



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02903/2020

THE IMMIGRATION ACTS

Heard by a remote hearing
On 14 July 2021

Decision & Reasons Promulgated
On 4 August 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AFM
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A. McVeety, Senior Presenting Officer

For the Respondent: Ms M. Cleghorn, Counsel instructed on behalf of the Appellant.

DECISION AND REASONS

Introduction:

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

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

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge O’Hanlon) (hereinafter referred to as the “FtTJ”) who allowed the appellant’s protection and human rights appeal in a decision promulgated on the 11 January 2021.
2. Permission to appeal that decision was sought and on 2 February 2021 permission was granted by FtTJ Andrew.
3. Whilst this is an appeal on behalf of the Secretary of State I intend to refer to the parties as they were before the First-tier Tribunal.
4. The hearing took place on 14 July 2021, by means of *Microsoft Teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

The background:

5. The appellant is a citizen of Iraq of Kurdish ethnicity. The appellant left Iraq for Turkey on 5 October 2017 concealed in a lorry, arriving in Istanbul 3 to 4 days later. He remained there for a week and was then taken to Romania. He was stopped by the Romanian authorities and spent a few days in custody prior to his release. Home Office records show that he claimed asylum in Romania on 1 November 2017. The appellant stated that after 10 days there, the agent found the appellant put him in a lorry taking him to an unknown location where he remained for 2 months.
6. On 8 January 2018 the appellant entered the UK clandestinely by lorry and he claimed asylum.
7. The basis of his claim was that in April 2017 he was employed at a woman’s clothes shop Makhmour and where he met a young woman whom he continued to meet with outside of the shop.

8. On 4 October 2017 the woman spotted her father while she and the appellant were embracing in the park. The appellant was aware of the tribal and political connections of her family and the appellant ran away. He contacted his employer who took him to a nearby village and whilst there the appellant was telephoned by the woman's brother who threatened to kill him for having an unsanctioned relationship with his sister.
9. Later that evening the appellant's mother telephoned him to warn that this woman's family had come to the house demanding that the appellant be handed over to them. He was advised to leave Iraq and his employer agreed to help the appellant to be smuggled out of Iraq.
10. In March 2018 after he had arrived in the United Kingdom, the appellant contacted his former employer and through him was put into contact with his mother. He was told that the appellant's family relocated to a village near Koya to avoid further trouble from the woman's family.
11. The appellant therefore feared that an event of return he would be killed by the family due to his unsanctioned relationship with her. He also feared the general situation in his home area.
12. His asylum claim was refused in a decision letter dated 11 March 2020. The FtTJ summarised the respondent's case is set out in that decision letter at paragraph [25] of his decision. Whilst it was accepted that the reasons given by the appellant for claiming asylum was that he was a potential victim of an honour crime and as such, a member of a particular social group and the reasons engaged the U.K.'s obligations under the 1951 Convention, the respondent did not accept that the appellant had given a consistent and credible account of the relationship with the woman concerned and that the inconsistencies and contradictions undermined his claim. The issues relied upon by the respondent were set out at paragraph [37 - 58] of the decision letter.
13. Section 8 of the 2004 Act applied for the reasons set out at paragraphs [59 - 61].
14. By reference to SMO and others (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 ("SMO") the respondent concluded that in the event of his return, solely on account of his presence in Iraq that the appellant did not face a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of article 15 (c) of the qualification directive.
15. The respondent set out the headnote of SMO relating to documentation (excluding the IKR) and the civil status identity documentation, internal relocation within GOI - controlled Iraq.
16. As to the IKR by reference to SMO the respondent cited that decision and there are regular direct flights to the UK to the Iraqi Kurdish Region and that returns might be to Baghdad or to that region that it is the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah (page 16 of decision letter).

