IAC-BH-PMP-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05712/2019**

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business
On the 12 August 2020

Decision & Reasons Promulgated
On the 12 October 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

AND

KK
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent: Ms Brakaj, Solicitor instructed on behalf of the appellant

DECISION AND REASONS

Introduction:

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who allowed his appeal in a decision promulgated on the 11 March 2020.

2. Whilst the Secretary of State is the appellant, for the sake of convenience I intend to refer to the parties as they were before the First-tier Tribunal.

3. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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.

4. The hearing took place on 12 August 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

5. I am grateful to Mr Diwncyz and Ms Brakaj for their clear oral submissions.

Background:

6. The appellant's claim is summarised in the decision of the FtTJ at paragraphs 10-11. The appellant is a national of Iraq. He claimed to have been a peshmerga soldier who fought against Daesh.

7. In January 2017, his maternal uncle phoned him and asked the appellant to accompany him to Erbil city. Whilst the appellant drove his maternal uncle was having a difficult conversation with someone on the telephone. As they approached the KDP checkpoint the guards opened fire on them. The appellant got out of his car and hid behind it whilst his uncle exchanged fire with his gun. The appellant's uncle was shot and to the guards was shot in the return fire. He managed to get his uncle in the car and drive back to town where the appellant took his uncle to hospital.

8. The appellant was arrested and taken to prison where he was detained for 4 ½ months.

9. However, he was released without charge following the production of some CCTV footage showing the appellant was not responsible for firing the gun which had injured the guards at the KDP checkpoint. Despite the CCTV footage showing that he was not responsible for firing a gun which had injured the guards at the KGB checkpoint, the relatives of the injured guards wanted to exact revenge against him. The families of the two injured guards contained members who held senior positions such as a brigadier general in the army and therefore in a position to exert control.

10. 2 to 3 months before the appellant left Iraq he was stabbed by a member of the xxx family in the town centre. The appellant received hospital treatment but despite reporting the incident to the authorities no further action was taken.

11. The appellant believed that if he returned to Iraq he would be killed by the family members of the two men his uncle injured in the shootout at the KDP border.

12. The appellant left Iraq on 12 May 2018 and travel to Turkey by plane using his own passport. He stayed in Turkey until October 2018 and then travelled to a number of countries finally entering the United Kingdom on the 4 February 2019. The records show that he claimed asylum in Romania and in Germany.

13. The appellant claimed asylum on 5 February 2019. In his claim he stated that he had been threatened on many occasions including whilst he had been in the UK.

14. The respondent refused his claim in a decision dated 7 June 2019. It was accepted that he was an Iraqi national of Kurdish ethnicity, but that he had not given a consistent account regarding the core aspect of his claim to have been involved in a shooting incident and having had subsequent problems with the families of the KDP guards. The respondent considered four photographs that have been submitted in evidence to demonstrate that he was a Peshmerga soldier but the respondent noted that whilst the photographs had a resemblance to the appellant, they did not evidence anything in relation to the claim problems with the families involved in the incident or any subsequent threats.

15. Consideration was also given to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 on the basis that the Home Office records demonstrated that he claimed asylum in Romania and Germany in 2018 and that he had not provided a reflex relation as to why he did not stay for the outcome of those claims. It was also noted that he travelled to the UK via Austria and France but failed to claim asylum in either country before arriving to the UK.

16. The decision letter cited the CPIN for Iraq: political opinion in Kurdistan region of Iraq (KRI) dated August 2017, noting that the KDP did not have full control of Kurdistan including Sulaymaniyah.

17. The decision letter also considered the feasibility of return noting that in the decision of AA(Iraq) [2017] there were no internal flights to the IKR and that all returns would be to Baghdad and therefore the appellant, as a Kurd would be returned to Iraq via Baghdad and then able to return to his home area. It was also noted that the recent objective evidence showed that there were direct flights from the UK to the IKR.

