



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02059/2019

THE IMMIGRATION ACTS

Heard at Field House
On 12 January 2021

Decision & Reasons Promulgated
On 18 February 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

Q M A (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paul Draycott, Counsel instructed by Sutovic & Hartigan solicitors

For the Respondent: Ms Ana Cunha, a Senior Home Office Presenting Officer

Anonymity

The First-tier Tribunal made an anonymity order. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies, amongst others, to all parties.

Any failure to comply with this order could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals against the respondent's decision on 21 February 2019 to refuse his international protection and human rights claims and to refuse to revoke the deportation order made against him on 15 June 2016.
2. The appellant is a foreign criminal, by reason of a conviction for drug dealing on 30 September 2015 which attracted a prison sentence of 15 months, triggering the automatic deportation provisions of section 32 of the UK Borders Act 2007, and section 117C of the Nationality, Immigration and Asylum Act 2002 (as amended).
3. The appellant is a citizen of Iraq, a Sunni Muslim of Kurdish ethnicity, from Kirkuk. He arrived in the United Kingdom in 2004, leaving his mother and sister in Tikrit, and travelling alone through a number of countries en route. The appellant's parents are dead: his father died in Iraq when he was 9 years old, and his mother in December 2012, while the appellant was still in immigration detention following a robbery conviction which was subsequently overturned on appeal.
4. The appellant learned of his mother's death in January 2013. He has a married sister who still lives in Tikrit. He says he is estranged from her and that she has not called him for a couple of years. His sister and her husband considered that the appellant's imprisonment, and his drug use, were un-Islamic and brought shame on the family. On the appellant's account, and that of his friend LE, they both cut ties with him when they learned of his criminality, some time in 2017.

Vulnerable witness

5. The appellant has serious mental health problems (depression with psychotic features) and has made several suicide attempts over the period beginning with his first detention in 2011, and which his friend LE recorded as continuing up to the summer of 2020, when LE made his most recent statement.
6. The Tribunal has before it psychiatric evidence from Professor Cornelius LE Katona MD FRCPsych, instructed by the appellant's solicitors and from Dr T S Ananthanarayanan MBBS, FRCPsych, DPM (Lond), DPM (RCSI), instructed by the respondent. Each of them gave a separate opinion but there is also a joint opinion following a meeting between the experts on 19 November 2019, which is summarised in Appendix 1 to this decision. Both experts examined the appellant at the end of 2019 and both were satisfied that the appellant had active suicidal ideation and presented a high risk of completed suicide either during the process of return to Iraq, or following soon after his return.
7. The experts' joint opinion included a statement that the appellant should not be asked to testify in the Tribunal proceedings. The effect of that is that the appellant's credibility must be assessed solely by reference to his written

accounts and any corroborative material, whether personal or country evidence.

8. The appellant is a vulnerable witness and has the benefit of the Joint Presidential Guidance Note 2 of 2010 entitled *Child, Vulnerable Adult and Sensitive Appellant Guidance*. The respondent has in the past arranged for service of her decisions by the appellant's solicitors, rather than directly. In these proceedings, the only adjustment which has been requested is that the appellant does not attend hearings or give oral evidence.

Mode of hearing

9. The appeal was heard remotely by Skype for Business with the consent of both parties. A face to face hearing was not held because it was not practicable and no-one requested a face to face hearing. I was satisfied that all issues could properly be determined in a remote hearing, particularly as no oral evidence has been called.
10. There were technical issues during the hearing: Ms Cunha, who appeared for the respondent, had a weak broadband signal: she explained that she was sharing the broadband with her housemate, who was a teacher and was teaching in another room. The difficulties resulted in Ms Cunha's screen freezing from time to time, and sometimes her voice breaking up, but at the end of the hearing, neither party indicated that their participation in the hearing had been seriously affected.
11. I am satisfied that the hearing was completed fairly, with the cooperation of both Counsel.

Documents before the Tribunal

12. The appellant relies on the evidence before the First-tier Judge, the expert psychiatric evidence of Professor Katona and Dr Ananthanarayanan, his witness statements and LE's evidence, and the respondent's May 2019 CPIN *Iraq: medical and healthcare issues*, and on two bundles of documents, a supplementary bundle running to 159 pages, and an additional bundle dealing with the availability of crystal meth in Iraq and the attitude of the Pakistani authorities to drug use.
13. The most recent witness statement from the appellant is dated 29 October 2018 and has never been tested in cross-examination. He is not fit to testify now, as both the psychiatric experts agreed, having interviewed him separately in 2019 and discussed their evidence together.

Procedural history

14. The appellant was born in Iraq on 1 March 1985, and is a Kurd from Kirkuk. He came to the United Kingdom in 2004, when he was 19 years old, arriving

clandestinely by lorry, after a long journey via Iran, Turkey, Bulgaria, Greece, Italy and France. The appellant claimed international protection on arrival. The respondent refused him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.

15. The appellant exercised his right of appeal to the First-tier Tribunal.

2005: First-tier Judge Suchak's decision

16. The appellant did not appear at the hearing on 14 January 2005. First-tier Judge Suchak dismissed his appeal. In the absence of the appellant, he did not consider him to be a credible witness. The appellant became appeal rights exhausted on that appeal on 21 February 2005.
17. In 2007, the appellant travelled to France, where he was stopped by the police and returned to the United Kingdom on 13 November 2007. He made a further asylum claim.
18. On 11 February 2010, the appellant was granted indefinite leave to remain as part of the legacy exercise.

