**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-005157

First-tier Tribunal Nos: PA/53389/2021
IA/10681/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

8th December 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**SW (IRAQ)**
**(ANONYMITY ORDER CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms Patel, Counsel, Kenworthy's Chambers
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 16 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is further granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court**.

**DECISION AND REASONS**

## Background

1. This is the remaking of the decision in the Appellant's appeal against the Respondent's refusal of his protection and human rights claim.

2. The Appellant's claim is made on the basis of his imputed political opinion. His account is as follows: He says he worked in the IKR border force and was responsible for checking vehicles importing food items. Having been informed in May 2019 that eggs were banned as an import, he attempted to refuse entry to a number of vehicles carrying eggs. However, his superiors allowed the vehicles to enter as the produce belonged to a powerful PUK member, Mahmoud Sangawi. The Appellant sought to involve the authorities but they were not able to assist. In an attempt to stop the eggs being sold and putting the public at risk the Appellant contacted a local journalist, informed him of the issue and a story was subsequently published. Due to his actions, he says he is wanted by Mahmoud Sangawi and the PUK.

3. The Respondent refused the Appellant's claim in a letter dated 17 June 2021 ("Refusal Letter") due to alleged inconsistencies within his account, and as against external information. The Respondent also did not accept that the Appellant's Facebook account had attracted or was likely to attract the adverse attention of the authorities.

4. The Appellant appealed the refusal decision.

5. His appeal was heard by First-tier Tribunal Judge Alis ("the Judge") at Manchester on 13 July 2022, who later dismissed the appeal in its entirety in a decision promulgated on 9 August 2022.

6. The Appellant applied for permission to appeal to this Tribunal on three grounds, the gist of which was summarised by First-tier Tribunal Judge Haria, granting permission on 21 October 2022, as being that the FtT had erred in making contradictory findings [15, 56] in relation to the Appellant's Facebook posts, in failing to seek representation from the parties on the Respondent's latest CPIN on Iraq (July 2022) [60] and in failing to take into account that the Appellant cannot travel from Baghdad to his home area without documentation and so he would be unable to obtain his CSID or an INID within a reasonable time [58- 61].

7. Following a hearing on 27 July 2023, I set aside the Judge's decision, finding he had erred in failing to make specific findings concerning the Appellant's identification and consequent ability to return to Iraq. However, I found this error did not infect the Judge's findings beyond this issue such that all other findings were preserved. Those preserved findings can be summarised as follows:

   (a) it was not accepted that the Appellant experienced any problems with Mr Sangawi or his men following an incident concerning the importation of eggs. There would therefore be no reason for the Appellant not to return to his home area of Sulaymaniyah. [53] [54]

   (b) it was not credible that the Appellant went to Erbil for the reason he gave or that he received a threatening phone call whilst there. It was not accepted that his family were threatened or that his father was arrested; his family continue to live in the same area albeit his father has passed away. [55]

(c) the Appellant does not have a high profile as a result of his political activity on Facebook or by attending demonstrations. [56] [57]

(d) the Appellant remained in contact with his mother. [58]

8. I regarded it as appropriate for this Tribunal to remake the decision concerning the Judge's erroneous findings, noting the availability of evidence and narrowness of the issues (albeit their seriousness), concerning:

(a) the place of return

(b) whether the Appellant has, has access to, or can obtain the necessary documentation in order to travel to the place of return and, if needs be, onwards from there to his home area.

9. At the resumed hearing before me on 16 November 2023, it was agreed with both representatives that, in line with the "Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns" issued in October 2023 ("the CPIN"):

(a) a laissez passer is sufficient to board a flight (3.4.1);

(b) to obtain a laissez passer, the Appellant only needed to establish his nationality, which can be done by interview (3.4.6 citing SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) "SMO1"); and

(c) the Appellant could not obtain an INID from the UK (3.7.9).

10. The Appellant gave oral evidence and was cross-examined in Kurdish Sorani via the interpreter, Mr Sleiman, whom he confirmed he understood.

11. The representatives then made their respective submissions.

12. Mr Tan said the Appellant lived in Sulaymaniyah in the IKR; he can be returned to the airport there directly, whether voluntarily or not; there is evidence of flights and the return of nationals to the IKR in Annex C of that CPIN; the Appellant can get on a plane with a laissez passer, which he can obtain by way of interview if necessary. However, the Appellant has other easier avenues he could explore to obtain evidence of his identity, including asking his mother for her/his father's identification documents which would contain the family registration number; approaching his previous employer to whom he says he showed his CSID (screening interview); and approaching his paternal uncle (rejecting the Appellant's evidence about this not being a true uncle due to inconsistency). Mr Tan also drew my attention to 5.1.3 of the CPIN containing an extract from an ICIBI report dated June 2023 referring to expert evidence discussing how someone may be admitted to the IKR without documents, such as obtaining a letter from a local mukhtar to say who he is. Otherwise, the Appellant could be met at the airport by his family, and be admitted into Sulaymaniyah within a reasonable timeframe to obtain a new INID at the local civil status office; he need not travel to a separate area of the IKR.

