



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002164

First-tier Tribunal No: PA/01377/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 September 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon, instructed by UK & EU Immigration Law Services

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on Thursday 31 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND DIRECTIONS

BACKGROUND

1. By a decision issued on 19 April 2023, the Tribunal (myself and Deputy Upper Tribunal Judge Grimes) found an error of law in the decision of First-tier Tribunal Judge F E Robinson dated 31 March 2022 dismissing the Appellant's appeal against the Respondent's decision dated 7 July 2021 refusing his protection and human rights claims for a second time. The error of law decision is appended hereto for ease of reference.
2. The Appellant had previously unsuccessfully appealed an earlier refusal of his asylum claim. The decision on that occasion (of First-tier Tribunal Judge Bircher promulgated on 24 July 2017) ("the 2017 Appeal Decision") forms the starting point in this second appeal.
3. The Appellant is accepted to be a national of Iran. The Respondent concedes that he cannot be returned to that country as he would be at risk of ill-treatment there. However, the Appellant lived with his family in the Kurdish area of Iraq ("IKR") since he was seven years old. He came from there to the UK. Although the Appellant says that he has lost contact with his family (mother, father and brother), his family remained in the IKR when he came to the UK. The Respondent intends to remove the Appellant to Iraq/the IKR.
4. The Appellant claims to be at risk on return to Iraq because of his sur place activities criticising the Kurdish Regional Government ("KRG"). He also claims that he could not be returned to Iraq due to a lack of documentation. He also says that he is not a national of Iraq and was able to remain there in the past only on a temporary basis.
5. In the error of law decision, the Tribunal concluded that the First-tier Tribunal Judge had erred by failing to consider the issue whether the Appellant is also an Iraqi national and, if he is not, the impact of that finding on the Respondent's ability to remove him to the IKR. We declined the Respondent's invitation to preserve the findings (which were adverse to the Appellant) in relation to the Appellant's sur place activities. As we indicated, the Tribunal has to reconsider all issues in the appeal on protection and human rights grounds at date of hearing. We did however preserve the findings that the Appellant's claim to be at risk because his father is a member of the Peshmerga and/or that he is in fear of the father of a woman with whom he claimed to have a sexual relationship (HS) were not credible. I do not therefore need to deal with those issues.
6. On this occasion, I had before me the Respondent's and Appellant's bundles as before the First-tier Tribunal ([RB/xx] and [AB/xx]) respectively). I also had a further bundle filed by the Appellant ([ABS/xx]) and an expert report of Dr Kaveh Ghobadi dated 10 June 2023 ("the Expert Report"). Mr Solomon filed an updated skeleton

argument for the hearing. Mr Wain apologised that the Respondent had failed to file a skeleton argument in compliance with the earlier directions. He made his submissions orally without objection from Mr Solomon.

7. Having heard oral evidence from the Appellant via a Kurdish Sorani interpreter and following submissions from Mr Wain and Mr Solomon, I indicated that I intended to reserve my decision and issue that in writing which I now turn to do.

THE ISSUES AND THE LAW

Nationality

8. I begin with the nationality issue. As indicated above, and as set out at [12] of the error of law decision, the Appellant meets the definition of a refugee viz-a-viz Iran as a result of the Respondent's concession.
9. The Appellant's case is that his appeal therefore succeeds on protection grounds unless I am satisfied that he is also a national of Iraq. It is accepted that if the Appellant is a dual national, he could only meet the definition of a refugee if he is able to show that he is at risk on return to both countries.
10. The Respondent's position is that she can return the Appellant to Iraq whether he is a national of that country or not. She says that she can do so provided there is no risk on return to that country and provided that he could otherwise continue to live in that country. She says that is because the Appellant was habitually resident in Iraq prior to coming to the UK (for many years).
11. Mr Solomon relied on the case of Starred VD (Nationality, Country of Habitual Residence, TRNC) Cyprus [2001] UKIAT 00002 ("VD"). I accept that VD is authority for the proposition that, in relation to the definition of a refugee under Article 1A of the Refugee Convention, country of habitual residence is only relevant to that definition if an individual is otherwise stateless. It would not apply in the Appellant's case.
12. Mr Solomon did not take me to VD during his submissions. He perhaps should have done so because otherwise the case is not of assistance to the Appellant's case in this regard. At [42] to [44] of the decision, the Tribunal said this:

"42. An appeal under section 8 of the 1993 Act (or section 69 of the 1999 Act) is not an appeal against the refusal of asylum. It is an appeal against the immigration decision, the grounds of appeal being that the appellant's removal or expulsion would breach the Convention. If (but only if) the appellant is a refugee, he is

protected from removal or expulsion by Articles 32 and 33. Article 32 imposes a general prohibition on the Contracting States' expulsion of a refugee 'lawfully in their territory'. As the prohibition is general, destination is irrelevant under this Article. The restriction of its application to those lawfully in the country of reception, however, means that this article only applies to those appealing under section 8 (2) of the 1993 Act (or section 69 (2) or (3) of the 1999 Act). That is the effect, in this context, of the decision of the House of Lords in **In re Musisi [1987] Imm AR 250**: see the speech of Lord Bridge at 258.

43. Where the appeal is under any of the other subsections of the relevant Acts, the removal or expulsion even of a refugee is not prohibited by the Convention. In such cases the appellant is protected only by Article 33. As interpreted, broadly speaking, that Article prohibits return to a place where the individual would either be at risk of persecution for a Convention reason or would be at risk of being expelled from there to a place where he would be at such risk.

44. In English law, the possible destinations for a person who is to be removed from the United Kingdom are restricted by the 1971 Act. For those refused leave to enter, or declared to be illegal entrants, the provisions are in paragraph 8(1)(c) of Schedule 2 to the act. For those being deported, the provisions are in paragraph 1 of Schedule 3. In each case removal may be to 'a country or territory to which there is reason to believe that he will be admitted'. Thus, a person being removed from (or being required to leave) the United Kingdom will not necessarily be returned to his country of nationality."

13. I accept of course that rights of appeal have changed several times since VD. However, those changes do not affect what is said at [42] to [44] of VD. Although the decision under appeal is now the refusal of a protection claim rather than an appeal against an immigration decision, the grounds of appeal remain the same. They are that removal would breach the Refugee Convention (section 84, Nationality, Immigration and Asylum Act 2002 - my emphasis). Mr Wain made brief reference to this but did not develop the submission. However, I accept that he was correct in his reference to that section.
14. Accordingly, the issue is not whether the Appellant falls within the definition of a refugee. He is a refugee viz-a-viz Iran. If he is also a national of Iraq, he may also fall within that definition if he is at risk in Iraq for a Convention reason. However, it is Article 33 of the Refugee Convention which is mainly relevant to my determination. That issue requires me to determine, in broad terms, whether the Appellant can be returned to Iraq, whether he is at risk there and whether he would be able to continue to live there without any risk of being refouled to Iran and without breach of his human rights.

Sur Place Activities

15. Applying the guidance in Devaseelan [2002] UKIAT 00702, the starting point in relation to determination of this appeal is the 2017 Appeal Decision. That is my starting point, but the guidance is not a “legal straitjacket” and it may be appropriate to depart from those findings where that is justified by further evidence. There are in any event certain issues on which no findings have been made (in particular as to sur place activities and documentation).
16. As I have already noted, this Tribunal preserved the findings that the Appellant is not at risk based on his claims of what occurred in Iraq. At [35] of the 2017 Appeal Decision, Judge Bircher rejected as not credible the Appellant’s claim that his father was a member of the Peshmerga, and that the Appellant could not return to Iraq because of the discovery of a relationship with HS ([37] to [40]). Judge Robinson upheld those findings at [35] of her decision and this Tribunal has preserved those findings.
17. The Appellant is therefore limited to arguing that he cannot return to Iraq due to his political opposition to the KRG. That is founded on his sur place activities in the UK.
18. The Appellant relies in this regard on the Tribunal’s decision in XX (P/IAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC) (“XX”). XX was concerned with surveillance of social media platforms by the Iranian authorities which is not relevant to the Appellant’s case as it is accepted that he cannot be returned to Iran. The general guidance on which reliance is placed is as follows:

“Guidance on social media evidence generally

7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.

9) In deciding the issue of risk on return involving a Facebook account, a decision maker may legitimately consider whether a person will close a Facebook account and not volunteer the fact of a previously closed Facebook account, prior to application for an ETD: HJ (Iran) v SSHD [2011] AC 596. Decision makers are allowed to consider first, what a person will do to mitigate a risk of persecution, and second, the reason for their actions. It is difficult to see circumstances in which the deletion of a Facebook account could equate to persecution, as there is no fundamental right protected by the Refugee Convention to have access to a particular social media platform, as opposed to the

right to political neutrality. Whether such an inquiry is too speculative needs to be considered on a case-by-case basis.”

