



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03933/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 22 October 2020

Decision & Reasons Promulgated
On 9 November 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

B H H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott instructed by Hoole & Co Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Iraq who was born on 3 June 1990. He is Kurdish and comes from Mala Abdullah Village which is near Kirkuk City in the South West of the Kirkuk Governorate.
3. The appellant arrived in the United Kingdom on 18 January 2017. He claimed asylum on that day when he was arrested on suspicion of illegal entry and was detained. A screening interview took place on 19 January 2017 and an asylum interview on 13 March 2018.
4. The basis of the appellant's claim was that in July 2014 he started work as a tanker driver for a company which, unbeknownst to him, was involved in the illegal trade of oil in Iraq shipping it between the IKR and Central Iraq. He claims that he was arrested by the IKR authorities and imprisoned without charge for a period of two years because of his involvement with illegal oil smuggling. He claimed that after two years he was bailed by the IKR authorities, having been held in prison in Sulaymaniyah, subject to a provision of a guarantor.
5. His case was, in essence, that he was inadvertently involved in the smuggling. Powerful figures in the IKR (Sheikh Jafar and Abdulla Bour) were involved with, or behind, the smuggling operations. A trial of high-ranking individuals involved in the smuggling of oil, at which the appellant and others would have been witnesses for the prosecution, did not take place because of a standoff between the political parties in the IKR. It was settled informally. He claimed that if the rival political party came to power, then the high-profile individuals behind the smuggling would face trial.
6. The appellant claimed that, on the day he was released from prison, he was shot at in the street by an individual from the rear of a car, the windows of which were blacked out. A bullet hit him in the chin grazing his face. He believes he was targeted by those involved in the illegal smuggling. The appellant claimed that if he were returned to Iraq he would face a real risk of persecution and/or serious harm from those who were involved in smuggling the oil between the IKR and Central Iraq.
7. The appellant also claimed that he is an atheist, having relinquished his Muslim faith, and he would also be at risk on that basis.
8. On 9 April 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal

9. The appellant appealed to the First-tier Tribunal. In a determination sent on 29 June 2019, Judge Richards-Clarke dismissed the appellant's appeal on all grounds. Although the judge accepted the bulk of the appellant's claim, including that he had been involved in an illegal oil smuggling operation and that he had been shot at in the street following his release from prison, she did not accept that incident was

connected to the illegal oil smuggling operation and that he would on return be at risk from the high-ranking IKR individuals as he claimed.

10. The appellant sought permission to appeal to the Upper Tribunal. On 30 October 2019, the First-tier Tribunal (Judge Adio) granted the appellant permission to appeal.
11. Following a part-heard hearing on 12 March 2020 and a resumed remote hearing on 30 July 2020, in a determination sent on 3 September 2020 I found that the First-tier Tribunal's decision involved the making of an error of law. First, I concluded that the judge had erred in law in reaching her adverse finding in respect of the appellant's claim to be at risk from high-ranking IKR officials on return as a result of his involvement in the illegal oil smuggling operation in July 2014. Secondly, and this was conceded by the Secretary of State, I found that the judge failed properly to apply the relevant country guidance in relation to the issue of whether the appellant could obtain a replacement Civil Status Identity Document ("CSID") which would be essential for his safe passage within Iraq and in order to allow him to live in his home area.
12. Consequently, I set aside the First-tier Tribunal's decision and, as both parties invited me to do, I retained the appeal in the Upper Tribunal in order that the decision could be remade in respect of the appellant's international protection claim and in relation to his claim for humanitarian protection. There had been no challenge to the judge's decision to dismiss the appellant's appeal under Art 8 and that decision stood.

The Resumed Hearing

13. The appeal was listed for the resumed hearing on 22 October 2020. In the light of the COVID-19 crisis, the appeal was listed at the Cardiff Civil Justice Centre with me based in court and Mr Draycott, who represented the appellant and Mr Howells, who represented the Secretary of State joining the hearing remotely via Skype for Business. In addition, the appellant took part in the hearing, including giving evidence via an interpreter, both of whom joined the hearing via Skype for Business.
14. Mr Draycott sought to rely upon a supplementary bundle of documents together with a number of background documents concerning Iraq. Mr Howells relied upon three CPIN documents: (1) "Iraq: Religious Minorities" (October 2019); (2) "Iraq: Security and Humanitarian Situation" (May 2020); (3) "Iraq: Internal Relocation, Civil Documentation and Returns" (June 2020). None of these documents were before the First-tier Tribunal. Both representatives agreed that the material relied upon by their opponent should be admitted and, I did so, in the interest of justice under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

The Issues

15. Based upon the submissions of the parties, the issues in this appeal are as follows.
 - 1) First, the appellant contends that he would be at real risk of persecution or serious harm due to his political opinion if he were returned to Iraq

because he would be at risk of being killed or seriously harmed by those powerful individuals involved in the illegal oil smuggling operation.

- 2) Secondly, the appellant contends that he would be at real risk on return to Iraq because of religious reasons, namely because he is an atheist.
- 3) Thirdly, to the extent that the appellant cannot establish a Convention reason under basis (1) and (2) of his claim, he contends that he is entitled to humanitarian protection under Art 15(b) of the Qualification Directive (Council Directive 2004/83/EC) and there would be a breach of Art 3 of the ECHR as he would be at real risk of serious harm.
- 4) Fourthly, although Mr Draycott did not pursue this basis of the appellant's claim with any vigour in his oral submissions, the appellant also relies upon Art 15(c) of the Qualification Directive, namely that there would be a real risk of serious harm arising from indiscriminate violence in his home area.
- 5) Finally, the appellant contends that he would be at risk of serious ill-treatment or harm contrary to Art 3 of the ECHR if he is returned to Iraq as he would not have an identity document (such as a CSID), that would allow him to travel safely from Baghdad (to which he would be returned) to his home area in Kirkuk Governorate.

16. In his oral submissions, Mr Howells accepted that, if the appellant were at risk in his home area, he could not safely and reasonably internally relocate either to the IKR (given his past history of being charged and imprisoned there as a result of illegal smuggling) or to Baghdad (given he is a single Kurdish man with no family or other support in Baghdad).

The Law

17. In relation to the appellant's asylum claim, relying upon the Refugee Convention (Art 1A(2)), the appellant must establish that there is a real risk or reasonable likelihood that on return to Iraq he will be persecuted for a Convention reason. The relevant Convention reasons relied upon in this appeal are political opinion (in relation to the risk arising from his previous involvement in an oil smuggling operation) and religion (arising from his atheism).
18. In relation to the appellant's humanitarian protection claim under Art 15(b) and 15(c) of the Qualification Directive, the he appellant must establish that there are substantial grounds for believing that he is at real risk of serious harm (torture or inhuman or degrading treatment or punishment) or a serious and individual threat to his life by reason of indiscriminate violence.
19. In relation to both claims, the appellant must establish, to the extent that any risk emanates from non-state actors, that the authorities in his home area would not be willing or able to provide a sufficiency of protection.

20. In relation to the appellant's Art 3 claim, he must establish that there is a real risk, in the same terms as Art 15(b) of the Qualification Directive), namely that he will be subject to serious ill-treatment, i.e. torture or inhuman or degrading treatment or punishment.
21. In relation to each of these claims, the lower standard of proof (real risk or reasonable likelihood) applies to all factual issues.

Discussion and Findings

1. Preserved Findings

22. It was common ground that a number of factual findings made by Judge Richards Clark are preserved for the purposes of remaking the decision.
23. The appellant is an Iraqi Kurd who comes from Mala Abdullah Village which is near Kirkuk City in the Kirkuk Governorate.
24. The judge accepted the appellant's account that he was a tanker driver who, in July 2014, had become unwittingly involved in an illegal oil smuggling enterprise in which senior PUK individuals within the IKR were involved, namely Sheikh Jafar and Abdulla Bour. It is plain from the material that Abdulla Bour is a senior officer in the Peshmerga in Kirkuk and Sheikh Jafar is now the Vice President of the IKR.
25. It is accepted that the appellant was involved in oil smuggling activities between the IKR and Iraq. He was arrested by the IKR intelligence agency (the Asayish) and imprisoned in Sulaymaniyah for two years without charge.
26. The judge accepted the appellant's account that whilst in prison the authorities had wanted him to be a witness in prosecutions to be brought but which were not as the matter was resolved informally.
27. After two years, the appellant was released on bail. On the day of his release, on the way from the prison, he was shot at by an unknown person from a 'blacked-out' car and he sustained an injury on his chin when a bullet grazed him. Although he does not know who was in the car, he believes they were associated with the high-ranking IKR individuals and the attack arose because of his involvement in the illegal oil smuggling operation.
28. The appellant was a Sunni Muslim but is now an atheist. Mr Howells accepted that the judge had made that finding and he did not, in the light of that, seek to go behind that finding.
29. Finally, it is accepted that the appellant does not have a CSID in the UK.

