



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07741/2019

**THE IMMIGRATION ACTS**

Heard by skype for business  
On 9 April 2021

Decision & Reasons Promulgated  
On 23 April 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AKK  
(ANONYMITY DIRECTION MADE)

**Appellant**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Representation:**

For the Appellant: Mr Holt, Counsel instructed on behalf of the Appellant.

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction:**

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

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a citizen of Iraq. On 31 July 2019, the respondent made an order that the appellant is to be deported from the United Kingdom ('UK'), following his criminal conviction as it was considered that his presence in the UK was not conducive to the public good. Following representations made on behalf of the appellant, the respondent refused the appellant's protection and human rights claim in a decision letter dated 31 July 2019.
2. The appeal that decision before the FtTJ (Judge Kelly) and in a decision promulgated on 23 January 2020 judge Kelly dismissed his appeal.
3. Permission to appeal that decision was sought and on 10 March 2020 permission was granted by FtTJ Simpson.
4. Following a decision pursuant to Rule 34 UTJ Coker reached the conclusion that the decision of Judge Kelly involved the making of an error on a point of law and set aside the decision to be remade by the Upper Tribunal. This is the remaking before the Upper Tribunal.

**The background:**

5. On 24 June 2018, the appellant entered the UK clandestinely by lorry and he claimed asylum the following day having been encountered by the police. His asylum claim was refused on 30 July 2008 and his appeal against that decision was dismissed by Immigration Judge Reid on 11 August 2008.
6. The appellant was granted discretionary leave remain on 19 July 2013 and this was subsequently extended until 27 August 2016.
7. He applied (in time) for further leave to remain on 5 August 2016.
8. During his residence in the United Kingdom he has committed criminal offences. On 4 August 2015 he was convicted in the magistrate's court for assaulting a constable and fined £50.
9. On 17 March 2017 he was convicted of the Crown Court for wounding/inflicting grievous bodily harm (contrary to section 20 of the Offences Against the Person Act) and was sentenced to 12 months imprisonment following his plea of guilty. The circumstances of that offence are set out fully in the sentencing remarks in the respondent's bundle. Whilst the pages were not complete, a full copy of the sentencing remarks were provided by counsel. I will return to the circumstances of the offence later on in this decision.
10. In light of his conviction, a stage 1 notice of decision to deport him was issued on 17 March 2017 and a fresh stage I notice of decision to deport was served on 19 September 2017. This was responded to by the appellant by further representations received on 8 October 2017 from his partner and 13 October 2017 from his stepson.

On 19 October 2017 further submissions on asylum grounds were received from his legal representatives where he made a protection claim and a human rights claim.

11. A decision was made on 31 July 2019 to make a deportation order and a decision to refuse a protection and human rights claim.

The respondent's decision:

12. In a decision made by the respondent on 31 August 2019 in his claim was refused. It was said that the appellant having stated that his mother and half siblings lived in Iraq and that he spent 27 days visiting his stepsister in Iran in June 2011, he would therefore have the help and support of family members on return to Iraq and be able to obtain assistance from them for a CSID card.
13. As he is an ethnic Kurd, he would be up to relocate to and integrate into the IKR (see paragraphs 31 - 40, 77 - 80). He would be excluded from humanitarian protection by virtue of paragraph 339 D of the immigration rules (see paragraphs 85 - 89).
14. In relation to Article 8, whilst it was accepted that the two children were "qualifying children" and that he had a genuine and subsisting parental relationship with them, it was not accepted that their separation from him following his deportation would be "unduly harsh", given that their mother is their primary carer, they are not financially dependent on him and they can continue their education as British citizens and will be able to continue their contact with them by the modern means of communication (see 105 - 110). As regards the relationship between the adult children, it was not accepted that the relationship went beyond normal emotional ties between adult family members. As regards his partner, in the absence of satisfactory evidence of cohabitation, is not accepted that he had a genuine subsisting relationship with her. As he spent majority of his life in Iraq, there were no other compelling circumstances to outweigh the public interest in his deportation (at paragraph 129).
15. The appellant appealed the decision, and it came before the FtT (Kelly) on 2 January 2020.
16. In a decision promulgated on 23 January 2020 the FtTJ dismissed his appeal. The factual circumstances of the appellant are set out at paragraphs 3 - 9. The appellant is a citizen of Iraq of Kurdish ethnicity from Kirkuk who left Iraq in 2008 and had not returned there since that date. His claim was that it lost contact with all members of his family who may otherwise have been able to assist him in obtaining replacement documents as he no longer has a CSID card.
17. In terms of his family life, the appellant relied upon his relationship with his children of his former relationship) and the two children of the family and also his relationship with his current partner.
18. The judge heard evidence from the appellant and his partner and set out his findings at paragraphs 24 - 29. The judge accepted the appellant's evidence concerning his upbringing in Iraq set out at [24]. As to family relatives in Iraq and the appellant's

contact with them the judge set out his factual findings at paragraphs [25] and [26] and concluded from the evidence that he did not accept that the appellant had lost contact with his stepsister N nor that he had lost contact with his other step siblings but accepted that he had lost contact with his biological mother.

19. In terms of family life, he was satisfied that the appellant was in a genuine subsisting relationship with W ( at [29]) and that the genuineness of the appellant's current relationship with his former partners adult children as well as his own children were not in dispute by the respondent at [29]).
20. The FtTJ considered the protection appeal in the light of the country guidance of SMO and others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 ("SMO") and concluded that the appellant's home area of Kirkuk was no longer a "contested area" and could return there. He did not fall into any of the categories outlined would be at risk of harm and whilst the judge considered that "the only contra indicator is that he is to some extent now westernised, he was not satisfied by virtue of that fact alone that it fell within a risk of harm within the terms of Article 15(c).
21. Furthermore, at [31] he was satisfied that the appellant would have access to a replacement CSID based on his findings at the appellant had not reasonably likely lost contact with his relatives. He found that there were no regular flights to the IKR but with its close proximity to Kirkuk that he could be returned to Iraq via Erbil rather than Baghdad. He would therefore not have to travel in order to reach his destination for the purposes of obtaining a replacement identity document and a CS ID card in Kirkuk.
22. As to the human rights appeal on Article 8 grounds, when considering exception 1 the FtTJ found that he had been lawfully resident in the UK for a period of only six years out of the total period of 32 years of his life could meet the requirements of the rule thus could not meet S117C (4).
23. As to the exception 2, based on his family life, the judge did not accept that the effect of the appellant's deportation upon his partner would be unduly harsh given that she entered into the relationship with him at a time when his immigration status was precarious pending the application for further extension of his leave made on 5 August 2016. She ought to have known it may only been possible to continue their relationship from outside the United Kingdom. He found it to be an adult in good health and that together with the recent improvements in Kerr Cook it was reasonable for her to relocate should she choose to do so.
24. As to the circumstances of the children they were addressed at [32] but found that when taking into account the appellant's term of imprisonment of 12 months, "I must therefore hold the public interest outweighs the primary consideration of the best interests of the children unless I conclude that the effect of his deportation upon them would be "unduly harsh". The judge concluded that whilst the consequences of deportation and their separation would be harsh, it would not be unduly harsh given that their mother was their primary carer, they are not financially dependent on the appellant and they could continue their education the U.K.'s British citizens and will

be able to continue their contact with the appellant by modern means of communication and visiting him in the IKR.

25. The FtTJ considered his relationship with the adult stepchildren that concluded that the nature of the relationship nor the effect of his deportation upon them outweighed the public interest in the appellant deportation. The FtTJ therefore dismissed the appeal.
26. The appellant sought permission to appeal that decision and permission was granted by FtTJ Simpson on 10 March 2020.
27. In light of the Covid-19 pandemic, directions were made by Upper Tribunal judge Coker concerning further conduct of the appeal on the 29 April 2020 and provision was made for the question of whether there was an error of law and if so whether the decision of the FtTJ should be set aside to be determined on the papers.
28. It is recorded that the appellant complied with the directions but that the respondent made no submissions and made no risk request for an extension of time in order to make such submissions and did not seek an oral hearing. There was also no rule 24 response.
29. In the light of the material that was before the Upper Tribunal, Judge Coker reached the conclusion that the appeal could be heard on the papers and that a decision could be made under rule 34 without a hearing.
30. UTJ Coker set out her consideration and findings at paragraphs 4-10 of her decision as follows:

“Consideration and findings.

