Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07823/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 July 2019	**On 30 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling of Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes back before the Tribunal further to an 'error of law' decision and directions promulgated on 29 March 2019, and further directions sent on 15 May 2019. The error of law decision and the respective directions are appended hereto and should be read as an integral part of this Decision.

2. Two issues in particular detained the Tribunal and were the subject of the discussion and directions in the documents to which I have just referred.

One of those issues related to the jurisdictional effect of an arrest warrant issued by the authorities of the IKR and in particular whether such a warrant could be executed outside the IKR in the rest of Iraq.

3. The second issue related to the replacement of the CSID by a new form of national identity card – the Iraq National Identity Card ('INID'), with new procedures including the use of iris scanning technology.

4. In the event, although further materials have been filed by the Appellant pursuant to the most recent Directions of 15 May 2019, no further materials have been filed by the Respondent. However Ms Cunha this morning has very helpfully taken instructions on the issue in relation to the arrest warrant.

5. Ms Cunha's instructions are to the effect that the increasing level of co-operation between the authorities of Iraq and the authorities of the IKR are such that it is reasonably likely that an arrest warrant issued by one administration would be executed by the other. This is broadly consistent with the opinion expressed by Dr Rabwah Fatah who had provided an earlier report in these proceedings and has provided an updated report dated 3 July 2019 sent to the Tribunal under cover of letter dated 10 July 2019.

6. Ms Cunha restated that the Secretary of State did not necessarily accept the primary findings of the First-tier Tribunal – but acknowledged that those findings had not been impugned. In this context see in particular paragraph 8 of the 'error of law' decision in which I set out the findings that could be taken variously from the Respondent's 'reasons for refusal' letter and the Decision of the First-tier Tribunal - which included the First-tier Tribunal's finding in respect of the Appellant being the subject of an arrest warrant that had been issued in the IKR.

7. In the circumstances I conclude that the option of internal relocation is neither reasonable nor viable for the Appellant. Upon his return to Baghdad, or if he were to seek to establish himself in Baghdad or elsewhere in Iraq outside the IKR, he is at risk of having the arrest warrant executed - which reasonably likely would result in him being taken to the IKR where the First-tier Tribunal Judge found he would be at risk of persecutory treatment. Given that an internal relocation option is not available the Appellant is entitled to the international surrogate protection of the Refugee Convention and/or Article 3 of the ECHR. For that reason I remake the decision in the appeal by allowing the appeal on protection grounds.

Notice of Decision

8. The appeal is allowed.

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

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

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: **29 July 2019**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT
FEE AWARD

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

Signed: Date: **29 July 2019**

Deputy Upper Tribunal Judge I A Lewis
(*qua* Judge of the First-tier Tribunal)

APPENDIX 1

TEXT OF 'ERROR OF LAW' DECISION & DIRECTIONS PROMULGATED ON 29 MARCH 2019

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Cameron promulgated on 22 August 2018 dismissing the Appellant's appeal against a decision of the Respondent dated 7 January 2018 to refuse protection in the United Kingdom.

2, The Appellant is a citizen of Iraq born on 14 December 1981. He entered the United Kingdom clandestinely on 9 December 2017 and claimed asylum. The Appellant entered with his wife and three minor children, all of whom have been treated as dependents of his claim. (A further child was born in the UK on 6 February 2018.) The application was refused on 7 January 2018 for reasons set out in a 'reasons for refusal' letter ('RFRL') of the same date.

3. The Appellant appealed to the IAC.

4. The appeal was dismissed for the reasons set out in the 'Decision and Reasons' of First-tier Tribunal Judge Cameron.

5. The Appellant applied for permission to appeal, which was granted by First-tier Tribunal Judge Grant-Hutchison on 14 September 2018. So far as is material the grant of permission to appeal is in these terms:

> *"It is arguable that the Judge has misdirected himself in dismissing the appeal by failing to correctly apply the relevant country guidance when it was accepted that the Appellant, for the reasons given, did not have a CSID card, could not obtain a laissez-passer from the Iraqi Embassy and that there was a reasonable risk of persecution on return to the IKR but that it would not be unduly harsh for the Appellant to be returned to Baghdad. The relevant country guidance makes it clear that the Appellant would require to travel to his home governate to obtain a replacement CSID card. The Judge's conclusion that the Appellant could obtain a new CSID card with the assistance of his father could assist but only to the extent of proving that the Appellant is a person named on the relevant page. The Judge's conclusion that the Appellant could be returned without undue hardship to Baghdad was predicated entirely on finding that he would be able to obtain a CSID card within a reasonable period."*

Consideration

6. Pursuant to a helpful preliminary discussion encompassing relevant Country Guidance cases, Mr Kandola accepted that the First-tier Tribunal Judge had not engaged in the depth of enquiry or analysis required pursuant to Country Guidance, and that the basis of his conclusions was not reasoned with manifest adequacy or clarity, such that the Respondent acknowledged that there had been an error of law. Notwithstanding, Mr Kandola submitted that the error of law was not sufficiently material to justify interfering with the decision of the First-tier Tribunal; alternatively, if the decision was to be set aside the decision in the appeal should be remade without further hearing, but the appeal should again be dismissed. Mr Spurling necessarily accepted the concession in respect of error of law, but argued that the outcome should be that the decision should be remade and the appeal allowed.