19. Mr Solomon also relies on YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 (“YB (Eritrea)”) as authority for the proposition that, where there is evidence of the suppression of political dissent within a country, it would not require evidence or be speculative to “arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed”. It is similarly said that “affirmative evidence” is not required “to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups” ([18] of the judgment). What is said at [18] of the judgment has to be read however with [17] of the judgment where the Court of Appeal accepted that the Tribunal had adopted the correct approach to the issue of surveillance and monitoring (in terms of the authorities’ means and inclination to monitor).
20. Paragraph [18] of the judgment also has to be read in the context of the case before the Court of Appeal. That is relevant because in the final sentence of [18] the Court goes on to draw a distinction between someone identified as “a hanger-on with no real commitment to the oppositionist cause” and a person in the position of the appellant in that case who had been accepted as being a regional chairman of an opposition party and very active in support of that party’s cause.
21. Mr Solomon also referred me to the recent Court of Appeal judgment in WAS (Pakistan) v Secretary of State for the Home Department [2023] EWCA Civ 894 (“WAS”) which he submitted had upheld the judgment in YB (Eritrea). I do not consider that this judgment adds to the Appellant’s case. The submission made by Mr Solomon is echoed in that recorded at [71] of the judgment. However, when considering that submission, the Court of Appeal said this:

“84.I paraphrase a question which Phillips LJ asked Mr Holborn in argument, ‘What evidence did the UT expect?’ It is very improbable that there would be any direct evidence of covert activity by the Pakistani authorities, whether it consisted of monitoring demonstrations, meetings and other activities, monitoring social media, or the use of spies or informers. I do not consider that Sedley LJ was suggesting, in paragraph 18 of YB (Eritrea), that a tribunal must infer successful covert activity by a foreign state in the circumstances which he described. He was, nevertheless, making a common-sense point, which is that a tribunal cannot be criticised if it is prepared to infer successful covert activity on the basis of limited direct evidence. Those observations have even more force in the light of the great changes since 2008 in the sophistication of such methods, in the

availability of electronic evidence of all sorts, and in the ease of their transmission. To give one obvious example, which requires no insight into the covert methods which might be available to states, it is very easy for an apparently casual observer of any scene to collect a mass of photographs and/or recordings on his phone, without drawing any adverse attention to himself, and then to send them anywhere in the world.”

[my emphasis]

22. It is worth noting that in WAS, the Tribunal did have some evidence about monitoring and surveillance in the UK (including from an expert). It is also worthy of note that the appellant in that case was someone who it was accepted had been active in opposition in Pakistan and in the UK and was also involved with the opposition party. I also observe that, having said what it did about the Tribunal’s reasoning, the Court of Appeal did not allow the appeal outright but remitted it. The judgment is therefore a successful challenge to the Tribunal’s decision on its reasoning but does not necessarily reflect a successful outcome for the appellant in that case.
23. Finally, a further issue which arises in this regard is whether the Appellant would wish to continue his opposition to the KRG on return to IKR and whether, if he did so, he would face a real risk of persecution by reason of his political opinion. The case of HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 is potentially relevant. In broad summary, if the Appellant would not continue his political opposition to the KRG for fear of what would happen to him if he did and if that fear were objectively well-founded, he could not be returned. As Mr Solomon puts it in his skeleton argument, the Appellant “cannot be expected to live discreetly” if his reasons for doing so were to avoid a well-founded fear of persecution.

Documentation

24. In relation to documentation, the relevant country guidance remains SMO and KSP (Civil status documentation, article 15) CG Iraq [2022] UKUT 110 (IAC) (“SMO2”). The headnote so far as potentially relevant to this appeal reads as follows:

“B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

...

7. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.

...

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....
12. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered 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...
13. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities but only for those Iraqi nationals who are registered at a CSA office which has not transferred to the digital INID system. ...
14. Whether an individual will be able to obtain a replacement CSID whilst in the UK also 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, some Iraqi citizens are likely to recall it. Others are not. Whether an individual is likely to recall that information is a question of fact, to be considered against the factual matrix of the individual case and taking account of the background evidence. The Family Book details 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.
15. 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. ...
16. 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...
17. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel by land.
18. Laissez Passers are confiscated on arrival and will not, for that reason, assist a returnee who seeks to travel from Baghdad to the IKR by air without a passport, INID or CSID....
19. There is insufficient evidence to demonstrate the existence or utility of the 'certification letter' or 'supporting letter' which is said to be issued to undocumented returnees by the authorities at Baghdad International Airport.
20. The 1957 Registration Document has been in use in Iraq for many years. It contains a copy of the details found in the Family Books. It is available in either an individual or family version, containing respectively the details of the requesting individual or the family record as a whole. Where an otherwise undocumented asylum seeker is in contact with their family in Iraq, they may be able to obtain the family version of the 1957 Registration Document via those family members. An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy.
21. The 1957 Registration Document is not a recognised identity document for the purposes of air or land travel within Iraq. Given the

