



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

Appeal Number: PA/08004/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34
On 19 May 2020**

**Decision & Reasons Promulgated
On 22 May 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**HOK (IRAQ)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by written submissions only):

For the Appellant: Ms C Soltani, solicitor, of Iris Law Firm

For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

Procedure

1. This appeal was due to be heard on 23 April 2020, at Kings Court in North Shields. The parties had been notified of the hearing on 6 March 2020. On 20 March 2020, however, as a result of the Covid-19 pandemic, all hearings in the Upper Tribunal (IAC) were adjourned until further notice. On 20 March 2020, directions were sent to the parties by the Vice President. Those directions indicated his provisional view that the matters which would have been determined at the hearing on 23

April 2020 might properly be determined on the basis of written submissions. In reaching that view, the Vice President indicated that he had had regard to the over-riding objective and to the need to prevent the spread of Covid-19. Both parties were invited to make written submissions on that proposal, and on the merits of the appeal itself.

2. Detailed written submissions were made by the appellant's solicitors on 30 March 2020 and by Mr Whitwell, on behalf of the respondent, on 9 April 2020. Further brief submissions were made (following a query I had raised about service of the first submissions made by the appellant) on 12 May 2020. Neither party objected to the course proposed by the Vice President.
3. By rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules, the Upper Tribunal is permitted to make any decision without a hearing. In deciding whether to proceed in that way, the Upper Tribunal is required by rule 34(2) to have regard to any view expressed by a party when deciding whether to hold a hearing and the form of any such hearing.
4. The provisional view expressed by the Vice President was just that: a provisional view. The decision whether to proceed without a hearing is my own, and I have considered whether it is fair and appropriate to do so. In considering that question, I have considered what was said by Lord Reed in Osborn v The Parole Board [2013] UKSC 61; [2014] 1 AC 1115, at [80]-[96] in particular.
5. The dispute between the parties concerns, at this stage, whether or not the decision reached by the First-tier Tribunal is vitiated by legal error. I am obviously not invited to resolve any disputes of fact, or to consider oral evidence, whether from the appellant or any other witness. There can be no suggestion, to my mind, that either party is prejudiced if no oral hearing takes place. No such submission has been made by either party. The appellant is legally represented and both parties have made full written submissions. I am satisfied, in all the circumstances, that it is fair and appropriate to determine whether or not the First-tier Tribunal erred in law without a hearing.

Background

6. The appellant is an Iraqi national of Kurdish ethnicity. He comes from Jalawla in Diyala Governorate, within Iraq's Disputed Territories and close to the Green Line dividing Iraq and the IKR. His claim for international protection was based, in brief outline, on events which were said to have occurred in late April 2016, when the appellant attended a conference about religious extremism. The conference was at the Garmian University, at which the appellant was studying for a degree. The appellant claimed that he had made remarks at that conference which had attracted the opprobrium of some of those attending. He stated that he had been attacked and that threats had subsequently been made against him. The appellant sought temporary refuge in a nearby village whilst arrangements were made for him to flee

from Iraq. He travelled into Iran using his own passport but he continued his journey to the UK clandestinely, arriving here in 2016. He was returned to France, through which he had travelled, but he returned to this country again in January 2017.

7. The respondent considered the appellant's account to be untrue. She considered that he could be returned safely to Iraq without the UK being in breach of its obligations under the Refugee Convention or the ECHR. The appellant appealed.