2. The Evidence

30. A number of factual matters remained to be resolved. The appellant gave oral evidence through an interpreter and he adopted his witness statement dated 28 May 2019 which had been before the FtT.
31. In the course of the appellant's evidence, a number of factual matters were explored including, (i) the oil smuggling operation and the shooting incident, (ii) the whereabouts of his family in Iraq and his contact with them, (iii) the whereabouts of any ID documents, (iv) his knowledge of the family's entry in the family book held in Iraq and (v) his atheism.
32. In his examination-in-chief, the appellant confirmed that he had been born in Mala Abdullah Village near Kirkuk. He also confirmed that his parents had been born within the Kirkuk Governorate. The family home was in Mala Abdullah but they had left around 2014 when Daesh came.
33. When asked what family he presently had in Iraq, the appellant said he only had a mother and she was staying with his maternal uncle in Kirkuk City. He said that he was not frequently in contact with his mother because she had no access to the internet. It was only when somebody was there who had access to the internet that it was possible to make contact.
34. In relation to his ID documents, the appellant said that his mother was not aware where they were. He said that nothing was left. He had lost everything with the arrival of Daesh. That had been unexpected and so quick and everything had been left behind. He accepted, however, that he had taken his Iraqi passport but on arriving in Turkey, the agent had taken all his documents from him, including his passport because he had been told it would not be safe to keep them.
35. The appellant was asked about the two individuals whom, in his asylum interview, he had said were behind the illegal oil smuggling operation. He had described Sheikh Jafar as being head of "Force 70" within the Peshmerga. He was asked what position Sheikh Jafar now held and he said that he was a deputy president of the Kurdish Region. As regards Abdulla Bour, the appellant had said that he was a high profile Peshmerga commander. When asked what his status is now, the appellant replied that he was in charge of the Peshmerga force, he was a major general.
36. The appellant was asked what would happen if he was returned to the IKR, and he replied that when he was arrested, the plan was to use him as part of a political move against high-ranking members of the political parties. If he returned, those individuals would wish to protect their authority and position and do whatever it took to protect themselves.
37. In cross-examination, the appellant was asked about his contact with his mother which he said that he did through WhatsApp and Messenger. He said that his mother was at his maternal uncle's home and he gave that address in Kirkuk City.

He was asked whether his mother and uncle had ID documents and he replied that his uncle lived in Kirkuk, that his mother had lost hers with the other family documents. He said it was not easy to get a replacement as the files had been destroyed. When he was asked about how she managed to live without a CSID, including obtaining health services, the appellant said that there were different types of ID documents and that she had been issued with a temporary card with a code issued for security purposes by the Asayish. When it was suggested to him that he had now changed his answer concerning what documents his mother had, he said that there was a difference between the CSID and the temporary code which had been issued to his mother.

38. The appellant said that he had last seen his mother before the arrival of Daesh. He had been in Sulaymaniyah taking exams. He then recalled that she had visited him once in prison when he was held in Sulaymaniyah.
39. The appellant was asked some questions concerning his documents. He agreed that when in Iraq he had had a passport, a CSID and Registration Document. He said that the CSID had been issued in the office in his home town of Mala Abdullah. When he was asked why this would be so if it was a village, the appellant replied that it was in fact a town where there were public offices and where documents were issued. He said the town was simply called Mala Abdullah Village. The appellant said that he no longer had any of these identification documents. He denied that these documents were with his family in Kirkuk City and said that they had been destroyed or lost.
40. The appellant was asked whether he knew the volume and page of the family book. He said that he did not. It was not important for him to know. It was put to the appellant that it had been accepted by the Upper Tribunal (in SMO and others (Art 15(c); Identity Documents) CG [2019] UKUT 400 (IAC) ("SMO") at [391] - [392]), that this information was very important and that it had to be used many times and was likely to be known by an individual. It was put to the appellant that he was simply pretending not to know the information. He replied that the information was not something that an individual remembered or memorised. He said, once you have a CSID, it is not important to memorise it.
41. The appellant was asked about the incident in 2014 when he was shot. He said that he did not know the individual who had shot him. It was suggested to the appellant that it was just his suspicion that the shooting was linked to the oil smuggling operation. He replied that that was the only problem that he had and he could not see any alternative reason. There was nothing for him to suspect apart from this being linked to the oil smuggling operation.
42. The appellant accepted that the high profile individuals had not been prosecuted and he said that, with the arrival of Daesh in the region, that was not a priority. He pointed out that Parliament had been closed and the judiciary not active. He said there had been an attempt to bring the case to court but due to the political climate at the time, it was no longer a priority. He said that he had not attempted to contact

anyone in Iraq about any news concerning what was happening. When it was suggested that he might contact his paternal cousin, who had accommodated him in the IKR and arranged his journey out of Iraq, he responded that he had been in touch with him but “to obtain what information?”.

43. The appellant said that he did not fear the Kurdish or Iraqi authorities but only the two individuals who he had mentioned who were “very powerful individuals”. He accepted that he had reported the shooting to the police and had been able to leave Iraq on his own passport. He said that that did not mean that the case was at an end. He agreed that after he was shot, and taken to hospital, he had been asked if he suspected anyone and he was unable to help as he could not name any names. He did not know the individual who had shot him. The appellant was asked why, if he returned to his home area in Kirkuk which was under the control of Iraqi forces and not the Peshmerga, he would be at risk there. He replied that Sheikh Jafar was a senior member of the PUK and deputy president of Kurdistan. He was a very influential member of the PUK. The appellant said that Sheikh Jafar had a lot of influence in Kirkuk. He said that even though it was legally under Iraqi control, their party was the biggest political party and had the biggest political influence.
44. The appellant was asked about his stepbrother with whom he lived in the UK. He was asked whether his stepbrother was in contact with anyone in Iraq and the appellant replied that he did not know. He accepted that if his stepbrother was making contact it would be with their mother. He was asked why it was that he was not interested if his stepbrother had been in contact with his mother. He replied that he had contact with his mother and it would be only if he did not have contact with her that he would like to know about his stepbrother’s contact. He agreed that his stepbrother had returned to Iraq since he had obtained refugee status in the UK. He could not remember when his stepbrother had last gone to Iraq. He agreed that his stepbrother had gone back to visit family but when he was asked whether that was in the Kirkuk area, the appellant said that he did not know. That was his life. He agreed that he had been living with his stepbrother for three years.
45. The appellant was asked why he could not ask his family in Iraq to obtain ID documents. He said that he would need to be physically present. He could not have any documents replaced.
46. The appellant was asked a number of questions about his religious beliefs. Some of this evidence need not to be set out now as Mr Howells accepted subsequently, in his submissions, that the appellant was an atheist. Some, however, remains relevant in relation to the appellant’s claim to be at risk because of his atheism.
47. In cross-examination, the appellant said that he had started to have his views about atheism when he was 17 or 18 in school. He said that his beliefs in relation to his religion and the groups around him made him distance himself from his religion. But there was no set time or date when he became an atheist. He agreed that he had gradually stopped practising as a Muslim in Iraq. It did not happen overnight. It was as he was growing up and that he saw killing people over words. He said that

he mostly told his friends about his lack of faith when they sat down and had a discussion. He said it was not so much his friends in Kirkuk unless you had trusted close friends as you could get killed for saying something like this in Kirkuk. He said it was mainly when he was living in Sulaymaniyah. He agreed, however, that he had told friends in Kirkuk but only his closest friends. He said "very, very few friends knew".

