



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01478/2018

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 3rd March 2020

Decision & Reasons Promulgated
On 24 March 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HFJ
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Jafferji, Counsel instructed by R & A Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1986. He appeals against the Secretary of State's decision to deport him on protection and human rights grounds.

Case History and Introduction

2. The material history of this matter is as follows:

November 2007	The Appellant claims asylum on arrival
January 2008	His asylum claim was refused
March 2008	The First-tier Tribunal dismiss his asylum appeal
2009	Further representations are made, and rejected
August 2014	The Appellant was granted 3 years' Discretionary Leave on Article 8 grounds
3 rd December 2015	The Appellant sentenced to 12 months' imprisonment for evasion of customs duty on smuggled cigarettes
10 th August 2016	The Respondent signs a deportation order The Appellant appeals to the First-tier Tribunal resisting deportation on protection and human rights grounds
11 th July 2018	First-tier Tribunal Judge Pickup dismisses the appeal on all grounds First-tier Tribunal Judge O'Garro grants permission to Appeal to Upper Tribunal
31 st July 2018	Mr Justice Lane sets the decision of Judge Pickup, insofar as it related to the matter of protection, aside to be remade. The error identified was a failure to follow country guidance. Judge Lane upholds Judge Pickup's reasoning on Article 8, rejecting the contention in the grounds that he erred by 'double counting' when he weighed the Appellant's criminality against the best interests of his children in the assessment of whether it would be "unduly harsh" on those children were he to be deported. Judge Lane finds that Judge Pickup did not err in following the guidance of the Court of Appeal (in for instance <u>MM (Uganda)</u> [2016] EWCA Civ 450).
24 th October 2018	Supreme Court hands down judgement in <u>KO (Nigeria) v Secretary of State for the Home Department</u>
1 st November 2018	Principle Resident Judge O'Connor makes order transferring the case from the President's list
29 th January 2019	Matter listed before me at Manchester CJC to remake the decision in the appeal. The parties agreed that pursuant to the decision in <u>KO (Nigeria)</u> a further error has been identified in the decision of Judge Pickup. The Appellant's grounds to the Upper Tribunal had specifically challenged

the First-tier Tribunal's approach to the question of 'undue harshness'. At the date of the hearing before Judge Lane, Court of Appeal authority was firmly with Judge Pickup and no arguable error therefore arose. By the date of the hearing before me, the legal landscape had markedly altered in that the Supreme Court held that the question of 'undue harshness' was one that was to be determined with reference to the child alone: it was not lawful to determine what might constitute 'harshness' with reference to the offending parent's criminality. On that basis Mr Jafferji made an unopposed application to amend the grounds of appeal which I granted.

By my oral judgment and written decision of the 29th January 2019 I found as follows:

"Although the First-tier Tribunal conducted a careful 'balance sheet' analysis of all of the relevant factors it was quite clear that it did take the approach then endorsed by the Court of Appeal, and subsequently ruled unlawful by the Supreme Court. At paragraph 85 the Tribunal directs itself to MM (Uganda) in which the court directed that the 'unduly harsh' balancing exercise "must involve an assessment of the wider public interest in the appellant's removal, including his immigration and criminal history". The Tribunal concludes: "it follows that the consideration is not merely on the effect on the child or partner alone". I am satisfied that this was an error in approach. I therefore set the decision of the First-tier Tribunal, insofar as it relates to Article 8, aside".

On the 29th January 2019 the Respondent, that day represented by Senior Presenting Officer Mr Diwnycz, was not in a position to proceed to a full remaking. He had come to the hearing only prepared to argue the protection point and had no instructions on the position taken by the criminal casework directorate to such cases post-KO. He asked that the matter be adjourned to enable him to take such instructions and if necessary, to conduct a review of the case in accordance with the KO principles.

Given that the Article 8 issue had only arisen at hearing, and given the indication that the Respondent may wish to review his decision, I agreed to adjourn the re-making.

18th July 2019

The hearing resumed before me. The Home Office had not, as Mr Diwnycz had hoped, conducted a review of the case. I proceeded to hear oral evidence from the Appellant and his British partner, CN. This evidence was wholly concerned with the Appellant's Article 8 family life in the

United Kingdom. At the conclusion of the evidence it was agreed that before the Tribunal proceed to determine the protection limb of the Appellant's case, the Tribunal should await the new country guidance on Iraq, then believed to be shortly forthcoming.

