



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08835/2019

THE IMMIGRATION ACTS

Heard at Field House via Teams
On 4th June 2021

Decision & Reasons Promulgated
On 23rd July 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

HMS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford instructed by Iris Law Firm

For the Respondent: Mr R Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 9th July 1995 who, having left Iraq on 23rd November 2018, arrived in the UK on 3rd December 2018 clandestinely and claimed asylum on 4th December 2018. The Secretary of State refused his application for asylum, humanitarian protection and his human rights claim on 31st August 2019 and a decision was made to remove him by way of directions under Section 10 of the Immigration and Asylum Act 1999. His appeal came before First-tier Tribunal Judge Bircher on 18th October 2019 in North Shields. She dismissed the appellant's appeal on all grounds.

2. The judge made a series of findings but ultimately rejected his account of risk on return. The appellant appealed and Upper Tribunal Judge Kekić found that the judge's determination contained errors of law with respect to her approach towards the humanitarian protection claim and that her decision in that respect was unsustainable.
3. Upper Tribunal Judge Kekić found at paragraph 13 on her error of law decision that *"having found that the appellant's claim for asylum had not been made out either on refugee or article 3 grounds" (at 21 – 32), the judge then proceeded to "address whether or not it is reasonable to return the appellant to Iraq and thus by doing so make him a displaced person anywhere in Iraq" (at 33). Her assessment on this issue pertains only to the appellant's ability to contact his family and obtain his CSID document from his home (where he left it). She also rejects the claim that the appellant would be at risk because of his grandfather's and father's alleged involvement with the Ba'ath Party (38). She rejects the claim that he could not live anywhere else because of that involvement but concludes that he does not need to in any event because he could safely return to Tuz".* Upper Tribunal Judge Kekić added
 14. *The difficulty is that the judge failed entirely to consider the humanitarian protection claim in its own right. Although she cites AA and AAH at length (at 38-39), there is no engagement whatsoever with the principles and guidance therein and she fails to apply the guidance to the facts as accepted of the appellant's case. She makes no finding as to whether she accepts that Tuz is a disputed territory and there is no assessment of whether, if it is, the appellant would specifically be at risk because of indiscriminate violence. It may well be, as Mr Avery submits, that the appellant would not be at any risk in Tuz on return but that conclusion cannot be reached without an assessment of the situation on the ground and the appellant's circumstances. That has not been carried out in Judge Bircher's determination. The decision on humanitarian protection is therefore set aside and shall be remade at a future date by a judge of the Upper Tribunal.*
 15. *There is no challenge to the judge's findings and conclusions on the asylum and article 3 claim, nor on the article 8 claim, and those conclusions stand. The only issue to be re-determined is that of article 15(c)."*
4. Upper Tribunal Judge Kekić decided that the decision of the First-tier Tribunal was set aside on humanitarian protection grounds only. *"The decision on asylum and human rights stands"*.
5. The appellant's account states he was born in Khanaqin and moved at a young age with his family to Tuz Khurmatu. He lived with his parents and sister. He attended school for nine years and after completing his education did some odd jobs and worked in the family restaurant. He claimed that in October 2018 an individual, who was a relative of a high-ranking member of the PMF force, left a bag in the family restaurant with the appellant containing important material. The restaurant was then visited by the Iraqi Central Army from the anti-terror fast response team who removed the bag. The individual was then arrested. The appellant was visited by the bag owner's relatives who asked the appellant to attend court and take responsibility

for the bag which he refused to do. As a result news circulated that the man in detention had been given a long jail sentence and the appellant was attacked and they subsequently came to his home upon which he left. The appellant stated that he could not relocate within the Kurdish region because of his grandfather's links to the Ba'ath Party. His family had owned a restaurant in Tuz for five years and he worked there for two or three times a week, during the five year period. He maintained he did not know if the restaurant remained in Tuz and could not give the exact address of the restaurant and had asked members of the Kurdish community if they knew where his family were but to no avail.