48. It was put to him that in his asylum interview (at questions 110 and 111) he had inconsistently said that when asked about his religion in Kirkuk and why he was not going to the mosque, he had told individuals that he was praying at home. In his oral evidence, the appellant said that he had been trying to explain that this is what he had said to neighbours not friends. He agreed that his mother did not know that he had become an atheist but that she had known he was not practising and he had told her that he just could not be bothered or that he was lazy. He agreed that he had told some friends in the UK that he was an atheist when it had come up in discussion and that he had told his stepbrother. He said that there was no evidence from his stepbrother at this hearing because he did not see the need for any such evidence. He said his claim was not on that basis. He did not accept that he had stopped practising his religion since he had come to the UK. He said that he had already done that before he arrived in the UK. He said he would not resume practising in Iraq simply because it was the cultural thing to do, he said that he did not believe in doing that.
49. Finally, in cross-examination, the appellant agreed that he had no physical or mental health problems apart from suffering from a digestive system issue brought on by stress which, he said, affected his memory as well.
50. In re-examination, the appellant explained that when they had left their home anything in their homes worth taking or being looted by Daesh members were taken so all their possessions were taken. Documents in public offices were burnt. When asked what had happened to the CSA Offices in Kirkuk or Mala Abdullah when they were under the control of Daesh, he said that those public offices were no longer functioning. All documents were burnt and destroyed. He agreed that he had not seen this happening but it is what he had seen through the media and what people had witnessed. He had not seen it himself.
51. Finally, when asked about Shia militia in Kirkuk, and how did he think they would react if they discovered he was an atheist, the appellant said that they would see it as a good thing to kill him.

3. The Submissions

52. In relation to the factual issues, Mr Howells relied on a number of matters arising from the appellant's oral evidence which, he submitted, called into question his credibility.

53. First, he submitted that the appellant had inconsistently referred to his home as being in Mala Abdullah which was a village and had then said it was a town when identifying that the CSA Office had been destroyed when overrun by Daesh. Secondly, the appellant had first said, in his relation to his mother who was living with his uncle in Kirkuk City, that she had no CSID but he now said that she had been issued with a temporary document by the Asayish in order to explain how she was able to live and obtain services. Mr Howells relied on that change in the appellant's account. Thirdly, Mr Howells relied upon the appellant's evidence in relation to his stepbrother with whom he agreed he had lived for three years in the UK. Mr Howells submitted that it was not plausible that the appellant would not know if his stepbrother was in contact with family in Iraq, in particular with their mother in Kirkuk City. Mr Howells submitted that on the issue of availability of documentation, contacts and visits by the appellant's stepbrother to Iraq, this was important and the appellant was obscuring the position.
54. Further, Mr Howells invited me to find that the appellant had not established that the appellant had been shot at by individuals associated with the oil smuggling operation and that consequently he was at risk from them on return to Iraq.
55. Mr Howells accepted that Sheikh Jaffar was the Vice President of the IKR and that Abdulla Bour was a major general in the Kirkuk Peshmerga. However, Mr Howells submitted that Kirkuk City (and Kirkuk Province generally) whilst disputed was governed by Iraqi government forces with the presence of PMU militia (citing para 7.3.1 of the May 2020 *CPIN*, "Iraq: Security and Humanitarian Situation"). Mr Howells invited me to conclude that there was no evidence that Sheikh Jafar or Abdulla Bour exerted any power or influence in Kirkuk so as to pose a threat to the appellant in his home area.
56. As regards the appellant's atheism, Mr Howells accepted that the appellant was an atheist but that was not the same as apostasy. The appellant had not engaged in public criticism of Islam either in Iraq or the UK and he did not claim he would do so on return to Iraq. Mr Howells pointed out that the appellant had lived with his doubts about Islam in Iraq before he had left and that he had not told many individuals about his atheism. Mr Howells relied upon Section 7 of the *CPIN*, "Iraq: Religious Minorities" (October 2019) pointing out that there was no specific law prohibiting atheism and, although society's toleration was limited, the evidence did not establish there was a real risk on this basis.
57. As regards Art 15(c) of the Qualification Directive, Mr Howells submitted that, on the basis of SMO, there was no general risk falling within Art 15(c) in Kirkuk Governorate including the appellant's home area. Even applying the 'sliding-scale' approach, including having regard to the appellant's atheism, there was no real risk to the appellant in his home area providing he was returned with an identity document.

58. In relation to documentation, Mr Howells submitted that the appellant could be safely returned to Iraq with documentation. He accepted that the appellant could not obtain a CSID or the new INID from the Iraqi Embassy in the UK.
59. However, Mr Howells submitted that it was likely that the family in Kirkuk had the appellant's documents which he had left in Iraq. He was in contact with his mother and maternal uncle and he could obtain those documents before returning to Iraq.
60. In any event, on the basis of [391]-[392] of SMO, Mr Howells submitted that the appellant was likely to know the details of the page and volume number of the family book. He did not fall within any exceptions recognised in SMO - he had no mental health issues or numeracy or literacy issues and he had not left at a young age. He submitted that his family could, as a consequence, obtain a CSID from the relevant CSA Office in Kirkuk.
61. In addition, Mr Howells submitted, relying upon the *CPIN* "Iraq: Internal Relocation, Civil Documentation and Returns" (June 2020) at para 2.6.15 - 2.6.16, that the appellant could obtain a Registration Document (1957) from the Iraqi Embassy which could be used, not only to obtain an INID on return to Iraq, but which would also allow him to safely return from Baghdad to his home area. He submitted that there was no reason to believe that if the Iraqi Embassy would issue such a document in the UK that it would not allow individuals to travel onwards from Baghdad safely. That was not an issue addressed in SMO because the evidence then was that the Embassy was issuing CSIDs. Mr Howells accepted that the appellant would not be able to obtain (by a proxy) a document from Kirkuk City as SMO demonstrated that they had an INID terminal and did not, therefore, issue CSIDs anymore.
62. Mr Draycott relied upon his skeleton argument which he adapted to deal with the issues that remained live at the hearing.
63. First, he submitted that I should accept that the appellant had been shot at as a result of his involvement with the illegal oil smuggling enterprise. Mr Draycott submitted that the incident had all the hallmarks of a professional 'hit man'. There was no other reasonable explanation for the incident. Mr Draycott submitted that the appellant had been consistent that Sheikh Jafar and Abdulla Bour, both of whom were associated with the PUK and Peshmerga, had been involved in the underlying oil smuggling operation. They were, as the background evidence showed, highly influential individuals being the Vice President of the IKR and a senior officer in the Peshmerga. Sheikh Jafar's influence, now that he was Vice President, was likely to have increased since the attack in 2014. Mr Draycott submitted that the appellant was at risk because the proceedings were ongoing and there remained the possibility of prosecutions. He submitted that applying para 339K of the Immigration Rules (HC 395 as amended) the evidence of past persecution was relevant and pointed to a future risk unless there was good reason to think otherwise. Mr Draycott submitted that the Secretary of State could not point to anything that would displace this presumption. Mr Draycott submitted that, given the level of corruption throughout Iraq, someone as powerful as the Vice President of the IKR or who is a senior officer

in the Peshmerga would likely have contacts in the government of Iraq, including having an influence in Kirkuk which bordered with the IKR.

64. In relation to the appellant's atheism, Mr Draycott relied upon para 7.1.1 and 7.1.2 of the *CPIN*. He submitted that the appellant would be at risk on return including because in the redocumentation process he would have to give his religious affiliation. Although Mr Draycott submitted that that would not create an immediate risk, thereafter he might be required to lie and that following *HJ (Iran) v SSHD* [2010] UKSC 31 he was at risk of serious harm if it became known in Iraq.
65. Mr Draycott submitted that the appellant should succeed in his asylum claim on the basis of imputed political opinion and religion.
66. As regards Art 15(c), Mr Draycott did not address me on this part of the appellant's claim.
67. As regards redocumentation, Mr Draycott pointed out that the Secretary of State recognised that the appellant could not obtain a CSID from the Iraqi Embassy in the UK.
68. As regards obtaining any document in Iraq, Mr Draycott submitted that it was more likely than not that the office in the appellant's home area, which had been under the control of ISIL, had been destroyed and so a replacement could not be obtained.
69. As regards Mr Howells' submission that the appellant could obtain a Registration Document (1957) from the Iraqi Embassy in the UK, Mr Draycott submitted that there was no evidence to establish that this document would permit the appellant to travel safely between Baghdad and his home area when confronted at checkpoints by Shia militia. He submitted that the evidence did not support a finding that the journey could be safely made. Mr Draycott pointed out that the evidence from the Iraqi Embassy could not be relied upon to establish the claimed effect of possessing a Registration Document (1957). Mr Draycott pointed out that the UT in *SMO* had rejected other evidence from the Iraqi Embassy that a 'laissez passer' or a 'certification letter' would be sufficient to travel safely.
70. Finally, in relation to the points relied upon by Mr Howells relevant to the appellant's credibility, Mr Draycott submitted that these were not significant. The appellant had explained why his home area was called a "Village" as part of its name but was, in fact, a town. There was nothing inconsistent in the appellant's evidence about what documents his mother possessed. Finally, the evidence concerning his stepbrother's contact with his mother and his visits to Iraq and the appellant's knowledge of those matters, was 'neither here nor there'.
71. Mr Draycott invited me to allow the appellant's appeal on asylum grounds or on humanitarian protection grounds and Art 3 of the ECHR.