7. After careful consideration of all of the evidence, and the available country guidance decisions, in my judgement the accepted error of law is material. Essentially, it relates to the adequacy of consideration of determinative issues in the appeal. Even if it might be said that the outcome in the appeal would be no different, it does not follow that the failure to go through an adequate evaluation of the facts and issues is not material. Accordingly the decision of the First-tier Tribunal requires to be set aside and the decision in the appeal remade.

8. To understand the basis of the Respondent's concession, and to provide the context for remaking the decision in the appeal, I set out the following key facts taken variously from the RFRL and the decision of the First-tier Tribunal. In this context it is to be noted that neither party seeks to upset or displace the primary findings of fact made by the First-tier Tribunal. What is in dispute is the implication of those facts, in particular in terms of obtaining identity and travel documents.

(i) The Respondent accepted that the Appellant was Kurdish and from Iraq.

(ii) The Appellant's application for asylum was based on a claim that he had had a brief affair with a widow, K, who was the cousin of a member of the KDP. The affair was discovered, whereupon he fled in fear of K's family.

(iii) The Respondent did not accept the Appellant's claims in respect of this affair, or its consequences. In contrast, the First-tier Tribunal Judge did accept the Appellant's evidence as to the affair: "*Notwithstanding that there were clearly some inconsistencies in the evidence I am satisfied to the lower standard of proof that the appellant's core claim that he had an extramarital affair has been made out to that lower standard*" (paragraph 89). In this context, and generally, it is to be noted that the Judge made references to the consistency of the Appellant's evidence (e.g. paragraphs 84 and 85), and also stated in respect of the Appellant's wife "*I did find her*

evidence and her emotions to be genuine rather than contrived for the hearing" (paragraph 88).

(iv) The Appellant produced CCTV evidence from a security camera showing the outside of his father's house and his own house which was next to each other: see paragraphs 66-70, 74, 86-87, and 90). The Judge accepted that such evidence showed an official arriving at the Appellant's property, and also a police officer arriving on a date that matched the date of a summons produced by the Appellant.

(v) In consequence of the foregoing the judge made the following findings:

> "*… I am satisfied to the lower standard of proof that I can place weight on the police summons and the subsequent arrest warrant. This therefore shows that the appellant is of interest to the authorities as well as [K]'s family. The attendance of the authorities is also an indication that her family have some power in the area.*" (Paragraph 91)
>
> "*… I am satisfied that the appellant has shown to the lower standard of proof that he entered into an extramarital affair which has brought him to the adverse attention of [K]'s family and to the attention of the authorities as they issued a summons for him which he did not comply with and that they have subsequently issued an arrest warrant*" (paragraph 94).
>
> "*Given the cultural position of extramarital affairs and the likely penalties faced both by way of family members and through the authorities, I am therefore satisfied to the lower standard of proof that the appellant would be at risk on return to his home area and given that there is an arrest warrant to the IKR generally*" (paragraph 95)

9. Having made such findings the First-tier Tribunal Judge recognised that the issue became one of internal relocation, bearing in mind also that return would be to Baghdad: "*The appellant and his family would however be returned to Baghdad and the question therefore arises as to whether or not it will be reasonable to expect him to return there*" (paragraph 96).

10. Further to this, the Judge acknowledged that the Appellant's ability to obtain a 'civil status' ID document ('CSID') was "*fundamental to the question of whether or not the appellant could be returned and is also a substantial issue in relation to whether it would be reasonable to expect the appellant to relocate to in this case Baghdad away from the IKR*" (paragraph 103).

