



IN THE UPPER TRIBUNAL
IMMIGRATION AND
CHAMBER

ASYLUM First-tier Tribunal No: PA/09157/2019

THE IMMIGRATION ACTS

**Decision & Reasons Promulgated
On the 31 January 2023**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**H S
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 23 November 2022

DECISION AND REASONS

Introduction:

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Iraq of Kurdish ethnicity. He left Iraq in November 2015 and travelled through several countries before arriving in the UK on 7 January 2016 and claimed asylum two days later.
2. In a decision letter dated 7 September 2019 the respondent refused his claim. His appeal came before the First-tier Tribunal (Judge Cope) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 4 December 2020.
3. Permission to appeal that decision was sought and on 15 January 2021 permission was granted by FtTJ Parkes. There was delay thereafter as a result of the pandemic and the covid restrictions that were then in place. It was listed for hearing on 22 April 2021.
4. In decision promulgated on the 1 May 2021 Upper Tribunal Judge Callaghan found an error of law in the decision of the FtTJ for the reasons set out in his decision.
5. UTJ Callaghan rejected the grounds of challenge for the reasons he gave save for ground iii. He stated in the error of law decision the following:

Ground iii)

A factual question to be resolved by the Judge in this matter, as often arises at the present time in protection claims originating from Iraq, was the location of the appellant's identity documents, including his Civil Status Identity Documentation ('CSID').

The appellant explained in his substantive interview, at Q18-19, that his maternal uncle was residing in Gwer when they last had contact with each other in 2016. He confirmed at Q32 of the interview that his CSID remained at the family home in Gwer. He also confirmed that after the death of his father he left Gwer with his mother and relocated to Hamman Al-Ali, at Q131. The Judge did not find the appellant credible on this and other issues.

I observe that prior to [79] of his decision, the Judge had made adverse findings as to the existence of the purported blood feud. He determined at [79]-[81]:

- '79. The Appellant stated at qq.30ff of the SEF interview that the Iraqi authorities had issued him with a CSID and also an Iraqi nationality certificate [INC]. He said that he did not have them with him but that he had left them behind when he left Iraq. They have been left at Gwer in his home, and he had left them because his life was in danger, and they had to leave.
80. I do not find this credible. It is clear from the background evidence, for example in the CPIN *Iraq: Internal relocation, civil documentation, and returns* (June 2020), that the CSID in particular is an essential document for everyday life in Iraq. Given that it is obviously of such a small size I fail to see why the Appellant did not take it with him.
81. Rather it seems to me to be far more likely that the Appellant has left his CSID with his family in Iraq, bearing in mind the importance of that document for life in that country.'

The Judge subsequently concluded at [95] that the appellant and his mother had not moved from their home in Gwer due to a blood feud, such feud having never arisen.

I note that the Judge proceeded to consider the ability of the appellant to return to his home area on return to Iraq, observing at [115]:

‘115.In this case I have not accepted that the Appellant does not have a CSID; rather I consider it more likely than not that it remains with his family in Iraq. I am furthermore satisfied that he has not shown that he does not have any contact with his family.’

It is unfortunate that in deciding that the appellant’s CSID was with his family in Iraq, the Judge took no step to expressly determine where the family reside. The Judge’s reasoning on this issue can only be considered to be so confused as to leave the answer to the relevant question unclear. I observe that the Judge found the appellant to be incredible as to having left the family home in Gwer and relocating to Hamman Al-Ali. However, at [80] of his decision he expressly found the appellant’s evidence that left his CSID at home in Gwer to be incredible. In the next paragraph he determined that the appellant had left his CSID with his family. If he did not accept the CSID to have been left at the family home in Gwer, the Judge provides no detail as to where it is located, save that it is with the appellant’s family, who are (at the very least impliedly) found by the Judge to have remained in Gwer and not left for Hamman Al-Ali or gone missing.

The Judge’s decision as to the location of the appellant’s identity documents, including his CSID, is vague, confused, and contradictory. Such failure is in relation to a core issue in the appellant’s international protection appeal. In the circumstances, the Judge has materially erred in law in respect of his finding as to the present location of the appellant’s identity documents.”

6. At [55] UTJ Callaghan stated:

“I find that ground iii) identifies a material error of law in the Judge’s decision as to whether the appellant can secure possession of his CSID upon return to Iraq or, alternatively, can secure a replacement identification document.

7. UTJ Callaghan also preserved all findings of fact made except for paragraphs 79-81. He also preserved paragraphs [95], [115-118] in so far as they rely upon the appellant being able to secure possession of his original CSID (see error of law decision at paragraph [60]).

8. Thus as UTJ Callaghan stated at paragraphs [60- [61]:

“All findings of fact made by the Judge are preserved; save for [79]-[81] and only insofar as they rely upon the appellant being able to secure possession of his original CSID, [95], [115]-[118].

For clarity, the findings by the Judge that the appellant does not have a well-founded fear of persecution in Iraq consequent to i) a blood feud or ii) from ISIS (ISIL) are preserved.

The sole question to be considered at the resumed hearing is:

- i) Whether the appellant can obtain his original CSID or a replacement within a reasonable time frame.
9. The hearing has come before the Upper Tribunal by way of a Transfer Order made on 13 June 2022.
10. The hearing is therefore listed as a resumed hearing in accordance with UTJ Callaghan's directions.

The background:

11. The appellant is a national of Iraq. He is an ethnic Kurd, from the Sorchi tribe, and is from Gwer. Whilst living in Iraq he was employed as a labourer.
12. The appellant states that his father got into an altercation with a family from the Zrari tribe in June 2014 consequent to a dispute concerning his grandfather's house which had been purchased from members of the Zrari tribe. Upon his grandfather's death, a family from the Zrari tribe moved into the property and declared it to be theirs. They were members of the powerful HS family. The appellant's father attended the property and an argument ensued, leading to the death of the appellant's father and two members of the HS family. This incident led to the appellant and his mother relocating on the same day to Hamman Al-Ali, near Mosul. The appellant asserts that he has a fear of being killed consequent to a blood feud, detailing that his family home was burnt down by members of the Zrari tribe after the incident that led to the death of his father. Mediation efforts undertaken by members of the Sorchi tribe proved unsuccessful.
13. He also asserts that he is fearful of ISIS having rejected their efforts to recruit him in October 2015.
14. The appellant left Iraq in November 2015 and travelled through several countries before arriving in the United Kingdom on 7 January 2016. He claimed asylum two days later.
15. The respondent refused the application for international protection by a decision dated 7 September 2019. The respondent accepted that the appellant is an Iraqi national and ethnically Kurdish. The respondent considered the claim as to an existing blood feud to be extremely vague, lacking in detail and lacking credibility. As for the claim that ISIS sought to recruit the appellant, the respondent again concluded that the account was vague and lacking in detail, further observing that it had not been advanced during the appellant's screening interview.
16. His claim was therefore refused.
17. The appeal came before the FtT on 7 October 2019. The Judge confirmed at [48]-[49] that he proceeded on the basis that Gwer was under the *de facto* control of the Baghdad-based Iraqi government and was situated in Nineveh governorate.
18. The Judge concluded as to the appellant's fears of the Zrari tribe, at [95]:
 - '95. In particular I do not accept that the Appellant's father was involved in an argument with members of the family of Hamza Sewe of the Zrari tribe; that his father shot and killed two members of the tribe, and that he himself was severely injured