13. In answer to my question as to the Respondent's position on credibility concerning whether the Appellant gave his CSID to the agent, Mr Tan said it does not matter given the number of options open to the Appellant for getting re-documented.

14. Ms Patel said the Appellant's case is that he has no CSID or other identification documents, without which he cannot safely return to his home area of Sulaymaniyah or anywhere else in the IKR as he would be as at risk of serious harm when passing through check points; his return would be to Baghdad rather than the IKR. She said the Appellant has been consistent that: his documents were taken by an agent in Turkey; he only has female family members in Iraq; INIDs were not being issued before he left; and he comes from Sulaymaniyah but not Sulaymaniyah city. She said he has already attempted to redocument himself at the embassy in the UK and the latest CPIN shows the whole of Iraq is now issuing only INIDs such that he has to attend in person to give his biometrics (eye scan and fingerprints); a laissez passer can get him to Baghdad but would not enable him to travel on to the IKR. Baghdad is the point of return because there is evidence that flights to the IKR are not actually happening. Whilst the CPIN was issued in October 2023, it relies on evidence from 2022 and we do not know when the last return was; an article from the Guardian discusses how a flight was cancelled due to the passengers' names and documents not having been provided to Iraq. She said the expert evidence referred to by Mr Tan was not up to date, had not been verified and tested, and referred to Erbil not Sulaymaniyah.

15. In answer to a question from me concerning 3.6.6. of the CPIN referring to someone being able to be redocumented shortly after arrival at the airport, Ms Patel confirmed it was the Appellant's case that he simply cannot be returned to Sulaymaniyah such that she was unable to address what the position would be in terms of travel between Sulaymaniyah airport and the Appellant's actual home, should he be able to be returned to that airport.

## Discussion and findings

16. To the lower standard, I am prepared to accept that the Appellant is no longer in possession of his CSID, passport or citizenship card. It was not made clear that the Respondent was challenging the Appellant's credibility on this point and I find he has been consistent throughout his evidence that he handed everything to an agent whilst in Turkey. I also accept that the Appellant has never had an INID, as this was accepted by the Respondent and makes sense if the Appellant had a CSID.

17. As noted above, it was agreed that the Appellant would only need a laissez passer to board a flight and that to obtain this document, he would only need to establish his nationality, which could be done by interview if necessary. I find the Appellant would be able to establish his nationality without any real difficulty. Whilst he says he has already attended the embassy, I do not know what, if any, documents he took with him. The Refusal Letter accepted the Appellant's nationality based on the answers he gave about Iraq in his substantive asylum interview. That letter and interview record could be made available to embassy staff and, with this, I see no reason why they would not similarly accept his nationality.

18. I also accept the submission that the Appellant has several avenues open to him for obtaining other/further evidence of his nationality. He confirmed that he is still in contact with his mother and there is no evidence that she would not have any documents at all indicating the family registration number or other details which could assist. It has not been said that she would neither remember any such details or would not have any documents containing them.

19. Alternatively, the Appellant confirmed in his screening interview that "I can get some evidence sent to me. I can get an ID card to show I was employed at the

checkpoint." Such an ID card would also assist in proving nationality and may be sufficient evidence in itself (see 3.4.7 CPIN).

20. I do not accept the Appellant's explanation that the paternal uncle mentioned in paragraph 4 of the Appellant's first witness statement is not in fact an uncle related by blood, as no indication was given that this is the case prior to the Appellant being asked about it in the hearing before me. Even if he is not an uncle related by blood, the Appellant's evidence was that this person assisted him getting a job such that I see no reason why this person could not be asked by the Appellant's mother to approach his former employer to get copies of the ID mentioned in the screening interview. I note that the Appellant was employed by the government such that if they were satisfied as to his identity by virtue of this ID previously, I see no reason why they would not be satisfied by it now.

21. I therefore find the Appellant is able to board a flight from the UK back to Iraq using a laissez passer. As per SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) "SMO2", this will be confiscated on arrival and the Appellant will not be at risk of serious harm at the point of return by reason of not having a current passport.

22. In terms of the point of return, I find this will be to Sulaymaniyah airport in the IKR. SMO2 (headnote 7) states that "Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad". The Appellant confirms he is a former resident of the IKR, having been born in Sulaymaniyah and living there until his exit in 2019.