The Appeal to the First-tier Tribunal

8. The appellant's appeal came before First-tier Tribunal Judge Cope, sitting at North Shields, on 24 September 2019. The appellant was represented by a solicitor (not Ms Soltani), the respondent by a Presenting Officer. The judge heard oral evidence from the appellant and submissions from both representatives before reserving his decision.
9. The judge's reserved decision was issued on 22 November 2019. He did not accept the appellant's account of events: [61]. He concluded that the appellant's home area was no longer under control of ISIL and did not accept, in any event, that the appellant would be of any interest to that group: [71]. The appellant had access to his Civil Status Identity Document ("CSID") because it, and his Iraqi Nationality Certificate, had been left with his parents in Jalawla: [85]. The appellant remained in contact with them and they would be able to provide the document for him: [ibid]. There was no reason to think, in the circumstances, that the appellant would be in danger between Baghdad (to which he would be returned) and his home area: [90]. The judge did not accept that the appellant was entitled to Humanitarian Protection on account of the situation in his home area: [110]. Nor did he consider the appellant's return would be in breach of the ECHR: [114].
10. Permission to appeal was refused by First-tier Tribunal Judge Grant, who considered that the judge's credibility and other findings had been open to him as a matter of law. The appellant renewed his application to the Upper Tribunal.

The Appeal to the Upper Tribunal

11. The grounds of appeal are not properly delineated into separate, particularised complaints of legal error, as required by Nixon [2014] UKUT 368 (IAC) and Harverye [2018] EWCA Civ 2848. There are seven paragraphs. The first six make various criticisms of the judge's assessment of the appellant's credibility. The final paragraph is in the following terms:

"The FTJ has also erred in his assessment of AAH (Iraq) [2018] UKUT 212 CG (IAC) by departing from country guidance and failing to properly assess whether the appellant can safely return to his home area or relocate to IKR in light of the facts of his case. Even if considering the most up to date information, this would suggest that

the current situation in Diyala is such that it cannot be said that the appellant could not return to this area safely.”

12. Permission was granted by Upper Tribunal Judge Pickup, only in relation to the safety of the appellant returning to his home area. Judge Pickup engaged at some length with the grounds which related to the judge’s assessment of the appellant’s credibility. He cited what was said by McCombe LJ at [12] of VW (Sri Lanka) [2013] EWCA Civ 522 and concluded that the judge had been entitled to reach the conclusions he had, having noted various respects in which the appellant’s account was legitimately thought to be inconsistent and implausible. In respect of the final point in the grounds, Judge Pickup said this:

“The judge gave cogent reasoning for finding that the appellant will have access to his CSID. It was also concluded that the situation in Diyala Province had changed so that it was no longer a contested area and the appellant would be able to return to Jalawla. However, given the remaining uncertainty of the security situation, and in the light of more recent case authority it is arguable that the findings on return to the home area are flawed and in addition the decision failed to address the alternative of relocation as a Kurd to the IKR. On this ground alone permission is granted.”

13. As I have already noted, detailed written submissions were made by both parties in response to the directions issued by the Vice President at the end of March.

Submissions

14. On behalf of the appellant, Ms Soltani submits that the Upper Tribunal should permit argument in relation to the judge’s credibility findings. At [8], she notes that the judge had accepted that the appellant had been consistent in his claims regarding the events at Garmian University but had founded his adverse finding in relation to the appellant’s account on what he perceived to be the implausibility of that account. Ms Soltani submitted that the judge had erred in so concluding, for three reasons. Firstly, she submitted that the judge’s conclusions had been inconsistent. At [36], he had stated that it would be ‘quite wrong to draw any determinative conclusion’ purely from his concern that the reaction to the appellant’s statements was implausible. Subsequently, however, that was precisely what the judge had done, she submitted. Secondly, the judge had failed to identify in his decision what evidence he relied upon to conclude that the appellant’s account was implausible in this regard. Thirdly, in so concluding, the judge had lost sight of what was said by Neuberger LJ at [28]-[29] of HK [2006] EWCA Civ 1037.
15. At [11], Ms Soltani submitted that the remaining findings reached by the judge had flowed from his concern that the appellant’s account was implausible. As such, she submitted, the remaining findings could not stand and the assessment fell to be set aside as a whole.