4. My Conclusions

72. My starting point is Judge Richards-Clarke's positive credibility finding which resulted in her accepting virtually all the appellant's evidence. The only part of her evidence she did not accept, or find in his favour upon, was his belief that the shooting incident arose from his involvement with the illegal oil smuggling operation. That was, as he said in his evidence before me, something which he accepted he did not know but was simply his belief because he could not think of any other reason why he would have been attacked in this way. The judge's non-acceptance of the fact underlying his belief in no way reflected upon his credibility and truthfulness upon matters within his knowledge.
73. I also found the appellant to be a truthful witness when giving his evidence before me. He did so in a clear and unrehearsed way. I do not accept Mr Howells' submission that aspects of his evidence were significant enough to call into question his credibility and the truthfulness of his evidence. He gave an entirely plausible explanation as to why his home area of Mala Abdullah was in fact a town (in size) whilst it was called as part of its name Mala Abdullah *Village*. Further, the appellant's explanation about his mother's documentation was not, in my judgment, something which raised a reasonable suspicion that he was not seeking to tell the truth. He accepted that she did not have her CSID but that she had obtained a temporary code in order to live in Kirkuk City. I agree with Mr Howells, however, that the appellant's lack of interest in his stepbrother's contact with their mother or visits to Iraq was difficult to understand. It does not, however, lead me to distrust the veracity of the appellant on the central features of his claim. Overall, I am satisfied that the appellant was seeking to tell the truth and I am satisfied that I can rely upon his evidence in reaching my factual findings.
74. First, as regards the shooting incident, that incident is accepted as having occurred as a result of the judge's earlier finding. I agree with Mr Draycott's submission that the description of this by the appellant, involving a parked car with blackened windows from which the appellant was shot by an individual sitting in the rear, has all the hallmarks of a 'hitman' attack. There is nothing in the appellant's history, or suggested to be in the appellant's history, that could explain this incident apart from his accepted involvement in an illegal oil smuggling operation. Given that it is accepted that he was imprisoned for two years, and that he was lined up to be a witness in a prosecution which involved an illegal smuggling operation in which two senior figures in the IKR were involved, it is a reasonable inference that it was this (and the prospect that he might be a witness that could implicate them) that led to the attack. It can be no coincidence that it occurred shortly after he had been released from prison. The unlikelihood of that coincidence together with the nature of the attack itself leads me to accept, on the lower standard, that the attack was instigated by those who had been involved in the illegal smuggling operation and feared the appellant's involvement as a witness in any prosecution. The position of prominence of the two individuals which the appellant has named, and the judge accepted, is consistent with such an attack (and having knowledge of his release) to protect their reputation and positions.

75. I accept also that despite having been released on bail there is a reasonable likelihood that, at some point in the future, the IKR authorities might reactivate a prosecution of individuals with the risk of implicating the high-ranking individuals that the appellant has identified. In my judgment, this risk is only enhanced by the increased prominence of at least one of those individuals in the IKR at present.
76. Mr Howells submits that any risk arises only in the IKR – the attack took place in Sulaymaniyah – and not in Kirkuk Governorate where the appellant’s home area is located. He relies upon the fact that the Iraqi authorities are in control of Kirkuk Governorate where the Iraqi Army and PMU units operate (see *CIPN* (May 2020) at 7.3.1). That is undoubtedly the factual position. However, the appellant’s home area has a border with the IKR. Kirkuk Governorate is a disputed area between the Iraqi government and the IKR. Mr Draycott took me to material that demonstrates levels of corruption within Iraq generally (see, e.g. Human Rights Watch, “We Might Call You in at Any Time: Free Speech under Threat in Iraq” (June 2020)) and Mr Howells did not seek to counter Mr Draycott’s suggestion that that was the position in Iraq. Whilst it would be mere speculation as to whether the appellant’s home area might be taken over by the IKR authorities, it is, in my judgment, reasonable to infer that given the geographical proximity and the prominence of the individuals whose reputation and position might be affected if the appellant were to become involved again in a potential prosecution, that their reach could extend to the appellant’s home area if they wished to take coercive action against him to prevent him giving evidence against them.
77. The standard of proof is the lower one applicable in international protection cases. Mr Draycott also relied upon para 339K of the Immigration Rules that past persecution or serious harm is a “serious indication” of the individual’s well-founded fear of persecution or real risk of serious harm in the future unless there are “good reasons to consider that such persecution or serious harm will not be repeated”. The appellant has been subject to a past incident of persecution or potential serious harm when he was the subject of a shooting (as I have found because of his prior involvement in the illegal oil smuggling operation) and, in my judgment, the Secretary of State has provided no “good reasons” to deflate the “serious indication” or future risk that follows from that incident being established.
78. Mr Howells did not suggest in his submissions that any risk to the appellant could or would be obviated by the provision of a sufficiency of protection from the Iraqi government in his home area. Given the prominence, and undoubted power, of those behind any attack on the appellant, I am satisfied that even if the Iraqi government or authorities were willing to provide protection to the appellant they would not to reasonable level be able to provide protection. As I have said, Mr Howells did not address me on this issue and suggest otherwise.
79. In these circumstances, I therefore find that there is a real risk that the appellant will be subject to persecution or serious harm if he returns to his home area as a result of his prior involvement in the illegal oil smuggling operation.

80. What I do not accept, however, is that this risk arises for a ‘Convention reason’, namely because of his actual or imputed political opinion.

81. Mr Draycott did not take me to any supporting material for his submission that, the appellant has established this Convention reason. A helpful case is Suarez v SSHD [2002] EWCA Civ 722. The Court of Appeal was concerned with a claim by a former soldier of the Colombian Army who had taken a stance against the endemic corruption and lawlessness in Colombia having witnessed the criminal activities of his immediate commanding officer (which included murder) and whether the risk of persecution was for ‘imputed political opinion’. The Court recognised the core issue was the motivation of the persecutor. The Court upheld the decision that the Convention reason was not established. At [29]-[30], Potter LJ said this:

“29. When dealing with the motivation of a persecutor, it has to be appreciated that he may have more than one motive. However, so long as an applicant can establish that one of the motives of his persecutor is a Convention ground and that the applicant’s reasonable fear relates to persecution on that ground, that will be sufficient. Thus, if the maker of a complaint relating to the criminal conduct of another is persecuted because that complaint is perceived as an expression or manifestation of an opinion which challenges governmental authority, then that may in appropriate circumstances amount to an imputed political opinion for the purposes of the Convention. That is made clear in the Colombian context in *Gomez* at 560 para 22. Although, in the case of *Gomez* [*v* SSHD [2000] INLR 549], the acts of persecution of the appellant were those of non-state actors, namely members of the armed opposition group FARC, the decision contains an illuminating discussion, replete with reference to authority, of the problems associated with the notion of *imputed* political opinion in a society where the borderlines between the political and non-political have been distorted so that it is difficult to draw a distinction between governmental authority on the one hand and criminal activity on the other.

30. In such cases, the political nature of an applicant’s actions or of the opinions which may be imputed to him in the light of such actions must be judged in the context of the conditions prevailing in his country of origin. Thus, what may in a relatively stable society be a valid distinction between a crime committed for the purposes of revenge, intimidation or the furtherance of some other personal interest on the one hand, and a political crime of repression on the other, may not hold good in a society where violence and repression are routinely used to stifle political opinion or any challenge to established authority: see paras (42)-(45) of *Gomez*.”