17. Having set out SMO, the respondent considered that as a Kurdish ex resident from Makhmour in the Erbil governorate he would be returned to the IKR which was not an area subject to article 15 (c) of the qualification directive, via Erbil or Sulaymaniyah airport. It was stated “it is considered that, as an ethnic Kurd, who could evidence their recent return from the United Kingdom, you would be admitted by the Kurdish authorities” (at paragraph 50).
18. At paragraph 51, the respondent noted that the appellant had family in Iraq with whom he had had contact with since leaving the country and thus could vouch for him and assist in his re-documentation. As his relationship with the lady had been rejected, it followed that his family would have no need to relocate and therefore would still be present in Makhmour.
19. The appellant would be able to redocument himself either at the Iraqi embassy in the UK or once returned to Iraq at the local CSA office and that he should be able to recall it and thus facilitate his redocumentation.
20. At [53] it was noted that even in the absence of family support, he could avail himself of funds by the voluntary returns program which would allow him to support himself and mitigate any initial hardships upon return whilst reintegrating to the KRG.
21. The issue of sufficiency protection was set out at paragraph 68 – 76. Internal relocation to anywhere in the IKR was considered at paragraphs 77-85.
22. The application was therefore refused.

The decision of the FtTJ:

23. The appeal came before the FtT on 22 December 2020. In a decision promulgated on 11 January 2021 the FtTJ allowed the appeal on asylum grounds and on human rights grounds but dismissed the appeal on humanitarian protection grounds.
24. The FtTJ made the following findings.
25. At paragraphs [42 – 51], the FtTJ set out his analysis of the evidence and gave his reasons for rejecting the appellant’s account of his claimed relationship with a woman in his home area. The FtTJ reached the conclusion that the appellant had given an inconsistent and vague account in his evidence concerning the core aspect of his claim to have been in a relationship with a woman in Iraq. The judge therefore found that if returned to Iraq, he would not face persecution due to his claim relationship with the woman and that the appellant did not have a genuine subjective or objective fear on return to Iraq on the grounds of his relationship with her.
26. At [50] the FtTJ considered section 8 of the 2004 Act in accordance with the issue set out in the respondent’s decision letter. The judge rejected the appellant’s evidence for

having failed to claim asylum in a safe country, namely Romania and found that his credibility was damaged under section 8 (4) of the 2004 Act.

27. At paragraphs 52 – 53 the judge addressed the issue as to the place the appellant originated from. The judge recorded the position of the respondent set out in the decision letter and in the respondent's response to the appellant's skeleton argument which maintained the position that the appellant's claimed hometown of Makhmour was in Erbil and that the appellant's family had relocated to a place also within Erbil and that the appellant originates from the IKR.
28. The appellant disputed the respondent's position and that he stated that Makhmour belonged to Mosel governorate and that it was a disputed area as referred to in paragraph 60 of SMO.
29. At [53] the FtJ set out his conclusions on the issue as follows.
 - (1) the respondent states that Makhmour is part of the IKR, and the appellant can return there.
 - (2) Paragraph 60 of SMO describes Makhmour as part of the disputed territories, administered by Nineveh that to which Erbil lays claim and this is consistent with the appellant's evidence in his witness statement.
 - (3) Paragraph 60 of SMO refers to Isis having held Makhmour in August 2016 before being forced out by Kurdish forces. The peshmerga withdrew from Makhmour in October 2017 which is consistent with the appellant's claim at paragraph 49 of witness statement that Makhmour is part of the Iraq central government although it continues to be a disputed area.
 - (4) Therefore, having considered the evidence, and that set out at paragraph 60 of SMO, Makhmour was formally in a contested area, Isis having taken over a short bit of time before being ejected by a combination of the Iraqi government forces and the Peshmerga that that following the independence referendum in October 2017 Makhmour has been under the control of the federal government of Iraq that remains a disputed territory, the dispute being between the IKR and the federal government of Iraq.
 - (5) The appellant was therefore not formally a resident of IKR.
 - (6) SMO held that former residents of the IKR would be returned to the IKR and all other Iraqis would be returned to Baghdad.
 - (7) The judge therefore found that the appellant is not a former resident of the IKR, and his return would therefore be to Baghdad.