information recorded on the 1957 Registration Document, the fact that an individual is likely to be able to obtain one is potentially relevant to that individual's ability to obtain an INID, CSID or a passport....

22. The evidence in respect of the Electronic Personal Registry Record (or Electronic Registration Document) is presently unclear....

E. IRAQI KURDISH REGION

26. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

Kurds

27. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

28. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

29. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon 'connections' higher up in the chain of command.

30. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.

...

32. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

33. For Kurds without the assistance of family in the IKR the accommodation options are limited: ...

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR;...;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;

(iii) ... It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

34. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

...

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID or INID;

(iv) Patronage and nepotism continue to be important factors in securing employment....;

(v) Skills, education and experience....;

..."

25. In relation to the protection claim, the Appellant bears the burden of substantiating his protection claim to the lower standard of proof. He has to show that there is a real risk that he would face treatment contrary to the Refugee Convention for a Convention reason.
26. The Appellant also has the burden of proof in relation to the Article 3 ECHR claim. That is an absolute right not to be subjected to torture, inhuman or degrading treatment or punishment. As well as the overlap with the Appellant's protection claim, if the Appellant is able to show that, due to a lack of documentation, it would be unduly harsh to return him to the Iraq/IKR, the appeal would also be allowed on Article 3 grounds.
27. When dealing with the Article 8 claim, the starting point is within the Immigration Rules ("the Rules"). The only potentially relevant rule is Paragraph 276ADE(1)(vi) which requires the Appellant to show that there are very significant obstacles to his integration in Iraq/IKR ("Paragraph 276ADE(1)(vi)").
28. In relation to Article 8 ECHR, as a qualified right, outside the Rules it is for the Appellant to establish the fact and degree of interference with his right to respect for his private life (no family life is asserted). It is then for the Respondent to show that such interference is justified and proportionate. When balancing the interference with the Appellant's private life, I must have regard to section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B").

THE 2017 APPEAL DECISION

29. I can deal quite briefly with the findings made by First-tier Tribunal Judge Bircher which remain relevant. The 2017 Appeal Decision appears at [AB/48-56]. The following findings have some continuing relevance:
- (1) A Sprakab report concluded that the Appellant's background was of an Iranian and an Iraqi ([33]);
 - (2) In the course of his journey to the UK, the Appellant informed the authorities of three different European countries on three different occasions that he was "from Iraq" (albeit using different false identities and different dates of birth) ([34]);
 - (3) The Appellant had a mobile phone and charger when he was taken into custody in the UK ([40]);
 - (4) The Appellant would have family support in IKR and could use that support to obtain pre-entry clearance ([46]).

THE EVIDENCE AND FINDINGS

30. I heard oral evidence from the Appellant via a Kurdish Sorani interpreter. I am satisfied that the Appellant and interpreter understood each other.
31. The Appellant has provided two statements in this appeal - undated for the hearing before the First-tier Tribunal ([AB/12-18]) and dated 15 May 2023 ([ABS/3-4]). Mr Wain during his cross-examination also referred the Appellant to the asylum interview record which is at [AB/57-82].
32. I did not find the Appellant a credible witness. On several occasions, questions had to be repeated as he avoided giving a direct answer. Some of his answers, particularly as regards his sur place activities were very vague.
33. In addition to his statements and other documents in the bundle to which I will refer as necessary below, the Appellant relies also on the Expert Report. That is a report of Dr Kaveh Ghobadi dated 10 June 2023. He describes himself as "a Middle East consultant [with] a special interest in Kurdish society and culture as well as Kurdish nationalist movement".
34. Mr Wain did not dispute Dr Ghobadi's expertise but submitted that I should give limited weight to the Expert Report given the lack of documentation to which the expert was referred. He pointed out that Dr Khobadi was provided only with instructions from the Appellant's solicitors, the First-tier Tribunal decision in this appeal and my error of law decision. He was not provided with the 2017 Appeal Decision and was therefore not aware that the Appellant had been found not to be credible in certain respects. He was not

provided with the Appellant's witness statements which means that he has in certain respects not considered the factual background to the Appellant's own case when looking at the background situation in Iraq.