20th December 2019 The decision in SMO and Others (Article 15(c) identity documents) Iraq CG [2019] UKUT 400 was published

3rd March 2020 The appeal is relisted before me to hear submissions on Article 8 and the protection claim, made in light of the new country guidance.

3. It will be apparent from that chronology that there has been a series of unfortunate delays in the resolution of this matter, caused in part by the Home Office, and in part by the Tribunal. For those delays the parties, and in particular the Appellant and his family, have my apologies.
4. The Appellant is not a British citizen and at present he has no leave to remain. He is therefore liable to deportation pursuant to s3(5) of the Immigration Act 1971. On the 3rd November 2015 at Manchester Crown Court the Appellant was convicted of two counts of fraudulently evading duty and on the 3rd December 2015 he was sentenced to 12 months in prison. The effect of this sentence is that in accordance with s32 of the United Kingdom Borders Act 2007 the Secretary of State must make an 'automatic' order for the Appellant's deportation. Notwithstanding that his deportation is in the public interest the Appellant can avoid actually being removed if he can demonstrate that one or more of the 'exceptions' set out in s33 of the Borders Act 2007 apply to him.
5. In this regard the Appellant makes two submissions. He submits that he cannot be removed to Iraq because he will be in danger there; he further submits that to remove him would be a disproportionate interference with his right to Article 8 family life. The statutory provision relating to the latter 'exception' is unambiguous: it is found at s33(2)(a) of the Borders Act 2007, to be read with Part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended). As to the 'protection' limb of the claim it is less clear. Section 33(2) reads:
 - (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
 - (a) a person's Convention rights, or
 - (b) the United Kingdom's obligations under the Refugee Convention.
6. Although he asserts that he would face a real risk of serious harm should he be returned to Iraq the Appellant does not in fact assert that he is entitled to refugee status. His claim under the Refugee Convention was rejected long ago, his asylum appeal having been dismissed by Immigration Judge Battersby on the 17th March 2008. Before me Mr Jafferji's submissions were solely concerned

with subsidiary protection status under Article 15 of the Qualification Directive, not a matter that *prima facie* engages s33(2)(b). I therefore proceed on the basis that the ‘protection’ limb of the Appellant’s case is, in the context of s33, more properly understood as a second element of his ‘human rights’ claim, it being concerned with Article 3 ECHR as well as Article 15 of the Qualification Directive. That said, if the Appellant succeeds in demonstrating that his appeal should be allowed on Article 15 grounds the effect of this, for the purpose of the appeal under s82 Nationality, Immigration and Asylum Act 2002, will be that the appeal is allowed on protection grounds. I deal with each element of the case in turn.

Protection: Article 15 QD/ Article 3 ECHR

7. The Appellant is a citizen of Iraq. The Respondent tells me that he arrived in the United Kingdom on the 2nd November 2007 and claimed asylum the same day. The Appellant has consistently stated that he was born in Douz, in the Kirkuk governate, and that when he left Iraq this is where his family were residing: see 1.10, 3.1, 3.2 screening interview, Q2-5 asylum interview. In his decision of the 11th May 2018 Judge Pickup found [at his paragraph 59] that the Appellant still has some contact with his family in Kirkuk. That finding was expressly upheld by Lane J.
8. It is not in issue that the Appellant entered the United Kingdom illegally. The Respondent has never challenged his claim to have done so with the assistance of people smugglers. It is accepted that he did not have an Iraqi passport with him when he arrived. As to what other documents he might have had in his possession the Appellant told the officer at his ‘screening interview’ that he had a National Identity card but that he had left this in Iraq. It was issued to him at birth: see 7.36 and 7.37. At the outset of his substantive asylum interview the Appellant handed in to the officer documents described as follows [at Q1, B6]:
 - “ID card
 - Photographs
 - Military ID card (badge)
 - Conscription letter for 3 months”
9. These documents were subsequently examined by Immigration Judge Battersby at the Appellant’s asylum appeal. At paragraph 12.2 of the decision Judge Battersby describes the “identification card”. He states that it was issued on the 1st December 2015, it expired on the 1st December 2006 and that an enrolment date of the 11th January 2005 is entered. Given these dates, and the consequent findings of Judge Battersby, I am satisfied that the ‘identification card’ in question was the Appellant’s military ID as opposed to a CSID or an Iraqi National Identity card. I say so because these documents would, as the Appellant indicates in his screening interview, tend to be issued at birth or at least in childhood. The document being examined by Judge Battersby was not issued until 2005 and referred to an ‘enrolment date’: both of these are

