



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09864/2019 (V)

THE IMMIGRATION ACTS

Heard by a remote hearing
On the 28 May 2021

Decision & Reasons Promulgated
On 18 June 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

RAM
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer, Counsel instructed on behalf of the appellant

For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Iraq, appeals with permission against the decision of the First-tier Tribunal (Judge Mack) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 4 March 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The hearing took place on 28 May 2021, by means of *teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that he could listen and observe the hearing. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle.
5. The appellant is a citizen of Iraq of Kurdish ethnicity from Tuz Khurmatu. The appellant stated that he and his family worked on a farm which was owned by two brothers. The appellant worked on the farm from the age of 12. When the eldest brother was alive they were treated well until he died at the end of 2017.
6. After the invasion of Kirkuk the group known as Hasht -Al Shabi (hereinafter referred to as "HAS") started to appear in the village in October 2017, the appellant's house was burned down but he did not know by whom. F offered the appellant and his mother and sister stay on the farm. After the eldest brother had died, the younger brother pestered the appellant to join HAS and asked him numerous times to join becoming forceful eventually. The appellant was forced to join as F was selling off the farm animals. He also said he would not be responsible if the other troops discovered that the appellant was a Sunni Muslim.
7. The appellant started training with HAS and was shown a variety of weapons but when it came to target practice he was not allowed to hold a gun. After 2 weeks he was told he would get a weapon and be expected to fight. He went home and was told that F had gone to his home and had touched his mother and sister sexually. His mother said they needed to leave the area, so we didn't go back to F, his farm or the HAS. The appellant had been paid 2 million dinar for the month although he had only been there for 2 weeks.
8. The appellant claimed that as a deserter from the HAS they would find him and would kill him. As HAS are Shia Muslims the appellant feared that if people

found out in his area that he had betrayed the Sunni people he would be killed. As there are peshmerga in the area they would also kill him.

9. The appellant's sister told in that his face was on Facebook at the time he went to join HAS he also feared Arab Shia militia.
10. The appellant's mother and sister paid an agent, and he had a friend who knew someone to help. The appellant left Iraq in November 2018. The agent was paid US\$12,000. The appellant became separated from his mother and sister in Turkey. The appellant travelled through a number of countries until he entered the United Kingdom in March 2019 and claimed asylum on 13 March 2019.
11. In a decision letter dated 3 October 2019 the appellant's claim was dismissed. The respondent accepted that he was from Iraq and was of Kurdish ethnicity. From paragraphs 32 - 42, the respondent set out the appellant's claim and identified that the appellant's account was internally and externally inconsistent concerning his claim to have been forced to join HAS. This included that he was internally inconsistent in his account as to how he was treated by his employer and when the mistreatment occurred (at[32]) that he was not consistent about the date that the eldest brother F had a heart attack and when he went to live at the farm (at[33]). He was not consistent about when he met the younger brother nor was it plausible that the appellant was not able to give the full name of either of the 2 brothers who owned the farm that he and his family had worked upon (at[35]). Other inconsistencies referred to his account of joining the HAS (at [36]-[41]).
12. The respondent therefore rejected the factual claim advanced by the appellant.
13. The appellant appealed that decision came before the FtTJ on 24 February 2020.
14. In a decision promulgated on the 4 March 2020 the FtTJ dismissed his appeal. At paragraphs [59]-[84] the FtTJ set out his analysis of the evidence and his findings of fact concerning events in Iraq. The basis of the appellant's claim was that he feared reprisals from identified individuals and groups, but also from unknown individuals and groups should he be returned.
15. Having considered his claim, the FtTJ set out a number of inconsistencies in his evidence. In summary the FtTJ rejected his account to be at risk of harm from his employer F, and his account of having joined HAS or being at risk from them or any other armed group or any individuals in his home area. The judge did not accept that he would travel from Iraq without either access to a mobile phone or arrange telephone numbers of friends to check the position of his family in the event that they were separated or any purported threats in Iraq (paragraphs [70 - 71]) given that he now has a mobile phone, and his sibling had a mobile phone (at paragraph [69]). The judge rejected his account of why F asked the appellant to join HAS and that his account was internally coherent given the appellant's ethnicity and risk to him and F's own position if the appellant's ethnicity was discovered by others in the group (at [73]). The judge

also found that the counterforce recruitment by a Shia group was inconsistent with background evidence (at [74]) found that there were factual inconsistencies concerning dates relating to his account ([75 - 78] and whether he was armed or not (at [72]).

