



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03440/2019

THE IMMIGRATION ACTS

Heard at Field House
On 16th November 2020

Decision & Reasons Promulgated
On 13th January 2021

Before

UPPER TRIBUNAL JUDGE JACKSON
DEPUTY UPPER TRIBUNAL JUDGE MALIK

Between

MMM
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Symes of Counsel, instructed by Barnes, Harrild & Dyer
Solicitors

For the Respondent: Mr T Lindsey, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In UTJ Jackson's decision promulgated on 25 February 2020, an error of law was found in the decision of First-tier Tribunal Judge Hanbury promulgated on 19 November 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 1 April 2019 was dismissed. The error of law decisions is annexed to this decision and sets out the background and history of this appeal, which will not be repeated herein save as is necessary.

2. The decision of the First-tier Tribunal was set aside, with preserved findings that the Appellant's appeal on humanitarian protection and human rights grounds is dismissed; such that the remaking of his appeal is only in relation to risk on return in his home area and if relevant, whether the Appellant would have the option of internal relocation and/or a sufficiency of protection. This decision has been reached on those issues by both members of the panel.
3. At the end of the Appellant's oral evidence, Mr Symes made an application to adjourn the hearing part-heard to obtain further evidence referred to in cross-examination by the Appellant. During questions from Mr Lindsey, the Appellant stated that a video showing a news interview at a protest in the United Kingdom, referred to in his written statement, had been submitted to the Tribunal in support of his claim; but it had not. On instructions, Mr Symes submitted that the Appellant had sent the video to his solicitors, however they say that they had not received it and it had not therefore been submitted to the Respondent or the Tribunal. Mr Symes assured us that the evidence was available to the Appellant but needed translation, although he was unable to confirm whether the evidence was a *Facebook* video (the still screenshot of which was available in the documents relied upon by the Appellant) or the actual broadcast interview, or evidence of any such broadcast. Mr Symes however submitted that this was an issue of fairness which went to the heart of the Appellant's case and it appeared only to be a mixup, possibly Covid-19 related, that meant that the evidence had not been submitted.
4. On behalf of the Respondent, Mr Lindsey resisted the application on the basis that both the Appellant and his solicitors were well aware of the evidence, referred to in the most recent written statement and there was no good reason why it had not been submitted. In any event, there was no sufficient reason to suppose that even if produced, the evidence would advance the Appellant's case in any material way.
5. We refused the application for an adjournment at this stage of the proceedings, in circumstances where there had been a clear breach of directions for the Appellant to file and serve any further evidence upon which he wished to rely no later than 14 days before the hearing; where the Appellant and his solicitors knew of the evidence as it was referred to in the latest written statement; where there was no reasonable excuse for the delay in submitting it; when the evidence was not in fact yet available or translated and where Counsel could not even specify precisely what the evidence was that the Appellant wished to produce during any period of adjournment. In any event, a still image of a video of an interview was available, which could be taken into account alongside the Appellant's evidence about this. In the circumstances, it was not in the interests of justice to both parties to adjourn the hearing at this very late stage and we were satisfied that it was not unfair to the Appellant to proceed with the hearing.

The appeal

Applicable law

6. It is for an Appellant to show that he is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality

and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.

7. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a “reasonable chance”, “a serious possibility” or “substantial grounds for thinking” in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.
8. Under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualification Regulations).
9. The current country guidance in relation to Iraq is contained in SMO, KSP & IM (Article 15(c): identity documents) Iraq CG [2019] UKUT 400 (IAC) which so far as relevant to the present appeal states:

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
3. *The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, “sliding scale” assessment to which the following matters are relevant.*
4. *Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*
5. *The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*

- *Opposition to or criticism of the GOI, the KRG or local security actors;*
 - *Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
 - *LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
 - *Humanitarian or medical staff and those associated with Western organisations or security forces;*
 - *Women and children without genuine family support; and*
 - *Individuals with disabilities.*
6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*
8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

C. CIVIL STATUS IDENTITY DOCUMENTATION

11. *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.*
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.*
13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and,*

critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.

14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

E. IRAQI KURDISH REGION

17. *There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.*

Kurds

18. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
19. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
20. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*

21. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.*
22. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
23. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
24. *For Kurds without the assistance of family in the IKR the accommodation options are limited:*
 - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
 - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
 - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
 - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
25. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
 - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
 - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
 - (iii) *P cannot work without a CSID or INID;*
 - (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
 - (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*

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

Respondent's explanation for refusal

10. In the Respondent's reasons for refusal letter dated 28^h of March 2019, the Respondent accepted that the Appellant was an Iraqi national of Kurdish ethnicity but it was not accepted that he would be at any risk on return to Iraq. The Appellant had given inconsistent or no information as to when he first started demonstrating in Iraq and gave different explanations as to why he did. The Appellant specifically stated in his screening interview that he had not been arrested or detained in any other country, did not claim any periods of detention in his written statement; but claimed to have been detained for two or three days in 2016 after arrest during his substantive asylum interview. The Appellant was considered to have been vague about his attendance of five days of protests in Rania and Hajiawa from 19 December 2017 and it was only speculation that the Appellant's picture had been taken during these demonstrations. It was not considered credible that six months had passed after the demonstrations before the Appellant was sought by the authorities, during which time he came to no harm. At its highest, the Appellant is someone who has little or no political profile in Iraq, who did not have any specific role in the demonstrations, being one of many thousands who took part in the protests in December 2017. The Respondent did not accept that the Appellant was wanted by the authorities for protesting and as such would not be at risk on return.
11. The Appellant accepted in interview that he previously had a CSID and passport in Iraq, such that he was registered with the authorities and there was no further evidence that he would not be able to access these obtain a new one, with information from his parents as needed. The Appellant is in contact with his parents.
12. The Respondent rejected the Appellant's humanitarian protection and human rights claims for essentially the same reasons and considered that he had not established any family life in the United Kingdom, nor could he meet the requirements in paragraph 276ADE of the Immigration Rules for a grant of leave to remain on private life grounds and there were no exceptional circumstances to warrant a grant of leave to remain on any other basis.