35. Notwithstanding Mr Wain's submission, I have regard to the Expert Report where that appears relevant to the issues before me and have given it such weight as I consider appropriate on the issues dealt with in that report. As I come to, the Expert Report is predominantly concerned with the acquisition of Iraqi nationality (which is only peripherally relevant) and otherwise concerns the issue about documentation on which I have wider guidance in SMO2.
36. It appears now to be common ground that the Appellant was born in Iran but moved with his family to IKR when he was aged seven years which would have been in around 2001. He arrived in the UK in 2016. He accepts that he was educated in Iraq to some extent at least. He also accepts that he worked in Iraq. At first, he said that he had his own business and that was his only employment but then accepted that he had also worked before that in a brick factory.
37. The Appellant denies that he had any documents to permit him to be educated and to work. He accepts that he had seen a document with his photograph on it (which he says he no longer has) but says that he does not even know whether that was a form of residence permit. Even if it was, it was a temporary permit only.
38. When asked how he could have been educated or have worked in Iraq without an identity document, the Appellant said on two occasions that it was "not like here. They do not ask for documents to be accepted". That is inconsistent with what is said in SMO2 and also inconsistent with the Expert Report on which the Appellant relies. Dr Khobadi is adamant that an identity document (CSID or INID) "is essential for life of Iraqi citizens". He says that it is "required, among other things, for internal travelling, access to health services, the social health service, education, as well as selling and buying properties and cars".
39. As Mr Wain pointed out, the Appellant has not only been able to find work in Iraq but also rented a shop and ran a business. He was also educated in Iraq for ten years (see Q25 in the asylum interview records at [AB/66]). Although the Appellant says that he was "not officially a student" and "they just let [him] in the school", based on Dr Khobadi's evidence, I find that the Appellant must have had some form of identity card on which to be accepted for education and to find work.
40. Turning then to nationality, I do not accept the Appellant's explanation for why he told the authorities in Greece and France that

he was from Iraq. In his oral evidence, he said first that he had not given the information. It was given by “a guard” (possibly an agent?). However, that information was given on three occasions, and I do not accept that three different people would have given the same information if that had not been conveyed to them by the Appellant himself.

41. Nor do I accept the suggestion that the Appellant said this because he was scared. There is no explanation why he would lie about the country from which he emanated for that reason. He did not explain why he would say that he was from Iraq rather than Iran for that reason.
42. I accept as Mr Solomon submitted that it might not be inconsistent for the Appellant to say that he was “from Iraq” given that this is the country which he left to come to the UK. That might not indicate that he was of Iraqi nationality. Equally, though, I do not accept the Appellant’s testimony in relation to his nationality and for that reason I am sceptical about his own assertion not to also have Iraqi nationality.
43. Dr Khobadi has dealt at some length with the issue of acquisition of Iraqi nationality. The issue for me to determine though is whether the Appellant is Iraqi at the present time (although potential acquisition of citizenship may have some relevance to the documentation issue).
44. I accept and give weight to Dr Khobadi’s evidence about the difficulty of obtaining citizenship in the IKR and that for most Iranian Kurds, that has not been possible. I also accept that his evidence shows that many have been granted residence permits rather than nationality which would not be inconsistent with the Appellant’s case that he had some form of residence document. However, one of the main reasons why there is such difficulty is because the KRG’s authority to naturalise non-citizens is not recognised by the Iraqi authorities ([12]). Moreover, Dr Khobadi very fairly accepts at [11] of the Expert Report that “the KRG reportedly granted several Iranian Kurds citizenships in 2006”.
45. Dr Khobadi was not asked to comment on whether the Appellant and his family might have been amongst those granted citizenships. He was unaware of the facts of the Appellant’s case as he did not have the Appellant’s witness statements. The timeline given by Dr Khobadi regarding the grant of citizenships in 2006 is not inconsistent with the chronology of the Appellant’s case. Moreover, Dr Khobadi says that CSIDs and INIDs are granted only to Iraqi nationals. Given his insistence that those documents are necessary for the purposes of education, work etc, I find that the Appellant would not have been able to receive education, find work and rent a

shop for his business without such a document. Given Dr Khobadi's views about the need for citizenship to obtain those identity documents, I find that the Appellant is also an Iraqi national.

