



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001768

First-tier Tribunal No: PA/52762/2021
IA/08283/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11th March 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MIA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G. Brown, Counsel instructed on behalf of the appellant.
For the Respondent : Ms Z. Young, Senior Presenting Officer

Heard on 23 October 2023

Order Regarding Anonymity

Anonymity is granted because the facts of the appeal involve a protection claim. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Pursuant to section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007, this is the remaking of the decision of Judge of the First-tier Tribunal Lodato promulgated on the 17 December 2021 following the decision dated 22 November 2022 (promulgated on 19/12/22) of the Upper Tribunal setting aside the decision of the FtT having found a material error of law in that decision for

the reasons set out in that decision. That decision is annexed to this decision marked "Annex A".

The background:

2. The appellant is a citizen of Iraq of Kurdish ethnicity from the IKR. The basis of his claim is set out in the decision letter and summarised in the decision of the FtTJ.
3. The basis of his claim is set out in the decision letter and summarised in the decision of the FtTJ from paragraphs 10-21. It is summarised as follows. The appellant based his protection claim on the basis of being a target of honour-based violence. The appellant worked as a shepherd on his family farm. There was a well outside his home, and he would open the cap of the well during the day for people to collect their water.
4. In February or March 2019 the appellant met C when she came to the well to take some water. He helped her carry the Jerry can and also began speaking to her. He had thoughts of marrying her. The appellant continued to meet C when she came to take water from the well 2 or 3 times a week. They fell in love with each other.
5. The appellant stated that he told C that he would send his family to propose to her, but she told that they could not do that she had been promised to another man, since she was a child. This man (J) lived abroad, and C did not like him.
6. The appellant continued his relationship with C discreetly for approximately 3 months as he was in love with her could not live without her. He asked his family to propose to see anyway, and check if the other man had feelings for her. J's father was unexpectedly at C's home when the appellant's father and elders visited to propose. He was very angry and expelled the appellant's father from the house. The appellant's father told the appellant never to get close to C's house again. C was stopped from coming to collect water and after approximately 1 ½ months J returned from abroad and married her. After approximately 2 to 2 ½ months after J married C, the appellant received a phone call from C who was very distressed and said J was mistreating her. He stated that she was very distressed, and she wanted to kill herself. She said it was appalling life for her to live with J and that J was ill treating her. The appellant said that C should mention it her own family. She said that she had mentioned it to her family, but she was advised to wait and be patient because if she got divorced then her brother would need to divorce J's sister. He said J would go back home late at night drunk and he would beat her (see Q172).
7. Approximately 2 or 3 days later, C called the appellant again and asked him to come to her house as nobody was at home. She told him that she needed him for something, and he did not want to let her down . She spotted him from far away and to open the gate and told him to come in quickly. He went in but the door was unlocked, and they went to a rear room. They had another gate at the rear of the house. They both went into the rear room, and both started crying and expressed their feelings . This went on for about 10 to 15 minutes then C sat on his lap. They became intimate and had sexual intercourse (Q172).
8. J's mother suddenly came in and saw the appellant and C and screamed. He said J's mother lived next door and simply visited unannounced when she saw the couple together (see paragraph 20 of witness statement).

9. The appellant managed to run away but C did not. He hid in a mountain and then went to his uncle's house in Erbil.
10. The appellant's mother phoned his uncle and told him his family home had been raided 2 or 3 times by J, C's father and her brothers, and told his uncle to take care of him and to get out of the country. When questioned at the hearing, the appellant described how, in the aftermath of his discovery with C the home was raided by 2 to 3 armed men who worked for C's father. He denied giving the answer recorded a question 186 of the substantive interview where he said that J, C's father and her brother raided the home (see paragraph 16 of FtTJ's decision).
11. It is asserted that C's father was a Peshmerga general and was powerful and influential. C's brothers are their father's bodyguard.
12. The appellant feared that if he were to return to Iraq he would be killed by J and C's father and brother.
13. It is recorded that the appellant was cross-examined about the power and influence of C's family during the hearing. The appellant said that C's father was such a powerful figure that he tended to work from home where he was able to deploy agents to work on his behalf. He planned combat operations. While he was well known in their village, he did not court publicity. The appellant denied giving the answer recorded a question 2 to 3 of his substantive interview where it was noted that he said that C's parents did not have any influence (see paragraph 15 of the FtTJ's decision).
14. In re-examination the appellant was asked to expand upon the suggested inconsistencies recorded questions 186 and 223 of the interview. He said that he was stressed and anxious and could not recall giving the answer to question 186. In relation to his answer to question 223, he said that C's family were influential as part of a big and powerful tribe. He also referred to the main Democratic party of Kurdistan.
15. In relation to documentation, the appellant said that he left his CSID card with his family in Iraq. He was unable to contact them because he no longer had access to the mobile phone he had in Iraq which contained his family's contact details. On examination GP said that he had not contacted his family since his arrival in the UK because he was embarrassed about all the trouble he had caused. This is also the reason why he had not attempted to find out about C's welfare since he left because he could not only hope to reach to his family. He was asked if he was not worried about his family's safety, he reiterated that he was embarrassed to contact them and, in any event, he was at risk of harm as opposed to his family members. He accepted he could use social media to trace his family if he were inclined to do so (paragraph 14 of FtTJ's decision).
16. The appeal came before the FtTJ on 9 December 2021. In a decision promulgated on 17 December 2021 the FtTJ dismissed the appeal on asylum grounds and on human rights grounds.
17. The FtTJ set out his factual findings and assessment of the evidence at paragraphs [30-40]. The FtTJ set out that the respondent did not dispute that the appellant was in a relationship with C before he left Iraq, and neither was he meaningfully challenged about the circumstances in which he was discovered with C. The judge accepted the appellant's evidence concerning the relationship, how it developed and that they were discovered in compromising circumstances

(see paragraphs 30 – 31). The FtTJ did not accept the appellant’s account that the members of C’s family were powerful or had any influence or profile in the way described (see paragraphs 32 – 33) and rejected the appellant’s evidence as to the interest taken in his family in their home after the discovery of his relationship with C (see paragraph 33). At paragraph 35 the FtTJ rejected the explanation given by the appellant as to the discrepant evidence on those 2 issues. At paragraph 36 the judge referred to the lack of evidence that the tribe to which C belonged to exerted far-reaching influence so that the appellant would not be able to find sanctuary in a “distant part of the IKR”. At paragraph 37, he did not find that the appellant’s failure to claim asylum undermined his credibility. At paragraph 38, the FtTJ set out his reasoning as to why the appellant would be able to obtain documentation from his family so that he could travel to the IKR from Baghdad and could use his family contacts to re-establish himself. At paragraph 39, the FtTJ stated that the appellant had not established that he would be at risk from C’s family or husband but that if he was wrong, it would be reasonable for the appellant to relocate within the IKR. The FtTJ therefore dismissed the appeal.

18. The appellant sought permission to appeal on 3 grounds. On 25 March 2022 FtTJ Beach granted permission on all 3 grounds. Following the hearing on 30 September 2022, I gave my written decision on the grounds of challenge as advanced on behalf of the appellant. The relevant paragraphs are replicated below.

“Decision on error of law:

38. Dealing with the ground 1, the issue advanced on behalf of the appellant is that the FtTJ made contradictory findings in his decision as to whether the appellant was at risk of harm/persecution in his home area at paragraph 39 given the other positive findings made within the decision.

39. I have concluded that when reading the decision of the FtTJ and contrary to what is said at paragraph 39, that the FtTJ reached the decision that the appellant would be at risk of harm/persecution in his home area. It had not been disputed by the respondent that he had a relationship with C before he left Iraq. The FtTJ also set out that the appellant was not “meaningfully challenged about the circumstances in which he was discovered with C in the marital home by his mother-in-law” (see paragraph [30]). The FtTJ also accepted the appellant’s evidence that the relationship with C developed as claimed and that they were discovered in compromising circumstances by C’s mother-in-law. Finally he also accepted that C was first promised to J, who she later married (at [31]).