2011-2013: Robbery conviction

19. On 13 April 2011, the appellant was convicted of robbery at Peterborough Crown Court and sentenced to 3 years' imprisonment. While in prison, his mental health deteriorated. Unfortunately, before the conviction was quashed, the appellant had served his sentence and also some time in immigration detention. His first recorded suicide attempts were during this period.
20. While in immigration detention, the appellant stopped eating for up to a week, on several occasions. In HMP Norwich, he hanged himself to the point of unconsciousness, and was shocked back to life with electric pads. He tried to hang himself, or to take an overdose of his pills, more often than he can now remember. Following a hearing at Taylor House when bail was refused, the appellant tried to hang himself with a cord over the lavatory door, in the bathroom there. He had brought the cord with him from the detention centre. He was saved by the security guards.
21. The respondent made a deportation order on 8 January 2013. The appellant appealed successfully against that deportation order: the respondent reconsidered his case and made a second deportation order on 29 August 2013.

2015: First-tier Judge Landes' decision

22. On 19 January 2015, the appellant's challenge to the August 2013 deportation order was heard in the First-tier Tribunal. In her decision dismissing the appellant's appeal, First-tier Judge Landes noted that the appellant had not responded to correspondence from the First-tier Tribunal and did not attend

the hearing. She proceeded to determine the appeal in his absence, taking the decision in 2005 by First-tier Judge Suchak as her *Devaseelan* starting point.

23. Judge Landes treated the appellant as a 'foreign criminal', based on the 2011 robbery conviction: the appellant had been convicted and the sentence was more than 12 months, so that was correct at the date of hearing. As a person with a pending appeal against a criminal conviction, the respondent's policy was not to remove him until that appeal was concluded. The outcome of that appeal was not available when Judge Landes considered protection and human rights appeals.
24. Judge Landes approached her decision on the basis that the appellant was not a credible witness, relying on the decision of Judge Suchak. In the alternative, at [32], she did not consider, even taking the appellant's account at its highest and applying the lower standard of proof applicable in international protection claims, that the appellant would be of any adverse interest now to anyone in Iraq, or that he would face treatment contrary to Article 3 ECHR on return.
25. Judge Landes' decision was sent to the parties on 4 February 2015. In her decision, Judge Landes concluded as follows:

"55. Given that apart from the outstanding criminal appeal, I have found that there is no question of the appellant's removal being other than proportionate, I dismiss the appeal. I emphasise yet again that there is no question of the appellant actually being removed unless and until his criminal appeal is dismissed, and if it is, and *if at that time the appellant's circumstances have changed or the position in Iraq has changed, the respondent will be bound to consider representations about such circumstances before the appellant is removed.*"

[Emphasis added]

26. The appellant did not challenge the decision, so he became appeal rights exhausted thereon on 23 February 2015. On 5 February 2015, the appellant's appeal against the criminal conviction for robbery was allowed. The August 2013 deportation order was quashed.

2015: Drug-dealing conviction

27. On 30 September 2015, the appellant was convicted again at Peterborough Crown Court of possession with intent to supply, and being concerned in supplying, a Class B drug (cannabis). The appellant was sentenced to 15 months' imprisonment. Despite having cleared his name in relation to the 2011 robbery conviction, he was once again a foreign criminal from that date.
28. On 5 October 2015, the appellant applied for voluntary return to Iraq, knowing that he would be unable to cope with long term immigration detention. His evidence was that he planned to spend only one night in Baghdad, then go to Turkey and try to find somewhere that he and his partner and their child could

live together. The appellant was told to expect removal in 2-8 weeks from signing the papers, but by March 2016 he still had not been removed. When the appellant queried this, immigration officers explained that he could not be removed because of his pending appeal against the 2011 robbery conviction. The appellant withdrew his voluntary return application.

29. On 12 May 2016, the appellant was served with notice of decision to deport, and on 15 June 2016, the respondent again made a deportation order against him. That deportation order remains in force. Removal directions were set for 3 May 2017.
30. The applicant made two further submissions immediately before the proposed removal, relying in part on a 28 April 2017 Rule 35 report from Dr Arsiwala at the detention centre concerning previous torture. On 8 May 2017, his submissions were refused and removal directions maintained. The removal did not go ahead due to the appellant's disruptive behaviour on the plane. When returned to the detention centre, he was badly bruised.
31. On 2 July 2017, the appellant made another suicide attempt: he went to the second floor of the detention centre and jumped. He had been telling prison officers that he planned to kill himself. Fortunately, there was a net below and he sustained no lasting or serious injuries. On 17 July 2017, another detainee hit the appellant in the eye: the same day, the appellant was recorded as being 'upset' and threatening to bang his head on the wall.
32. From October 2017 to October 2018, the appellant was prescribed 150mg Amitriptyline daily. He stopped taking his prescribed anti-depressants in early 2019, following a disagreement with his GP, who wanted to change his medication. It is unclear whether he is still taking medication for his hypothyroidism.
33. Following a judicial review, by a consent order sealed in the Court of Appeal on 5 November 2018, the respondent agreed to reconsider her decision of 2 May 2017. She wrote to the appellant asking for evidence of attempts to locate his missing family in Iraq. Submissions were received.

2019: Decision under challenge

34. On 21 February 2019, the respondent made a further decision to refuse the appellant's claims for international protection and/or leave to remain on human rights grounds. The appellant appealed to the First-tier Tribunal. On 2 July 2019, First-tier Judge Ford dismissed the appellant's asylum appeal, but allowed his appeal on humanitarian protection and human rights grounds.
35. The appellant and the Secretary of State both appealed to the Upper Tribunal and on 11 October 2019, I set aside the decision of the First-tier Judge.