16. In relation to the matters upon which permission to appeal had been granted, Ms Soltani submitted that the safety of the appellant's return to Iraq was now to be considered in light of the decision in SMO (Iraq) CG [2019] UKUT 400 (IAC). The particular circumstances in the appellant's home area had been considered in that decision and there were several factors which were relevant, including the ongoing circumstances there and the specific features of the appellant's individual case: [12]-[16].
17. At [17]-[18], Ms Soltani sought to raise further matters which fell outside the scope of the grant of permission to appeal. It was submitted that there was no adequate reason for the Tribunal's conclusion that the appellant was not in contact with his parents, and no properly reasoned assessment of their present location. It was also submitted that the judge had erred in treating the appellant's contact with the Red Cross as 'evidentially neutral' when it clearly favoured the appellant's account. The appellant sought a decision in which the judge's assessment was set aside as a whole and the appeal remitted to the FtT de novo.
18. In his initial submissions for the respondent, Mr Whitwell responded only to the submissions for which permission to appeal had been granted. At [10], he accepted that Judge Cope's decision had 'not aged well' as a result of the issuance of SMO (Iraq) at the end of 2019. He nevertheless submitted that SMO had concluded that the appellant's home area was no longer contested and that the findings made by the judge, set against the backdrop of the new country guidance, were largely dispositive of the appeal. He noted that Judge Cope had found, in particular, that the appellant is a Kurdish Sorani speaker who had lived with his family and managed to supplement his income by working whilst he was a student. The judge had not accepted that the appellant had fallen out of touch with his family and had concluded that he would be in a position to obtain his CSID.
19. Mr Whitwell submitted that the challenge presented to the judge's assessment of the safety of return was largely unarticulated. It was not explained, he submitted, why the judge had failed to assess the appellant's return to his home area adequately. In any event, in light of the judge's primary findings of fact, the judge's assessment was adequate. There had been a proper basis for the judge to conclude that the appellant could return to Diyala. It was submitted by the appellant that the judge had erred in departing from AAH (Iraq) but there was no error in that respect, since SMO had replaced all previous country guidance. Setting the judge's findings against the relevant parts of SMO, there was no legal error on the part of the judge, and no need for any further findings of fact.
20. When I first came to the papers in this appeal, I was concerned by the fact that Mr Whitwell had not seen the submissions which were filed by Ms Soltani in response to the Vice President's directions. I issued further directions to ensure that any decision I reached would be procedurally fair. It transpired that there had been a communication error, with Ms

Soltani sending her written submissions to a Home Office email address for FtT correspondence. That difficulty having been resolved, Mr Whitwell made further submissions in writing. He opposed the appellant's attempt to raise the grounds of appeal upon which Judge Pickup had refused permission to appeal. The correct course in relation to those points was for the appellant to pursue a 'Cart' JR under CPR 54.7A. In the event that permission was granted for the appellant to raise these new points, he sought an opportunity to file and serve additional submissions.

Analysis

21. Permission to appeal was refused by Judge Pickup on those grounds of appeal which sought to challenge the judge's adverse findings as to the appellant's credibility. Ms Soltani nevertheless submits that those challenges were arguable and that I should grant permission. Mr Whitwell opposes that course, submitting that the appellant should have made an application to the Administrative Court under CPR 54.7A.
22. I do not accept Mr Whitwell's submission that the appellant should have pursued relief in the Administrative Court. CPR 54.7A is concerned with applications for judicial review of decisions made by the Upper Tribunal refusing permission to appeal. CPR 54.7A(1) states expressly that it applies 'following refusal by the Upper Tribunal of permission to appeal against a decision of the First Tier Tribunal'. There is no reference in the rule to the possibility of an application being made where permission has been granted on limited grounds only. This is plainly an intentional omission, since the CPR makes express provision for such applications in other contexts. Where, for example, permission to proceed with an application for judicial review has been granted 'on certain grounds only', CPR 54.12 makes provision for the partly successful applicant to request that decision to be reconsidered at a hearing.
23. If it had been intended that an appellant who had been granted limited permission to appeal by the Upper Tribunal should have to seek recourse in the Administrative Court, that would have been made clear in CPR 54.7A. I note that rule 21(2)(b) of the Upper Tribunal's own rules makes express provision for a person who has been granted permission by the FtT on limited grounds only to apply to the Upper Tribunal. Had it been intended that a 'Cart' JR was the appropriate course when permission was granted in the Upper Tribunal on limited grounds only, the CPR would have made that clear.
24. That is not to suggest that an appellant in the Upper Tribunal is unable to seek to persuade a judge considering an appeal to entertain argument on grounds upon which permission was refused by the Upper Tribunal permission judge. The position in that regard is to be contrasted with that which applies in an appeal to the Court of Appeal as a consequence of the s54(4) of the [Access to Justice Act 1999: James v Baily Gibson &](#)