40. The FtTJ set out the areas in dispute between the parties. They were described as what had happened after the discovery of C and the appellant together and the level of threat posed by C’s family (at [32]). For the reasons set out at paragraphs 32 and 33, the FtTJ rejected the appellant’s evidence concerning the degree of influence exerted by C’s family. The FtTJ set out the discrepant evidence concerning the profile and influence of them. The 2nd issue related to whether the appellant given consistent evidence as to the interest in his family and their home after the discovery. The FtTJ considered this at paragraph 34 and set out the different evidence given by the appellant in his interview and the oral evidence as to the identity of those had come to the house. At paragraph [35] the FTT J analysed the appellant’s evidence and his

explanation for the discrepancies and gave adequate and sustainable reasons for rejecting that explanation.

41. The key paragraph is paragraph 36. The FtTJ stated:

“I do not doubt that there would be tribal friction and cultural difficulties for the appellant if he were to return to his home area given the discovery of him in compromising circumstances with a married woman. However I was not provided with any evidence that could support the proposition that the tribe to which C belonged exerted the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR. Beyond the word of the appellant, there was very little to support the proposition that this tribe would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area. Given the doubts, I have already expressed about the appellant’s evidence on these key aspects, I do not find there is evidence alone could discharge the burden he must satisfy to establish such reach.”

42. If the FtTJ had found that the appellant was not at risk of harm in the home area, there would be no reason for him to refer to the evidence using the language properly understood to refer to internal relocation. The references to the tribe “exerting the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR” can only be read as a reference to being at risk in the home area and whether the family would be able to exert influence in another part of Iraq. Similarly at paragraph 36, the FtTJ made a 2nd reference to the prospects of internal relocation that “beyond the word of the appellant, there was very little to support the proposition that this tribe would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area”. At paragraph 38, in the context of documentation, the FtTJ also found that he could use his family contacts to “re-establish himself” which is a further reference to living outside his home area. Those references in paragraph 36 when read with paragraphs 30 and 31 and 38 and taken together support a finding that the appellant was at risk in his home area and that the reference made at paragraph 39 was in error.

43. I reject the submission made that the different findings are such that the decision is unsafe. The FtTJ undertook a careful assessment of the evidence concerning the events in Iraq and assessed the appellant’s account in the context of that evidence. The findings of fact made at paragraphs 30 - 37 were not challenged expressly in the grounds and those findings were, in any event, open to the FtTJ on the evidence before him. Consequently the opening words of paragraph 39, do not demonstrate an error of law that is material in light of the assessment made at paragraph 36 when read with the positive factual findings. Furthermore, as submitted by Ms Young, the second sentence of paragraph 39 stated that if he was wrong about whether the appellant was it fear of being a victim of honour-based violence, it was reasonable for him to relocate within the IKR to guard against any such risk.

44. As to ground 2, in light of the submissions made I am satisfied that the FtTJ did not undertake a complete assessment of internal relocation. The references made to the appellant being able to internally relocate to a “distant part of the IKR” was not sufficient in establishing the factual elements

necessary for concluding the reasonableness or otherwise of internal relocation. I am satisfied that in light of the findings made at paragraphs 32 and 33, which were open to the FtTJ that he was entitled to take into account that he would not be at risk from C's family there. It had not been established on the evidence for the reasons given that they had the profile influence to locate him. However it was not just a matter of risk but an assessment of all the factors personal to the appellant and as set out in the country guidance decisions. Therefore I find an error in the assessment of internal relocation (Ground 2).

45. As to ground 3, this concerns the issue of redocumentation and is directed towards paragraph 38 of the decision. Having considered the submissions in the light of the evidence, I am not satisfied that the FtTJ was in error in his assessment of the evidence on this issue.

46. It was argued on behalf of the appellant that his case before the FtTJ was that his actions in Iraq have caused embarrassment and issues of dishonour and the FtTJ therefore did not explain why his family would assist him.

47. The issue of contact with his family was explored during the evidence before the FtTJ. This is plainly set out in the summary of the evidence at paragraph 14. The FtTJ recorded the submissions made on behalf of the respondent at paragraph 27. The FtTJ also recorded the competing submissions made on behalf of the appellant which were summarised at paragraph 21. Against that evidential background the FtTJ undertook his analysis and set out his findings at paragraph 38. He expressly considered the submission made on behalf of the appellant that he had not contacted his family out of a sense of shame but for evidential-based reasons rejected that evidence. It was open for him to find that "the suggestion that he could not bring himself to contact his family out of a sense of shame appeared to run inconsistently with the account he gave in his witness statement that he did not have the means to make contact." Earlier at paragraph 38 the FtTJ analysed the appellant's evidence as to his ability to contact his family. The judge found that "much like the evidence he gave about the influence of those who claim to fear, his evidence shifted about his ability to contact his family." The judge then set out the evidence in this respect.

48. Consequently it was open to the FtTJ to find on the evidence that it demonstrated that the appellant's family members had assisted the appellant- both his mother and her brother (his uncle) by providing the necessary documents and that from that evidence it was a reasonable inference for the judge to draw that in the circumstances they would provide assistance to him as required, including any assistance with documents that he might need to re-establish himself.

49. Those reasons, there is no error of law demonstrated in the grounds as advanced in grounds 1 and 3 and the only issue relates to the assessment of internal relocation (ground 2). On the basis of that assessment, the findings of fact set out at paragraph 30 - 38 shall remain as preserved findings as those

findings were ones that were open to the FtTJ to make on the evidence that was before him.”

The resumed hearing:

19. At the hearing, the appellant was represented by Mr Brown of Counsel and the respondent by Ms Young, Senior Presenting Officer. The appellant attended the hearing alongside the court interpreter who had been requested by the appellant’s solicitors. There were no problems identified by either the appellant or the court interpreter concerning the language or interpretation during the hearing.
20. Mr Brown raised a preliminary issue as to the parameters of the remaking stating that the error of law decision seemed to restrict the issue on remaking to be that relating to internal relocation and that no place of relocation had been identified by the respondent. He stated that it seemed to be accepted that there was a risk from C’s family in the home area but not clear whether there were difficulties arising from his own family. He further stated that the error of law decision stated that there was no error of law in the issue of documentation, but he was aware of the latest CPIN which had not yet been published that travel outside the home area without documentation could give rise to a risk.
21. Ms Young’s view was that on a fair reading of the error of law decision it was clear that it has been found that there was a risk of persecution in his home area of Sulamaniyah, and that the risk was from C’s family and not the appellant’s family. As to the issue of documentation there was no error on ground 3 as found in the error of law decision which is in line with the appellant being able to obtain his CSID from his family.
22. The answer to the preliminary issue is set out in the error of law decision and by the extract set out in the earlier part of this decision. For the reasons set out between paragraphs 38 – 43, ground 1 was not made out. The conclusion reached in the error of law decision was that having considered the decision of Judge Lodato, he had accepted the appellant’s relationship with C before he left Iraq and noted that the appellant had not been “meaningfully challenged about the circumstances in which he was discovered with C in the marital home by his mother-in-law”. He also accepted that the relationship with C developed as claimed and that they were discovered in compromising circumstances by C’s mother-in-law and also accepted that C was 1st promised to J, who she later married. By reference to paragraph 36, I found that the FtTJ had made findings of fact that whilst he rejected the appellant’s account that members of C’s family had taken an interest in his family and their home after the discovery of events (see 33 – 35) and having further rejected the appellant’s account that C’s family had the profile and influence that he had claimed, the FtTJ had found that the appellant could internally relocate. It followed that the FtTJ had found that the appellant would be at risk of harm in his home area. Ground 1 was not made out.
23. Ground 2 challenged the assessment of internal relocation and for the reasons set out in the error of law decision at paragraph 44, I found that the FtTJ did not undertake a complete assessment of internal relocation for the reasons given .
24. Ground 3 concerned the issue of redocumentation by paragraph 38 of Judge Lodato’s decision. For the reasons set out at paragraphs 45 – 48, I found that there was no error of law on the basis advanced. None of those 3 grounds sought

to argue that the appellant was at risk of harm from his own family. The ASA produced for the FtT hearing identified the risk issue as emanating from C's family (see paragraph 27) not his own family. Ground 3 was advanced on the basis that the FtT failed to properly assess whether the appellant could be redocumented and not properly explained why his own family would assist him in documentation. As set out in the EOL decision, the FtT made a finding of fact that the appellant had been previously assisted by members of his family, his mother and her brother who had helped him leave Iraq and that the FtT had given adequate, and evidence based reasons for rejecting his account as to why he claimed not to be able to contact his family.