23. 3.6.2 of the CPIN also states that:

> "Decision makers must start by considering (i) where the person would be returned to (noting failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq (other than Kirkuk) and to Erbil and Sulaymaniyah airports in the KRI (see Annex C)), …"

24. Annex C contains a "Returns Logistics statement on returns to Iraq and the IKR – January 2023" from a country manager for the Home Office, stating that:

> "2. Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region, as stated in section 3.1.1 of the Home Office's Country Policy and Information Note: internal relocation, civil documentation and returns, Iraq, July 2022.
>
> 3. Between 30/09/2020 and 05/10/2022 the Home Office successfully enforced the removal of 8 Iraqi nationals to Erbil and 9 to Sulaymaniyah. There were no flights between the UK and Iraq from 17/03/2020 to March 2021 due to the Covid pandemic.
>
> 4. The contents of this statement are derived from Home Office records and minutes, save as otherwise appears, and are true to the best of my knowledge and belief…"

25. This statement shows that flights to the IKR took place in 2022 and there is nothing to indicate a cessation in flights since then. The Guardian news article provided by the Appellant is the only piece of evidence relied upon to argue that flights to the IKR cannot take place. It discusses the cancellation of a single flight to Erbil, is dated 31 May 2022 and so predates the Annex C statement and the date of the last flight therein. I do not find it is sufficient evidence to justify a departure from the country guidance.

26. The Appellant will therefore be able to fly to Sulaymaniyah airport in the IKR using a laissez passer. Given the preserved finding that he is not of adverse interest to the authorities, I do not find it made out that he would be prevented from leaving the airport. I also do not find it made out that his family would be unable to meet him there; he has not said they cannot do so. As Ms Patel candidly admitted, the Appellant has not addressed what the position would be as regards return to Sulaymaniyah airport. I have not been provided with any evidence as to where the Appellant's local CSA office, or home, is in relation to the airport, nor of any checkpoints along the way. I note his most recent witness statement says some checkpoints ask for ID, whereas others wave you through, but this was not in relation to a journey to the airport. It has not been made out that the Appellant will require any form of documentation in order to get to the local CSA office. It is not made out that the Appellant will not be able to make an appointment either before leaving the UK or on arrival at that office to provide his biometrics to enable him to obtain his INID, if required, within a reasonable time. I do not find it proved that any period between returning to Sulaymaniyah and a subsequent appointment to obtain an INID, if required, will result in ill treatment sufficient to entitle him to a grant of international protection pursuant to article 3 ECHR or on any other basis.

27. Overall, I do not find it proved that the Appellant would not be able to access the necessary documents to enable him to live a normal life within Iraq. I see no reason why his family, with whom he lived previously, could not assist him in re-establishing himself in his home area. The core of his account relating to the events that he claimed led to his departure from Iraq has been rejected. No argument is made that there is an Article 15(c) risk in his home area.

28. I do not find the Appellant has discharged the burden of proof upon him to show he is entitled to the remedy he seeks. On that basis, I dismiss the appeal.

**Notice of Decision**

29. I dismiss the appeal.

**L. Shepherd**
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
**30 November 2023**

**ANNEX: ERROR OF LAW DECISION**

**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-005157
First-tier Tribunal Nos: PA/53389/2021
IA/10681/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

.....

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**SW (IRAQ)**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms Patel, Counsel, Kenworthy's Chambers
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 27 July 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court**.

## DECISION AND REASONS

### Background

1. This matter concerns an appeal against the Respondent's decision letter of 17 June 2021, refusing the Appellant's asylum and protection claim initially made on 31 August 2019.

2. The Appellant's claim is made on the basis of his imputed political opinion. His account is as follows: He says he worked in the IKR border force and was responsible for checking vehicles importing food items. Having been informed in May 2019 that eggs were banned as an import, he attempted to refuse entry to a number of vehicles carrying eggs. However, his superiors allowed the vehicles to enter as the produce belonged to a powerful PUK member, Mahmoud Sangawi. The Appellant sought to involve the authorities but they were not able to assist. In an attempt to stop the eggs being sold and putting the public at risk the Appellant contacted a local journalist, informed him of the issue and a story was subsequently published. Due to his actions, he says he is now wanted by Mahmoud Sangawi and the PUK.

3. The Respondent refused the Appellant's claim in a letter dated 17 June 2021 ("Refusal Letter") due to alleged inconsistencies within his account, and as against external information. The Respondent also did not accept that the Appellant's Facebook account had attracted or was likely to attract the adverse attention of the authorities.

4. The Appellant appealed the refusal decision.

5. His appeal was heard by First-tier Tribunal Judge Alis ("the Judge") at Manchester on 13 July 2022, who later dismissed the appeal in its entirety in a decision promulgated on 9 August 2022. I note both parties were represented at the hearing and the Appellant gave oral evidence with the assistance of an interpreter.