30. As to the issue of documentation, the FtTJ considered the evidence from the appellant and at [54] the FtTJ concluded that the appellant's evidence in this respect to be "vague and lacking in credibility" as to what had happened to his documentation on route.
31. At [55 - 56] the FtTJ address the issue of whether or not the appellant was in contact with his family. The FtTJ considered the appellant's evidence that he lived with his mother in Iraq and that he had a brother in a nearby village but that he had not been in contact with them since March 2018 and he had lost contact with them. He had contacted them once since he left Iraq in March 2018. He had contacted his former employer and persuaded him to go and find his mother so he could talk directly to her by using his employers mobile phone. The appellant stated that when he last spoke to his mother in March 2018 she was residing in Goma Shin.
32. The FtTJ considered the appellant's evidence and that he had given the explanation that his mother had left their former home because of threats from the woman's family. As a judge had not been satisfied that the appellant's account of his relationship with the woman was credible, he did not accept that the appellant's mother would have needed to relocate from the home that she shared with the appellant due to threats. However the judge found "it is possible that the appellant's mother had moved from Makhmour due to what is referred to in paragraph 60 of SMO, which describes renewed presence of Isis in the area with Isis cells plainly remaining active in the area and sporadic attacks continuing".
33. The judge therefore concluded at [56], "Although I do not therefore find the appellant's mother and brother had been forced from their home area due to threats from the family of S, it is plausible that they have needed to move from their original home given the security situation in Makhmour as referred to in paragraph 60 of SMO. It follows that finding that the appellant's claim loss of contact with his family members in Iraq is plausible."
34. The FtTJ took into account that whilst he found the appellant's oral evidence regarding his claim about documentation (CSID and nationality certificate) as being vague, he was satisfied that the appellant had lost contact with his family and that whilst the appellant had not given any evidence of any efforts to trace or locate his family other than contact with the Red Cross, given the situation described in Makhmour set out at paragraph 60 of SMO, it is "plausible that the appellant may have been unable to maintain contact with his family members and indeed his former employer to whom he had previously contacted his mother. In this case I find that the appellant would not be able to contact his family members with a view to obtaining his CSID card credit be left in Iraq or in obtaining the assistance of his family to obtain a replacement in the event of his return to Iraq " (at [57]).
35. As to the issue of redocumentation, the FtTJ referred to the respondent's guidance on this issue at paragraph [58] of his decision. As set out at paragraph 2.6.16 of the Home Office Country Policy and Information Note entitled: "*Iraq: Internal relocation, civil documentation and returns*", version 11.0, dated June 2020 (hereafter "the June

2020 CPIN"): *"it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK.*

36. At [59] the FtT] made the following assessment:

- (1) situation faced by the appellant upon return is that he would be returned to Baghdad and without being in possession of a CSID card.
- (2) Paragraph 2.6.17 of the CPIN June 2020 provides an individual who is not from Baghdad is not likely to be able to obtain a replacement car there, certainly within a reasonable timescale.
- (3) Without the benefit of a CSID card the appellant would not be able to remain in Baghdad regardless of other factors which would make relocation for the appellant and the Baghdad area to be unduly harsh, in particular his Kurdish ethnicity.
- (4) As to whether or not the appellant will be up to make his way from Baghdad to his home area, applying the decision in SMO, the principles established at paragraph 21 - 24 refer to the difficulties in making a journey between Baghdad and the IKR to be the same as those which the appellant would face in making his way from Baghdad to his home area without being in possession of a valid CSID card.
- (5) Paragraph 23 of SMO provided a personal face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or INID.
- (6) Paragraph 23 refers to the numerous checkpoints provided of a person was making this journey without a CSID card there is a real risk of being detained at a checkpoint and it is not reasonable to require such person to travel between Baghdad and the IKR by land without the ability to verify his identity checkpoints. This normally requires the attendance of a male family member and the production of identity documents.
- (7) The judge found on the basis of SMO that the appellant did not have a CSID card and on the factual findings made, he would be unable to contact his family for assistance and that there would be a "real risk that the appellant would suffer persecution, serious harm or article 3 ECHR ill-treatment and the difficulties he would face on the journey from Baghdad to his home area would be unduly harsh."

37. For those reasons, the judge concluded that for this appellant, "there is a real risk that the appellant would suffer persecution or serious harm in making the journey from Baghdad to his home area" and therefore he allowed the asylum appeal on that basis.

