



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09579/2017

THE IMMIGRATION ACTS

Heard at Field House
On 20th May 2021
Face-to-Face Hearing

Decision & Reasons Promulgated
On 2nd September 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR I J O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Forrest, Maguire Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iraq and of Kurdish ethnicity born on 24th August 1988, appeals against the decision of the respondent made on 27th September 2017 to refuse his asylum, humanitarian protection and human rights claims.
2. The appellant's appeal came before First-tier Tribunal Judge A M S Green on 26th February 2018 and was dismissed on 14th March 2018. Permission to appeal to the Upper Tribunal was granted on 23rd August 2018 on the basis that the judge erred in

failing to provide sufficient reasons for finding the appellant's account not credible. On 19th February 2019 a decision by Upper Tribunal Judge Macleman found no material error of law and maintained the decision.

3. An application for permission to appeal to the Court of Session was made.
4. On 18th March 2020 The Honourable Mr Justice Lane, in a joint decision and in accordance with the Interlocutor of the Inner House, found an error of law in the decision of the First-tier Tribunal dated 14th March 2018 owing to inadequate reasoning and set it aside. Undated directions were issued that no oral evidence would be called and that the matter would be listed for a remote hearing. On 3rd December 2020 further directions were issued that an interpreter should be made available because the Home Office indicated a request to cross-examine the appellant. The matter was adjourned and set down for hearing. That hearing was adjourned on the basis that no interpreter was in attendance and the matter was resumed before me on 20th May 2021.

Immigration History

5. The appellant and his wife arrived in the UK on 14th March 2017 and the appellant claimed asylum on the same date. On 14th March 2017 he was issued with an IS.151A notice of liability for removal owing to illegal entry: clandestine.

The Appellant's Claim under the Refugee Convention

6. The appellant claims in his appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that a return to home territory would be a breach of the United Kingdom's obligations under the 1951 United Nations' Convention relating to the Status of Refugees and the later Protocol ("the Refugee Convention"). In determining this appeal I have paid due attention to Section 85 of the 2002 Act and in so doing have taken into account all avenues of appeal open to the appellant.
7. It is for an appellant to show that he or she 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.
8. 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.

9. On 9th October 2006 the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (“the Qualifying Regulations”) came into force and some consequential changes in the Immigration Rules were inserted after paragraph 339 of the existing Rules. Under the Qualifying Regulations 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 Qualifying Regulations).

The Appellant’s Claim under the Humanitarian Protection

10. The Statement of Changes in Immigration Rules provide for a grant of humanitarian protection in circumstances where a person does not qualify as a refugee but can show substantial grounds for believing that they would, if returned to their country of return, face a real risk of suffering serious harm. The applicant must be unable or owing to such risk unwilling to avail himself of the protection of that country.

Appeal under the Human Rights Convention

11. This appeal is also brought under the 2002 Act because the appellant alleges that the respondent has in making his decision acted in breach of the appellant’s human rights. The appellant has in particular relied upon Articles 2 (Right to Life), 3 (Prohibition of Torture) and 8 (Right to Respect for Private and Family Life) of the Human Rights Convention. The standard of proof for Articles 2 and 3 is that there should be substantial grounds for believing that there is a real risk of treatment contrary to Article 3 which creates a burden of proof on the appellant which can be equated with the burden of proof in asylum cases. It also equates with the burden and standard of proof in claims for humanitarian protection. The standard of proof for Article 8 is that of the balance of probabilities.

Documentation Considered

12. The respondent had in accordance with the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 submitted the following documents: an asylum decision letter dated 12th September 2017, a Statement of Evidence Form dated 31st August 2017, an article from www.bustle.com entitled “How Does ISIS Recruit, Exactly? Its Techniques Are Ruthless, Terrifying and Efficient”, a Home Office country request entitled “Mental Health Treatment in Iraq”, a Home Office report dated June 2017 entitled “Iraq: Return/Internal relocation”.
13. The appellant produced documentation for his appeal which included a First Inventory of Productions, which in turn included a selection of photographs from 1 to 22. Also produced was an Inventory of Productions II, a witness statement of the appellant dated 30th October 2017, a letter from Glasgow City Health and Social Care Partnership dated 20th September 2017, a statement of correction, clarification, addition and amendment in response to the record of screening interview, statement of clarification and correction in response to the record of substantive interview, article ISIS attacks two villages north of Kirkuk dated 16th October 2017. An Inventory of Productions III, included a marriage certificate with certified translation,

Iraqi civil status for the appellant and wife with certified translations and the Republic of Iraq nationality certificate for the appellant and his wife.