46. The Appellant says that he has not had any contact with his family since leaving Iraq as his mobile phone was taken from him by an agent whilst he was in Turkey. That is inconsistent with the finding in the 2017 Appeal Decision that the Appellant had a mobile phone and charger when taken into custody in the UK. His explanation on that occasion that he was given this by an agent does not ring true. An agent would be unlikely to give someone a mobile phone as that might permit a migrant to contact the authorities. If the agent was returning to the Appellant his own phone, that undermines his evidence to have had his phone taken from him. I do not for that reason believe that he has no way of contacting his family.
47. In his 2023 statement, the Appellant details his visits to the Iraqi Consulate and KRG Representative's office in May 2023. He went with two friends who have provided letters confirming the visits. Those are at [ABS/5] and [ABS/6]. In short summary, the Appellant's case is that neither the Consulate nor the KRG Representative's office would provide him with any information because he did not have a passport or any form of identity document. It is said that the Consulate and KRG Representative's office could not find the Appellant in their databases. The Consulate apparently said that they would not be able to do so without a CSID number or passport number. The KRG Representative's Office said that they could not find the Appellant's details. It is worthy of note that one of the Appellant's friends says in his letter that the Consulate said that they could not search for the Appellant because "they don't have advanced technology".
48. In his statement, the Appellant says that the fact that the KRG Representative's office could not find his details on the database means that "[he is] probably not a KRG resident". When the Appellant finally gave a straight answer to the question whether that was his interpretation of what he had been told or what the office had actually said, I understood him to accept that it was his view based on what he had been told.
49. The Appellant also said in answer to my question, that he had also given his family's details to the Consulate and KRG Representative's Office to assist enquiries. I do not believe his evidence in that regard as it is not mentioned in his written statement. I find that in making the visits he did to the Iraqi Consulate and KRG Representative's office, the Appellant was simply going through the motions of appearing to provide information to the authorities in order to make out a case that he could not be returned to Iraq/IKR due to a lack of documentation.

50. There is a further inconsistency in the Appellant's case arising from his visits to the Iraqi and KRG authorities relating also to his sur place activities. The Appellant claims to fear that he is being monitored by those authorities due to his activities in the UK and yet was quite prepared to go into the buildings occupied by those authorities and hand over his details.
51. This is an issue which I find undermines the Appellant's claim genuinely to fear the authorities based on his sur place activities. If he genuinely feared that he was being monitored or was under surveillance, he would not be prepared to provide his details to those authorities.
52. His answer when asked about this that he needed proof, that he was not so frightened because he was in the UK and because he had two friends with him does not assist. I do not believe that if he genuinely feared those authorities, he would be prepared to go to them and provide his personal details (and on his account which I have not believed would also give details of his family who remain living in the IKR).
53. In relation to his sur place activities, I begin with whether the Appellant is genuinely politically motivated. I accept that this is not directly relevant to a risk from sur place activities. An individual may still be at risk based on such activities without any genuine motivation. It is however relevant to the issue whether the Appellant would wish to continue with his opposition to the KRG on return to IKR.
54. The Appellant's interview record in relation to his original asylum claim is at [AB/57-84]. The Appellant was expressly asked whether he had any political affiliation. He said that he did not. He did not mention any fear of return to Iraq based on previous political activities during his 2017 appeal. The Appellant now says that he was not involved in such activities before leaving Iraq because of the risk of so doing. However, given his denial of any political association when he first came to the UK, I do not believe that answer.
55. The Appellant said in his oral evidence that he was in fact politically active in the UK at the time of his previous appeal but "did not post on social media". When he was asked in what way he was active at that time, he said that it was more in relation to Iranian Kurds than Iraqi Kurds and gave some vague evidence about having attended demonstrations in London. I do not accept that evidence. If the Appellant had been involved in activities whether against the Iranian authorities or the Iraqi/KRG authorities, I find that he would have mentioned this in his 2017 appeal. There is no mention of activities

dating back to 2017 in either of the Appellant's witness statements or in the documents.