38. As he had allowed the appeal on Refugee Convention grounds, the judge found at [61] that he could not qualify for humanitarian protection. However whilst he did not find that the appellant's account of his problems with the family was reasonably likely to be true, he found that in the absence of a valid CSID card the risk of suffering persecution, serious harm, or article 3 ill-treatment in making the journey from Baghdad to the appellant's home area would breach the appellant's rights under articles 2 and 3 of the ECHR.

39. The respondent sought permission to appeal that decision and permission was granted by FtTJ Andrew on 2nd February 2021 for the following reasons:

"It appears that the judges allowed the appeal on asylum grounds because of the claimed lack of a CSID. However, other parts of the asylum claim were disbelieved. As there is no Convention reason it is arguable that the judge did not allow the appeal on asylum grounds.

Notwithstanding this the judge gave insufficient reasons for his finding as to why a replacement CSID could not be obtained and why the appellant could not resume contact with his family and/or friends on return to Iraq thus enabling him to have assistance in obtaining a replacement CSID. It is further arguable that the judge gave insufficient reasons as to why the appellant's home area may be in disputed territory."

The submissions of the parties:

40. Mr McVeety on behalf of the respondent relied upon part of the written grounds.
41. The written grounds set out that the FtTJ allowed the appeal on the basis of the Refugee Convention but erred in law. The judge found the appellant to be incredible as to his claim for asylum but to be unable to make the journey from Baghdad to his home area due to his apparent lack of documentation. It is submitted that, the appellant having not demonstrated a risk due to one of the protected characteristics defined in the Convention, cannot be found to be a refugee for reasons of his race, religion, nationality, membership of a particular social group or political opinion, as such to find otherwise is a misdirection in law.
42. Both advocates agree that this was an error of law in view of the factual findings made and that in the alternative the FtTJ had allowed the appeal on article 3 grounds, therefore the issue is the materiality of that error based on the other grounds of challenge.
43. The written grounds also submitted that the FtTJ's assessment of the appellant's home area and any associated risks was a misdirection. The area of Makhmour whilst "disputed" is not one which remains in a contested area, SMO, and under the control of ISIS as such it is unclear on what basis it is found that the current situation would prevent contact former residents, including his family or the employer who assisted in previously, who are likely to have returned since the departure of ISIS. It is submitted that it is for the appellant to demonstrate by way of efforts made that he is unable to do so, he has failed to make such efforts either to regain contact or attempt redocumentation via the Iraqi embassy in the UK, as such to find out more

that is unable to do so is to err in law. Again, Mr McVeety did not seek to advance that argument in his oral submissions.

44. Ground 3 submits that the judge failed to give adequate reasons why, despite the appellant began to make contact with his family previously, he would be unable to do it again in order to obtain assistance in securing a new CSID or other documentation which will allow his passage throughout Iraq. It had been accepted that the appellant made contact with his mother by his prior employer, and it is unclear why, therefore, he would be unable to make contact in the same way currently. His employer was in possession of a mobile phone and was able to meet with the appellant's mother even after her relocation who in turn spoke to the appellant directly. The judge failed to give reasons why this would now not be possible and therefore the findings as regards the appellant's ability to redocument himself are unsound.
45. Mr McVeety, in his oral submissions relied upon paragraph [54] where the FtTJ had set out that the appellant's evidence concerning the documentation (CSID) had been vague and lacking in credibility. He accepted that a judge is entitled to find some parts of a witness's evidence to be credible and others to be incredible but when looking at the appellant's account the FtTJ had found the core of his account not to be credible.
46. Furthermore the judge had found at [56] that the appellant had been in contact with his mother in 2018 but gave no reason as to why the appellant should now not be in contact with his mother. The judge found that she had relocated out of the home area and the appellant had managed to contact with her. Therefore the appellant had been able to make contact with her after she left the home area. In summary, the judge should have done more in his assessment and the logical conclusion from the appellant's evidence which was vague about his CSID is that he either had it or had access to it.
47. There was no rule 24 response in behalf of the appellant I heard oral submissions from Ms Cleghorn. She submitted that the judge had separated the core of the account which related to the reasons for leaving Iraq and considered separately the issue relating to documentation. She submitted that when reading the decision as a whole it was a well thought out and properly reasoned decision. The judge had properly considered the background evidence and had cited paragraph 60 of SMO and had taken into account the circumstances of the appellant's home area. In particular Dr Fatah's evidence to the tribunal recorded at paragraphs 369 and 372.
48. As to the issue of documents, the evidence demonstrated that the appellant did not have his CSID with him in the UK when he arrived as recorded in the screening interview. It is now the position from the most recent CPIN Iraq: internal relocation, civil documentation returns version 11.0 June 2020 at paragraph 2.6.16 that it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi embassy while in the UK. Instead a person would need to apply for a registration

