



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13269/2018

THE IMMIGRATION ACTS

Heard at Field House
On 2 December 2020

Decision & Reasons Promulgated
On 06 January 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**O M F (IRAQ)
[ANONYMITY ORDER MADE]**

Respondent

Representation:

For the appellant: Mr Esen Tufan, a Senior Home Office Presenting Officer

For the respondent: Ms Jyoti Wood, Counsel instructed by Wimbledon Solicitors

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of O M F who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 7 November 2018 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The claimant is a citizen of Iraq of Kurdish ethnicity, and a Sunni Muslim.

Background

2. The claimant was born in 1986 in Tobzawa, Iraq, which lies about an hour north of Kirkuk, in the Kirkuk Governorate. He is 34 years old. The Kirkuk Governorate is not within the Independent Kurdish Region (the IKR).
3. The claimant's family left Tobzawa in 1987, towards the end of the Iran-Iraq war. The claimant was just a year old. They spent the next few years in Bnaslawa, on the outskirts of Erbil city in Erbil Province, which is in the IKR. The family returned home to Tobzawa in 1992. The claimant would have been 5 years old then. His father died in an explosion in 2003, at the time of the United States invasion of Iraq. Life became very hard for the claimant's mother and siblings after that.
4. In Iraq, the claimant still has his mother and his three siblings, two of whom are disabled: his older sister has a learning difficulty and is unable to read or write, needing constant care, and his younger brother has a spinal problem and achondroplasia (dwarfism) which means that he has very short hands and cannot move his body properly. In one account, he has been paralysed since birth.
5. The claimant's youngest brother is fit and healthy.
6. The claimant also has a police officer cousin in his home area.
7. The claimant attended school for 5 or 6 years. His account of his schooling varies, either having been all in Kurdish Sorani, or the first three years in Sorani, and the last two or three years in Arabic. He says he is not fluent in Arabic.
8. After leaving school, at the age of 10, the claimant first worked selling cigarettes, then as a labourer, before getting a job as an assistant to a car mechanic. When he was 20 (in 2006) he started his own car repair business with his younger brother.
9. In August 2015, the claimant briefly left Iraq fearing persecution or serious harm at the hands of ISIL, who had taken control of his home area. He travelled via Turkey, Bulgaria and Serbia, ending up in Hungary, where he was twice fingerprinted, on his evidence both times in August 2015. The claimant's evidence is that he returned again in September 2015.
10. In April 2016, the claimant says he was asked by a man to fix his car. The man was a regular customer. The police raided the claimant's home while the car was there, and found explosives in both the car and in the claimant's home. The man's car was impounded, and so were some of the claimant's personal possessions.

11. The claimant asserts that he is thus linked now to terrorist activities, and relies on an arrest warrant dated 21 April 2016, of which a photograph was obtained for him by his police officer cousin and sent by social media for use in these proceedings. The claimant fears arrest and ill treatment by the Iraqi authorities if returned.
12. In May 2016, the claimant left Iraq again, travelling via Turkey, Hungary, and a number of countries he says he cannot identify. He arrived in the United Kingdom on 25 May 2016 and claimed asylum on arrival.
13. Following the claimant's departure, on 16 October 2017 the claimant's family left Tobzawa again, and went to live in Qara Hanjeer, which lies half an hour by car to the east of Kirkuk. He stayed in contact with them by phone although his account is that he lost touch with his family in March 2020.
14. The police officer cousin obtained the photographs of the alleged arrest warrant and another similar document in late 2018 and early 2019. He is said to have disappeared in or about May 2020, and the claimant fears that the cousin is in difficulty because of the favour he did the claimant in obtaining that evidence.

First-tier Tribunal decision

15. On 21 August 2019, the First-tier Judge allowed the appeal on asylum grounds and made an anonymity direction, which I maintain. The judge rejected the core account as lacking in credibility and found as a fact that neither the claimant, nor any member of his family, had ever been of specific adverse interest to ISIL. The judge also found that the claimant would not be at risk on return to Iraq, either by reason of his Sunni Muslim faith, or because he was a Kurd.
16. However, the judge directed himself by reference to the country guidance in *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)* and *AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC)*. He found as a fact that the claimant was not in possession of his passport or any identity documentation and that his family, who were no longer living in the home region, could not be expected to assist him in obtaining a CSID to enable him to travel internally. The claimant had no links in the IKR and even if he returned with a *laissez passer*, he could not safely return via Baghdad or travel overland without the CSID identity document which he lacked, and could not obtain. Internal relocation was not open to him.
17. The First-tier Judge allowed the appeal on asylum grounds, and indicated that even if it had failed on asylum grounds, he would have allowed it on humanitarian protection grounds or, in the alternative, that return would be contrary to Article 3 ECHR as he would face a real risk of suffering serious harm.
18. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