11. The Judge appears to accept that although the Appellant had held a CSID this had subsequently been taken (or retained) by an 'agent' in Turkey and could no longer be accessed by the Appellant: e.g. see paragraphs 82, 83, and 104. The Judge then made the following comments and observations in respect of evidence in relation to obtaining a CSID:

> "*105. The question is whether or not the appellant and his family would be able to obtain these documents on return. The appellant has indicated during his evidence that he has not and could not obtain such documents. He states that he went to the Iraqi Embassy in London and was told that they could not obtain such documents without having his birth certificate, Iraqi national ID, and Iraqi national passport.*
>
> *106. I have been provided with a statement from [SAF] dated 19 July 2018. I am aware that she attended the hearing but due to other commitments had to leave prior to the case being called. She indicated that on the instructions of the appellant's solicitors she attended the Iraqi embassy with the appellant on Wednesday, 18 July. She states that the appellant was told that he was not eligible to apply for Iraqi documents because he did not have his birth certificate, Iraqi national ID and Iraqi National passport.*
>
> *107. The appellant has also indicated during his oral evidence that he has not had contact with his family since he left Iraq and in particular that his father would not support him as he feels he has brought shame on the family. That particular attitude is consistent with the societal attitude to extramarital affairs and the shame that it does bring on the family as a whole.*"

12. However, the Judge noted that the Appellant's father had assisted him, in particular by allowing his friend access to the CCTV footage from home security cameras that was obtained to support the appeal (paragraph 108). The Judge did not find that it was credible that the Appellant's father "*would now not assist the appellant in obtaining the necessary documents from the local authorities*" (paragraph 109). Further the Judge noted that the Appellant's friend 'O' - "*who apparently has some connections with the local police*" - had assisted the Appellant in obtaining supporting documents for the appeal, before concluding "*there are therefore people the appellant could turn to to assist him in obtaining the relevant CSID documents*" (paragraph 110). The Judge reached the following conclusion:

> "*I take into account the fact that the appellant was not able to obtain a CSID from the Iraqi embassy in this country however given my findings that I do not accept that his father would not assist the appellant and his family if he was returned to Iraq I am not satisfied that he would not be able to obtain a CSID within a reasonable time of his return to Baghdad with the help of his father and in fact O.*" (paragraph 117)

See similarly:

> "*I am not however satisfied even to the lower standard of proof that the appellant would not be able to obtain a CSID within a reasonable period of return to Baghdad.*" (paragraph 122)

13. The Judge took this finding forward into his evaluation of the circumstances if returned to Baghdad, and whilst acknowledging that there might be some difficulties in the family establishing itself there, they would be able to access services having obtained the "*necessary*" CSID (paragraph 118); the Judge found that the risk from the family of the woman with whom the Appellant had had an affair did not extend to Baghdad (paragraph 120), and observed "*there is nothing in the evidence which would indicate that the authorities in the IKR are themselves able to take action against the appellant in Baghdad*" (paragraph 121).

14. As may be seen from the grant of permission to appeal (quoted above) the contentious issue that has arisen in the challenge to the Upper Tribunal relates to the Appellant's ability to obtain a replacement CSID card (including whether this would necessitate going in person to his home governorate - where he is at risk of persecution). There is a further associated issue as to whether the Appellant would be able to obtain documentation to travel to Iraq at all; if he cannot, the cannot presently access the proposed location of internal relocation – cf. the definition of a refugee under Article 1A(2) of the Refugee Convention, which in part specifies "*… unable… to avail himself of the protection…*".

15. In this latter regard the Appellant's Grounds of Appeal submit that the Judge's approach is illogical and/or inconsistent. The premise of the Judge's substantive conclusion that it would not be unduly harsh for the Appellant to relocate to Baghdad was that he would be able to obtain a CSID within a reasonable period after his arrival in Baghdad from the UK: necessarily this reasoning was based on obtaining the CSID *after* return. However, elsewhere the Judge appeared to accept that without satisfactory documentation, such as a CSID - bearing in mind that the Appellant did not have any other identification documents such as his birth certificate or his passport - he would not be able to obtain a laissez-passer to permit him to travel to Baghdad from the UK (see paragraphs 98 and 116). In this context the Judge also appeared to accept that the Appellant had been unable to obtain travel documentation from the embassy in the UK (paragraphs 105, 106 and 117).

16. I accept that the Judge does not appear to have reconciled these matters, and it is unclear on what basis the Judge concluded that the Appellant would be able to obtain the necessary documentation to be able to travel to the proposed place of internal relocation from the UK. Nor is the Judge's process of reasoning adequately clear in its navigation of the country

guidance materials as to the method by which the Appellant might obtain a CSID in reasonable time after return.