14. Expert reports from Dr Alan George dated 11th March 2020 and from Dr E Joffé, specialist in Middle Eastern contemporary affairs, dated 9th February 2019 were attached.
15. For the resumed appeal hearing a further Inventory of Productions was produced which included a skeleton argument, grounds of appeal, a further supplementary statement of the appellant dated 8th February 2019 and supplementary witness statements dated 26th November 2020 and 28th April 2021.
16. I shall note here that I have read and considered all the papers before me and where I have been guided to certain passages in the objective material by a representative, I have read those passages with especial care. However, I have read them in the context of the entire document. I have carefully considered both the expert reports and the articles provided by both parties prior to reaching my conclusions.

The Appellant's claim

17. The appellant lived in Kirkuk, a contested area where he worked as a butcher and a shepherd, and he claims he was approached one night by members of ISIS who asked him to work for them as an informer. They warned him that if he did not help them, they would behead his children and as a result he and his wife and children fled from Iraq. When in Turkey, he left his children with his parents and uncle, who returned them to Iraq. He feared that he would be targeted by ISIS on return to Iraq and he also feared his uncle with regards to his marriage to his wife.

The Secretary of State's refusal

18. The respondent accepted that the appellant was an Iraqi national and that he spoke Kurdish Sorani and he correctly identified Sulaymaniyah, Dahuk, Halabja and Kirkuk as provinces in Iraq. The respondent's refusal letter considered that the appellant's responses in interview were inconsistent, for example his children he stated originally were in Turkey and then he stated that they were in Iraq. It was not accepted that if he had been directly threatened with the beheading of his children that his family would send them back to Iraq. Further, he stated that he fled to his uncle when ISIS came to visit and although he stated that he had not told his uncle that he was being threatened by ISIS, had it been found that his uncle had helped him, this would have placed him in danger from ISIS. It was unclear as to why he thought his uncle would kill him and further, he would not have approached him. When asked how he could give the ISIS information, his response as to why the ISIS would recruit him was not accepted because it was inconsistent with background material. It was not accepted that ISIS would seek to recruit him, a shepherd, to assist them because ISIS' main route for recruitment was through the media and social media. It was not accepted that ISIS would approach him and run the risk of him notifying the authorities.

19. It was put to him as to why it was a problem for him to live in Erbil near his uncle and he explained that the uncle had five children and wished one of his sons to be married to his wife. The appellant stated that his in-laws agreed to the marriage, but his uncle did not. It was considered that his responses were vague, lacking in detail and evasive. It was not accepted that the appellant was ever threatened by ISIS or that he was threatened by his uncle as he claimed.
20. In relation to risk on return the Secretary of State's refusal letter stated that the respondent would only return the appellant to the IKR if he originated from the IKR. He had stated in interview that he had lived in Daratu in the IKR beside Erbil, also known as Hewler, which was part of the KRG. It was not accepted that he was ever threatened by either ISIS or his uncle and it was considered that he could use the same resilience that he had shown in relocating to the United Kingdom to re-establish his life in Iraq.
21. Further, it was considered that the appellant had failed to meet the requirements of paragraph 276ADE(1)(vi) and there were no exceptional circumstances. Additionally, with regards mental health, the Secretary of State confirmed that there were basic health services in Iraq and most mental disorders could be treated in primary health centres and in hospitals albeit mental health remained stigmatised.