25. The summary of the error of law decision makes it plain that the only issue relates to the assessment of internal relocation, and that paragraphs 30 – 38 should remain as preserved findings. Whilst the appellant's bundle had photographs said to pertain to C's family, Mr Brown confirmed that they were not relevant in light of the preserved findings of fact and the risk on return from C's family in the home area and that such documentation should properly be considered as fresh evidence for a fresh claim.
26. For those reasons the resumed hearing was to consider the issue of internal relocation in the light of the preserved findings of fact made by FtT Lodato as set out in the error of law decision.

The hearing:

27. A summary of the documents relied upon by the appellant as confirmed by the parties are as follows:
 1. The original bundle that was before the FTT.
 2. Appellant's supplementary bundle with witness statement, and country information.
28. The respondent relied upon the material that had been filed before the First-tier Tribunal and the preserved findings of fact as set out in the error of law decision.
29. At the hearing, the appellant gave oral evidence. He adopted his witness statement dated 11 January 2023. It stated that the reasons he gave to the FTT for not contacting his family were correct and nothing had changed and that he was still embarrassed to contact his family due to his actions and having brought shame on his family. He was therefore extremely embarrassed to contact his family to obtain details of his CSID. Further reference was made that C's family were very powerful, that his own tribe would not protect him and that no matter where he went in the IKR C's family would find him. It stated that he could not return to his family home in Iraq and that his family and the Jaff tribe would not want him to live with his family. As to conditions in another part of Iraq, it stated that he could not take refuge in a refugee camp and that living conditions are very poor and that he would not have the means to rent a flat and would have to reside in critical shelter arrangement. He was aware that the Home Office provided money for voluntary departure but that such money would not provide him with safety.
30. As to his circumstances he worked as a shepherd in Iraq before he left and did not have any form of education because he never attended school and he would

not be able to obtain any employment. As he does not have his CSID he would not work.

31. The appellant was asked one question on examination chief to confirm what work he did prior to leaving Kurdistan and he confirmed that he worked as a shepherd.
32. In cross-examination, he was asked about his education. The appellant said initially that he could not read in Kurdish but stated that he could read a couple of words here and there. He confirmed that he had his maternal uncle who lived in Erbil and that he worked as a labourer previously and then a shopkeeper in town. As to his Uncle's education, the appellant stated that in the past he had been to school but had not been educated very well.
33. He was asked if he could obtain a job as a labourer, the appellant stated that he could not live in Erbil. When asked why, he stated that it was because he had problems with C's family and that their links are in Erbil as they belonged to the Khoshnaw tribe. He was asked to put aside that reason and was asked if there any other reason why he could not be a labourer in Erbil? The appellant stated "no".
34. In re-examination he was asked if he was in contact with his maternal uncle and he said "no" because he felt ashamed and embarrassed to approach them in any way.
35. No further questions were asked of the appellant by either advocate, and they proceeded to provide their submissions on the relevant issues which can be summarised as follows.

The submissions:

36. Ms Young relied upon the original decision letter dated 19 May 2021 and the preserved findings of fact.
37. Dealing with the issue of internal relocation, she submitted that the respondent's case was that internal relocation would be to Erbil and that it would not be unreasonable or unduly harsh for this appellant to so relocate.
38. She submitted that based on the preserved findings of Judge Lodato, he found that the risk from C's family did not extend to Erbil and that had not been demonstrated that they had the power or influence the find the appellant as claimed.
39. As to his ability to obtain employment, he was a shepherd in Iraq and had no other form of employment. However when asked about his maternal uncle in Erbil, the appellant's evidence was that he had not been educated that well and the appellant was asked why he could not obtain a job as a labourer as his maternal uncle had done however the appellant did not provide any reasons as to why he could not do so.
40. Ms Young submitted that she invited the tribunal to find that the appellant could obtain some form of employment and that he would be able to provide and support himself as a young adult male in good health. As set out, the appellant's family can send him his CSID which they retain and therefore he is not at risk due to a lack of documentation. That was also relevant as it would give him access to

facilities in the place of relocation including access to employment and as set out in the country guidance case of SMO(2). Therefore internal relocation was not unduly harsh or unreasonable in the light of those factual circumstances.

41. Mr Brown on behalf of the appellant made the following submissions. He submitted that when assessing the issue of internal relocation it was necessary to consider the importance of tribal affiliations. In the country materials at paragraph 5.3 (p28AB p409CEF) it demonstrates the importance of such affiliations and at paragraph 7.3 underpins issues of blood feuds. Mr Brown pointed to the tribal affiliation of C's family of Khoshnaw at p24A and that this tribe is in Erbil.
42. As to the ability to obtain employment, the background evidence suggested that there were problems with employment in the region. He referred to the article "more than 6 million unemployed in Iraq as quote (page 47AB; p429CEF). He submitted that he would face difficulty in securing housing and the background evidence suggested chronic housing shortages. There was a further piece of background evidence (p44AB; p426CEF) referring to 4 million homes being required.
43. Mr Brown submitted that the appellant's ability to establish himself could not be seen outside the context of him bringing dishonour to his family bearing in mind the importance of tribe and this would affect his ability to obtain employment in the proposed place of relocation. He submitted that he had no education and no skills to enable him to overcome the difficulties.
44. Taking into account his particular characteristics it was submitted that it will be unduly harsh or unreasonable for the appellant to relocate to Erbil and that whilst he was an adult alone he only had experience of a employment as a shepherd which would not enable him to properly and realistically relocate to Erbil. Therefore, it had been established that it would be unduly harsh or unreasonable for him to internally relocate.

Discussion:

Relevant Country Guidance:

45. The current CG decision is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 001100 (IAC) (hereinafter referred to as "SMO(2)").
46. The relevant parts of the headnote are reproduced below:

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.

12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered 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.

13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. Where an appellant is able to provide the Secretary of State with the details of the specific CSA office at which he is registered, the Secretary of State is prepared to make enquiries with the Iraqi authorities in order to ascertain whether the CSA office in question has transferred to the INID system.

14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also 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, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.

15. 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.

16. 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.

17. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.

18. Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID. The Laissez Passer is not a recognised identity document for the purpose of internal travel by land.

19. There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.

20. The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.

21. The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the information recorded on the 1957

Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport. Whether possession of a 1957 Registration Document is likely to be of any assistance in that regard is to be considered in light of the remaining facts of the case, including their place of registration. The likelihood of an individual obtaining a 1957 Registration Document prior to their return to Iraq is not, without more, a basis for finding that the return of an otherwise undocumented individual would not be contrary to Article 3 ECHR.

22. The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear. It is not clear how that document is applied for or how the data it contains is gathered or provided. On the state of the evidence as it presently stands, the existence of this document and the records upon which it is based is not a material consideration in the evaluation of an Iraqi protection claim.