18. The decision letter cited the decision of AAH(Iraqi Kurds-internal relocation) (CG) Iraq [2018]UKUT 00212 noting that he would be required to provide a CSID and passport to enter the IKR and that the CPIN : returns and internal relocation stated that to obtain an Iraqi passport he would need to present a form with completed personal information filled out according to the information on the CSID, and INC residency card (for those outside Iraq) photographs and a cheque for 20,000 Iraqi dinars taken to an Iraqi consulate where they will take a person's fingerprints. It is therefore stated that if he were able to provide a CSID card he would be able to obtain a passport. As he had claimed that his CSID was with his mother she would be able to send this to him.

19. Further information in the decision letter made reference to material from the Iraqi embassy in London setting out how a CSID card could be obtained from the Iraqi embassy in the UK.

20. In summary it was submitted by the respondent that as the material facts of his claim had been rejected, it was not accepted that he had faced problems with the relatives of the men concerned. As it was noted that he was a Peshmerga soldier in Iraq, there is no dispute that he did previously have a CSID card in order to avoid destitution. As such, his mother could return his CSID card for him to return to Iraq. In the alternative, if the card had been lost he could apply for a new one at the Iraqi embassy in London by providing his page and volume number details. If he did not know them, then you could use his family members, including his male relative such as maternal uncle as a proxy in order to assist him as family members details are placed together. He could also visit the Iraqi embassy in London to provide him with a laissez-passer in replace of a passport.

21. In relation to his personal characteristics, he spoke Kurdish Sorani, is a Muslim and had worked as a peshmerga and a plaster and had no life-threatening health problems. He had some education and there are a number of family relatives currently living in Iraq with whom he was still in contact with. His family members would be able to attend at the civil register office at Erbil province. He would therefore be able to return to his home area.

22. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 11 March 2020, FtTJ Bircher allowed the appeal. The FtTJ dismissed the appeal on asylum grounds but allowed the appeal on humanitarian protection grounds and on article 3 of the ECHR.

23. The respondent sought permission to appeal the decision and permission to appeal was issued and on 24 April 2020 permission was granted by FtTJ O'Keefe who stated as follows:

> "The judge accepted that the appellant was from Erbil in the IKR. The appellant's evidence was that he had male relatives in Iraq and was in contact with his mother. At paragraph 21 the judge that it was uncertain

> whether the appellant's relatives will be willing to locate the ID documents in their possession or help the appellant secure alternative ID documents. It is arguable that the judge has given insufficient reasons for finding that the appellant would not have the required identity documents on return to Iraq.
>
> The ground is closing arguable material error of law and permission to appeal is granted."

The hearing before the Upper Tribunal:

24. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. At the outset of the hearing Mr Diwnycz indicated that he was not able to locate the appellant's bundle. Ms Brakaj highlighted its relevance to the hearing as it included the appellant statement and was relevant to the risk in Iraq. Therefore, she sent a copy of the bundle electronically to Mr Diwnycz so that he had the relevant papers.

25. Mr Diwnycz on behalf of the respondent relied upon the written grounds of appeal. There were no further written submissions. There was no Rule 24 response filed on behalf of the appellant. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

26. On behalf of the respondent it was submitted that the FtTJ had failed to apply the country guidance case in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC); and that paragraph 3 of the headnote detailed the formally contested areas in paragraphs 25 – 50 gave a detailed expert analysis of the security situation. The case law stated that a fact sensitive approach was necessary and not just a recitation of case law as the judge had done at paragraph 18.

27. As regards the CSID issue, the judge had failed to take into account a material fact that the appellant's mother had his CSID (see the appeal hearing note). The FtTJ acknowledged that the appellant remained in contact with his family (paragraph 21) and thereby there is no reason why the appellant cannot obtain his CSID and access services and help through the support of his family. The judge's findings at paragraphs 19-22 are therefore wholly speculatively and unsubstantiated against the facts.

28. The written grounds assert that there was no evidence given as to whether the appellant had made any attempt to obtain documentation through any means by his family all through the Iraqi embassy in the UK.

29. It is further submitted that the findings appear to favour the appellant and were subjective rather than factual. The appellant had no profile and continued to maintain contact with his family. The appellant has male family members, uncles and cousins who provide the relevant details to obtain documentation moreover the appellant's mother holds the appellant CS ID document, and this was entirely overlooked by the judge.

30. Consequently, the errors outlined infected the judge's consideration of the feasibility of return an internal relocation to Baghdad, Iraq, or the IKR.