4. The appellants appeal was against the refusal of his international protection and human rights claims which was triggered by the signing of an automatic deportation order following his conviction in March 2017 resulting in a sentence of 12 months’ imprisonment. The appellant is from Kirkuk, which is not part of the IKR. The FtT judge found that because the appellant’s home area (Kirkuk) is no longer contested he could return there without being at risk of being persecuted because he did not fall within any of the identified groups at risk. The judge found that the appellant would be able to access a replacement CSID on his return to Iraq and that he could be returned to Erbil or Sulaymaniyah and would thus not have far to travel to Kirkuk to obtain a replacement CSID.
5. The first tier Tribunal judge concluded that it would not be unduly harsh for the appellant to be separated from his current partner who had entered into her relationship with him at a time when his immigration status was precarious and who in any event could, if she chose to, relocate to Iraq with him. The judge also found that the best interests of the appellant’s two minor children (the mother of whom is not his current partner) are a primary consideration that is to be balanced against the public interest. The judge concluded that the public interest outweighs the primary consideration of the children’s best interests and that it would not be

unduly harsh for them to be separated from the appellant because *inter alia* they would be able to visit him in the IKR.

6. The appellant submits that the judge's finding that the appellant could travel to Erbil or Sulaymaniyah is an error of law that fundamentally impacts upon the decision given that the appellant is not returnable to the IKR but would be returned to Baghdad. The appellant also submits that the judge has failed to make findings as to the risks faced by the appellant travelling from Baghdad to Kirkuk and to the IKR.
7. In so far as the private and family life of the appellant are concerned, the appellant submits that the first tier Tribunal judge has conflated three separate issues namely whether or not removal would be unduly harsh, the best interests of the children and the impact of the appellants' criminal contact conduct and public interest in removal.
8. *SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400(IAC)* makes clear that only former residents of the IKR will be returned to the IKR. All other Iraqis will be returned to Baghdad and the Iraqi authorities will only allow an Iraqi National to enter Iraq if they are in possession of a current or expired Iraqi passport or a *laissez passé*. No Iraqi National will be returnable to Baghdad if not in possession of one of those documents. The appellant does not have one of those documents. In paragraph 31 of the decision, the first tier Tribunal judge states that the appellant would have access to a replacement CSID card from Kirkuk on his return to Iraq. The judge has failed to recognise that this appellant would be returning to Baghdad without a CSID or passport or *laissez passé*. He therefore cannot be returned there. This error on the part of the judge impacts upon the conclusion reached regarding the protection claim. The error by the judge of the availability of a CSID impacts upon the conclusion reached regarding the protection claim. The judge has erred in law in his conclusions on the protection claim.
9. Although the judge in considering the human rights aspects of the appellant's appeal refers to those convicted of crimes that lead to a sentence of less than 12 months, sentences of 12 months to 4 years and sentences of four years and above, the judge balances the best interests of the children against the public interest in deportation. There is no sliding scale. The judge makes a finding that it would not be unduly harsh for the children to be separated from the appellant but the conflation of the best interests of the children in consideration of the public interest of deportation indicates that the judge has imported a sliding scale of assessment. The judge has erred in law in his conclusions on the human rights claim.
10. The decision reached by the First tier Tribunal judge both in connection with the protection claim appeal and the human rights claim appeal is set aside to be remade. Although the conclusions are set aside the judge has set out in the decision the evidence that was before him and has made findings of fact. There is no suggestion that the judge has failed to have regard to evidence that was before him and it is therefore appropriate that

this matter is listed for resumed hearing before an Upper Tribunal judge rather than remitted to the first-tier tribunal.”

31. Accordingly UTJ Coker concluded that the decision of Judge Kelly involved the making of an error on a point of law and set aside the decision to be remade by the Upper Tribunal.
32. At the same time UTJ Coker set out consequential directions as follows:
  - (1) the parties to agree a schedule of agreed facts as found by FtTJ Kelly, such schedule be filed and served no later than 35 days after the sending of this decision.
  - (2) Both parties have leave to file and serve in hard copy by email such further background evidence as they seek to rely on no later than 21 days before the resumed hearing. Reference document to the public domain to be identified by hyperlink.
  - (3) Both parties to file and serve in hard copy by email skeleton arguments, with hyperlinks to case law relied upon, no later than 14 days before the resumed hearing.
  - (4) If either party wishes to call oral evidence, and applications to be made to the Upper Tribunal, with reasons, no later than 35 days after the sending of this decision.
  - (5) The matter to be set out in all remote hearing. If either party sick subject to remote hearing, any objection must be made detailed reasons to the upper Tribunal within seven days of the sending of this decision. In any event both parties to provide the upper Tribunal details of the contact arrangements to enable remote hearing to take place.
  - (6) Other directions related to service of documents.
33. The hearing was listed before the Upper Tribunal as a resumed hearing on the 9 April 2021.

**The re-making decision before the Upper Tribunal:**

34. At the resumed hearing both parties were represented by advocates; the Appellant was represented by Mr Holt of Counsel who had represented the appellant previously and the Respondent by Mr Diwnycz , Senior Presenting Officer.

**The evidence:**

35. The Appellant’s solicitors had provided a bundle of documents before the FtTJ which I had before me. In addition, there were three further witness statements; Witness statement of the Appellant, and one from his current partner and one from his former-wife.
36. The Respondent relied upon the material in the Respondent’s bundle which included the decision letter, a copy of part of the sentencing remarks, previous decision of the

FtT (Judge Reid) in 2008 and copy of asylum interview, screening interview, application made for ILR in 2016 along with the accompanying documents.

37. Country evidence was filed on behalf of the respondent in the form of the CPIN dated June 2020.
38. The most recent GC decision of SMO had also been placed before the tribunal and formed the basis of the submissions of the parties as recorded below.
39. When setting out a directions for the remaking of the appeal, UTJ Coker made provision for the appellant to call any oral evidence that he required. The appellant's solicitors indicated in correspondence in October 2020 and again in March 2021 that further oral evidence would be required from the appellant and his partner. In support of the oral evidence three witness statements were filed in behalf of the appellant, one from the appellant himself, one from his partner and one from his former partner.
40. Counsel Mr Holt confirmed that discussions had taken place with his instructing solicitors and the appellant and that all consented to the appeal taking place by way of remote means, which included the giving of evidence of the witnesses and that this had been communicated to the tribunal.
41. I heard submissions from the parties at the outset of the hearing to satisfy myself that hearing the appeal by way of a remote hearing would be the correct course to take and to ensure that all matters were canvassed before the hearing took place and to ensure the fairness of the proceedings.
42. Mr Holt confirmed that preparations had taken place for the remote hearing and that the appellant and the witnesses were aware of the nature of the hearing and had given their consent to do so. Having considered the submissions of the parties and having done so in the light of the relevant factors both identified in recent case law in the family division and the Court of Appeal, the Equal treatment bench book and practice directions, I was satisfied that the appeal could be conducted fairly by remote means. This was an appeal where the oral evidence was limited in its nature and none of the parties required an interpreter. There were no issues of credibility raised concerning the evidence of the appellant and his partner; she could provide no evidence on issues relevant to Iraq and her evidence as to their relationship had been accepted by Judge Kelly as a genuine and subsisting relationship when addressing Article 8.
43. No technical problems encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means and I also confirm that at the conclusion of each of the witnesses they confirmed to me that they had no difficulties in either understanding the questions asked or providing answers to them and confirmed that they were able to see and hear the proceedings well.
44. I heard evidence from the appellant, he confirmed the contents of his two witness statements which he recalled signing and was satisfied that those statements were



accurate and true to the best of his belief. Those statements were adopted as his evidence in chief.