The Hearing

22. At the hearing the appellant confirmed that he could understand the interpreter in Kurdish Sorani, and he adopted his statements dated 8th February 2019, 26th November 2020 and 28th April 2021.
23. In response to questioning and my request for clarification on his geographical relocation in Iraq, the appellant confirmed that he had married at the start of 2014 and at that time he was living in Erbil. He stayed for approximately two weeks after he married and then moved to the village of Nem Alaquer in the western part of Kirkuk. That was about an hour and a half from Erbil. He stated that he moved to his home village in order to save his life. He was asked why he had referred to Daratu in his asylum interview and explained that he was displaced by the former regime of Saddam Hussein and Daratu was a compound (apparently near Erbil), and he was forcibly displaced from his own area. He lived there until the day he moved to Alaquer, which was a village that belonged to the town of Dibis and Dibis was in the province of Kirkuk. Kirkuk was a disputed area. He stated that he moved to Alaquer when he was faced with a problem in Erbil with his wife's maternal uncle because he threatened to kill him, and he had just moved quietly to the village.
24. Under cross-examination he was asked what other family members lived there in Erbil and he stated that he had none.
25. Mr Walker submitted that he relied on the refusal letter. The appellant and his wife had CSID cards, and they would be expected to relocate to Kirkuk, which was not in the IKR. This was a case which was unusual and a family split on the journey. The

children were left now with the grandparents and two children had subsequently been born in the United Kingdom.

26. Mr Forrest submitted that their evidence was from four sources, the appellant himself, his mother and the two experts. I was invited to accept that the appellant's evidence was credible and reliable. The expert report of Dr George underlined the fact that the threat from ISIS was still real albeit that it was less than in 2017. The doctor's report confirmed the claim that he would be unable to integrate into Iraq and his private life would be interfered with disproportionately.
27. It had previously been found that the appellant could return to Erbil, but he was no longer registered in the IKR but in Kirkuk, which was a contested area and not in the IKR.

Analysis

28. In his statement of 2017 the appellant related he had left Iraq on 1st March 2017, travelling via Turkey with his family with valid Iraqi identification documents and on entry to the United Kingdom claimed asylum on 15th March 2017. It aids his credibility that he claimed asylum promptly on entry to the United Kingdom together with his wife and further explained in his screening interview that he left Iraq because of his fear of Daesh/ISIS.
29. To his credit, at the very outset in his screening interview, the appellant gave an account of his difficulty on return and has not wavered from this. He further produced his CSID documents. He stated that ISIS came to his house in Dibis, Kirkuk and they threatened to kill him if he did not work for them. In his asylum interview on 31st August 2017 the appellant was consistent and explained, in fact in some detail, in the interview and in particular from question 36 onwards that he had been visited by Daesh/ISIS and was asked to work for them as an informer and that if he refused, he was told, they would behead his children and behead him. He explained that they visited his house on 22nd February 2017 and they repeated their visit. ISIS initially introduced themselves as Peshmerga and that because he lived on the border of the IKR and those areas controlled by the government of Iraq, in fact they were from ISIS and had crossed over that border. He explained at question 46 that they came "*sneaking into the village they behead people. It has happened in our village and other around villages*". He was told that they needed "*more members and to collect information from this side [of the border] to that side they want more people to work for them*".
30. The appellant explained that as a shepherd he would be able to give them access to information and bearing in mind that geographical information would be important in order to occupy ground, I find the account credible. To have local knowledge is self evidently valuable.
31. At question 49 of his asylum interview, indeed, the appellant outlined: "*They want to know all the defence point from the Peshmerga side we go out into the field we come across all the points or checkpoints (sic)*". The appellant also explained that he did not report

them to the Peshmerga because he was scared if he said anything he would not be able to escape. The following morning he called his own uncle and removed himself with his children. That he did not explain to his uncle the reasons for his departure does not necessarily undermine the appellant's claim. The appellant also explained that ISIS sometimes used the uniform of Peshmerga in which to travel effectively in disguise.