6. The Appellant applied for permission to appeal to this Tribunal on three grounds as follows:

> "GROUND ONE: Making contradictory finding
>
> At paragraphs 15 and 56 the FTTJ states he can attach little weight to the Appellant's Facebook posts because the Appellant had not provided the raw Facebook data -referring to the Upper Tribunal country guidance decision in [XX].
>
> However, at paragraphs 49 and 50 the FTTJ does exactly that, he takes the Appellant's Facebook posts into account in order to undermine the Appellant's account and this clearly shows a contradictory approach to the evidence.
>
> It is respectfully submitted that the FTTJ cannot say on the one hand that he will be attaching limited weight to the Appellant's Facebook posts and then choose to attach weight to the Appellant's Facebook posts where he sees them undermining his claim.
>
> The FTTJ should not be selective in the evidence that was before him and his selectiveness taints the rest of his findings.
>
> GROUND TWO: Failing to put material matters/material evidence
>
> At paragraph 60 the FTTJ refers to the contents of Annex A of the Respondent's latest CPIN on Iraq (July 2022) which was a letter dated 6th April 2022 from Tom

Pursglove MP, the British government Minister for Justice and tackling illegal migration to the Deputy Foreign Minister of Iraq Nazar al Khirullah and at paragraph 61 the FTTJ finds on the basis of this letter that the Appellant can be returned directly to Kurdistan.

It is respectfully submitted that the FTTJ has materially erred in relation to this piece of evidence for the following reasons:

(a) This evidence was not before the FTTJ either in the 460 page stitched bundle or additional 3 pages.

(b) The FTTJ had not sought representations from either party on this evidence at the hearing for either party to make their submissions upon and that is procedurally unfair.

If the judge was going to rely on this evidence to find the Appellant could be safely returned directly to the IKR the Appellant's representatives would have sought to adduce evidence of the recent failed attempt to return 30 Iraqi Kurds to Erbil on 31st May of this year. see -https://www.theguardian.com/uk-news/2022/may/31/home-office-cancels-flight-to-deport-kurdish-asylum-seekers-to-iraq

(c) Bearing in mind the CPIN relied on by the FTTJ was only published on the 12th July 2022 and the hearing before the FTTJ took place on the 13th July 2022 it is respectfully submitted that there is a strong possibility that the FTTJ has considered this CPIN post-hearing prior to promulgation.

In the circumstances therefore the FTTJ has committed a procedural irregularity capable of affecting the outcome of the proceedings and taints the rest of his findings.

GROUND THREE: Failing to consider material matters

At paragraph 58 the FTTJ states the issue is whether the Appellant has access to his CSID or whether he could obtain one or the new INID within a reasonable period of time.

The Appellant stated in his screening interview and asylum interview that the agent took all his documents from him whilst in Turkey-see questions 26-28 of his asylum interview and 1.8 of his screening interview.

The Appellant has to attend his INID office to get a replacement CSID and will have to be returned to Baghdad since enforced returns are to Baghdad and therefore he cannot travel to his home area without documentation".

7. Permission to appeal was granted by First-tier Tribunal Judge Haria on 21 October 2022, stating:

"1. The application is in time.

2. The grounds assert that the Judge erred in making contradictory findings [15, 56] in relation to the Appellant's Facebook posts, in failing to seek representation from the parties on the Respondent's latest CPIN on Iraq (July 2022) [60] and in failing to take into account that he cannot travel from Baghdad to his home area without documentation and so he would be unable to obtain his CSID or an INID within a reasonable time [58- 61].

3. It is arguable that the Judge erred as asserted in the last ground. While there is little merit in the first and second grounds, for the sake of clarity permission is granted on all grounds."

8. The Respondent filed a rule 24 response on 8 November 2022 stating that she opposed the appeal and the Judge directed himself appropriately. Specifically, she said:

> "3. In respect of Ground 1 the Respondent respectfully submits the grounds of appeal have erred in conflating the issue of the reliability of the information contained within Facebook posts and their appearance on the Appellant's Facebook account.
>
> 4. There is a considerable difference between the reliability of information contained within Facebook posts and the credibility of their posting on someone's Facebook account. The FTTJ simply makes the point that he was only provided with snapshots of the Appellant's Facebook account, which clearly could have been added or removed immediately before or after the hearing. Such a finding does not undermine the veracity of the information contained within those posts.
>
> 5. In respect of Ground 2 & 3, whilst the Respondent accepts that the FTTJ has erred in respect of the application of SMO and the ability of the Appellant to re-document himself the Respondent submits that the error is not material. The FTTJ did not find the Appellant to be a credible witness and as such the Respondent submits that the FTTJ was unable to conduct a full or reliable assessment of how or indeed if the Appellant required re-documentation."

## The Hearing

9. The matter came before me for hearing on 27 July 2023.

10. It serves no purpose to recite the submissions in full here as they are a matter of record. I shall only set out the main points as follows.