consistent with it being document issued to the Appellant by the Iraqi national Army.

10. In the Appellant's more recent foray into the First-tier Tribunal, before Judge Pickup in May 2018, he was informed that the Respondent had obtained for him from the Iraqi Embassy in London a Laissez-passer issued in his name. The Appellant for his part avers that he has made "a couple" of attempts to obtain other documents from the consulate in Manchester. He requested an Iraqi passport or "any sort of ID document" because he needed the same in order to register his marriage in the United Kingdom. Consulate staff advised that they were unable to help him. Further enquiries were made by the Appellant's solicitors who were advised, in a letter dated the 30th April 2018, that the Consulate were at the time unable to issue passports, and that in order to be issued with one the Appellant would in any event need to present his "National ID and Nationality Certificate" – I take the latter to be a reference to a CSID.
11. In assessing all of this evidence I have borne in mind that the Appellant has been convicted of a dishonesty offence, and that both Judge Battersby and Judge Pickup found reason to doubt elements of his evidence. Applying the lower standard of proof, and having had regard to all material evidence, I am satisfied of the following:
 - i) The Appellant is from Kirkuk;
 - ii) The Appellant must, at one time, have had both CSID and INC: see sections 5.4 and 5.6 of the Respondent's Country Policy and Information Note *Iraq: Internal relocation, civil documentation and returns* (Version 9.0 February 2019);
 - iii) He had neither of these documents on arrival;
 - iv) It is reasonably likely that the Appellant was telling the truth when he says that he left these documents at home;
 - v) The 'ID' he presented at his interview and original asylum appeal was his military ID.
12. Having made these findings I now proceed to consider the effect of the guidance in SMO (Iraq) on the Appellant's case.
13. The Appellant is from Kirkuk. Although Kirkuk was previously considered to be a 'contested area' such that Article 15(c) of the QD applied, that is no longer the case. The Tribunal in SMO set out a number of factors that might enhance the risk to an individual per the *Elgafaji* 'sliding scale'. It has not been contended that any of those apply here. Accordingly I find that there is no risk of indiscriminate harm to the Appellant arising from an internal armed conflict in Iraq.

14. The next focus of my enquiry is whether the Appellant would be reasonably likely to find himself in circumstances of such socio-economic deprivation so as to engage the United Kingdom's obligations under Article 3 ECHR/ Article 15(b) of the QD. In that regard the concession made by the Secretary of State in AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212 and repeated in SMO remains Home Office policy:

"it remains the position that a 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 ECHR".

15. The Appellant does not have a CSID. I am not satisfied that it is reasonably likely that he will manage to obtain one prior to his departure from the United Kingdom. I so find for two reasons. First because it seems likely that had the Iraqi authorities felt able to issue him with a CSID in the United Kingdom, this fact would have been mentioned in their letter to the Appellant's solicitors. Second, because successive country guidance cases have made it clear that redocumentation from within the United Kingdom is not a straightforward process. In SMO [at §383] the Tribunal refers back to the findings in earlier appeals:

"We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent's CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity."

16. Whilst the Tribunal in this passage clearly envisage that it remains *possible* to obtain a new CSID in London, the likelihood of an individual successfully doing so must be read in light of Dr Fatah's earlier evidence on the point. The passages in AA to which the Tribunal refer are these:

"173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will

send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, inter alia, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application".

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act "as a proxy" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad. "In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring".

17. And the supplementary evidence given by Dr Fatah in AAH was as follows:

"26. If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the

website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.