17. The Judge's exploration of the difficulties the Appellant and his family might face in Baghdad includes the following observation derived from paragraph 203 of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**:

> "*It is however quite clear from paragraph 203 that despite difficulties that may be experienced in respect of such matters, such as access to healthcare, education and jobs, relocation to Baghdad is safe and not unreasonable or unduly harsh, one reason being that a person can only be returned to Baghdad if such a person has a current or expired Iraqi passport or a laissez-passer. If such a person has been issued with the latter, it can be presumed that he has been able to obtain CSID.*" (paragraph 116)

18. It is unclear what role this passage has had in the overall reasoning of the Judge. As noted, contextually it appears within the discussion of the circumstances likely to be encountered in the event of relocation to Baghdad. In isolation, the meaning of the passage is to the effect that if an individual is able to return to Baghdad because they can obtain a laissez-passer then that is in itself evidence that they are likely to have already obtained a CSID - and therefore are able to access various services to alleviate the harshness of the conditions that might otherwise be faced. But, this passage is immediately followed by the Judge's acknowledgement, at paragraph 117, that the Appellant was not able to obtain a CSID from the Iraq embassy.

19. I pause to note that it is also identified in the Grounds of Appeal that there appears to be a tension between the guidance in **AA Iraq** – to the effect that obtaining a laissez-passer is likely premised on having obtained and produced a CSID – and the guidance in **AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC)** wherein it is suggested that a laissez-passer may be issued without any other form of ID being available.

20. The country guidance cases of **AA** and **AAH** explore in very considerable detail the documentation processes: e.g. see in particular **AAH** at paragraph 100 *et seq.* (which incorporates quotations from paragraph 123 *et seq.* of **AA**). As noted above it was common ground before me that the Judge's analysis had not been as detailed or as thorough as required in this regard. However, it was a matter of dispute between the parties as to whether this amounted to a material error, and if it did whether the evidence pointed to a favourable conclusion in the appeal.

21. I have expressed my conclusion on materiality above. Accordingly, the issue becomes one of remaking the decision in the appeal. Both parties were content that this did not require a new hearing before the First-tier

Tribunal with all issues at large, but could proceed before the Upper Tribunal on the solid foundation of the First-tier Tribunal Judge's findings of primary fact (as rehearsed above).

Remaking the decision

22. Further to the above I turn to a consideration of two matters, albeit with the common and/or overlapping theme of documentation: obtaining a CSID (whether as part of the process of obtaining documentation to permit travel from the UK, or after arrival in Iraq); obtaining documentation to permit travel to Baghdad from the UK.

Obtaining a CSID

23. I remind myself of the observation at paragraph 100 of **AAH**: "*a critical part of a decision-maker's enquiry will be what documents the individual in question has, or might reasonably be expected to get. The first question to be asked is whether the proposed returnee is in possession of a CSID; if he is not, the second question is whether it is reasonably likely he will not be able to obtain one*".

24. I have also had regard to the ensuing passages in **AAH**, which find their summary in the guidance given at paragraph 135, which is to be read as a supplement to Section C of the Court of Appeal's guidance in **AA**. In sum (retaining the paragraph numbering from the original sources):

> As per **AA**:
>
> "*C. The CSID*
>
> *9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.*
>
> *10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to*

persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear."

Supplemented from **AAH**:

"*1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*

(i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;

(ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

(iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a

> *significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all."*

25. Further to the findings of the First-tier Tribunal, and generally, I note the following:

(i) The Appellant is not in possession of a CSID; his previously held CSID is not available to him having 'disappeared' with the agent.

(ii) Nor does the Appellant have any other identification documents from Iraq.

(iii) Because he does not have a passport his ability to obtain a CSID may depend on whether he can identify the page and volume number of the book holding his information. In practical terms this may be done by utilising his father's CSID. Because the system is patrilineal, the Appellant's father is likely to be the most suitable person to assist in this regard.

(iv) Notwithstanding the Appellant's comments in respect of his father's cooperation, the Judge found that he did not accept that the Appellant's father would not be willing to help.

(v) In this latter context it is also to be noted that the Appellant's ability to persuade the officials that he is the person named on the relevant page is likely to depend on whether he has family members or other individuals who are prepared to vouch for him.

(vi) The Appellant's home governorate – from where he would ordinarily be expected to obtain a new CSID - is outside Baghdad in the IKR; he cannot be expected to go there because he is at risk of injurious action (including at the hands of the authorities who have issued a warrant for his arrest). As such he cannot apply for a new CSID in person.

26. Necessarily this raises the question of whether or not an application has to be made in person; and, if in the event that it may be made by proxy, the efficacy of such a process.