D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

23. Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.

24. Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.

25. Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, i.e. a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraqi Kurds – internal relocation) CG [2018] UKUT 212.

E. IRAQI KURDISH REGION

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

Kurds

27. 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.

28. 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 air 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. For Kurds without the assistance of family in the IKR the accommodation options are limited:

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;

(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

34. 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, which may deter prospective employers.

47. In reaching my assessment, I bear in mind the appellant bears the burden of substantiating the primary facts of his protection claim. The standard is a reasonable degree of likelihood. The burden and standard of proof applies to the factual matters in issue in this appeal. Also that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that there are substantial grounds for believing that there is a real risk of serious harm on return.

48. The starting point of the assessment of the appeal are the factual findings made by the FtTJ which were preserved findings in accordance with error of law decision.

1. The FtTJ found that the appellant had a relationship with C before he left Iraq (para 30)
2. C was first promised to J, whom she later married (para 31).
3. The appellant developed a relationship with C as claimed and they were discovered in compromising circumstances by C's mother-in-law.
4. The FtTJ rejected the appellant's account of the degree of influence exerted by C's family. The FtTJ found that the evidence given by the appellant as to the profile and status of C's father was inconsistent and he had previously not described him as a high-ranking military commander with 6 sons in the Peshmerga (see findings at paragraphs 32 -33 and 35).
5. The FtTJ found that the appellant had given inconsistent evidence as to that C's family had taken an interest in his family and their home after his

discovery (see reasons at paragraphs 34 and 35). The FtTJ found that he had been inconsistent about matters of “real importance”.

6. The FtTJ found that there would be tribal friction and cultural difficulties for the appellant if he were to return to his home area given the discovery of him in compromising circumstances with a married woman. However he rejected the appellant’s account of the reach and influence of C’s family stating “I was not provided with any evidence that could support the proposition that the tribe to which C belonged exerted the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR. Beyond the word of the appellant, there was very little to support the proposition that this try would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area. Given the doubts I have already expressed about the appellant’s evidence on these key aspects, I do not find on his evidence alone could discharge the burden he must satisfy to establish such reach” (paragraph 36).
7. The FtTJ set out his findings of fact that related to contact with his family in Iraq and the issue of documentation at paragraph 38. The FtTJ rejected the appellant’s evidence and claimed that he had not contacted his family out of a sense of shame taking into account that his evidence had “shifted about his ability to contact his family. At paragraph 26 of his witness statement, he was categorical that he could not make contact because he no longer had access to their contact details which were stored on the phone he could no longer access. In his oral evidence he bluntly accepted that he could establish contact using social media if you wished but he was too embarrassed to do so. I also note that his account was always been that his mother assisted her brother by providing the necessary documentation to enable her son to escape Iraq (answer to question 184 of the substantive interview). This is a strong indication that he would be prepared to turn to her again if he needed access to his CSID card to travel between Baghdad and the IKR. The suggestion that he could not bring himself to contact his family out of a sense of shame appeared to run inconsistently with the account he gave in his witness statement that he did not have the means to make contact. I find that this was a tactic to lay the groundwork for an alternative document argument. I find that he has the means available to him to obtain the documentation he would need to get to the IKR from Baghdad and that he produces family contact to re-establish himself with the assistance of his maternal uncle and other family members” (para 38).
8. The FtTJ found that if he were to return to his home area there was a reasonable likelihood that the appellant will be at risk of serious harm based on honour based violence.

49. The issue identified for this hearing is that of internal relocation. Neither advocate has addressed the tribunal on the relevant law, but it is well established and can be summarised as follows.

50. As to internal relocation, Rule 3390, which is included in part 11 of the Immigration Rules, deals with the possibility of "Internal relocation". It states:

"(i) The Secretary of State will not make:

(a) a grant of refugee status if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

51. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [\[2006\] UKHL 5](#), [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

52. The Upper Tribunal in MB(internal relocation-burden of proof) Albania [2019] UKUT 00392 held that: *The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in SSHD v SC (Jamaica) [2017] EWCA Civ 2112, at paragraphs [40] and [41]. MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System - Directive 2004/83/EC) Case C-277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.*
53. When assessing the issue of internal relocation this relates also to the assessment of the issue of documentation. It is necessary to consider the position of documentation in the light of the evidence and the CG decision.
54. As to the identified place of removal, the legal and evidential landscape has changed since the FtTJ's decision. There is now an updated country guidance decision of SMO(2) and an updated position taken by the respondent. In SMO (2) the headnote at paragraph 7 states: "return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad." At paragraph 26 it states, "there are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah."

55. The CPIN of July 2022 at paragraphs 2.6.3 and 3.1.1 states:

“There are asylum seekers and foreign national offenders can now be returned to any airport in federal Iraq and the Iraqi Kurdish Region.”
56. It is the respondent’s case that whilst the appellant will be at risk of harm in his home area, he can relocate to another area of the IKR, namely Erbil.
57. As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the respondent’s position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID may be at risk of enduring conditions contrary to Article 3 of the ECHR.
58. The issue surrounding the documents required to return to Iraq and to survive in that country have played a prominent part in the country guidance cases thus far decided. Those documents are referred to as the Civil Status Identity Card (“CSID”), the Iraqi Nationality Certificate (INC) and the public distribution system (“PDS”) card/ food ration card and the new digital identification document known as Iraqi National Identity Document (“INID).” Reference is also made to the 1957 Registration Document (see paragraphs 115 -137 of SMO(2)).
59. The importance of the CSID was set out in the previous CG decisions as it is required to access financial assistance, employment, education and housing etc. it was described as an “essential document for life in Iraq” (at [39] AA (Iraq) [2017]).
60. It is necessary to consider whether the appellant has access to his CSID or any documentation within a reasonable time.
61. The starting point are the preserved findings of fact. The FtTJ did not accept all of the appellant’s account of events in Iraq and in the context of the issue of documentation and contact with his family, the FtTJ’s findings of fact are summarised earlier.
62. The FtTJ thus found that the appellant’s CSID remained with his family in Iraq and rejected his evidence that he had not contacted his family out of sense of shame for the trouble he felt he had caused. In this context the FtTJ observed that the appellant’s evidence on this issue, much like the evidence he gave about the influence of those he claimed to fear, shifted about his ability to contact his family. The FtTJ assessed his evidence (witness statement para 26) and his claim that he could not make contact as he no longer had their contact details which were stored on his phone which he could no longer access but contrasted that with his oral evidence where “ he bluntly accepted that he could establish contact using social media if he wishes but he was too embarrassed to do so.” The FtTJ rejected this explanation and made a finding of fact that the “ suggestion that he could not bring himself to contact his family out of a sense of shame appeared to run inconsistently with the account he gave in his witness statement that he did not have the means to make contact. I find that this was a tactic to lay the groundwork for an alternative documents argument. I find that he has the means available to him to obtain the documentation he would need to get to the IKR from Baghdad and that he could use his family contacts to re-

establish himself with the assistance of his maternal uncle and other family members” (at [38]FTT’s decision).