31. The grounds challenge the findings at paragraphs 19-22 regarding the inability to obtain a CSID and internally relocate on the basis that it failed to take account that the appellant was a healthy male, who spoke Kurdish. He had shown personal fortitude to travel across several countries to the UK and there was nothing to prevent him finding work in Iraq or in the IKR. Furthermore, the CPIN February 2019 shows that internal relocation to Iraq/IKR is entirely feasible as the Iraqi government taking control and there was no reason why he could not internally relocate in Iraq/IKR especially Baghdad city or the Baghdad Belts which was clearly feasible.

32. The FtTJ failed to make findings on the country evidence and official embassy letters that supported the feasibility of return.

33. Ground 2 stated that the judge found that there was no asylum risk to the appellant (at paragraph 22) although the appellant was implicated in an incident he was exonerated (paragraph 10). Whilst the appellant claimed been stabbed there was no medical evidence to corroborate his hospital treatment. The appellant has no significant profile and there was no evidence to suggest that the guard's families continue to be in pursuit of the appellant or that his family were being persecuted as a result. Therefore, the judge's findings at paragraph 17 are therefore entirely speculative and only suggest that the relatives "may continue to hold a grievance against the appellant". It was submitted that in any event, those findings contradicted the conclusion at paragraph 22. Therefore, there was nothing to render his return to his home area is not feasible.

34. In his oral submissions Mr Diwnycz submitted that the appellant's family had his CSID document and could therefore be sent to him.

35. I asked him to explain paragraph 9 of the grounds relating to the official embassy letters and he made reference to the previous CPIN and that the letters were referred to in SMO at paragraph 352.

36. In relation to ground 2, he submitted that it was not unduly harsh for him to relocate to another place in the IKR.

37. Ms Brakaj on behalf of the appellant began her submissions by dealing with ground 2. He submitted that the FtTJ had found the appellant to be credible and

that the finding at [22] that there was no convention reason mirrored the decision letter which had focused on the feasibility of return and whether he could obtain a CSID. She submitted that the decision letter did not argue that if the appellant had found to be credible that there would be a viable internal relocation alternative. The refusal letter was also silent as to sufficiency of protection and seem to suggest that that was not viable.

38. She submitted that in terms of risk the judge allowed the appeal on Article 3 grounds and that the respondent did not ask the judge to consider the appeal on the basis that if he were credible what the outcome would be.

39. Ms Brakaj submitted that the judge did what she had been tasked with and that in terms of credibility findings at paragraphs [10] onwards the FtTJ had accepted that he was a Peshmerga and his background and found to have been at risk from the families of the guards who were injured in the shootout and that it was credible and plausible that the relatives of the two injured men continued to hold a grievance against the appellant (at [17]). In the appellant's witness statement, he set out evidence of continued threats against him- he was changing locations between areas, did not stay in one place. After five months he was in the town bazaar and was attacked and stabbed and was taken to hospital. Following this he spent six weeks recovering staying with different family members. This was set out at paragraph 11 of the FtTJ's decision where the judge recited the appellant's claim and oral evidence. The judge had found him to be credible. In the light of that, there was nothing to say on behalf the respondent that his claim should be refused on the basis of sufficiency of protection or internal relocation. The respondents own note did not show that this was argued and where he was found to be credible the judge was not asked to consider this.

40. During her submissions I asked Ms Brakaj whether the FtTJ did consider risk to the appellant in Erbil. She responded by stating that at paragraphs 21 – 22 were the relevant paragraphs but she stated that those paragraphs could have been more detailed and that it was not clear. However, she stated the judge had not been assisted by the respondent's advocate and the failure to make submissions on the basis that if he were credible whether he would be at risk. It was because of this that the brevity of the paragraph was due to not being asked to consider those issues on behalf of the respondent at the hearing.

41. When asked about the issue of risk, Ms Brakaj submitted that the appellant feared high-ranking members of the KDP. She submitted that in this appeal the only issue is credibility and that was the way the respondent had run the case and therefore the judge had properly dealt with this.