Remaking the decision

36. The appeal was adjourned to await expected country guidance on conditions in Iraq, now reported as *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400 (IAC). The appeal has been further delayed by reason of the Covid-19 pandemic. It came before me for hearing on 12 January 2021.
37. I take the unchallenged decision of First-tier Judge Landes in 2015 as my *Devaseelan* starting point, albeit with caution because of the absence of any oral evidence from the appellant, and the changes in his health and the circumstances on the ground in Iraq since then.
38. I take no account of the 2011 conviction, which was quashed, save to note the suicide attempts during that imprisonment and subsequent immigration detention. This seems to have been when the appellant's mental health began deteriorating. I accept that he experienced trauma while in prison on both occasions.

Appellant's account

39. The appellant's 29 October 2018 witness statement is his most recent account: it was prepared by solicitors and checked through an interpreter. The appellant referred to the Ba'ath Party connections of his late father and his paternal uncle, and to beatings from his uncle, which are supported by evidence of scarring on his back seen by Dr Arsiwala in the detention centre in April 2017 (see Rule 35 Report).
40. While in Iraq, the appellant would pass out from time to time, and was prescribed medication which he continued to take in the United Kingdom when he could, at least until 2018 or early 2019. He thought his blackouts were probably caused by epilepsy. There is no corroboration of that and no discussion whether the blackouts were related, for example, to his hypothyroidism, for which he has received medication while in the United Kingdom.
41. The appellant travelled alone to the United Kingdom, leaving his family in Tikrit, the home town of Saddam Hussein, where they had fled when Kirkuk was liberated. On arrival in the United Kingdom in 2005, he made his asylum claim and registered with a local GP: he was prescribed medication for his depression and hypothyroidism. In 2005-2006, the appellant had six or seven sessions with a therapist, which helped him. He was not sure why the facility was withdrawn: it had been provided through his GP. Following the failure of his first asylum appeal in 2006, the appellant lost his NASS accommodation and was homeless and destitute. He went to live with people he knew in Peterborough.
42. The appellant has had two unsuccessful relationships while in the United Kingdom. In early 2008, less than a month after his return from France, he met

a Polish woman and went through an Islamic Marriage with her. They began living together but in 2011, when he was imprisoned on the robbery charge, the broke down and his partner returned to Poland. When the appellant's sentence was complete, he remained in immigration detention and was not released.

43. While in immigration detention, the appellant tried to kill himself on more than one occasion. He tried to hang himself, or to take an overdose of his pills, more often than he can now remember. He stopped eating for up to a week, on several occasions. In HMP Norwich, he hanged himself to the point of unconsciousness, and was shocked back to life with electric pads. On another occasion, following a hearing at Taylor House when bail was refused, the appellant tried to hang himself with a cord over the lavatory door, in the bathroom there. He had brought the cord with him from the detention centre. He was saved by the security guards.
44. In November 2014, while staying with a friend in Peterborough, the appellant met a Lithuanian woman who was a neighbour. What was initially a casual relationship became serious when she became pregnant with their child. The appellant wanted to support and care for her, and they moved in together. The appellant was not working, so in January 2015, he began to deal cannabis to get money for his partner and their home together. On the appellant's account, he was caught almost immediately.
45. The baby was born in July 2015, but on 30 September 2015, following his conviction on the drugs charges, the appellant was imprisoned again. He did not try to commit suicide this time, but he did refuse food. His friends supported his partner, and she visited every week when the appellant was in HMP Peterborough. However, when the appellant was moved to HMP Maidstone, it became more difficult for his partner to visit and he suggested she come once a month, with the help of friends who brought her there.
46. On 29 June 2016, the appellant was released and went to live with his partner and daughter, at her sister's home, reporting regularly as required by the respondent. His partner was working in a factory in Peterborough, and the appellant was the main carer for his daughter, who was now nearly 2 years old.
47. In January 2017, the appellant discovered that his Lithuanian partner been unfaithful to him. There was a row, and the couple split up. The appellant moved out, but continued seeing his daughter every day and sometimes having her to stay overnight. In early March 2017, the appellant told the respondent of his change in circumstances, and about a week later, on 27 March 2017, the appellant was detained with a view to removal, and transferred to the Oxford detention centre.
48. There was some initial difficulty in the appellant getting his medication in detention but eventually the detention centre contacted his general medical

practitioner for his prescription details. While detained without his tablets, the appellant was not very well at all, upset and angry. He needed his medication.

49. On 5 April 2017, officials from the Iraqi Embassy came and interviewed the appellant. They only asked for his name, his date of birth and his city. On 26 April 2017, the appellant was given a ticket back to Baghdad and presumably, though he does not say so, a laissez passer.
50. The appellant was unwilling to go: he had to be tied up, handcuffed and carried to the plane, where he made such a fuss that he was returned to the detention centre. His legs and arms were badly bruised. The appellant was very upset when he returned to the detention centre, shouting and hitting his head on the wall. He made a complaint, supported by a medical examination, but nothing came of it. There was a further attempt to remove him, but the removal directions were cancelled. The appellant remained in detention and his suicidal impulses returned. He was looking for tablets to save up for an overdose, or other ways to end his life.
51. In either May or June 2017, the appellant's partner and child returned to Lithuania. He felt there was no reason to live. On 1 July 2017, he jumped from the second floor, hurting himself but refusing to see the doctor. He was moved between different detention centres: sometimes he could get his medication, sometimes not. Two days before his bail hearing, another detainee punched the appellant in the eye.
52. On 4 August 2017, the appellant was released. He went to live with LE. He also went to see his general medical practitioner and was re-prescribed the same medication, after an assessment. The appellant felt safer in the community, where he had a group of friends who were supportive, who would have him for dinner, and to stay over, and so on. They made sure that he was not left alone, as they were aware of his health issues. Whenever the appellant went to report, he was worried that he might be detained again.
53. The appellant's relationship with his partner and his access to his child remained difficult. His partner was not prepared to return to the United Kingdom unless they could be together. He had last seen his daughter in February 2018 and given his immigration status, he could not travel to Lithuania to see her as he would have wished. The appellant just wanted to be safe: he wanted to have status so that he could travel to Lithuania once or twice a year and see his daughter, and move on with his life.
54. The appellant's only family in Iraq were his sister and her husband, who lived in Tikrit with their two children. When they were still in contact, his sister told him that in both Kirkuk and Tikrit there was a lot of fighting and bombs, and conflict between Shi'a and Sunni Muslims. His sister and her family could not help him, nor did he think that he would get help in Iraq for his mental health