19. Permission to appeal was granted by First-tier Judge Holmes on 28 October 2019, on the basis that the judge arguably had not properly applied current country guidance (in context, the *AAH* decision), had not considered whether Erbil Province, where the claimant lived for 5 years between 1987 and 1992 was an alternative 'home area', or whether the claimant would be accepted by the IKR authorities as a returning resident of that region.
20. Given the adverse credibility findings had been made on the core account, Judge Holmes considered that there was insufficient explanation why the claimant's assertion that he was undocumented, and unable to obtain any identity documents, had been accepted by the First-tier Judge.

Error of law decision

21. On 18 December 2019, Upper Tribunal Judge Finch set aside the First-tier Tribunal decision for error of law. She considered that the reasoning of the First-tier Judge about the claimant's documentation issue was inadequate and did not properly apply *AAH*. A number of other errors of law were identified. The appeal was retained in the Upper Tribunal for remaking.

Procedural history

22. A hearing listed for 13 February 2020 was adjourned, as Ms Wood was unwell. Judge Finch gave additional directions in her order of 17 February 2020 recording the adjournment, and again on 3 April 2020 and 7 May 2020.
23. The appeal was then listed for a remaking hearing before me, a transfer order having been made by Principal Resident Judge Kopieczek on 22 October 2020.
24. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

25. There were three preliminary points raised on the claimant's behalf by Ms Wood at the beginning of the hearing:
 - (a) The first concerned interpretation. A Kurdish Sorani interpreter was booked to assist the claimant at the Upper Tribunal hearing. However, at the beginning of the hearing, Ms Wood raised a query about the interpreter's dialect: he spoke Iraqi Kurdish Sorani, not Iranian Kurdish Sorani. The claimant's solicitors had brought their own interpreter to the hearing and it was agreed that he, the claimant, or the court interpreter, would let me know if there were any difficulties in the evidence. At the end of the hearing, all three confirmed that there had been no difficulty with the translation.
 - (b) A second preliminary issue was raised. Some findings by the First-tier Judge had been displaced. The claimant relied on *AB (Preserved First-tier Tribunal*

findings: Wisniewski principles) [2020] UKUT 268 (IAC), but in fact it is clear from the decision of Upper Tribunal Judge Finch at (2) in the Decision section that the appeal was to be reheard on all issues. I approach this appeal on the basis that no findings of fact or credibility have been preserved.

- (c) The claimant was said to have depression and might need breaks in his evidence, having regard to the Joint Presidential Guidance Note No 2 of 2010.

26. The hearing then proceeded to the substantive evidence and remaking of the appeal decision.

Claimant's evidence

27. On 27 May 2016, in his screening interview, the claimant denied ever having been fingerprinted in any country, including his own, saying that he had never used his passport and had left it in Iraq. The basis for his asylum claim was said to be that ISIL had threatened him at work and told him to work, fixing their vehicles. He claimed to have received a threat letter from ISIL, which might or might not still be at his home in Iraq. He had never been accused of, or committed, any offence in any country.

28. In a third country interview, later the same day, the claimant was advised of Eurodac records showing that his fingerprints were taken in Hungary, on 31 August 2015 and 13 November 2015. The claimant continues to deny that the second Eurodac record is accurate: his case is that he was back in Iraq by then.

29. The asylum interview did not occur until 21 September 2018, over two years after the screening and travel interviews. This time, the claimant introduced the account of the man who brought a car for repair, which had explosives in it, and the explosive found in his house. That is a significantly different account: instead of being at risk from ISIL, the claimant now feared the Iraqi authorities on the basis that he is a perceived criminal and a terrorist. The claimant told the First-tier Tribunal that he could not remember what he had said two years earlier and that it was normal to forget things.

30. The claimant now said the ISIL threat was a telephone call, not a letter. The claimant in his oral evidence to the First-tier Tribunal still had no explanation for the November 2015 fingerprinting in Hungary, when on his account he was in Iraq, save that Eurodac must be wrong. This is important, because if the claimant did not return to Iraq in September 2015 but remained in Hungary, his account of the car repair and the subsequent events in April 2016 is not credible.