45. Mr Holt asked only one question of him, which was whether he had ever heard of his family book number? The appellant replied "what is that? The appellant was asked if he was familiar with it? But the appellant said that he was not.
46. In cross-examination he was asked if he remembered the details of his CSID and he replied "what is a CSID? When it was described to him by Mr Diwnycz as a green card with his name, date of birth and important details on it which is used to obtain services and for purposes of school he stated, "no I do not remember it". When asked if he recalled having had such a card, the appellant stated "no". He confirmed that he had attended school in Iraq "for a few years". When asked if he recalled his stepsister providing any details as to the card, he said "I do not remember stuff like this". He was later asked if he ever had an Iraqi passport. The appellant replied "no".
47. When asked if he had ever had an Iraqi ID card he said "I may have it, I have not seen it. In Iraq we have a document for food, but he did not know if it was still being used for this.
48. In relation to questions about his relationship with the children, he stated that he had grown up as an orphan and that he did not want his children to grow up in the same way.
49. As to contact with the children, he said that he saw the children regularly. When asked about the frequency he stated "it depends; sometimes once a week sometimes five times in a week. He confirmed that there was no formal contact arrangement in place.
50. When asked questions about contact with his family members in Iraq and the last time we had contact with them, he confirmed that he last had contact with his stepsister in 2011 in Iran and that was the last time that he had seen her and that he had no idea where she was now.
51. When asked if there were other members of the family in Iraq, he explained that he had step brothers and stepsisters but that they had "taken advantage of me they took things from me; they did not help me, I have no contact with them". When asked if he knew where they were? He said "not really, they could be anywhere in Iraq. When asked when he saw his stepsister in 2011 if she knew where stepsisters and brothers were, the appellant stated, "we did not talk about that." He was asked if she would have any expectation of knowing where they were? The appellant stated "no".
52. It was suggested to him that Kirkuk no longer was experiencing any problems as it had in the past as evidenced by the most up-to-date material but the appellant in his opinion stated that it was unstable and that he based that on having lived there on a daily basis before coming to the United Kingdom in 2008.

53. There was no re-examination. By way of a question of clarification I asked the appellant to identify who the uncles were who had been mentioned in his previous asylum claim. He stated, "on my dad's side, they took everything from me." I asked him to confirm if he could if there were any other uncles other than those on the downside. He said "no". He then explained that the uncles he was referring to were dead and they died in 2010. When asked how we knew this, he said he knew from contact that it had in 2010. He said they were last in Kirkuk. He was asked about the screening interview in which reference is made to his uncles providing him with money to the UK. He stated that "I cannot remember". Neither advocate had any questions arising out of the clarification questions.
54. I also heard oral evidence from the appellant's former partner G. She confirmed her witness statement dated 18 March 2021 was her witness statement, which he had signed and confirmed that the contents were true. This was adopted as evidence in chief. There were no other questions in evidence in chief asked by Mr Holt.
55. Turning to cross-examination, she was asked if there were any formal arrangements made as to contact. She stated that there were no such agreement, but they had decided the issue of contact the children between themselves and that it would be "50-50". When asked how frequently the appellant saw the children she stated that it was nearly every day and that he picked them up from school a few times per week and that whilst he does not take them out as a result of the current restrictions prior to lockdown he take them to places like the park. She explained that when they first went into lockdown he was not allowed to see the children but as she had a balcony he would asked to see them whilst they were standing on the balcony. When asked to confirm the longest period where the appellant had not seen the boys, the witness was not sure and referred to his prison sentence. She also referred to times when she had been away on holiday. She confirmed that he blasted the children three days ago. No further questions were asked.
56. The last witness was the appellant's partner who confirmed her two witness statements the latest being dated 18 March 2021. Again she confirmed the contents of her witness states were true were accurate at the time she made them, and they were adopted as evidence in chief.
57. She was asked when the appellant had last seen the boys and she confirmed that that was on Easter Sunday for a barbecue. When asked how often he would see them in a regular week she replied, "a couple of times per week". When asked to provide the longest period of time that he had not seen the boys she said that there were times when they had been on holiday and there were times during the restrictions because of lockdown but that 5 to 7 days would be the longest time that they had been apart. She was asked about her language ability and whether she had taken the time to learn Kurdish Sorani. She explained that her focus was on learning English rather than any other foreign language.
58. There was no re-examination. In a question of clarification as to the date of entry to the UK she confirmed that she had entered in May 2013 after finishing college and that her father had been present in the United Kingdom since October 2012. She had

her sisters and mother and niece living in the United Kingdom. She confirmed that she lived with the appellant.

59. At the conclusion of the oral evidence I heard submissions from each of the advocates. I shall summarise those submissions.

The submissions of the parties:

60. Mr Diwnycz on behalf of the respondent relied upon his skeleton argument. I set out in full that skeleton argument.
61. The Secretary of State relies on the decision letter of 31 July 2019 save for those accepted facts set out above.
62. With respect to the appellant's protection claim SMO, KSP & IM (Article 15(c); identity documents) CG Iraq UKUT 400(IAC) establishes that there is no general Article 15(c) risk to the appellant should he return to his home area of Kirkuk in Iraq and he has not established that there are any specific risks that would sustain a claim for asylum. The Secretary of State also considers that the finding of the FTT that the appellant retains contact with his family in Iraq means that it is open to him to obtain their assistance in re-documentation, if it is the case that they have not, in fact, retained his original documents.
63. With respect to the position of the appellant's relationship with his children and the assessment of Para 399(a) of the immigration rules the Secretary of State's position remains the same as set out in para 105-110 of the decision letter. It is not accepted that it would be unduly harsh for them to remain in the UK if the appellant is deported. Their primary carer is their mother.
64. Although the relationship with Ms P has been accepted it is not accepted that the requirements of Para 399(b) are met as the relationship was not entered into when the appellant was lawfully in the UK and both parties were aware of the appellant's precarious position at the time.
65. The Secretary of State does not accept that even when considered cumulatively the appellant has established that there are very compelling circumstances which could lead to his appeal succeeding.
66. The Secretary of State considers that the appellant has failed to establish that he can succeed on the basis of a protection or Human rights claim and invites the tribunal to dismiss the appeal.
67. In oral argument Mr Diwnycz submitted that in fairness there was nothing controversial or any complaint about the evidence of the appellant and his partner and that there was broad agreement between the witnesses as to the level of contact between the appellant and the children.

68. As to the appellant's evidence concerning contact with family members, Mr Diwnycz accepted that it lost contact with his mother. In respect of his uncle had said that they were dead.
69. As to the issue of documentation, the appellant stated he did not know the details of the documents. However he submitted that when being realistic in light of the June 2020 CPIN document it is not likely that he would be able to document himself whilst in the United Kingdom.
70. Reference was made to the decision of SMO being remitted to the Upper Tribunal on the issue of knowledge of the family book. He submitted that at paragraph 3 of the consent order, there was an "open door" for the tribunal to consider any other matter. He confirmed that he was not asking the tribunal to stay any decision to await a further consideration by the tribunal. Mr Holt also confirmed there was no such application.
71. Mr Holt on behalf of the appellant relied upon his skeleton argument filed the day before the hearing. In that document he deals with each aspect of the issues as follows. He also supplemented this with oral submissions. He submitted that in relation to Article 15(c) he did not intend to raise any further submissions beyond those in the skeleton argument.
72. He submitted that the appellant was entitled to succeed on Article 3 grounds or in the alternative Article 15(b) on the basis of lack of documentation and the risk arising from this. As regards redocumentation in the UK, he submitted that the appellant's evidence was that he was not in possession of a CSID card and that was a consistent and plausible claim. In particular he invited me to consider the appellant's evidence about his own family circumstances that he was an orphan as a child and thus was in the least likely category to be able to document himself. He invited the tribunal to find that, to the asylum standard, the Appellant has no CSID. No other document would be of any assistance (see decision in AAH where a laissez passé document would be confiscated upon arrival).
73. As to the issue of redocumentation, he referred to the respondent's guidance on this issue. As per paragraph 2.6.16 of the Home Office Country Policy and Information Note entitled: "*Iraq: Internal relocation, civil documentation and returns*", version 11.0, dated June 2020 (hereafter "the June 2020 CPIN"):

*"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."*
74. According to the Home Office's own guidance, therefore, it cannot be reasonably argued that the Appellant is able to redocument himself whilst in the UK.
75. Further the Appellant has always claimed that he has lost contact with his family in Iraq. His last contact, he says, was when he spoke to his maternal uncle over the phone when the Appellant had fled to Erbil as part of his departure from Iraq. He has made efforts to reconnect with his family to no avail. It is submitted that, given

that the Hashd-al-Shabi incursion into Kirkuk is *accepted* as being the reason for the Appellant's fleeing from Qara-Dara, the Appellant's account of having lost contact with his family is, at the very least, plausible. Notably, the Respondent has neither accepted nor disputed the Appellant's claim to have lost contact with his family, giving no reasons as to why this specific aspect of the Appellant's claim should be disbelieved.