27. If you are in Iraq, and have all of the required documents, in normal circumstances the process is straightforward and quick and should take no more than three days. Dr Fatah's own daughter was born in the United Kingdom and he managed to obtain her a CSID in one day from the office in Sulaymaniyah, upon payment of a small fee. Dr Fatah was less optimistic about the efficiency of the process if in the United Kingdom. He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful.

..."

18. Applying that guidance, and in particular the evidence of Dr Fatah, I conclude as follows. There is no obstacle to the Appellant signing a statement explaining why he does not currently have a CSID. Whether he could get that countersigned by the head of his family remains debatable. The First-tier Tribunal found that he will still have some contact with his family in Kirkuk but it is far from clear that this includes his father. The Appellant's father was certainly alive in 2007 when he assisted the Appellant in leaving Iraq, but I have no reliable information about what might have happened to him in the 13 intervening years of civil war and massive population displacement. Even assuming that the Appellant's father is alive and well and living in Kirkuk, and that there is no reason why he could not countersign the application form, there remains the matter of the colour photocopy of the INC. This the Appellant does not have. Add to this Dr Fatah's overall conclusion that embassy staff in London are "generally very unhelpful", and I am left to conclude that it is at least reasonably likely that the Appellant will not be able to acquire a new CSID in London. The strict evidential requirements for the application must be viewed in the context of the very great number of Iraqi nationals who are undocumented, and Dr Fatah's evidence that the problems of an individual returnee are regarded as "trivial".
19. This means that there is a reasonable likelihood that the Appellant will find himself at Baghdad airport with no means of onward travel. He cannot board a

domestic flight to Kirkuk, and cannot pass through the many checkpoints on the road north. In order to do so he would need a CSID, or one of the new generation of identity cards – the INID – being progressively rolled out across the country. Mr McVeety accepted, in light of the findings of the Tribunal in SMO, that he would not be able to use his Laissez-passer for this purpose.

20. The next question is whether the Appellant would be able to secure such identity documents within a reasonable time frame. Assuming that his family in Kirkuk would be able to assist him by approaching the civil status office in that city on his behalf, and that one male family member would be able and willing to make the journey to Baghdad airport to greet the Appellant and bring to him a replacement card, I must nevertheless consider the likelihood of such a card being issued to a proxy. It was the clear evidence of Dr Fatah that the new generation of cards are not being issued to proxies. At its paragraph 431 the Tribunal in SMO concluded that the Kirkuk civil status office is now issuing INIDs. That being so it does not appear to be feasible that the Appellant will be able to obtain a INID from his home city Kirkuk, given that he cannot get there and any family member who might be willing to help will not be assisted by the authorities. Applying the guidance in AAH and SMO it follows that the Appellant would, on arrival, be exposed to conditions amounting to a violation of Article 15(b) and his appeal must be allowed on that basis.

Human Rights: Article 8 ECHR

21. It is not in issue that the Appellant is in a genuine and subsisting relationship with his partner CN, and that they have three children together. All three children are British and the Appellant has a genuine and subsisting parental relationship with each of them. I am accordingly satisfied that the Appellant has an Article 8 ‘family life’ in the United Kingdom.
22. The Respondent accepts that it would be unduly harsh to expect CN and the children to relocate to Iraq should the Appellant be deported. The only matter in issue is whether it would be “unduly harsh” to expect these other family members to remain in the United Kingdom without the Appellant.
23. The higher courts have repeatedly emphasised that although the ‘undue harshness’ test falls somewhere in the middle of the statutory spectrum – framed on one side by ‘reasonableness’ and on the other by ‘very compelling circumstances’ – this should not obscure the fact that the test sets a high threshold. The ‘commonplace’ distress that will be caused to children if a parent is removed is not sufficient: otherwise any parent facing deportation would be able to succeed. Dicta to this effect can be found in Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213, BL (Jamaica) v Secretary of State for the Home Department [2016] EWCA Civ 357, Secretary of State for the Home Department v AJ (Zimbabwe) and VH (Vietnam) [2016] EWCA Civ 1012 and NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662. It was further underlined in KO (Nigeria) v

Secretary of State for the Home Department [2018] UKSC 53 where [at §27] the Supreme Court endorsed the dicta of the Upper Tribunal in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC) as to what kind of suffering the statute is here concerned with:

“By way of self-direction, we are mindful that ‘unduly harsh’ does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. ‘Harsh’ in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb ‘unduly’ raises an already elevated standard still higher.”

