Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06488/2019

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 12 February 2020	**On 9 March 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

S M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C. Boyle, instructed on behalf of the Appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to 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.

2. The Appellant with permission, appeals against the decision of the First-tier Tribunal (Judge Fisher) (hereinafter referred to as the "FtTJ") who, in a determination promulgated on the 1st April 2019, dismissed his claim for protection. Permission to appeal that decision was sought and granted and on the 1 October 2019 by FtTJ Swaney.

The background:

3. The Appellant is a national of Iraq. He arrived in the United Kingdom and claimed asylum on 7 March 2008. His application was refused on 8 July 2010 and an appeal against that decision was dismissed following a hearing before a judge on 23 August 2010.

4. The basis of his claim was that he was born in Kirkuk where he lived with his parents and brother. The appellant is Kurdish but speaks both Kurdish Sorani and Arabic. He attended 3 to 4 years of primary school for helping in the family grocery shop.

5. The appellant claimed that his father was a member of the Baath party and that he had cooperated with the former regime having joined the party in 1986. It was stated that his work involved acting against Kurdish citizens. The appellant claimed that after the collapse of the regime, his father disappeared, and he did not see him for six months.

6. The appellant first had problems in 2006 and a threatening letter was thrown into the yard of the family home addressed to the appellant's father. It was stated that five or six threatening letters were received, and nothing was on the letters to say who they were from but the appellant thought they were from Kurds as they were written Kurdish, apart from one or two letters in Arabic. The appellant also refers to further letters in 2006, 2007/2008. The appellant stated he was beaten up by other Kurds and that this happened three or four times from October 2007 to the beginning of 2008.

7. The appellant claimed that his father and brother were shot in February 2008 and both had died. The appellant was taken to the Turkish border and was then informed that his father had died.

8. The appellant left Iraq on the 25th February 2008 and arrived in the UK on 7 March 2008.

9. The appeal was heard by FtTJ Balloch. In a decision promulgated in September 2010, the FtTJ dismissed his appeal. The judge did not find that the appellant had demonstrated even to the lower standard of proof that his father was involved with the Baath party and that as a result the family had received threats or that the appellant's father and brother were killed in the way that the appellant had claimed. The judge made reference at paragraphs 75 to the vagueness in his evidence regarding his father's activities but that even if it had been the case that his father did have some involvement with the Baath party, the judge did not find it reasonably likely that the appellant and his family had only started suffering as a result of this in 2006 - a period of three years after the fall of the regime. Furthermore, the judge did

not find it reasonably likely that of the appellant's family members if at a real risk from the threats that they would not have sought protection or at least have attempted to move away from the area. Nor did the judge find it reasonably likely to be true that if a person seriously wanted to harm the appellant and his family that they would have sent threats over a period of two years before actually carrying out the threats.

10. At paragraphs 80 – 82 the judge found that the appellant had been "quite vague" regarding the threatening letters, he did not know the letters came from and had not provided them though he stated he did have three of them. Nor had he provided his father's death certificate which he stated had been destroyed in a fire in March 2010. However the judge found that the appellant had not provided any reasonable explanation as to why, if he had the letters and his father's death certificate and they supported his claim, he had not previously provided them when he made his claim for asylum in March 2008.

11. On the factual findings, the judge concluded that the appellant was not at risk in his home area but even if the appellant had established that he would be, there was a viable option of relocation to the KRG.

12. The judge therefore dismissed his claim. By 10 January 2011 he had exhausted his appeal rights.

13. Following that decision further submissions were lodged on behalf of the appellant in October 2014 which were refused an application for settlement protection made on 11 January 2018 was also refused on 23 May 2018.

14. Further submissions were made on his behalf on the 14 May 2019. The respondent treated them as a fresh claim but refused those submissions in a decision letter dated 18 June 2019.

15. In the decision letter the respondent took into account further representations made on behalf of the appellant including the updated CG, and two articles relating to the position of Kirkuk (set out at paragraph 7 of the decision letter).

16. At paragraphs 9 – 17 the respondent applied the principles in Devaseelan and set out the findings of fact made by the earlier Tribunal judge and that the judge had found that the appellant's father was not a member of the Baath party or that the family had ever received threats.