63. The FtTJ also found that the appellant’s evidence had always been that his mother assisted her brother by providing the necessary documentation to enable her son to escape Iraq (see AIR Q184). The FtTJ concluded, “This is a strong indication that he would be prepared to turn to her if he needed to access his CSID card to travel between Baghdad and the IKR “ (at paragraph [38]).
64. In his witness statement filed for the hearing he maintained that he was extremely embarrassed to contact his family to obtain his CSID due to his actions. The appellant’s evidence remains the same as that he gave before the FtTJ and there is no evidence to undermine those factual findings made by the FtTJ which were preserved findings. There has been no evidence given by the appellant to demonstrate that he has even tried to contact his family members since the FtTJ’s decision. It therefore follows that the FtTJ’s factual assessment remains the same; that Judge Lodato rejected his factual account as to why he was not in contact with his family and that he had access to his CSID and had the means available to him to obtain that document by his mother assisting him as she had done previously. The appellant therefore has a CSID which he could access in reasonable time.
65. I take into account paragraph 392 of SMO (1) which stated that “as is clear from AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member for whom the relevant volume and page reference could be obtained or traced back.” Whilst that is in the context of those who would be considered to remember the family book details, is still of relevance concerning the issue of contact generally.
66. The country information and assessment in SMO (1) and (2) attest to the importance of those documents for life in Iraq. Against that background, it is not reasonably likely that important documents like the appellant’s CSID would be disposed of by his family members or would be subsequently lost.
67. In conclusion and in the light of the preserved findings of fact, the appellant’s family members would be able to send the documents (that is his CSID) to the appellant directly so that he would be able to obtain the documents which he requires to travel to the area of relocation.
68. The July 2022 CPIN (paragraph 2.5.6) sets out that a laissez passer can be issued by the Iraqi embassy in the UK without the requirement for an interview provided the person holds one of the document set out which includes a CSID. On the factual findings made by Judge Lodato the appellant has a CSID which remains with his family members where they are likely to still reside and with whom the appellant reasonably likely can contact.

69. Having found that the appellant will have the prospect of obtaining his CSID within a reasonable time, when applying the relevant CG decision in SMO (2) at paragraphs 30 -31 of the headnote, the appellant would be granted access to the territory subject to and registering with the local Mokhtar. There are no sponsorship requirements for entry or residence in any of the 3 IKR governorates for Kurds. It has not been demonstrated that the appellant would be at risk of ill-treatment during the security screening process. It has not been submitted on behalf of the appellant that he comes from a family with a known association with ISIL nor has he come from an area associated with ISIL. While he is a single male of fighting age, the appellant 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.
70. Judge Lodato rejected the appellant's evidence as to the influence, reach and profile for the reasons set out between 32 - 35. Those findings of fact ones that were open to the FtTJ on the evidence before him. The FtTJ rejected the appellant's account that the tribe that C's family belonged to would be able to "exert the kind of malign a far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR. Beyond the word of the appellant, there was very little to support the proposition that this tribe would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area." That remains as the preserved finding of fact which has not been undermined.
71. As to his personal background, Mr Brown submits that in view of his tribal difficulties it would lead to the appellant being unable to obtain employment and would also lead him to being unable to secure housing. It is submitted that the appellant's ability to establish himself in Erbil cannot be seen outside the context of him bringing dishonour to his family bearing in mind the importance of his tribe and that this would affect his ability to obtain employment.
72. In his oral submissions Mr Brown referred to the country materials in the appellant's bundle relating to the importance of the tribe in Iraq. Having considered the material to which I have been referred, the material in general sets out the tribes in Iraq vary widely in size and complexity and although the practice of referring to tribal affiliation to distinguish one's identity is less prevalent in today's society, particularly in the large cities, it is estimated that 75% of the population to belong to one of the countries tribes.
73. The appellant submits that he is a member of the Jaff tribe. The material demonstrates that they number 1.5 million (40% of Iraq) and are described as "widely integrated in society with positions in government, Armed Forces and business (see paragraphs 5.3.5 - 5.3.7). They are described as one of the tribes who have become "neo-tribes "and who have attained political influence that extends beyond their geographical region (see paragraph 5.3.2). It is also stated that the Jaff tribe is one of the most substantial tribes in size (see 5.3.2); they are from Sulamanyah, but its members have migrated to other areas outside Sulamanyah to urban areas such as Erbil and Baghdad.
74. Whilst Mr Brown submits that the country materials demonstrate that the appellant's tribal affiliation will affect his ability to obtain employment, the

evidence to which I have been directed and cited above demonstrates that whilst tribal affiliations continue to be important, the Jaff tribe to which the appellant belongs is one of the most substantial of tribes. Reference has been made to the Khoshnaw tribe as “very large” and that they are “around Shaqlawa” which is in the province of Erbil. C’s family are said to belong to the tribe, but no further detail or evidence has been provided of this tribe’s particular extent and influence unlike the evidence relating to the Jaff tribe.

75. Furthermore, the evidence demonstrates that the Jaff tribe continue to have influence outside their own geographical area and have migrated to other urban areas such as Erbil the area that the respondent has stated the appellant could relocate to (see 5.3.2).
76. The evidence Mr Brown has referred to does not demonstrate that the appellant’s affiliation to the Jaff tribe would necessarily affect his ability to obtain employment.
77. A further factor relied upon by Mr Brown is what he describes as a large number of unemployed people in Iraq. In this context Mr Brown relies upon an article entitled “more than 6 million unemployed in Iraq” (see p47AB;p 429(CE File). However the contents of this article does not differentiate between government controlled Iraq (GOI) and Kurdistan and particularly Erbil. Similarly the report from the Norwegian Refugee Council (NRC) entitled “how housing, land and property rights impact return to Sinjar”, expressly refers to the conditions in Sinjar which is located in the western Ninewah governorate which is described as one of the areas most devastated by the conflict with IS and that 80% of the public infrastructure was destroyed. That article has no relevance to the place of relocation.
78. The article at page 43AB (P 46CEF) refers to the need to build more housing in Erbil which has ceased due to the problems in obtaining licences for housing projects. The evidence in the CPIN (p474CEF) sets out the conditions of employment by reference to the situation in Iraq generally rather than the providing evidence in particular areas such as Erbil.
79. The UNHCR report at page 76AB (p 459CEF) refers to Iraqi citizens from the KRI going to Erbil as being entitled access to basic services such as health, education and to access employment there.
80. Having considered the country materials, it is not surprising that the general thrust of the evidence relating to Iraq demonstrates that there are social and economic problems given the end of a number of years of large-scale military operations and the ensuing humanitarian context of Iraq which has been characterised by protracted internal displacement.
81. Notwithstanding the limitations of the country material to which the tribunal has been referred, and as identified above, I would accept that in light of the

returning citizens to the KRI, and other internally displaced people, the region is experiencing a period of significant economic decline and there is likely to be a shortage of housing and employment opportunities. That is reflected in SMO(1) between paragraphs 417 – 424 and as set out in the summary of the headnote of SMO(2) replicated above. In this context the appellant's employment history is of relevance having worked as a shepherd and having had limited education.

82. Whilst reference is made in the appellant's evidence that he would return as an IDP, that has to be seen in the context of the evidence of the preserved findings of Judge Lodato. The appellant falls into the category of someone relocating to the IKR as set out at paragraph 32 of SMO(2).
83. Paragraph 32 of the CG decision in SMO(2) and replicated above sets out that if P has family members living in the IKR cultural norms required family to accommodate P. In such circumstances p would, in general, have sufficient assistance from the family so is the lead a "relatively normal life", which would not be unduly harsh.
84. The appellant does not need to rely upon residence at a IDP camp because he has a family member living in the area of relocation namely his maternal uncle.
85. Whilst Mr Brown submits that the appellant's ability to establish himself in Erbil should not be seen outside the context of him bringing dishonour to the family, the findings of fact made by Judge Lodato and as preserved demonstrate that notwithstanding the appellant's conduct with C causing such dishonour to the family his mother was prepared to help him leave Iraq by obtaining the help and assistance of her brother (the appellant's maternal uncle) who lives in Erbil. Part of that assistance included the appellant living with him in Erbil before he left Iraq.
86. When assessing the extent of any assistance likely to be provided by the appellant's family, that has been assessed by the FtTJ who made a finding of fact that the appellant would have the assistance of his maternal uncle in re-establishing himself (see paragraph [38]). Again this is seen in the context of the factual findings made by the FtTJ which are preserved findings, that he rejected the appellant's claim that he would not contact his family relatives, which included his maternal uncle, out of embarrassment. It is of relevance that the appellant lived with his maternal uncle in Erbil for a period of time before he left Iraq by air and travelling to Turkey. In view of those findings of fact as preserved, the appellant's maternal uncle would be available to assist the appellant to re-establish himself. As found by Judge Lodato, on the appellant's own factual account he had previously lived there, even when his maternal uncle was aware of the appellant's conduct with C and the dishonour to the family. The appellant therefore would not need to access the other accommodation options set out at paragraph 33 of SMO(2).
87. When considering the appellant's prior employment history as a shepherd, this may rank him as an unskilled worker who would be at a greater disadvantage.