11. Ms Patel said all grounds were maintained and took me through them.

12. As regards ground 2, she added that the Appellant's bundle before the Judge contained the previous CPIN from June 2020 and not the updated CPIN from 12 July 2022; this was also not in the Respondent's papers and so it appears the Judge found and considered it post-hearing. She said post decision research is not permitted and the finding made based on the updated CPIN is material as it discussed returns directly to the IKR.

13. As regards ground 3, she said the rule 24 response accepts that the Judge erred in his application of SMO and the Appellant's ability to redocument himself but says the error was not material. She said it is material, because if the Appellant does not have his documents (he says they were taken by an agent in Turkey), he cannot obtain them in the UK and cannot get replacements without returning to his home area, and his home area only issues INIDs. I asked whether the findings about contact between the Appellant and his mother and the Refusal Letter saying he could use family to get redocumented made a difference. She said if the Appellant has not got a CSID and needs to obtain an INID, he needs to go to his local station in person to give his biometrics and so contact with family does not assist him.

14. She asked that the Judge's decision be set aside and the matter remitted to the First-tier Tribunal for a de novo hearing.

15. In response, Mr Diwnycz said the 2022 CPIN was extant on the day of the hearing but it does appear that it was not in evidence or referred to before the Judge such that he appears to have sought or seen it after the hearing without consulting the parties; this is accepted as being an error. However, Mr Diwnycz

said he failed to see how the outcome would have been different even if the Judge had consulted the parties, given he had found the Appellant had family contact and could get to the IKR using a laissez passer without hindrance in order to document himself with an INID; Mr Diwnycz understood that Iraqi Kurds within the IKR can travel freely within the IKR and the Respondent would have intended to return the Appellant to an airport within the IKR. As to the other grounds and the Facebook evidence; the case of XX is country guidance on Iran, however its findings on Facebook generally in terms of how it is treated and can be manipulated by account owners applies regardless of which country is being considered. He said if a material error is found, the Upper Tribunal should retain the matter for remaking given the limited amount of fact finding to be undertaken.

16. Ms Patel replied to say that 3.1.1 of the updated CPIN makes a bold assertion of policy that failed asylum seekers can now be returned to any airport including in the IKR; it is not the law and the Appellant would have argued and adduced evidence to show that in practice, such returns were not taking place and the Appellant could not have been returned to the IKR. As regards Facebook, she reiterated that the Judge appeared to be selecting what he wanted to see rather than looking at the matter as a whole.

17. On the latter point, I asked whether the Judge was not entitled to attach some weight to the articles posted on Facebook even if the weight was limited? Ms Patel disagreed and said that had the Judge looked at all the posts, they would have shown what the Appellant was saying to be happening was in fact happening i.e. eggs were being stopped by the authorities, except the Appellant was saying in his case, they were not stopped as a powerful figure had ordered they be allowed through. She said the posts go to the plausibility of the Appellant's account. I asked whether [53] was not key in showing the Judge's reasoning and whether the point about the posts was material given the Judge also found that the Appellant had not evidenced that he had been threatened by Mr Sangawi. Ms Patel said the reasoning in [53] is deficient as the Judge does not say why he does not accept the Appellant was threatened, having accepted at [48] that Mr Sangawi is a real person.

## Discussion and Findings

18. The Judge did not issue an anonymity direction in line with the Presidential Guidance Note No 2 of 2022: Anonymity Orders and Directions regarding the use of documents and information in the First-tier Tribunal (Immigration and Asylum Chamber), notwithstanding the nature of the appeal. I consider it is appropriate to make such an order because the Appellant seeks international protection, and so at present I am satisfied that his protected rights under article 8 ECHR outweigh the public interest in details of these proceedings being generally disseminated.

19. The Appellant is therefore granted anonymity and shall be referred to in these proceedings as SW (IRAQ).

20. Reference has variously been made within the documents and throughout this appeal to the 'Kurdistan Region of Iraq', 'IKR' and 'KRI'. I take these references to all mean the same thing, being the Kurdistan Region of Iraq, and have used the abbreviation 'IKR' to denote this area.

*Ground 1*

21. At [9] of his decision, the Judge gives a self direction that he must not view any documents in isolation but consider them as part of the totality of the evidence placed before him, correctly citing the applicable case of Tanveer Ahmed [2002] UKIAT 00439. At [10] he discusses the correct approach to assessing credibility and that a person may be found not to be credible on one issue and yet credible on others; all matters must be taken into account. Having correctly summarised the issues at [14], he states at [15] that:

> "Ms Patel accepted the Appellant had not provided the Facebook raw data and indicated this was because it had been difficult to obtain. I reminded Ms Patel the Upper Tribunal had recently stated that without the raw data of the Facebook account little weight should be attached to selected posts placed before the Tribunal. There was no application made for an adjournment to obtain this".