32. I find that the appellant did not attempt to embellish his claim and explained that he had not had problems with Daesh previously to this point, [question 66 AIR]. In his witness statement of 25th October 2017, (I assume that the reference to 22nd February 2016 is a mistake because the appellant is consistent with the rest of the detail in his witness statement), he confirmed that he left Iraq on 27th February 2017.
33. I have factored into my consideration of the appellant's account the report from the expert Dr George, who is a freelance writer, journalist, consultant and academic and a respected expert specialising in Middle Eastern political and economic affairs. I accept his report as informed and balanced and note that he has given evidence in numerous appeals in the Immigration and Asylum Chamber.
34. It should be recalled that the appellant claimed that he was threatened in early 2017 albeit that the Islamic states were defeated finally in late 2017, but as outlined at paragraph 76 of Dr George's report, ISIS was still active in the appellant's area and remains so. Dr George stated at paragraph 77 that

"although the security situation in Iraq has generally improved significantly since the defeat of ISIS, the group has re-established itself as an underground insurgent movement in areas seized from it"

and he noted that:

"The disputed territories between the Iraqi central government and autonomous Kurdistan region in the North West of the country have recently witnessed a rise in Islamic state attacks, foreshadowing long-term security threats and forcing people from dozens of villages to flee their homes.

The vast disputed lands, consisting of Kirkuk [my underlining] and parts of Nineveh, Saladin and Diyala provinces, have been a point of high contention between the central government and the Kurdistan Regional Government for decades. ISIS started regrouping in the area after losing control over major cities such as Mosul."

35. Dr George at paragraph 79 referred to "ISIS in Iraq: Militants 'getting stronger again'":

"Kurdish and western intelligence officials have told the BBC that the ISIS presence in Iraq is a sophisticated insurgency, and ISIS attacks are increasing.

...

'They have better techniques, better tactics and a lot more money at their disposal'.

...

There is now a vast area of no man's land in northern Iraq between Kurdish Peshmerga security forces and their Iraqi counterparts.

...

The only ones patrolling in this area are ISIS.

...

ISIS is 10,000 strong in Iraq with between 4,000 and 5,000 fighters, and a similar number of sleeper cells and sympathisers."

36. At paragraph 138 Dr George confirmed the ongoing and continuing threat to the appellant as follows:

"Mr O claims to have fled Iraq largely because of the threat of retaliation from ISIS after he refused to operate as an informer on their behalf. If the Tribunal was to determine that his testimony on this point is credible, it could be plausible that he would now be a target for ISIS vengeance, at least in the area where ISIS continues to operate."

And at paragraph 139:

"In this regard I note that ISIS has suffered severe blows and no longer controls territory other than sporadically and at night; but that the group continues to operate clandestinely over a large area of North Central Iraq, including northern parts of Kirkuk governorate."

37. Although Dr George conceded that the appellant would not be a prime target for attack, in his opinion "anyone who had defied ISIS would have reason to fear being targeted by them". At paragraph 141 Dr George accepted that he would not be at real risk from ISIS in the KRG-controlled parts of Iraq which indicates that the report was considered and balanced.
38. The appellant produced his Iraqi civil status and Iraqi nationality certificates for both himself and his wife and his children still in Iraq. It assists his credibility that he has produced documentation to verify his identity, but it also assists in identifying his movements in Iraq. In his asylum interview he confirmed that he was born in Hewler (Erbil), and this is confirmed in his documentation. The documentation shows that he married in 2014 in Erbil, as indeed that of his wife was born in Erbil and that he was then registered in the Nationality Directorate in Kirkuk governorate in Dibis (Dubis). Although in his asylum interview, he stated that he had lived in the town of Daratu around Hewler, [Erbil], and was asked if he had lived anywhere else and he stated "no, just in my own village", [question 9], he did proceed confirm that he lived in Kirkuk, and thus he did refer to both places. Indeed Dubis is a town to the north of Kirkuk in the Kirkuk governorate and not in the IKR. I accept that nuances of meaning of questions and answers may be lost through interpretation.