42. She submitted that if the tribunal did not accept that, that the findings on credibility were detailed.

43. As to ground 1 she submitted that in relation to the CSID and whether he could obtain it he didn't know where it was suggesting there would be further difficulties and the question was whether his mother would be able send it to him (see [21]). Based on the credibility assessment the issue was whether he would be at risk.

44. By way of reply Mr Diwncyz submitted that there was a tension between paragraph 17 and 22 and that even if credibility findings were open to the FtTJ it did not negate ground 1.

45. As to whether there was a material error of law, Ms Brakaj submitted that there was no such material error as the appellant and set out a clear risk to him and that there was an ability to locate him in his home area from people who had a level of authority. Furthermore, in terms of documents, whilst he had certain documents if they could not be located he would need to return to his home area and the question was whether his family would assist him.

46. In terms of risk, he had been located previously and was a victim of an attack and reported it to the authorities. He had remained in hiding and had been located in a KDP area. She submitted that in the witness statement of the appellant (paragraph 7) there was a connection between the families because his maternal aunt's marriage to a cousin of one of the men involved and therefore there was a link even if he relocated to a different part of the IKR. Therefore, the family of the men knew that he was in the UK and there was information about him being leaked by the family and would be aware of the location. She therefore submitted there was a risk in his home area. His family links had not been challenged and therefore any error could not be material.

47. Ms Brakaj submitted that even if any error was material the findings of fact was sufficient to allow the appeal. The judge had accepted his account as a whole and the appellant did not know with certainty how he had been located. He had been pursued in the past and this was accepted. On the unchallenged evidence he was at risk in his home area and unable to relocate. The evidence is statement was that he was unable to relocate and that the authorities will be unwilling to assist him.

48. Mr Diwnycz submitted that the error was material and that the submission made on behalf of the appellant by Ms Brakaj that his aunt had betrayed him to the family is a submission that went too far and that there was no cogent evidence led on this evidence of betrayal. He surmised that she might be able to mediate for them.

49. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

50. I have carefully considered the written grounds and the oral submissions of Mr Diwnycz and Ms Brakaj.

51. The question whether the decision contains a material error of law is not whether another Judge could have reached the opposite conclusion but whether this Judge reached a conclusion by appropriately directing himself as to the relevant law and assessing the evidence on a rational and lawful basis.

52. The respondent relies upon two grounds. As ground 2 is a challenge in part to the credibility findings, I intend to consider that ground first.

53. It is submitted on behalf the respondent that whilst the appellant was implicated in an incident he had been exonerated and there was no evidence and suggest that the families continued to be in pursuit of the applicant and he had no significant profile. It is also asserted that the finding at [17] is speculative. It is also argued that the finding at [17] contradicts the conclusion of the FtTJ set out at [22]. Ground two is therefore a challenge to the credibility assessment made by the FtTJ.

54. I have carefully considered those submissions in the context of the decision of the FtTJ.

55. The FtTJ's findings of fact can be summarised as follows:

    1. It was accepted by the respondent that the appellant was an Iraqi national of Kurdish ethnicity from Erbil province.

    2. The FtTJ found that the appellant was a Peshmerga who fought against Daesh. The finding was based on his ability to provide "exceptional detail and answers to the asylum questions". In his account, he was sent to fight Daesh almost immediately after joining and that he and other Peshmerga would process family members of Daesh who would be sent to them and who were then dispersed to other towns and cities in the KRG. His role was to detain the fighters for a very short period before they were sent to the headquarters to be interrogated by others (at [13-16]).

    3. The FtTJ found that it was credible that the appellant was implicated in an incident at the checkpoint. The FtTJ considered the position of the respondent who had argued that he would not be at risk on return to Iraq because the authorities acknowledged that he had not been responsible for shooting at the guards at the checkpoint and that the appellant's uncle had made peace with the relatives of the men he had injured. However the judge stated at [17]; " however it is credible and plausible that the appellant remains at risk from the families of the guards who were injured in the shootout if only because he was at least implicated in the incident by way of the fact that he was the driver who approached the checkpoint and similarly he was the driver who rescued his uncle and drove away. It is credible and plausible that the relatives of the two injured men may continue to hold a grievance against the appellant. "

    4. At [18] the FtTJ found that the appellant did not have any ID documents and his original passport was given the agent and not return to the family as agreed. At present he has no ID documents which would enable him to travel from Baghdad to Erbil.