27. The possibility of applying other than in person was subject of consideration in **MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)**, brought to my attention by Mr Kandola. As may be seen from the discussion in **AA** when it was before the Upper Tribunal (see at paragraphs 46-49) notwithstanding that an appeal against the decision in **MK** was allowed by the Court of Appeal in **HF (Iraq) and others v SSHD**

[2013] EWCA Civ 1276, the Court of Appeal rejected the arguments directed against the country guidance element of the decision. The country guidance in **MK** included the following, at paragraph 88(1)(b):

> "*Although the general position is that a person who wishes to replace a lost CSID is required to return to their home area in order to do so, there are procedures as described in this determination available which make it possible (i) for Iraqis abroad to secure the issue of a new CSID to them through the offices of the local Iraqi Embassy; (ii) for Iraqis returned to Iraq without a CSID to obtain one without necessarily having to travel to their home area. Such procedures permit family members to obtain such documentation from their home areas on an applicant's behalf or allow for a person to be given a power of attorney to obtain the same. Those who are unable immediately to establish their identity can ordinarily obtain such documentation by being presented before a judge from the Civil Status Court, so as to facilitate return to their place of origin.*"

28. The possibility of applying for a CSID through a proxy was also the subject of consideration in **AA**, particularly in the context of obtaining a CSID whilst in the UK: e.g. see paragraphs 173-176 recounting the evidence of an expert witness before the Tribunal, Dr Rabwah Fatah (who also gave evidence before the Tribunal in **MK** and **AAH**), and in **AAH** – for example at paragraph 29, again per Dr Fatah:

> "*As to whether one would need to attend the office of the civil registrar in person, Dr Fatah reiterated the evidence he gave in AA (Iraq). One could delegate the task to a relative or trusted friend, assuming of course that he was in possession of the relevant documents and/or information. Alternatively, Dr Fatah agreed that it was theoretically possible that one could engage a lawyer and grant him or her power of attorney. He had however never known of anyone who had actually done that, but like everything else in Iraq, it depended on whether you had contacts whom you could trust. Dr Fatah was asked about the possibility of attending alternative offices, such as the Central Archive in Baghdad, discussed at paragraphs 180 to 187 of AA (Iraq). He maintained the evidence that he gave in that case: he has never heard of anyone obtaining a CSID from the Central Archive. In his main report Dr Fatah cites the research of NGO 'Ceasefire Centre for Civilian Rights' to the effect that IDPs attempting to recover lost documents are being met with indifference, corruption, incompetence and even sarcasm by the authorities.*"

29. I have set out above the 'country guidance' passages of **AAH** which are to be found at paragraph 135 of the Decision. The country guidance set out at paragraph 135 represents an almost complete reproduction of paragraph 106, save that paragraph 106 also contains the following preliminary sentence: "*The evaluation of whether there is a reasonable*

likelihood that an applicant will not be able to obtain a new CSID, either directly or by way of a proxy, must be assessed against that background." Thus, whilst the country guidance itself is not overt in making any reference to obtaining a CSID by proxy, the context in which the country guidance is given expressly recognises such a possibility. As such the reference in Dr Fatah's evidence before **AA** (quoted at paragraph 179 of **AA**, and cited at paragraph 102 of **AAH**) "*that the starting position is that in order to obtain a new or replacement CSID a person usually had to return to the governorate where his or her birth was registered and where the primary family registration book is held i.e. in the local population registration/civil status office*", was not considered to require presence in person as a *sine qua non*.

30. In this context it is pertinent to restate part of the country guidance from **AA**, which on one reading might suggest that if an application is not made in person it has little prospect of success – "*is likely to be severely hampered*":

> "*P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.*"

31. At first blush there would appear to be a tension between this passage and the notion of it being possible to apply for a CSID by proxy. However, in my judgement this tension is resolved by a closer consideration of the circumstances described as preventing access to the 'home' governorate. The guidance quoted is derived from paragraph 186 of **AA**; the reference to alternative CSA offices picks up from paragraph 183, which in context suggests that the 'home' offices are inaccessible because they are in territory held by ISIL. As such, the difficulty for an applicant is not merely in reaching the location of the office, but that the office itself would likely not be under the control of the national authorities. Accordingly, in context, it seems to me that this particular passage in the country guidance is not to be read as precluding the possibility of a proxy application being made to a 'home' office which the applicant is not able to reach in person, providing that the office is at the very least still functioning.

32. It follows that the evidence indicates that there is a mechanism in place by which the Appellant can apply for a CSID by proxy. Further, absent the Appellant's assertion that his father would not assist – a matter cogently

rejected by the First-tier Tribunal – the Appellant has not identified any reason why he could not avail himself of such a mechanism.

33. Accordingly, in my judgement – subject to two caveats – on a careful consideration of the evidence, findings of the First-tier Tribunal, and case law, the Appellant has not shown that it is reasonably likely he could not obtain in reasonable time a new CSID with the assistance of his father without having to attend in person at the civil office of his home governorate. In consequence it would not be unduly harsh to expect him to internally relocate to Baghdad.