17. The respondent set out the basis of the appellant's claim which was that he was unable to return to Iraq due to the country situation and that the situation in Kirkuk was still a "contested one" and it would be unduly harsh for him to internally relocate to the IKR as he did not have any identity documents and have no contact with his family.

18. Reference was made to the country materials and the CPIN dated November 2018 and consideration was also given to the country guidance decisions in AA (Article15

(c) Iraq CG [2015] KUT 544 and AAH (Iraqi Kurds-internal relocation) CG [2018] UKUT 0212. The respondent concluded from the country information that the situation in Kirkuk had changed and that whilst it was accepted that Iraq still had internal conflict that had resulted in civilian death, the level of indiscriminate violence was not high enough to engage article 15 (c).

19. At paragraphs 31 onwards consideration was given to documentation and feasibility of return in the light of his claim that he was unable to internally relocate to the IKR as he had no identity documents and had no contact with his family.

20. The respondent made reference to the CPIN : internal relocation, civil documentation returns February 2019; and that it demonstrated he was able to internally relocate to the IKR and that he would be able to travel from Baghdad to the IKR without suffering a real risk of persecution. It was noted that the appellant had not provided any reliable evidence to demonstrate that he did not have any documentation.

21. At paragraph 33, applying the CPIN dated February 2019 it was considered that there were multiple avenues through which he could get re-documented and he had not provided any substantial evidence that he was unable to obtain documentation. It was noted that during his appeal the judge determined that he was still in contact with his family in Iraq and he had not provided any independent evidence to demonstrate that he was unable to obtain identification all that he was no longer in contact with his family.

22. As to the appellant's claim that he not lived in Iraq for over 11 years and because he had no contact with his family had been unable to rely upon the financial help upon arrival in the IKR, the respondent applied the CPIN November 2018 and in the light of the country guidance case of AAH and concluded that whilst it was accepted that assistance of those without family would be limited in the IKR, it would be considered that his return would not be unduly harsh as he had family in the IKR and that he had not demonstrated that he had lost contact with his family.

23. As to his personal circumstances, it was noted that he was a healthy young male with no known medical conditions, having been educated in Iraq and having employment history in a grocery store. There was no evidence of his claim that he had no family in Iraq, and it was considered that he had a support network that he could access on return.

The appeal before the First-tier Tribunal:

24. The appellant lodged grounds of appeal against that decision. The appeal against that decision came before the FtTJ (Judge Fisher) on 15 August 2019 and in the decision promulgated on 29th August 2019 his appeal was dismissed.

25. The FtTJ set out his findings of fact at paragraphs 14-23 They can be summarised as follows:

(a) He took as his starting point the findings of fact made by FtTJ Balloch applying the guidance in Devaseelan. At paragraph 16 he recorded that Judge Balloch had not found the appellant's account to be credible and had not been satisfied that his father was involved with the Baath party, that the family were threatened or that his father and brother had been killed. The judge observed that the appellant had not adduced any new evidence before the tribunal concerning that aspect of his case and therefore the judge treated those findings as settled. However, he recorded the following "for the avoidance of any doubt, I do not accept that the appellant's father and brother are dead. This conclusion is of significance when I go on to consider the issue of redocumentation."

(b) At paragraphs 17 – 18 the judge considered the issue of return to Iraq. He began that assessment by referring to the CG decision in AA (article 15(c) Iraq [2015] UKUT 00544 and the areas which the decision had referred to as "contested areas" which included Kirkuk. He also referred to the decision in TM, KM and LZ (Zimbabwe) which concerned the issue of country guidance cases. At [18] then addressed the submission made on behalf of the appellant that Kirkuk remained a contested area and that there were no "good grounds" to depart from the country guidance in AA (Iraq). Having considered the country materials and the decision in R (on the application of Amin) v SSHD [2017] EWHC 2417, he reached the conclusion that there had been significant changes since the promulgation of AA (Iraq) and that there was good reason to depart from that country guidance. As Kirkuk was no longer a contested area, he found that there was nothing to suggest that the appellant could not obtain a CSID from the Kirkuk civil affairs office.