56. Having considered those findings in the context of the evidence, in my judgement the credibility findings made were ones which were reasonably open to the FtTJ to make. The FtTJ gave adequate and sustainable reasons for reaching the conclusions set out between paragraphs 13 – 17. In doing so the judge stated that she had given "careful consideration to the evidence" and at [14] recorded that in relation to his evidence of being a Peshmerga, she was satisfied that he had given answers which were "specific" and were "given without hesitation".

57. In relation to the core of his account the FtTJ's findings are set out at [17]. The FtTJ did consider the point raised by the respondent (and also in the grounds) as to why the appellant would be at risk if it had been acknowledged that he had not been responsible for the shooting of the guards at the checkpoint. However, on the judge's consideration of that issue she found that it was both credible and plausible that the appellant would remain at risk from the families of the guards who were injured in the shooting because he was implicated by the fact that he was the driver who resided with his uncle and had driven away. Whilst the FtTJ stated "it is credible and plausible that the relatives of the two injured men may continue to hold a grievance against the appellant", it seems to me that this reflected the acceptance of the factual claim that the men concerned continue to hold a grievance against the appellant. I do not accept this was a speculative finding as the grounds assert but one that was open to the FtTJ to make on the evidence.

58. The other point raised by the respondent is that the findings at [17] are inconsistent with paragraph [22] where the FtTJ recorded that she was not satisfied that the appellant had discharged the burden of proof upon him to show that he had a well-founded fear of persecution for a Convention reason and therefore refused the asylum appeal. Having read the decision and heard the submissions of Ms Brakaj, I do not think that there is a conflict or a tension between those two identified paragraphs although I observe that paragraph [22] is not as clear as it could have been. The FtTJ plainly accepted that it was plausible and credible that the two men may continue to have a grievance against the appellant and as I have set out that was a finding that was open to the judge to make. That being the case, it must follow that the judge was satisfied that he would be at risk in his home area. It does not seem to have been argued by any of the parties as to whether the factual claim did amount to a Convention reason whether by way of imputed political opinion or whether the factual circumstances indicated a "blood feud". Therefore having not been addressed as to whether there was a Convention reason or not, the judge appears to have considered the claim on the factual basis that if the appellant was at risk of serious harm he was entitled to a grant of humanitarian protection (without the need for a Convention reason). There is an alternative explanation which is that the FtTJ was considering the appeal on the basis of an inability to obtain the documentation. As set out above, the judge was not clear in her conclusions at [22] but I have reached the conclusion that the only reasonable inference is that she had allowed the appeal on the basis that she

considered the appellant would be at risk of serious harm if returned to his home area. When considered alongside the credibility findings, I am not satisfied that it has been demonstrated that there was any inconsistency between paragraph 17 and paragraph 22.

59. Therefore, it must follow that the FtTJ gave adequate and sustainable reasons for reaching the factual findings made at paragraphs 13-17 of the decision.

60. Whilst I have found no error in the assessment of the core facts, I am satisfied that there are material errors of law in the decision of the FtTJ. I am satisfied that the FtTJ was entitled to reach the conclusion that he was at risk in his home area (although the FtTJ did not clearly or specifically state that) but that there was no assessment of secondary facts which were relevant to the issue of risk and internal relocation. Nor was there any reasoning or assessment of internal relocation in the light of all of the evidence.

61. Whilst Ms Brakaj submits that the respondent did not set out in the decision letter what the position would be in the event that the appellant was found to be credible, in my judgement the FtTJ was required to consider the issue of risk on return based on her assessment of the factual account and if at risk in his home area to then expressly consider whether there was another part of Iraq which the appellant could return to where he would not be at risk of serious harm. Whilst the decision did not accept the factual claim and was addressing return to Iraq on the basis of the lack of credibility in his claim to be at risk in his home area, there are still references to the issue of relocation as can be seen at pages 15 and 16 of the decision letter where reference is made to return to the IKR or another location in Iraq and where reference is made to his personal circumstances which were relevant to the issue of relocation.