issues: lots of people killed themselves in Iraq, because there was no support or care for people there.

LE's evidence

55. The evidence of the appellant's deteriorating mental health over time is supported by three accounts from his friend, LE, whom he met in or about 2010. LE is a former soldier who served in Iraq during the war. He is now the National Business Manager for a home improvement company, managing over 30 branches. When he first met the appellant in 2010, the appellant needed no help and was in good form. He described the appellant as happy, content with his life, smiling, joking and laughing.
56. LE's first statement was dated 13 June 2019. In November 2019, he gave an account to Professor Katona, having driven the appellant to see Professor Katona in his car. Finally, he made another statement on 27 July 2020. LE was not able to attend the 12 January 2021 hearing, so his account could not be tested in cross-examination; I must give it such weight as it will bear, especially where it is corroborated by other evidence. LE knew the appellant before his mental health troubles began and has provided steady support to him for over a decade, including preventing a number of attempts by the appellant either to hang himself or to take an overdose.
57. The appellant was a changed man when he came out of prison in 2015. He would not hold his head up, talk to anyone, or look at anyone. If this was what life was, the appellant did not want to live. When the robbery conviction was quashed, the appellant wept. He could not be convinced that he now had the right to work again. Mr Elwood was then away from the United Kingdom for a couple of years, spending limited time here, but staying in touch regularly with the appellant. Most of the time, the only solution he saw was to kill himself: Mr Elwood tried to reassure him, to let him know that he was not alone and there were people who cared about him.
58. Mr Elwood said that the appellant had made many suicide attempts. Sometimes they had come to blows when Mr Elwood prevented the appellant from completing his suicide attempts. On one occasion, Mr Elwood found the appellant in a secluded part of a park, throwing a rope over a branch and trying to hang himself. Mr Elwood ran to the appellant and wrestled him to the ground. On another occasion, Mr Elwood found a large number of pills in the appellant's possession: his view was that the only good reason to have so many was that the appellant planned to kill himself with them.
59. The appellant was really paranoid about anything and everything: any noise or something he saw could set him off. Sometimes, he would run and hide, usually under bushes and trees in parks. It could take an hour to find him, or days, in which case they police had to be involved. The trigger was always the same: bad thoughts and memories about what happened in Iraq, and the appellant's belief that he would be killed if he returned there. The appellant

said he would rather kill himself in the United Kingdom than be killed in Iraq. It was very hard for him to believe that things could improve.

60. Mr Elwood had experience in Iraq and had seen what happened there. The brutality was 'like nothing you can imagine' and he had no doubt that the appellant was speaking the truth about his past experiences. His statement concluded:

"34. Over the years there have been so many incidents. I cannot detail every single event. This is a serious situation. If it is not taken seriously it will end with his death. I have known [him] for several years and I am truly fearful for him. There are days when I have left work because I have not heard from him, and I am panicking that he has done something stupid. It is like a fulltime job just to make sure he is ok. He needs his daughter just as much as she needs him. He needs to have hope and to feel safe. ...

61. LE lives in Peterborough, and when the appellant has not been in in prison, particularly since the breakdown of his relationship with his Lithuanian partner, the appellant lives with him and his family. LE is the appellant's close friend, giving him support at first, and later a place to live, food, clothing and pocket money. LE has his own past experience of suicidal ideation and attempts, following the breakdown of his marriage and his wife taking his child away. He recovered his own mental health with the help of family and friends.
62. The Elwood family were the appellant's surrogate family in the United Kingdom and cared deeply for him. Mr Elwood's mother and step-father helped to support the appellant: his step-father was a policeman, but also a hypnotist. He had tried to use hypnotism to help the appellant with negative thoughts. The step-father's opinion was that the appellant would not recover from his negative feelings for several years after getting leave to remain, if that happened. Nothing had gone right so far: the appellant's negative view of his life was unchanged.
63. The appellant was heartbroken by his Lithuanian partner leaving him and taking his daughter to Lithuania with her. The situation regarding the appellant's daughter was not good. Social services in Lithuania were involved and her maternal aunt in Peterborough was worried about the child. The aunt's opinion was that she would prefer the appellant to be bringing up her niece, because the child's mother was not taking proper care of her, was bringing people back to the house, and was not feeding the child. When the appellant had video calls with his daughter, she would cry and ask him to come and get her, as she was not getting any food. Her aunt did not think the situation in Lithuania was healthy for the daughter and Mr Elwood said that the appellant would be happy just to have the child with him.
64. The appellant's daughter remained in Lithuania, but they were able to speak more often, using the video call function of Messenger. Sometimes she called

the appellant, other times, he called her, and Mr Elwood said that you could see him light up like a completely different person during those calls. When the calls ended, the light went out and the appellant returned to his low mood and depression.