Documentation

6. Before me I had the bundle which was before the First-tier Tribunal which included the Home Office bundle containing the Asylum Interview Record and a screening interview and the appellant's bundle before the First-tier Tribunal which contained background evidence on Iraq from pages 1 to 364. The latest report in that bundle was an EASO Country Guidance Iraq Report dated 4th July 2019.
7. Additionally, for the hearing before me on 4th June 2021 I was provided with material including the appellant's statement dated 22nd April 2021, a Media Line Report dated 27th March 2020, an IMMAP weekly report dated 26th March 2020 to 1st April 2020, a GardaWorld report dated 11th December .2020, an EASO COI Report security situation October 2020, a Shafaq News report dated 3rd September 2020, Baz News report dated 17th February 2021 and a Kurdistan 24 report dated 19th March 2020 and a BBC report dated 5th May 2020.
8. Following an adjourned hearing on 6th May 2021, because of technical difficulties with the remote hearing and the hearing was resumed on 4th June 2021.
9. The appellant attended and gave oral testimony through an interpreter in Kurdish.
10. Mr Lindsay submitted that the appellant sought to raise a new issue regarding the CSID to which Mr Bedford objected on the basis that it was not a new point and in accordance with the error of law finding as to whether the appellant could return to his home area with documentation. Mr Bedford stated that the CSID point was raised in the skeleton argument. Mr Lindsay submitted that the argument raised in the skeleton argument was a new point and it concerned whether the appellant was able to access his CSID card and it was clear from **SMO KSP & IM (Article 15(c); identity documents) Iraq CG** [2019] UKUT 400 (IAC) at paragraph 11 of the headnote that the fact a person states he does not have a CSID was an Article 3 matter and Article 3 was not appealed in this case. The issue in this matter was solely confined to Article 15(c) and the matter of the CSID should not be addressed.
11. Mr Bedford submitted that the appellant needed to get to Tuz Khurmatu and he could not get to Tuz Khurmatu without a CSID. He did not have a CSID card and would not be able to get a new one.
12. I pointed out to Mr Lindsay, aside from whether the CSID was a factor relating to Article 15 (c), that **Birch** in the Upper Tribunal which had found that the provisions

under Section 85 of the Nationality, Immigration and Asylum Act did not apply to the Upper Tribunal and although Mr Lindsay submitted that this was being challenged in the Court of Appeal he, notwithstanding, agreed that the matter of the CSID could be dealt with. I note subsequent to the hearing, **Hydar (s 120 response; s 85 “new matter”: Birch)** [2021] UKUT 0176 (IAC) was promulgated and held that Section 85(5) applies to both the First-tier Tribunal and the Upper Tribunal. The finding to the contrary in **Birch** (precariousness and mistake; new matters) [2020] UKUT 86 (IAC); [2020] Imm AR 873 was made per incuriam the judgment of the Court of Appeal in **Alam & others v SSHD** [2012] EWCA Civ 960; [2012] Imm AR 974 and is not to be followed. I have, however, dealt with the matter of the CSID in fairness to the appellant and following the concession by Mr Lindsay.

13. Under cross-examination the appellant denied that he would be able to write to his family in Tuz Khurmatu and ask for the card to be sent and the appellant stated that he needed to be there to obtain a card. He was asked why his family could not simply send his existing card in the post if he asked for it and the appellant replied that he had no contact with his family and he needed to be present in order to get an INID card. Mr Lindsay pressed the appellant on whether the card could be posted to him but he said he had no contact with his family and did not know where they are but if he needed a document, he would have got it a long time ago. The appellant confirmed that he was a young man in good health and he could only return if his safety was guaranteed.
14. Mr Lindsay submitted that there were only two issues for remaking. One, Article 3 and whether the appellant was able to access the CSID card and secondly, the risk of harm under 15(c). He submitted that the appellant was able, practically to access a CSID card and he would be able to travel freely in Iraq. He would be returned to Baghdad. It was his submission that the preserved findings of the First-tier Tribunal were determinative of the claim now raised regarding the CSID and I was referred to paragraph 35 of the First-tier Tribunal decision. The appellant claimed not to remember details of the family’s restaurant and whereabouts, but was disbelieved by the judge. The appellant stated he could not remember the details even though the restaurant was owned by his family and the appellant had worked there for five years. That was not credible. The judge concluded at paragraph 36 that the appellant obviously knew the names and addresses of the family and the business, and the key finding was that he could write to the family in Iraq and get a CSID and there was a clear finding that the appellant would be able to do that. The difficulty for the appellant was that having been found not to be credible his bare claim had no basis on which to be accepted. The position was not dissimilar to that in **MA (Somalia)** [2010] UKSC 49 and in any event there was an express finding that the appellant could simply ask for the CSID to be sent to him. That was a complete answer to the Article 3 claim under the European Convention on Human Rights.
15. Regarding Article 15(c) it was clear from the country guidance that in general there would not be a risk to the appellant of serious violence if he returned to his home area under Article 15(c) of the Qualification Directive. That was made clear by the first paragraph of the guidance in **SMO**. The appellant did not seek to argue that

this Tribunal should seek to depart from the country guidance and indeed the updating country guidance evidence in the supplementary bundle clearly indicated that the situation in Salah al-Din was the same as when the country guidance was promulgated in 2019.