Oral evidence

31. I asked the claimant at the beginning of the hearing what medication he was taking for his depression, and how he was feeling. The claimant said, that he had a headache, but he had taken a paracetamol pill and was ready to testify. He had no antidepressant prescription but took paracetamol when he needed it. He would let

me know if he was feeling strained and needed a break. The claimant said that he had not seen a general medical practitioner, although he had recently registered with one and would try to see a doctor.

32. The claimant had prepared an updated witness statement dated 26 May 2020, which he identified and adopted. He recalled an earlier witness statement for the First-tier Tribunal but not its contents: it had been too long ago. Save, therefore, for the evidence recorded in the First-tier Judge's decision (which remains relevant, even though his findings and conclusions were set aside), I have disregarded that statement.
33. The interpreter and claimant confirmed at the beginning of his evidence that they could understand each other. There might be some different vocabulary but there was no real difficulty.
34. Ms Wood had some supplementary questions for the claimant. She asked him first, if he were in Tobzawa and needed to renew his CSID card, where he would need to go. He said that the registry office was in Kirkuk. The claimant confirmed that he did speak a little Arabic, although it was not very good. He could speak '30%'.
35. The claimant said he had lost contact with his family. He used to contact them about once a month, through his police officer cousin, using the cousin's phone as none of them had mobile phones, but had not been able to do so since February 2020. He had tried to reach his cousin since then, a few times, without success. The last time they spoke, the claimant's cousin said that he was in trouble for sending the claimant the papers the claimant asked him to provide in 2018. The cousin's Facebook account was still open and active, but there had been no new posts or pictures since March 2020 and his cousin was not online, either there or on Messenger.
36. Certain Facebook Messenger conversations were included in the claimant's supplementary bundle, including one where a comment was left on his Facebook profile saying, 'Leave this place and move, we don't want you here. You are the cause of pain and the bad luck of the nation'. That was on a comment which the claimant had re-posted: the claimant clarified that the poster's comment was aimed at the government of Kurdistan, not the claimant.
37. On 12 May 2020, there was a post which the claimant had written himself, criticising the Kurdish Regional Government (KRG). The reply from someone addressing him as 'cousin' was not from a cousin of his: that was a courtesy title used by friends between themselves. Sometimes, they also said 'brother'. There were further posts, by the claimant, on 19 and 22 April 2020. The claimant confirmed that his Facebook criticism was of the KRG, not the government of Iraq.
38. The claimant told his Counsel that he could not remember the number of his CSID card.
39. In cross-examination, the claimant said he had two brothers, a sister, and his mother still in Iraq, but had not contacted them directly, always through his cousin. His

family members did not have 'internet and things'. Two of the claimant's siblings had medical issues, but his younger brother and his mother were in good health. Unfortunately, neither of them had a mobile phone.

40. The claimant was asked about his schooling. He had said, at question 44 of the interview, that he spent three years studying in Kurdish, and three in Arabic. He said that was wrong, he studied at school for three years in Kurdish and just two in Arabic.
41. Mr Tufan asked the claimant if he remembered when he first claimed asylum that he had a screening interview. He agreed, but did not remember where it had taken place: it was not at Customs, nor was it in London. Mr Tufan reminded the claimant that at his screening interview, he was asked if he had ever been fingerprinted in any country, including his own, but denied having been fingerprinted at all. The claimant said he meant that he had not been fingerprinted on the second journey out of Iraq in 2016, to the United Kingdom.
42. His first journey out of Iraq had been to Hungary. He had been fingerprinted twice then, once at the police station and once three days later at the detention centre. He was absolutely sure there had only been a 3-day gap between the two fingerprint taking sessions: after the second, that September, he went home. Being fingerprinted had bothered him a lot, so he left Hungary and went back home to Iraq.
43. The claimant was then asked about the incident in April 2016 where he was repairing a car which was found to have explosives in it. He said that happened after he returned to Iraq. The claimant had his own workshop in Iraq, just a small one. When he left for Hungary the first time, the car lot became vacant, and nobody used it. When the claimant returned, he rented the same shop again. He never owned it and did not know how the owner used it when he was away in Hungary. It was certainly vacant when the claimant returned from Hungary: the claimant noticed no changes, and did not ask.
44. The claimant said his cousin, a police officer, had obtained a copy of the arrest warrant dated 21 April 2016 for him. The claimant had not dared to ask for it directly from the police. He had not heard from that cousin since June 2020, but although he was really worried, he did not want to call the police and ask about his cousin, or ask anyone else to do so, to see if his cousin was still all right.
45. There was no re-examination. When I asked him, the claimant confirmed that he had been reasonably comfortable when giving his evidence and that he had no difficulty understanding the interpreter.