65. Mr Elwood confirmed that the link between the appellant and his sister had broken down two years earlier. The appellant always used to tell him when he had spoken to his sister: it was she who called him, not the other way round. The appellant's sister had been upset when she found out that the appellant had been in prison for drug-related offences: she felt he had not acted like a respectable Muslim. His brother-in-law had also fallen out with him. The appellant did not have his sister's phone number. She had not called for about two years now.
66. LE's accounts are internally consistent and show the appellant's declining mental health over time. They are consistent also with the psychiatric expert reports and I am satisfied that it is appropriate to treat his evidence as a credible account of the appellant's difficulties during the 10 years that LE has known him and, often, accommodated him at his home.

Psychiatric evidence

Dr Ananthanarayanan's 2019 report

67. Dr Ananthanarayanan, who examined the appellant in October 2019 on behalf of the respondent, noted that there was no record of any significant physical or mental health problems for the appellant before 2011, despite his negative experiences in Iraq. His mental health problems appeared to have begun in February 2011 and were clearly documented in Professor Katona's reports of 30 October 2018 and 6 December 2018. The appellant's first episode of deliberate self-harm came in October 2011, when he tried to hang himself. His friends prevented him. The appellant was prescribed Amitriptyline, an antidepressant, and Levothyroxine for hypothyroidism, diagnosed in detention.
68. Since October 2011, the appellant had frequent suicidal thoughts and acts of deliberate self-harm. In detention, he threatened to harm himself many times, if his needs were not met, and banged his head a few times or refused to eat. On 7 May 2013, being upset about the prospect of deportation, the appellant took an overdose and was seen by a psychiatrist, Dr Mohamed Lafir, who noted 'emotionally unstable personality traits'. From 2013 – 2016, the appellant was in variable mental health: there were no signs of mental disorder, but he became depressed, with thoughts of self-harm, and in 2013 he was treated with an antidepressant, Mirtazapine.
69. On 28 April 2017, while in detention, the appellant had told Dr Arsiwala that in 2015 he was shot while in the United Kingdom. On 4 September 2015, he had been referred to specialists for the removal of a shot gun pellet lodged in his right cheek, which gave him constant pain. He could not keep the

appointment, having been detained. A rule 35 report from Dr Arsiwala noted old scars on the appellant's back, and recorded the appellant's account that he had been beaten regularly by his uncle as a child and suffered mental health problems while in Iraq.

70. Following a failed attempt to remove him on 3 May 2017, the appellant had extensive bruises on both arms and the left leg, as recorded by Nurse Manager Babooram in the detention centre. On 2 July 2017, the appellant made another suicide attempt: Staff Nurse Masumpa recorded that he went to the second floor of the detention centre and jumped. Fortunately, there was a net below and he sustained no serious injuries. Before the attempt, the appellant had been telling the prison officers that he planned to kill himself. On 17 July 2017, another detainee hit the appellant in the eye: on the same day, Staff Nurse Akem recorded that the appellant was 'upset and threatening' to bang his head on the wall.
71. The appellant was prescribed Amitriptyline 150mg daily for depression from October 2017 to October 2018, after which he stopped taking it. It was unclear whether he continued to take medication for his hypothyroidism.

Professor Katona's 2019 report

72. Professor Katona examined the appellant in November 2019, and recorded his unchanged opinion that the appellant had suffered trauma in detention in 2017, which had caused 'a significant but relatively minor exacerbation of his overall mental distress'. Professor Katona noted that the appellant did not remember seeing him in 2018, nor could he say why he had been asked to come to see him now. The appellant said that Professor Katona could explain: it was 'up to [him]'. He did remember having seen another psychiatrist recently, presumably Dr Ananthanarayanan, whom he had seen in September 2019. The appellant's mental health had deteriorated considerably since Professor Katona saw him in 2018: he now exhibited 'severe depression and marked distress' and was not fit to testify.
73. His past history suggested that the appellant might have Borderline Personality Disorder (also known as Emotionally Unstable Personality Disorder) but without more information it was not possible to confirm that diagnosis. The diagnosis of Major Depressive Disorder was based on five main symptoms: very low mood, most of the time, poor appetite, disturbed sleep, difficulty concentrating, and past suicide attempts, together with 'an active wish to die and ...suicidal plans which he was unwilling to change'.
74. Professor Katona noted that the appellant was 'extremely dejected' throughout this second assessment. His eye contact was very poor. He was unkempt and unshaven, and smelled strongly of bad breath and stale tobacco, suggesting significant self-neglect. The appellant said, repeatedly, that he wanted the assessment over as soon as possible, but Professor Katona was able to engage

him ‘sufficiently to elicit a reasonably complete account from him of his recent experiences and his current situation’.

75. Professor Katona’s professional conclusion was that the appellant’s presentation ‘reflects real distress rather than feigning or wilful exaggeration’. In conclusion, Professor Katona set out his opinion on the likely effect of a forced return to Iraq:

“12.1 I remain of the opinion that if he were forced to return to Iraq, [the appellant] would experience considerable distress and anxiety, which would increase his already high risk of suicide. ...