16. On a careful reading of what was said in the EASO Report, particularly at page 55 was that unsurprisingly there were ongoing difficulties and the country guidance acknowledged that there continued to be problems in parts of Iraq. In that context the case here was that there did continue to be isolated security incidents. There was nothing, however, in the materials in the bundle even taken at its highest that there was a generalised risk of 15(c) harm. That was what was expectedly accepted by the appellant in his submissions and I was not asked to depart from the country guidance in **SMO**.
17. What the appellant relied on was paragraph 6 and his time spent outside Iraq and the difficulty with that argument was his own evidence was that he could live and work in Tuz Khurmatu until 2018. He had spent years working in Tuz Khurmatu with no problem. It could also be seen from the EASO that the situation at that time was no different from that now and there was no basis on which to consider any greater risk now than before he left.
18. With regard to the other two personal characteristics, that being his age and his background, the appellant agreed in his evidence that he is a young man in good health and nothing in his profile indicates a risk with regards to the final matter which is his background. Mr Lindsay relied on the findings of the First-tier Tribunal regarding the appellant's credibility and his background from 21 to 38.
19. The appellant's background as a witness was rejected in findings which have been preserved in the First-tier Tribunal determination and I should not accept anything unless it was supported by cogent, independent evidence. The effect of this was that the appellant had not proved the existence of circumstances capable of indicating a risk on return. In all the circumstances on a requisite sliding scale the appellant was in no worse position than any other returnee. In the round, he did not have a background to place him at risk on return.
20. Mr Bedford submitted that the case for the appellant was primarily that he was entitled to humanitarian protection because he could not travel from Baghdad to Tuz without suffering serious harm. To this end issue was taken with the submissions that his credibility was comprehensively rejected by the First-tier Tribunal because, for example, the judge accepted that he was Kurdish and he was Iraqi and came from Tuz Khurmatu. The judge merely did not accept the difficulties he had had there and thus this was not an **MA (Somalia)** type case.
21. At paragraph 35 of the decision the judge said that the appellant could just write but that was in conflict with paragraphs 36 and 37 where the judge describes how the appellant could obtain a replacement. Those findings were not alternate.

22. It was clear that the appellant could not obtain a new CSID card because as indicated in the CPIN Report from June 2020 with the installation of new offices the appellant would have to attend the office in Khanaqin in person. The appellant would be returned to Baghdad notwithstanding his Kurdish ethnicity. At 5.6.1 of the CPIN June 2020 Report confirmed the government had begun issuing new electronic identity cards with the intention of replacing the old national civil status card and nationality certificate. This confirmed that the appellant could not obtain a replacement card from the embassy in the UK. The appellant could not obtain an INID card from the embassy in the UK. SMO at paragraphs 262 to 267 referred to the Salah al-Din governorate and at paragraph 363 of SMO Dr Fatah's evidence was accepted regarding INID cards and the phasing out of the CSID card. At paragraph 366 the evidence from Dr Fatah was that the CSID card could not be obtained anymore. The EASO October report of 2020 at internal page 104 confirmed there was no list of CSA offices and any such list was outdated. An individual could not now obtain a CSID card or an INID card by proxy and thus it was no longer relevant that an appellant could not remember his family page number.
23. At this point both parties agreed that the redetermination in SMO on the CSID point had no relevance to the issue in question here.
24. Mr Bedford indicated that at paragraph 394, it was recorded in SMO that some civil registries may have been damaged during the conflict with ISIL and given the scale of the damage this could be a possibility in Khanaqin. At paragraph 395 there was reference to where a CSID was destroyed, the likelihood of obtaining it was thin at best.
25. Mr Bedford indicated that the second appellant in SMO came from Tuz Khurmatu and although the Upper Tribunal did not make a final decision and remitted the appeal paragraph 437 was instructive as it indicated that the First-tier Tribunal findings were insufficient when stating that it was possibly at the family home. That was not satisfactory.
26. A lot would depend on what was made of the findings of the First-tier Tribunal. There was no statement that there was an alternative finding on the CSID. And there was a clear finding that the CSID could be obtained remotely but the supplementary bundle and the documents therein indicated the extent of the infrastructure damage and it was clear there was no possibility of a new CSID card being obtained. Indeed the appellant would have to be in his home area to obtain a new INID card and he could not travel without one.
27. The EASO Report dated October 2020 did show that Salah al-Din one of the most unstable of the contested governorates and I was referred to page 141 and 142 of the report. Further, Tuz was under the control of a Shia strongman and that was relevant to the sliding scale assessment where ethnicity had to be taken into account regarding risk under Article 15(c). This was a Kurd returning to a previously predominantly Kurd area but run by a Shia warlord. ISIL had a secure base in Salah al-Din and Kirkuk, and I was referred to SMO at paragraphs 262 to 267.