76. Without these details, it is highly unlikely that the Appellant would be able to obtain replacement documentation at the Iraqi consulate in the UK, §1.8, AB140, also at §26 AAH (*Iraqi Kurds – internal relocation*) Iraq CG UKUT 00212.
77. According to SMO §425(§45), *“The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system.”* As per §393 of SMO, *“If an individual genuinely has no relevant documents to present, via a proxy, to the relevant CSA office, if they genuinely do not know the volume and page reference in the civil register, and if they genuinely cannot contact a family member from whom those details cannot be obtained, there will be no realistic prospect of that person obtaining a CSID remotely upon return to Baghdad.”*
78. The Upper Tribunal is therefore invited to find that the Appellant would be unable to redocument himself whilst outside Iraq.
79. As to re documentation within Iraq, he submitted that the Appellant would be returned to Baghdad on a *laissez passez*, enabling travel between the UK and Baghdad. These are confiscated upon arrival (AAH (*Iraq*) CG [2018] UKUT 212, §35 and headnote 12 of SMO).
80. As per headnote 16 of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), obtaining a replacement CSID is now unlikely to be possible where the person seeking the document is from a governate where the INID system has been rolled out:
- “The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy.”*
81. As per paragraph 431 of SMO, *“It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy ...”* Kirkuk is therefore one of those cities in which the INID system has been rolled out.
82. In order to obtain an INID, the Appellant would have to attend the CSA office in Kirkuk in person, as per §45 of SMO:
- “In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans.”*
83. The Appellant would be returned to Baghdad, not the KRI. As per §4.2.1 of the June 2020 CPIN,

*“There are international flights to Erbil International Airport (EBL) and Sulamaniyah International Airport (ISU). However, it should be noted that all enforced returns are to Baghdad and that only those willing to return voluntarily can travel directly to the KRI.”*

84. In order to obtain a new INID, the Appellant would therefore have to travel along the Baghdad-Kirkuk road. This has been a major security hotspot over the years, which, although security there is better than a few years ago, still experiences serious security breaches.
85. The FTT is bound by the decision in *SMO*, which at §425(§40) provides [emphasis added]:

*“The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.”*

#### Article 15(c) in Kirkuk

86. The Tribunal in *SMO* held that the question of whether an individual Appellant would face a risk of treatment contrary to Article 15(c) requires a fact-sensitive, “sliding scale” assessment to which a number of matters are relevant. Those matters include:
- (i) Whether the area retains an active ISIL presence;
  - (ii) Whether there is membership of a minority ethnic group;
  - (iii) Whether there are disabilities;
  - (iv) Whether the returnee is a “child” without family support.
87. According to §252 of *SMO*, “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.”. This is a factor in favour of a positive A15C finding.
88. When this is coupled with the Appellant’s age (33) and his lack of family connections it is submitted that the “sliding-scale” approach required in *SMO* leads to the sensible conclusion that the Appellant would face a real risk of treatment contrary to Article 15C in Kirkuk.
89. Mr Holt submitted that the appellant should not be excluded from a grant of humanitarian protection as set out in the decision letter. He provided to the Tribunal a copy of the Court of Appeal decision in AH (Algeria) [2012] EWCA Civ.
90. Mr Holt turned to the issue of family life and Exception 2.

91. The Appellant's imprisonment of 12 months categorises him just into the "middle category" for the purpose of assessing exceptions to deportation.
92. It is submitted that the exception at s.117C(5) of the Nationality, Immigration and Asylum Act 2002 applies, namely that the public interest does not require the Appellant's deportation as he has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of his deportation on the partner or child would be unduly harsh.
93. It is submitted that the evidence of W, the Appellant, and G demonstrates that the Appellant has a particularly close relationship with his children K and D, and that the effect of his removal upon them would be unduly harsh. It is submitted that the effect on W would be similarly harsh.
94. In summary, the Appellant is unable to return safely to Kirkuk, and therefore unable to redocument himself. As per SMO, he therefore faces a real risk of harm throughout Iraq.
95. The effect of the Appellant's deportation upon his partner and children would be unduly harsh.
96. In his oral argument he accepted that the test was an "elevated test" but that it was met on the factors here. In particular he submitted, the appellant's background deserved weight; he was a former orphan and had said it is evidence that he did not want the same thing to happen to his boys to grow up without a father.
97. He submitted that the well-being of the children met the test, and that the child D was experiencing some degree of learning. When asked to identify the evidence in support, he confirmed that it was set out in the witness statement at paragraph 3 of his partner but confirmed that there was no diagnosis of this but that there was some issue with D's learning. He submitted that there was a subjective assessment of closeness with all of the children and in conclusion this would satisfy the elevated test of "unduly harsh". He therefore invited the tribunal to allow the appeal as section 117C(4) Exception 2 was met.
98. At the conclusion of the hearing I reserved my decision which I now give.

The legal framework:

99. The appellant bears the burden of substantiating the primary facts of his protection claim. The standard is a reasonable degree of likelihood.
100. Under Section 32 (5) of the UK Borders Act 2007, the Secretary of State must make a deportation order in respect of a "foreign criminal". The principle does not apply if the removal of the foreign criminal in pursuance of the deportation order would

breach that person's rights under the European Convention of Human Rights ("ECHR") or the United Kingdom's obligations under the Refugee Convention.

101. Part 5A (sections 117A-117D) of the Nationality, Immigration and Asylum Act 2002 (inserted by amendment in 2014) is entitled "Article 8 of the ECHR: public interest considerations." Section 117A explains when Part 5A applies:
- "(1) this part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts
- (a) breaches are persons right to respect for private and family life and Article 8, and
  - (b) as a result would be unlawful under section 6 of the human rights act 1998.
- (2) in considering the public interest question, the court or tribunal must (in particular) have regard:
- (a) in all cases to the considerations listed in section 117B, and
  - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), "the public interest question" means the question of whether an interference with the person's right to respect for private and family life is justified under Article 8 (2).
102. Section 117B lists certain public interest considerations to which the court or Tribunal must have regard in all such cases. These include the considerations that:
- "(1) The maintenance of effective immigrations controls is in the public interest.
- (2) it is in the public interest, and in particular the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English - (a) are less of a burden on taxpayers, and (B) are able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons - (A) are not a burden on taxpayers, and (b) are better able to integrate into society.
- (4) Little weight should be given to -
- (a) a private life, or
  - (b) a relationship formed with a qualifying partner,
- that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) ...



103. Section 117C lists additional considerations to which the court or Tribunal must have regard in cases involving "foreign criminals" (defined in a similar way to the 2007 Act). These considerations are:
- "(1) The deportation of foreign criminals is in the public interest.
  - (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
  - (3) In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
104. S 117 C(1) of the 2002 Act provided the deportation of "foreign criminals" is in the public interest for the purposes of determining the proportionality of deportation under Article 8(2) of the ECHR.
105. The appellant satisfies the definition of foreign criminal as he is not a British citizen and has been convicted of an offence which led to a period of imprisonment of at least 12 months: see section 117D (2) of the 2002 Act.
106. The appellant's conviction falls into section 117C (3) of the 2002 Act; he has not been sentenced to a period of imprisonment of four years or more, with the effect that, if Exception 1 or 2 applies, his deportation will not be in the public interest. Those exceptions are:
- (4) Exception 1 applies where - (a) C has been lawfully resident in the United Kingdom for most of C's life, (b) C is socially and culturally integrated in the United Kingdom, and (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
  - (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
  - (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
  - (7) The considerations in subsections (1) to (6) are to be taken into account where a court or Tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."
107. Subsection (6) also applies to foreign criminals sentenced to less than four years imprisonment. The extent to which an individual satisfies the criteria in Exceptions 1 and 2, even if not meeting their requirements fully, is relevant to the assessment of "very compelling circumstances..." (I refer to NA (Pakistan) v SSHD [2016] EWCA Civ 662.

108. A “qualifying partner” includes a person who is ordinarily resident in the UK without being subject under the immigration laws to any restriction on the period for which he may remain, and a “qualifying child” includes a child who is a British citizen (section 117D (1) of the 2002 Act and section 33(2A) of the Immigration Act 1971).

Analysis of the evidence:

The Appellant’s factual claim:

109. The Upper Tribunal expressly invited the parties to agree a schedule of agreed facts as found by FtTJ Kelly.

110. They are as follows:

- It is agreed that the Appellant is an Iraqi Kurd from Kirkuk.
- It is agreed that the family background of the Appellant is as set out in para 24 of the FTT determinations. The A was brought up by his step-sister (N) following the death of his father and remarriage of his mother whilst he was still a young child. He has two other step-sisters and two step-brothers, all of whom are children from father’s previous marriage.
- It is agreed that the Appellant has lost contact with his mother as per para 27 of the FTT determinations.
- It is agreed that KAK and DK are qualifying children, and that the Appellant has a genuine and subsisting parental relationship with them. He has an amicable contact arrangement with Ms R to maintain contact with KAK and DK.
- It is agreed that the Appellant has a genuine and subsisting relationship with his partner. W.
- It is agreed that the Appellant has genuine relationship with Ms R’s adult children as per para 29 of the FTT determinations.
- The facts not in dispute as stated in paragraph 6 of the FTT determinations.