Dr Stein's evidence

46. I have had regard to the report of Dr George Stein, MB, BS, MRCP, DCH, MRCPsych, MPhil, FRCPsych, a section 12(2) approved consultant psychiatrist, who is not currently in an NHS post. He gives himself a proper self-direction in accordance with the *Ikarian Reefer* duty to the Upper Tribunal.

47. Dr Stein qualified at University College Hospital in 1968, practised in general medicine for a time and then trained at the Maudsley Hospital before becoming a Consultant Psychiatrist in 1982 and taking up a post in the Mother and Baby Unit at Farnborough Hospital, Bromley, Kent. Dr Stein's lifelong psychiatric speciality is in mother and baby mental health issues, but he also writes medico-legal reports on all aspects of adult general psychiatry. Dr Stein retired from NHS practice in 2004 but has undertaken long term locums at the Gordon Hospital in Victoria, and in Guildford. He works as a medical member on the Mental Health Tribunal and has a small private practice.
48. Dr Stein interviewed the claimant on 27 September 2020, by video link with the assistance of a Kurdish Sorani interpreter. No supporting medical evidence or general medical practitioner records were available as the claimant, in the four years he has been in the United Kingdom, has had no contact with any medical practitioner, self-medicating with paracetamol when he gets headaches or is depressed.
49. Dr Stein's report set out the claimant's account, including his assertion that when the police raided his family home they found his clean clothes and his CSID there. The family circumstances and employment history are as above.
50. The claimant told Dr Stein that he went to primary school for 5 years, studying only in Kurdish Sorani. On leaving school, he trained as a car mechanic, working first as an assistant to another mechanic and then, when he was about 20, setting up his own business. It was a very good business, supporting the family after his father died. The claimant's younger brother worked with him in the car repair business.
51. The claimant said that he had been in the United Kingdom for four years but not learned to read or write English well, although his English was 'not that bad'. He had attended Barking and Dagenham College to study English but his studies were interrupted when he became depressed. He was always depressed in the United Kingdom, but not in Iraq. He could not return to Iraq, as it would be dangerous to do so. His police officer cousin had told him that he was 'wanted' there, had obtained some evidence for him, but had now disappeared. He feared that something bad might have happened to his cousin.
52. The claimant told Dr Stein of frequent night waking, nightmares, and waking up sweating. He said he had been beaten at a checkpoint in Iraq and that the Shi'as are dominant now in Iraq, making it risky to be a Sunni Muslim there. He said that his first name was one of three which were particularly recognisable as being Sunni names and increased the risk to him, but that the main reason he could not return to Iraq was that he was wanted by the Iraqi authorities.
53. The claimant was very isolated in the United Kingdom as he claimed to be too frightened to meet members of the Kurdish community. He cried often, and was using paracetamol to medicate his depression; he claimed to be addicted to it. He

had registered with a new general medical practitioner in Ilford. He was sure he would be killed on return.

54. Dr Stein's opinion is at [33]-[42] of his report. It does not engage with either the Istanbul Protocol or the ICD-11 mental health definitions. It is really no more than a repetition of the account above. Dr Stein confirms that the claimant's perception is that he is at great danger in Iraq, but notes, correctly, that it is not for him as psychiatrist to judge how dangerous the claimant's personal situation would really be in Iraq.

Other evidence in the supplementary bundle

55. **Arrest warrant evidence.** The claimant produced a poor photograph of two documents, both dated 21 April 2016. The first purports to be the arrest warrant itself:

"To: All police stations and check points
Subject: Arrest warrant

An arrest warrant has been issued by the Criminal Court of Investigation of Kirkuk, by the respected judge (Faruq Osman Amin) against the accused [name supplied] accused of participating in a terrorist organisation in accordance with Article 4 of [the] Terrorism Acts and there is an ongoing investigation on this matter. ..."

No original document is available. The crest of the Supreme Judiciary Council Presidency of Court of Appeal, Kirkuk Federal Court, Investigation Court of Kirkuk, which appears on the copy is very blurred and dark.