22. At [16] to [35] the Judge sets out the Appellant's case, expressly mentioning Facebook as follows:

> "[24] His story was broadcast on television and also appeared on the NRT Facebook page on 20 May 2019…
>
> [31] Since being in this country he has started his own Facebook account and he posts information about corruption in his country and criticises Kurdish leaders including Mr Sangawi.
>
> [33] In oral evidence, the Appellant stated he did have Facebook in Iraq but he had lost access to that account and he had opened his current Facebook account around a year before arriving in this country but that he had now removed or blocked all his old friends who had previously been his 'friends' on Facebook. He explained that he copied most of his posts from elsewhere and only posted them if he believed they were genuine. He was not aware of anyone posting any adverse comments on his Facebook account."

23. The Respondent's submissions concerning the Facebook account are set out in [40], namely that the Appellant simply copied other people's posts on his account, there was no evidence of the authorities monitoring the Facebook account, the Appellant could delete his account as his support was not genuine and without the raw data, the information in the bundle was of limited evidential value.

24. The Appellant's submissions are set out at [40] – [48], including as regards Facebook at [45] that his posts demonstrated he had views about corruption and whilst he may not have written any of the posts, he shared their views.

25. At [45] the Judge confirms that he has looked at all the evidence in the round before reaching his findings and that, even though he may have compartmentalised those findings, he emphasises they have been made having taken account of the evidence as a whole.

26. At [49]- [50] he says:

> "There was also a report on Facebook that NRT reported on 25 December 2019 that a truck full of expired eggs had been seized in Erbil although this report has no relevance to the claim made by the Appellant that he was told to allow the lorry through in May 2019. In fact, the Facebook account suggests that such trucks were being seized by the authorities which contradicts what the Appellant what the Appellant [said] was actually happening.
>
> The Facebook account also refers to NRT offices being closed by the security forces on 26 August 2020 which again did not assist me in assessing the credibility of the

> Appellant's account because he indicated his problems and those of the local NRT office were in May 2019. There was no country evidence of an NRT office being targeted in May 2019".

27. At [51], he accepts that, given there were issues over the importation of eggs, there may have been an issue in May 2019 but that does not necessarily mean the Appellant was targeted by Mr Sangawi. At [52], the Judge finds it lacked credibility that the Appellant was aware of who was behind the egg delivery but did not pass this information on to the journalist. At [53] the Judge repeats his finding that it was credible that there may have been an attempt to bring forbidden products into the country, despite the lack of supporting articles, but this did not mean the Appellant was threatened by Mr Sangawi or his men. At [56] he finds that only limited weight can be attached to the Facebook evidence as the raw data had not been provided. Nonetheless, he finds that whilst the Appellant could be detained for posting anti-government material, the risk mainly appertained to those with a higher profile and the Appellant did not fall within that category, having only attended one demonstration [57].

28. It is correct that the case of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) contains general guidance on Facebook and social media evidence, with the headnotes relevant for this purpose stating as follows:

> "7. Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.
>
> 8. It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value."

29. No issue was taken before the Judge to his applying this guidance to the evidence produced in the appeal. Given the 'raw data' behind the Appellant's Facebook account had not been produced, the Judge was therefore entitled to attach little weight to what had been produced and he was obliged to consider that evidence as part of the evidence overall. Having done so, he was entitled to make reasoned findings in respect of it.

30. The Judge specifically says he has taken the evidence as a whole into account when making his findings, even though he may 'compartmentalise' those findings in his decision. Such compartmentalisation could be said to occur at [49] and [50] when the Judge cites two specific posts on the Facebook account.

31. It is clear the Judge did in fact consider the evidence as a whole because the reason for finding against the Appellant is that there was a lack of evidence showing that the Appellant had been threatened by Mr Sangawi or his men [51] [53]. He does so taking the Appellant's account at its highest, finding it credible that there was an issue with the importation of forbidden products [51][53], despite the lack of supporting articles going to the actual event in question and despite the lack of raw data. If anything, the Judge has selected those parts of the Facebook account which are in the Appellant's favour.

32. I therefore find that ground 1 is not made out.

*Grounds 2 and 3*

33. I take these together as they are interlinked.

34. Having had time since the hearing in which to review the Judge's decision in further detail, I note he states at [46] that:

> "Ms Patel further submitted that the conclusions on return in the 2022 CPIN were not accepted and any return would be to Baghdad".

35. This indicates that the Country Policy and Information Note: Internal relocation, civil documentation and returns, Iraq, July 2022 (which I shall refer to as the "updated CPIN") was in evidence before the Judge.

