylum and that when they had claimed their CSID Iraq documents were taken. The evidence before me is that there has been no reply to that email.

83. As Mr Diwnycz submitted, that is not surprising given the lack of information in the email. Beyond the names of the appellant and his wife there is no other information for the German authorities to identify them or to provide any evidential background for determining whether they have the documents. Their dates of birth and other relevant information is not included in the email including the date they applied for asylum and the circumstances of the claim. The date of the email is also not given. Ms Cleghorn did not realistically seek to challenge that description of the email. However she submitted that there was an onus on the respondent to authenticate the document. No legal authority was provided to support that submission other than an oral reference to a decision of MJ (2013) and in any event the factual circumstances are entirely different. This is not a case of authenticating a document or asking for verification of a particular document but to ascertain the documents whereabouts. The burden is on the appellant to demonstrate the factual basis of his claim. However I would accept that there is likely to be a level of cooperation between the UK and its counterparts in Germany and the respondent has not sought to make any enquiries either.

84. I find the evidence before me to be unsatisfactory but on the basis of the present evidence I am not able to find that the appellant's CSID is available to him given the length of time since he last had the document and that its whereabouts have not been ascertained.

85. The last factual issue I required to determine relates to whether he would retain the necessary information necessary to reissue any relevant documentation. Mr Diwnycz places reliance on paragraph 391 – 392 of SMO and the level of knowledge that Iraqi citizens would have concerning the contents of their CSID. However as Ms Cleghorn points out pursuant to consent order dated 16 February 2021 the decision of the Court of Appeal was to remit SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) to the UT to reconsider the finding at headnote 13 that most Iraqi citizens would recall the family book information, and any other findings in the light of developments in Iraq. The appellant's evidence is that he is not seen his CSID since it was left with the German authorities, and he described there being a number of lengthy

digits which he could not remember. Given the circumstances of the consent order and the appellant's evidence, I am prepared to accept that he is not able to recall that relevant information contained in his CSID.

Conclusions:

86. Having made those factual findings I now consider the issue of risk and have done so in light of the country back ground evidence and the relevant CG decisions including SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) .In light of the factual findings I conclude that there is a reasonable likelihood the appellant will be at risk in his home area from the Delam tribe although not from the paternal relatives for the reasons that I have set out. The FtTJ determined that there was no sufficiency of protection in Mosul, and this was a preserved finding. I therefore conclude that the appellant and his family members will be at risk of serious harm on return to their home area of Mosul.

87. Whilst there is a reasonable likelihood of risk of serious harm for which there is no protection from the Delam tribe in the home area, there is no evidence the appellant will be at risk of harm from them in another area of relocation. The expert report of Dr Fatah states that it is not accurate to believe that the entire tribe which has millions of members would seek to attack the appellant. He further states that it is more likely that a clan within the tribe would pursue him (see paragraphs 68 and 80). However Dr Fatah does not make it clear whether this is confined to the home area or beyond that. I also observe that when the appellant was asked to identify what particular clan he feared, he was not able to identify any particular clan but referred to the "Delam" only.

88. In light of the factual findings of the FtTJ which were preserved, the blood feud arose out of the local area. There is no evidence of any cogency to demonstrate that any members of the Delam tribe would seek to find the appellant wherever he lived in Iraq or would seek to do so. Whilst Dr Fatah referred to a characteristic of the tribe as living in different geographical areas (at paragraph 70 of his report) that does not provide any proper evidential basis for reaching the conclusion that in the context of this localised dispute the appellant will be sought by members of the Delam tribe outside that area. Consequently I conclude that there is no real risk of harm from the Delam tribe in any place of relocation.

89. The issue of documentation applies in the context of internal relocation. The appellant and his family members will not be able to relocate to the IKR, which was the only realistic option identified by the respondent, without the requisite documentation.

90. I have found that the appellant does not have access to that documentation and also that he has lost contact with his maternal relatives. I also have found that this is likely to be the same for his paternal relatives.

91. Mr Diwnycz accepted that without any Iraqi documentation the appellant would not be able to obtain replacement documents from within the UK. That is consistent with the respondent's own document CPIN June 2020 at paragraph 2.6 .16. The appellant therefore cannot redocument in the UK. The alternative posed in the CPIN relates to what is described as the "1957 document". However in the light of the factual assessment that he has no contact with his relatives who would be able to provide him with the necessary additional information that will be required for the 1957 document, it has not been demonstrated that that would be available to him and his family members.