and then died as a result of wounds; that the appellant and his mother had to hurriedly move from their home because of such an incident; that their house was burnt; ...'

19. The Judge further determined at [95] that the appellant had not been approached by ISIS.
20. The FtTJ dismissed the appeal. Following this, the appellant sought permission to appeal the decision and First-tier Tribunal Judge Parkes granted the appellant permission to appeal to this Tribunal by a decision dated 15 January 2021.
21. At a remote hearing on 22 April 2021 UTJ O'Callaghan heard the appeal and set out in a written decision the why he had found an error of law in the FtTJ's decision based only on ground (iii). As set out above he stated: " I find that ground iii) identifies a material error of law in the Judge's decision as to whether the appellant can secure possession of his CSID upon return to Iraq or, alternatively, can secure a replacement identification document.

The resumed hearing:

22. The resumed hearing initially took place on 10 August 2022 by way of a face to face hearing. The appellant was represented by Ms Cleghorn, of Counsel and the respondent by Mr Diwnycz, Senior Presenting Officer. At that hearing an issue was raised as to the location of the appellant's home area on behalf of the respondent and as a result the parties were unable to agree as to its location. It was agreed between the advocates that the location was a central issue and therefore evidence on this issue should be obtained.
23. The resumed hearing took place on the 23 November 2022. The appellant was represented by Ms Cleghorn, of Counsel and the respondent by Mr Diwnycz, Senior Presenting Officer. There were new documents filed on behalf of the appellant, and the tribunal had the previous bundle before the FtT.
24. The appellant relied upon the following new documentation:
 - (1) Witness statement filed on behalf of the appellant.
 - (2) A letter showing the names of his family relatives and where they and he were registered.
 - (3) Expert report dated 28 September 2022 by Sheri Laizer.
25. The respondent relied upon the original Home Office bundle which included the screening interview, interview record, the decision of FtTJ Cope. After the adjourned hearing, Mr Diwnycz on behalf of the respondent sent copies of a number of internet searches he had conducted concerning the location of the appellant's home area which involved a series of maps of the area. He also provided a document entitled CPIT dealing with the location of Gwer. At the hearing Ms Cleghorn on behalf of the appellant stated she had not seen the CPIT document. Time was given for her to read the document. After having done so Ms Cleghorn indicated that she was able to address the document in her submissions and did not require an adjournment or any further time.
26. The appellant gave evidence in Kurdish Sorani with the assistance of the court interpreter. I am satisfied that there was no difficulty in the appellant

understanding the interpreter or vice versa and no problems were identified at the hearing. He adopted his original witness statement and the latest witness statement as his evidence in chief. No additional questions were asked.

27. In cross examination he was asked about the location of the town he lived in, and he referred to it being on the east bank of the river. A number of questions were asked about its location.

The submissions:

28. At the conclusion of the evidence I heard submissions from the advocates.
29. Mr Diwnycz relied upon the email of 17 August 2022 and the CPIN response concerning the location of the appellant's home area. He referred to the contents of the CPIN and that it was a supportive of the evidence provided in the various maps that he had obtained that the appellant's home area of Gwer was administered by Erbil and was thus located in the IKR.
30. He went carefully through the various maps that he had provided to demonstrate that his primary submission was correct. He relied upon a map taken from the Kurdistan region statistics office (page 24) which he submitted showed that the appellant's home area could visibly be seen in the Erbil governorate. He referred to the "live maps" which were open source documents frequently used and that the coordinates gave the result of showing their appellant's home area as part of the IKR. He submitted that the area was administered by Erbil as shown by the CPIN where it described a government official attending to perform civil functions.
31. He therefore submitted that as a matter of return the appellant could be returned to Erbil airport and therefore whether he had a CSID or not was irrelevant. In this respect he relied upon the CPIN dated July 2022 at section 3.1.1 that return to Iraq would be any to any airport in the IKR or federal Iraq but only Erbil and Sulaymaniyah airport were presently working. He submitted that he would be given an emergency travel document. He further submitted that if there was no INID office in his home area he could go to Erbil. In his submissions he accepted that they appellant's home area did not issue CSID's. However he submitted that once in his home area he could redocument himself.
32. In the alternative if his home area was not in the IKR, he could obtain his CSID from his family who could provide him with that by travelling to Baghdad.
33. Ms Cleghorn relied on her skeleton argument dated 2 October 2022. As regards the issue of the location of the appellant's home area, she placed reliance upon the report of Sheri Laizer. In her submissions she highlighted the evidence given by Dr Fatah in SMO(1) which she submitted was consistent with the expert report. After having taken the tribunal through the evidence relied upon by the respondent, she submitted that there was nothing that Mr Diwnycz had provided which was inconsistent with the evidence of Sheri Laizer and that the clear answer was that the appellant's home area remained on the government side of the line and that any distinction is made on the map was merely an "artificial distinction".
34. As regards the issue of return, she referred the tribunal to her skeleton argument at paragraphs 6 - 18 and that in terms of obtaining a replacement CSID card in Iraq it was well established in light of the respondent's CPIN that there were limited numbers of offices still issuing the old CSID card and it was accepted in

the evidence that the appellant's home area of Gwer was no longer issuing replacement CSID's and therefore he would have to attend the office and give his biometrics to obtain the new INID.