[Co \[2002\] EWCA Civ 1690; \[2003\] CP Rep 24](#) refers. In the absence of any such statutory regime, the wide case management powers conferred upon the Upper Tribunal by rule 5 do, in my judgment, enable a judge to entertain argument upon grounds in respect of which permission was originally refused by the Upper Tribunal. That power will obviously not be exercised lightly, since to do so would potentially prejudice the opposing party and run counter to principles of judicial comity, but I do consider there to be such a power.

25. I am wholly unpersuaded that this is a proper case for the use of that power, however. I agree with the reasons given by Judge Pickup for refusing permission to appeal against the judge's credibility findings. Judge Pickup cited what had been said by McCombe LJ in VW (Sri Lanka) about impermissible attempts to reclothe disagreement with factual findings as assertions of legal error. Those remarks are certainly apposite in respect of these grounds of appeal. Also relevant is what said Lewison LJ at [114] of Fage v Chobani [2014] EWCA Civ 5, regarding the danger of an appellate body merely 'island hopping', whereas the trial judge will have regard to the whole sea of the evidence presented.
26. Presumably in recognition of the logic of much of what was said by Judge Pickup in refusing permission, Ms Soltani sought in her written submissions to focus her fire on one particular aspect of the judge's credibility assessment. She concentrated upon the judge's observation that it was implausible that other attendees at the conference would have reacted in the manner claimed by the appellant. The relevant section of the judge's decision is at [35]-[38]:
- "[35]I find it difficult to understand quite how his words could have been misconstrued as an attack on Islam as a whole.
- [36] I readily acknowledge that there may be different cultural and religious sensibilities in a society such as Iraq which could lead to difficulties of interpretation with a liberal western society such as the United Kingdom. It would thus be quite wrong to draw and determinative conclusions on the basis of this factor alone, and I do not do so.
- [37] Nonetheless it does seem to me implausible that there would have been that type of reaction described by the appellant, especially in the context of a conference about religious extremism.
- [38] So far as the physical attack on the appellant is concerned I again bear in mind the cultural differences that there might be in Iraq compared to the United Kingdom. However, I once more find it somewhat implausible in the context of an academic conference."
27. Insofar as it is suggested by Ms Soltani that the judge's approach was contrary to that required by Neuberger LJ in HK v SSHD, the point is unarguable. As Keene LJ subsequently explained in Y v SSHD [2006] EWCA Civ 1223, a judge in this field is not required to accept at face value an account of the facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. What the judge is required to do is to look through the

spectacles provided by the country information before him in deciding whether an account is plausible or not. That is evidently what Judge Cope did in the present case. The section above shows that he was cognisant of the particular situation in Iraq, characterised as it is by heightened sensitivities of political, religious and ethnic types. That awareness is also apparent from an earlier paragraph of the decision, in which the judge said this:

“[20]As is well known in this jurisdiction and generally, Iraq in recent years since the American-led western invasion of the country in 2003 has been blighted by sectarian, ethnic and tribal violence. More recently this has particularly taken the form of attacks by Islamist fundamentalist groups called variously Islamic State, ISIS, ISIL or Daesh, against the governments in Baghdad and in the KRI. In this decision I refer to these fundamentalist groups as ISIS.”