56. No copy of Article 4 of the Iraqi Terrorism Acts is provided (it is difficult to understand how it can be Article 4 of more than one statute).
57. The claimant also produced a copy of an investigation report, bearing the same date of 21 April 2016, from First Lieutenant Jalal Adbullah [sic] Ahmed, investigation officer, as follows:

"To: [not completed]

Subject: Report

On 21/04/2016, the accused [name supplied] was accused of participating in a terrorist organisation and according to Article 4 of Terrorism acts, an arrest warrant has been issued by the Police Station of Tirkalan which is affiliated with the governates [sic] and quarters of Kirkuk province and inform all check points and police stations to look for him and arrest him according to the court order."

58. This document is an even worse copy, but in particular, I note that the crest in the middle at the top appears not to be straight and is very blurred. I have been unable to place much weight on either of these documents: applying the *Tanveer Ahmed* test, I do not consider them to be reliable.

Social media messages

59. The claimant provides copies of a number of social media messages from his police officer cousin, and posts of his own on Facebook. They are all not dated in translation and it is unclear who translated them: these are not certified translations.
60. There is an exchange between the cousins on 24 and 28 November 2018, when the claimant says he is waiting for a reply, and the police officer cousin says that he was offline, but will try to do something. He says that 'it is too difficult, but for you I will put myself in danger whatever happens, at least I will take a picture, wait'. In an exchange on 28 November 2018, the claimant says he needs the documents before 5 December 2018, when his hearing is listed, and his cousin says he managed to take photographs and will send the pictures now.
61. Undated exchanges refer to the cousin sending the claimant something that he had asked for yesterday night, and the response, as follows:
- "Thank you very much my dear cousin. I don't know how to thank you for the favour you did for me. I know doing such things are difficult. I know you did that for me, you are my beloved cousin.
- My dear cousin, in order to prove it can you send me a copy of your police ID, with a supporting letter to prove that I did return back from Hungary to Iraq?"
62. Two voice messages in reply, on 6 and 10 December 2018, say that the cousin lost his own original ID, along with all of his group, when they were fighting ISIL, and that before 16 October (year not specified, but presumably 2018), the police directorate wrote to Baghdad to get new police IDs issued for them. Baghdad replied that all IDs would be changed and that now they would have to wait. There had not yet been a response.
63. Later voice messages on 10 December 2018 specify that police identity cards are renewed annually and therefore the ones lost in 2018 cannot be replaced until 2019. The cousin eventually produced a copy of his 2015 police ID, which is out of date, and a letter from the General Director of Kirkuk Police, confirming that he is a police commissioner and is still in service, dated 25 November 2018. The cousin said that police officers are required to serve any court order forthwith, or the officers in question will be considered negligent and will be questioned as to why they delayed.
64. The cousin wrote a manuscript letter for the claimant to use in these proceedings, saying that 'after painstaking efforts I managed to get [the claimant's] arrest warrant letter which has been issued (by the Supreme Judiciary Council, Court of Appeal Kirkuk Federal) and it has been sent out to all police stations'. The claimant's response is that 'this is very authentic', and that the cousin should 'tell the friends to arrange the [victory] party for this coming spring'.
65. There are then a number of other missed calls and exchanges, and copies of posts by the cousin which are hard to interpret but seem to be fairly politically provocative

posts for a police officer. On 5 January 2019, the claimant asks for a better copy of his manuscript letter 'as the previous pictures were blurry'. There follow exchanges between the cousins in January and February 2020, including missed call from the cousin on 22 February and a missed call back on 13 May 2020 and again on the Friday before the hearing, in context 27 November 2020.

66. There is a reposted Facebook post from the claimant's Facebook page. However, the response 'we don't want you here, you are the cause of pain, the bad luck of this nation' on the claimant's evidence refers to the KRG Government and is not a threat to him. The claimant himself posted on 12 May 2020 a comment aimed at the KDP, saying that he does not understand something, 'their leader is a Mullah but through their TV channels they bring people who are like a dog on our sacred Islam'. A response, directed to the claimant, asks him to check whether they [the KDP] do or do not have Hajis, [people who have made the pilgrimage to Mecca] among them 'as they don't believe in it'. That post addresses the claimant as 'cousin' but he says that in context, it is a courtesy title and that particular poster is not his cousin.