62. I agree with Ms Brakaj that the decision letter is not clearly drafted but in its important aspects it is clear that the FtTJ was required to consider whether the appellant had demonstrated his factual account as to whether he would be at risk in his home area but even addressing that question positively, it was incumbent upon the judge then to consider whether internal relocation would be unduly harsh.

63. There is no clear assessment of the issue of internal relocation made by the FtTJ. The relevant part of the decision is at paragraphs 18-22.

64. At paragraph [18] the FtTJ recited guidance from the decision in SMO (although when citing the material under the heading E. Iraqi Kurdish Region did not set out the material relating to returns to the IKR.

65. At paragraphs [19-22] the FtTJ considered the issue of return. The FtTJ made the following findings:

- the appellant is a young man of fighting age from Erbil in the IKR.
- He does not speak Arabic.

- He is not in possession of a CSID card and has handed his Iraqi passport to the agent responsible for bringing him to the UK which is unlikely to be seen again.
- The appellant may well be viewed with suspicion given his period in detention for over four months and the fact that he was implicated in an incident at the checkpoint where two guards were injured.

66. At [20] the FtTJ stated:-

> "I conclude that he is likely to encounter considerable difficulties when attempting to secure a biometric Iraqi National Identity Card (the INID). The appellant needs one of these two documents to travel from Baghdad to Erbil in the IKR governorate or an area he chooses to relocate to. Whilst CSA offices have now reopened the extent to which records have been destroyed by the conflict with ISIL is unclear. The appellant is unlikely to be able to obtain a CSID document in Baghdad because neither the central archive nor the assistance facilities for IDP's are likely to render documentation assistance to an undocumented returnee. Also, the likelihood of him securing a CSI is further complicated by the introduction of the INID system. In order to obtain such a document, the appellant would need to attend his local CSID office in person to enrolled as biometrics, including fingerprints and iris scans."

67. At [21] the FtTJ stated:-

> "the appellant has not lost contact with his relatives, but it is uncertain whether or not they will be willing to try and either locate the ID documents in their possession or help the appellant to secure alternative ID documentation. On balance I consider that it is neither feasible nor reasonable for this appellant to return to the IKR given his lack of documentation and his involvement (albeit limited) in the incident at the checkpoint where two guards were shot and injured. The appellant has no support network in Baghdad and does not speak Arabic. It is also clear in light of the recent country guidance caselaw that without the necessary travel documentation, the appellant would encounter difficulties attempting to travel from Baghdad to the IKR by air and land. Without the CSID card/INID card or a passport there is a real risk you will be detained at a checkpoint until such time as his ID had been verified.

68. At [22] the FtTJ stated:-

> "In conclusion I find that the appellant has not discharged the burden of proof to show with a reasonable degree of likelihood that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Geneva Convention. Therefore, it follows that I must refuses asylum appeal. However, I am satisfied that it is unreasonable to expect the appellant to return to Iraq and attempt to relocate back to his home area or to a different location within the IKR or Baghdad and other Southern Governorates.

> Given the guidance contained within the recent country guidance case of SMO. I reached the conclusion that internal relocation is unduly harsh."

69. As set out above the findings at paragraph 19 are relevant to internal relocation. However, there is no assessment of the reasonableness of relocation specific to the appellant and any particular risk.