35. As to obtaining a replacement CSID before leaving the UK, Ms Cleghorn relied upon SMO(2) that this could only apply for Iraqi nationals who are registered at a CSA office which was not transferred to the digital INID system, and as he is registered at a place where the INID has been rolled out, he would not be able to apply for a CSID in either Iraq or the UK (see paragraphs 60 - 61).
36. Ms Cleghorn further submitted that when considering the preserved findings of the FtTJ that he had not shown that he was no longer in contact with his family, she submitted it needed further consideration as it would require the appellant to be in contact with his family and for them to be living in the same place. Also it would require the appellant's family to have taken his documents with them if they had left.
37. In this context Ms Cleghorn referred to the country evidence concerning the events in the governorate generally including the period where ISIS were in the region, and through the events surrounding the Kurdish referendum and that the Shia militia also occupied the area currently. She submitted that whilst the FtTJ had found at paragraph 111 (although this should be paragraph 115) that he rejected the appellant's claim that he did not have a CSID and that it remained with his family in Iraq and that he had not shown that he does not have any contact with his family, that was not a conclusion that could properly be reached when considering the background evidence.
38. Ms Cleghorn also submitted that even if his family did remain in Gwer, and have his CSID, the question remained how the card could be transported to the UK. She submitted that the background evidence suggested that the infrastructure was damaged and that the freedoms that one might assume exist no longer given the control of the Shia militia and it would be potentially dangerous for the family to travel and meet the appellant in the IKR.
39. In her oral submissions, she dealt with the alternative position and that if they submissions of Mr Diwnycz were correct and his home area was in the IKR, the appellant would not be returning but would be "relocating" and therefore the relevant factors as to relocation should be considered. He would be returning to an area where he had no relatives and accommodation would lead to a critical shelter arrangement as acknowledged by the tribunal in decision of AAH, and thus would also be likely to lead to a breach of Article 3. Ms Cleghorn referred to the position of IDP's resident in camps and there were a number of people without documentation.
40. Ms Cleghorn submitted that the appellant's safety would turn on the fact of his CSID surviving the political instability and the ability of his family to get to him his CSID.
41. At the conclusion of the hearing I reserved my decision. I am grateful to the advocates for their help and assistance.

The current country guidance:

42. The current CG decision is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 001100 (IAC) (hereinafter referred to as "SMO(2)").

43. The headnote of the CG decision is replicated below.

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*

2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*

3. *The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*

4. *Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government, or the security apparatus are likely to be at enhanced risk.*

5. *The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*

(i) Opposition to or criticism of the GOI, the KRG or local security actors;

(ii) 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;

(iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;

(iv) Humanitarian or medical staff and those associated with Western organisations or security forces;

(v) Women and children without genuine family support; and

(vi) Individuals with disabilities.

6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*

8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*

10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

C. CIVIL STATUS IDENTITY DOCUMENTATION

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.*

12. *In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered 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.*

13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of*

the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.

14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also 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, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.

15. 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.

16. 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.

17. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.

18. Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.

19. There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.

20. The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.

21. *The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.*

22. *The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.*

D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

23. *Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.*

24. *Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.*

25. *Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support,*

ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraqi Kurds – internal relocation) CG [2018] UKUT 212.

E. IRAQI KURDISH REGION

26. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

Kurds

27. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

28. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

29. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

30. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

31. 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.

32. 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.

33. For Kurds without the assistance of family in the IKR the accommodation options are limited:

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;

(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

34. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID or INID;

(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(vi) If P is from an area with a marked association with ISIL, which may deter prospective employers.

Non-Kurdish Returnees

35. *The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

Discussion:

44. In reaching my assessment, I bear in mind 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. Also 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.
45. The starting point is to resolve the dispute between the parties as to the location of the appellant's home area.
46. I am required to consider the circumstances of the appellant's home area at the date of the hearing. The current CG decision is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 001100 (IAC) as set out above.
47. When the appeal was before the FtT on 13 November 2020, it is recorded that at an earlier case management review held on 1 October 2020, Judge of the First-tier Tribunal Gumsley noted that the question of where Gwer and Hamman Al-Alil were situated in Iraq, particularly in which governorate they were located and whether they were in the Kurdistan Region ('KRI'), did not appear to have been addressed by the parties. He issued directions for this point to be clarified. The Judge recorded at [44] of his decision:

'44. This led to an exchange of correspondence between the representatives and the Tribunal. In a letter dated 19th October 2020 the Newcastle upon Tyne Home Office presenting officers' unit stated that the Respondent's position was that the home area of the Appellant is Gwer which together with Hamman Al-Alil is situated in the Nineveh governorate [i.e., outside the KRI]. The Appellant's solicitors in an email dated 22nd October 2020 confirmed that they agreed with the Respondent's view and stated that Gwer belongs to Makhmour in Nineveh governorate.'
48. The Judge confirmed at [48]-[49] that he proceeded on the basis that Gwer was under the *de facto* control of the Baghdad-based Iraqi government and was situated in Nineveh governorate.
49. This was not an issue that formed any part of the hearing before UTJ O'Callaghan. However at the earlier remaking hearing Mr Diwnycz on behalf of the respondent provided evidence which he stated was relevant to the resumed hearing

concerning the location of the appellant's home area. As set out above, the parties could not agree as to the location of the appellant's home area. It was agreed between the advocates that the location was a central issue and therefore evidence on this issue should be obtained.

50. On behalf of the respondent, there is a bundle of documents comprising of a series of maps downloaded from the Internet to demonstrate the physical and administrative placement of the town of Gwer/Al Kuwayr. In addition there is a document entitled "response to an information request : Iraq location of Gwer from the Country Policy and Information Team dated 17 August 2022 ("CPIT").
51. Mr Diwnycz on behalf of the respondent helpfully took the Tribunal through the various maps that had been downloaded from the Internet. The paper copies did not assist as it was not possible to clearly see any demarcation lines nor were the maps in colour. Furthermore, parts of the maps were so small it was not possible to locate the areas in dispute. Mr Diwnycz therefore explained the maps by using the PDF versions where it was possible to enlarge the various points of interest.
52. It was submitted on behalf of the respondent that the maps that had been produced from the Internet demonstrated that the location of Gwer was in the IKR. At page 14 of the respondent's additional evidence, the governorates were set out showing the districts. Makhmour was in District 81 and 82, and Gwer was shown as being located in 81 (Makhmour). There was a United Nations map humanitarian response and Makhmour district reference map 2020 (p.17-19) which he relied upon and gave the location of Gwer as shown east of the broken line which Mr Diwnycz stated was the governorate boundary. The map was expanded further (page 18) showing the broken boundary as the demarcation between the governorates. Pages 18 - 24 shows the map in greater detail. He stated that the pink line shown on the map page 23 was a road incorporating a bridge which went over the demarcation line and again showed that glare was on the east side of the boundary.
53. Mr Diwnycz turned to the next set of maps which he said were from the gov.Kurd website (Kurdistan region statistics office). On page 24 a map showed the outline of the KRG, and he stated Gwer was visible as in the governorate of Erbil. Page 25 from the same website referred to Gwer as a subdistrict of Makhmour.
54. Mr Diwnycz also referred to the live map resource. He stated that by entering the latitude and longitude provided by live map for Al Kuwayr into Google the following results was seen from page 27. He explained that the coordinates gave the result at page 27 showing the great Zab River and that Gwer was situated on the east side of the river (see pages 28, 29 and 31).
55. The last document he referred the tribunal to was at page 35 which was part of the live map showing that the KRG in yellow and that the pink area was the government-controlled area. He said the village was in the yellow side (although only just) and therefore demonstrated it was evidently situated in the KRG. A higher resolution picture was found at page 45.
56. He further relied upon the information in the CPIT dated 17 August 2022. References were made to sources indicating that between 2016 to 2021, academic institutes, international organisations and country of origin research bodies published reports or studies on events that took place in the town of Gwer