56. I turn then to the substance of the evidence about sur place activities which is contained in the Appellant's undated witness statement at [AB/12-18]. The Appellant says at [11] of the statement that he has "participated in several political agendas and protests". He provides no detail in that regard. In relation to social media posts, he says at [12] of the statement that he considers it dangerous to go back to either Iraq or Iran because of his "strong views" against the governments of those countries and that he has shared those views on his social media account.
57. The Appellant's social media posts and photographs are at [AB/85-105]. None of them are explained in the Appellant's evidence. The quality of some of the photographs is poor. Some relate to the Iranian government and are not relevant to this appeal. Some include text written in Arabic which is untranslated. Many are posts of articles which the Appellant has shared. He has shared them with a limited group of people and has attracted in most cases a very limited number of comments. Most fail to identify the location or the date other than by reference to what the Appellant himself has apparently written. Where dates are given, none pre-date November 2019. Where those include photographs of demonstrations, they do not identify the person who is said to be the Appellant.
58. The high point of the Appellant's case are the posts at [AB/96-103] and at [ABS/29-34]. Those refer to killings in IKR and protests against the KRG.
59. At [AB/97] is a photograph of a protest which may be outside the KRG Representative's Office (the location is not shown). It may include a photograph of the Appellant although this is not expressly shown. It was shared with 10 people and attracted 17 comments.
60. At [AB/98] is mention of NRT news having recorded a protest. The Appellant says that "NRT show that we have done a protest against a Iraqi Kurdistan Government". NRT is apparently an independent media network in IKR. The photograph shows a woman apparently from NRT interviewing someone. The Appellant is not shown as identified in the group being interviewed nor is there any indication what was being said. The location is not shown. The post was shared with 8 people and received 15 comments.
61. At [AB/101] is a post saying "[w]e did a protest against the president of Iraqi Kurdistan government and asked for release of the badinan prisoners and journalists". It shows a man (possibly the Appellant although this is not stated) holding a banner which is largely

- illegible. The location is not shown. The post was shared with 30 people and received 106 comments.
62. At [AB/102] is a post criticising the KRG for failing to protect the security of its citizens and at [AB/103] is a report of explosions in Erbil and criticism of arrests of young people who are demonstrating. Those are undated. They were shared with 13 people and received 21 comments.
 63. At [ABS/29], there is a post referring to “the corrupt and evil family regime” but no further detail is given. That was shared with 21 people and received 66 comments. It is not clear whether this post refers to Iran or Iraq.
 64. The posts at [ABS/31-34] are photographs of a demonstration. The location is not shown. It may be the KRG’s Representative’s Office. There is an address given as that of the KRG’s Representative’s Office but that is just typed into the post and is not shown as the location of the post. The post appears to have been on 16 October 2022 which may or may not have been the date of the protest. An individual is shown holding a banner which reads “The traitors of 16 October should be trialed [sic]”. It is not clear whether the person holding the banner is the Appellant. The post was shared with 19 people and received 86 comments.
 65. As is made clear at [7] and [8] of in the guidance in XX, production of printed material without full disclosure in electronic form is likely to be of very limited evidential value. It does not show a location of access or a full timeline. As is also there made clear, it is easy for an apparent printout to be manipulated.
 66. Even if I accept the evidence at face value, it shows that the Appellant shares posts with a very limited circle of people and receives very limited comments and the content of those comments is not shown. They do not show that the Appellant’s posts are the subject of widespread publication nor are they for the most part particularly critical of the KRG.
 67. The photographs showing the protests may mark the high point of the Appellant’s case but even those do not show what is the Appellant’s role in the protests nor that he has attracted any attention because of those protests. As I have already noted, if the Appellant really feared the KRG government as a result of his activities, he would not have voluntarily presented himself to the authorities and handed over his details as well as (on his account) those of his family members.
 68. There is also no evidence that the KRG has the motivation or resource to monitor activities in the UK. The Appellant said in his

oral evidence that when he was at one of the protests, there was a group filming and taking photographs who he said were from the KRG. I have already noted that one of the posts show a media network taking photographs, but that network is said to be an independent organisation. The Appellant has provided no evidence that they are linked to the KRG. When he was asked how he knew that the people taking photographs were from the KRG, he said that “they were wearing the same clothes and shoes and were escorting a car with tinted windows”. That answer lacked credibility as showing that the KRG was monitoring or carrying out surveillance of a demonstration. It is possible that security staff were escorting a car with tinted windows if this related to a presidential visit but beyond that, I do not accept the Appellant’s evidence in this regard as credible. There is no mention of this in his written statement. The Appellant said that he could not remember when this took place. Again, he also failed to provide a credible explanation why if he thought that he had been photographed, he would then attend the KRG Representatives Office to hand over his details.