12.4 I am now also very concerned about [the appellant’s] risk of suicide in the context of forced return to Iraq. There is in my view now a very high risk that [the appellant] would attempt suicide (with potentially lethal consequences) if he were forced to return to Iraq. The risk could be reduced to some extent, but not eliminated, by reasonable precautions such as the removal of means and close or continuous observation. As I noted in my previous report, [the appellant] has in the past found such close observation very distressing. If he were subjected to close or continuous observation again, this would in itself be likely to worsen his mental condition.”

Appellant’s submissions

76. For the appellant, Mr Draycott’s written submissions of 13 January 2020 set out his case. It is not necessary to rehearse them in detail here. The appellant’s claimed religion (Sunni Muslim) had not been challenged. His nationality, ethnic origin (Kurdish) and his home town of Kirkuk are not disputed. It was common ground that he does not now possess a CSID card and that he would be returned to Baghdad. The appellant is a vulnerable witness by reason of his psychiatric difficulties. He remains unfit to testify.
77. Mr Draycott’s supplementary written submissions of 12 January 2021 adopted the previous submissions, and argued that the rejection of the appellant’s core account by First-tier Judge Suchak and First-tier Judge Landes should not limit the Upper Tribunal’s ability to find him credible. Neither decision could properly be viewed as the *Devaseelan* starting point for the present appeal: the appellant had been consistently diagnosed as suffering from a major depressive episode from 2015 onwards and the factual matrix was significantly different from that considered by either judge.
78. The appellant’s assertion that his father had been killed in a reprisal attack in 1994 was capable of amounting to paragraph 339K past persecution, as were the beatings he received from his paternal uncle in childhood.
79. As regards the prospect of obtaining a CSID card from the Iraqi Embassy in the United Kingdom, it was common ground that the appellant lacked the documents required to prove his identity and his Iraqi nationality and in any event, the Kirkuk CSA office now had an INID terminal, so a proxy could not assist him (see above).

80. The respondent's June 2020 CPIN *Iraq: internal relocation, civil documentation and returns* accepted that it was 'highly unlikely that an individual would be able to obtain a CSID from the Iraqi embassy while in the United Kingdom. Whatever document the appellant had previously had been left behind when he fled his home in Kirkuk in early 2004 and there was no evidence to suggest that it could be recovered now, some 17 years later.
81. The appellant's sister in Tikrit would not be able to help: there was no evidence that the identity document which the appellant had in Iraq was still in her custody, and she had disowned the appellant when she found out about the drugs offence. She had not contacted him for 2 years now. The appellant relied on the contents of the additional bundle about the prevalence of crystal meth in Iraq, and the article entitled *The Treatment of drug offences in Shari'a-based countries* [2014] IJHSS Vol 4 no 10(1).
82. Mr Draycott relied on Professor Katona's January 2020 report for the effect on the appellant of returning to Iraq, increasing his already high suicide risk and making him vulnerable to abuse and exploitation. The appellant would now rely on *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17 at [32]-[33]. The respondent had not dispelled any doubts as to the existence and accessibility of appropriate medical treatment, given her May 2019 CPIN and the UNHCR paper already mentioned.
83. In addition, Médecins sans Frontières in their 24 September 2020 paper *Covid-19 outbreak in Baghdad is 'very alarming'* and the Middle East Institute's 8 December 2020 *Iraq's Fragile State in the time of Covid-19* reflected the parlous state of Iraqi medical services, such that the country had closed its borders to all but Iraqi nationals and required even returning nationals to quarantine for 14 days on return.
84. The appellant could not travel within Iraq on a laissez passer: see *SMO* [374]-[380] nor could a proxy obtain an INID for him. There was no safe evidential basis for finding that the CSID he left behind in Iraq in 2004 still existed: the Kirkuk area was a Formerly Contested Area which had been under intermittent Daesh control during the years of conflict, and no member of the appellant's family still lived there.
85. Mr Draycott reminded me that the appellant was an extremely vulnerable individual and witness, and asked me to look at the report from Dr Ananthanarayanan, the respondent's own psychiatric witness. The appellant presented a high risk of suicide and needed further treatment, which was unavailable in Baghdad, Kirkuk or Tikrit, on the evidence before the Tribunal. The appellant had demonstrated exceptional compelling circumstances and the appeal should be allowed.

Respondent's submissions

86. For the respondent, Mr Kotas had prepared written submissions dated 4 March 2020, which Ms Cunha adopted at today's hearing. The respondent's position was that the appellant would be returned to Baghdad with a laissez passer, and could obtain a CSID in the United Kingdom which would enable him to travel from there to Tikrit, and rejoin his sister and her family. A CSID would also allow him to access essential services and secure employment.
87. The respondent did not consider that the appellant met the Article 3 ECHR threshold (this was before the Supreme Court's decision in *AM (Zimbabwe)*). Nor could he show 'very compelling circumstances' under section 117C of the 2002 Act which would render deportation disproportionate.
88. In relation to credibility, Mr Kotas relied on the appellant's non-appearance at the hearings before First-tier Judge Suchak in 2004 and First-tier Judge Landes in 2015, neither of whom found him credible. First-tier Judge Suchak found his account to be 'wholly without any merit whatsoever'.
89. The appellant in his 2007 screening interview had said that he had ended up in France after having got drunk at a friend's birthday celebration, whereas in his witness statement of 29 October 2018, he said he and his friends planned to go to Italy via France, as they heard Italy was granting asylum. In 2017, the appellant said he had no family in Iraq, but in 2019, Professor Katona recorded him as saying that he was in regular twice weekly contact with his sister in Tikrit. The appellant should not be treated as a credible witness.
90. The respondent considered that the identity card which the appellant had in Kirkuk but left behind, in 2004, must have been his CSID and it should still be there. He could ask his sister to send it on to him. Even if it was some other type of identity document, if she sent it to him, he could use it to obtain a laissez passer. The appellant was plainly returnable to Iraq.
91. The appellant's home area was Kirkuk, but his mother had died and only his sister remained in Iraq, living in Tikrit with her husband and family. That was a safe, reasonable and feasible place of internal relocation, on the facts. The appellant's westernised characteristics were not likely to put him at risk: see SMO at [313] and [156]. Salah al Din was mainly Sunni Arabs, but there were Kurds there too. 68% of those displaced had returned there. The government was predominantly Sunni, as was the appellant.
92. The appellant and his sister were close: she had telephoned him twice weekly and sent him £5000 to assist him, a significant sum for an Iraqi person. The Tribunal was invited to find that she would be willing and able to accommodate and support him. That would assist with his mental health problems and her financial position would likely enable her to help him secure private medical and psychiatric health care. At [406] in SMO, the Upper Tribunal found that where there was a connection with an area, they should be