(c) At [19] the FtTJ referred to the decision in AAH (Iraqi Kurds -internal relocation) Iraq CG UKUT 00212 (IAC) and the submission made on behalf of the appellant that the appellant could not relocate in view of the lack of documentation and that the judge should attach weight to the evidence of attempts he had made to replace them.

(d) At [20] the FtTJ considered the evidence advanced on behalf of the appellant that he had attended the consulate in Manchester. The FtTJ stated that it was not surprising that his visit to the embassy was not fruitful as he had arrived unannounced and that the "business card and the pictures outside the consulate did not advance his case to any meaningful extent". He went on to find that there was no satisfactory evidence that the appellant had reported the loss of his passport and ID documents at the fire at this home nor that there was even such a fire. He concluded that he could not be satisfied that the appellant was not in possession of his passport and his ID documentation. In the alternative, he found that on the basis that his father and brother had not died, he had male family members who could assist him in terms of redocumentation as he was not persuaded that he had lost contact with his family relatives.

(e) At [21-22] he concluded that there was no sponsorship requirement for Kurds and the IKR and so they would normally be permitted to enter after security

screening and registering their presence with the local Mokhtar. In AAH the tribunal said that whether a returnee was at risk during the screening process was fact sensitive, but that coming from a family associated with ISIS, from Isis territory and being a single male of fighting age may increase the risk. The judge concluded that the appellant did not have any ISIS affiliation within his family and would be able to show from the UK documents that he arrived from there and would therefore not be returning from ISIS territory immediately.

(f) The judge found that the appellant would have support from his family if he wished to relocate to the IKR as he had shown himself to be resourceful in travelling to the UK and being able to find support. Whilst the submission was made that he had no relevant skills in the employment market, the judge found that his evidence was that he worked in the family's grocery business so he would in fact have experience of employment. He concluded that he was not satisfied that it would be unreasonable for the appellant to relocate, although his principal finding was that the appellant could return to his family in Kirkuk.

(g) He recorded at [23] the submissions made by the advocate representing the appellant that the Article 3 claim would stand or fall with the Article 15 (c) argument and recorded that no separate Article 8 issues were raised

(h) He therefore dismissed the appeal on all grounds.

<u>The appeal before the Upper Tribunal:</u>

26. The appeal was therefore listed before the Upper Tribunal. Mr Boyle, who did not appear before the FtTJ, appeared on behalf of the appellant and Ms Petterson, senior presenting officer, appeared on behalf of the respondent.

27. Mr Boyle relied upon the written grounds in which it was asserted that the FtTJ erred in law in his assessment of the humanitarian protection claim in respect of Kirkuk and that it was fundamentally flawed. Firstly, it is said that the test of "strong and cogent evidence" had not been met and secondly, it is asserted that the judge failed to have proper regard to the objective material (see paragraph 4 of the grounds).

28. At paragraph 5 of the grounds, a general reference was made to "objective material "which was said did not demonstrate that the area of Kirkuk was "very secure" which is what the judge had stated and therefore did not justify departure from the country guidance caselaw. By making that statement, the judge had taken the term out of context and in isolation. That term "very secure" was in respect of the current Isis control and not an overview of the position within the province of Kirkuk itself.

29. Reference was made to an extract from the CPIN November 2018. In particular, he referred to paragraph 2.3.6 which stated that 80% of those in humanitarian need are in Ninewah, Kirkuk and Anbar (46% are in Ninewah alone) and 2.3.8 that food, employment and medical care are the top three humanitarian needs in nearly all governorates. He also referred the Tribunal to the EASO report extract which referred to the position of Kirkuk and the extract that was copied into the written

grounds which made reference to ISIL no longer controlling a territory in the Kirkuk governorate but retained pockets of fighters especially in Hawija and the Hamerrin mountains.

30. Mr Boyle did not refer the Tribunal to any other parts of the report save that his general submission was that "severe conditions existed in Kirkuk".