82. At [40]-[41], Potter LJ upheld the IAT’s conclusion that the judge had been entitled to find that ‘imputed political opinion’ by the individual’s persecutors had not been established:

“40. On the particular facts of this case, the claimant had witnessed a murder committed by three of his immediate superiors in circumstances where there is no suggestion such action had been authorised by, or enjoyed the approval of, higher authority within the army. On the next day, when the appellant protested at these matters, he was immediately threatened by one of those superiors that he would be killed if he said anything and, within hours, the perpetrators of the

crime had shot at him, killing his friend and causing him to flee. It was also his case that, on his return home, the follow-up threats and shooting which took place two days later where the work of the same perpetrators in an effort to silence him. His fear as to what might happen on his return was not that the government or higher authorities within the army would persecute him on the ground of his political opinions but that he might go to prison for desertion where the perpetrators of the crime might yet seek to kill him in order to secure his silence.

41. In these circumstances, it was plainly open to the IAT to find, as the Special Adjudicator had found, that if true this was the case of a man (laudably it should be said) who had protested at a criminal act or acts by three of his immediate superiors, who then sought to silence him to prevent him from taking that matter further. While he feared for his safety on his return to Colombia on the basis that the same men might get to him in prison, should he be sentenced for desertion, there was no reason to suppose, nor did the appellant really suggest, that reprisals would come from any other quarter or for any other reason."

83. Keene LJ and Sumner J agreed. Keene LJ added this at [46]:

"46. I would only add that I accept that there can be cases where the risk of persecution arises from a mixture of political and criminal reasons, particularly in a society such as Columbia currently is, where criminal economic activity may support political structures. But it is wrong to assume that all actions aimed at preventing the exposure of criminal activities in such a society can be characterised as imputing a political opinion to the witness. These matters need to be looked at on a case by case basis. In the present case, the Special Adjudicator found that the commanding officer:

"was concerned to silence the appellant in order to avoid the consequences of criminal prosecution if his activities were exposed ... I was not satisfied that any general political opinion could be imputed to [the appellant] along the lines of his being on the side of law and order and against the "dark forces" of guerrillas and criminal gangs.""

84. I accept that a person who is involved in prosecutions relating to corruption (especially if it involves governmental figures) might be expressing a political opinion or, at least, be perceived as expressing political opinion. In my judgment, however, the view taken in Suarez is applicable in this appeal. The evidence in this case does not establish that would be the appellant's actual motivation or that it would be imputed to him by his potential persecutors. As in Suarez, the appellant will, at its highest, be exposing criminal activity by others, including high ranking IKR individuals. Their activities were not on behalf of the IKR Government but were those individuals' self-interested criminal acts. The reasonable inference I am able to draw is the same as in Suarez, namely that the risk to the appellant arise would arise from their desire "to silence the appellant in order to avoid the consequences of criminal prosecutions if their activities [are] exposed" and not because any political opinion would be imputed to him despite the evidence, to which Mr Draycott referred me, of corruption in Iraq (including the IKR). The basis upon which the appellant would be persecuted or be subjected to serious ill-treatment would be

simply to prevent him from taking part in a prosecution as a witness. It would not be because of his actual or perceived political opinion.

85. However, although I do not accept that the appellant can succeed on this basis under the Refugee Convention, the fact that it is established that he is at real risk of serious harm means that he is entitled to succeed in a claim for humanitarian protection under Art 15(b) of the Qualification Directive and under Art 3 of the ECHR.
86. The alternative basis upon which the appellant put his asylum claim was that there is a real risk of persecution or serious harm on return to Iraq because of his atheism. That undoubtedly, and it was accepted by the respondent, engages a Refugee Convention reason. The issue is whether, because of his atheism, the appellant is at real risk of persecution on return. The relevant material to which my attention was drawn is set out in the *CPIN* "Iraq: Religious Minorities" at Section 7. At paras 7.1.1 – 7.1.4 the *CPIN* sets out the following material:

"7 Atheists

7.1.1 UNHCR in its 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq' published in May 2019 summarised that:

'Although open atheism is extremely rare in Iraq, the number of atheists is reported to be on the rise. Although there are no laws prohibiting "atheism", in some instances, atheists have reportedly been prosecuted for "desecration of religions" and related charges. Moreover, societal tolerance vis-à-vis atheists is reported to be very limited, as evidenced also by the public rhetoric of some politicians and religious leaders. For fear of rejection, discrimination and violence at the hands of their families, private vigilantes and conservative/hardline religious groups, atheists are reported to often keep their views secret.'

7.1.2 The June 2019 EASO Guidance on Iraq report stated that:

'Atheism is not illegal in Iraq, but State actors typically equate atheism with blasphemy. Although there are not any articles in the Iraqi Penal Code that provide for a direct punishment for atheism, the desecration of religions is penalised. In March 2018, arrest warrants were issued in Dhi Qar against four Iraqis on charges of atheism. According to COI sources, no recent examples of prosecution of atheists in the KRI have been reported.

'In Iraq, atheists are reportedly viewed with disdain and face threats. It is reported that persons who openly admit they are not religious would risk arrest in, for example, Baghdad and the South, whereas in the KRI there would be more freedom of expression with regards to religious beliefs. According to COI sources, Kurds primarily identify themselves in terms of their ethnicity and not their religious affiliation.

'While atheism is rare in Iraq, the number of atheists is reportedly growing. Secularism is also on the rise amongst Iraq's youth. A poll released in 2011 recorded that 67% of Iraq's population answered that they believe in God, 21% answered probably, whilst 7% answered that they did not believe in God. There are many Iraqi websites and blogs that cater to atheists, but membership lists are kept secret for fear of persecution by extremist religious groups or the surrounding society.

'Atheism is in general not well perceived in the KRI. However, according to some sources, it is somewhat more acceptable to be an atheist than an apostate. Criticism of religious functionaries in general is quite widespread in KRI and is not looked upon as something scandalous. Criticising Islam on social media, particularly on Facebook, has become something of a social trend in the KRI, whereas up until recently it was not acceptable. However, proclaiming oneself as an atheist publicly could cause problems. There have reportedly been cases in which atheists have been physically threatened, harassed or rejected by their families. According to COI sources, atheists who suffer harassment due to their beliefs prefer to hide than to report to the police. Although the Kurdish government is secular, society in general, especially in Erbil, is conservative and people are generally expected to respect Islamic norms.'

7.1.3 An article published by NBC News in April 2019 entitled 'Iraq's atheists go underground as Sunni, Shiite hard-liners dominate' stated:

'In a move that struck fear in Iraq's small community of atheists, police in October [2018] arrested Ihsan Mousa, the owner of a bookstore in southern Iraq. They accused him of selling works that encouraged readers to reject Islam, according to local media reports.

Col. Rashad Mizel, a local police official, told NBC News that Mousa had been released after promising not to sell the offending books again.'

7.1.4 Arab Weekly also reported on the arrest of Ihsan Mousa in an article published in July 2019 entitled 'Iraq's growing community of atheists no longer peripheral':

'Bookkeeper Ihsan Mousa was arrested during a police raid on his library in late 2018. An official statement by the Directorate of Intelligence stated that the charge facing Mousa "is the attempt to promote and spread atheism."

'The community in the southern province of Nasriya, where the incident took place, rallied behind Mousa. Iraqi writer Ahmad al-Saadawi criticised the arrest and the evolving saga "as trivial and stupid," adding that "authorities are trying to build legitimacy under the imposition of a culture of prevention and control.'''

87. As Mr Howells submitted, atheism is not the same as apostacy, i.e conversion from Islam to another religion, for example, Christianity. Apostacy is dealt with in Section 6 of the CPIN Report at paras 6.1.1 - 6.1.5. Those paras provide as follows:

"6 Converts

6.1.1 UNHCR in its 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq' published in May 2019 summarised that:

'The Penal Law does not prohibit conversion from Islam to Christianity (or any other religion); however, the law does not provide for the legal recognition of a change in one's religious status. As a result, a convert's national identity card would still identify its holder as "Muslim". Instances of open conversion from Islam to Christianity in Iraq are very rarely reported. Converts are reported to keep their faith secret given the widespread animosity towards converts from Islam in Iraqi society and the fact that families and tribes would likely interpret conversion by one of their members as an affront to their collective "honour".

Open conversion would likely result in ostracism and/or violence at the hands of the individual's community, tribe or family as well as Islamist armed groups.'