However the appellant's uncle is in employment having previously worked as a labourer and is now said to be a shopkeeper. The appellant therefore would be at a place of relocation with a family connection in that area as set out at paragraph 34(iv) of the headnote of SMO(2) which notes that patronage and nepotism continue to be an important factor in securing employment.

88. In summary whilst the country evidence and the CG decision demonstrate that the circumstances of relocation to the IKR may be challenging for the appellant in terms of employment and housing, it is not made out that the appellant will suffer destitution or would find himself in an IDP camp as he has stated given that he has an identifiable family member who was previously provided him with a home and safety and no evidence has been advanced as to why that has altered.
89. Whilst the appellant has had limited employment previously in the light of the assistance his uncle can give him as demonstrated in the past, there is a likelihood that avenues of employment will be available to him. Also taking into account his own specific personal characteristics, that he is a single young man with no health issues who would be living with a family member in the place identified for internal relocation.
90. Those reasons, the appellant has not discharged burden on him to demonstrate that it would be unduly harsh or unreasonable for him to relocate to another area outside of his home area where he would not be at risk of harm and would not be able to re-establish himself.

Decision:

91. The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside; the appeal is to be remade as follows:

The appeal is dismissed on all grounds .

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds
1 November 2023

“ANNEX A”

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/52762/2021
(UI-2021-001768)

THE IMMIGRATION ACTS

Heard at xxx IAC

**Determination
Promulgated**

On 30 September 2022

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Before

UPPER TRIBUNAL JUDGE REEDS

Between

**MIA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G. Brown, Counsel instructed on behalf of the appellant

For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve 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.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 17 December 2021.
2. Permission to appeal that decision was sought and on 25 March 2022 permission was granted by FtTJ Beach.

The background:

3. The appellant is a citizen of Iraq of Kurdish ethnicity from the IKR.
4. The basis of his claim is set out in the decision letter and summarised in the decision of the FtTJ from paragraphs 10-21. It is summarised as follows. The appellant based his protection claim on the basis of being a target of honour-based violence. The appellant worked as a shepherd on his family farm. There was a well outside his home, and he would open the cap of the well during the day for people to collect their water.
5. In February or March 2019 the appellant met C when she came to the well to take some water. He helped her carry the Jerry can and also began speaking to her. He had thoughts of marrying her. The appellant continued to meet C when she came to take water from the well 2 or 3 times a week. They fell in love with each other.
6. The appellant stated that he told C that he would send his family to propose to her, but she told that they could not do that she had been promised to another man, since she was a child. This man (J) lived abroad, and C did not like him.
7. The appellant continued his relationship with C discreetly for approximately 3 months as he was in love with her could not live without her. He asked his family to propose to see anyway, and check if the other man had feelings for her. J's father was unexpectedly at C's home when the appellant's father and elders visited to propose. He was very angry and expelled the appellant's father from the house. The appellant's father told the appellant never to get close to C's house again. C was stopped from coming to collect water and after approximately 1 ½ months J returned from abroad and married her. After approximately 2 to 2 ½ months after J married C, the appellant received a phone call from C who was very distressed and said J was mistreating her. He stated that she was very distressed, and she wanted to kill herself. She said it was appalling life for her to live with J and that J was ill treating her. The appellant said that C should mention it her own family. She said that she had mentioned it to her family, but she was advised to wait and be patient because if she got divorced then her brother would need to divorce J's sister. He said J would go back home late at night drunk and he would beat her (see Q172).
8. Approximately 2 or 3 days later, C called the appellant again and asked him to come to her house as nobody was at home. She told him that she needed him for something, and he did not want to let her down . She spotted him from far away and to open the gate and told him to come in quickly. He went in but the door was unlocked, and they went to a rear room. They had another gate at the rear of the house. They both went into the rear room, and both started crying and

expressed their feelings . This went on for about 10 to 15 minutes then C sat on his lap. They became intimate and had sexual intercourse (Q172).

9. J's mother suddenly came in and saw the appellant and C and screamed. He said J's mother lived next door and simply visited unannounced when she saw the couple together (see paragraph 20 of witness statement).
10. The appellant managed to run away but C did not. He hid in a mountain and then went to his uncle's house in Erbil.
11. The appellant's mother phoned his uncle and told him his family home had been raided 2 or 3 times by J, C's father and her brothers, and told his uncle to take care of him and to get out of the country. When questioned at the hearing, the appellant described how, in the aftermath of his discovery with C the home was raided by 2 to 3 armed men who worked for C's father. He denied giving the answer recorded a question 186 of the substantive interview where he said that J, C's father and her brother raided the home (see paragraph 16 of FtTJ's decision).
12. It is asserted that C's father was a Peshmerga general and was powerful and influential. C's brothers are their father's bodyguard.
13. The appellant feared that if he were to return to Iraq he would be killed by J and C's father and brother.
14. It is recorded that the appellant was cross-examined about the power and influence of C's family during the hearing. The appellant said that C's father was such a powerful figure that he tended to work from home where he was able to deploy agents to work on his behalf. He planned combat operations. While he was well known in their village, he did not court publicity. The appellant denied giving the answer recorded a question 2 to 3 of his substantive interview where it was noted that he said that C's parents did not have any influence (see paragraph 15 of the FtTJ's decision).
15. In re-examination the appellant was asked to expand upon the suggested inconsistencies recorded questions 186 and 223 of the interview. He said that he was stressed and anxious and could not recall giving the answer to question 186. In relation to his answer to question 223, he said that C's family were influential as part of a big and powerful tribe. He also referred to the main Democratic party of Kurdistan.
16. In relation to documentation, the appellant said that he left his CSID card with his family in Iraq. He was unable to contact them because he no longer had access to the mobile phone he had in Iraq which contained his family's contact details. On examination GP said that he had not contacted his family since his arrival in the UK because he was embarrassed about all the trouble he had caused. This is also the reason why he had not attempted to find out about C's welfare since he left because he could not only hope to reach to his family. He was asked if he was not worried about his family's safety, he reiterated that he was embarrassed to contact them and, in any event, he was at risk of harm as opposed to his family members. He accepted he could use social media to trace his family if he were inclined to do so (paragraph 14 of FtTJ's decision).
17. His asylum claim was refused in a decision letter dated 19 May 2021.

18. The appeal came before the FtTJ on 9 December 2021. In a decision promulgated on 17 December 2021 the FtTJ dismissed the appeal on asylum grounds and on human rights grounds.
19. The FtTJ set out his factual findings and assessment of the evidence at paragraphs [30-40]. The FtTJ set out that the respondent did not dispute that the appellant was in a relationship with C before he left Iraq, and neither was he meaningfully challenged about the circumstances in which he was discovered with C. The judge accepted the appellant's evidence concerning the relationship, how it developed and that they were discovered in compromising circumstances (see paragraphs 30 - 31). The FtTJ did not accept the appellant's account that the members of C's family were powerful or had any influence or profile in the way described (see paragraphs 32 - 33) and rejected the appellant's evidence as to the interest taken in his family in their home after the discovery of his relationship with C (see paragraph 33). At paragraph 35 the FtTJ rejected the explanation given by the appellant as to the discrepant evidence on those 2 issues. At paragraph 36 the judge referred to the lack of evidence that the tribe to which C belonged to exerted far-reaching influence so that the appellant would not be able to find sanctuary in a "distant part of the IKR". At paragraph 37, he did not find that the appellant's failure to claim asylum undermined his credibility. At paragraph 38, the FtTJ set out his reasoning as to why the appellant would be able to obtain documentation from his family so that he could travel to the IKR from Baghdad and could use his family contacts to re-establish himself. At paragraph 39, the FtTJ stated that the appellant had not established that he would be at risk from C's family or husband but that if he was wrong, it would be reasonable for the appellant to relocate within the IKR. The FtTJ therefore dismissed the appeal.
20. The appellant sought permission to appeal on 3 grounds. On 25 March 2022 FtTJ Beach granted permission on all 3 grounds.