36. However, Ms Patel (who is of course under a duty not to mislead the Tribunal) appeared for the Appellant before the Judge such that she could be expected to know what was in evidence or not at the time. She says the updated CPIN was not in evidence before the Judge and that representations were not sought on it from either party. I note that no mention is made of the updated CPIN in the Judge's decision save for in [46] as referred to above, and at [60] which I discuss further below. I cannot see a copy of it in the bundles that were before the Judge.

37. Mr Diwnycz also accepted before me that although the updated CPIN was extant at the time of the hearing, it was not in evidence before the Judge nor referred to by either party such that it was an error for him to have considered and made findings based on it without seeking representations from the parties. It is not for me to go behind this concession.

38. I therefore accept that the updated CPIN was not in evidence before the Judge; the reference in [46] is therefore unexplained but could be due to a typographical or other error.

39. Turning to the evidence that was before the Judge:

40. The decision at [49] cites the June 2021 CPIN: Opposition to the government in the KRI, followed by the country guidance case of SMO & KSP (Civil Status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO2"). I note the paragraph numbering in the decision has gone awry from this point

41. The Judge sets out several parts of the headnotes of SMO2 including para 26 (incorrectly numbered as 13) which states:

> "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".

42. I note headnotes 27 to 24 of SMO2 then discuss how a Kurdish returnee would make their way to the IKR from Baghdad and do not appear to address a Kurdish returnee flying directly to the IKR.

43. The Judge's decision at [44] (being the second paragraph numbered 44) cites the case of SA (Removal destination: Iraq, undertakings) Iraq [2022] UKUT 00037 (IAC) which discusses enforced removals and repeats that it is for the Secretary of State to identify the place to which she intends to enforce removal. However, that case said enforced removals would only be to Baghdad because the authorities of the IKR would only accept voluntary returnees.

44. The Refusal Letter stated:

> "57. Consideration has been given to whether your return to Iraq is feasible in line with Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns, June 2020 and country guidance case laws of SMO, KSP and IM which found that:
>
> > *Return of former residents to the Iraqi Kurdish Region (KR) will be to the IKR and all other Iraqis will be to Baghdad (Section B5)*
> >
> > *There are regular flights from the UK to the Iraqi Kurdish Region and returns might be to Bagdad or that region (Section E20)*
>
> 58. It is therefore considered that you will be returned to the IKR as you have claimed to have lived in Sulaymaniyah since birth (AIRQ 33, 34), an area in the IKR. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region….
>
> 61.You clarified during your interview that your ID card and passport was taken from you in Turkey (AIRQ 28). You are still in contact with your mother (AIRQ 20, 21, 22). As your claim has been rejected and in line with the above, it is considered that your family could provide this information to the Ministry of Foreign Affairs in order to prove your identity to obtain a Laissez Passer in the UK."

45. The Respondent's review at para 16 stated:

> "The Respondent replies on the Country and Information CPIN Iraq June 2020 Iraq - Internal relocation - civil documentation and return. Annex 1 of the CPIN describes the applicable procedure. The Respondent position is that the appellant would have to apply for a registration certificate here in the United Kingdom via the Iraqi Consulate. Once in possession of a registration certificate the appellant would be able to apply for a passport or a travel document. The passport would enable the appellant to travel to Baghdad and from there the appellant would be able to obtain a new CSID card or replacement CSID (or alternatively an identity card) within a reasonable timeframe".

46. Paras 17-21 of the review go on to state the Appellant has had ID documents, he will likely remember his family number and book number, he has not shown he could not get a replacement card or that his local office is no longer issuing CSID cards, he has family in Iraq and has not shown they would not be able to send his existing CSID card, a new CSID card or other ID documentation and that he had not shown he could not get the necessary documentation through the Iraqi consulate or with the assistance of his family.

47. By the time of the hearing before the Judge, according to the review, it therefore appeared the Respondent's position was that the Appellant would be returned to Baghdad. The Appellant's skeleton argument is very brief and merely says the feasibility of return is addressed in the Appellant's witness statement (which I note says the Appellant cannot be returned to any part of Iraq due to the risk arising from his account of events) whilst inviting the Tribunal to consider the objective evidence in the Appellant's bundle.

48. At [14] of the Judge's decision, the feasibility of the Appellant's ability to return to the IKR was cited as an issue to be determined in the appeal.

49. At [17] the Judge sets out the Appellant's case that his passport, CSID, nationality certificate and national card were taken from him by an agent when he fled to Turkey. At [32] the Judge says:

> "The Appellant stated that he had been to the consulate to try and replace his CSID but this had been unsuccessful. He had spoken to his mother but she had been unable to do anything".

50. The Judge sets out the Respondent's submissions that it was not accepted that the Appellant did not have access to his documents including his CSID [36], and that it was open to him to return to the IKR and once there he could go to his local office and obtain fresh documentation as he had family support, or alternatively if he was found to still have his documents he could go to Erbil if he did not wish to live in his home area [41].