16. At [83] the FtTJ concluded that he found the appellant to be “generally vague in his account and lacking in detail. In summary, the appellant has given an incredible story as to why he would be asked or pressured to join HAS, vague as to why anyone would have an interest in him in the 1st place, vague as the journey undertook the UK and vague as to what actual risk he faced on return. It follows that the appellant’s entire claim essentially hinged on his credibility. Even if the appellant had a subjective fear from F or unnamed unknown state actors, I have found, objectively there was no real risk to him and no threat the appellant has been identified to the lower standard of proof. I did not accept any part of this aspect of his claim.”
17. The FtTJ then turned to the issue of relocation. The FtTJ set out the CG decision of *SMO and others (article 15 (c) identity documents) Iraq* CG [2019] UKUT 00400 (hereinafter referred to as “SMO”).
18. The FtTJ found the following facts:
 - that the appellant had no real or perceived association with ISIS or any other military group.
 - He was a single young man with no dependents.
 - The appellant is still in contact with his family and can contact his sister via Facebook.
 - Whilst he had minor surgery it was not exceptional and could be treated at home whilst in Iraq.
 - The appellant has worked for many years and undertake a wide range of manual jobs on a farm and therefore he had acquired skills he could use on return.
 - The appellant has access to his documentation including his CSID and passport.
 - Flights have resumed to the IKR and for an Iraqi national of Kurdish origin in possession of a valid CS ID or a passport, the journey to the IKR is affordable and practical and can be made without a real risk of the claimant suffering persecution, serious harm, or article 3 ill-treatment.
 - The appellant has access to financial help from his family and the skills he acquired whilst working on the farm.
 - He would be able to show that he has come from the UK are not directly from area formerly occupied by Daesh.
 - The appellant shown himself to be resourceful and to have reasonably acquired skills which are transferable.

19. The FtTJ therefore found that he could internally relocate to the IKR and dismissed his appeal.
20. Permission to appeal was sought on 4 grounds and permission was granted by FtTJ O'Garro on 31 March 2020 stating:

“the appellant’s grounds of appeal assert the judge made several errors of law in the decision such as failing to take account of material evidence, taking into account immaterial matters and procedural irregularity that leads to unfairness. However the ground that tips the balance in the appellant’s favour is the assertion that the judge made a mistake of fact when she said at paragraph 89 of her decision that the appellant is from the IKR. The appellant is a Kurdish citizen of Iraq from Tuz Khurmatu in the Salah al-Din governorate, which is one of the contested areas.

This mistake meant that the judge failed to factor this fact into the assessment of the appellant’s return which requires account to be taken as to whether the appellant had family in the IKR and how he would cope without family support. I find this ground of appeal is arguable and permission is granted.”

The hearing before the Upper Tribunal:

21. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on the 12 June 2020, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and directions were given for the provision of further written submissions to be provided by the parties.
22. Written submissions were provided on behalf of the appellant on the 7 July 2020 and on 2 July 2020, written submissions were filed on behalf of the respondent. Following the representations made, the Upper Tribunal (UTJ Lane) issued further directions for the hearing to be listed as a remote hearing.
23. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.
24. Mr Greer appeared on behalf of the appellant and relied upon the written grounds of appeal and the written submissions.
25. Mr Walker relied upon the written submissions issued on behalf of the respondent dated 2 July 2020. Both advocates provided oral submissions to which I have had regard when reaching my decision.
26. At the conclusion of the submissions, I reserved my decision which I now give. I intend to consider the submissions of the parties by reference to each of the grounds. I have set out above the grant of permission by Judge O'Garro. As can

be seen from paragraphs 2 and 3, the judge appeared to grant permission only in relation to ground 4. However, for the reasons set out in the decision in *Safi and others (permission to appeal decisions)* [2018] UKUT 00388, I do not find that the grant of permission has been restricted and the respondent did not seek to argue that point further. I therefore have considered all 4 grounds of challenge.

Ground 1:

27. Dealing with ground 1, it is submitted that the FtTJ engaged in making perverse or irrational findings at paragraphs [67 - 70] and [74] of the decision.
28. In making his oral submissions, Mr Greer submitted that the reasoning is irrational because the judge engaged in a consideration of peripheral points which did not go to the core of the claim. He identified them as follows; that the judge found it implausible that a Sunni Muslim would look at a HAS website (paragraph [67]). At paragraphs [68 - 69] the judge concluded that it was inherently implausible that one sibling would possess a mobile phone and the other would not. At paragraph [69] the judge concluded that as the appellant attended his solicitor's office to attend an appointment arranged over the phone, the appellant must have owned a phone in Iraq. At paragraphs [70] and [79], the judge concluded that it was not believable that the appellant's mother and sister lost contact with one another fleeing Iraq. At paragraph [74] the judge referred to "external evidence" and it was unclear what that meant.
29. Thus, Mr Greer on behalf of the appellant submitted that the judge engaged in speculative conjecture and the inherent probabilities of the events concerned.
30. The respondent submitted that there was no error of law in the judge's approach and that the credibility should be looked at holistically and for the reasons set out in the rule 24 response at paragraph 10 - 13 the judge gave numerous reasons for rejecting the appellant's account when the decision is read as a whole and the grounds come nowhere near to establishing the threshold of a perversity challenge.
31. I have considered the grounds in the light of the FtTJ's decision and also the evidence that was before the tribunal. Having done so I am satisfied that the challenge to the factual credibility findings is not made out nor are they properly characterised as perverse or irrational findings of fact but ones which were reasonably open to the judge to make on the evidence.
32. In reaching that conclusion I remind myself that the assessment of credibility should be considered holistically rather than taking strands in isolation which is what the grounds seek to do.
33. In assessing the decision of the First-tier Tribunal I bear in mind that, as Mr Greer submitted ground 1 is a perversity challenge.
34. In [Lowe v SSHD \[2021\] EWCA Civ 62](#) the Court of Appeal held at [29] to [32]:

"29. At [114] - [115], Lewison LJ explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges. Para. [114] is particularly well known, but para. [115] is also of relevance to the present case. The Lord Justice said this:

"114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva Plc* [1997] RPC 1 ; *Piglowska v Piglowski* [1999] 1 WLR 1360 ; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 ; [2007] 1 WLR 1325 ; *Re B (A Child) (Care Proceedings)* [2013] UKSC 33 ; [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 ; [2013] 1 WLR 2477 . These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include

- i. The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- ii. The trial is not a dress rehearsal. It is the first and last night of the show.
- iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case.
- iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
- v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not

controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039; [2003] 2 WLR 210; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135

35. The issue raised in the grounds relate to the factual findings made concerning the issue of mobile phones and that the conclusion reached by the judge was irrational and perverse. In my judgement this is not reflected in a reading of the decision. Paragraphs [68 – 71] address the appellant’s account that he had lost all contact with his family, he had lost contact with his mother and sister whom he claimed to have left Iraq with en route as they were separated and that he was “alone and isolated “(see paragraph [71]).
36. Contrary to the grounds this was not a “peripheral issue” but one that went to the core of the account concerning his circumstances in Iraq, why he had left Iraq and the position on return. The FtTJ recorded the appellant’s evidence that he had never had a mobile phone and he didn’t have one because he didn’t know how to use it (at [68]). The judge recorded the tenor of his evidence that “he was at pains at the hearing to state that he’d never had a mobile phone.” In his fact-finding assessment the judge gave adequate and sustainable reasons as to why she disbelieved the appellant’s evidence. In my judgement those paragraphs do not demonstrate a lack of reasoning or an overemphasis on inherent probability as the reasoning is based on the appellant’s own evidence and the factual account given.
37. It was open to the FtTJ to contrast the circumstances of the appellant and that of the other family members and that both his sister and mother had access to mobile phones but that he claimed he did not. The judge disbelieved his account that he did not know how to use a mobile phone by reference to the appellant’s explanation and his evidence which the FtTJ recorded at [69] and where the appellant was asked why his other family members had mobile phones and he did not. His reply was “some people are interested, and others are not.” Furthermore, his account that he didn’t know how to use a mobile phone and didn’t have one in Iraq or the UK, the appellant’s evidence on this issue was also set out at [69]. When the appellant was asked how he contacted his solicitors and they him, the appellant said that the solicitor would phone him that as he couldn’t speak English he would travel to x if he got such a call. The judge plainly disbelieved the appellant and gave the reason “I do not accept that the appellant would, if he heard an English voice on the phone, then go to the trouble of travelling all the way to x just to see what the person wanted.” The judge found the explanation to be one that was “incredible, and wholly lacking in credibility”. Furthermore, the factual finding made later at [69] wholly undermined the claim to not use a phone as the judge made reference to the written evidence in the documents before the court which recorded the appellant “smiling and laughing on the phone with friends.”