The Appellant's claim

13. The Appellant is a single male from Suleymaniah (specifically Hajiawa Village, Rania Town) in the IKR in Iraq; he is of Kurdish ethnicity and a Sunni Muslim. He claims to have left Iraq on 1 August 2018, arriving in the United Kingdom on 22 August 2018 via Turkey and claimed asylum the same day.
14. The Appellant claims that he is at risk of persecution on return to Iraq because of his political profile; having protested against both governments in Iraq whilst living there and in the United Kingdom; attending demonstrations and posting on *Facebook* messages which are critical of the authorities.

15. In the skeleton argument, the issues of humanitarian protection due to risk on return under Article 15(c) of the Qualification Directive and whether removal would be an unlawful interference with the Appellant's human rights were raised as issues, but as above, the appeal was dismissed by the First-tier Tribunal on these grounds; the findings on which were not challenged by either party and were preserved by the error of law decision.

The hearing and evidence

16. The Appellant's first written statement, signed and dated 8 November 2018, was submitted by his solicitors (the same as his current representatives), together with still images from a video of the Appellant attending a protest, a video of a protester being injured and a news report on a protest; on 18 December 2018. A translation of the news report refers to forces arresting protesters and activists with a significant military presence and random shootings, wounding at least three people. The video referred to is not before the Tribunal.
17. In the statement, the Appellant sets out his family background and stated that everyone should have freedom of speech and freedom of expression. He believed the Kurdish authorities have done many bad things, including a policy of not paying teacher salaries because of which the Appellant missed two years of his education. From 2014 the Appellant attended about 10 demonstrations in his home area, to speak out against corruption, abuse of human rights, and cuts to salaries, the latter of which affected his father who lost his business as a self-employed man.
18. There was a large anti-corruption protest in Rania on 19 December 2017 and in Hajiawa on 20 December 2017, continuing to 22 December. The Appellant, along with hundreds of other people, attended these protests and was vocal. The protests were not particularly organised, with people naturally taking to the streets. The Appellant was not wearing a mask and the authorities had people in the crowds taking photos of protesters. The Appellant did not know at the time that his photograph had been taken and only realised later that it must have been.
19. On 19 December 2017, one person was killed in the protests and others were wounded. Between 20 and 22 December, the authorities were violent and three people were injured, including two of the Appellant's friends. There is a video of the protest, which shows the Appellant and people can be seen running after gunshots were fired. It is said that there is a further video of one of the Appellant's injured friends but he is not visible in that and that video has not been submitted to the Tribunal.
20. Following the protests, the Appellant went into hiding after it was realised that people who had attended were being arrested and the Appellant realised he may be targeted. There was a TV report of activists being arrested. The Appellant stayed at his half-sister's house. In January 2018, men from the PUK attended the Appellant's family home to take the Appellant because he had disrespected property and threatened to burn down the buildings, because he was an active demonstrator. The Appellant was still in hiding at this time and remained there, not going out.

21. In July 2018, men from the PUK started to ask friends and neighbours where the Appellant was, following which the Appellant decided to leave because he feared for his life in Iraq. He thought he would be arrested and in custody he would be tortured or even killed. The Appellant knew of many other activists who had been kidnapped and terrorised, including demonstrators and journalists. The Appellant left Iraq on 1 August 2018, with his uncle organising his travel. The Appellant left his CSID card behind.
22. In the Appellant's written statement, signed and dated 29 April 2019, the Appellant responds to the Respondent's reasons for refusal letter and maintained his fear of persecution on return to Iraq because he took part in anti-government demonstrations. He refers to being nervous in his interview not been able to remember the year when he started demonstrating, only his age and that he missed school because of reduced teachers' pay. The Appellant's arrest in 2016 was not official or ordered by the judge and he was too frightened to mention this before his substantive interview, but at that point he was told everything was confidential and would not be passed to the authorities in Iraq.
23. The Appellant only escaped arrest in Iraq following the December 2017 protest because he was in hiding and he is still of interest to the authorities who were looking for him now. The media do not always report people have been killed or arrested. The Appellant has also been posting anti-government material on his *Facebook* account and is interested in taking part in demonstrations in the United Kingdom, but none had been arranged by the date of this statement.
24. The Appellant's most recent written statement, signed and dated 11 November 2020, provides an update on his current circumstances. The Appellant has continued his political activities, protesting against the general situation in Iraq and Kurdistan and is encouraging the overthrowing of the political system. He claims to be a civil rights activist not related to any particular party. He refers to corruption within the current governments in Iraq with a need for change in the system.
25. On 25 July 2020, the Appellant posted on *Facebook*, a message criticising a high-ranking member of the PUK, Sheikh Jaffar; following which he received a threatening message. The Appellant thought that his actions were endangering his family and he has cut off all contact with them since July 2020. He messaged his brother at the time telling him this. There is evidence available of two threats, but others were made and then deleted immediately by the senders. The Appellant has also posted on *Facebook* evidence of protesters and activists who have been arrested in Iraq.
26. The Appellant has attended a few demonstrations in London, since his last appeal hearing but has been unable to attend many due to Covid-19. The Appellant attended a demonstration on 11 August 2020 at which he was interviewed by a Kurdish news channel, NRT, a video which is available (as above this was not submitted to the Respondent or the Tribunal and we refused the application for an adjournment made at the end of the Appellant's evidence to adduce this). Other demonstrations were on 1 September 2020, in front of the Iraqi embassy and later in front of Amnesty International and on 1 October 2020, in front of the Iraqi embassy.