28. It is abundantly clear, to my mind, that the judge was aware of the approach he was required by the authorities to adopt, and that he adopted that approach by taking careful account of the situation in Iraq before observing as he did at [37]-[38].
29. Ms Soltani submits that the judge's conclusions were inconsistent, in that he said at [36] that it would be quite wrong to draw any 'determinative conclusions' from his concerns as to the plausibility of the account but he went on to do just that. This submission is based on a misreading of the decision and a misunderstanding of the approach required by the authorities. The judge did not attach 'determinative' weight to his concern regarding the plausibility of the appellant's account. It was one of a package of points which led him to the conclusion that the appellant's account was not reasonably likely to be true. Other points concerned the judge's concern about two aspects of the appellant's account which he felt unable to reconcile. On the one hand, at [39], he noted that the appellant had stated that he did not know who had attacked and threatened him and which group they belonged to. At [40], however, the judge noted that the appellant had stated that the group would be able to find him wherever he went in Iraq. At [41], the judge also observed that the appellant had developed his account: in his SEF he had known nothing about the group, whereas he had said that it was a Shia militia group in his witness statement. Yet further problems were considered by the judge at [43]-[47]. There was a contradiction in the appellant's evidence as to whether there were security guards present during the conference and it was not plausible that his brother had been able to remain at the family home for several months after being threatened there by the group.
30. At [57]-[61], the judge drew together the various strands of his analysis. He noted that there was a degree of consistency in the appellant's account but, weighing that against concerns he had expressed in the preceding paragraphs, he concluded that the central account presented by the appellant was not reasonably likely to be true. It is quite clear, with respect to Ms Soltani, that the judge's analysis did not begin and end with his observation that the appellant's account was

implausible. On the contrary, the judge adopted precisely the approach required by Karanakaran [2000] 3 All 449. He did not treat his concerns about the plausibility of the appellant's account as determinative. Instead, his concern in that regard was woven into his analysis of the account as a whole before he reached an overall conclusion that the account was not reasonably likely to be true. It is not arguable that the judge's assessment was inconsistent in the manner suggested by Ms Soltani.

31. It is then said by Ms Soltani that the judge failed to identify which specific parts of the background evidence led him to doubt the appellant's account. But it was not for the judge to pinpoint which parts of the background evidence caused him to doubt the appellant's account. Nor was the judge required to rehearse exactly what the appellant had said, to whom he had said it and what was said in response. This is the 'sea of evidence' of which Lewison LJ spoke in Page v Chobani. In this case, the judge heard contested evidence from the appellant, who was cross examined about the events which he claimed to have taken place in Iraq. The judge considered that evidence and took account of the background circumstances in Iraq. Having done so, he did not consider the appellant's account of events at the university to be plausible. It is not arguable, in my judgment, that he was required to particularise his process of reasoning in any greater detail. To require judges of the FtT to do so would be to require elaborate decisions, bringing about unnecessary delay to litigants and the state alike. The appellant can be under no illusion about the basis upon which he has lost and it is unarguable that the judge's reasons were inadequate to explain the basis of his concerns.
32. In the circumstances, I agree with Judge Pickup that the challenge to the judge's credibility findings is unarguable. Proper and sustainable reasons were given for the judge's conclusion that the appellant had fabricated his account of events at the university.
33. I therefore turn to the basis upon which permission was actually given. Ms Soltani contends that the judge reached an unsustainable conclusion when he decided that the appellant could return to his home area (Diyala) in safety. The judge decided this appeal in November 2019. Shortly before Christmas 2019, the Upper Tribunal gave new country guidance in the form of SMO (Iraq). That new guidance was not mentioned in the appellant's renewed grounds of appeal which were settled on or about 20 January 2020, but it was clearly this 'more recent case authority' which prompted Judge Pickup to grant permission to appeal.
34. Both advocates have based their submissions on the guidance given in SMO (Iraq). I consider there to be a fundamental problem with that approach. A country guidance decision of the Upper Tribunal is one which considers the factual situation in a given country at a given time. It is not a decision to which the declaratory theory of the common law