39. Overall I find the appellant's account of his risk from ISIS to be credible. His account is supported by the unchallenged expert report of Dr George. Indeed, neither expert report was challenged. It is also confirmed by the report of Mr E Joffé, who has specialised in Iraqi affairs since 1980 when he was editor for the Middle Eastern North Africa at The Economist Intelligence Unit and a lecturer at King's College London University and previously an affiliated lecturer at the Department of Politics and International Studies in the University of Cambridge in relation to international relations of the Middle East and North Africa. This expert confirmed that he understood his duty in compiling the report was to the court and that he had complied with the guidance on expert witness testimony as outlined in **MOJ & Ors (Return to Mogadishu) Somalia (CG) [2014] UKUT 00442 (IAC)**.

40. The account given by the appellant to the experts was consistent with the remaining evidence in his witness statements and his oral evidence. Indeed he confirmed that in the wake of his marriage in 2014 because the inter-family conflict had been so bad, the appellant and his new bride moved away from Daratu into a village called Awa Alager (Alaquer) in Kurdish) to the south of Erbil in the neighbouring governorate of Kirkuk's Dibis district in February 2014. Mr Joffé confirmed that this was outside the Kurdish Autonomous Region and is one of the contested areas. Although it was said to be under the control of the Peshmerga, ISIS had penetrated up to the borders and ISIS-controlled territory was very close to the appellant's village. Mr Joffé addressed the issue of the appellant relocating to the KRG and stated at paragraph 25:

"He would only be able to establish permanent residence in Kurdistan if he has a Kurdish permanent residence sponsor and has fulfilled the Regulations for internally displaced persons in Iraq. ... In addition, the current crisis in northern Iraq has made access much more difficult."

41. The country background material including the report US Department of State Country Reports on Terrorism dated 19th July 2017 confirmed that the government had made progress towards defeating ISIS but 'severe internal security threats endured' and some of Kirkuk had not been reclaimed (i.e. ISIS retained a presence in the Kirkuk governorate). A further press article dated 16th October 2017 near the time of the appellant's claimed threats, reported 'ISIS attacks two village north of Kirkuk'. This supports the appellant's contention that he was threatened by ISIS.

42. At paragraph 124, Mr Joffe confirmed, as at the date of report on 9th February 2019, that even though ISIS has now been defeated many of its members who did not escape the country or were killed have dispersed throughout the population or become sleeper cells. At paragraphs 75 and 76 Mr Joffé confirmed that:

"ISIS began to infiltrate villages in the Dibis region, partly because – in the wake of the Kurdish referendum – Iraqi forces replaced the Peshmerga and only garrisoned the main roads. Even in early 2019, [my underlining] ISIS activity was reported just to the South of the Dibis district."

43. Although Mr Joffé did not directly address the issue of recruitment and the Secretary of State considered that the tactics deployed by ISIS in relation to the employment of

the appellant varied between the appellant's account and the article produced, I do not accept that, particularly as Dr George stated there was flexibility in tactics that this would rule out the direct approach to the residents of the local villages.

44. Although I accept **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG** [2019] UKUT 00400 (IAC) refers to Article 15(c), it nonetheless reflects the security situation and concludes

'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'.

45. The country background material and the expert reports corroborate the account given by the appellant that he was targeted by ISIS because he lived in a region where ISIS was active, according to the expert reports, at the relevant time; although ISIS may have been theoretically defeated, I am prepared to accept, against the context of the background material, that the appellant and his family fled Iraq because of the ISIS threat and would continue to be exposed to that threat should they return to Dibil, Kirkuk.
46. In terms of the credibility points taken against the appellant by the Secretary of State in her refusal, I find that the appellant's explanation of him being separated from his children by the agents was credible, because he would have little control over their whereabouts or relocation in the melee of fleeing the country and in the face of direction from agents who organised the family's removal. As the appellant states he and his wife were also separated. His account is supported by a statement from his mother.
47. It would also appear that the Secretary of State confused the identity of the uncle with whom he stayed when fleeing ISIS with the identity of the uncle who lived in Erbil.
48. I do not accept that the appellant would be provided with sufficiency of protection on return to Kirkuk in the face of the specific threat from ISIS.
49. At paragraph 124 Mr Joffé confirmed that the situation around the borders of the Kurdish Autonomous Region, particularly since the referendum in September 2017, was becoming increasingly tense and he would *"doubt that adequate sufficiency of protection is available there either. Indeed, the police actually warned Mr O's father that they could not provide him with protection"*.
50. Dr George's report referred at paragraph 79 to 'ISIS in Iraq: militants getting stronger again' and at paragraph 86 to Iraq's crime rate as very high and that 'police do not have the resources to combat criminal elements' and that kidnappings 'have been a significant dimension to the breakdown in law and order' and which are conducted by 'individuals,