document (1957) and then apply for an INID upon return to their local CSA office in Iraq.

49. Ms Cleghorn submitted that the judge considered whether the appellant's mother would be able to obtain the documents but reached the conclusion having considered paragraph 60 of SMO that the home area and governorate of Nineveh had been razed to the ground and that ISIS were operating in that area and that many had fled as a result. This paragraph demonstrated that it would be unlikely that the appellant's mother remained in Makhmour and that in the light of the security situation the reality is that she would not have taken documents with her. She submitted that it was not known if the appellant's mother was living as an IDP given the mass displacement are set out in SMO.
50. Ms Cleghorn submitted that the issue turned on whether the appellant was in contact with his mother and whether she had documents or not and that the judge had given a thorough decision and therefore the respondent's grounds were no more than a disagreement with the decision. The judge had been aware of his previous negative credibility findings and referred back to them before reaching his overall decision.
51. Mr McVeety by way of response submitted that as the appellant's mother had relocated away from the home area in line with the decision of SMO it is likely that she would have taken her documents in order for her to access food and other services. The judge did not consider that issue. The judge had failed to say why he could not get back in touch with her.
52. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

53. Dealing with the first ground, the advocates were in agreement that the FtTJ was in error by allowing the appeal on Refugee Convention grounds. The appellant's claim had been advanced on the basis of the appellant being a potential victim of an honour crime and as such a member of a particular social group and it was for this reason that the claim engaged the U.K.'s obligations under the 1951 Convention. However for the reasons set out at paragraphs [40 – 49] (which are unchallenged) the FtTJ rejected the appellant's account that he would be at risk of harm in his home area of Makhmour on the basis that he claimed, which arose from his relationship with a woman. It must follow that his claim under the Refugee Convention must fail on that basis.
54. The FtTJ appeared to allow the appeal on Refugee Convention grounds on the basis that the appellant would suffer persecution or serious harm in making the journey from Baghdad to his home area without having the necessary documentation that would be necessary (at [58]-[60]). At [61] the FtTJ also found that in the absence of a valid CSID card he would be at risk of persecution, serious harm, or article 3 ill-treatment in making the journey from Baghdad to the appellant's home area and therefore it would also be a breach of articles 2 and 3 of the ECHR.

55. It is therefore common ground between the advocates that in light of his factual findings and his rejection of the appellant's account, the FtTJ had no basis upon which to allow the appeal on asylum grounds.
56. However the error is not material if on his analysis, or the same analysis, the FtTJ was entitled to allow the appeal either on humanitarian protection grounds or on Article 3 grounds.
57. This is because paragraph [317] of SMO states as follows:
- "317. The starting point for our consideration must be the respondent's repetition, at [150] of her closing submissions, of her concession in previous cases that 'it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR'. This section of our decision is therefore principally relevant to those who have or are able to obtain a CSID (or INID) within a reasonable time or have family members from whom they can secure assistance or support."
58. When looking at the FtTJ's decision and his analysis of the country materials and SMO, he did not allow the appeal on the basis of feasibility of return but based his decision on the appellant's inability to access an essential document, namely a CSID or INID. There is no dispute that the previous and current CG decisions refer to the importance of being in possession such a document to enable its holder to access services, to obtain support and employment and to be able to find accommodation and therefore is essential to life in Iraq (see paragraph 337 of SMO).
59. As to the ground where it is suggested that the appellant could redocument himself in the UK, Mr McVeety did not seek to advance that ground in the light of the evidence which the FtTJ was provided with at the hearing as set out in the respondents CPIN which states that the embassy no longer issues CSID's in the UK. According to the Home Office's own guidance, therefore, it is therefore accepted by the respondent that the Appellant is not able to redocument himself whilst in the UK. The FtTJ was not in error in reaching that view despite the respondent's grounds.
60. The only ground now advanced on behalf of the respondent is that the judge gave insufficient reasons as to why a replacement CSID could not be obtained or why the appellant could not resume contact with his family members.
61. As Ms Cleghorn has stated upon entry to the UK the appellant did not have any of the documents with him. The judge heard evidence from the appellant concerning the location of his documents previously and what had happened to them and recorded this at [54]. The appellant had stated in his interview that the agent who had facilitated his travel to the UK had taken both his CSID card and his INC from him. In his oral evidence he stated that he only had his CSID card with him which was taken off him when he was in Turkey. When referred to the earlier response in his interview, the judge recorded his evidence as "somewhat vague" and that he was not sure that he had his INC with him, but the document had been taken of him in Turkey and was unsure about whether his CSID and INC had been removed as it