24. At the hearing in July I heard oral evidence from CN and I found her to be a pleasant young woman and a wholly credible witness. I noted that CN became quite distressed during her evidence, particularly where she was asked to contemplate what will happen to her and the children if the Appellant is deported. I have no hesitation in finding that she loves the Appellant a lot, and that she regards him as being a “brilliant dad”. They have lived together since 2012 (apart from the 7 months that he was in prison and the 2 months he spent in an immigration detention facility). I fully accept that she finds the prospect of life without him upsetting and stressful. CN has run her own beauty salon for two years. She has two employees and she herself worked there full time before she became pregnant again. When she is working it is the Appellant who looks after the children – he drops them to and from nursery, and brings them home at the end of the day. She corroborated the evidence given by the Appellant that he is a “hands on Dad”. He takes his son to boxing and plays “horse” with their daughter. CN could not conceive of how she would manage should the Appellant be deported. She has no close family living nearby. The nearest are her mother and sister who live in Wigan. CN told me that she and her mother are not particularly close – they only see each other at Christmas and during the Easter holidays. She has a stepfather in Newcastle but she would not look to him for help. CN expressed a fear that if she was a single mum she would have no option but to sell her business because she does not see how she would be able to continue to work.
25. I accept that it would be in the best interests of these three British children if they could remain living in their family home with both of their parents. I need not elaborate on that finding because the Respondent also accepts that to be so.
26. I accept that the impact upon CN and the children if the Appellant were to be deported will be harsh. Again, this is accepted by the Respondent. They have not committed any crime and yet it is they who are asked to pay the price for the Appellant’s criminality. I am however unable to find that the consequences would be “bleak” or “severe”. CN has shown herself to be a capable mother, and as Judge Pickup observed, there is no real merit in the submission that she would have to give up work if her husband left the country – that is the normal consequence of family break up and it is one that parliament no doubt contemplated when it approved s117C of the Act. CN would, if necessary, be

able to turn to the state for support. It will be enormously upsetting to all of the Appellant's family members, but it will not be unduly harsh. I am unable to identify any particular features of the evidence which would elevate the circumstances of this family above the 'commonplace' distress that the Court of Appeal have ruled is an acceptable consequence of deportation.

27. Accordingly I am not satisfied that the 'exception' at s33(2)(a) is made out.
28. Finally, I consider whether, in all of the circumstances of the case, there are "very compelling circumstances over and above" the matters set out in the exceptions. As the Court of Appeal in NA (Pakistan) made clear, this most demanding of tests is as available to 'medium' offenders such as the Appellant as it is to the most serious of offenders under s117C(6).
29. Mr Jafferji referred me to Judge Pickup's *Hesham Ali* evaluation, at his paragraphs 87-88, of all of the relevant factors in play when applying this test. Paragraph 87 contains a balanced and fair evaluation of all of the possible factors militating in the Appellant's favour. To these I need only add that since that decision, the Appellant and CN have had a third child. Judge Pickup's paragraph 88 sets out the factors weighing against the Appellant. Prominent among these is Judge Pickup's pre-SMO conclusion that the Appellant would have no problems in returning to Iraq. Insofar as I have found that he would today face a reasonable likelihood of enduring conditions in breach of Article 3 ECHR/Article 15(b), then the test of "very compelling circumstances" is obviously met, and the appeal is therefore allowed on human rights grounds. For the sake of clarity I record that if I am wrong about that matter, then I would adopt and endorse the findings so carefully made by Judge Pickup and the result would be that the appeal would be dismissed on human rights grounds.

Anonymity Order

30. This appeal concerns a claim for protection, and a number of British minors. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

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

Decisions

31. The decision of the First-tier Tribunal has been set aside.

32. The decision in the appeal is re-made as follows:

“The appeal is allowed on protection grounds.

The appeal is allowed on human rights grounds”.

33. There is an order for anonymity.

Upper Tribunal Judge Bruce
13th March 2020