in Iraq during which they confirmed the location of the town as being in Erbil governorate(see paragraph 1.1.2).

57. The sources were set out as follows; a 2016 academic report fixing the location of the town of Gwer as being in the south-west of Erbil governorate(paragraph 1.1.3). The International organisation for migration (OIM) commented on a primary healthcare centre established by them in Gwer with reference to the city hosting a ceremony attended by the governor of Erbil (1.1.4) and a report published by Rudaw (a media network based in the KRI) noted that in March 2021 “Erbil, Kurdistan region the delegation from the global coalition against Islamic State visited the peshmerga posted on the Makhmour Gwer front (about 60, the south-west of Erbil) to assess the security situation in the area and ongoing threats from ISIS. At paragraph 1.1.6 the Austrian centre the country of origin research and documents (ACCORD) noted in a report dated 16 August 2022 that the town of Gwer was in Arbil (Erbil)
58. Mr Diwnycz therefore submitted that taking into account the maps and the above sources shown in the CPIT that the town of Gwer had been reported as being in Erbil and there is no evidence of changing administrative boundaries.
59. For the purposes of the hearing, the appellant relies upon a report from Sheri Laizer dated 28 September 2022. Ms Cleghorn relied on this report which she stated established the location of Gwer and to whom it belongs. At section 3 (subsections (i) - (iv) Ms Laizer refers to the history of the location of Gwer and also by reference to her own first-hand knowledge when reporting on developments from inside Iraq including the Kurdish region for major news networks from October 1989 to 1991 and beyond. The reasons set out at paragraphs (ii) - (v) Ms Laizer concluded that Baghdad retained control of the area after 16 October 2017 and remained in control of the area that includes Gwer.
60. At section 4 subparagraphs (i) - (xii) Ms Laizer provides her observations upon the bundle of documents provided (essentially the maps) to demonstrate that Gwer belongs to the Kurdish region. Ms Laizer provides a critique of those maps making the observation that the demarcation of control does not follow the governorate boundary lines, for example, Makhmour is located within Erbil governorate but never formally belonged to the KRG and still does not. She refers to the line as a “false friend” as it does not denote who controls which territories. Thus not all of Erbil governorate belongs to the KRG and thus remains disputed. She refers to the trouble that she undertook to mark the actual line at the end of each stretch from Erbil city, she stated she reached the last peshmerga or Zerevani held checkpoint which is followed by an intervening stretch of no man’s land. On the further side it the Iraq lies at their 1st checkpoint. Reference is made to a printed map she uses when travelling from before the regime change locating Al-Kuwayr and Kalak exactly on the governorate boundary line. She states that this is not the same as the government-controlled line, just the governorate and that page 18 of the respondent’s bundle misinterprets the boundary line information and assuming that it means all Erbil belongs to the KRG. She states page 22 clearly shows al-Kuwayr sitting on the boundary line between the governorate although the same is translated as Gwyer is moved to the centre. By looking carefully at the red line you can see that the denoting the town of al-Kuwayr is missing entirely and Quwais is shown with the right below. The map situates Gwer entirely on the red line in the Kurdish name alone is given. She states that that is the correct reading and although it is being

presented as evidence to the contrary shows Gwer is entirely disputed and lies on the boundary of the disputed territories.

61. As to the KRG map relied upon by the respondent, it is submitted that the map is the Kurdish decided boundary and is undated and does not show who controls it in practice. It shows the Erbil governorate as belonging to the KRG, as in the area they held after 2003, but not since 16th of October 2017. It is no longer therefore the “region border” as marked by the thin crimson line (page 25). The maps that follow are just location maps.
62. At subparagraph (vi) Ms Laizer refers to a reliable definition from the Iranian review of UN Studies which makes reference to the disputed internal boundaries.
63. In summary, Ms Laizer refers to the situation of disputed territories by reference to the maps relied upon by the respondent. Between paragraphs (x) –(xii) Ms Laizer refers to the country information relied on, and that the country information follows the maps is not differentiated distinctly between before and after 17 October 2017 when control reverted to the Iraqi government. Reference is made to paragraph 1.1.5 referring to citation correctly referring to the Makhmour- Gwer front and so it remains (March 2021) however the issue was not as at 1.1.7 a change in the administrative governorate boundaries but rather of who controls which parts of them on each side of the front line. Similarly, paragraph 1.1.8 is not addressing who controls the area and by reference to the maps above. Ms Laizer’ s opinion is that the information request is out of date and falls into the same error as the maps and that it is not the “administrative boundary” but the green line of control between the KRG in practice and government-controlled areas of Iraq. Any source cited their up to 17 October 2017 is out of date.
64. In her submissions Ms Cleghorn submitted that the evidence in the report of Sheri Laizer should be given great weight and that the evidence set out in the report is consistent with the expert evidence given by Dr Fatah in SMO(1) (see paragraph 18).
65. She submitted that the maps provided by Mr Diwnycz shows boundary lines rather than de facto control. Furthermore, the country information request (CPIT) is not reliable. Paragraph 1.1.2 was simply a statement, paragraphs 1.1.3-1.1.4 refers to information from 2016 and pre-referendum in 2017, and 1.1.5 refers to peshmerga posts but that does not mean it is not a disputed area. Paragraph 1.1.6 refers to an Austrian report. Again it is not disputed whether boundary lines are what is disputed is whose control the area is under. 1.1.8 is a map showing the boundary line. In summary she submits the respondent’s evidence fails to provide any up-to-date evidence post-referendum showing de facto control therefore fails to establish that Gwer is located in the KRG.
66. Ms Cleghorn submitted that the CPIT failed to appreciate the distinctions referred to in the CG decision of SMO (1) and the evidence given by Dr Fatah which is consistent with Ms Laizer’s report.
67. She submitted that Ms Laizer was clear that Gwer remained on the government side of the line in the respondent’s position was no more than an artificial distinction.
68. I have therefore considered the submissions of the advocates alongside the evidence provided.