27. The Appellant attended the hearing, confirmed his details, adopted his three written statements and gave evidence through a Court appointed Kurdish Sorani interpreter. The Appellant stated that he has been critical of both governments, the one in Erbil and the one in Baghdad as both are corrupt and in need of change.
28. The first video relied upon by the Appellant shows his participation in a demonstration in Iraq together with people from the same town. The Appellant can be seen on the video when the time is at 40 seconds. The video was obtained from *You Tube*.
29. The second video relied upon by the Appellant shows him at a demonstration in front of the Kurdistan Regional Government office in London amongst the line of demonstrators. The video was obtained from Facebook and had been posted by the person giving the speech in the video. The demonstration was to condemn the killing of Sardasht Osman, a journalist, by the Kurdish authorities, the PUK and the KDP, nine years ago.
30. In cross-examination, the Appellant stated that he first started attending political demonstrations in 2014 when he was 15 or 16 years old. When he was interviewed he couldn't remember the exact date but said he was 15 or 16.
31. The Appellant was asked why he did not refer to his detention and mistreatment in 2016 in either his screening interview or his first written statement in support of his claim. The Appellant stated that when he arrived in the United Kingdom initially, he was very scared and did not know if he should reveal everything or whether such information would get back to the authorities in his country. Later on he was told that he could express anything that happened to him here without danger that he was now in a free country. The Appellant confirmed that he prepared his first written statement with the assistance of solicitors, whom he has since changed and he cannot remember what the first solicitors advised him of to include in his written statement. He knew more from his second solicitors and had not made any complaints against the first.
32. When he left Iraq, the Appellant had no access to *Facebook* and it was difficult to obtain internet access and that is why there is no evidence of any *Facebook* or other posts before he left Iraq. The posts that the Appellant has made since being in the United Kingdom are public and accessible by all and the accounts can be checked for accuracy if needed. The Appellant confirmed that he could delete his *Facebook* account if he wanted to, but he wanted to continue to share his political views.
33. In relation to the first video relied upon, the Appellant stated that the video was dated and it is well known that there was a demonstration in that area on that date, showing that it was a protest. You can hear shootings on the video and the person speaking on it says that they should stop the process until the shootings calmed down, after which they can continue the demonstration. The Appellant stated that the video is available on *You Tube* and can be shared from there and on social media, but it is not possible to tell how many people have seen it.

34. The Appellant was reminded of his evidence before the First-tier Tribunal that the first video was obtained from *Facebook*, not *You Tube* which he confirmed was correct but it is also from *YouTube*. The Appellant downloaded it through *Facebook*. He stated that there was no inconsistency in his evidence, the video was originally seen on *Facebook* and when you open it, it takes you to *You Tube*, but it can be shared again through *Facebook*. There was no evidence of the URL or source of the video available.
35. In relation to the second video relied upon, the Appellant confirmed that one of the slogans was 'no to terrorism in Kurdistan' which it was suggested the KRG would not disagree with. The Appellant stated that without doubt the authorities would disagree as the protesters were implying that it is the KRG itself involved in terrorism in Kurdistan. The second video has been shared within the Appellant's *Facebook* account.
36. The Appellant stated that he is a political person, he has a background of expressing his personal opinion which forced him to flee Iraq and he continues to be active in the United Kingdom without ever changing his political beliefs. His social media accounts prove how active he is. There is a lack of media coverage of demonstrators who get arrested, kidnapped and killed.
37. The Appellant does not wish to contact his family in Iraq to assist him if he returns as this could put their lives in danger.
38. The panel asked the Appellant supplementary questions. He stated that hundreds of people attended the demonstrations in Iraq, which all happened in one place.
39. The Appellant made a *Facebook* post on 25 July 2020 regarding a high-ranking PUK person, Shaif Jafar with information about corruption, harassment, kidnapping, illegal businesses and smuggling. The Appellant received two threats on the same day that if he ever returned to Iraq he would be killed and these included threats to his family unless he stopped making such posts. There was no copy of the original post within the *Facebook* materials in the Appellant's bundle.
40. The Appellant did not know the person who made the first threat, nor did he know anything about him. There had only been a single communication from him. The Appellant however stated that the person was a member of either the PUK or KDP because of the uniform worn in the person's profile picture, showing that he works with the counter-terrorism group which is under the control of these two parties. These people and their affiliates are very experienced and would be able to find the Appellant in Iraq.
41. The Appellant did not know the second person who made a threat, nor anything about them but could also tell from the picture that they are within the PUK. The threats were both sent directly through *Facebook* messenger to the Appellant, the documents available in the bundle do not show that these were sent to the Appellant, but one shows the message in response to a screenshot of the Appellant's post.
42. The Appellant last had contact with his family in July 2020 and does not know of any threats that have been made to them in Iraq.