31. Ms Petterson on behalf of the respondent submitted that there was no error of law in the FtTJ's decision. She submitted that the grounds took issue with the security situation but that failed to take account of the information in the EASO report at pages 80 – 81 which made reference to the overall drop in the average number of attacks in Kirkuk by the third quarter of the year and that ISIL no longer controlled any territory in the Kirkuk Governorate but that there were pockets of fighters in Hawija and the Hammrin mountains. She referred to the evidence at page 80 that the level of security incidents the level of violence was still relatively high although the situation was improving.

32. She submitted at [17) the FtTJ referred to the decision in R (Amin) which considered the CG decision in the context of the changes in Kirkuk. Whilst it was a decision of the administrative court, the FtTJ was entitled to take into account that decision in assessing whether to depart from the CG in AA(Iraq).

33. She further submitted that the FtTJ had regard to all the material before him and that he was not required to rehearse every single matter and set out all of the material he placed weight on. At [19] he referred to the material relied upon by the appellant which included the EASO report and considered it also in the light of the CPIN. Thus, she submitted, the FtTJ was entitled to place weight on that material and to reach the conclusion that he did.

34. The first issue to resolve relates to whether the FtTJ was entitled to depart from the country guidance set out in AA (Article15(c)) Iraq CG [2015] UKUT 544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, which confirmed that there was a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL, which included Kirkuk.

35. There is no dispute as to the applicable law. The test to be applied when considering whether to depart from country guidance is set out in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 Lord Justice Stanley Burnton said this:

> 45. There are simply not the resources for a detailed and reliable determination of conditions in foreign countries to be made on an individual basis on each decision on the application or appeal of persons seeking protection. There are far too many such cases, as is demonstrated by the Secretary of State's use of charter flights to accommodate the large numbers of returnees to countries such as Afghanistan and Iraq. Neither those representing those seeking

> protections nor the Secretary of State herself have the resources for the detailed, lengthy and costly investigation of conditions on return that is appropriate, given the potential risk to the returnees, in every case. Even if the resources were available, it would be wasteful to have such an investigation, involving much the same evidence, in every case. There would also be a risk of inconsistent decisions, a consideration that is particularly important in the present context since it follows from a decision that one person requires protection, if correct, that a person in the same situation who has been returned may have risked or suffered ill treatment or worse.
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> 46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
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> 47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so.

36. The Upper Tribunal elaborated upon this test in the subsequent decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) [at Â§72]: [We] recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable.

37. Having carefully consider the competing submissions of the advocates in the light of the material before the FtTJ and his decision, I am satisfied that the FtTJ did not fall into error as asserted in the grounds.

38. As set out earlier he undertook that assessment at paragraphs 17 – 18 of his decision. He began that assessment by quoting the decision in AA(Iraq) [2015] and reminding himself that that decision did refer to Kirkuk as a "contested area". He then went on to set out correct test to apply in deciding whether there was sufficient material upon which he could rely to depart from that guidance and properly directed himself to that at [17].

39. In that assessment he took account of the competing submissions made on behalf of the appellant and the respondent (see paragraph 18). He referred to the EASO report at page 76 in the appellant's bundle and referred to page 80 of that report where it acknowledged that ISIS no longer controlled any territory in the Kirkuk governorate. The FtTJ also acknowledged that incidents did continue to occur although as the report stated, the situation was improving. The FtTJ considered the background material relied upon which included the material sent to the respondent to support

his fresh claim. The FtTJ cited the Diyaruna article dated 26 April 2019 at paragraph 18 which referred to the Iraqi forces having launched a military operation to clear a remote area in southern Kirkuk province. The judge quoted the police command media director who was quoted as saying that the province had become "very secure as a result of coordinated operations between all military units and security and intelligence services." Whilst Mr Boyle sought to argue that that was taken out of context, from reading the material, it demonstrates that this was an article relating to ongoing operations targeting ISIS remnants in Kirkuk. The judge was not saying that Kirkuk itself had become "very secure" but was quoting what the Kirkuk police command director had stated.