6.1.2 The June 2019 EASO Guidance on Iraq stated that:

'Apostasy is uncommon in Iraq and is generally seen as unnatural. Despite its acknowledgment of religious diversity, the Personal status laws and regulations prohibit the conversion of Muslims to other religions. Whilst civil laws provide a simple process for a non-Muslim to convert to Islam, conversion of a Muslim to another religion is forbidden by law. Article 26 of the National Identity Card Law affirms the right of non-Muslims to convert to Islam, but does not grant the same rights to Muslims. Converts from Islam to other religions cannot change their religion on their identity cards after conversion and must continue to be registered as Muslims. Children born to a Muslim and a non-Muslim parents are legally deemed Muslim.

'According to COI sources, people who convert from Islam to Christianity may be at risk of being killed in Iraq. While converts may encounter difficulties with the authorities, the main source of problems is usually the community and family, with reactions varying from one family to another. In some cases, family members are open-minded and do not react to the conversion in any way. In others, the convert may be disowned, receive death threats or even be killed. According to some sources, problems typically arise within the extended family. The treatment of female converts is reportedly much worse than the treatment of men.

'The situation of the convert may also vary somewhat depending on the person's social status and tribal background. Kurdish tribes could be more permissive towards the convert compared to Arab tribes. There are also regional differences, with reactions being generally harsher in the countryside. The situation for converts is reportedly worse in other parts of Iraq as compared to the KRI. In 2015, the KRG passed a law to protect the rights of different religious groups. There are no reported cases of anyone being tried in the KRI for changing religion. Although the KRG supports the Christian converts residing in the KRI, state authorities cannot provide the converts constant protection against the possible threat posed by their own tribe. Kurdish authorities are fairly tolerant of the Christian converts but it has not been possible for converts to e.g. change the official status of religion for their children. Some years ago Kurdish authorities did, however, register a Kurdish Christian group that had converted from Islam. The number of Christian converts in the KRI is generally thought to be around a few hundreds.'

6.1.3 The DFAT report of 2018 stated that:

'Regulations founded on Islamic law (sharia) prohibit individuals from converting from the Muslim faith, although DFAT is not aware of any prosecutions for this. Local churches may refuse to accept converts for fear of retribution by members of the local community.

'Under Iraqi law, a child under 18 years old will automatically be converted to Islam if one of their non-Muslim parents has also converted. Muslims are unable to convert to other religions. Under the Personal Status Law (1959), if one parent is Muslim, the child must be Muslim. This prevents children from choosing their own religion as adults.'

6.1.4 The USSD 2018 religious freedom report stated that:

'Personal status laws and regulations prohibit the conversion of Muslims to other religions, and require administrative designation of minor children as Muslims if either parent converts to Islam, or if one parent is considered Muslim, even if the child is a product of rape.

'Civil laws provide a simple process for a non-Muslim to convert to Islam, but the law forbids conversion by a Muslim to another religion.

'... According to Christian leaders, in some cases Christian families formally registered as Muslim but privately practicing Christianity or another faith were forced to choose to register their child as a Muslim or to have the child remain undocumented. Remaining undocumented would affect the family's eligibility for government benefits such as school enrollment and ration card allocation for basic food items, which depends on family size. Larger families with legally registered children received higher allotments than those with undocumented children.

'... The KRG continued to offer support and funding to some non-Muslim minorities, but other minorities in the IKR, including evangelical Christians, said they continued to face difficulties in changing their registration from Muslim to Christian if they were converts, or engaged in in proselytizing.'

6.1.5 The U.S. Commission on International Religious Freedom (USCIRF) annual report covering events in 2018 noted that:

'...the Iraqi government continued to prevent other communities or individuals from freely expressing or practicing their beliefs. The 2015 National Identity Card Law remains problematic for Iraq's minorities: Article 26 forces children with one Muslim parent to identify as Muslim. It reinforces existing restrictions that Muslims cannot change their religious identification on their identity cards after conversion to any other religion. Christian leaders have said that in some cases, families that are formally registered as Muslim but practice Christianity have fled to avoid registering their children as Muslims or to have their children remain undocumented. The law remains in place, despite periodic promises by successive Iraqi administrations since 2015 to revisit it.'"

88. In my judgment, the position of apostates – i.e. converts from Islam to other religions such as Christianity – is different. In relation to converts, for example, some sources stated that such individuals might be “at risk of being killed in Iraq”. By contrast, whilst there is reference to a fear of “discrimination and violence” from families and others reported by atheists, the overall impression left by the evidence in Section 7 of the *CPIN* Report (and it was the only evidence relied upon before me) is that there is no general risk of serious harm to atheists even if they face some discrimination and disadvantage in Iraqi society. The *CPIN* notes that there is no specific law prohibiting atheism although prosecutions have been reported for “desecration of religions”. Whilst there appears to be “distain” and “potential” threats, against those who are known to be atheists, the evidence does not, in my judgment, establish a real risk of serious harm to an individual such as the appellant who is an atheist.
89. Mr Draycott relied on the appellant having to disclose his religion (or lack of it) to obtain ID documents. He accepted that, if this was the case, there was no immediate

threat to the appellant. He relied on the impact at Shi'a checkpoints or from Shi'a militia generally if he were stopped. I was not taken to any detailed evidence on the issue. I do note, however, what is said in para 6.1.5 (above) of the *CPIN* that a change of religious identification on the National ID card is not permitted.

90. I do not accept, on the basis of the evidence relied on, that there would be a real risk to the appellant from Shi'a militia. It is not established on the evidence that any ID document he possessed would show that he is an atheist. That they would know, or ask about his religion, is not demonstrated.
91. Mr Draycott also relied upon HJ (Iran), but that case has no direct application to the appellant's circumstances. The appellant's evidence was that he had told close friends, including in Kirkuk, but mainly in Sulaymaniyah about his atheism. He also told me about his fear if it became more widely known. Indeed, he said that he did not explain it to his neighbours and, in effect, he prevaricated and dissembled when asked by his mother about his not attending the mosque. I also note that during his evidence the appellant explained as one reason why his step-brother was not giving evidence about his religion that it was not the basis of his claim. Even if he were not to disclose his atheism, it would not be, in my judgment, to avoid persecution or serious harm.
92. I do not accept that any subjective fear is well-founded or that there is a real risk to him even if his atheism was more generally known in his home area. Mr Draycott did not rely upon any position expressed in any of the country guidance decisions including SMO which suggested a general risk to atheists in Iraq such that the Refugee Convention would be engaged. The only material to which I was referred is that which I have set out above in the relevant *CPIN*. That evidence does not, in my judgment, sustain a finding that atheists (such as the appellant) are at real risk of persecution or serious harm because of their beliefs.
93. For these reasons, therefore, the appellant has not established his claim on the two bases relied upon under the Refugee Convention. However, for the reasons I have already given, he has established that he is entitled to humanitarian protection or that his return would breach Art 3 of the ECHR.
94. The remaining bases of his claim relies upon Art 15(c) and, it is said, the absence of relevant ID documentation on return to Iraq. I will take each of these in turn.
95. As regards Art 15(c) of the Qualification Directive, Mr Draycott made no oral submissions in support of this basis of the appellant's claim. He did, however, continue to rely upon it in his skeleton argument. In my judgment, the claim under Art 15(c) does not succeed.
96. In SMO the UT recognised that there was no general risk of serious harm arising from indiscriminate violence in Kirkuk Governorate (see [425(30)]). In SMO, the UT adopted the 'sliding-scale' approach of the CJEU in Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 2 CMLR 45 at [39] and Diakite v Commissaire général aux

réfugiés et aux apatrides (C-285/12) [2014] 1 WLR 2477 at [31], the UT said this (at [32]):

“At [31] the Court [in Diakite] reaffirmed the view it expressed in Elgafaji at [39] that Article 15(c) also contains (what UNHCR has termed) a “sliding scale” such that “the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.” The Court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the “sliding-scale” notion.”

97. The UT went on in [250(32)] to identify the ‘sliding-scale’ assessment as follows:

“The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, ‘sliding-scale’ assessment to which the following matters are relevant.”

98. Then at [425(33)] and [425(34)] the UT set out the relevant matters as follows:

“33. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.

34. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area in which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding-scale analysis required by Article 15(c) are as follows:

- opposition to or criticism of the GOI, the KRG or local security actors;
- membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
- LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
- humanitarian or medical staff and those associated with Western organisations or security forces;
- women and children without general family support; and
- individuals with disabilities.”