Closing submissions on behalf of the Respondent

43. On behalf of the Respondent, Mr Lindsey relied on the reasons for refusal letter and submitted that the Appellant was not a credible witness. First, it was not credible that when the Appellant first arrived and with the assistance of solicitors, he would not have revealed all of the details of his claim, including a period of detention and it is notable that no complaint has been made against those solicitors who were acting for him at the time. Secondly, the Appellant changed his evidence of where the first video relied upon had been obtained from, at the hearing before the First-tier Tribunal he said it was obtained from *Facebook* and in his evidence before the Upper Tribunal he said it was obtained from *You Tube* and there is no evidence of it being published anywhere. These were just two examples amongst many others which could be highlighted.
44. Overall, Mr Lindsey submitted that the Appellant's evidence was not consistent with his claim to be a dedicated political activist. At their highest the videos relied upon do not demonstrate any risk to him and there is no evidence at all that they have been broadcast or shared. It was submitted that the evidence from *Facebook* is of little real weight, was not credible and lacked supporting evidence which would reasonably be available but has not been produced by the Appellant. For example, it would be reasonable to expect at least colour images of the computer screen shots and/or a statement of truth from the solicitors as to the original contract original content contained. In any event, the Appellant has only a very low and limited approval doesn't establish a risk on return even if he maintained his *Facebook* account.
45. The background country evidence showed only isolated instances of risk to members of the media and journalists or specific high-profile people within specific activist groups. Taken at its highest, even if credible, the Appellant would not be at risk on return.
46. The Respondent relies specifically on certain evidence recorded in findings in the country guidance case of SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT; specifically the evidence of Dr Fatah in paragraphs 156 and 157, that a Kurdish person may face more questioning on return including about political affiliations, but there needs to be more than just *Facebook* postings to generate this. There is reference to politics having opened up in the IKR since 2009, extending beyond the two main parties and with more opposition to any human rights violations. There is nothing within the country guidance to establish that the Appellant would be at risk on return in the circumstances claimed, nor is there anything in his own evidence to support this.
47. In paragraph 248 of SMO, there is reference to opposition to the main political parties and the IKR, including protest involving thousands of people but no indication of a risk of harm to any number of those demonstrators. Further in paragraph 299, a person may be at enhanced risk of harm by reason of political opposition and criticism, but there was no recent evidence of the same and the assessment of such risk was beyond the scope of the country guidance. There were only a few examples

of harm from anti-government protests involving people with a much more significant profile than this Appellant.

48. The Appellant is able to get in touch with his family for assistance on return and in obtaining a CSID as needed. There has been no adverse interest in his family and it was submitted that the Appellant had only cut ties with them to strengthen his claimed difficulties on return.
49. The Respondent does not expressly rely on internal relocation.

Closing submissions on behalf of the Appellant

50. On behalf of the Appellant, Mr Symes relied on his skeleton argument and submitted that the Appellant was a credible witness. In relation to the inconsistencies relied upon by the Respondent, it was submitted that these need to be looked at individually many were not inconsistencies at all and in any event they didn't undermine the Appellant's credibility as a whole. In relation to the Appellant's age when he started attending political demonstrations, there was no inconsistency, he has stated throughout he was either 15 or 16. The Appellant has made a consistent claim throughout, his screening interview cannot be considered as a comprehensive and at the time following arrival he was scared both are being returned to Iraq and also of being detained in the United Kingdom. The Appellant cannot remember the advice he was given by solicitors at that time, which in any event would be privileged and the fact that he has not complained about them but has changed his representatives, doesn't take the matter much further. The other alleged inconsistencies have been explained by the Appellant in his latest written statement and do not undermine his account.
51. The Appellant's *Facebook* evidence shows public posts, by reference to the global icon on each but the pages do not include how many times the material has been viewed. The Appellant offered to show the Upper Tribunal his *Facebook* account which suggest that the documents have not been fabricated and there is no suggestion that they are not genuine. The Appellant has made posts which are critical of the governments in Iraq and he is entitled to choose to keep this account and express his views rather than deleting it to reduce the risk of persecution.
52. In relation to the video evidence, it is accepted that there is no evidence of how widely this has been viewed and also that there is no evidence that they have been published at all, but there was no inconsistency in the Appellant's account of where the videos were available. Whether the source is *You Tube* or *You Tube* accessed through *Facebook* is a case of splitting hairs rather than inconsistency.
53. The Appellant has provided details of two individuals, not friends of his on *Facebook* account who threatened him and it is not unreasonable as a result for the Appellant to think that people would be able to find him and his family, who are specifically referred to in the posts. One of the individuals is wearing a PUK uniform, the insignia behind him and his name (which includes PUK) establishes who he is and his affiliations, together with the threatening response to the specific screenshot of

the Appellant's post. It is accepted that there is no translation of the Appellant's post, but that is not material as whatever it said, it elicited a threatening response.

54. The Appellant specifically relies on a relatively small number of specific extracts from the larger collection of background country information submitted; first, the Gulf Centre for Human Rights article 'Iraq: and Iraqi Kurdistan: Targeting of activists and journalists continues', dated 14 March 2019 which reiterated calls to respect public freedoms, including freedom of the press, freedom of expression and freedom of peaceful assembly, in addition to protecting journalists and internet activists. Secondly, the USSD 2018 country report for Iraq dated 30 March 2019 which refers to extrajudicial killings and security forces firing on and beating demonstrators protesting against unemployment and poor public services in Basrah Governate and southern Iraq, with use of excessive and unnecessary lethal force in controlling protests which turned violent as well as reports of enforced disappearances by or on behalf of government forces and the use of forced confessions, together with credible reports of government forces abusing and torturing individuals, particularly Sunni Arabs during arrest, pre-trial detention and after conviction; and arbitrary arrest and detention of Sunni Arabs and IDPs.
55. There is no question of a sufficiency of protection for the Appellant as he fears the state authorities and the Respondent does not rely on any option of internal relocation. Forced returns are to Baghdad but it is accepted that voluntary returns can be to other locations. Assuming a return to Baghdad and an onward journey to his home area, the Appellant would be returning without a CSID card and even if his family could assist him (and he has no contact with them because he fears a risk to his family) they are not in even from Baghdad. On arrival to the IKR without a CSID, the Appellant would not have a right to work and would face very difficult circumstances on return. However, My Symes accepted that if the Appellant was not at risk on return to Iraq, there could be no risk to his family and he could therefore contact them for assistance and obtain a CSID; subject to the possibility of future political activism which may caution him against family contact.
56. The Appellant specifically relies on the likely conditions he would face on return to the IKR even if not at risk, which to a great extent overlaps with his protection claim but there are some factual background issues which may still be relevant, including his inability to find work given the high unemployment rate and lack of sponsors to assist him.