militias and organised criminal groups'. In the face of a specific threat from ISIS I do not accept that the appellant would be able to avail himself of sufficiency of protection.

51. The updated country guidance from the Secretary of State Country Policy and Information Note Iraq: Actors of protection Version 1.0 December 2020 reflects the expert reports as follows:

'6. Capabilities of law enforcement agencies

6.1 Effectiveness of state security apparatus

6.1.1 In May 2020 the USSD Overseas Security Advisory Council (OSAC) published its Crime and Safety Report for Baghdad. The report stated that the:

'ISF has a limited ability to respond to security incidents, terrorist attacks, and criminal activities. Response times and capabilities may vary wildly, as displayed by their recent response to protests at the U.S. Embassy. Iraqi police do not meet U.S. or western standards. ISF maintains a large presence in most major urban areas to limit potential terrorist, insurgent, and militia activity. There are many permanent, manned military checkpoints and security stations; temporary ones often appear without advance notice.'

6.1.2 The EASO 2018 report noted that according to a February 2018 OSAC report, 'crime statistics in Iraq and reporting mechanisms are incomplete and inconsistent within Iraqi law enforcement and security forces'.

52. I turn to the next question as to whether the appellant has established that he cannot return to Erbil (the IKR) and whether he was subject to an honour crime. It is surprising that having been born in Erbil and being someone of Kurdish ethnicity he would not wish to remain in the relatively safe area of the IKR (KRG). He explains that he has a fear of his maternal uncle and in his witness statement gave his name as Massoud.
53. The appellant made no mention of his fear of his wife's uncle in his screening interview but in YL [2004] UKIAT 00145 the Tribunal noted that while the answers given at a screening interview are expected to be true and may fairly be compared to answers given later, it is not appropriate at that stage to expect a detailed account of the applicant's asylum claim. The account should be considered in the light that the interviewee may well be tired after a long journey and such matters should be borne in mind when considering inconsistencies between the screening interview and the later evidence (including the asylum interview). The appellant, as seen, did claim asylum promptly, and offered this information in his substantive asylum interview.
54. That said, the screening interview is not inconsistent with the asylum interview. The screening interview was conducted on 15th March 2017 and the asylum interview was conducted on 31st August 2017, some five months later and where the appellant was represented. When asked at question 81 of his substantive asylum interview, why he did not move within Iraq to Erbil for example, the appellant responded, apparently without hesitation, stating:

“Fear one is Daesh all over the place fear two my wife’s family I had trouble with them I had no trouble with Hewler before when I got married to my wife” (sic).

55. The appellant gave a relatively lucid account (bearing in mind interpretation) of the difficulties that he had experienced, and which included that his wife’s uncle wanted her to marry one of his sons. He went on to state that his uncle was armed and the appellant *“had chosen to live in a village and not to have any trouble and not to be killed by my in-laws who is they are armed”*.
56. The uncle is an ‘in-law’ and not the uncle to whom he turned for assistance when he left and in whom he did not even confide lest it place him in danger. It was confirmed at paragraph 119 of Dr George’s report that honour killing is a significant feature in Iraq today, especially in the Kurdish area, and that the general breakdown in security and law and order was conducive to the perpetration of such murders.
57. Dr George noted that the KRG had made some efforts to address the problem of honour killings but that in effect it was a problem which persisted and was directed towards women. He noted, as the appellant consistently stated that on their marriage, the uncle threatened the couple with death and as a result Mr O and his wife relocated from the Erbil area to Dibis, located in the Kirkuk governorate north-west of Kirkuk and outside the KRG-controlled area but at the time was under the Kurdish Peshmerga control.
58. Crucially, Dr George stated at paragraph 142:

“On the basis that Mr O’s account is accurate – and I appreciate that that is a matter for the courts to decide – if returned to Iraq he could be at risk of being targeted by his uncle who, as I understand resides in the Erbil area, for reasons of honour arising from that uncle’s disapproval of his marriage.”
59. Dr George in his expert report referenced the ‘UNHCR’s International Protection Considerations with Regard to People Fleeing the Republic of Iraq’ (May 2019) on honour killings and added at paragraph 144 that there was no evidence to suggest that the risk of an individual being targeted for an honour killing diminished *“merely because of the passage of time”*. Again he supported his opinions with references to various publications, noting that the practice dated back to medieval times. At paragraph 145 Dr George opined that a person targeted for an honour killing could be at real risk on this account throughout the country as it was not easy for a targeted person to relocate anonymously. *“In the close-knit communities that characterise Iraqi society newcomers stand out and are the subject of curiosity.”*
60. Thus, Dr George confirmed that he thought should the appellant’s account be found credible that he would be at risk in area of Erbil.
61. The appellant was consistent throughout his witness statements that he was at risk from his wife’s uncle. It is clear from the documentation that the appellant married his wife in 2014 as disclosed by the marriage certificate dated 23rd January 2014. The marriage certificate shows the appellant was married in the Erbil Civil Court on 23rd

January 2014 which suggests as he claimed that he was resident in Erbil at the time. The Iraqi civil status documents for the appellant and his wife, however, were issued on 25th June 2014 in the Department of Dibis. The Iraqi nationality certificate also identified their registration place as Dibis. Indeed his assertions in relation to his relocation within Iraq chime with the chronology as disclosed in the documentation.

62. I have found the appellant's account in relation to his threats from ISIS to have been promptly made and consistent and credible. The documentation supports the appellant's account that they moved from Erbil to Dibis shortly after their marriage. The appellant added the detail that his wife's family as indicated on the documentation was from a powerful tribe often associated with connections and government. I therefore accept that the appellant might also be at risk from the maternal uncle in Erbil. There is no reason to suppose that the photographs of the person in the photographs was the wife's uncle in the Peshmerga were not genuine in view of my other findings on the credibility of the appellant. Whether the uncle is said to be armed or not, the appellant may still be at risk.
63. I am not persuaded that there is sufficiency of protection in either Dibis or Erbil, in view of Horvath v SSHD [2000] UKHL 37 and SMO.
64. The Secretary of State in her updated guidance on **Country Policy and Information Note** Iraq: 'Honour' crimes March 2021 states as follows at 2.5.5 and 2.5.6

'Despite the introduction of laws regulating honour crimes in the IKR, sources indicate that they are not effectively implemented. Taking domestic abuse to court is regarded as shameful and there is a widespread discriminatory mindset of judges towards women. The police and court system is prone to influence from prominent families and tribes which can lead to perpetrators being acquitted of charges even when there is clear evidence against them. While there have been examples of perpetrators being prosecuted for murder, those convicted of 'honour' killings are seldom punished in practice (see Enforcement of the law).

2.5.6 For these reasons, authorities in Iraq and the IKR cannot be considered as willing and able to provide effective protection to those at risk from 'honour' crimes. Decision makers must, however, assess each case on its merits'.

65. There is no reason to suppose this position was any different at the date of the decision and it is incumbent upon me to consider the facts as they are at the date of remaking the decision. A reword report 'Iraq: Honour-based violence in the Kurdistan region; state protection and support service available to victims' dated February 2016 confirmed that *'honour-based violence is 'not taken seriously' by the police'* and that sources confirmed that *'police are 'unable or unwilling to offer...protection'*.
66. Independent from the protection considerations cited above in relation to Erbil, Dr George confirmed at paragraph 165 that the KRG authorities are unlikely to be able to protect the appellant as follows

'Despite the KRG's security situation being much better than in the rest of Iraq Kurdish authorities have a demonstrated inability to provide protection for individuals targeted by determined attackers notably in situations involving blood feuds, revenge and honour'.