38. At [70 – 71] the FtTJ pointed to the relevance of these findings when he stated: “ I find I must look at this within the overall context of someone who says he has not been in contact with his mother and sister. I find it is an essential part of his case that he has no idea where they are and will be vulnerable on return.” Thus, the context of the findings made as to the mobile phone and issues surrounding contact were not peripheral but relevant evidence to the core issue as to contact with his family and his circumstances in Iraq.
39. When addressing this, the judge did not accept the appellant’s account that if the circumstances in Iraq were as he claimed, which led to him being in fear and that as a result he, his mother and sister were required to leave, he would not be in a position to make contact with them in the event of their separation. The judge was entitled to consider this in the context of the evidence that his sister and mother had mobile phones, but he claims not to have one and didn’t use one and that the evidence was undermined by the conduct when he was seen happily using a phone in the UK (at [70]).
40. At [71] the FtTJ was also entitled to find that the appellant’s credibility was undermined by his evidence relating to contact with others in Iraq. The appellant’s account was that he had a friend in Iraq who had arranged an agent so that he could leave the country. The judge recorded the appellant’s evidence that he claimed to have no one in Iraq despite having referred to someone who had gone to the lengths of providing help and assistance for him when leaving Iraq. It was open to the FtTJ to find that the appellant’s account of having no available means of any kind to contact the person who had arranged his affairs so he could check what was happening in Iraq and whether there were any threats against him (given his claim to have deserted from the HAS) was not credible. The judge was entitled to find his account was not credible that he would not have had contact with his friend to see if there had been any news of his mother and sister.
41. The grounds submit that the appellant had provided evidence that he had attempted to trace the family and that because such a service existed it demonstrates that it is not impossible that families fleeing conflict lose contact with one another. In my judgement that has no bearing on the credibility assessment made and in fact supports the FtTJ’s reasoning that if his account were true that he lost contact with his relatives, he would have taken steps to contact his friend in Iraq to make enquiries about events that occurred since he left and also his family’s whereabouts.
42. Those findings should also be read in the light of the other factual findings made at [79] where the judge made reference to the long journey taken in the different places on that journey and the appellant’s inability to identify any countries other than Turkey. The FtTJ considered that in the knowledge of undertaking such a journey, it would not be reasonably likely or credible that the appellant would not have a system in place to contact his mother and sister should they become separated.

43. Furthermore, as to contact, the judge was entitled to take into account the appellant's evidence that his sister had seen a photo of him on Facebook (this was on the basis that he would be at risk because he had been seen on a HAS Facebook page). As the judge recorded, if the appellant's sister could access Facebook and therefore make contact, it did not preclude the appellant from doing so.
44. Against that factual background, it was open to the FtTJ to find that the appellant had not a given credible or consistent evidence as to having lost contact with his family and that this was relevant to the overall credibility of his claim.
45. The grounds also seek to challenge paragraph [74] where the FtTJ referred to the "external evidence". The grounds assert that it was unclear what "external evidence" the judge was referring to. This paragraph should not be read in isolation but should be read in the light of the credibility assessment concerning the appellant's account of being forced to join the HAS (set out at paragraph 73 - 83 of the decision). The external evidence set out at paragraph [74] is referred to in the decision letter at paragraph 38 and comprises of country materials relied upon by the respondent. The document itself is in respondent's bundle entitled "Iraqi recruitment (including forced recruitment) of young men by Shia Militia." Therefore, the reference to the "external evidence" is not unclear. The grounds do not seek to challenge the assessment of that country material which was plainly set out in the decision letter at paragraph 38 and therefore the reference made to it by the FtTJ is consistent with that material.
46. There is no perversity or irrationality in the finding at [67]. The judge was entitled to take into account that the appellant had offered no reasoned explanation as to why his sister as a Sunni Muslim of Kurdish ethnicity would be looking at a HAS (Shia paramilitary organisation) on Facebook and as the judge stated, the appellant given no background as to how that had occurred.
47. I am therefore not satisfied that ground 1 has been established.

Ground 2:

48. Whilst ground 1 seeks to challenge the findings made at paragraphs 67, 68, 69, 70-71 and 74, the FtTJ made other factual findings adverse to the appellant at paragraph 72, 73, 75 and 76 - 83, those findings went to the core of the appellant's claim that he was at risk on return to Iraq from the man known as F or from any military organisation and the circumstances in which he claimed that he was recruited to the HAS.
49. Ground 2 seeks to challenge some of those findings (but not all of them) on the basis that the FtTJ was procedurally unfair by giving undue weight to immaterial matters.