applies. It does not have the retrospective effect considered by the Appellate Committee in Kleinwort Benson Ltd v Lincoln City Council & Ors [1998] UKHL 38; [1999] 2 AC 349. As the Vice President put it in Adam [2017] UKUT 370 (IAC); [2018] Imm AR 183, a failure to take into account a Country Guidance decision not in existence at the time of the judge's decision could not be an error of law. The up-to-date situation, including any more recent country guidance, is only relevant at the point that an appellant has passed through the gateway presented by s12(1) of the Tribunals, Courts and Enforcement Act 2007 (by securing a finding that the FtT erred in law) and the Upper Tribunal is considering which of the actions specified in s12(2) should follow from that conclusion.

35. In CA (Ghana) v SSHD [2004] EWCA Civ 1165; [2004] Imm AR 640, in relation to the previous statutory scheme, Laws LJ summarised the position in this way, at [15]:

“... once a material error of law is shown, I for my part would accept that the IAT must then decide what if any relief to grant in the light of the facts arising at the time it is considering the case. The appellant's skeleton argument prepared for the permission application accepts as much. The judicial review court, and this court on appeal in cases where our jurisdiction goes to legal error only, proceeds in precisely the same manner.”

36. Sir Martin Nourse agreed. Mummery LJ gave a short judgment of his own, underlining Laws LJ's rejection of the submission made by the Secretary of State, which was that up-to-date evidence could be considered as soon as permission to appeal had been granted. These dicta continue to apply, in my judgment, to appeals governed by the TCEA 2007.
37. As Mr Whitwell submitted in writing, it is not altogether clear what is said by the appellant to be wrong with the risk assessment undertaken by the judge on the basis of the country guidance which was in force at the time of his decision. He was very much aware of the development of the country guidance on Iraq, as he demonstrated by the full list of such cases at [19] and the application of those cases at [63] *et seq.* The judge was aware that the Upper Tribunal had held in AA (Iraq) [2015] UKUT 544 (IAC) that the situation in the appellant's home area was contrary to Article 15(c) of the Qualification Directive. Over the course of two pages of his decision (pp13-14), he analysed the evidence that ISIL had been removed from the formerly contested areas and he considered what had been said about Diyala in AAH (Iraq) CG [2018] UKUT 212 (IAC). He concluded that it had not been shown that the appellant would be at risk from indiscriminate violence arising from internal armed conflict in his home area: [110].
38. In an earlier section of the decision, at [86]-[91] in particular, the judge also considered whether the appellant would be at risk on the journey from Baghdad (to which the appellant would be returned) to Jalawla. He gave detailed and cogent reasons for concluding that the appellant, who

would be in possession of his CSID, would be able to make that journey without encountering treatment contrary to either Convention.