111. The Secretary of State also considered that the previous finding of Judge Kelly in paras 25 and 26 of his determination that the appellant has not lost contact with his step-siblings is a sustainable finding that should be retained but this has not been accepted by the appellant ( see skeleton argument).

112. I have set out above the factual findings which are agreed by the parties and form the basis of my factual assessment.

113. It is necessary to consider all relevant evidence before reaching a holistic assessment of the credibility of the Appellant's account. However, the credibility of his account can also be assessed holistically by looking at its consistency and plausibility, as above, and also by comparing it to what is known about Iraq.

114. There is no dispute that the appellant is a national of Iraq and is of Kurdish ethnicity who entered the UK on 24 June 2008 when he was 21 years of age and claimed asylum the following day. The basis of his claim for asylum was dismissed by immigration judge Reid in a decision promulgated on 11 August 2008. A copy of that decision is in the papers at C1, where it was made plain that the judge rejected his factual account that he had been visited on three occasions by a group of men who had asked him to make metal boxes to be attached to cars and that he had been targeted by a particular group of people who were terrorists. The judge concluded that his account of being at risk of harm in Iraq was not credible and thus reached the conclusion that he had not discharged the burden of proof to demonstrate that he was at serious risk of harm or persecution on return to Iraq.
115. It is also not in dispute that he was granted discretionary leave to remain on 19 July 2013 and subsequently extended until 27 August 2016. He had made an application (in time) a further leave to remain on 5 August 2016, but this was refused some three years later in 2019 in the context of the appellant's deportation.
116. As to his family background, it is accepted that he was brought up by his stepsister, N, in Kirkuk following the death of his father and the remarriage of his mother whilst he was still a very young child. He is only seen his mother on two occasions throughout his entire life. N is the daughter of his father by previous marriage.
117. As to the relatives, the appellant has two other stepsisters as well as two stepbrothers all of whom are the children of his father's previous marriage. Judge Kelly considered that "the appellant appears to have no reason to lie about this aspect of his family history and I therefore accept it" ( at [24] of his decision). There is no reason for me to depart from this decision.
118. The issue I have to resolve is whether the appellant is in contact with N or any of his family in Iraq. The written submissions made on behalf of the respondent were to the effect that the factual findings made by Judge Kelly at [25 - 26] resolved this issue. Mr Holt on behalf of the appellant seeks to reopen this issue and relies upon the evidence of the appellant to demonstrate that there is a reasonable likelihood that he has lost contact with his family.
119. FtTJ Kelly at [25] considered the appellant's evidence that he was not in contact with N since 2011 but reached the conclusion that he did not believe that the appellant had lost contact with N. He placed particular weight on the fact that the appellant had met N in June 2011 while she was seeking medical treatment in Iran.
120. At [26] FtTJ Kelly considered the circumstances in which he had met N in 2011. This was because he was anxious to retrieve family photographs to help him trace his origins and family history. The judge found that to be credible however what he did not find credible was that having obtained the items from N who acted as his mother by bringing him up as her own child, that he would voluntarily cease any further contact with her. The judge considered the appellant's explanations for the cessation of contact which included a desire to have nothing further to do with anything or anyone from Iraq and a fear that he might put her life in danger if he were to make

further contact after meeting her in Iran. It is plain at [26] that he found the claim of not wanting to have anything to do with Iraq was “incongruous with his reason for arranging to meet in the first place” and that is claim that he might put her life in danger was one to be “short on detail and inconsistent with his admission that he regularly, if infrequently, spoke to her by telephone between 2008 and 2011”. The judge also rejected his claim that he had not entered his number in the memory of his telephone and had lost the piece of paper which had the number. He therefore concluded that his claim to have lost contact with N lacked credibility. He also found that his claim to have lost contact with his other stepsiblings were undermined.

121. The findings of FtTJ Kelly that the appellant has not established that he has lost contact with his step sister in Kirkuk, are only the 'starting point' in my reaching findings applying Devaseelan [2002] UKIAT 00702.
122. Mr Diwnycz on behalf of the respondent did not seek to make any submissions on whether he was in contact with his relatives.
123. I therefore considered the appellant’s evidence concerning loss of contact. It is right to observe that the last time he spoke to his uncle was when he fled to Erbil as part of his journey from Iraq. No findings are made by FtTJ Kelly as to whether he had any contact with his uncle since he had left Iraq. Given the length of time that has elapsed since 2008, I am prepared to accept that he has had no contact with his uncle and that it is reasonably likely that his lost contact with him.
124. As to his stepsister N, the evidence of the appellant is that he reiterates that he has had no contact with her since 2011 and maintains whilst he could have been clearer in his responses to judge Kelly, the judge did accept that he had no reason to lie about his family history (see paragraph 3 of the witness statement). He described having last contact with her in 2011 and not being sure if she was dead or alive.
125. I take into account that the appellant left Iraq in June 2008 which is some 12 years ago. However, it is the appellant’s own evidence that he was able to keep in contact with N between 2008 and 2011 by telephone and their contact was sufficient to enable him to meet her in Iran in 2011. As set out in the decision of Judge Kelly, he made factual findings from the appellant’s evidence in which he rejected his account of having lost contact with N for the reasons given and cited above. I have heard no new evidence that would undermine that overall finding that he had not lost contact with N and the findings made relate to the particular relationship the appellant had with N and the lack of credibility in the explanations given as to why and how he had lost contact. The appellant has not provided any further elucidation of those points during his oral evidence. I recognise that a significant time has elapsed since 2011, but beyond the appellant reiterating that he has lost contact, he has provided no further evidence on which to undermine those findings that were carefully made by Judge Kelly.
126. However, that said, I consider that I reach a different finding as regards his other stepsiblings. The appellant’s oral evidence is that he has not had cordial relationships with those stepsiblings even when in Iraq and that it was N who had stood in the shoes of his mother and brought him up. There is no reference in the earlier evidence,

either before judge Reid or Judge Kelly as to any particular contact with those relatives. The only evidence really related to the circumstances of N who was in a different position to that of the other stepsiblings.

127. It is correct to observe that FtTJ Kelly did not make reference to any positive evidence concerning contact with the other stepsiblings but considered his claim to have lost contact with them in the context of his finding that he had not lost contact with N. As I have said, the evidence demonstrated that the appellant had different relationships with N as opposed to his stepsiblings.

128. Furthermore, I bear in mind the self-direction, known in the context of criminal trials as the "Lucas direction" which applies in international protection proceedings as the Court of Appeal recognised in Uddin v SSHD [2020] EWCA Civ 338 at [11] (per Sir Ernest Ryder, SPT):

"I note in that regard the conventional warning which judges give themselves that a person may be untruthful about one matter (in this case his history) without necessarily being untruthful about another (in this case the existence of family life with the foster mother's family), known as a 'Lucas direction' (derived in part from the judgment of the CACD in *R v Lucas* [1981] QB 720 per Lord Lane CJ at 723C). The classic formulation of the principle is said to be this: if a court concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. That is because a person's motives may be different as respects different questions. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases. "

129. I have therefore concluded that in the light of his lack of relationship with those stepsiblings whilst in Iraq against the lack of references to them in his claim since 2008, I do not find that it is reasonably likely that simply because he has not lost contact with N, that he has not lost contact with the stepsiblings.

130. I now turn to the issue of documentation. In his oral evidence the appellant did not recall what a CSID was or what was contained in it. In his oral evidence he accepted that he might have had an ID card in Iraq although we did not know if this was a document that was used for food. As for the family book and the reference to that, his evidence was to the effect that he did not know what the family book was nor did he recall the number, if indeed that was the book that was being referred to during the questions were put to him.

131. The importance of the CSID was set out in the decision of AA (Iraq) as it is required to access financial assistance, employment, education, and housing etc. it was described as an "essential document for life in Iraq" (at [39] AA (Iraq) [2017]).