Findings and reasons

57. We consider first the Appellant's claim to have been politically active in Iraq as the cause of him leaving that country and coming to the United Kingdom before going on to consider his sur place activities here.
58. There are essentially three aspects to the Appellant's claimed activities in Iraq; first that he attended approximately 10 demonstrations between around 2014 and December 2017; secondly that he was arrested, detained and beaten on at least one occasion in 2016; and thirdly, that as a result of attending the demonstrations in December 2017, the authorities came looking for the Appellant.

59. We do not find any significant or material inconsistency in the Appellant's account of when he first started attending demonstrations in Iraq, identifying consistently his rough age when he claims to have started albeit not being able to consistently identify which year that was. Whilst we take into account the Appellant's relatively young age at this time (14 or 15 years old), there is a significant lack of detail about these demonstrations. The only information given is an approximate number of demonstrations attended, with no dates, places, numbers of attendees, any incidents or difficulties arising at the protests, no specific theme or subject matter of the protests and whether or not they were organised and if so by whom. We find the Appellant's account to have been involved in any such protests or demonstrations to be so vague and lacking in detail that we are unable to find that he participated as claimed.
60. We do not find the Appellant's claim to have been arrested, detained and beaten following a demonstration in Iraq to be credible either. Although we attach relatively little weight to lack of reference to any such event in the Appellant's screening interview (given it is a very brief initial set of questions asked at the outset of a claim), it is notable that the Appellant was expressly asked if he had ever been detained to which he answered no. More significantly, the Appellant did not make any such claim of arrest, detention or being beaten in the written statement made in support of his asylum claim which was submitted prior to his substantive asylum interview. The Appellant claimed in evidence before us that although legally represented at that time, he was not aware of what should be included in the statement and had since changed legal representatives, albeit no complaint was made against those representing him initially.
61. We reject that claim entirely. The Appellant is represented at this hearing by the same legal representatives as those who submitted his written statement in December 2018 and there is therefore nothing to indicate any dissatisfaction with the service given then or that he would not have been advised to set out his claim in full in that written statement.
62. In addition, the Appellant was asked at the beginning of his asylum interview if there was anything he would like to add or amend and other, minor corrections were made to his written statement but not relevant to the claimed detention. It was only later in the Appellant's asylum interview that he claimed for the first time that the Appellant claimed that he had been arrested one year before the demonstrations in December 2017 during which his name had been taken, he was subject to intimidation, beating and given a warning. He claims that he was detained for two or three days and there were no conditions attached to his release because it was not an official arrest. The Appellant has not expanded on the account of this claimed incident at all and no information is given as to whether there was any follow up to it (given the warning said to have been given) or why the Appellant would need to be identified from the later demonstration if he had already been encountered and identified in the past as a protestor or political activist.
63. We find that if the Appellant had been arrested (whether or not officially), beaten and detained previously in Iraq that he would have mentioned this if not in his

screening interview, at least in his written statement in December 2018 and that by the time of the hearing before us, he would have given more details about this claim given its potential significance as evidence of past persecution. For these reasons, we do not find that the Appellant was arrested, detained, intimidated, warned or beaten whilst in Iraq in connection with any demonstration or political activism or otherwise.

64. Finally, the Appellant claims to have attended demonstrations in December 2017 in his home area, his involvement in which was the reason he left Iraq in the summer of 2018. The Appellant claims that he participated in a series of demonstrations in two locations in his home area over a number of days in December 2017; that these were not organised demonstrations and involved hundreds of people all in the same place (in his asylum interview he gives numbers of 100s, 500, 600 and 700 people). The Appellant does not claim to have been involved in the organisation of the demonstrations but to have been vocal and active within them and assumes that his photo was taken by the authorities during the demonstrations.
65. The Appellant's main evidence of this was the first video submitted to the Tribunal which he says shows him at the demonstration and that there was gunfire; together with background evidence of demonstrations held at that time. We do not find that the video provides any positive support at all for the Appellant's claim to have been involved in a demonstration on that day in Iraq. The video itself shows a small group of people standing to one side of a street with no obvious signs of any protest. There are no signs or other items which one may associate with a demonstration and there is nothing like the hundreds of people that the Appellant claims were all demonstrating at the same location together. Although we accept that what appears to be gunfire can be heard on the video, it is impossible to tell where this is coming from (or any other details like who was shooting or at whom) and the video does not, as the Appellant claim, show anyone running after the gunfire.
66. Although the Appellant states that what is being referred to audibly on the video is to a demonstration continuing after the gunfire stops, a translation of the video does not support this either. In the transcript, three people are speaking about the sound of shootings from a roof and one being told to sit down and not get killed for trying to take a picture. There is not a single reference to demonstrations, pausing because of the gunfire, why the people were there or of any vocal protest at all. The transcript supports what can be seen on the video of a relatively small group of people having a conversation in a street and nothing more. The video provides no evidence of the Appellant's claim to have attended a demonstration, let alone to have been a vocal and active demonstrator. Further, the Appellant's evidence was inconsistent as to where this video had been obtained (whether *You Tube* or *Facebook*) and there was no evidence at all of it being publicly available, for example, no screenshot of it being included in a post and no url.
67. The Appellant has also referred to friends being injured at this protest and a video of this; but there was no such video before us and no other evidence of any substance to support the claim of friends being injured in the vicinity of the Appellant.