99. The UT set out the evidence relating to the Kirkuk Governorate at [24]–[50] of its determination. At [251]–[257] the UT set out its conclusions in relation to Kirkuk Governorate as follows.

“Kirkuk Governorate

251. All of Kirkuk governorate is disputed between the GOI and the IKR. It is an ethnically diverse governorate which has seen a great deal of upheaval in recent decades. We were struck by Dr Fatah’s evidence that an individual who had lived in Kirkuk since the 1970’s would have seen it change hands several times. Kirkuk City itself was never taken by ISIL although Hawija was, and Hawija was one of the last places in Iraq to be liberated, in October 2017. The battle for Hawija caused significant damage to its infrastructure. Since control over Kirkuk was taken back from the peshmerga in the aftermath of the Kurdish Independence Referendum, the whole governorate is controlled by the ISF, with a significant presence of PMU militia.
252. ISIL controls no territory as such in Kirkuk governorate but it is certainly present and active, particularly in the areas surrounding Hawija and the Hamrin Mountains. There are pockets of fighters in these areas, or permanently operating attack cells, as they are also called in the background material. We accept Dr Fatah’s evidence that around half a million people live in the areas in which these cells operate.
253. The statistics we have recorded above show a sharp fall in the number of civilians killed. We recall just one of the datasets before us: IBC recorded 950 civilian deaths in the governorate in 2017, which fell to 276 in 2018. The intensity fell from 62.9 civilians deaths per 100,000 population in 2017 to 18.3 in 2018.
254. ISIL’s main focus in Kirkuk is to attack specific targets, who are usually authority figures or those associated with the security services. More recently, as recorded in the Musings blog, they have also been burning farms and agricultural infrastructure, and it is this activity which was responsible for the increased number of security incidents recorded in the blog in May 2019. It is notable that there have been frequent attacks of this nature in Kirkuk, particularly in the South West of the city, which is the area nearest to the Hamrin Mountain range, in which ISIL retains a constant presence despite some ISF successes in locating and destroying their cells. The White Flag group also operates there, although its activities are limited.
255. All commentators agree that ISIL is attempting to regain control of rural areas in this governorate. Concerns have been expressed about their attempts to regroup in the governorate. The killing of village mukhtars and the attacks on farms are part of that plan. There have also been skirmishes during the day time. Civilians have undoubtedly been affected by the violence, particularly in rural areas, but also in Kirkuk city and during checkpoints attacks. We note that EASO recorded one assessment as being that Hawija and Daquq Districts are actually contested, due to the physical and psychological pressure exerted by ISIL over the population. Dr Fatah declined to use that label when it was put to him, although he

said that the situation was bad and that the White Flags also continued to operate in the area.

256. There is a security vacuum in the rural parts of the governorate, left by the departure of the peshmerga in late 2017. ISIL has some support in the region and has been able to move freely and expand its operations in the region as a result of that vacuum. It is regarded as one of the core areas for ISIL's rebuilding efforts by Joel Wing and other respected contributors. We also accept the evidence given by Dr Fatah about the effect of the PMU in Kirkuk governorate. Whilst they lessen the threat from ISIL in the region, they have also brought renewed sectarian tension, for instance by renaming Sunni sites with Shia names. The fact that Kirkuk remains a Disputed Territory also contributes to the uncertainty experienced by residents of the Governorate.

257. The urban areas of Kirkuk and the transport links which connect them therefore suffer primarily from targeted attacks against authority and security figures which cause largely unintended civilian casualties. The rural areas of Kirkuk suffer from targeted attacks of a similar type but also from a security vacuum which is exploited by ISIL and, to a much lesser extent, the White Flags. The risk to civilians in the rural areas is demonstrably higher, given ISIL's attempts to rebuild in those areas and the way in which they pursue that goal. Nevertheless, we do not consider the proper application of the inclusive approach set out above to justify a conclusion the level of violence in the governorate reaches the Article 15(c) threshold. The levels of civilian casualties are not indicative of such a threat, standing as they did at 276 amongst a population of 1.5 million in 2018. Similar figures emerge from the 2019 evidence. The small numbers of ISIL fighters are thinly spread, operating in small groups, and the scale of their activities is limited. As at 23 May, 329,622 IDPs had returned to Kirkuk governorate according to Musings on Iraq. We take account of indirect forms of violence, as required by HM2 and as described above but we do not consider that the level of risk to an ordinary civilian purely on account of his presence in Kirkuk, or any part of it, is such as to cross the Article 15(c) threshold. The existence and actions of permanently operating attacks cells, the coercion brought to bear on sections of the rural population by ISIL and the other forms of indirect violence from ISIL and other groups (including the PMU) are not at a sufficiently high level to cross that threshold when considered as a whole."

100. In his skeleton argument Mr Draycott submitted that the Appellant would face an individual risk of indiscriminate violence contrary to Art 15(c) by reason of his falling within the following enhanced risk categories (i) that Kirkuk is under the control of Iran backed Shi'a militias, given that the Appellant is a Sunni Kurd who has become an atheist; and (ii) given that the Appellant first arrived in the UK in January 2017, he will inevitably be viewed as an individual with Western traits. I do not agree.

101. The appellant's home area is under the control of the Iraqi Government and PMU militia (which are predominantly Shi'a). The appellant does not come from a rural area but, on his own evidence, a town. Even in rural areas, where the UT in SMO noted a higher incidence of attacks by armed groups, the UT still did not consider

that the indirect violence including from groups such as the PMU did not engaged Art 15(c).

102. I see no basis for concluding that the appellant, having been in the UK only since January 2017, would stand out as “Westernised” and be at an enhanced risk as a result. At [311], the UT in SMO noted that the basis for this category was related to enforcing “conservative standards on personal appearance” and was focussed on women rather than men. The UT noted that there was “little recent evidence” to support a claim that men were at “significantly enhanced risk” certainly in areas where ISIL no longer retain a presence. I do not accept, based upon SMO, that the appellant’s home area, which is urban and not rural, is a place which creates any significant risk to him from ISIL or otherwise on this basis.
103. Taking into account all of these factors including his atheism, the evidence does not, in my judgment, establish a real risk of indiscriminate violence to the appellant in his home area. The claim does not succeed under Art 15(c).
104. The final issue concern documentation. It is common ground that without the appropriate ID documentation, the appellant would likely be at risk of serious ill-treatment contrary to Art 3 of the ECHR or at risk of serious harm contrary to Art 15(b) of the Qualification Directive (see SMO headnote at para (11)).
105. It is accepted that the appellant does not have a CSID. It is also accepted that he cannot obtain a CSID or indeed an INID from the Iraqi Embassy in the UK. Mr Howells submitted, however, that the appellant could obtain his existing CSID which he left in Iraq from his family.
106. The appellant’s evidence is that his CSID was left in his home and, he understands, will have been destroyed or lost as a result of ISIL taking over his home area. I see no reason to reject the appellant’s evidence that his documentation was left in his home. It is not suggested that his home area was not overrun by ISIL. It would be pure speculation to conclude that his mother took any documents of the appellants with her to Kirkuk City. The appellant’s evidence was that she did not have her own CSID and, given my (and Judge Richards-Clarke’s) views on the appellant’s credibility, I accept that to be the case. If she did not take her own CSID, there is no good reason to believe she took the appellant’s documents. Given that it is not suggested that the appellant’s home area was not overrun by ISIL, and the looting of his home was likely as a result, I am satisfied that the appellant’s documents (in particular his CSID) have been destroyed or, at least, are lost and could not be obtained by his family in Iraq.
107. However, I do not accept that the appellant’s family could not obtain a replacement CSID for the appellant. Whilst Mr Howells accepted that the CSA Office in Kirkuk City has an INID terminal and therefore was probably no longer issuing CSIDs (see SMO at [431]), the appellant did not claim that his CSID had been obtained from the CSA Office in Kirkuk City. Rather, he maintained that it had been obtained from the CSA Office in his home town of Mala Abdullah Village. The appellant believes that

the documents and that office have been destroyed. However, he accepted that he has no direct knowledge of this and he has simply derived this from media and other reports. As the UT made plain in SMO, it is for an appellant to establish that the relevant office and records are no longer available and that any particular office no longer issue a CSID (see [389]). The evidence in SMO did not suggest that any of the offices were destroyed or that any remained closed or that any records were destroyed during the conflict – although they left open the possibility in some parts of Iraq given the “scale of the devastation” (see [394]). In the absence of supporting evidence, I am not satisfied that it established that the CSA Office (and the records it contained) in his home area of Mala Abdullah Village were destroyed. There is also no evidence that that office now only issues INIDs rather than CSIDs.