67. I have found that the appellant is not likely to be able to find sufficiency of protection in Erbil.
68. Nor do I find the appellant would be able to relocate within that relatively small area with the threat from his uncle in law. Owing to the requirement for sponsorship in order to relocate, the risk from the uncle in law will preclude the appellant's return there. Indeed he is no longer registered in Erbil but as the documents show, in Kirkuk.
69. As Dr George stated at paragraph 186, relocation within Iraq involves a lengthy and complex administrative process which carries risks that a person's antagonists through their contacts and sympathisers within administrative offices will learn that person's new address. In that case the appellant would be denied the subsidised support on which the great many majority of Iraqis would depend.
70. I have taken into account the country guidance of SMO and consider that it would not be safe for the appellant to relocate to the governorate of Kirkuk or within those contested areas. As stated by SMO:

"Even where it is safe for an individual to relocate within the formerly contested areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question." [406]

and

'Whilst the conditions in those areas do not cross the threshold for Article 15(c) or Article 3 ECHR protection, the humanitarian considerations in those areas are such that it will often be unreasonable to expect an individual to resettle there' [408].

71. Albeit considered within the Article 15(c) context, this to me, precludes the option of the appellant relocating elsewhere within the formerly contested area as per Januzi [2006] UKHL 5. The appellant, a Kurd and a Sunni who does not speak Arabic, would have to move with his family to an area with which he is not familiar and has no connections, and the documents showed that he has mental health problems.
72. I conclude that there would very significant obstacles to the appellant returning to the IKR or relocating in the remainder of Iraq.
73. In relation to relocation to Baghdad I note that the country guidance states that there are sponsorship requirements for residency but that a documented individual of working age is likely to be able to satisfy those requirements and that relocation to Baghdad was likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific

vulnerabilities. Other individuals are likely to require external support, i.e. a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq), [headnote paragraph 19 of SMO].

74. This appellant is of Kurdish ethnicity and speaks Kurdish not Arabic. Indeed, it was suggested in the decision letter that he would be returned not to Baghdad but to Erbil.
75. Dr George was of the opinion that the appellant would face serious challenges finding employment and accommodation in non-KRG Iraq and these would be acute because of his lack of family support. I have had regard to the medical report that was produced by Dr Fraser Morrison, clinical psychologist, on 8th May 2021, who was of the opinion that the appellant's mental health would be accompanied by a significant deterioration if he were returned to Iraq. The appellant presented with a range of symptoms of a major depressive disorder although these appeared to be linked primarily to the instability in his life and the separation from his children. In fact, Dr Fraser considered that the separation appeared to be "a significant source of psychological distress". There was also evidence that the wife suffered from mental health depression. Overall however this would add to the difficulties experienced by the appellant and his ability to relocate although I am not persuaded that those difficulties are such to support a claim under Article 3 on health grounds applying AM (Zimbabwe) [2020] UKSC 17.
76. I consider for the reasons given above that the appellant would be unable to secure a security of protection should he return to Erbil or to his previous residency area of Dibilis. I also consider that very significant obstacles to relocation elsewhere and it is unreasonable to expect the appellant and his wife to relocate to Baghdad. For these reasons I will allow this appeal on asylum and human rights (Article 3) grounds. By definition, the appeal is also allowed on Article 8 grounds because of the very significant obstacles in his return to Iraq. Albeit the appellant cannot speak English and is not financially independent, his difficulties in returning to Iraq will outweigh those considerations under Section 117B of the Nationality, Immigration and Asylum Act 2002.

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

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

Order

I allow the appeal on asylum grounds.

I dismiss the appeal on humanitarian protection grounds.

I allow the appeal on human rights grounds (Articles 3 and 8).

Signed *Helen Rimington*

Date 1st September 2021

Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed *Helen Rimington*

Date 1st September 2021

Upper Tribunal Judge Rimington