Submissions

67. For the Secretary of State, Mr Tufan relied on the discrepancies identified in the refusal letter and between the appellant's evidence in his statements and his evidence at the hearing. The appellant's account about being fingerprinted had developed over time. When asked a straightforward question about it during screening, he said that he had never been fingerprinted. Presented with evidence of fingerprints being taken in Hungary, he said that it was only on one occasion. Now his account in his witness statement was that he was fingerprinted twice, three months apart, in August and November 2015, but in oral evidence he had been quite sure that the fingerprints were taken three days apart. The claimant was not telling the truth.
68. The claimant's account of what happened to his car repair workshop in 2015 was equally unreliable and the Upper Tribunal should find that the claimant had never been back to Iraq at all. Mr Tufan acknowledged that this might not be the Secretary of State's strongest point, but it should be given some weight in the overall assessment of credibility.
69. The evidence the claimant gave at the previous hearing about letters from ISIL was also unreliable. The letters had not materialised and were now said to be telephone threats. The claimant's Facebook posts were not critical of the Iraqi government, but of the government of the KRG. The claimant would be returned to Baghdad, not to the KRG.
70. The medical evidence produced in the supplementary bundle was not of a high standard. Dr Stein repeated paragraphs 18 and 13. It was based on a remote examination, and on what the claimant said himself. The principles in *JL (medical reports - credibility) China* [2013] UKUT 145 (IAC) were applicable. At this point in Mr Tufan's submissions, the claimant became distressed and left the room. The hearing continued in his absence, with his agreement, and he later returned and rejoined the hearing.

71. Mr Tufan pointed out that the claimant had said in his screening interview that he studied Arabic for three or four years, whereas now he said it was only for two years.
72. Mr Tufan accepted that the claimant was entitled to succeed in his claim, if he had no CSID and could not replace it. However, the claimant would be able to obtain a CSID in the United Kingdom: see *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400 (IAC). He should not be believed when he said that he did not remember his CSID number, given the low credibility of the rest of his account. At [13] in the judicial headnote to *SMO and others*, the Upper Tribunal found that given the importance of the CSID information, most Iraqi citizens would recall it, or it could be obtained from family members.
73. The claimant still had family members in Iraq, and his account of having lost touch with them was not consistent with earlier accounts of direct contact, rather than through the police officer cousin. The claimant had never before said that his mother and younger brother had no phones. The claimant's account to the Upper Tribunal at this hearing was full of fabrications to support his claim that no help was available for him in Iraq.
74. The Upper Tribunal should reject the core account and dismiss the appeal.
75. For the claimant, Ms Wood relied on the skeleton argument submitted on 30 November 2020 and the substantial bundle of documents which accompanied it. In her skeleton argument, Ms Wood set out the history of the matter and a number of factual disagreements with the First-tier Tribunal decision. In relation to Article 15(c), she submitted that the country guidance decisions accepted that the position in the former contested areas remained precarious, with resentment between Shi'a and Sunni Muslims, and against the Kurds (see p246 of the hearing bundle). The risk to civilians varied across Iraq but was highest in rural parts of the formerly contested areas [pages 257 and 285 of the bundle].
76. Ms Wood reminded the Tribunal of the 'sliding scale' assessment required by the country guidance in *SMO and others* at [3] of the judicial guidance. The claimant was a Sunni Kurd who had lived and worked near Hawija, which had been controlled by ISIL until 2017. Ms Wood accepted that he needed to show more than that in order to establish a present risk, but relied on the continuing activity of ISIL in the region, and his association with his police officer cousin, who fought against ISIL, giving him an association with the security apparatus, which was an enhanced risk factor. The tensions between Sunni and Shi'a Muslims were set out in *SMO and others*, in particular at [45], [26], and [378]. The claimant was very likely indeed to encounter checkpoints manned by Iranian-backed Shi'a militia.
77. On the question of documents, the First-tier Judge had found as a fact that the claimant did not have any identity documents and had been entitled to do so, on the evidence before him. It was also open to the judge to believe the claimant's account that he could not recall his CSID details or contact any family members in Iraq. Even if he had that information, applied *SMO and others* at [396], if he were perceived to be

a ISIL sympathiser, the document might be refused on the basis of such actual or perceived affiliation.