92. Given that the enforced route of return is to Baghdad, and that in light of the assessment he would not be able to leave the airport without such document, it follows that the appellant will be in Baghdad with no form of support and thus the risk of destitution applies. This is the factual assessment made by the Secretary of State in the country guidance decisions when addressing Article 15 (b).

93. I accept the submission made on behalf of the appellant that the material demonstrates that the appellant and his family members would not be able to leave the airport at Baghdad without a CSID or valid INID. The Upper Tribunal recorded the evidence which they describe as "uncontested" that a failure to produce a CSID or, in the environs of the airport a valid passport, will be likely result in detention until the authorities could be satisfied of an individual's identity.

94. The appellant cannot obtain replacement identity documentation once removed to Baghdad the reasons set out in SMO headnote 15 and that the safety of onward travel could not be undertaken to the area of relocation in the IKR without such documentation (see headnote 23 of SMO).

95. Furthermore, in the preceding country guidance case of AAH (Iraqi Kurds) [2018] UKUT 212 it was held at paragraph 98 as an ethnic Kurd without a CSID and no family members in Baghdad could not reasonably be expected to relocate there. I do not consider that the position is changed from SMO although I would accept that a slightly different list of factors are set out. In any event, it was not argued that the appellant and his family members should relocate to Baghdad.

96. I have also considered what type of document the appellant would require. The evidence before the UT in SMO appeared to state that Mosul had rolled out the new INID system which requires the appellant's presence to enable the biometric information required for such a document. However the expert report of Dr Fatah provided on behalf of the appellant gives a different picture which is that in March 2021 his associate was informed that there is currently a shortage of INID cards due to payment issues with the German company that manufactures them. The process has not stopped completely but as fewer cards available newly married couples are being prioritised over other individuals

who merely wish to renew the documentation. In urgent cases where no INIDs are available, individuals may also apply to renew their CSID's for official purposes such as selling land. Dr Fatah states at paragraph 75 that as Mosul is a city it is likely that the offices there have the facilities for issuing INID cards. However, as elsewhere, there may be a delay in issuing of INID's due to the shortage and CSID's may still be issued for people who need renewed documents urgently.

97. In light of the more recent evidence of Dr Fatah it appears that CSID's are still being issued however in the light of the lack of contact with family relatives and access to the necessary information to obtain such a document, the appellant has demonstrated that he would not be able to obtain a CSID. Consequently without the necessary CSID or identification documentation, the country background evidence considered in the light of the CG decisions demonstrate that the appellant would be at risk of serious harm in Iraq on return.

98. Given that assessment, it is not necessary to consider the issue of internal relocation further as the appellant is entitled to succeed on the basis that as he will be unable to reside in Iraq without coming to a real risk of serious harm as he has an absence of the necessary documentation.

99. If I were to assess internal relocation, the relevant CG decision is AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC). It sets out as follows:

> *Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*
>
> *2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
>
> *3. 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, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
>
> *4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
>
> *5. 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.*

6. 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.

7. 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.

8. 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.

9. 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.*

10. 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.

100. Having considered the relevant factors, and in the light of the evidence, I do not consider that the appellant would be at risk of ill-treatment at any screening process that would be undertaken as he will be able to evidence the fact that he has arrived in the UK. However, when looking at the circumstances of the appellant he would be returning with his family members which include his wife and 2 young children. There are no family members in the IKR and in the light of the factual findings made, he is not in contact with any of his family members in Iraq. Thus the family cannot obtain assistance from anyone in the IKR or outside the IKR. In addition, the accommodation options are likely to be very limited indeed in their circumstances. The appellant has no education (see question 21) nor work history. In addition the appellant's wife has a mental health problems. The medical report at page 52 refers to her suffering from severe anxiety and moderate to severe depression. She has panic attacks and is undergoing counselling. It appears that a traumatic incident occurred when in Finland which is not explained further in the documentary evidence. Therefore taking into account all of those factors I have reached the conclusion that it is been demonstrated that it would be unduly harsh or unreasonable for the appellant and his family members relocate to the IKR.

101. The decision of the FtTJ made it plain that the appellant had not demonstrated a risk of persecution in Iraq based on a Convention reason and nor has one properly been evidenced during the course of this hearing. Thus to return the appellant to Iraq would be in breach of Article 3 of the ECHR and Article 15 (b).

102. I therefore remake the appeal by allowing the appeal.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside; the appeal is remade as follows:

The appeal is allowed on Article 3 and Article 15(b) grounds.

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.

Signed

Date: 16/09/2021

Upper Tribunal Judge Reeds