40. I do not consider that there was any error in his approach by making reference to the decision of the High Court in R (on the application of Amin) v SSHD 2017 EWHC 2417 which had made reference to the material relied upon by the respondent to justify a departure from the country guidance decision. In that decision, Sir Ross Cranston had found that Kirkuk was no longer a contested area, and that although there are apparently still dangers there, that is nothing like the position as when AA was decided. There is no error of law in taking into account this decision and it was not the case that the FtTJ did so in isolation from the other evidence that was before him.

41. I have set out earlier the relevant test and accept the submission made by Mr Boyle that cogent reasons must be given. However, in my judgment the FtTJ considered whether there was fresh evidence to justify such a departure which consisted not only of the CPIN which was set out in the decision letter which could accurately be described as drawing on multiple sources of background material which provided a conclusion that Kirkuk was no longer afflicted by high levels of violence such as to make return there a general risk contrary to article 15 (c) of the QD. The CPIN set out that ISIS was no longer in control and that there were only sporadic incidents of violence. The material set out in the grounds and referred to by Mr Boyle (see paragrphs 2.3.6 and 2.3.8 refers to humanitarian need but this needs to be viewed in the context of all the evidence.

42. In KK (Sri Lanka) [2019] EWCA Civ 172, that a judge had not erred in her approach when concluding that new evidence, including a Country Information and Guidance report, justified a departure from an earlier country guidance case when assessing the risks of returning an asylum seeker to Sri Lanka. The Court of Appeal confirmed that the Judge was not required to go through each section of the report in her determination, or to set out a list of positive and negative factors from it.

43. Consequently, I have reached the conclusion that it was open to the FtTJ to conclude that Kirkuk was no longer a contested area. There is no error in that approach.

44. It is further submitted on behalf of the appellant that the FtTJ failed to adequately consider the appellant's position in respect of replacement identity documentation. In this context it is submitted by Mr Boyle that the FtTJ did not give adequate

consideration to the appellant's attendance at the Iraqi consulate. In his oral submissions he argued that there was evidence in the decision of AAH at paragraph 27 that the embassy staff are unhelpful and obstructive.

45. He further submitted that at paragraph 20 the FtTJ stated that he could not be satisfied that he was not in possession of the passport or ID documents. It is asserted that he had failed to provide adequate reasoning and that this was not a finding.

46. I have considered that those submissions in the light of the evidence. As to the appellant's attendance at the embassy, his witness statement at paragraph 6 (page 4) simply stated that he went the embassy and explained he needed his Iraqi documents to be reissued and that they would not do that for him. The evidence in support of that claim was a business card and a photograph of him outside of the embassy.

47. I accept the submission made in behalf of the respondent that this is not evidence that he had been rejected but simply demonstrates that he went to the embassy. In my judgment it was open to the FtTJ to reach the conclusion that the business card and picture consequently did not advance his case to any meaningful extent. It was not evidence as to the nature of the conversation that took place nor was it known what information he had provided to the embassy staff. Whilst Mr Boyle has submitted that the decision AAH refers to the staff being unhelpful and obstructive, that paragraph does refer to them being unhelpful (not obstructive)but that does not necessarily mean that in the context of this appellant's claim that it was made out in his case.

48. As to the issue of documents, I am satisfied that it was open to the FtTJ to find that he was not satisfied that the appellant had no passport or ID documentation. Contrary to the submissions made by Mr Boyle, the FtTJ did have an evidential foundation for that conclusion. The FtTJ had previously referred to the decision of Judge Balloch who had rejected the appellant's factual account in its entirety. Judge Balloch found that the appellant had not provided a reasonable explanation as to why he had not provided certain documents to the respondent which he claimed to have had prior to the alleged fire in March 2010. Consequently, the judge did not accept that he had been truthful in his evidence concerning important documentation. Against that background, in my judgment it was open to the FtTJ to reach the conclusion that there had been no evidence, either at the time of the decision of the judge in 2010 or subsequently, that he had reported the loss of his passport or ID documents in the fire or provided any evidence that there was in fact a fire. As they were documents of importance, the judge was entitled to find that the lack of evidence in reporting their loss was not credible.

49. The last ground advanced on behalf of the appellant is that the FtTJ failed to apply the CG in AAH (Iraq) when considering the issue of internal relocation to the IKR.