78. With regard to internal relocation and destitution, the claimant would not be able to be returned to Iraq without a CSID or INID document. Where the system had transitioned to the INID machines, it was necessary to attend the home area in person in order to obtain replacement documents. The Iraqi authorities would not allow him to fly to Iraq without one of those documents.
79. Accordingly, internal relocation was not a reasonable option in this case: the claimant had demonstrated that he had no CSID/INID and would be unable to obtain one; he did not speak good Arabic and was less likely to obtain employment; he had no qualifications; he had no support network in Baghdad, nor sponsor to help him access a room or accommodation; and as a Kurd, he was a member of a minority community facing discrimination everywhere outside the IKR. Cumulatively, on that basis, it would be unduly harsh to expect the claimant to relocate away from his home area and in any other area, he would be exposed to risk of persecutory treatment and/or serious harm.
80. Nor was it reasonable to expect the claimant to relocate to the IKR: that too would be unduly harsh, as set out in the headnote to *SMO* and in *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 00212 (IAC) for the difficulties in accessing basic necessities, including employment and accommodation, without family support. The claimant would be unable to gain access to an internally displaced persons camp, and critical accommodation did not offer a viable internal relocation. The decision of the First-tier Judge should be upheld.
81. In oral submissions, Ms Wood agreed that the asylum claim would turn on the credibility of the claimant's account. She argued that the loss of contact with his family was not a necessary fabrication, and that the claimant would have to go to Kirkuk in person and use the new INID machines. He had given the same responses at questions 236 and 237 of the asylum interview. The assertion that the fingerprinting occurred three days apart was supported at question 157 of the asylum interview, though Ms Wood accepted that the claimant had said he had never been fingerprinted, when screened. He had given a plausible explanation for that in evidence today. The interp for the screening interview was recorded as having been 'Kurdish' but no dialect was specified in the record of that interview. The Eurodac printout seemed confusing, as the times were the same and that, she submitted, threw doubt on the dates.
82. Evidence from the claimant's police officer cousin stated that the claimant was in Iraq in September 2015, when he appeared to have been fingerprinted in Hungary. Human error could occur on documents and it was conceivable, at least, that the Eurodac record was wrong. The photographs of the arrest warrant had been taken in the toilet by the police officer cousin, which was why the quality was poor, and was consistent with the cousin having taken them secretly.

83. The country evidence supported the risk to perceived collaborators: *BA (returns to Baghdad)*. The claimant's account was plausible and consistent with the country evidence. ISIL had asked him to work on the vehicle, not to join up. The refusal letter did not disclose material appropriate for a negative credibility finding.
84. The claimant remained at risk, both from the Iraqi state because of the arrest warrant, and from ISIL, as a perceived collaborator. The Secretary of State's February 2019 CPIN *Perceived Collaborators, Iraq* reflected systematic targeting of collaborators, and the claimant fitted the broad definition therein. The sliding scale for Article 15(c) was made out. The claimant could not be returned because he could not access his CSID: see *AAH*.
85. Ms Wood asked me to allow the appeal.

Analysis

86. As regards the credibility of the claimant's evidence, I have had regard to the discrepancies identified above, particularly in relation to when and where he was fingerprinted in Hungary; how and when he contacts his family in Iraq; and whether he can remember the details of his CSID.
87. I have been unable to place any weight on the social media posts, which are plainly self-serving, or on the arrest warrant documents, which are blurred and bear clear signs of unreliability, applying *Tanveer Ahmed*. They do not contain details of the alleged offence, there is a reference to a single Article 4 of multiple statutes, they are generally vague, and the headers have blurred and off centre stamps on them. I do not agree with the claimant's assessment in his Facebook post that they look authentic.
88. I have also concluded that I cannot place weight on the medical evidence. It lacks any kind of rigour, and amounts to no more than a recounting of the claimant's account. In *JL (China)*, the Upper Tribunal gave the following guidance on medical evidence:

"(1) Those writing medical reports for use in immigration and asylum appeals should ensure where possible that, before forming their opinions, they study any assessments that have already been made of the appellant's credibility by the immigration authorities and/or a tribunal judge (SS (Sri Lanka) [2012] EWCA Civ 155 [30]; BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC) at [49], [53])). When the materials to which they should have regard include previous determinations by a judge, they should not conduct a running commentary on the reasoning of the judge who has made such findings, but should concentrate on describing and evaluating the medical evidence (IY (Turkey) [2012] EWCA Civ 1560 [37].

(2) They should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming

that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).

(3) The authors of such medical reports also need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]). ..."

That standard is not remotely met in Dr Stein's report.