was done in a sudden manner. The FtTJ then recorded that the appellant changed his evidence by stating that both documents were taken from him, both having been inside an envelope together. The judge therefore found that the appellant's evidence in this respect was "vague and lacking in credibility".

62. As Mr McVeety submitted, it is open to a judge to accept some parts of the appellant's evidence and the fact that the judge rejected his core account of events in Iraq does not necessarily mean that other evidence should be discounted on that basis. What is important is whether the judge gave adequate reasons for reaching the conclusion he did on the other issue of family contact.
63. The issue as to contact with the family was relevant to the issue of documentation. The judge addressed this issue at paragraphs [55]-[57]. The appellant's evidence was that the last time he had had contact with his mother was in March 2018 and he had lost contact with her since that date. At [55] the appellant's account was that the call had been facilitated by his former employer and that she was residing in Goma shin.
64. Whilst the FtTJ did not accept that she had left the area due to threats made from the woman's family (the judge having rejected the appellant's core account on that), the FtTJ considered that the real reason for leaving the family home was as a result of the conditions in her home village as set out in the country information and recorded in the country guidance decision of SMO at paragraph 60. As Ms Cleghorn submits, the country information concerning the area demonstrated a renewed presence of ISIS in the area and evidence of sporadic attacks. Dr Fatah's evidence to the tribunal was that a security vacuum had developed in the area with a vast increase in the number of attacks (and see paragraph 259 of SMO). Similarly the evidence recorded at paragraph 69 from EASO was that the presence of ISIS exerted a great deal of physical and psychological pressure on those in the area and that there had been an abandonment of populated villages, repeated raids, and destruction of agricultural products and infrastructure, and that civilians could not rely on the security services for protection.
65. In the light of that evidence the FtTJ stated that the appellant's claim loss of contact with family members was plausible.
66. The point made by Mr McVeety is that the appellant was able to contact his mother after she left her home, and the judge gave no reasons as to why the appellant could not have re-established contact with her again.
67. Having read the decision I am satisfied that the judge did address this at [57] and gave adequate reasons for reaching his decision. Contrary to the respondent's submissions, the judge reminded himself of his previous adverse finding concerning the evidence about the CSID but that even in the light of that finding he was satisfied that the appellant had lost contact with his family because the appellant's evidence of the conditions in the area and the circumstances in which he had last had contact with his mother in 2018 which was supported by the country materials which he again referred to at [57].