132. I consider that the appellant's evidence in some respects is inconsistent with the country materials. The appellant's failure to recall what a CSID is, is in my judgement inconsistent with the country materials concerning the importance of such a document. I take into account that he left Iraq in 2008 but at the time he left he was an adult aged 21, he had been working in Kirkuk and also had undergone some education. The point made by Mr Holt that he was an orphan and thus the lack of documentation may be seen plausible against that background, fails to take into account in my judgement that the appellant's evidence was that he was brought up by his stepsister N who would reasonably be expected to have some documentation to ensure his general access to services and well-being whilst in Iraq.
133. Against that background it is not reasonably likely that he would not know what a CSID was given its importance within Iraqi life. However Mr Diwnycz accepted that the appellant does not have a CSID, and this is consistent with the appellant's claim made in 2008 that he lost his Iraqi documents whilst travelling through Iran.
134. As to the family book, I bear in mind what was said in at [392] of SMO and others, which considers that the number of individuals who do not know or could not ascertain the volume or page number will be quite small. The tribunal found the details of the volume and page number appears on a number of important documents and is of significance. At [392] the tribunal considered that those who would plausibly not be able to provide those details were those identified as being mentally ill, problems with literacy or numeracy. The appellant would not fall into those categories. However, as both advocates have stated, whilst the UT in SMO reached that conclusion, the Court of Appeal have remitted by consent the sustainability of the conclusion that Iraqi citizens could be expected to recall their entry in the family book. That assessment is outstanding. Neither advocates sought a stay pending further consideration by the Upper Tribunal and no submissions were made by either of them that such a stay would be reasonable in the circumstances. It seems to me that that issue now having formed the basis of a remittal by consent, that it would not be right for me to place weight upon that assessment. Furthermore, given the length of time that has been absent from Iraq since 2008, I am prepared to find that it is not reasonably likely that he would necessarily recall such details.
135. As to the issue of family life, I make the following findings which are not in dispute. The appellant met his former partner G shortly after his arrival in the UK in 2008. The parties were married on 7 June 2010. She has two children (now adults) as a result of a previous relationship (J and L). J is within the autistic spectrum. They lived together and during the course of their relationship to children were born, namely K in 2009 and D born in 2013. The appellant also is the father of British twins aged five with whom he has never had contact.
136. The parties separated in or about 2013 following the birth of D . Following separation, the appellant has continued to have a good relationship with J and L; J sometimes sleeps at his home. In respect of the younger children K and D, he has regular contact with those children with the approval of their mother. Whilst there is no formal arrangement (in the terms of an agreement as to when and where such contact should take place), the appellant has regular contact with the children. There

is no dispute that the appellant has a genuine and subsisting relationship with the younger children.

137. As Mr Diwnycz submitted, there was no inconsistency between the witnesses as to the level of contact between the appellant and the younger children. The evidence, I accept was consistent from the witnesses was that the appellant had regular contact with both children. This was characterised by them often and spending time with him being taken out for the day and that he had taken them to school. Both children have provided letters in the bundle (pages 14 and 15); the letter from K makes reference to their father taking them out everywhere and that both of them love their father would not like to see him deported.
138. The appellant has a new relationship with W, a Polish national and they have been in a relationship since April 2013. They live together. In her evidence, she referred to the appellant maintaining a loving relationship with his children and maintaining regular contact. She states that she could not relocate to Iraq because she would have several difficulties in adjusting to life there and would not also be able to bear the pain of separation should he be deported. She refers them having lived together for almost 4 years and that the impact on her family including her parents and sisters would be “massive”. They treat him as part of the family.
139. Having made those findings of fact it is now necessary to undertake an analysis of the issues outlined by the parties in their written and oral submissions.

#### Exclusion from Humanitarian Protection:

140. By reference to the decision letter, Mr Holt submitted that the respondent had made a mistake by stating that it was not discretionary but mandatory. That was not consistent with the case law and that the only question of discretion involved was in assessing whether the crime was a “serious crime” and the factors that were relevant were summarised at paragraph [54] of AH (Algeria) [2012] EWCA Civ.
141. He submitted that there were reasons for reaching the conclusion that this was not a serious crime so as to exclude the appellant from humanitarian protection. He submitted that this was an offence of wounding and that whilst it may appear serious, when looking at paragraph 52 of AH (Algeria) it makes it plain that the connotation “serious” has shades of meaning and that what might appear to be serious may not be serious when looked in its context. It is further important to recognise that the offence must be serious enough to take away or exclude someone from an important right.
142. He submitted when looking at the judge’s sentencing remarks, the appellant was sentenced to a period of 12 months imprisonment having pleaded guilty to an offence under section 20. The judge referred to the appellant and the complainant “both behaving disgracefully” and that the sentencing remarks refer to the altercation being based on a dispute about a partner. He submitted it was important to recognise that the judge made reference to the high level of provocation from the complainant and that this was a mitigating factor and when looking at the injuries

whilst unpleasant they were relatively superficial although he conceded the judge sentenced him on the basis of the appellant lashing out at him. He submitted it was a nasty injury but not the worst of its type and that he was under attack by someone with a metal bar. In terms of mitigating circumstances he pleaded guilty although not at the earliest opportunity.

143. He further submitted that the judge summarised the aggravating factors and also the mitigating factors and the personal mitigation. In terms of length of imprisonment of 12 months this was at the lower end of the scale for such an offence. Thus taken together, there was a preponderance of mitigating factors, this was a low sentence, and it was important to consider the part played by the appellant in the offence but also the complainant. Therefore he submitted it was sufficient to conclude that on the facts of this offence and considering all the general factors in relation to aggravating features and mitigation, it was not so serious to warrant exclusion from a grant of humanitarian protection.

144. Mr Diwnycz made no submissions in respect of this issue .

145. Paragraph 339D of the Immigration Rules provides as follows:

'339D. A person is excluded from a grant of humanitarian protection for the purposes of paragraph 339C (iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

(ii) there are serious reasons for considering that they have guilty of acts contrary to the purposes and principles of the United Nations or have committed, prepared, or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;

(iii) there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom; or

(iv) there are serious reasons for considering that they have committed a serious crime; or

(v) prior to their admission to the United Kingdom the person committed a crime outside the scope of (i) and (iv) that would be punishable by imprisonment where it committed in the United Kingdom and the person left their country of origin solely in order to avoid sanctions resulting from the crime.

146. Paragraphs 339D of the Immigration Rules excludes a person from any claim to humanitarian protection where (see 339 D(i)) the Secretary of State is satisfied that he has committed a serious crime, and "serious crime" is defined as any crime for which a sentence of at least 12 months has been imposed. Whether a serious crime had been committed is not a matter that was subject to the rebuttal provisions in the 2002 Act in the humanitarian protection context as it is in the asylum context. Paragraph reads "serious reasons for considering a serious crime has been committed."



147. The rule in 339D(i) is without qualification and the decision letter at paragraph 87 refers to “exclusion of this rule is mandatory in respect of persons falling within its scope and there is no provision to exercise discretion.”. Mr Holt on behalf of the appellant submits that that is in error and that it requires a consideration of the circumstances of the offence (I refer to his submissions outlined above).
148. Whilst the rule refers to the length of sentence as determining whether a serious crime has been committed, the respondent’s policy on humanitarian protection version 5.0 last updated in 2017 states that the length of sentence alone should not determine the seriousness of the offence for exclusion purposes. Reference is made to the decision in AH (Algeria) (as cited), and that the sentence is a material factor but not a benchmark and that when deciding whether a crime is serious enough to justify loss of protection, the tribunal must take fact matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed. The policy guidance makes reference to examples of serious crimes including, but not limited to, murder, rape, arson, and armed robbery. It is stated that other offences which might be regarded as serious can include those which are accompanied by the use of deadly weapons, in full serious injury to persons, or if there is evidence of serious habitual criminal conduct. The crimes that are not accompanied by violence, such as large-scale fraud, may also be regarded as serious but the purposes of exclusion.
149. I note that the respondent made no reference to the circumstances of the offence or any of those issues when reaching the conclusion at paragraph 87 – 89 that he should be excluded from humanitarian protection and the only consideration applied was the conviction and sentence of 12 months imprisonment. I further note that the only part relied upon is paragraph 399D (i) and not (iii) which refers to serious reasons for considering that he constitute a danger to the community or the security of the UK. No reference is made to the appellant constituting any danger to the community either in the decision letter on behalf of the respondent or the submissions during this hearing.
150. I have given consideration to the issue of whether there are serious reasons for considering that the appellant has committed a serious crime and has done so in the light of the sentencing remarks. The appellant pleaded guilty to an offence of wounding contrary to section 20 of the Offences Against the Person Act 1861 to which he was sentenced to 12 months imprisonment. The judge determined that on the facts of the case (but taking into account the basis of plea) that it fell within category two of the guidelines, which is a starting point of 18 months.
151. It is plain from reading the sentencing remarks that there had been a basis of plea entered on the appellant’s behalf which had not been disputed by the prosecution. Unfortunately, the full basis of plea is not set out in the sentencing remarks but there is reference made to this in the concluding parts of the sentencing remarks by Counsel for the defence who stated that the appellant on the basis of plea did not cause the injuries with the weapon. Therefore whilst the appellant was charged with section 20 the basis of the plea was that any injuries caused were not caused by the

use of a weapon by the appellant. No other circumstances were described and therefore I am bound by what is reflected in the sentencing remarks themselves.