39. There is no reasoned challenge to these conclusions in the grounds of appeal. It is said that the judge erred in departing from the country guidance but there is no reason given for why his detailed analysis is said to be legally deficient. The approach adopted by the judge essentially mirrored that required by MST (Eritrea) CG [2016] UKUT 443 (IAC) and the evidential basis upon which he decided not to follow AA (Iraq) cannot be faulted. It is said that the judge failed to 'properly assess' whether the appellant could safely return to his home area but there is nothing in that criticism; the judge undertook a full and reasoned analysis and came to a proper conclusion on the basis of the evidence before him.
40. It is then suggested in the grounds, as I understand it, that the judge overlooked evidence which suggested that 'the current situation in Diyala is such that it cannot be said that the appellant could return to his area safely'. As Mr Whitwell observes, however, there is no further particularity in this challenge. The evidence which the judge is said to have overlooked is not identified and it is far from clear to me, having considered the evidence in the file, that there was anything which militated specifically against the conclusion reached by the judge.
41. I do not consider there to be a legal error in the decision reached by the judge on the basis of the evidence before him. As I have explained above, that suffices to dispose of the appeal. Since both parties have made submissions about the effect of SMO (Iraq), however, I will state my conclusions on those submissions.
42. With respect to Mr Whitwell, I think he might have accepted too readily that the judge's decision had not 'aged well' in light of the subsequent country guidance. On the contrary, I consider the judge's decision to have aged really rather well in light of SMO (Iraq). He reached the same conclusion that the Upper Tribunal reached in respect of the general Article 15(c) situation in Diyala and the other parts of the formerly contested areas. He noted the central importance attached to the CSID in Iraq and he concluded that the appellant would not be in difficulty because he would have access to his own CSID, rather than having to navigate the task of replacing it from the UK or in Iraq. The judge even noted, at [82], the progressive replacement of the CSID with a document which, in SMO, the Upper Tribunal decided to call the 'INID', the Iraqi National Identity Card. That was a matter which particularly concerned the Upper Tribunal, as can be seen at [383] of our decision in that case. In many respects, therefore, the judge's decision enquired into many of the matters which were considered to be particularly relevant in SMO.
43. With some encouragement from the basis upon which permission to appeal was granted, what Ms Soltani submits, however, is that there are aspects of the judge's decision in which he has not conducted as full an enquiry as would now be expected of a judge applying SMO (Iraq).

I accept that submission. The judge reached the same conclusion as the Upper Tribunal in respect of the first stage of the Article 15(c) enquiry in Diyala but he did not undertake a detailed 'sliding scale' analysis thereafter, encompassing the matters set out at [5] of the headnote to that decision. In her written submissions, Ms Soltani helpfully set out [98] and [112] of the Upper Tribunal's decision, highlighting certain sections of the background material concerning Diyala in general and Jalawla in particular.

44. It is clear that Diyala is a particularly vulnerable part of the formerly contested areas. It is also clear that the Kurds have been marginalised in Diyala, as set out at [112] of SMO. This appellant is a non-practising Muslim who has no association with ISIL or with the security apparatus. He is not - or has not been accepted to be - a known opponent of the GOI, the KRG or local security actors in the region. He is fit and well. He has family members there and will be able to travel (on the judge's findings) on his own CSID card. On the basis of the findings reached by the judge, therefore, the appellant will be returning to a volatile region as a member of a minority group (being Kurdish) but with his own document and a support base. Had I been required to apply the 'sliding scale' analysis for myself, on the basis of those findings, I would have concluded that the appellant would not be at enhanced risk, and that his return would not be contrary to Article 15(c) of the Qualification Directive.
45. As I have made clear in the preceding paragraphs, I reach those conclusions on the basis of the findings made by the judge. In doing so, I have not lost sight of the final attempt made by Ms Soltani, at [17]-[18] of her written submissions, to attack the findings made by the judge about the appellant's access to his CSID and the location of his parents. I consider that these findings were open to the judge, however. He concluded that the appellant had lied to him about the substance of his asylum claim and, as he explained at [49]-[50], he also concluded that the appellant had lied about the extent to which he had been in contact with his parents. Against this backdrop, it was open to the judge to conclude that the Red Cross letter (which recorded a 'tracing' approach by the appellant) was 'evidentially neutral' and to draw the inference that the appellant's parents remained in Diyala, where they could provide support and a CSID. These were permissible inferences for the Tribunal of fact to draw and not, as Ms Soltani sought to submit, merely an impermissible 'leap' of the type cautioned against by Lord Dyson JSC at [21]-[33] of MA (Somalia) UKSC 49; [2011] 2 All ER 65.
46. I do not accept, in the circumstances, that the decision of the FtT was vitiated by legal error. Nor do I accept the submissions made by Ms Soltani about the subsequent guidance in SMO (Iraq). In the circumstances, the appeal is dismissed.

Notice of Decision

The decision of the FtT did not contain a material error of law and will stand. The appeal to the Upper Tribunal is dismissed.

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

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

M.J.Blundell

Judge of the Upper Tribunal (IAC)

19 May 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a **Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday**.
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email.**