34. The first caveats is this. It was accepted that the Appellant was the subject of an arrest warrant and was "*of interest to the authorities*" in the IKR. It is unclear whether such a circumstance would prevent the issuing of a CSID, or otherwise interfere with the process to an extent that it becomes impractical. It is to be noted that the CSID is issued by a civil office, and it perhaps cannot be presumed that it would routinely be informed of all, or any, arrest warrants or that its functions intersected with policing. Be that as it may, as matters stand I do not have the benefit of any evidence on point.

35. The arrest warrant is also potentially relevant in the context of relocation. The First-tier Tribunal Judge observed "*…there is nothing in the evidence which would indicate that the authorities in the IKR are themselves able to take action against the appellant in Baghdad*" (paragraph 121). The parties before me were not able to direct my attention to any evidence on point as to the 'reach' or jurisdiction of an IKR arrest warrant in other parts of Iraqi (including Baghdad), or the extent of any cooperation such that the authorities in Baghdad might execute such a warrant and hand the subject to the IKR authorities. Necessarily if there is a risk that the warrant could be executed in Baghdad then relocation to Baghdad would not achieve the aim of evading the Appellant's would be persecutors.

36. Accordingly, further to the analysis set out above it would seem that the warrant now assumes potentially determinative significance in the appeal: it is not merely relevant to risk in the IKR, but might have an impact on the ability to obtain a CSID, and/or in any event the adequacy of Baghdad as a location of internal flight. Whether or not that is the case is really a matter for evidence. In such circumstances I do not consider that I should remake the decision in the appeal without affording the parties a further opportunity of addressing this issue which has now assumed critical significance. I have therefore decided to issue Directions inviting further written submissions and evidence: see below.

37. The second caveat is in respect of the issuing of a further CPIN by the Respondent: 'Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns (Version 9.0, February 2019)'. Necessarily this document was not before the First-tier Tribunal and was not before me at the date of the hearing – and so I have heard no submissions on it.

38. In so far as the latest CPIN relates to the issues herein, on a brief preliminary reading I could not readily identify any significant changes compared with the CIG of 19 August 2016 which was before the Tribunal (Appellant's bundle pages 628-693). However, in circumstances where I consider it appropriate to seek further submissions and evidence from the parties in relation to the arrest warrant, it also seems to me to be appropriate that the parties be afforded the opportunity of making representations in respect of the latest CPIN – whether that be by way of emphasising anything new or different, or anything that particularly reinforces the preliminary analysis set out above.

Feasibility of Return

39. The current country guidance in respect of feasibility of return remains that appended to the Court of Appeal decision in **AA (Iraq) v SSHD [2017] EWCA Civ 944** (which is also annexed to the Upper Tribunal's decision in **AAH**). Section B is in these terms:

> "*B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)*
>
> *5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.*
>
> *6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
>
> *7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
>
> *8. Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

40. The Appellant's case in this regard was not merely premised upon theoretical arguments in respect of the obtainability of documents, but was supported by his failed attempt to obtain assistance from the Iraq Embassy in London. I accept that it is unclear how the Judge reconciled the Appellant's evidence in this regard – which he appeared to accept – with the conclusion that the Appellant would be able to obtain the necessary documentation to travel.

41. Necessarily this issue is closely associated with the issue in respect of the Appellant's father's ability to obtain either a CSID, or possibly some other form of identification document such as an Iraqi Nationality Certificate ('INC'), which might assist the Appellant in securing a laissez-passer.

42. In my judgement reconsideration of this issue must be premised on a recognition that the Judge did not accept the Appellant's claim that his father would not offer him assistance. The Appellant attended the embassy without the benefit of any documents that his father might have been able to provide him. For the Appellant to succeed on this aspect of the case he cannot rely upon the notion that his father is unwilling to assist him, but will need to establish that his father is unable to assist him in obtaining adequate proof of identity to secure a laissez-passer. The existence of an arrest warrant may, again, be relevant in this context. The parties are invited to make further submissions in this regard: see Directions below. Absent this, and subject to anything that might be said further to the most recent CPIN, it is not apparent that the Appellant should have any significant difficulties in obtaining a laissez-passer in accordance with the mechanisms discussed in **AA** and **AAH**.

Directions

43. Further to the above I issue the following Directions for the future conduct of the appeal. The intention in the first instance is that the parties should have the opportunity of making written submissions and filing any further evidence; the Tribunal will then consider whether it is possible to dispose of the appeal without the need for a further hearing. As such the written submissions should be prepared on the basis that it is possible that there will not be an opportunity to amplify them orally. I have specified working days in the timetable below to make allowance for the forthcoming Easter holidays. I note that there is no reason why the Appellant should await the receipt of the submissions and evidence from the Respondent prior to commencing preparation of his own submissions and evidence, and accordingly permit only a further 10 working days after the period for the respondent to file and serve. The Appellant should file and serve any evidence within the specified timetable irrespective of receipt of any evidence from the Respondent. I am also inviting the parties to correct any factual errors in the analysis set out above: this is not an invitation to revisit any arguments other than those that arise in the context of the Directions.