50. The grounds assert that the appellant was entitled to be given a fair opportunity to seek to correct the transcript of the interview prepared by the respondent and that at paragraphs [76 - 78], the judge failed to take into account the manner in which the evidence was gathered by the respondent and that while the appellant was assisted by an interpreter arranged by the respondent, he was not given the opportunity to read over the contents of the transcript and make amendments prior to the conclusion of the interview.
51. Thus, Mr Greer submits at paragraphs [76 - 78] the judge took the respondent's transcript at "face value" and rejected the appellant's attempt to amend it on the basis that the appellant was unable to provide an explanation for the mistakes in the transcript prepared.
52. In oral submissions Mr Greer submitted that mistakes happened in interviews and that this should be taken into account. Furthermore, by reference to the respondent's reply whilst the appellant stated that he was happy with the replies in interview that assumes that the appellant was able to monitor the accuracy of the translation.
53. The respondent submits that there is no procedural irregularity. The tribunal's attention is drawn to the copy of the interview record where at the bottom it is stated that "at the end of the interview you will be given a copy of the interview transcript and the audio recording.". The tribunal's attention is also drawn to the transcript at Annex C of the bundle where the appellant confirmed that he had understood all the questions when he was asked if there was anything else he would like to add or clarify the appellant had stated "no". When asked if there were any other reasons that he wished to remain in the UK (which could include personal family circumstances that he would like taken into consideration) the appellant also stated "no".
54. The respondent also makes the point that the amendments that the judge was referring to were made in the appellant's witness statement dated 6 February 2020 which was 4 months after the receipt of the interview and came after the appellant's claim was rejected.
55. Prior to paragraphs 76-78, the judge set out a number of adverse credibility findings which were relevant to the core of the account. At paragraph 72, the judge referred to the appellant's statement where he claimed he was never involved in target practice (paragraph 24) and saw numerous weapons but did not use them. This was inconsistent with his initial interview where he said at 5.2 when asked if he had been a member of the National Armed Forces he replied "worked for 2 weeks for HAS-farming. I was armed".
56. At [73] the FtTJ addressed the appellant's case that he was a Sunni Muslim and that HAS members would kill him if they found out. The FtTJ made reference to the appellant's witness statement that he believed that F, who he says he thinks held a high ranking in HAS (paragraph 14) did not tell HAS that he was a Sunni

Muslim because he thinks F wanted to use him to work on the farm. The judge considered that this was not credible, and it did not explain why F would have wanted the appellant to join HAS. The judge also considered the appellant's account that F told him that he would not be responsible if the appellant admitted to other HAS members that he was a Sunni Muslim as they would kill him. The judge did not accept that F, a possibly high-ranking individual would bring someone into an organisation who we knew would not be wanted and may be killed if the others knew about it. The judge did not find it credible that F would put his own position and his own life at risk by doing this and that on the appellant's account, he "brought no special skills would cause F to take such a risk with his own welfare."

57. Having read the FtTJ's decision I am not satisfied that there is any procedural irregularity giving rise to unfairness as the grounds submit. I do not accept that there is any misunderstanding on the part of the judge as to how evidence is gathered by the respondent. In her assessment of the evidence the FtTJ properly took into account that there were a number of inconsistencies in the appellant's account and as reflected in the decision letter and also the appellant's explanation that he was inconsistent as to dates because he was not good at giving dates in a witness statement. Later at [76] the judge noted "it is common to see a statement or letter requesting corrections to the asylum interview." The judge also noted that he could accept that if a lot had happened then dates could be confused but went on to make the point relevant to the discrepant evidence that it did not solely arise from the asylum interview and the questions that he was asked about arose from the written witness statements.
58. In this context the FtTJ stated "the appellant has had the benefit of legal representation and has had for some time; the statements are not written under pressure and they will have been translated before they were signed by him." Therefore, the judge was highlighting the inconsistencies from the written statements. At paragraph [75] which the grounds are silent upon, the judge sets out the issues. In the asylum interview the appellant stated that on 16 October 2017 after his home area was attacked and 10 to 12 hours after the soldiers entered the town, F took him and his family to the farm and F had a heart attack 6 or 7 days later. However, in the statement of September 2019, the appellant stated that the heart attack was 2 months after he moved with his family to the farm. The judge took into account that he sent corrections to the asylum interview in the witness statement and that at page 3 of the bundle the appellant stated that the facts from September 2019 were true but that he had problem with "dates and times." However, in the witness statement filed later the appellant stated that the asylum interview was correct, and that F had a heart attack about a week after they moved to the farm. The judge therefore was highlighting the inconsistent evidence given by the appellant and that the statement made in February 2020 matched that of the asylum interview however a previous witness statement which he had signed on 4 September 2019 the appellant was equally clear at paragraph 13 F had the heart attack about 2 months after they moved to the farm. The judge was therefore

highlighting the inconsistent evidence as to the timeframe beginning at the asylum interview followed by a different time in a written statement in September 2019 but then having reversed back to what was said in the asylum interview in a later statement. It was against this background that the judge considered the explanation that he had a problem with dates and times, but the judge was entitled to take into account that the appellant had failed to explain why when he was not under any pressure at the time he made his witness statement he had given a completely different time for the events.