28. There were reports of indiscriminate violence affecting Tuz Khurmatu in March 2020. The headnote of SMO at paragraph 5 confirmed that the personal characteristics should be carefully assessed against the situation in the area to which return was contemplated and the other personal characteristics which should be considered included 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. There was ongoing ISIS activity as could be seen from the IMMAP article at page 7 of the appellant's bundle and there were continuing attacks in Tuz Khurmatu. From October to December 2020 military convoys were being attacked.
29. Secondly, Kurds were in the minority or not in de facto control and the Shia Militia were in control. The appellant could not be relocated to the IKR and it was because there was no suggestion that he had a network in the IKR.
30. Mr Lindsay submitted that most of the references in the supplementary bundle concerned matters as they stood before the Upper Tribunal so the country guidance was a complete answer. Further, large parts of the attacks were attacks on the military and the question concerned whether the generalised risk and personal characteristics of the appellant was a young man in good health, and he had support. That he was Kurdish and there was a Shia strongman in control was a development that predated the country guidance in SMO and could not lead to a different conclusion. Nothing on the facts should suggest that there was an Article 15(c) risk to the appellant.
31. Mr Bedford responded that the strongman was in control of Tuz Khurmatu not Salah al-Din. The starting point was the risk on return had to be assessed on a sliding scale and the Tribunal must look at ethnicity and where he came from or the population not in de facto control and the Kurds were in a minority or not de facto in control.

Analysis

32. Upper Tribunal Judge Kekic effectively preserved the First-tier Tribunal findings on the asylum and Article 3 claim. Those findings were not therefore successfully challenged and remain intact. The findings of the First-tier Tribunal at paragraph 13 were that the appellant was a national of Iraq who was of Kurdish ethnicity and born in Khanaqin and moved at a young age with his family to Tuz Khurmatu, where he lived with his parents and sister, and where he completed his nine years of schooling and worked in the family restaurant. The appellant left Iraq in November 2018. As identified the judge made an adverse credibility finding in relation to the appellant's account that he was being targeted by powerful relatives of an individual who had been detained by the security services owing to the appellant's actions at his restaurant. The judge found that the account was not credible, that the arrangements at the restaurant had not been altered in any way despite someone leaving an unattended bag there, and the appellant changed his account during his substantive interview and was thus inconsistent. The appellant's claim that he suffered death threats from the relatives of the man with the bag was roundly rejected at paragraph 29, not least because there was no logical conclusion why the

man with the bag's relatives would blame the appellant for the arrest and that his own family had not been threatened.

33. The judge at paragraph 32 found:

"32. I am therefore satisfied the appellant has not discharged the burden of proof to show with a reasonable degree of likelihood that he has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Geneva Convention. I therefore refuse his asylum appeal. Articles 2 and 3 of the European Convention on Human Rights were raised on behalf of the appellant. ... As I have not allowed the appellant's asylum appeal it therefore follows that I also do not allow his appeal under Article 3 of the European Convention on Human Rights, as enshrined in the Human Rights Act 1998.