44. **It is directed**:

(i) The Secretary of State is to file with the Tribunal and serve on the Appellant within 15 working days of the date shown as the promulgation date on this document:

(a) Any further evidence upon which he wishes to rely that is relevant to a consideration of the impact of an arrest warrant issued by the authorities of the IKR on the ability to obtain a CSID, and/or the ability to obtain any other form of identification in the context of obtaining a laissez-passer, and/or generally in respect of obtaining a laissez-passer.

(b) Any further evidence upon which he wishes to rely that is relevant to a consideration of whether the jurisdiction of such a warrant extends beyond the territory of the IKR, or whether the warrant is otherwise executable in Baghdad (either by the authorities of the IKR or through some formal or informal arrangement with the Iraq authorities).

(c) Written submissions in respect of the issues referred to at (a) and (b) above – irrespective of whether any further evidence is filed.

(d) Written submissions in respect of the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns (Version 9.0, February 2019), further to the discussion at paragraph 38 above, in so far as it relates to obtaining a CSID and or the feasibility of return (in particular obtaining a laissez-passer).

(e) A written note (which may be incorporated into any written submissions), identifying any claimed factual errors in the body of the Decision above.

(f) In the event that the Respondent does not wish to respond to any or all of the above Directions this should be communicated both to the Tribunal and the Appellant at the earliest opportunity, and in any event within the timeframe indicated above.

(ii) The Appellant is to file with the Tribunal and serve on the Respondent within 25 working days of the date shown as the promulgation date on this document:

(a) Any further evidence upon which he wishes to rely that is relevant to a consideration of the impact of an arrest warrant issued by the authorities of the IKR on the ability to obtain a CSID, and/or the ability to obtain any other form of identification in the context of obtaining a laissez-passer, and/or generally in respect of obtaining a laissez-passer.

(b) Any further evidence upon which he wishes to rely that is relevant to a consideration of whether the jurisdiction of such a warrant extends beyond the territory of the IKR, or whether the warrant is otherwise executable in Baghdad (either by the authorities of the IKR or through some formal or informal arrangement with the Iraq authorities).

(c) Written submissions in respect of the issues referred to at (a) and (b) above – irrespective of whether any further evidence is filed.

(d) Written submissions in respect of the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns (Version 9.0, February 2019), further to the discussion at paragraph 38 above, in so far as it relates to obtaining a CSID and or the feasibility of return (in particular obtaining a laissez-passer).

(e) A written note (which may be incorporated into any written submissions), identifying any claimed factual errors in the body of the Decision above.

(f) In the event that the Appellant does not wish to respond to any or all of the above Directions this should be communicated both to the Tribunal and the Respondent at the earliest opportunity, and in any event within the timeframe indicated above.

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APPENDIX 2

TEXT OF FURTHER DIRECTIONS SENT ON 15 MAY 2019

1. An 'error of law' decision, with accompanying Directions for future conduct of the appeal, was promulgated on 29 March 2019. It was indicated therein that upon receipt of the response to the Directions the Tribunal would consider whether it was possible to dispose of the appeal without the need for a further hearing (see paragraph 43).

2. Although the Respondent sent an email to the Tribunal on 1 April 2019 acknowledging receipt of the 'error of law' decision and Directions, (and requesting a corrected version because the 'header' on a number of pages gave the wrong appeal reference), there has been no response from the Respondent to the Directions. This is notwithstanding that the Directions included that the Respondent should communicate to the Tribunal and the Appellant if he did not wish to respond to any or all of the Directions.

3. The Appellant, through his representatives, has responded to the Directions by filing a Country Expert Report prepared by Dr Rabwah Fatah dated 26 April 2019. The report has been sent to the Tribunal under cover of letter dated 30 April 2019 which in material part states:

> "*We would respectfully point out that Dr Fatah's opinion is that the arrest warrants issued by the IKR are valid throughout Iraq. It follows that there is a substantial risk that the appellant will not be able to avoid risk of persecution in the IKR by relocating to any other area of Iraq, as he is at risk from the state authorities.*"

   The Appellant has not provided anything further by way of evidence or written submissions.

4. The paragraph in the covering letter purports to answer one of the two key issues identified in the 'error of law' decision and Directions as requiring to be addressed in the context of remaking the decision in the appeal. (I return to this below.)