108. In SMO, the UT outlined the requirements for obtaining a replacement CSID in Iraq:

“The process for obtaining a replacement CSID by the use of a proxy (or a power of attorney) has been considered in previous cases and there is no reason to depart from the guidance given in those cases. As explained at [25] of AAH (Iraq), a number of documents are ordinarily required and, if those documents are available, and a suitable proxy can present them to the relevant CSA office, a CSID should be issued within three days: [27]. In the event that some of the documents are missing, it might nevertheless be possible to obtain a replacement CSID and the key piece of information which is required is the family’s volume and page reference in the civil register: [28].”

109. The UT referred with approval to the earlier decision in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 (IAC). At [25], the UT in AAH set out the documents usually required:

“25. Dr Fatah states to his knowledge the documents that must be produced in order to apply for a CSID within Iraq are:

- i) Application form
- ii) Birth certificate
- iii) A 'housing card' or a letter from the local council confirming the applicant's residence
- iv) (In the IKR) a recommendation from the *mukhtar*
- v) PDS card
- vi) Two photographs of the applicant (or in the IKR, four)

This information broadly accords with that reproduced by Landinfo (December 2015), who confirm this list but add that the ID card of a close relative would also be required. Dr Fatah has been told by practitioners in the IKR that a person returned to Iraq from abroad who wishes to replace his CSID would, before making his application, also require a certificate from the Ministry of Foreign Affairs.”

110. Whilst these documents are usually required, in AAH the UT recognised (at [28]) that the “key piece of information” is the family’s volume and page reference in the civil register:

“If some of the documents were missing it might generally take you up to a month to collate and replace them all. In his live evidence, when pressed by Mr

Singh, Dr Fatah acknowledged that it may be possible, when dealing with some officials, to obtain a CSID even if one does not have all of the documents listed above. He conceded that an official might be 'persuaded' to overlook the official requirements, and that there may be some degree of flexibility about the process in some governates. He maintained however that it would normally be the case that these documents would be required. The key piece of information that the individual would however have to have would be his family's volume and page reference number in the civil register. Without that, the individual "is in trouble". He could only obtain a new CSID if the Registrar was prepared to trawl through volume after volume looking for the family record. In his evidence before the Tribunal in AA (Iraq) Dr Fatah wondered if such an official would be willing to undertake such a task, or could be "made willing". The Tribunal concluded that this was not likely. The only way that a totally undocumented Iraqi could realistically hope to obtain a new CSID would be the attendance at the civil registry of a male family member prepared to vouch for him or her. The production of a CSID from, for instance, an uncle, would enable the Registrar to trace back through the record to find the individual's father, and in turn him."

111. In the absence of the documentation (and it is not suggested that the appellant has it), crucial to the appellant obtaining such a document would be knowledge of the relevant page and volume for the appellant's family entry in the civil register held at the CSA Office. The appellant's evidence was that he did not know the relevant page and other details. He claimed that he had no reason to memorise such information. In SMO, the UT concluded that, absent particular factors, it was likely that an adult individual would know the relevant information in the civil register in order to obtain a replacement CSID. At [391] the UT said this in SMO:

"We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual's volume and page reference in the civil register. These details appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. It was suggested in a report from the British Embassy in Baghdad, quoted at 6.1.9 of the Internal Relocation CPIN of February 2019, that "[a]ll Iraqi nationals will know or be able to easily obtain this information". We find the former assertion entirely unsurprising. The volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. We do not lose sight of the fact that there remain a significant number of people in Iraq who are undocumented. We do not consider that problem to be attributable to a difficulty with recalling the relevant information. It is instead attributable to the closure - until comparatively recently - of the local CSA offices at which people were required to obtain replacement documents and to their reluctance to return to those areas from a place of relocation."

112. Then, at [392] the UT identified that, in certain circumstances, it might be plausible the person would not know these details:

"There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell

and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. 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 from whom the relevant volume and page reference could be obtained or traced back.”

113. In this case, as Mr Howells submitted, the appellant has not established that there are plausible reasons why he would not know the details. The importance of the document and its contents must have been obvious to the appellant, not least because he went to university in Sulaymaniyah and that document would have been necessary for him to travel and live there. In addition, he has no mental health or other issues which would support a contention that he would not know or would not need to know this important information for living in Iraq. He was an adult who was attending university and clearly had no educational background or issues with illiteracy or numeracy which would make it plausible he would not know the relevant volume and page number. In my judgment, he could provide that information to his family in Iraq who would be able to obtain a replacement CSID from the CSA Office in his home area in Mala Abdualah.
114. Consequently, and possession of that document is generally relevant to the appellant’s situation in Iraq, there is no basis for a claim under Art 3, or, indeed, humanitarian protection) based upon a lack of such a document.
115. The final submission made by Mr Howells concerned the process by which the Iraqi Embassy in the UK could issue the appellant with a Registration Document (1957) which could then be used, with appropriate process, for an INID to be obtained on his return. The issue is dealt with at para 2.6.15.

“2.6.15 Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:

‘CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a ‘Registration Document (1957)’ which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

‘The registration document (1957) must be applied for on the applicant’s behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of

a national identity document [see paragraph 2.6.24 for list of national identity documents] and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

'The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq."

116. On the face of it, the purpose of issuing a Registration Document (1957) is in order to permit an individual to apply for an INID on return to Iraq. Of course, that document can only be obtained by an individual attending the relevant CSA Office (which issues such documents) as it is a biometric document. Mr Howells, however, submitted that possessing a Registration Document (1957) was the equivalent of possessing a CSID for the purposes of safe travel from, for example, Baghdad to an individual's home area.
117. The evidence from the Iraqi Embassy set out in the *CPIN* does not, however, contemplate the document's use in this way. It is silent on whether the document would allow an individual's safe passage to their home area. Mr Howells invited me to infer that that was the case otherwise why would the Iraqi Embassy issue such a document. The answer to that may be that the document is issued in order to allow an individual to obtain an INID in their home area. That may, for example, be Baghdad itself to where there may be no travel difficulties.
118. More specifically, however, the Iraqi authorities are not issuing Registration Documents (1957) in order to facilitate safe passage to an individual's home area. The evidence from the Iraqi Embassy is not concerned with that issue. In my judgment, it cannot be inferred that is the case on the basis of the limited evidence set out in the *CPIN* from the Iraqi Embassy.
119. The UT in SMO did not express any view on whether that document would allow safe passage in Iraq. The UT in SMO was concerned with the relevance of a CSID, an INID, a 'laissez passer' or a 'certification letter'. Neither of the latter two documents was considered by the UT to allow for such safe passage (see [374] and [378]) and, as Mr Draycott submitted, that view was taken in the face of a (potentially) contrary position taken by the Iraqi Embassy itself. Here, of course, there is not even a view expressed by the Iraqi Embassy. In SMO, the UT referred to with approval the expert evidence that Shi'a militia were unlikely to find acceptable alternative forms of identification to a CSID or INID (see [378]). In the light of this evidence, I am not

satisfied that even if the appellant obtained a Registration Document (1957) – and assuming he has not already obtained a CSID as I have concluded he could – that document would obviate any risk to him, for example at Shi’a militia checkpoints on his journey home to Kirkuk Governance. The evidence in this appeal simply does not make good Mr Howells’ submission as to the potential use of the document beyond it being a document that allows an individual, once in their home area, to obtain an INID.

120. Consequently, I reject the appellant’s claim based upon a lack of ID documentation under Art 3 of the ECHR and Art 15(b) of the Qualification Directive.
121. However, for the reasons I have already given the appeal succeeds under Art 15(b) of the Qualification Directive and Art 3 of the ECHR.

Decision

122. The decision of the First-tier Tribunal to dismiss the appellant’s appeal was set aside by my decision dated 6 August 2020. The judge’s decision to dismiss the appellant’s appeal under Art 8 of the ECHR was not challenged and stands.
123. I remake the decision (1) dismissing the appellant’s appeal on asylum grounds; but (2) allowing his appeal on humanitarian protection grounds (Art 15(b)) and under Art 3 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
2 November 2020