152. A careful reading of the remarks indicate that the incident involved a complainant who himself had been involved in the incident and that the appellant had been under attack by him and that he had had a metal bar during the incident. The judge treated the offence as an incident of serious disorder in the street rather than an unprovoked attack. The judge also took into account that there was a significant level of provocation from the complainant and that the injuries the judge specifically stated were not the worst that one might expect and that they looked worse than they actually were and were “superficial”.
153. Having considered the facts of the offence and recognising that this was an incident carried out in public by two men fighting and one which properly merited an immediate custodial sentence, the Judge identified that there were particular mitigating features which had the effect of reducing its seriousness. They are summarised as follows; the high level of provocation used against the appellant, the level of violence visited upon the appellant (being under attack with a metal bar) that any injuries were superficial (and on the basis of plea the appellant did not cause any injury by the use of a weapon). This was an incident that lasted several seconds and whilst it was an incident carried out in a public place and therefore one of public disorder having found this limited the aggravating features, he was satisfied that there were “many more mitigating features”. Against that background and having carried out a careful consideration of the issue, I am persuaded by the submissions of Mr Holt and that this offence did not fall within Paragraph 339D (serious reasons for finding a serious crime) and of such seriousness to warrant the consequences of excluding someone from humanitarian protection.
154. I therefore now address that issue.

#### Humanitarian Protection:

155. I now deal with the issue raised of Article 15(c). As the Upper Tribunal noted in *AA (unattended children) Afghanistan CG* at [35], the starting point in considering a claim for humanitarian protection under Article 15(c) is the decision of the ECJ in *Elgafaji* (Case C-465/07), [2009] 1 WLR 2100. After reviewing the three types of 'serious harm' defined in Article 15, the judgment of the ECJ in *Elgafaji* continued:

35. In that context, the word 'individual' must be understood as covering harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place assessed by ... the courts of a member state to which a decision refusing ... an application [for subsidiary protection] is referred, reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence ... face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive.

156. The personal circumstances of an individual were also addressed by the Court:

39. In that regard the more the applicant is able to show that he is specifically affected by reason of fact as particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.

Notwithstanding the United Kingdom's withdrawal from the European Union, the 'minimum standards' of protection set out in the Qualification Directive continue to find expression in the Immigration Rules:

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country; and
- (iv) they are not excluded from a grant of humanitarian protection.

339CA. For the purposes of paragraph 339C, serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

157. It is submitted on behalf of the appellant that the relevant personal characteristics are the appellant's age (33) and his lack of family connections. In addition, whilst ISIL controls no territory as such in Kirkuk there was evidence of it being active in the areas surrounding Hawija and the Hamrin mountains (see paragraph 252 of SMO) which is a further factor to support the conclusion that there would be a risk to the appellant under Article 15 (c).

158. I have considered the issue in the light of the country guidance decision of SMO (as cited). At paragraphs 251- 261, the Upper Tribunal expressly refers to Kirkuk Governorate and within those paragraphs undertakes an assessment of the country materials relevant to that area.

159. The conclusion reached at [257] that the level of violence in the governorate does not reach the Article 15(c) threshold and that “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 attack cells, the coercion brought to bear on sections of the rural population by ISIL and other groups (including the PMU) are not at a sufficiently high level to cross that threshold when considered as a whole.”
160. The general conclusions concerning Article 15 (c) are set out at paragraphs [282-289]. At [285] the Upper Tribunal turned its attention to factors affecting Iraq generally, sectarian tension, political insecurity and large scale displacement and extensive humanitarian need which are inflamed by the Iranian backed PMU which assisted the ISF and in the defeat of ISIL. However whilst noting that the level of threat “varies considerably by region”, they concluded that “with one exception, however, we do not consider that the risk to an ordinary civilian, even in parts of those territories in which ISIL exerts a degree of physical and psychological control of the population, is such as to engage Article 15 (c) in the generality of cases. The evidence clearly shows that the degree of indiscriminate violence characterising the current armed conflict taking place in .... Kirkuk.. is not at such a high level that substantial grounds have been shown for believing that any civilian return there would be solely on account of his presence there face a real risk of threat to his life or person.” The one exception was said to be the area north of Baji which is not in Kirkuk.
161. At [287] the tribunal concluded that they were satisfied that the changes that they had detailed above were “well-established and durable and that the previous country guidance in AA (Iraq) required revision in accordance with the conclusions above.”
162. Thus the appellant cannot satisfy the test that there are substantial grounds for believing that as a civilian return there he would be solely on account of his presence facing a real risk of threat to his life or person.
163. Mr Holt submits that in his case he falls within the enhanced risk categories.
164. I have therefore considered in light of the case law set out earlier in my decision whether the appellant as an individual applicant might be to show that he is specifically affected by reasons of factors particular to his personal circumstances and therefore applying the “sliding scale”.
165. At [313]-[314] the Upper Tribunal set out the risk categories as follows:

“313.In summary, we consider that the appellants’ proposed list of seventeen factors can be somewhat condensed. Two personal characteristics are particularly important. Firstly, those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. Secondly, 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.

314. 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:

- (i) Opposition to or criticism of the GOI, the KRG or local security actors;
- (ii) 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;
- (iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
- (iv) Humanitarian or medical staff and those associated with Western organisations or security forces;
- (v) Women and children without genuine family support;
- (vi) Individuals with disabilities.

315. The impact of any of the personal characteristics immediately above must be carefully assessed against the situation in the area to 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".

166. Having considered the appellant's personal characteristics, there is no evidence before the tribunal that he has any actual or perceived association with ISIL nor is it suggested that he has any such association. Whilst Mr Holt relies upon his age, it is not been demonstrated by any reference to the country materials or the country guidance decision that the appellant's age of 33 is such a characteristic as to give rise to any relevance in the assessment. Similarly, whilst he may be said to be without family support, he does not fall within the category of "women and children".
167. In his general submissions, Mr Holt made reference to the appellant being at a risk due to his westernisation, and this is referred to as a risk factor (see [311]).
168. However that submission was not supported by any reference to any relevant characteristics of this particular appellant which give rise to him being described as "westernised" beyond the fact of his length of residence in the United Kingdom. The appellant still retains his cultural and language links to Iraq and the tribunal has not been alerted to any particular aspects of his conduct which would necessarily be described as "westernised", nor by reference to his appearance or demeanour.
169. In the decision of SMO, the Upper Tribunal made reference to section 3.12 of the EASO report which referred to the PMU enforcing "conservative standards on personal appearance". The tribunal recorded that there have been reports of women being targeted, including in Baghdad, for an Islamic dress but that "we know that there is little recent evidence to support a claim that men displaying westernised behaviour would be at significantly enhanced risk, even in the formally contested areas."
170. Of the characteristics set out above, the potentially relevant one is that the appellant is an ethnic Kurd. The Kurds are in a minority in Iraq as a whole but the position of Kirkuk is that it is "ethnically diverse". Whilst Kurds are in the minority, it does not

necessarily follow that Kurds will be at a particular risk in that region. Furthermore to assume potentially to assume that an ethnic group is at a disadvantage because it is statistically in the minority in a particular area provides too broad a brush. Mr Holt on behalf of the appellant has not direct the tribunal to any country materials to support this claim. I consider that what needs to be evaluated is whether the appellant is at enhanced risk in Kirkuk as a Kurd, having regard to the composition of the area in question, the balance of power and the extent of ISIL activity in the area. Mr Holt is not produced any evidence in this appeal which comes close to demonstrating that.

171. Consequently it has not been demonstrated by reference to the appellant's personal and particular circumstances that he falls within any of the enhanced risk categories which would demonstrate that he is specifically affected by reasons of factors particular to those circumstances thus he has not demonstrated that he is entitled to a grant of humanitarian protection under Article 15 (c).