59. In this context the FtTJ also accepted that it was common to see a statement or letter requesting corrections to the asylum interview but that “it does not mean that the asylum interview is incorrect.” And also, that “small errors are easy to understand, not so large areas of difference”. At paragraph 78 the decision letter set out a reference to the witness statement that F was involved with the PMF and used to visit his house before he moved to the farm in his uniform and carrying a gun. In the asylum interview the appellant said that he had first met F after 16 October 2017 (Q 63) and when asked if he had met him before 16 October 2017 the appellant’s response was “no” (question 64). At question 67 he was asked did you know anything about F before you 1st met him? The reply was “no”. The judge set out that that was inconsistent with the witness statement filed. The correcting statement of October 2019 does not account for this inconsistency as to when the appellant first saw or knew F. In the statement dated February 2020 at paragraph 12 the appellant said that he could not give any explanation for why he had said this the witness statement and that “I found it difficult to concentrate during the statement process.” Therefore, what the judge had stated at [78] was correct and there is no procedural unfairness by the judge considering his explanation for inconsistent evidence given in the witness statement and after he had had the opportunity to explain the reasons for such inconsistent evidence but the FtTJ reached the conclusion that his explanation had lacked support and credibility. In this context it was open to the FtTJ to reject the appellant’s explanation given the contents of the witness statement at paragraph 12 that he found it difficult to concentrate during the statement process. As the judge had stated “the statement from September 2019 was prepared by reference to the appellant’s instruction and will be read back to him. I find that a lack of education would not lead to such inconsistencies as this.” The judge went on to state that “we are not talking about dates here, the evidence that is contradictory is important as it relates to a core element of the appellant’s claim as to the behaviour of F to both the appellant and his family plays a large part in why the appellant says he left Iraq. He cannot be relied upon to provide consistent evidence even with the benefit of such evidence been read back to him prior to signing as to the truth of its contents.”
60. In my judgement the grounds misread the FtTJ’s assessment. The judge did not conclude that the appellant’s attempts to amend the transcript undermined his credibility but that the appellant had given inconsistent evidence and when given the opportunity to provide an explanation for those inconsistencies in further documents, he was unable to do so or at [78] when he gave an

explanation in his witness statement, it was not one which stood up to any scrutiny.

61. The grounds do not challenge paragraph 80 where the judge assessed the appellant's evidence and his perception of a future threat against him. The judge reached the conclusion on the evidence of the appellant that the claim of future threat had not been based on any actual evidence of any threat made and that the appellant could not have known who would be in the home area when he returned.
62. Drawing together those matters, I am satisfied that there was no procedural unfairness in the judge's approach to the evidence and the credibility assessment in the way advanced on behalf of the appellant.

Ground 3:

63. it is asserted on behalf of the appellant that the judge appeared to allude to behaviour falling within section 8 of the 2004 Act as damaging the appellant's credibility but failed to state which parts of the section applied. The grounds point to the FtIJ's decision at [82] where the judge disbelieved the appellant; the grounds stating "he was unable to speak for himself" when encountered by the authorities in other EU countries.
64. In reaching this finding it is submitted that the judge made no reference to the appellant's explanation given at paragraphs 37 - 40 of his 1st witness statement and that the agent responsible for smuggling the appellant out of Iraq spoke on his behalf and the authorities did not provide an interpreter.
65. The respondent submits there is no error in the FtIJ's assessment and that on a proper reading of the decision the judge gave reasons for reaching the decision that he did on this issue.
66. There is no dispute that the appellant had travelled through a number of European countries, including safe countries in Europe on his journey to the UK. This is clear from his account and geographically to enter the UK given the route that the appellant had taken. It is also clear that at [82] the judge was addressing section 8 (4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and that the judge was considering the failure to claim asylum in a safe country. Any failure to set out the section in my judgement does not mean that the judge erred in law. The quotation cited in the grounds does not set out paragraph 82 in full. Here the judge stated "at his screening interview he was unable to provide any detail to the countries he travelled through. I do not accept, on the lower standard of proof, that the appellant was unable to speak for himself whilst in other EU countries I do not accept that when he was initially interviewed he did not know where he had been and was satisfied that his lack of detail was another deliberate attempt to bolster his claim in the UK." At [83] the judge set out his overall assessment of the

evidence finding “the appellant to be generally vague in his account and lacking in detail”.