51. The Appellant's submissions were that the Appellant had no CSID and his return would be to Baghdad rather than the IKR [47]; without documentation he would be at risk of serious harm when passing through checkpoints between the two [48].

52. Given feasibility of return to the IKR was an issue, it was incumbent upon the Judge to make specific findings as to whether the Appellant was in possession of his CSID and/or other identity documents which would enable him to travel, and the location to which he would be returned. If that location were Baghdad, the Judge needed to make findings as to whether the onward journey to the IKR could be made safely.

53. Having found there to be no reason why the Appellant could not return to his home area [54], that his family continued to live in that area [55] and that he was still in contact with his mother [58], the Judge states as follows:

> "[58]....The issue is whether he has access to his CSID or whether he could obtain one or the new INID within a reasonable period of time.
>
> [59] The latest information from the respondent appears to suggest that CSIDs are only available in Sheikhan, Sinjar, North Qahtaniya, Zelkan, Al-Baaj, Wanh, Shura. The KRG appears to now only issue INID cards.
>
> [60] Ms Patel submitted that he could not return safely to the KRG as he would be returned to Baghdad. But according to Annex A in the latest July 2022 CPIN an agreement was reached within the Iraqi authorities for the *"Repatriation on flights direct to the Kurdistan region – thus will enable the smooth repatriation of Iraqi Kurds who comprise a significant number of Iraqis in the UK...*
>
> [61] I therefore find that the Appellant can be returned direct to Kurdistan and given he has family there and as I have rejected his account I find he can safely be returned to Sulaymaniyah where he would be granted entry as a Kurd and he would be reunited with his family. He would then be able to obtain his INID without any difficulties".

54. The Judge fails to make an explicit finding as to whether the Appellant has his CSID or other identity documentation or not. I do not consider the Judge in saying the Appellant can be safely returned to Sulaymaniyah due to his account being rejected is sufficiently clear so as to encompass a finding that the Appellant either still had his CSID or could access it.

55. This is an error which is material, given that the Appellant's ability to return either to Baghdad or the IKR turns on what documentation the Appellant has or could obtain and from where. A finding that he is contact with his mother is not enough in itself.

56. It is also correct that the main reason the Judge finds the Appellant can return to the IKR appears to be Annex A of the updated CPIN. As above, I have accepted that this was not in evidence before the Judge and submissions were not sought in relation to it.

57. As the updated CPIN was extant at the time of the hearing, and as CPINS are a publicly available expression of the Respondent's policy, I do not consider it was an error for the Judge to have consulted it. However, in circumstances where the updated CPIN said direct returns to the IKR were now possible as against the Respondent's position in the appeal being that return would be to Baghdad, the Judge should have raised the issue with the parties to make submissions and/or seek an adjournment as they saw fit. Not doing so was procedurally unfair and this constitutes an error of law (R (Iran) [2005] EWCA Civ 982 para 9). The parties should have been permitted the opportunity to address the potential change in position indicated by the updated CPIN.

58. It is also correct that Annex 1 to the updated CPIN was a record of an agreement of what would happen, rather than what was in fact occurring or was practically possible at the time, as shown by the wording of the letter stating that (my emphasis in bold) "this **will** enable the smooth repatriation of Iraqi Kurds".

59. I therefore find grounds 2 and 3 to be made out. However, I cannot see that the Judge erring in his findings concerning the place of return and feasibility of getting there, including the question of documentation, infect the earlier findings in his decision which are soundly reasoned. Rather the error is confined to this specific issue.

60. I therefore find that the decision of the Judge involved the making of an error of law and must be set aside for a fresh decision on the limited points of:

(a) the place of return

(b) whether the Appellant has, has access to, or can obtain the necessary documentation in order to travel to the place of return and, if needs be, onwards from there to his home area.

61. The parties will need to address whether and to what extent the Appellant is entitled to protection on any basis if he is found to have no necessary documentation or is unable (or refuses) to access or obtain the necessary documentation.

62. In the circumstances, I consider that the appropriate course of action is for the appeal to be listed to be remade in the Upper Tribunal on a date to be fixed.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside for remaking only on the discreet issues of the point of return and identity documentation; all other findings are preserved.

2. I make the following directions:

(a) Any additional material on which either party seeks to rely must be served on the other party and on the Upper Tribunal at least 10 working days before the hearing. Such material must be set out in a properly indexed and paginated bundle, in electronic form.

(b) A Kurdish Sorani interpreter will be booked.

(c) The parties must prepare and serve 5 working days before the hearing, skeleton arguments in electronic form addressing the issues identified at [58].

3. An anonymity direction is made due to the nature of the issues underlying the appeal.

**L. Shepherd**
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
**24 August 2023**