69. The Upper Tribunal is often required to consider evidence from a range of sources including evidence from those who are said to be experts on the situation in a particular country. This may include evidence of experienced professionals who have first-hand experience of life in a country or from an individual who has an established research interest or academic work on a particular issue or country. This may often provide important evidence which may assist a tribunal in reaching its decision. When providing expert evidence, a witness provides independent assistance to the court or tribunal by way of an objective, unbiased opinion in relation to matters within their expertise. It is well established that it is for a court or a tribunal to consider what weight should properly be placed upon evidence and the approach to expert evidence is no different. Mr Diwnycz, in his submissions, did not seek to challenge the expertise of Ms Laizer, nor did he offer any criticism of the report during his submissions.
70. When applying these general considerations to the report, I am satisfied that the subject matter of the opinion falls within the class of subjects upon which expert evidence is admissible. I am further satisfied that Ms Laizer has provided evidence of her expertise as set out at section 1 (i)-(xxii) of her report which details her work as a specialist, writer researcher and political commentator in the Middle East and where she has lived, worked and travelled extensively. Her qualifications are set out as is her authorship of a number of publications and articles. She refers to being regularly called on as an expert by governmental organisations, NGO's, academics, journalists and researchers as well as by the courts and is a member of the Middle East country expert working group in the UK. I am satisfied that she has acquired by both her experience and study, good and sufficient knowledge of her subject to render the opinion of value in resolving the issues.
71. In undertaking an assessment of the evidence, I have taken to account other sources of evidence on this issue and in particular the evidence provided to the UT in the country guidance case of SMO(1) from Dr Fatah. At paragraph 16 his evidence was referred to as follows: "The depth and breadth of his knowledge on Iraq is readily apparent, as was his desire to remain absolutely impartial. He refused to be drawn into speculation, preferring always to justify his opinion with reference to an identifiable source. We were impressed with his reports and with his oral evidence and have been greatly assisted by him".
72. At paragraphs 18 -19 of SMO (1) he provides a background to the area:
- "Dr Fatah turns to explaining the division of control in certain parts of Iraq. With reference to the map which we have reproduced at Annex C, Dr Fatah identifies the Disputed Territories, which include parts of the governorates of Ninewa, Kirkuk, Salah al Din and Diyala. He explains that the Kurdish Regional Government ("KRG") gained autonomy in 1991 and governed the Dohuk, Erbil and Sulaymaniyah governorates. Saddam Hussein was removed in 2003, after which the KRG gained some de facto control over parts of the Disputed Territories. When ISIL began to expand across the region in 2014, the Iraqi government forces fell back, thereby enabling yet further expansion by the KRG authorities into the Disputed Territories. In September 2017, the KRG authorities held an Independence Referendum, despite the lack of international support for such a move. In the aftermath of that referendum, the Prime Minister of Iraq ordered that much of the Disputed Territories should be reclaimed from Kurdish forces. There were

some clashes, particularly around Kirkuk, but the KRG forces eventually withdrew and were effectively pushed back to the 1991 borders.

19. Dr Fatah considers the dysfunctional nature of the political situation in the IKR and explains that the relationship between the autonomous region and the Government of Iraq (“GOI”) has deteriorated as a result of the referendum. Religious fundamentalism has increased in the region and the rift between the two main political parties (the Patriotic Union of Kurdistan and the Kurdistan Democratic Party) has worsened. The KRG and the GOI remain locked in disagreement over the Disputed Territories, and about Kirkuk in particular. Disputes over the right to export oil from the IKR only serve to increase the tension. Iraq itself held elections in May 2018 and Adil Abdul-Mahdi became Prime Minister, although his position is a difficult one, since it was only earned by consent from all political blocs. The security situation is complicated by the presence of Shia militia known as the Popular Mobilisation Forces or Units (“PMF” or “PMU”) in the country. The most powerful of these militias have ties to Iran and whilst they have technically been under Baghdad’s control since 2016, they answer to their Iranian sponsors. Dr Fatah opines that the current level of insecurity in Iraq is rooted in a number of socio-political circumstances. He identifies sectarian and tribal divisions, poverty, the loss of command and structure in the army, ISIL cooperation by politicians and the role of force in political legitimacy”.

73. At paragraph 60 it states: “In his 21 June 2019 report, Dr Fatah provided an update on the security situation in one specific part of Ninewa: Makhmour, which is part of the Disputed Territories and is administered by Ninewa, although Erbil lays claim to it.”
74. There is also reference to the situation in Makhmour which is described as a remote area in Ninewa, although the respondent treated it as part of Erbil. The country evidence in SMO (1) plainly referred to disputed territories which remained disputed between the IKR and the government of Iraq (GOI) and that following the Kurdish independence referendum in September 2017 it continued to increase tensions. There were clashes between the Kurdish Peshmerga, the PMU and the ISF with the result that most those areas which had been under the de facto control of the IKR fell back under the control of the Iraqi government (see paragraph 247 of SMO (1)).
75. The impact of the referendum was also considered in the decision of AAH (Iraq) where it was noted that the situation had become “increasingly unstable following the September 2017 referendum” (see paragraph 7).
76. The UT in SMO (1) referred to the insecurity in the Ninewa governorate which was compounded by the fact that part of it remained disputed territory between the GOI and the KRG. Whilst there has been some rapprochement between the GOI and the IKR, the evidence of Dr Fatah is that a lasting political solution was needed to bring stability to that area(see paragraph 260).
77. Having considered the evidence I have reached the conclusion that the evidence of Ms Laizer should be afforded greater weight than that of the respondent as I find the evidence to be well sourced, properly reasoned and consistent with the expert evidence given in the CG decision of SMO (1) which provides support for the historical timeline of events in the area. It follows that I prefer the evidence in the report to the evidence advanced on behalf of the respondent.