68. On the basis of the evidence before us, we do not find, even to the lower standard of proof that the Appellant was involved in any demonstrations in December 2017 nor that there would have been any reason why his picture may have been taken by the authorities to identify and arrest him. There is no express reason given by the Appellant as to why he personally may be targeted even if he did attend a demonstration beyond a news report that some activists had been arrested.
69. We also do not consider it plausible that following the demonstrations in December 2017, even if the Appellant had been involved, that the authorities would come to his home in January 2018 and then only ask around for him in his local area 5 months later in July 2018. Even if accepted, this does not suggest that the Appellant was of any significant interest and as above, it is entirely unexplained as to why the Appellant would need to be identified given his claim of his details being taken when previously detained. The Appellant's claim that he was not found because he was in hiding at a relative's house for a period in excess of six months is also inconsistent with his claim that following sur place activities in the United Kingdom he would be found anywhere in Iraq by the PUK and/or KDP on his return now.
70. It is not necessary for an Appellant to corroborate his claim, but in this case, it would be reasonable to expect some supporting statement or evidence from his family members as to events in Iraq given that he was in contact with them as recently as July 2020. There is however nothing from his immediate family who the Appellant claims were visited by the PUK in January 2018, or from friends or neighbours who were asked about him in July 2018, nor from any relatives in whose property he claims to have been in hiding for a significant period; nor from his uncle who arranged his passage from Iraq to the United Kingdom. Further, there is nothing to indicate any ongoing interest in the Appellant since July 2018 at the latest and no suggestion that the authorities have made any further visits to his family or have been continuing to look for him.
71. For these reasons we do not find that the Appellant was a political activist, nor had he been involved in any demonstrations in Iraq nor was he of any interest to the authorities in Iraq; nor that any of these were reasons for him to flee the country in August 2018.
72. We turn finally to the Appellant's claim of sur place activities in the United Kingdom, involving demonstrations and posts on *Facebook* which he says have resulted in direct threats to him.
73. We have been provided with some, but not all of the *Facebook* posts which the Appellant states he has made expressing his political views and being critical of the governments in Iraq. In the earlier period of November and December 2018 and early 2019, these posts were primarily sharing news reports and re-posting other comments, including news in particular about journalists. Thereafter there is evidence of posts on an irregular basis from October 2019, including photographs of demonstrations, some re-posts of news and various short comments on events in Iraq, protests and journalists. We accept that these are public posts as shown by the globe icon on the screenshots and some show a number of likes and comments in response.

74. The *Facebook* posts include photographs of and references to attendance at demonstrations and in addition a second video of a protest was submitted. Again, as with the first video, there is no evidence that this is publicly available from a screenshot or url and we have not been provided with a translation as to what is being said; albeit some parts of the demonstration are self-evident from the placards in English against terrorism.
75. The Appellant has not claimed to be part of any particular group or association; nor to be an organiser of any protests or demonstrations in the United Kingdom, only to have attended a relatively small number (although we appreciate that Covid-19 has restricted this sort of activity significantly this year) without undertaking any particular role. The Appellant has not claimed that he has any received threats, warnings or adverse interest as a result of this activity.
76. At its highest, we find this evidence to show that the Appellant has made a limited number of fairly short comments and posts on his *Facebook* account, some of which are more expressly critical of the government than others and attended a relatively small number of demonstrators as a participant. We however bear in mind the finding above that the Appellant was not politically active in Iraq and his apparent interest after arrival in the United Kingdom is unexplained. We return below to whether this low level individual involvement would place the Appellant at real risk of the authorities.
77. The final part of the sur place activities claimed is of two specific threats to the Appellant resulting from a post he made on 25 July 2020; albeit no copy of the post itself nor any translation has been submitted (save for a small screenshot as part of another post). Counsel on behalf of the Appellant submitted that it did not matter that the details of the post were unknown because whatever it said, it elicited a threatening response. We do not however accept that the nature of the post is irrelevant particularly when considering the context of what was said in response.
78. The first threat refers to the Appellant having criticised the PUK and the author states "... I will end your criticism and your respect for KDP and Barzani ...", however the Appellant has never claimed to be a supporter of the KDP or Barzani (a former President of the IKR) but to the contrary to be critical of both main parties and both governments in Iraq.
79. The second threat also appears to reference criticism of the PUK and that the Appellant should "stop working for the KDP" but again, the Appellant has never claimed to support the KDP but to the contrary to be critical of it as well as the PUK. In addition, the Appellant's evidence is that he had never heard of the author of this message before (or after) but the message states "I warned you several times to stop posting on social media".
80. We do not find the translation of the threats to be consistent with the Appellant's claim or evidence about the post or who the threats are from. Whilst there is a reference to the Appellant's home and brothers in Iraq, no family members are specifically identified and there is nothing to indicate any family members have been threatened or harmed following this and the Appellant has been in contact with at

least his brother after the threats were received. There is also no evidence of any further threats or contact at all since July up until the date of hearing.

81. The Appellant states that it is clear from the first message that the author is from the counter-terrorism group within the PUK or KDP because of the uniform worn and that the person is under the control of both parties. Again, that is inconsistent with the text of the threat which is more consistent with a PUK supporter but nothing in the message itself suggests any particular role or affiliation and there is no background country evidence to show identification from the uniform. Similarly the Appellant states that the second threat is from the PUK from the picture, although this is more self-evident in the name itself. Again, there is no detail as to who this person is or whether he holds any particular position, power or influence.
82. The Appellant asserts that these messages are both credible threats and that the authors would be able to locate him on return to Iraq, but there is little if anything to support this assertion. We do not accept that these are credible threats that place the Appellant at any real risk of persecution on return to Iraq; in particular as the authors are not identified beyond the name on their *Facebook* account and without any indication that they would have the desire or means to be able to locate the Appellant anywhere in Iraq and more importantly that they appear to both be on the premise that the Appellant is a supporter of the PDK which is directly contrary to the core of his claim
83. As above, we have rejected the Appellant's claim to have been politically active in Iraq and find at its highest, he has irregularly protested and made *Facebook* posts at a very low level, with no particular affiliation or group membership, no leadership or other role and we have not found the threats made to be credible or consistent with the Appellant's own claim. We do not find that at its highest, being a low level individual demonstrator/critic, places the Appellant at any real risk on return to Iraq now and there is nothing in the country guidance or background evidence to support any claimed risk. The Appellant is not a journalist, he was not involved in any protests in Iraq and as such there is nothing to suggest that he is or would be of any adverse interest to the authorities on return. The matters highlighted by Counsel in the background country evidence do not directly apply to the findings we have made on the Appellant's claim and it is doubtful that even if we accepted his account in its entirety the Appellant would in any event be at risk on return in accordance with the background evidence before us and the country guidance.
84. On the basis of these findings, the Appellant can return to his home area in the IKR and there is no basis for him not re-establishing contact with his family who would, for the same reasons, not be exposed to any real risk of persecution arising from such contact or anything the Appellant has done. Similarly, there is no reason why the Appellant would not be supported or assisted by his family on return and the Appellant's evidence is that he had left his CSID card at home and could get it with the assistance of his family. We would add that if no longer available or valid, there is no reason why the Appellant's family would be unable to assist him with obtaining a replacement, particularly as returns can be to the IKR directly where they are based.