70. In my judgement at [21] the FtTJ's assessment was somewhat confused. The FtTJ was seeking to address two distinct issues; lack of documentation and internal relocation but did so within in the same sentence. The first issue of lack of documentation is, as the respondent sets out, considered on the wrong factual basis and the FtTJ did not consider the CG decision and issue of return on the correct factual evidence that was before the Tribunal. The evidence before the FtTJ was that he had left his CSID card at home with his mother. The presenting officer's note which is annexed to the grounds sets out the cross-examination that he was in regular contact with his mother and that she had his CSID card and INC card at the family home and that the appellant had not asked her to send the documents. As I indicated to the advocates, the ROP in the file also reflected that evidence. The ROP set out verbatim that the appellant stated in cross-examination that he last had contact with his mother four days before the hearing by Facebook messages. The ROP also set out the large number of male and female relatives living in the IKR. Therefore the finding at [21] that it was uncertain whether or not they would be willing to locate the ID documents does not reflect the evidence given before the FtTJ nor are there any reasons given for any such uncertainty in the light of that factual evidence given by the appellant. The error is material because it infects the assessment made by the FtTJ when considering the issue of return and the application of the CG decision in SMO. The evidence does not support the FtTJ's finding that it is not feasible for the appellant to return to the IKR given the lack of documentation. At [21] the FtTJ identifies that without a CSI D and /or INID that the appellant would encounter difficulties attempting to travel from Baghdad to the IKR by air and land. Without the CSI D card/ INID card or passport there is a real risk you will be detained at a checkpoint until such time as his ID had been verified. However, the point made in the grounds is that there was cogent evidence before the FtTJ that the relevant documents including his CSID were available and could be sent to him. The ROP sets out the evidence given by the appellant and his answer to the questions relating to the documents and that he had left them at home with his mother. He stated that he had contact with his mum and when asked why he had not asked to send them he said, "I don't know." That being the case, as the documents were available to the appellant, this was the factual starting point for the assessment of documents available and feasibility for return when applying the CG decision. The FtTJ therefore erred in her assessment.

71. As to the issue of relocation, the FtTJ does not provide any reasoning. The FtTJ states at [21] "that it was neither feasible nor reasonable for this appellant to return to the IKR given his lack of documentation and his involvement (albeit

limited) in the incident at the checkpoint where the two guards were shot and injured". As set out above the assessment of lack of documentation failed to take account of the evidence and therefore a flawed assessment was undertaken. There was no reasoning either why it was not reasonable to return to the IKR due to the involvement in the incident at the checkpoint. Whilst I am satisfied that findings of fact made at paragraphs 13 – 17 were open to the judge to make, there was no assessment as to whether the appellant could relocate to another area either in the IKR or another part of Iraq. Neither paragraph 21 nor 22 gives any reasoning.

72. Whilst Ms Brakaj submits that there was evidence of continuing threats, no findings are made by the judge concerning the appellant's claim of events following the shooting. Even if it was accepted on the basis that the judge had a positive view of his credibility and that he would be at risk in his home area, there was no assessment made of whether that risk would make any return to another area of the IKR or any other part of Iraq unduly harsh by reference to the appellant's evidence or in the light of any objective evidence. Nor was there any assessment made of whether the men had the means or intention to locate him wherever he lived in Iraq. Ms Brakaj made reference to the evidence in the appellant's witness statement about his aunt and messages on social media. However, as Mr Diwnycz submits, there is a tenuous link with that evidence and there are no factual findings or assessment made of that issue all of which were relevant to the issue of relocation and the issue of documentation.

73. In my judgement there are errors of law which are material to the outcome. It is not possible for me to remake the decision on the basis of the factual findings of the FtTJ as the assessment made by the judge did not assess the full factual account and there are gaps in the evidence which are relevant to risk on return which also need to be seen in the light of the CG decision and the objective material.

74. For those reasons I am satisfied that the decision of the FtTJ demonstrates the making of a material error of law and I set aside the decision. As set out above the findings of the FtTJ at paragraphs 13 – 17 are not in error. The FTT J's assessment of the ability to obtain documents is in error and the finding made at [21] cannot stand. There was clear evidence before the Tribunal that the appellant's family had his CSID card and that they were in contact with him. The FtTJ did not properly assess the issue of documentation in accordance with that evidence and thus did not properly consider the CG decision. This led to the FtTJ confusing the issue of documentation risk on return and whether he could relocate to a different area of the IKR or in Iraq. No factual findings were made as to any risk outside of his home area. It will be necessary for the appellant to give evidence on those remaining issues and for further findings of fact to be made.

75. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have

given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

> "[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
>
> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

76. I have considered this question in the light of the practice statement recited above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk in the light of the relevant law and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. The Tribunal will be seized of the task of undertaking an assessment of the evidence and any updated evidence (whether subjective or objective evidence).

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision shall be set aside save that the findings at paragraphs 14 – 17 shall be preserved findings and also the appellant's evidence of the location of his CSID and ID documentation. The appeal shall be remitted to the FtT.

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. 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 *Upper Tribunal Judge Reeds*
Dated 3 October 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email