5. In respect of the other question, Dr Fatah has expressed an opinion that does not benefit the Appellant's case. Dr Fatah states that "*the criminal procedure in Iraq does not affect issues of documentation*", and further states that the issue of obtaining documentation and the issue of an arrest warrant "*are not related*" (see paragraph 154 and 155 of Dr Fatah's report). As such, I understand Dr Fatah's opinion to be that the existence of an arrest warrant issued by the IKR should not impede the documentation process.

6. I note that Dr Fatah's report raises an additional circumstance – not previously considered in the context of the instant appeal – in relation to national identity documents. Dr Fatah refers to the phasing out of the civil status ID ('CSID') to be replaced by the Iraqi National ID ('INID'); it is intended that the process be completed by the end of 2019; current CSIDs will continue to be valid until the end of the year; persons seeking to renew or amend their CSID (for example to reflect the change of status upon marriage) will be prompted to apply for an INID. A CSID can no longer be obtained or renewed.

7. It is said that the INID cannot be applied for by proxy because the process involves an iris scan and the taking of thumb and finger prints. Necessarily this requires the presence of the applicant, albeit that arrangements can be made for the document once issued to be collected by proxy. Dr Fatah also reports that there is no arrangement in place in foreign missions to facilitate iris scanning or fingerprinting as part of the application process; the Consulate in London has responded to an enquiry in this context by stating "*in the current time obtaining the national ID takes place only inside the country*" (report at paragraph 82).

8. As regards the process in Iraq, unlike the CSID it is said that the process for the INID is centralised, the offices in the various governorates being connected to Baghdad; the applications are ultimately overseen by officials in Baghdad (report at paragraph 72). Dr Fatah sets out the procedure for obtaining an INID, which includes the applicant going to the "*local Office of Civil Status*"; however, it is unclear whether this simply means the office local to where the applicant happens to be, or the office of his originating governorate.

9. The INID gives rise to new matters not previously raised or considered, which appear to me to require some further clarification. Given also that I am not presently satisfied that the issue of the jurisdiction, or 'scope', of the IKR arrest warrant is settled determinatively in the Appellant's favour (see below), I have concluded that there should be a further hearing in the appeal pursuant to the Directions set out below.

10. In respect of the arrest warrant the report of Dr Fatah states this at paragraphs 151 and 152:

> "*The Iraqi legal system contains both civil and Sharia law. The 2005 New Iraqi Constitution secured the federalisation of the IKR with an autonomous government. However, both the Kurdistan Regional Government and Government of Iraqi cooperate with one another regarding both criminal and insurgent matters.*
>
> *Therefore, an arrest warrant against a person, in either the IKR or Iraq-proper, would be valid throughout Iraq. This is because both governments cooperate on criminal matters.*"

11. I am unclear to what extent Dr Fatah's opinion is based on a matter of pure inference, and to what extent it is based on actual knowledge. I am mindful that the fact of cooperation of two autonomous governing bodies is not in itself inevitably reliable evidence of the enforceability of an instrument issued by the agents of one such body in the territory of the other.

12. Reconvening the hearing will afford the Appellant an opportunity of clarifying this matter further, and will also allow the Respondent to indicate his position in this regard. Of course, if the Respondent essentially accepts the opinion of Dr Fatah as to the potential for the arrest warrant to be executed against the Appellant in Baghdad, then the Respondent may wish to indicate that the appeal is conceded.

13. For the avoidance of any doubt, I note that the Appellant has not made any submissions further to paragraph 42 of the 'error of law' decision, and there is not obviously anything apparent in the paragraphs of Dr Fatah's report in relation to a laissez-passer that would suggest return to Iraq is not feasible. As such the outstanding issues in the appeal relate to the circumstances upon return, rather than the mechanism and practicalities of return itself.

14. Accordingly the appeal is to be relisted to consider further the issues identified above. It is open to the parties to file and serve any further evidence upon which they wish to rely, but this should be done at least 14 days prior to the next hearing. It is a matter for the Appellant and his advisers as to whether or not they wish to call Dr Fatah, or any other expert, to give live evidence. Is not anticipated that it will be necessary to hear evidence directly from the Appellant.

Directions

(i) The appeal is to be relisted for further hearing, reserved to me, on the first available date after 12 June 2019.

(ii) The parties are to file with the Tribunal and serve on the other party at least 14 calendar days prior to the next hearing any further evidence or written submissions upon which they wish to rely.

(iii) In the event that the Respondent accepts the opinion of Dr Fatah expressed at paragraphs 151 and 152 of his report of 26 April 2019 to the effect that the arrest warrant issued by the authorities of the IKR against the Appellant is executable in Baghdad, and that the Appellant is thereby entitled to international surrogate protection, this should be communicated to the Tribunal as soon as possible with a view to vacating the next hearing date on the basis that the appeal is to be allowed accordingly.

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