85. Counsel for the Appellant accepted that in the absence of a finding of risk on return to his home area, the Appellant would be able to contact his family and obtain his own CSID (or a replacement) and therefore the remainder of his claim about conditions on return, particularly about access to employment and lack of support essentially fall away (subject to any future political activism, for which we find no basis). In addition, as above, the findings of fact in relation to humanitarian protection and human rights from the First-tier Tribunal are preserved the appeal being dismissed on those grounds and therefore nothing more arises as to conditions on return.

Notice of Decision

For the reasons set out in UTJ Jackson's error of law decision (annexed below), the making of the decision of the First-tier Tribunal did involve the making of a material error of law such that it was necessary to set aside the decision on asylum grounds, although not on humanitarian protection or human rights grounds on which there was no appeal against the dismissal of these aspects of the Appellant's claim and those parts of the decision were preserved.

The appeal is dismissed on asylum grounds.

The appeal is dismissed on humanitarian protection grounds.

The appeal is dismissed on human rights grounds.

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

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

Signed *G Jackson*
3rd January 2021
Upper Tribunal Judge Jackson

Date



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03440/2019

THE IMMIGRATION ACTS

Heard at Field House
On 20th February 2020

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

MMM
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Symes of Counsel, instructed by Barnes, Harrild & Dyer
Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Hanbury promulgated on 19 November 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 1 April 2019 was dismissed.
2. The Appellant is a national of Iraq of Kurdish ethnicity who entered the United Kingdom on 22 August 2018 and claimed asylum on the basis that he feared

persecution on return because of his political opinion, having protested against the authorities and undertaken sur place activity.

3. The Respondent refused the application the basis that the Appellant had made a number of alternative claims, which lacked detail, were vague and only relied on generic supporting documents not specific to the Appellant. The Respondent did not consider that the Appellant had claimed to have any significant or particular political profile, no specific role in demonstrations and it was not accepted that he was wanted by the authorities. Overall there was no risk on return and it was feasible to return the Appellant to Iraq given that he had previously had a CSID card and an Iraqi passport and could obtain a new CSID with the assistance of his parents in Iraq with whom he was still in contact. The application was also refused on private and family life grounds and there were no exceptional circumstances for a grant of leave to remain.
4. Judge Hanbury dismissed the appeal in a decision promulgated on 19 November 2019, primarily on the grounds that the Appellant's claim was generic in nature, inconsistent, in some respects implausible and that in any event the Appellant had no particular political profile in Iraq nor had he undertaken any significant sur place activities. It was not accepted that the Appellant had been arrested and beaten in Iraq and overall he would not be at risk on return.

The appeal

5. The Appellant appeals on five grounds as follows. First, that the First-tier Tribunal made contradictory findings in paragraphs 11 and 45(v) of the decision as to the evidence contained on a DVD relied upon by the Appellant. Secondly, that the First-tier Tribunal failed to consider all of the evidence available at the hearing and relied on inconsistencies which were either not real or not material to the claim. Specifically, in paragraph 45(i) that the Appellant claimed he was either 15 or 16 when he first attended demonstrations which was not an inconsistency; in paragraph 45(ii) which failed to consider the Appellant's explanation for not mentioning his detention in his screening interview; and in paragraph 45(iv) which failed to consider the detailed evidence given in cross examination. Thirdly, that the First-tier Tribunal reached illogical findings on the Appellant's CSID, reaching adverse credibility findings on the Appellant's claim to have left this in Iraq despite the Appellant accepting that he could obtain a new one on return and it bearing no material relevance to the core of the claim. Fourthly, that the First-tier Tribunal had no power to exclude or refuse to admit Facebook evidence relied upon by the Appellant, in circumstances where it was accepted to be relevant. Finally, that the First-tier Tribunal erred in law in failing to make an anonymity direction in respect of the Appellant.
6. At the outset of the hearing, on behalf of the Respondent, Mr Jarvis submitted that although not all of the grounds of appeal were accepted, a number of material errors of law had been identified by the Appellant which were sufficient to require that the decision of the First-tier Tribunal be set aside and the appeal remade. Specific reference was made to the inconsistency in the findings between paragraphs 11 and 45(v) of the decision which was relevant to an essential part of the Appellant's claim

and property of evidence of it. Mr Jarvis confirmed that what was contained in paragraph 11 of the decision was description of the evidence rather than assertion submission by the parties and the contents of that paragraph were consistent with the note from the Home Office Presenting Officer who appeared before the First-tier Tribunal.