able to obtain documentation to settle there. Exceptionally, therefore, internal relocation to Tikrit was reasonable for this appellant.

93. The Tribunal was invited to find that, given the appellant's poor credibility, he was not telling the truth about his document in Iraq and that he would be able to remember his family registration details: see *SMO* at [391]-[392]. His statement was silent as to whether he could remember those details and the medical reports did not say whether he had memory difficulties. If he could not remember, his sister could help.
94. As regards suicide risk, Mr Kotas relied on *AXB (Article 3 health: obligations; suicide) Jamaica* [2019] UKUT 397 (IAC) which reiterated that in cases not involving hostile actions of the receiving state, the appropriate standard remained that set in *N v United Kingdom* [2008]. That submission has been overtaken by the decision of the Supreme Court in *AM (Zimbabwe)* and the test is no longer the deathbed test.
95. The appellant was not taking any medication: he had stopped taking his antidepressants at the beginning of 2019, which had 'contributed significantly to [his] deterioration' according to the joint psychiatric report of November 2019. On return to Iraq, he would no longer suffer anxiety as to his immigration status and would have the support of his sister and access to essential services via his CSID. The suicide risk fell well below the Article 3 ECHR standard.
96. In relation to Article 8 ECHR and paragraph 276ADE(1)(vi), the appellant could not bring himself within that provision of the Rules on suitability grounds, as he is a foreign criminal.
97. Part 5A of the 2002 Act contained the relevant provisions. The appellant could not bring himself within Exception 1 or Exception 2 so he would have to show very compelling circumstances over and above the Exceptions, under section 117C(6), which was also available to 'medium offenders' such as the appellant: see *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662 at [25]. There were no such circumstances in this case. The appellant was not financially independent and evidence of his private life was limited. The Secretary of State relied on the presence of family in Iraq to help the appellant integrate on return. As regards his connection to his daughter in Lithuania, that would not change if the appellant were in Iraq.
98. There was a strong public interest in deterring drugs offences: despite the mitigating circumstances, that public interest went to proportionality and the Upper Tribunal was invited to find that the appellant had not demonstrated 'very compelling circumstances' and dismiss the appeal.
99. In addition to these submissions, in her oral submissions, Ms Cunha argued that thousands of internally displaced persons had returned to Kirkuk and the Iraqi government did have provision for subsistence. She did not accept the

evidence of the appellant and LE that his sister had stopped speaking to the appellant, inviting the Tribunal to place no weight on LE's statement, given that he was not available to be cross-examined. Nor was there an updated witness statement from the appellant himself. Ms Cunha argued that the appellant's account should be found to lack credibility and that his mental health was not such as to meet the very high threshold in *AM (Zimbabwe)*. There was no up-to-date psychiatric evidence after January 2020.

100. Ms Cunha accepted that it would not in practice be possible to return the appellant to Iraq at present, because like many other countries, Iraq was unwilling to accept flights from the United Kingdom. That factual situation was not relevant to the Upper Tribunal's *ex nunc* assessment of the risk if he were to be returned. The respondent hoped to resume flights to Iraq in April 2021.
101. Ms Cunha asked me to remake the decision in this appeal by dismissing it.

Analysis

102. There is no dispute that this appellant is a Sunni Kurd from Kirkuk, with a family connection to Tikrit, the birthplace of Saddam Hussein. His national, religious and ethnic orientation are not in dispute: he is an Iraqi citizen, a Sunni Muslim from a majority Shi'a area, and a Kurd. Nor is it disputed that the appellant cannot produce either an Iraqi passport or a CSID at present, although he may have had a CSID in Iraq before he left there, 16 years ago. I accept Mr Draycott's submission that given how hotly contested Kirkuk was during the conflict, with no family member still living in Kirkuk, it is unlikely that the document has survived the conflict.
103. The credibility of the appellant's core account of family connections with the Ba'ath Party was rejected by Judge Landes and does not fall to be relitigated in these proceedings, absent significant new: see *Devaseelan*. The new evidence which needs to be considered in this decision, concerns the appellant's mental and physical health and his persistent history of suicide attempts. Mr Draycott relied on the appellant's ill health and vulnerability, and the lack of any family support for him in Iraq, given the rupture with his sister and brother-in-law, which I accept as credible.
104. The appellant is a man who has never been employed, either in Iraq (because he left soon after leaving school) or in the United Kingdom. He has been in the United Kingdom since 2005, has served two prison sentences (for one of which his conviction was later quashed), was convicted of drugs offences, and has been severely depressed with psychotic symptoms, and suicidal for a number of years now, that having been made worse in prison and in detention.
105. I consider that the evidence now before me amply justifies departing from Judge Landes' conclusions that the appellant could be returned safely, applying *KMO and others*, and that his mental health issues were not established at a

level sufficient to engage Article 3 ECHR. On each issue, the respondent's case turns on her insistence that the evidence of a breach between the appellant and his sister's family in Tikrit, for the last two years, has been fabricated by him and by LE to support this claim.