78. The evidence relied upon by the respondent consists of a number of maps and whilst they seek to show the location of Gwer they should not be read in isolation but are required to be seen in the context of the evidence and in particular the political and geographical changes that have taken place in Iraq over a number of years and during the various conflicts.
79. The history of the area is set out in Ms Laizer's report at section 3 which I accept as it is consistent with what is known of the area. The area in which Gwer (or more accurately Al-Kuwayra as it is usually known) lies within the disputed territories and have never formally belonged to the KRG. I place weight on Ms Laizer's personal knowledge of the area in light of the evidence as provided from her travels and from reporting in the region. She sets out that in October 1989 - 1991 Gwer remained on the government side of the line and that Gwer and Makhmour were all outside the "green line". It is the boundaries which have been reimposed since control over the disputed territories reverted to Baghdad on 16 October 2017.
80. In 2018, Ms Laizer referred to defining the boundaries and that she travelled from Erbil in every direction and marked where the final Kurdish checkpoints were situated, where the final barriers were placed and where Iraqi controls began. She stated that the actual cut-off points are extremely clear because to enter Iraq -controlled areas you need to have an Iraqi visa. In 2019 she marked the key checkpoints travelling north from Baghdad towards the KRG. . When travelling in that direction she refers at 3 (v) to the intersection and key crossroads leading to Makhmour, Gwer and Altun Kporu, she described the area is coming under the de facto control in 2013 and 2014 and although the area was recaptured by the Kurdish peshmerga forces, Gwer did not formally belonged to the KRG when they took control. It was "disputed" with the GOI, and Baghdad regained control after 16 October 2017.
81. Insofar as the CPIT report is concerned, I accept the observations made by Ms Laizer that the evidence relied on in establishing the locality of Gwer is out of date. The sources cited the paragraphs 1.1.3 and 1.1.4 are dated from 2016 and June 2017 respectively and predate the area coming back under the control of the Iraqi government following the referendum. That data is important in the history of what are described as the "disputed territories". Furthermore, the fact that a health centre was established in Gwer, and it was attended by the governor of Erbil does not mean that the area is administered by Erbil or that the GOI consider that it is formerly part of the KRG.
82. Paragraph 1.1.5 refers to the Makhmour -Gwer front as it remains in March 2021 but what is not acknowledged in the report is that it is not a change of the administrative boundaries but rather it is who controls which part of them on each side of the front line.
83. Mr Diwnycz undertook a great deal of time and research when obtaining the maps from the Internet sources that he has referred to. I am grateful to him for the assistance he has given in explaining those maps and providing some of the maps in greater enlarged areas to undertake an assessment. However, the maps do not really deal with the issue of the control of what are the disputed territories and that whilst he has pointed to the administrative boundaries highlighted on the maps, it is the green line control between the KRG in practice and the government-controlled areas of Iraq that are relevant. Ms Laizer's observation on the maps are set out at paragraph 3 (i) (ii), (iv) and (v) and are points that are

well made. In particular, the maps provided by the KRG are not reliable evidence given that it shows all of Erbil governorate as belonging to the KRG. Other points are made at (vii) (viii) and (ix).

84. Mr Diwnycz particularly relied on the location is next to the river on the east. When looking at the reports and the maps in context, the great Zab River is a natural boundary (page 40 of the maps), and the town is shown on the east side was the governorate boundary line appears to follow the river it does not mean that it is not part of a disputed territory. The area is described as a strategic factor in past armed confrontations between the peshmerga and the Iraqi government forces.
85. Therefore having considered the evidence in its totality, I place weight and reliance on the report of Ms Laizer as it is reliable, well sourced and consistent with what is known of the area and its history and its political geographical changes and therefore conclude that Gwer (Al-Kuwayr) is part of the disputed territories and is controlled by Baghdad and the Hashab Al-Shabbi militia forces at the present date.

Article 3:

86. I now turn to the assessment under Article 3 of the ECHR. The starting point of the assessment of the appeal are the factual findings made by the FtTJ which were preserved findings in accordance with decision reached by UTJ O'Callaghan.
87. As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the respondent's position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID may be at risk of enduring conditions contrary to Article 3 of the ECHR.
88. The Tribunal concluded in SMO(2) that the position for a healthy, documented male returnee to their place of origin in the formerly contested areas, does not cross the threshold for a breach of Article 3. It is not submitted on behalf of the appellant that falls within the categories of enhanced risk set out in the CG decision in light of the preserved findings.
89. The issue surrounding the documents required to return to Iraq and to survive in that country have played a prominent part in the country guidance cases thus far decided. Those documents are referred to as the Civil Status Identity Card ("CSID"), the Iraqi Nationality Certificate (INC) and the public distribution system ("PDS") card/ food ration card and the new digital identification document known as Iraqi National Identity Document ("INID)." Reference is also made to the 1957 Registration Document (see paragraphs 115 -137 of SMO(2)).
90. The importance of the CSID was set out in the previous CG decisions as it is required to access financial assistance, employment, education and housing etc. it was described as an "essential document for life in Iraq" (at [39] AA (Iraq) [2017]).
91. It has been emphasised in the previous country guidance decisions that an intensely fact sensitive enquiry is necessary as to whether an individual would be able to obtain a replacement CSID and the possession of other documents and the location of the civil registry office and the availability of other male family relatives were all relevant considerations.