The submissions of the parties:

21. Mr Brown, Counsel on behalf of the appellant relied upon the written grounds. The written grounds advance 3 grounds of challenge.
22. Dealing with ground 1, Mr Brown relied upon the written grounds. It was submitted that on a fair reading of the decision reasons the judge seemed to accept that the appellant would be at risk in his home area as set out at paragraphs 30, 31 and also paragraph 36. In respect of paragraph 36, the FtTJ had set out that he did not doubt that there would be "tribal friction and cultural difficulties for the appellant if he were to return to his home area given the discovery of him in compromising circumstances with a married woman. However, I was not provided with any evidence that could support the proposition that the tribe to which C belonged exerted the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR."
23. Mr Brown submitted that although the judge did not expressly state what difficulties the appellant might face that a reasonable inference to draw it at such difficulties would meet the persecution threshold. The judge appeared to suggest that there was an internal flight alternative to the appellant "in a distant part of the IKR." The grounds refer to the FtTJ making a contradictory finding to the above assessment at paragraph 39 of his decision where the FtTJ stated that "the appellant has not established that it is reasonably likely that he would be at risk

from C's family or husband or that he has a well-founded fear of persecution because of his membership of a particular social group."

24. In his oral submissions, Mr Brown submitted that the FtTJ had background evidence concerning those accused of honour crimes and that on his reading of the decision letter and the findings made by the FtTJ, set out a background of the appellant having a relationship with C, and it was discovered as claimed in therefore the appellant had to leave his home area in Iraq. He submitted to the point made in the grounds is that when setting out the background the FtTJ made contradictory findings of risk faced by the appellant in his home area. In particular he pointed to paragraph 30 where the FtTJ identified that the central issue was credibility and focused on the dangers of C's family. However when looking at the reasoning at paragraph 36 there is a suggestion to the reader of the decision that he accepted that there would be difficulties in the appellant's home area. Mr Brown posed the question, what does the FtTJ mean? He submitted that it could only be inferred from that paragraph that those who transgress honour related behaviour would therefore be at risk of harm. As the FtTJ had stated that he would face cultural difficulties that could be avoided by relocating supported the finding of risk.
25. Mr Brown submitted that the difficulty with the decision is that the judge suggested that the appellant had not established that he will be at risk in the home area therefore this presented a difficulty. Any reader of the decision should know what the judge decided. Mr Brown level submitted that if there were contradictory findings, the decision was unsafe, and the implications went to internal relocation and to the terms of the documents issue as part of the assessment of the documentary issue.
26. Ground 2 of the written grounds related to the assessment of internal relocation and that the FtTJ failed to identify where in the IKR the appellant could reasonably expected to relocate. The FtTJ's reference to "a distant part of the IKR" was not sufficient and that without identifying the place, there has been consequently no assessment of the 2nd limb of Januzi v SSHD [2006] UKHL 5 irrespective of risk and whether it is unreasonable for the appellant to relocate having regard to his personal circumstances. In his oral submissions Mr Brown submitted that the appellant's home area was in the IKR and when assessing the issue of internal relocation and whether it was reasonable the judge was required to consider his claimed illiteracy and his previous work as a shepherd. There was no proper assessment undertaken of whether it will be unduly harsh to relocate.
27. Ground 3 related to the issue of whether the appellant could be re-documented. The written grounds asserted that the appellant's case was that his actions in Iraq and caused embarrassment and issues of dishonour for his family. Given the positive findings made by the FtTJ he had not properly explained why the appellant's own family would still assist him in terms of redocumentation. Reference is made to paragraph 38 and the reasoning given. However, on the basis that the judge accepted the central narrative of both the nature of the illicit relationship in the manner of its discovery, the appellant sense of embarrassment and shame is plausible. However the critical assessment is whether given the appellant's actions with the family in Iraq still assist him in getting alternative documents. It is asserted that it is one thing that assistance may have been given to the appellant in the past to enable him to leave Iraq, but the issue was whether the family would be willing to assist in helping him to return and that

was a different issue. The appellant's presence in Iraq might exacerbate or worsen the position for the appellant's family in terms of honour.

28. In his oral submissions Mr Brown submitted that in light of the contradictory findings and the lack of proper assessment as to internal relocation, the decision should be set aside and be re- heard.
29. Ms Z. Young, Senior Presenting Officer on behalf of the respondent confirmed that there was no Rule 24 response filed. In her oral submissions, Mr Young submitted that there was no material error of law in the decision of the FtTJ. With reference to ground 1 where it was asserted there were contradictory findings, she submitted that paragraph 39 of the decision was clear that the appellant had not established a reasonable likelihood that he would be at risk of persecution. However he went on to state that if he were wrong, the appellant could internally relocate. She submitted that the FtTJ gave clear reasoning on any fair reading of the decision. She submitted that on a reading of paragraph 36 of the decision the FtTJ did not say that he was at risk of persecution in his home area. If paragraph 36 is read along paragraph 39 it is clear that the FtTJ did not find the appellant be at risk in his home area. In any event the judge clearly stated that if he was wrong then he considered the alternative of internal relocation.
30. Mr Young submitted that if paragraph 36 is read, the FtTJ has not made a positive finding about the influence of the family as claimed in this was an important point concerning risk in the home area.
31. Dealing with the internal relocation point, she submitted if there was an error it is not material because the judge went on to consider internal relocation. She submitted that the judge touched on this at paragraph 39 and refers to it to be reasonable to relocate to guard against the risk. The judge considered the characteristics of the appellant and that he would have family support therefore the judge had assessed internal relocation in the IKR.
32. As to ground 3, she submitted that if ground 1 was made out and the findings were contradictory it was open to the FtTJ to make those findings in the light of paragraph 38 where the judge set out the inconsistencies in the appellant's evidence. There was nothing wrong with the FtTJ's finding on the contact with his family. She submitted that there was no material error of law.
33. Mr Brown in his reply submitted that there was a dispute as to how the paragraph should be interpreted. He submitted that he could only interpret those words saying that as a consequence of the appellant discovering compromising circumstances the appellant would face tribal difficulties and cultural difficulties but those are not set out by the FtTJ.
34. As to the appellant being able to find sanctuary in a "distant part of the IKR" that was not a sufficient assessment of internal relocation. This could be a remote part and in terms of assessment there was a need for a proper assessment of internal relocation and all the judge did was acknowledge a risk in the home area (if that is accepted) without identifying where it will be possible for him to relocate. The lack of specificity as to place was important because the appellant said he was not safe in Erbil, so his uncle had made steps him to leave. The place of safety should be specified when considering whether it is unduly harsh. Mr Brown submitted that it was not sufficient to say that he could move to another area and the judge was expected to assess whether he would have support, the appellant is an educated and that was not a factor the judge considered that not

considered his limited work experience. Therefore even if the finding was made in the alternative there was not a sufficiently well-reasoned decision on internal relocation.