67. At paragraphs [43 – 49] the FtTJ had previously set out in detail the factual account of the appellant’s journey from Iraq and therefore was fully aware of the appellant’s account which was set in his witness statement that he was with an agent. It is implicit in the judge’s finding at [82] that the judge rejected his account. The judge was entitled to take into account that the appellant was unable to provide any details of the countries that had passed through and that when interviewed he did not know where he had been and that the lack of detail as to how he came to the UK and the EU countries that had passed through was an attempt to bolster his account. It is noted from the appellant’s account that he accepted that he had been fingerprinted on more than one occasion and it can be inferred from this that his account of not being told where he was when he had plainly been fingerprinted was not credible and that it is in this context the judge rejected his account that he was unable to speak for himself when he had been encountered in other EU countries.
68. I am therefore not satisfied that there was any error but even if the judge was wrong, this was only one issue of credibility adverse to the appellant and it is not one that would undermine the safety of the other factual findings made which were relevant to the core of his factual account. Furthermore it is plain that the judge did not reject his account on this point only and thus it was not determinative of his claim.
69. Drawing together the conclusions of grounds 1, 2 and 3, it was open to the FtTJ to find that the appellant had not provided a credible or consistent account as to the events in Iraq, the risk from HAS or that he had lost contact with his family. The findings of fact and the assessment of credibility should be viewed holistically, and I am satisfied there was no procedural unfairness as the grounds assert. The test of irrationality is an onerous one to meet. It requires the Tribunal to be satisfied that *no* reasonable Tribunal properly directing itself could have reached the finding or conclusion challenged. For the reasons I have given, I am not satisfied that those factual findings could properly be characterised as perverse or irrational.
70. I should also deal with paragraph 12 of the grounds which refer to the FtTJ’s conduct. None of those matters been the subject of any supporting evidence either at the time permission was applied for or subsequently. Mr Greer accepted in his submission that he did not seek to rely on or advance the matters set out at paragraph 12.

Ground 4:

71. I now turn to ground 4 which Mr Greer on behalf of the appellant submits is the “strongest ground”.

72. The appellant originates from Tuz Khurmatu which is in the Salah al-Din governorate lying directly to the north-west of Baghdad. It is submitted that the FtTJ made a mistake of fact that the appellant is a former resident of the IKR.
73. Whilst the grounds cite paragraph [95], at this paragraph the judge stated “as per SMO the return of former residents of the IKR will be to the IKR. Iraqi authorities will allow an Iraqi national in the UK to enter Iraq only if in possession of a current or expired passport, or a laissez passer.” This appears to be a general reference rather than one referable to the appellant although I accept the judge did make reference to the appellant at [89] in the following terms “the appellant however is from the IKR.”
74. The grounds therefore state that the judge erred in law because a judge misdirected himself in respect of the state of conflict in the appellant’s home area at [90] and the route of return at [95] and therefore the judge did not determine the risk of harm in the home area applying paragraphs 262 - 267 of SMO and the difficulties the appellant might face on relocation to the IKR as opposed to return to the IKR.
75. Mr Greer in his oral submissions submitted that there was a “sliding scale” in relation to the appellant’s home area and therefore individual factors were necessary. He submits the judge did not consider return to his home area where HAS remain in de facto control. He therefore submits the judge did not perform the “sliding scale” as necessary as set out in SMO and therefore the error was material.
76. The respondent’s written submissions accept that the judge did not make a finding on return to his home area of Tuz Khurmatu and appeared to proceed on the basis that the appellant was a former resident of the IKR as referred to at [89] but that the error was not material because the judge considered internal relocation to the IKR taking into account the country guidance decision of SMO.
77. Mr Greer submits that the circumstances of someone who does not originate from the IKR and is seeking to relocate is entirely different and that as he has no familial links and relocating from an area of conflict that because of the mistake of fact the judge did not approach the question of relocation by looking at the decision in SMO.
78. I have considered with care the submissions advanced on behalf of the appellant relevant to ground 4. There is some agreement between the advocates on the basis the judge did not make an assessment of return to his home area of Tuz but secondly that the judge gave the appearance that he proceeded on the basis that the appellant was a former resident of the IKR.
79. Whilst both advocates refer to paragraph [89] that is the only paragraph where the judge refer to the appellant as “from the IKR”. Throughout the decision the judge records the appellant’s history correctly as a resident from the government-controlled Iraq and not the IKR (see paragraphs 17, 19 where the

home area of Tuz is set out). At [85] and after having set out the findings of fact and assessment of the evidence, the judge stated, “the crucial issue therefore is as to whether the appellant can safely relocate within Iraq” and at [87] the judge stated “the appellant was born in Tuz Khurmatu. This is a formally contested area”. Also at [89] the judge referred to “relocation to the IKR and not return to the IKR. I do accept there is a reference at [93] to the phrase “I considered what, if any difficulties, the appellant would have been returning to the IKR” but the sentence continues “and whether he would be able to establish himself there.”