Article 15(b) / Article 3 of the ECHR:

172. I now turn to the primary submission made on behalf of the appellant which relate to Article 15(b) or in the alternative Article 3.
173. In reaching my assessment, I bear in mind that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that there are substantial grounds for believing that there is a real risk of serious harm on return. That burden and standard of proof applies to the factual matters in issue in this appeal.
174. The decision letter relied upon by the respondent is dated 31 July 2019 and reflects the country guidance and country materials that were relevant at the date of the decision. Consequently it does not make any reference to the current country guidance decision that I must apply, namely SMO.
175. The written submissions of the respondent make no specific reference to any parts of the decision in SMO but submits in general terms that the decision establishes that there is no general Article 15 (c) risk to the appellant to his home area and that he has not established that there are any specific risks that will sustain a claim for asylum. I have reached the same conclusion for the reasons that I have set out earlier.
176. The written submissions on behalf of the respondent further submit that as he retains contact with his family namely N, it is open to him to obtain assistance in redocumentation. Nothing further is set out in the written submissions nor have I been referred to any particular parts of SMO during the oral submissions before the tribunal.
177. I have set out my factual findings above as to the issues of contact with family members in Iraq and the issue of documentation. As set out the appellant does not have a CSID or passport or any documentation relevant to establishing his nationality in the United Kingdom.

178. Applying the country guidance in SMO ,the first issue I am required to consider is whether the appellant could obtain the relevant documentation ( that is a CSID) while in the UK or from Baghdad (if returned), either himself or with the assistance of his family.

179. The relevant part of the headnote reads as follows:

### **C. CIVIL STATUS IDENTITY DOCUMENTATION**

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.*
12. *A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a ‘certification letter’ at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*
13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father’s or the mother’s side because the registration system is patrilineal.*
14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*
16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

180. I am satisfied that it has not been demonstrated that the appellant would be able to obtain the relevant documentation from the embassy in London.
181. Dr. Fatah's evidence in SMO, which post-dates AAH, records at (para 366): Dr Fatah did not believe that a CSID could be obtained from abroad any more, since it had been replaced by the INID. At [968]-[980], however, he described how a CSID could have been obtained in the past from an embassy.
182. In that regard, both advocates relied upon paras 2.6.15 and 2.6.16 of the CPIN (June 2020) which is in the following terms:
- " **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."
183. It is therefore common ground that the appellant will not be able to apply for or obtain a CSID in the UK. The alternative route suggested in the CPIN is an application for a "1957 document".
184. In light of the factual finding that I have made that the appellant has been in the UK since 2008 and in the light of the evidence given,, I am satisfied that he does not recall the details from the family book which might assist him or family members in Iraq in obtaining any documentation. I am prepared to accept that the appellant cannot generally recall this information and he was not challenged on this point. As I have set out, the reasoning set out in SMO which appeared to underpin the conclusion



that most Iraqi citizens will recall the reference in the family book, has been set aside by consent.

185. In those circumstances the appellant has no information himself that would assist in obtaining the requisite documentation. I have therefore considered whether the information can be obtained from his relatives in Iraq. I have set out my findings of fact that the earlier findings of Judge Kelly concerning contact with his stepsister N have not been undermined. On the evidence presented, the appellant has been brought up by his stepsister. I have also found that it is reasonably likely that he is not in contact with his stepsiblings for the reasons that I have given.
186. It has not been explained on behalf of the respondent how the appellant's stepsister, even if they are in contact, would be able to obtain the documents or obtain assistance from the authorities given her position as a woman.
187. Nor has it been explained, even if it were right to conclude that the document known as a "1957 document" , how that document could be used once in Iraq to travel internally. The document appears to be limited to enabling the issue of a laissez passé for internal travel.
188. Mr Holt has submitted that the appellant as a former resident of Iraq as opposed to the IKR, will be returned to Baghdad. Mr Diwnycz has confirmed that the position of the respondent is that for this appellant the only destination for an enforced return would be to Baghdad. There is no proposal in his case that he would be returned to the IKR.
189. I have therefore had to consider the circumstances for the appellant on return without a CSID and therefore at risk of treatment in breach of Article 3 if he seeks to travel from Baghdad. In this context, it is common ground that he would arrive without any form of documentation, having not been able to obtain it in the United Kingdom. In the event that he remains in contact with his stepsister and on the basis that she as a sole woman would be able to travel from Kirkuk to Baghdad, I have considered the possibility of whether she could meet him there and provide assistance.
190. Mr Holt submits that this is not possible and that the realistic position for the appellant without any documentation is that he would remain at the airport and not be able to travel to Baghdad as such a journey would entail him passing through several checkpoints. Furthermore, he submits even if his stepsister could obtain a new document ( his previous documents having been lost)to bring to the appellant in Baghdad at the airport, that would not assist the appellant in light of the evidence in SMO. Her ability to do so depends on whether the appellant is from an area where CSID's are still issued or whether the alternative system referred to in SMO, the INID has now been rolled out and in operation which is an entirely different system that requires his attendance in person.
191. I have considered paragraph [431] of SMO. It is plain that the CSA office in Kirkuk no longer operates the system whereby a CSID will be provided. It has an INID terminal and there is no evidence that the authorities will be willing to issue a CSID

to the appellant through a proxy. It must follow that in the event that he has no access to a CSID, and that he is not able to obtain a replacement in the UK, I am satisfied that as the Upper Tribunal said in SMO, his return to Iraq would be in breach of Article 3 of the ECHR.

192. I have not been provided to any evidence on behalf of the respondent to undermine that conclusion in SMO. As the civil Registry in the appellant's home area has rolled out the new system which operates an INID terminal, in order to obtain the requisite document, which is a biometric document, it will be necessary for the appellant to attend that office in person to provide those biometric details.
193. As to obtaining a CSID from Baghdad, an individual returnee who is not from Baghdad, which is the position of this appellant, is not likely to be able to obtain a replacement document or to do so in a reasonable time. The central archive and the facilities for IDP's are not likely to provide assistance for an undocumented returnee. The appellant would not be able to board a domestic flight beyond Baghdad or to the IKR without either a CSID or INID or invalid passport.
194. Given that the enforced route of return is to Baghdad, and that in light of the assessment he would not be able to leave the airport without such document, it follows that the appellant will be in Baghdad with no form of support and thus the risk of destitution applies. This is the factual assessment made by the Secretary of State in the country guidance decisions when addressing Article 15 (b).
195. I accept the submission made by Mr Holt that the material demonstrates that the appellant would not be able to leave the airport at Baghdad without a CSID or valid INID. The Upper Tribunal recorded the evidence which they describe as "uncontested" that a failure to produce a CSID or, in the environs of the airport a valid passport, will be likely result in detention until the authorities could be satisfied of an individual's identity.
196. It cannot be properly said that the appellant could relocate to Baghdad, given that he is not likely to be documented and therefore the guidance in SMO (applying the former guidance in AA (Iraq) (set out in annex A to SMO) does not apply to the appellant. Furthermore, paragraph 414 of SMO refers to the circumstances that in order to reside in Baghdad, an individual from the formally contested areas will require security clearance and "two sponsors from the neighbourhood in which they intend to reside as well as a support letter from the local Mokhtar". That has not been explained any further by the respondent and in any event the likelihood of obtaining a sponsor residence in Baghdad would be dependent again on the individual being "documented". Furthermore, in the preceding country guidance case of AAH (Iraqi Kurds) [2018] UKUT 212 it was held at paragraph 98 as an ethnic Kurd without a CSID and no family members in Baghdad could not reasonably be expected to relocate there. I do not consider that the position is changed from SMO although I would accept that a slightly different list of factors are set out.
197. Drawing together all of those factors, it must follow from my reasoning that the appellant does not have Iraqi identity documentation and will not be able to re-document in the UK or within a reasonable time upon return to Iraq and without the

relevant documentation, country background information and the country guidance decisions make it plain, and is accepted by the respondent before me, the appellant would be at risk of serious harm in Iraq.

198. The decision of Judge Reid made it plain that the appellant had not demonstrated a risk of persecution in Iraq based on a Convention reason and nor has one properly been evidenced during the course of this hearing. Thus the appellant succeeds on the basis that he will be unable to reside in Iraq without being at a real risk of serious harm for reasons relating to the absence of the identity documentation. Thus to return the appellant to Iraq would be in breach of Article 3 of the ECHR and Article 15 (b) as set out in the immigration rules.
199. Given that assessment, it is not necessary to consider Article 8 and therefore the appellant has demonstrated that an exception to deportation applies in his case on the basis set out above.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside; the appeal is re-made as follows: the appeal is allowed on humanitarian protection grounds (Article 15 (b) and under the Immigration Rules, and human rights grounds ( Article 3).

**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 his family members. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

Signed

*Upper Tribunal Judge Reeds*

Date: 12 April 2021