106. I have found that LE is a witness on whose evidence I place weight, for the reasons given above. That being so, I also find that the appellant has no family support in Iraq to enable him to re-document himself with a CSID or an INID, to exercise an internal relocation option to Tikrit when he is returned to Baghdad, or to obtain the support he needs to prevent him carrying out his suicidal intentions.

Getting a new CSID or INID

107. The appellant's case is that he cannot remember enough details to obtain a CSID at the Iraqi Embassy in London. Given the cognitive decline reflected in both expert reports, and LE's account, that level of memory loss is credible and I accept, to the lower standard applicable for international protection claims, that he does not remember the information. In Iraq, applying SMO, he would not be able to replace the CSID in Baghdad within a reasonable time, and if he returns on a laissez passer, that would be taken from him at the airport. He would have to travel to Kirkuk to attend in person at the INID machine there and provide biometric data, but he would have no document on which to do so.
108. I am satisfied, to the appropriate lower standard, that the appellant would be returned without a CSID, INID, or family links, to Baghdad, and that he could obtain an INID only by attending and giving biometric details at an INID machine in Kirkuk, which is a Formerly Contested Area.
109. I have considered the guidance given in SMO (*Iraq*). The appellant has two of the identified factors at paragraph 5 of the guidance: he is a member of an ethnic and a religious group which are in the minority, or not in de facto control, of the area from which he comes (Kirkuk), and he is an individual with a disability, by reason of his mental health issues. He does not possess an Iraqi passport or a laissez passer. I note that at [12] of the Guidance, the Upper Tribunal held that:
- "12. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity."*
110. At [13], the Tribunal stated that replacement CSIDs are available through Iraqi Consular facilities: however, the appellant has no documents available here to assist him and I have accepted his account that he cannot remember the volume and page reference of the entry in the Iraqi Family Book. He cannot get

that information from his sister, because of the rupture in their relationship in 2018/2019. Applying [14]-[15], Mr Draycott's submission that the appellant would have to attend the CSA office in Kirkuk is correct.

111. At [18]-[19], the country guidance in *SMO (Iraq)* deals with internal relocation within the formerly contested areas or to Baghdad:

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

19. Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq)."

112. Without family support, this appellant would not be safe in either Kirkuk, his home area, on Tikrit, his internal relocation option, or in Baghdad. Since the risk arises in part from his ethnicity and religious orientation, it is a Refugee Convention risk and the question of humanitarian protection is not reached.

Suicide risk

113. I consider also whether there is an Article 3 ECHR risk by reason of the appellant's long-standing depression with psychotic features, and his suicidal ideation. There is evidence before me, which was not before Judge Landes, as to the appellant's long-term depression, described both in the experts' reports and in LE's written evidence, and also of a significant number of serious attempts to end his own life, and an ongoing intention to kill himself, consistently and repeatedly expressed to prison officers, doctors, and LE's family.

114. LE's evidence has been consistent both in his statements, and in what he said to Professor Katona. LE's account, and that of the appellant himself, was that the appellant's sister cut off all connection with him when she discovered that he had been to prison on drugs offences. I have had regard to the evidence adduced about the approach to drugs offences in Iraq and under Shari'a law, which supports LE's account of the seriousness with which Muslims regard intoxication with drug. I accept LE's evidence and that of the appellant of the break in his relations with his sister. I do not approach this decision on the basis that the appellant can access family support once returned to Iraq.
115. I am satisfied that the appellant has a serious mental illness, and there is nothing before the Tribunal now to suggest that his suicidal ideation, which both Professor Katona and Dr Ananthanarayanan accepted in November 2019, has resolved. Both experts considered him to be an active suicide risk with a high risk of completed suicide either during the process of return, or following return to Iraq. The appellant has made several recorded suicide attempts over a number of years and on LE's account, continues to try to accumulate materials for another overdose, and has tried at least once to hang himself from a tree in the nearby park. The reference by LE to 'finding nooses' in the house is particularly chilling.
116. The appellant is an extremely vulnerable man: the support of LE and his family has been crucial since he came out of detention in 2017. LE has been constantly on suicide watch and telephones him several times a day. When he cannot look after the appellant, he arranges for him to stay with someone else, so that he is not alone. The very high level of support which LE and his family provide is the reason that there has as yet been no completed suicide attempt.
117. The respondent's case is that this level of care could be replicated by the appellant's sister and her family in Iraq. I find as a fact that the appellant's sister would not support him on return and that he would return as a vulnerable man with a serious intention to kill himself, on which he has almost succeeded, several times, even with the support he has in the United Kingdom. The evidence of the psychiatrists, and of LE, is that he would carry out that intention very soon after his return.
118. Since I find that the ongoing connection with the appellant's sister is not established, then he will be unable to access whatever mental health provision there may be in Iraq, and will lack any family support to enable him to reintegrate in Iraq, which he left nearly 17 years ago now. I have regard to the decision of the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17 and I find that on the facts of this appeal, the appellant is one of those who, in *Paposhvili* terms, is exposed on return to Iraq to the likelihood of 'a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy'. The human rights appeal succeeds on Article 3 ECHR grounds.

DECISION

119. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appellant's appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 4 February 2021