33. *As I have rejected the appellant's account and found him not to be a credible witness I must now address whether or not it is reasonable to return the appellant to Iraq and thus by doing so make him a displaced person anywhere in Iraq. The appellant left Iraq as recently as 2018. He confirmed at his substantive interview at question 15 that he was issued with a CSID. He said that the CSID document was in Iraq. At question 18 he was asked if he could get the documents and he said he could not. At question 19 he said that he could not get in contact with his relatives. At question 20 of his substantive interview he was asked if he could write to his last address and get his family to send the documents. Again he said that he could not because at question 21 he was 'not in contact with them'.*

34. *The appellant also stated at question 22 that he could not get a new CSID card and he stated that he is not in contact with anyone in Iraq who would assist him with this process. He confirmed that he had been issued with his CSID from the Kharaqeen office in Iraq at question 25. The appellant claims that he has lost all contact with family and friends. He claims that he last saw his family and friends a year ago. I have rejected his account and found him not to be a credible witness. I do not accept that he has no contact with family and friends and in any event he has not even tried to contact family and friends.*

35. *The appellant claims in answer to question 176 that he has not details for his family and friends and at question 177 he states that he cannot remember the details of the restaurant. This is a restaurant owned by the family and at which the appellant worked for 5 years. I reject his claim that he cannot remember the name of the restaurant. All the appellant needed to do was to write to the restaurant and/or his last known address in Iraq to have the CSID card sent over. There is no evidence to suggest that he has even attempted to find his relatives and friends in Iraq. There is also no evidence to indicate that he approached an organisation such as the Red Cross to help him find them.*

36. *The appellant has taken no steps to recover any contact that may have been lost with these family members. Since he obviously knows their names,*

addresses and the name of the restaurant business it is difficult to understand why such steps to contact his family would not be taken – unless that is because he is in contact with family members and does not need to take any further action to locate them. If the appellant is in contact with family members then his identity can be verified with their assistance and the family records held in the Kharaqeen office accessed in order to secure replacement identity documents. However even without the help of family members he may be able to instruct a lawyer/agent in Tuz province to act as his proxy in identifying the relevant documents which could be issued to him. He could also present himself to the Embassy, ask for his finger prints to be taken, provide his name and his father's details to request that a replacement passport be issued.

37. *The appellant's point of return will be Baghdad airport. I am satisfied that with the help of family he can obtain the issue of replacement documents. I am satisfied that he would not face a risk of harm at Baghdad airport even if he were perceived as a failed asylum seeker. He should therefore be able to be returned fully documented and be able to make his onward journey to Tuz. It is not unreasonable for the appellant to be expected to return to Tuz where he has family who can support him. I am satisfied that his account as to why he fled Iraq is fabricated.*

38. *There is no basis upon which he should fear Hashd Al Shaabi forces, the Shia militia and the family of the man with the bag. I also reject his claim that he is at risk because of his grandfather and father's alleged involvement with the Ba'ath party. The appellant did not experience any difficulties in Tuz because of his claim that his grandfather and father worked for the Ba'ath party. His family by all accounts ran a successful restaurant in Tuz and there were no incidents to indicate that the appellant's family experienced difficulties in Tuz because of the alleged connection between the appellant's grandfather and father. I reject the appellant's claim that he cannot live elsewhere in Iraq because of this alleged Ba'ath party connection. In any event I have concluded that he does not have to live anywhere else and can return to live in Tuz. In reaching my decision I have taken into account the case of AA (Iraq) CG [2017] EWCA Civ 944."*

34. It is quite clear that the judge found at paragraph 34 when considering the CSID card that the appellant's claims that he last saw his family and friends a year ago was rejected. As can be seen from above the judge specifically stated "I do not accept that he has no contact with family and friends and in any event he has not even tried to contact family and friends."

35. As crucial paragraph is that of paragraph 35 where the judge continues to state that in effect that the appellant obviously knew the names, addresses of his family members and the name of the restaurant business and concluded that the appellant did not need to take further action to locate them because he was already in contact with the family members .