89. As to the conflict between the claimant's account and the Eurodac record of the fingerprints taken in November 2015, having examined the fingerprint document, and despite Ms Wood's contention that the Eurodac dates might be wrong, I find that I prefer the Eurodac evidence to that of the claimant. Accordingly, I find that the claimant was still in Hungary in late 2015, when he says he was back in Iraq. I find that even to the lower standard applicable in international protection claims, I am not satisfied that he ever returned to Iraq. The claimant's account of what happened to his workshop is incredible, to any standard.
90. The claimant's account is totally lacking in credibility. It bears the hallmarks of a poorly fabricated attempt to bring himself within whatever he considers to be the current risk groups each time he is interviewed.
91. I reject the whole of the account of the April 2016 events, the arrest warrants, and the subsequent disappearance of the police officer cousin. The warrant photographs were obtained in December 2018 and resent in January 2019. I do not accept, even to the lower standard, that they would result in the claimant's police officer cousin disappearing suddenly in the spring of 2020. I am not satisfied that he is a police officer as alleged: even if the police identity cards for 2018 had been lost, 2019 has come and gone and he should by now have been able to produce an up to date police identity card, especially as on the claimant's account they did not lose touch until well into 2020. The letter purporting to be from the cousin's boss, and the 2015 identity card, are not sufficient to establish that he is still in post, if he ever held such a post. I reject all of these documents as unreliable and probably forged.
92. I also reject the claimant's account that he has lost contact with his immediate family members in the manner alleged. His earlier accounts indicated that he was in direct contact with his family members independently of his contact with the cousin, although now he says it was always on the cousin's social media and/or mobile phone.
93. I do not accept that the claimant lacks access to his CSID or does not remember the relevant details. He did not have it with him on arrival but he is in touch with his family members, as I have found, and they would be able to send it to him, or remind him of the relevant details.

94. That brings me to the risk on return under *SMO and others* and *AAH (Iraq)*. It is not in dispute that the claimant is an Iraqi Kurd from Tobzawa in the Kirkuk Governorate. On his evidence, his family has also lived near Erbil during the Iran-Iraq war, and are now living about half an hour east of Kirkuk.
95. In *SMO and others*, the Upper Tribunal held that an Iraqi national not from the IKR will be returned to Baghdad, but that return will not be possible if the person does not have either a current or an expired Iraqi passport or a *laissez passer*.
96. Crucially, at [9] and [10] of the guidance, the Upper Tribunal held as follows:
- “9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.”*
97. In relation to the CSID and INID documents, which allow internal travel within Iraq, the Upper Tribunal in *SMO and others* said this:

“C. CIVIL STATUS IDENTITY DOCUMENTATION

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.*
12. *A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a ‘certification letter’ at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*
13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father’s or the mother’s side because the registration system is patrilineal.*
14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*

15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.”*
98. I have not believed the claimant’s account of being unable to recall the details of his CSID, or to receive it from Iraq, where the rest of his family still lives. He could apply to the Iraqi Consulate in London for a replacement CSID, if his family cannot send it to him. I note that he also has a passport which he says he left at home, which could be sent to him.
99. The claimant’s evidence is that there is an operational INID machine in Kirkuk, which is a formerly contested area. However, I am not satisfied to the lower standard that the claimant is perceived to have a ISIL link, as I have found that in April 2016, he was not in Iraq and that the events relied upon as leading to an arrest warrant being issued, did not take place and that the arrest warrant documents are unreliable. The claimant’s family members have been living just a half hour drive to the east of Kirkuk for some time now, and he could rejoin them. They would be under a cultural obligation to offer him hospitality and support his reintegration.
100. Given that I have found no risk to him in Kirkuk, there is no reason why on return he could not attend and obtain an INID there.
101. If I am wrong about the risk in the Kirkuk Governorate, there is another alternative home area. The claimant lived in Erbil for 5 years when young. It is not explained in his evidence what the family links were to Erbil, or whether they still exist, but he may be entitled to be treated as a returning resident of the IKR and be able to be flown straight to an airport in the IKR (Erbil or Sulaymaniyah), where he would be safe. That is not an unreasonable internal relocation option for this claimant. He would benefit from the possibility of a Voluntary Returns Scheme grant and has skills in car mechanics which would enable him to obtain employment there.
102. For all of the above reasons, the claimant’s international protection claim must fail, both under the Refugee Convention, and on humanitarian protection grounds. No Article 15(c) claim has been established. On the facts of this appeal, the Article 3 ECHR claim falls with the international protection claims.
103. Article 8 ECHR is not argued in the claimant’s Counsel’s skeleton argument. For the avoidance of doubt, there is no evidence of any particular connection to or integration in the United Kingdom. I can give little weight to any private life

developed in the United Kingdom since his arrival here in May 2016 (section 117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002 (as amended)) and it is not suggested that he has developed any family life here.

104. There is nothing in the evidence to suggest that there would be significant obstacles to reintegration, with the help of a CSID and his family members, or that there are any exceptional circumstances for which leave to remain should be granted outside the Rules.

105. This appeal is accordingly dismissed.

DECISION

106. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 15 December 2020