68. The judge's reasoning was that in light of the security situation in Makhmour (also described in SMO at paragraph 369 and 372 (summarised by the UT at paragraph 259) in terms of mass displacement and that governorate of Ninewa had been "bombed the ground"), that the appellant's account was plausible that he had been unable to maintain contact with his mother and his employer. The way in which the appellant had contacted his mother in March 2018 had been via his employer and not directly. The judge therefore reached the finding as to the appellant having lost contact with his family based on what was known about the last location of the appellant's family member, and the employer alongside the displacement and the length of time since he last had contact which was not direct contact, but via his former employer in March 2018.
69. Neither advocate expressly referred to Goma shin but on the map it is not far from Makhmour which the FtTJ found was part of the "disputed area" (see findings at [53]) and consistent with the UT's assessment at paragraph 259 of SMO where they adopted the evidence of Dr Fatah about Makhmour.
70. The grounds are advanced on a very narrow basis, and in reality it is whether the judge gave adequate reasons for finding that the appellant was not in contact with his mother. I am satisfied that the FtTJ did give adequate reasons for accepting the plausibility of the appellant's account. Whilst the judge did not find the core of the appellant's account to be credible and found the appellant's evidence concerning how the CSID was taken at [54] to be vague,, the judge was entitled to reflect on these previous findings, and he expressly did so at [57] but reached a different view on the issue of loss of contact with his family. The finding was based on the country materials which he had identified and was consistent with the conditions described by the appellant and supported the view that the appellant's account was credible that he had lost contact with them.
71. The FtTJ considered the issue on the basis of the appellant's return to Baghdad. The appellant as a former resident of Iraq as opposed to the IKR, will be returned to Baghdad. The position of the respondent is that for this appellant the only destination for an enforced return would be to Baghdad. The Appellant would be returned to Baghdad, not the KRI. As set out at 4.2.1 of the June 2020 CPIN,
- "There are international flights to Erbil International Airport (EBL) and Sulaymaniyah International Airport (ISU). However, it should be noted that all enforced returns are to Baghdad and that only those willing to return voluntarily can travel directly to the KRI."*
72. Therefore the question of documentation was relevant to that issue also. The FtTJ considered the circumstances for the appellant on return without a CSID/INID and therefore at risk of treatment in breach of Article 3 if he seeks to travel from Baghdad. In this context, it is common ground that he would arrive without any form of documentation, having not been able to obtain it in the United Kingdom. He has no contact with any family.

73. An appellant without any documentation would remain at the airport and not be able to travel to Baghdad as such a journey would entail him passing through several checkpoints (see SMO cited above).
74. It is clear that the judge should have allowed the appellant's appeal under Art 15(b) of the Qualification Directive and Art 3 of the ECHR on the basis that he was at risk of serious harm falling within those provisions if he were returned to Iraq without a CSID. In SMO and Others, the Upper Tribunal expressed the following view in relation to a person who lacked a CSID or the more recent Iraqi National Identity Card as summarised at paragraph 11 of the headnote:
- "As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Art 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass."
75. The FtTJ considered the circumstances for the appellant on return without a CSID/INID and therefore at risk of treatment in breach of Article 3 if he seeks to travel from Baghdad.
76. In SMO, paragraph 425 provides:
- "The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.*
77. An appellant without any documentation would remain at the airport and not be able to travel to Baghdad as such a journey would entail him passing through several checkpoints (see SMO cited above).
78. As to obtaining a CSID from Baghdad, an individual returnee who is not from Baghdad, which is the position of this appellant, is not likely to be able to obtain a replacement document or to do so in a reasonable time. The central archive and the facilities for IDP's are not likely to provide assistance for an undocumented returnee. The appellant would not be able to board a domestic flight beyond Baghdad or to the IKR without either a CSID or INID or invalid passport.
79. The grounds do not challenge the above assessment of the FtTJ which he set out at paragraphs [59]-[60]. When set against his finding that the appellant was not in contact with his family relatives, the factual assessment of the FtTJ is that the appellant could not be provided with support from his family members or obtain any replacement documents. It must follow that in the event that he has no access to a CSID, and that he is not able to obtain a replacement in the UK, I am satisfied that as the Upper Tribunal said in SMO, and as the FtTJ found, that his return to Iraq

would be in breach of Article 3 of the ECHR. Consequently whilst the FtTJ was clearly in error in allowing the appeal on asylum grounds, he was entitled to allow the appeal on Article 3 grounds.

80. I am satisfied that the decision of the First-tier Tribunal should be set aside because of an error of law in allowing the appeal on Refugee Convention grounds, but also that I should remake the decision consistently with the judge's conclusions and allow the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside; the appeal is re-made as follows: the appeal is allowed on humanitarian protection grounds (Article 15 (b) and under the Immigration Rules, and human rights grounds (Article 3).

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

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

Signed

Date: 15/7 / 2021

Upper Tribunal Judge Reeds