36. However, the critical point is that at paragraph 35, as cited above with my underlining, the judge made a very clear finding that there was no evidence to suggest that he had even attempted to find his relatives and friends in Iraq and all the appellant needed to do was write which he had not even done.
37. It is manifest that the judge found the appellant remained in contact with his family members and made a clear and unambiguous finding that the CSID card could be sent over. The appellant was clear in his asylum that he had a CSID card in Iraq.
38. I acknowledge the submissions made in relation to obtaining a new CSID card and an INID card but that is not the finding that the judge made. I find the further findings at paragraph 36 were merely to bolster the point that he could have made a further application. In the event, subsequent to the First-tier Tribunal decision, the situation has changed with regard to obtaining new CSID or INID cards, but there was no submission before me that the CSID cards expire in validity nor that the appellant could not travel through from Baghdad to Tuz Khurmatu with a CSID card rather than an INID card. SMO at paragraph 21 of the headnote confirmed that '*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*'. This indicates that travel is undertaken safely in Iraq. I note for clarity that Tuz Khurmatu is a contested area outside the IKR, but I do not find on the evidence that the appellant will be unable to travel, as a young fit healthy man with a CSID card, to Tuz Khurmatu. In SMO at paragraph 190 the submission was noted, albeit made on behalf of the respondent was that "*There was no suggestion that he [the second appellant in SMO from Tuz Khurmatu] would have any difficulty in returning there*". I was not taken to any background material that establishes that the appellant would be unable to safely make the journey from Baghdad to Tuz Khurmatu.
39. I permitted the submissions to be made in relation to the CSID card to address any risk comprehensively but there was no challenge to the factual findings by the judge which included that the appellant remained in contact with his family. Before me in his oral evidence the appellant merely denied that he could contact his family; even that was not attempted. I therefore reject his oral evidence and statement to that effect. The appellant was clear in his asylum interview that he had a CSID card in Iraq and it is logical to conclude that his family would have access to it, bearing in mind he was working for them at their own restaurant, and would be able to forward it to the appellant in the UK. Contrary to paragraph 237 in SMO whereby the UT found '*the judge of the FtT stated that the appellant's CSID was 'possibly' at the family home in Tuz Khurmatu*', the judge here had no such reservations. There was a clear finding that he could access the document.
40. I find no risk of an Article 3 breach based on the appellant's apparent lack of a CSID card. I take that finding forward into an assessment under Article 15(c).
41. Turning to those considerations under Article 15(c), the appellant hails from a contested area in Salah-al Din, Tuz Khurmatu. It is the only district of the

governorate to come under the 'disputed internal boundary' as per the Iraq Constitution.

42. SMO addressed the particular situation in Tuz Khurmatu and which I refer to below, but I was provided with an EASO Report dated October 2020 which detailed that although Salah al-Din was predominantly inhabited by Sunni Arabs and hosts a Shia Arab minority the population in Tuz district is particularly multi-ethnic and was reported to be "split evenly among Sunni Arabs, Kurds and Turkmen (Shia and Sunni)". Of note is that the appellant's Kurdish family chose to relocate to Tuz Khurmatu when he was very young and he was educated there. Additionally, his family ran their business there, a restaurant in Tuz Khurmatu, for many years and the appellant worked there until he left Iraq in late 2018. There was no indication from the appellant this had ceased merely that he had not been in contact. His account, according to his witness statement and his oral evidence was not that the restaurant and his family were being specifically targeted because of their Kurdish ethnicity but that he was being targeted by the relatives of the man detained because he left a bag at the family restaurant. Even that account was however disbelieved and that adverse credibility finding stands.
43. I carefully considered the background material and the developments relating to the security situation particularly since late 2018 when the appellant left. The EASO Report (October 2020) refers to attacks by ISIL on neighbouring areas from 2015 onwards and that attacks staged by insurgent groups continue to be reported on roads in Salah al-Din "throughout 2019 and 2020". It reported the ISIL forces were on the march from 2014 but most of the key population centres were arrested from ISIS control by mid-2015 and Salah al-Din was one of the first governorates to witness large-scale return of IDPs. The EASO Report also concluded that since ISIL expulsion Tuz Khurmatu was divided between Kurdish security forces and the PMU (an Iranian backed government forces). After the 2017 Kurdish Independence Referendum the Tuz district did experience high levels of violence. In January 2018 the central government of Iraq's rapid response forces were deployed to Tuz Khurmatu and then, the EASO Report notes "according to reports, one of the Badr Organisation's longstanding top commanders established himself as the 'strongman' in Tuz Khurmatu along with his 'personal militia' that he formed with local Shia Turkmen". In December the ICG assessed that security dominance by a single group was a recipe for continued violent conflict. Further, ISIL continued to carry out asymmetric attacks and there was reported an increase in the number of attacks from 2017 to 2018. This was before the appellant left.
44. The country background material provided to me showed, however, a decline in the number of security incidents since 2007 and I am mindful that the country guidance decision of SMO reviewed extensive material on Iraq up to 17th July 2019 and much of which was in the bundle before me. The Upper Tribunal considered the information published by the European Asylum Support Office (EASO) in March 2019 and the very recent posts on Joel Wing's Musings on Iraq blog. The Upper Tribunal specifically considered the general security situation in Salah al-Din and Tuz Khurmatu and had this to say from paragraph 263 onwards:

- “262. Salah al-Din is a predominantly Sunni governorate, and its capital Tikrit was the birthplace of Saddam Hussein. Only its easternmost section, which includes Tuz Khurmatu is disputed between the GOI and the IKR. Small parts of the governorate fell to ISIL but control was quickly regained, with ISIL forced out of the key centres (including the significant city of Baiji) by mid 2015. These battles nevertheless caused significant infrastructure damage in certain parts of the governorate. In Dr Fatah’s opinion, as shared with Joel Wing of the Musings on Iraq blog, ISIL has reduced its operations in this governorate to focus on the insurgency in other areas. The reduction in ISIL attacks from 84 per month in 2017 to 14.2 per month in 2018 would certainly support that theory.
263. Problems remain, however. Tuz Khurmatu saw heavy violence in the aftermath of the Independence Referendum and has suffered serious damage. Violence continued into 2018. It is now ruled by a powerful Shia militia and, as Dr Fatah stated, the problems which remain are essentially of an ethnic nature, with Kurds in that area more likely to face difficulty from the controlling PMU. We accept Dr Fatah’s evidence that Salah al-Din is one of the governorates in which there is particular resentment to the presence of Shia militia, since it was formerly the seat of Sunni power in the country. This is a governorate in which Shia control is most acutely felt, with Dr Fatah giving examples of the Kurdish flag being removed and a university’s name being changed by the Shias.
264. As elsewhere, the majority of ISIL activity is specifically focused towards security and authority figures. Dr Fatah again used the word ‘selective’ on more than one occasion during his oral evidence and accepted that their activities were limited by the presence of the PMUs in the governorate. He gave the example of civilians being killed at a checkpoint if ISIL mounted an attack on the security forces controlling it, stating that mass attacks were no longer a phenomenon.
265. There is some evidence of coercive behaviour on the part of ISIL towards the rural population in Salah al-Din. The Hamrin Mountain Range extends into Salah al Din and there are militants permanently stationed in that rugged terrain, who exert some physical and psychological control over the population, including the imposition of zaqat, or taxes, on the population. Salah al-Din also contains what is described in the EASO report (attributed to the Institute for the Study of War in January 2019) as ISIL’s only area of ‘doctrinal control’, as manifested by prisons, judicial proceedings, organised worship and training camps. Asked about this area, which is in the Makhoul Mountains of Baiji District, Dr Fatah was dismissive, stating that it was “only villages”. At Appendix D, we have appended a map from the Washington-based Institute for the Study of War (“ISW”) in which this small area is visible as a grave accent over the city of Baiji.
266. The metrics for the governorate are not indicative of a level of threat which engages Article 15(c) in general. The IBC figures recorded 152 civilian deaths out of a population of more than 1.5 million in 2018. The intensity of the violence was considerably lower than in Ninewa, for example,

standing at 10.05 per 100,000 in 2018, marking a reduction from 28.05 in 100,000 in 2017. Vast numbers have returned to the governorate and it is clear that the authorities are taking regular action in the area to continue the pressure on ISIL. We also take account of indirect forms of violence, particularly the assassination of local authority figures; the coercion exerted by ISIL on sections of the rural population in particular; and the sectarian tensions which persist across the governorate (in Tuz Khurmatu in particular). We do not consider, however, that an ordinary civilian faces such a high level of indiscriminate violence there that substantial grounds exist for believing that he would, solely by being present there, face a real risk which threatens his life or person.