35. Mr Brown submitted that the FtTJ was not clear about the cultural difficulties and not set out what they were. It is not known what the judge was referring to under the heading “tribal and cultural difficulties” and what they were and whether they would be continued family support in those circumstances.
36. As to internal relocation, he submitted that it was not possible to read into paragraph 39 that the FtTJ was referring to Erbil and this was merely speculation. He submitted the judge was required to express himself clearly and the place of internal relocation on account of the positive findings that he made.
37. At the conclusion of the hearing I reserved my decision.

Decision on error of law:

38. Dealing with the ground 1, the issue advanced on behalf of the appellant is that the FtTJ made contradictory findings in his decision as to whether the appellant was at risk of harm/persecution in his home area at paragraph 39 given the other positive findings made within the decision.
39. I have concluded that when reading the decision of the FtTJ and contrary to what is said at paragraph 39, that the FtTJ reached the decision that the appellant would be at risk of harm/persecution in his home area. It had not been disputed by the respondent that he had a relationship with C before he left Iraq. The FtTJ also set out that the appellant was not “meaningfully challenged about the circumstances in which he was discovered with C in the marital home by his mother-in-law” (see paragraph [30]). The FtTJ also accepted the appellant’s evidence that the relationship with C developed as claimed and that they were discovered in compromising circumstances by C’s mother-in-law. Finally he also accepted that C was first promised to J, who she later married (at [31]).
40. The FtTJ set out the areas in dispute between the parties. They were described as what had happened after the discovery of C and the appellant together and the level of threat posed by C’s family (at [32]). For the reasons set out at paragraphs 32 and 33, the FtTJ rejected the appellant’s evidence concerning the degree of influence exerted by C’s family. The FtTJ set out the discrepant evidence concerning the profile and influence of them. The 2nd issue related to whether the appellant given consistent evidence as to the interest in his family and their home after the discovery. The FtTJ considered this at paragraph 34 and set out the different evidence given by the appellant in his interview and the oral evidence as to the identity of those had come to the house. At paragraph [35] the FTT J analysed the appellant’s evidence and his explanation for the discrepancies and gave adequate and sustainable reasons for rejecting that explanation.
41. The key paragraph is paragraph 36. The FtTJ stated:

“I do not doubt that there would be tribal friction and cultural difficulties for the appellant if he were to return to his home area given the discovery of him in compromising circumstances with a married woman. However I was not provided with any evidence that could support the proposition that the tribe to which C belonged exerted the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR. Beyond the word of the

appellant, there was very little to support the proposition that this tribe would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area. Given the doubts, I have already expressed about the appellant's evidence on these key aspects, I do not find there is evidence alone could discharge the burden he must satisfy to establish such reach."

42. If the FtTJ had found that the appellant was not at risk of harm in the home area, there would be no reason for him to refer to the evidence using the language properly understood to refer to internal relocation. The references to the tribe "exerting the kind of malign and far-reaching influence that he would not be able to find sanctuary in a distant part of the IKR" can only be read as a reference to being at risk in the home area and whether the family would be able to exert influence in another part of Iraq. Similarly at paragraph 36, the FtTJ made a 2nd reference to the prospects of internal relocation that "beyond the word of the appellant, there was very little to support the proposition that this tribe would have the resources, wherewithal or inclination to track down the appellant should he move to a distant area". At paragraph 38, in the context of documentation, the FtTJ also found that he could use his family contacts to "re-establish himself" which is a further reference to living outside his home area. Those references in paragraph 36 when read with paragraphs 30 and 31 and 38 and taken together support a finding that the appellant was at risk in his home area and that the reference made at paragraph 39 was in error.
43. I reject the submission made that the different findings are such that the decision is unsafe. The FtTJ undertook a careful assessment of the evidence concerning the events in Iraq and assessed the appellant's account in the context of that evidence. The findings of fact made at paragraphs 30 - 37 were not challenged expressly in the grounds and those findings were, in any event, open to the FtTJ on the evidence before him. Consequently the opening words of paragraph 39, do not demonstrate an error of law that is material in light of the assessment made at paragraph 36 when read with the positive factual findings. Furthermore, as submitted by Ms Young, the second sentence of paragraph 39 stated that if he was wrong about whether the appellant was it fear of being a victim of honour-based violence, it was reasonable for him to relocate within the IKR to guard against any such risk.
44. As to ground 2, in light of the submissions made I am satisfied that the FtTJ did not undertake a complete assessment of internal relocation. The references made to the appellant being able to internally relocate to a "distant part of the IKR" was not sufficient in establishing the factual elements necessary for concluding the reasonableness or otherwise of internal relocation. I am satisfied that in light of the findings made at paragraphs 32 and 33, which were open to the FtTJ that he was entitled to take into account that he would not be at risk from C's family there. It had not been established on the evidence for the reasons given that they had the profile influence to locate him. However it was not just a matter of risk but an assessment of all the factors personal to the appellant and as set out in the country guidance decisions. Therefore I find an error in the assessment of internal relocation (Ground 2).

45. As to ground 3, this concerns the issue of redocumentation and is directed towards paragraph 38 of the decision. Having considered the submissions in the light of the evidence, I am not satisfied that the FtTJ was in error in his assessment of the evidence on this issue.
46. It was argued on behalf of the appellant that his case before the FtTJ was that his actions in Iraq have caused embarrassment and issues of dishonour and the FtTJ therefore did not explain why his family would assist him.
47. The issue of contact with his family was explored during the evidence before the FtTJ. This is plainly set out in the summary of the evidence at paragraph 14. The FtTJ recorded the submissions made on behalf of the respondent at paragraph 27. The FtTJ also recorded the competing submissions made on behalf of the appellant which were summarised at paragraph 21. Against that evidential background the FtTJ undertook his analysis and set out his findings at paragraph 38. He expressly considered the submission made on behalf of the appellant that he had not contacted his family out of a sense of shame but for evidential-based reasons rejected that evidence. It was open for him to find that "the suggestion that he could not bring himself to contact his family out of a sense of shame appeared to run inconsistently with the account he gave in his witness statement that he did not have the means to make contact." Earlier at paragraph 38 the FtTJ analysed the appellant's evidence as to his ability to contact his family. The judge found that "much like the evidence he gave about the influence of those who claim to fear, his evidence shifted about his ability to contact his family." The judge then set out the evidence in this respect.
48. Consequently it was open to the FtTJ to find on the evidence that it demonstrated that the appellant's family members had assisted the appellant- both his mother and her brother (his uncle) by providing the necessary documents and that from that evidence it was a reasonable inference for the judge to draw that in the circumstances they would provide assistance to him as required, including any assistance with documents that he might need to re-establish himself.
49. Those reasons, there is no error of law demonstrated in the grounds as advanced in grounds 1 and 3 and the only issue relates to the assessment of internal relocation (ground 2). On the basis of that assessment, the findings of fact set out at paragraph 30 - 38 shall remain as preserved findings as those findings were ones that were open to the FtTJ to make on the evidence that was before him.
50. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

51. When considering the reasons given for concluding that the decision involved the making of an error of law, I am satisfied that the appeal does not fall within paragraph 7.2(a) or (b) and I am further satisfied that the assessment that will be required on internal relocation does not preclude the Upper Tribunal from remaking the decision and in my judgement the best course and consistent with the overriding objective is for it to be retained in the Upper Tribunal for a hearing.
52. The decision of the FtTJ shall be set aside to be remade by the Upper Tribunal with the preserved findings at paragraphs 30 - 38. It will be for the tribunal to undertake an assessment of internal relocation in the context of the evidence and the preserved findings of fact. If it is anticipated that the appellant will give oral evidence, this must be communicated to the Tribunal and the other party no later than 14 days after the service of this decision.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision of the FtTJ shall be set aside to be remade by the Tribunal on a date to be fixed and in accordance with the directions issued by the Tribunal.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or his family members. 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 : 22/11/ 2022