92. It is necessary to consider whether the appellant has access to a CSID or any documentation.
93. The starting point are the preserved findings of fact. The FtTJ did not accept the appellant's account of events in Iraq and that he was the subject of a blood feud. Nor did he accept the appellant was fearful of ISIS having rejected their efforts to recruit him in October 2015 (see paragraph 95 of the FtTJ's decision). The FtTJ also records at paragraph 94 that he was not satisfied the appellant had been telling the truth about events.
94. The FtTJ set out at paragraph 115 that he did not accept that the appellant did not have a CSID and that it was more likely that it remained with the family and the appellant had not shown that he had no contact with the family.
95. The issue the Upper Tribunal identified from the FtTJ's reasoning is that in deciding that the appellant's CSID was with his family in Iraq, the judge took no steps to expressly determine where the family resided. The UTJ found that the decision as to the location of the appellant's identity documents including his CSID was "vague, confused and contradictory" and that the judge had materially erred in law in respect of this finding as to the present location of the appellant's identity documents. The UTJ set out that the issue was whether the appellant could obtain his original CSID or a replacement within a reasonable timeframe.
96. At the point of the FtTJ's decision in November 2020 the judge rejected the factual basis of his claim as to events in Iraq. The judge recorded that he did not accept that the appellant's father had been involved in an argument with members of the family or the tribe nor did he accept that his father shot and killed 2 members of the tribe or that he was severely injured and then died as a result of the wounds. Following that, the judge also rejected the appellant's account that the appellant and his mother had to hurriedly move from their home because of such an incident and that their house was burned. The judge also rejected the appellant's claim that he had been approached by ISIS and required to join them. He expressly rejected that the appellant had gone to live in a different area. He further found as a fact that the appellant had not shown that he was no longer in touch with his family. The evidence before the FtTJ was that his maternal uncle lived in Gwer (question 19) and the last time we had contact with him was in January 2016. When asked at interview why he had not been in contact since that date, the appellant stated; "he did not want". As the circumstances in which he claimed to have last spoken to his uncle they were set out at questions 196-198 of his interview where he claimed that his uncle had put the phone down on him blaming him for his mother's death. The FtTJ set out his factual findings at paragraphs 74 - 77 and that he rejected the appellant's account for the reasons given and rejected his account that we would be blamed particularly as his Uncle had helped him to escape from Iraq and paid for his journey to the United Kingdom.
97. In the witness statement filed for the hearing it was stated that he had no family members to assist in obtaining documents. In that statement he referred to his father been killed in 2014 as a result of the altercation with the tribe and therefore he would not have his father's support or assistance with issuing any ID replacements. He further stated that his mother passed away after he had arrived in the UK (paragraph 5). He stated that he had no family members to assist in documentation for Iraq. The witness statement did not deal with the

issue of contact, or any steps made to trace or contact his family since the decision in November 2020.

98. Thus the appellant's evidence remains the same as that which was given before the FtTJ as to the circumstances in which he left Iraq and his reference to the blood feud resulting in the death of his father and reference to his mother. However there has been no evidence to undermine those factual findings made by the FtTJ which were preserved findings. Therefore it follows that the FtTJ's factual assessment remains intact whereby he rejected the appellant's factual evidence concerning events in Iraq and the rejection that he was not in contact with his family. Therefore on those findings of fact the appellant's family members remain in their home and the appellant had not lost contact with them.
99. Ms Cleghorn on behalf of the appellant submits that whether he would be able to obtain his CSID, which on his evidence previously were said to be in his home area, depends on the appellant to be in contact with his family but also for them to be living in the same place. In her submissions she referred to the country materials and the events in the appellant's home area and that they could not be ignored as they were events that occurred after the appellant left Iraq in 2015. It would therefore be necessary to ascertain whether it is reasonably likely that the appellant's family would still be in the area or if forced to leave, whether they have taken the documents with them. She submitted that that would be the only way that the appellant would be able to obtain any documentation necessary to return.
100. Ms Cleghorn referred to specific parts of SMO(1) and the deterioration in the disputed area following the appellant's departure from Iraq in November 2015 (see skeleton argument at paragraphs 13-16).
101. Mr Diwnycz and submitted that if the appellant was in contact with his family he could obtain his CSID and return using that document. He accepted in his submissions that without a CSID and on the basis of the current evidence, the appellant would not be able to re-document in his home area as it was now an area issuing INID's and that he could only obtain one by attending in person and registering his biometrics which would mean having to travel from Baghdad to his home area.
102. I have therefore considered the parties' respective submissions in the light of the evidence including that set out in the country guidance decisions of SMO(1) and (2). When assessing the factual background, the appellant left Iraq in November 2015. The reasons for leaving his home area have been rejected by the FtTJ as was his evidence that he had not been in contact with his family for the reasons he gave and there has been no error of law found by UTJ O'Callaghan in his assessment based on that part of the FtTJ's reasoning. Those were preserved findings as set out in his earlier decision.
103. As to the location of the documents there is no dispute on the evidence that he did not enter the UK with any documentation. He stated that he had never been issued with a passport (1.8 SI) and that there was no evidence of identity (1.7 SI). In his asylum interview he confirmed that he had been issued with a CSID and national certificate (see question 30) and that they were left at home (question 32). According to his account the family had left the area to live in a place that was located near Mosul (questions 40 - 41). The reasons given for his last contact with his uncle in 2016 was rejected in the FtTJ's decision of December 2020.

104. The appellant's written evidence provides no details of any contact since the last hearing and the stated position is that he has no family upon whom he could call on to obtain his documents. It remains the position the appellant has not been found to have given a credible or truthful account of events in Iraq and this is relevant in assessing his evidence that he has had no contact with his family member since 2016, which was his account to the FtTJ and was rejected.
105. The point made by Ms Cleghorn is that the appellant's evidence should be considered in the light of the evidence concerning the appellant's home area based on the conclusions reached in the early part of the decision where the appellant's home area is located in part of the disputed territories. She submits that the FtTJ's assessment at paragraph [115] which stated :
- "115. In this case I have not accepted that the Appellant does not have a CSID; rather I consider it more likely than not that it remains with his family in Iraq. I am furthermore satisfied that he has not shown that he does not have any contact with his family", is a conclusion that cannot be properly reached and when considering all the facts, including the occupation of ISIS, the referendum and the current control of the area by Shia Militia, it would take a significant leap of faith to conclude that his family either remain in the area and/or still retain the appellant's documents throughout all this instability (paragraph 17 of skeleton and her oral submissions).
106. When looking at that evidence it is referred to in SMO (1) and states that the appellant's home area is in a Governorate described as being the most unstable. The reference is made to the disputed territories generally that they have been the most unstable since 2003 and they are the provinces in which there are different religions, ethnic groups and ideologies (paragraph 444 of evidence of Dr Fateh recorded in SMO(1)). Dealing with Ninewa governorate, this was considered to have had a high level of security incidents with civilians having faced a level of risk of indiscriminate attack by insurgent groups (paragraph 448 of Dr Fateh's evidence). The UT set out the evidence concerning Ninewa governorate between paragraphs 51 - 76 of SMO (1). It records that after years of violent extremism and Sunni Arab nationalism in Ninewa, Mosul (its capital) was taken by ISIL in June 2014. The attacks in Sinjar and other areas displaced nearly 1 million people in the following months. There is further reference to a battle which lasted for 9 months where Mosul was retaken by the ISF and the international coalition in July 2017 the references are made to Mosul and Sinjar (at paragraph 54, SMO (1)). The later evidence of Dr Fatah is recorded at paragraph 60 relating to Makhmour and that the Peshmerga withdrew from Makhmour in October 2017 and that ISIL had held the area for 2 days in August 2016 before being forced out by Kurdish forces. Most residents fled before ISIL arrived in order to avoid their atrocities. Since the city has been recaptured there have been reports of attacks. The UT set out its conclusions as to Ninewa governorate between paragraphs 258 - 261 of SMO(1). They noted that the security in Ninewa was compounded by the fact that part of it remained a disputed territory between the GOI and the KRG and that Dr Fatah was correct to state that a lasting political situation is needed in order to bring stability to the governorate and to Iraq as a whole (see paragraph 260). However after considering the evidence as a whole, they did not consider there was such a high level of indiscriminate violence there that substantial grounds exist for believing that an ordinary civilian would solely by being present there, face a real risk which threatened his life or person. It was noted that the risk of

actual or indirect violence to civilians in Ninewa is higher than elsewhere, but it nevertheless fell short of article 15 (c) threshold.