50. Mr Boyle relied upon the grounds in which it was asserted that the FtTJ at paragraph 21 – 22 was in error by stating that he did not come from a family with ISIS affiliation and that he had experience of employment with the family's grocery business. The submission was that he had misapplied the country guidance as this actually referred to the individual originating from a place previously held by Isis rather than the family and that this was relevant to the appellant had no special employment skills.

51. In his oral submissions he expanded on that ground and submitted that the FtTJ had not considered how the appellant could obtain a CSID and that he would need to obtain one and as he was unable to travel he would not be able to secure a CSID and would therefore be at risk.

52. I am satisfied that there is no error in the FtTJ's assessment of the appellant's ability to relocate to the IKR. The FtTJ expressly consider the submission made on behalf the appellant that he could not relocate in view of his lack of documentation (see paragraph 19). However as set out above, it was open to the FtTJ to reject the evidence that he had lost his identity documents including his passport in light of the general lack of credibility found by Judge Balloch and also before himself concerning events both in Iraq and in the UK.

53. At paragraph 20 the judge considered the issue in the alternative and that even if he was not in possession of the documents, he had remaining family in Iraq who were male family members who would be able to assist him in this regard. The judge plainly rejected that either of those family members were dead or that he had lost contact with them.

54. In the light of those factual findings, the judge went on to consider whether it would be unduly harsh for the appellant to relocate. The judge considered that the appellant would be able to obtain a CSID within a reasonable timeframe if in Iraq because he was not satisfied that it lost contact with his male family relatives and that they would be able to assist him in obtaining documentation in the event that he did not have his original passport and ID documents. Looking at *AAH*, the guidance states that:

> 1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
>
> *i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*
>
> ii) *The location of the relevant civil registry office. If it is in an area held or formerly held, by ISIL, is it operational?*

iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.*

55. As to the possibility of relocation to the IKR, the Country Guidance then applicable and before the FtTJ stated as follows:

" E. IRAQI KURDISH REGION

17. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

18. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

19. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

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

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

22. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

23. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

24. For those without the assistance of family in the IKR the accommodation options are limited:

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

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

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

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

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

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

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

(iii) P cannot work without a CSID;

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

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

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

56. I find no error in the judge's assessment at paragraph 21 where the judge considered the particular risk of ill-treatment during the security screening process. The judge properly had regard to the fact that whether a returnee was at risk during the screening process was "fact sensitive" and properly had regard to 1 of the factors which was coming from a family associated with ISIS. Contrary to the submission made that was one of the relevant factors and as the FtTJ found, he does not have an Isis affiliation within his family. As to the second part which relates to coming from ISIS territory, the FtTJ dealt with that at paragraph 21 by stating that he would be able to show from his UK documents that he arrived from the UK and therefore not immediately from ISIS territory. There is no error of law in that approach.

57. The judge went on to consider how he would support himself in the IKR in accordance with the country guidance decision. At paragraph 22 he was satisfied that the appellant would have support from his family if he relocated. In addition to that he took into account that the appellant had skills upon which he could draw which included that he had been resourceful in travelling to the UK and was able to find support. The judge took into account the submission made on his behalf that he had no relevant skills and the employment market but the judge was entitled to take into account that he had experience of employment in Iraq by working in the family's grocery business. The country guidance case also states that account must be taken of the fact that he would be able to apply for a grant to assist in establishing himself.

58. Having considered the submissions as set out above, I am satisfied that there is no error of law in the FtTJ's decision that was material to the outcome. Whilst I have reached the conclusion that it was open to the FtTJ to depart from the country guidance, in the event that I am wrong in that conclusion, I am satisfied that the FtTJ gave adequate and sustainable reasons by reference to the applicable CG decision of AAH that it would not be unduly harsh for him to relocate to the IKR in the light of his personal circumstances. On that basis there is no material error of law in the overall decision reached.

59. In my judgment the assessment made was one reasonably open to the FtTJ on the evidence, both oral and documentary, and I am not satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law. The decision to dismiss the appeal shall stand.

Notice of Decision

60. The decision of the FtTJ did not involve the making of an error on a point of law; the appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 3/3/2020

Upper Tribunal Judge Reeds