80. Against that background it is possible to view paragraph 89 as a slip rather than a mistake of fact given the other paragraphs where the judge correctly identifies the IKR as a place of relocation rather than return.
81. However, even if there were a mistake of fact, the issue relates to whether the error was material to the outcome.
82. Whilst the judge did not consider a return to the home area of Tuz Khurmatu on the findings of fact made in my judgement it has not been demonstrated that any “sliding scale” applies to this appellant. The judge wholly rejected the appellant’s account of events in his home area and that he would not be at risk from any person in Iraq including F or on the basis that he had joined the HAS either by way of having deserted from that group or from ethnic Kurds who knew he had joined the group. Therefore the judge found that he was not at risk from anyone in his home area.
83. Mr Greer in his submissions referred to paragraphs 262 and 267 of SMO.
84. In SMO the Upper Tribunal assessed the circumstances in the former contested areas and concluded that:

"The evidence clearly shows that the degree of indiscriminate violence characterising the current armed conflict taking place in Baghdad, Diyala, Kirkuk, Ninewah, Salah Al-Din [the appellant's region] and Anbar is not at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of a threat to his life or person." T
85. Therefore the appellants home area of Tuz fell within that paragraph.
86. The Upper Tribunal then went on (at paragraph 291) to hold that, nonetheless, an individualised assessment must be made as required by Article 4(3)(c) of the Qualification Directive to consider whether an individual applicant might be able to show that he is specifically affected by reason of factors particular to his personal circumstances - the '*sliding scale*' to which Mr Greer has referred to in his oral submissions.
87. They are also set out in SMO (both in the headnote and the decision itself as follows:

“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.

88. In the light of the factual findings made by the FtTJ and the rejection of his factual account, the only relevant factor from those set out above relates to his ethnicity as a Kurd.
89. The appellant is an ethnic Kurd and Kurds are in a minority in Iraq. They are also in a minority in the appellant’s home area (as set out at paragraph 262 of SMO).
90. By reference to paragraph 300 of SMO, it does not follow that those of Kurdish ethnicity will be of particular risk in that area and the Tribunal has not been directed to any material (country materials) or by reference to any characteristics personal to the appellant which would lead to the conclusion that the appellant would be at an enhanced risk in his home area solely by reason of his ethnicity as a Kurd. The grounds make no reference to any country information in support, and I have not been referred to any country material to demonstrate that this characteristic alone would satisfy the “sliding scale” analysis. Therefore a failure to consider this issue was not material to the outcome.

91. Furthermore as the respondent sets out in the written submissions, the judge did not err in law materially as the judge considered the issue of internal relocation and made factual findings in this respect is reflected in SMO and the previous decision of AAH.
92. Whilst Mr Greer submits that the materiality of the error was based on the judge considering his return as a resident rather than relocating there as the respondent's written submissions state, it is not been demonstrated that the judge's assessment of relocation was in error or failed to take account of any relevant issues.
93. In SMO the following guidance was set out:
- (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.
 - (vi) 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.

(vii) For Kurds without the assistance of family in the IKR the accommodation options are limited:

94. (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.
- (v) 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 employer.
95. The FtTJ found that the appellant had access to his CSID card and that he was in contact with his family (see paragraphs 98 - 100). At [101] the judge set out his assessment of relocation. It is correct as Mr Greer submits that the appellant as a Kurd and relocating to the IKR has no support network there. As acknowledged in the guidance in AAH it is unreasonable for the appellant to relocate from the formally contested areas to the IKR in the absence of a viable support network or the means to find accommodation and employment. Whilst the appellant had no support network, the judge expressly found that he would have a CSID and passport (at paragraph 100) and that he would receive financial help from his family (at paragraph (101) and would be able to rely on his experience of manual labour. At paragraph [94] the FtTJ had found that the appellant from his own evidence had worked for many years and undertaken a

wide range of manual jobs on a farm and the judge found that it was “not unreasonable for me to find that he had acquired skills he can use”. The judge also found at [101] that he had shown himself to be “resourceful and have reasonably acquired skills which are transferable”. As to any risk of having come from an area formerly occupied by ISIS, the FtTJ found that the appellant would be able to show that he had come from the UK and not directly from an area formerly occupied by them. As a result of those findings, the judge found that he would not fall into the category of those who are destitute and that it would not be unduly harsh or unreasonable to relocate to the IKR. The judge expressly stated that in making the findings “I adopt and follow the findings in SMO “which can only refer to the factors set out relevant to the issue of internal relocation to the IKR in the light of the assessment made at paragraph [101].

96. Consequently it has not been demonstrated that the FtTJ materially erred in law and therefore the appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

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 her. 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 *Upper Tribunal Judge Reeds*

Dated 7 June 2021