107. The burden is upon the appellant to establish to the lower standard of proof that he does not have or cannot obtain his CSID.
108. On his own evidence the appellant has a CSID in Iraq which he left with his family in Gwer. As set out in the FtTJ's decision, the FtTJ rejected his claim that he was not in touch with his family. Whilst the appellant stated that he last had contact with his uncle in 2016, the decision of the FtTJ was made in December 2020 where he concluded that he did not accept that that the appellant had shown that he does not have any contact with his family (see paragraph 115 of FtTJ decision). There has been no cogent evidence capable of undermining that finding, and the appellant's evidence remains a bare assertion that he has no contact with his family members. The appellant states in his recent witness statement that his father has died but this was an event that the FtTJ rejected for the reasons he gave at paragraph 95 of the decision and no further evidence has been adduced to undermine that finding.
109. Ms Cleghorn relies upon the country evidence in SMO(1) concerning the situation historically in the disputed territories. Having considered the country evidence, it supports the position historically that the Ninewa governorate has been unstable and the evidence as to the occupation of ISIS in that area. There is evidence of general displacement in the Ninewa governorate although this tribunal has not been referred to any specific evidence in relation to the appellant's home area of Gwer.
110. As set out above the FtTJ made adverse findings concerning the appellant's account and his contact with his family. For the reasons given those adverse findings have not been undermined by any cogent evidence. The fact that the FtTJ has rejected the appellant's account is not conclusive of the question as to the location of his CSID (see Uddin v SSHD [2020] EWCA Civ 331 at paragraph 11) but what is relevant is that there has been no evidence given by the appellant to demonstrate that he has even tried to contact his family members since the decision made by the FtTJ in November 2020 and such avenues do exist. There remains no supporting evidence for his claim beyond the generalised references to the governorate in which his family were said to live and where his CSID was said to be. The country information and assessment in SMO (1) and (2) attest to the importance of those documents for life in Iraq. Against that background, it is not reasonably likely that important documents like the appellant's CSID would be disposed of by his family members or would be subsequently lost.
111. In this respect I take into account paragraph 392 of SMO (1) which stated that "as is clear from AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member for whom the relevant volume and page reference could be obtained or traced back." Whilst that is in the context of those who would be considered to remember the family book details, is still of relevance concerning the issue of contact generally. The appellant in his interview had made reference

to having mobile phone contact to his uncle in Iraq and also reference was made to using social media and Facebook (see question 23).

112. Consequently he has not established to the lower standard that his family have not remained in their home area where he stated he had left his CSID and nor has he demonstrated that he has lost contact with his family or at least the ability to contact his family including other family members such as his uncle in Iraq. Therefore I am satisfied that he could obtain his CSID.
113. The question then arises as to how the appellant can obtain his CSID. The appellant's family members could meet him at the airport on arrival. I have considered the evidence and would accept the submission made that there has been recent unrest in the appellant's home area. Ms Cleghorn relies on the respondent's CPIN dated August 2022 and the reference made at paragraph 5.1.4 from the USSD annual report concerning the human rights situation in 2001 which noted "government forces, including the ISF and the PMF established and maintained roadblocks that reportedly impeded the flow of humanitarian assistance to communities in need, particularly in the disputed territories such as in the Nineveh plain and Sinjar in Nineveh province."
114. However this evidence relied upon by the appellant does not demonstrate that the situation generally would mean that a return to his home area would be unsafe, and that the appellant would be at risk of indiscriminate violence contrary to Article 15 ((c) . The CG decision states that "*There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*"
115. Whilst the UT acknowledged that the situation is complex in the former contested areas (see section A paragraph 3 of the headnote), the "sliding scale" approach was necessary applying the personal characteristics set out at paragraph 5 of the headnote. It has not been argued that the appellant falls into any of the risk categories identified by the UT in the country guidance decisions. Nor has it been demonstrated that on the evidence relied upon that this tribunal should depart from the CG decisions.
116. Nonetheless whilst it has not been shown that he would be at risk on return to his home area such as to meet the required standard for humanitarian protection, I would accept that in light of the distance between his home area and Baghdad that there is a reasonable likelihood that the family members would have to navigate a number of checkpoints and roadblocks on such a lengthy journey which could be potentially hazardous.
117. Whilst the skeleton argument filed on behalf of the appellant refers to the family members having to travel to the IKR, the appellant's return is to Baghdad (see SA (removal destination: Iraq: undertakings) Iraq [2022] UKUT 00 37 where it is stated that the enforced returns of Iraqi nationals is currently possible only to Baghdad).

118. I would therefore accept in light of the distance the potential hazards that such journey might not be possible to undertake. Nor is there any indication of how long such journey would take to enable the appellant to obtain his documents within a reasonable time. However that is not the only way in which the appellant could obtain his relevant documents which are held by his family. Family members would be able to send the documents to the appellant directly as an alternative way in which he would be able to obtain the documents which he requires to travel to his home area.
119. The July 2022 CPIN (paragraph 2.5.6) sets out that a laissez passer can be issued by the Iraqi embassy in the UK without the requirement for an interview provided the person holds one of the document set out which includes a CSID. On the factual findings made the appellant has a CSID which remains with his family members in the home area where they are likely to reside and with whom the appellant reasonably likely remains in contact.
120. The burden of establishing protection lies on the appellant to a lower standard. Applying that standard and giving the evidence the required degree of anxious scrutiny, for the reasons set out above the appellant has failed to discharge the burden of proof on him to the required standard show that he cannot obtain the required documentation to enable him to travel safely to his home area with the assistance of his family sending him the document (his CSID) that he requires. Thus his claim based on Article 3 of the ECHR and /or Article 15 of the QD is dismissed.

Decision:

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

The appeal is dismissed on all 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: 19/ 01/2023

Upper Tribunal Judge Reeds