267. *The one exception to that general conclusion is the geographically small area in rural Baiji which we have identified above as being under the doctrinal control of ISIL, as marked on the ISW map. We see no reason to doubt what is asserted in the EASO report in this respect, and consider that the position has changed from that described at [95] of the respondent's closing submissions (which refers to the Danish Immigration Service stating that ISIL controls no territory in Ninewa). Insofar as the respondent made submissions about such control, her stance was that there was no evidence of an actual threat to life or person there. We accept that submission but the inference is irresistible. If ISIL is in control of the area and is operating parallel judicial systems, prisons and training camps there, we consider it more likely than not (given the group's behaviour from 2014-2017) that the situation in that very specific area is one in which there is such a high level of indiscriminate violence that a civilian would face a real risk which threatens his life or person solely by being present there".*

45. Apart from the article "Combatting Terrorism Centre at Westpoint (USA military academy)" dated 8th August 2019 the material in the objective background material provided for the First-tier Tribunal predated **SMO**. The Tribunal were clearly aware of the existence of the Shia strong man in Tuz Khurmatu but did not find a level of violence there which engaged Article 15(c). Indeed, the reference to the strong man was made earlier as I identify below.
46. The EASO October 2020 Report (which SMO did not consider) identified that although ISF had "cleared" central northern Iraq, ISIL continued to carry out asymmetric insurgent attacks targeting security forces. The appellant will be returning however as a civilian. As reported in the October 2020 report, the ISF have the overall responsibility of the security within the governorate and predominantly consist of units from the Iraq Army, Federal Police and Special Forces. ISF does not have a large enough force to control large desert areas, and have been unable to retain control of territory cleared of ISIL in Salah al-Din governorate, but have a presence in some areas including the areas around Tuz Khurmatu. Although the number of armed conflict security incidents have fluctuated and continued there is nonetheless a focus on military targets. The civilians killed or injured in 2019 amounted (sadly) to 97 in Salah al-Din. In 2020 it was 49. The rural areas are those said to be vulnerable. I was also referred to the particularly high scores of

infrastructure damage in Salah al-Din and explosive ordnance contamination which inhibited safe returns of IDPs although the returns to the governorate outpaced displacement. There had been considerable damage before 2019. In effect the situation had not changed materially deleteriously since the appellant departed Iraq and I accept Mr Lindsay's submissions on the background material.

47. Overall, I am not persuaded that the security situation has deteriorated to an extent that I might find that **SMO** mischaracterised the situation in Tuz Khurmatu in general and the Article 15(c) risk exists there.
48. In terms of the approach to the consideration of humanitarian protection (albeit I note all country guidance on Iraq was replaced by **SMO**) as held in **AA (Article 15(c) Iraq CG [2015] UKUT 00544 (IAC)**

'In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm'.

49. I take into account paragraph 5 of the headnote of **SMO** as follows:

"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”.

50. The appellant maintains he is a Sunni and the majority in the area are Shia Muslims and thus he would be at risk. **SMO** recorded that following the Kurdish referendum in September 2017, serious fighting erupted in Tuz Khurmatu and then “the city was taken over by one of the most senior commanders of the Badr Organisation [an Iraqi Shia Islamist political party], one of the most powerful Shia militia”. However, the appellant did not leave Tuz Khurmatu until a year later and continued to work in his family business and reside there until his relocation. The appellant is a Kurd but the Badr Organisation exerted strong influence according to the reports in Salah al-Din 2018 prior to his departure and when he was still there. The appellant in his asylum interview at [34] identified the reason he left as the family threatening him and when asked at Q[36] if there were any other reasons, he was claiming asylum simply stated ‘no’. He added that his national certificate was in his home Q[38].
51. On the basis of the fresh material before me, I do not find that the appellant’s own personal characteristics of ethnicity as a Kurd contribute to an Article 15(c) risk in Tuz Khurmatu, nor that the conflict and the indiscriminate risk in Tuz Khurmatu has significantly increased since **SMO** contemplated the situation there. I have applied the sliding scale assessment, but this is a young, healthy Sunni Kurd who was working in Tuz Khurmatu, and on the basis of the facts found by the First-tier Tribunal has a family who have a business in Tuz Khurmatu and who could support him. He also has available to him a CSID card with which he can travel to his home area. He would not face an Article 15(c) risk on return to Tuz Khurmatu for the reasons I have given above.

Notice of Decision

The appeal remains dismissed on asylum and human rights grounds and I further dismiss the appeal on humanitarian protection 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 *Helen Rimington*

Date 22nd July 2021

Upper Tribunal Judge Rimington