Findings and reasons

7. In paragraph 11 of the First-tier Tribunal's decision, in the section dealing with the hearing, the First-tier Tribunal stated that in the first video gunshots were heard in the street and 'With some difficulty the appellant was seen second from the left in that later still'. However in paragraph 45(v), in the section dealing with findings, the Judge stated 'I did not consider from the video was possible to identify, either that it was definitely the defendant present or, perhaps more importantly, I did not hear gunshots on the DVD. I was not able to conclude that this DVD corroborated his account, therefore.' These two paragraphs are mutually inconsistent and based on the factual description of the evidence in paragraph 11, it was an error for the First-tier Tribunal in paragraph 45(v), relied upon as an example of a lack of detail in the Appellant's claim and/or an inconsistency, to reject the evidence in this way. The Respondent has very properly conceded that this is a material error in the decision on what is a core part of the Appellant's protection claim which infects the findings of fact and credibility assessment to such an extent that for this reason alone the decision of the First-tier Tribunal must be set aside.
8. I also find a further error of law in the First-tier Tribunal's refusal to admit evidence relied upon by the Appellant available either the day before or on the day of the hearing. It appears from the decision that a supplementary bundle was filed with the First-tier Tribunal under cover of a letter dated 30 September 2019, which may not have been received until 14 October 2019 and not served on the Respondent. In paragraph 32 of the decision, the First-tier Tribunal refers to additional Facebook activity having not been provided in accordance with directions and that this additional material would not be considered even though it may be relevant (because it was consistent with other posts in the public domain), it should not be admitted. The further reasons for this are set out in paragraphs 36 to 38 of the decision as follows:

"36. Rule 2 of the Tribunal Procedure Rules 2014 provides that the FTT is to apply the overriding objective of dealing with cases fairly and justly and avoiding unnecessary delay. Dealing with cases fairly and justly includes dealing with the case in a way which is proportionate to the importance of the case, the complexity of the issues, the anticipated costs on the resources the parties. In considering these issues, the tribunal is not only to consider the interests of the parties before it but also the interest of other litigants whose appeals are "in the pipeline".

37. I considered that the additional Facebook posts had not been served on the respondent. It would amount to a material injustice to the respondent, who would have had no advance notice of the application to adduce this evidence or the substance of this additional material, to allow this evidence to be referred to. It would inevitably result in adjournment of the appeal which would be highly undesirable given the oral evidence had concluded. This would be disproportionate.

38. *In accordance with my case management powers, therefore, I decided to refuse reference to any post served with the appellant's solicitor's letter 30.9.19 because of lack of service and lack of opportunity to cross-examine the appellant about them. The existing directions clearly foreshadowed the need to identify this evidence, serve it properly on the respondent and be ready to proceed at the hearing of this agenda appeal on 16 October 2019. For these reasons I refused the application, making clear that I did not consider the additional evidence would affect the outcome of the appeal."*

9. The First-tier Tribunal's decision discloses another inconsistency on this issue, saying first that the material in the supplementary bundle may be material as it supported and/or corroborated other evidence and then stating in paragraph 38, prior to any decision being given on the appeal, that it was made clear at the oral hearing that the additional material would not affect the outcome of the appeal. In any event, the First-tier Tribunal's consideration of whether to admit the evidence focuses only on potential detriment to the Respondent but without any consideration of whether that could be mitigated (i.e. by allowing further cross-examination on the day or further to an adjournment) and without any overall balancing exercise as to whether it was in the interests of justice to admit the evidence. The mere fact of an adjournment, even if highly undesirable as suggested by the First-tier Tribunal, is not sufficient reason alone to refuse to consider evidence that was accepted as at least potentially relevant. I find a further error of law in the First-tier Tribunal's approach to this evidence for these reasons, which led to the First-tier Tribunal failing to consider evidence before it which went to the core of the claim and assessment of risk on return.
10. In these circumstances, these errors of law are sufficient to require that the First-tier Tribunal's decision on asylum grounds to be set aside and it is not necessary to make any detailed findings on the second or fourth grounds of appeal; although there is some merit in those grounds as well. There was no challenge to the First-tier Tribunal's dismissal of the appeal on humanitarian protection or human rights (Article 8 of the European Convention on Human Rights) grounds and therefore the decision stands on those grounds.
11. The fifth and final ground of appeal is that the First-tier Tribunal erred in law in failing to make an anonymity direction. Although complaint may be made against the First-tier Tribunal about the refusal to do so, particularly as part of the reason was that the application for such a direction was made only during oral submissions; it is not an error of law to refuse to make an anonymity direction. It forms no part of the substantive decision on appeal and is not in itself an appealable decision. Further, as indicated to the parties, I accept that this is an appropriate case for an anonymity direction and one was made at the outset of the oral hearing.
12. Having regard to paragraph 7 of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, the matter is retained in the Upper Tribunal to remake the decision on appeal. Although the First-tier Tribunal has failed to make adequate or detailed factual findings on the key issue in the asylum claim, this is not a case where the effect of the error of law has been to deprive a party of a fair hearing and the nature and extent of fact finding is not so

significant as to require remittal to the First-tier Tribunal having regard to the overriding objective in rule 2. In particular, it is noted that the Appellant accepts that he has had a CSID in the past and would be able to obtain a new one on return to Iraq and the findings/decision to dismiss the appeal on humanitarian protection and human rights grounds stands; such that the outstanding issues in the appeal are relatively narrow in relation to risk in home area and potentially internal relocation.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal in relation to the asylum grounds. The decision of the First-tier Tribunal to dismiss the appeal on humanitarian protection and human rights grounds is confirmed.

Directions

- (i) The appeal to be re-listed before any Judge of the Upper Tribunal on the first available date after 26th March 2020, with a time estimate of two hours. The Appellant to confirm to the Upper Tribunal as soon as possible whether a Kurdish Sorani interpreter is required.
- (ii) Any further evidence the Appellant wishes to rely upon is to be filed and served no later than 14 days before the re-listed hearing.
- (iii) The parties are at liberty to, but are not required to, file a skeleton argument no later than seven days before the re-listed hearing.

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

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



Signed
2020

Date 24th February

Upper Tribunal Judge Jackson