69. Mr Wain also drew my attention to the Country Policy Information Note dated July 2023 entitled “Opposition to the Government in the Kurdistan Region of Iraq (KRI)” (“the Opposition CPIN”). The broad thrust of the Opposition CPIN is that “higher profile activists and those with a previous history of organising protests and demonstrations as well as journalists, particularly those with no links to the KRG parties” are not likely to be at risk. Low level participation in protests would not attract a real risk. “[T]here is no evidence to suggest that the KRG have the capability, nor the inclination, to target individuals who were involved in the protests at a low level”. Nor is there, as Mr Wain pointed out, evidence to show that the KRG monitors protests in the UK.
70. The Appellant relies on extracts from background information which are set out in Mr Solomon’s skeleton argument. The CPIN which is there cited is an earlier one. In any event, it is not inconsistent with the Opposition CPIN as showing that it is those with higher profile and journalists who are at risk. The evidence concerns protests in IKR and not in the UK. I do not find it necessary to deal with the CPIN regarding sufficiency of protection as I do not accept based on the background evidence that the Appellant would be at risk even if he were genuinely motivated to participate in protests on return which I do not accept that he would be in any event.
71. In relation to documentation, Mr Wain took me to the CPIN entitled “Internal Relocation, Civil Documentation and Returns, Iraq” dated July 2022 (“the Documentation CPIN”). Mr Wain accepted that SMO2 remains relevant. However, he also pointed out by reference to [3] of the Documentation CPIN that failed asylum seekers can now be returned to the IKR (see also [2.6.3]).

72. The Appellant's starting position is that he cannot be issued any identity document as he is not an Iraqi national. I have rejected his claim in this regard. I have found that he is also an Iraqi national.
73. I have also not accepted the Appellant's case that he has lost contact with his family.
74. I accept that the guidance in SMO2 indicates that for the areas which now use INIDs, those are unlikely to issue a CSID. I accept by reference to the Expert Report that this includes the Appellant's home area. I accept that this means that the Appellant would have to attend the local CSA office in person. If it is the case that the Appellant no longer has a CSID and that this is not with his family in IKR, then Dr Khobadi has explained how an INID can still be obtained ([24] of the Expert Report). Dr Khobadi has also explained at [25] of his report how an individual can obtain a copy of their page in the family registry.
75. Whilst [18] of the guidance in SMO2 indicates that an individual cannot travel from Baghdad to IKR on a laissez passer, that is no longer relevant if, as the Documentation CPIN indicates, the Appellant can be returned to IKR.
76. With the benefit of those findings, I now turn to draw together those findings as they apply to the issues I have to determine.

DISCUSSION AND CONCLUSIONS

77. I accept that the Appellant is a refugee viz-a-viz Iran. However, whether or not he is also Iraqi, he can be removed to Iraq. I deal below with risk to the Appellant in Iraq. Although Iraq is not a signatory to the Refugee Convention, there is no evidence that Iraq returns Iranian Kurds to Iran. There is no evidence to that effect in the Expert Report. As a matter of fact, the Appellant lived in the IKR for about 15 years before coming to the UK. On any view, the Appellant was habitually resident in IKR before coming to the UK. That is consistent with his own statements made to the authorities in the European countries which he passed through. Subject to any risk in Iraq, therefore, he could be returned to the IKR even though he is a refugee viz-a-viz Iran.
78. In any event, I have not accepted the Appellant's case that he is not also an Iraqi Kurd. Whilst recognising the difficulties of obtaining citizenship as set out in the Expert Report, that report concedes that some Iranian Kurds were granted citizenship by the KRG at a time when the Appellant and his family were in IKR.

79. As regards risk in IKR, I have preserved the finding made by First-tier Tribunal Judge Robinson, relying on the finding made in the 2017 Appeal Decision that the Appellant is not at risk due to his claimed relationship with HS. That claim has been found not to be credible. Nor was it accepted that the Appellant's father was a member of the Peshmerga.
80. I have not accepted that the Appellant was politically active in IKR before coming to the UK. I have not accepted that he has any genuine political interest. For that reason, I have not accepted that he would become politically active on return to IKR. In any event, were he to wish to do so, a low-level involvement would not give rise to any real risk of ill-treatment.
81. I do not accept that the Appellant's political involvement in the UK is motivated by any genuine motivation. I find that he has embarked on that involvement only to bolster his protection claim. Based on the evidence, I have found that he began his activities only once his first appeal was dismissed (in late 2019).
82. The Appellant's involvement in sur place activities has in any event been at a very low level. The evidence is vague and largely unsubstantiated. It does not show that the Appellant is the sort of individual in whom the KRG would show interest even if he were demonstrating in IKR. There is no evidence that the KRG has the capability or resource to monitor protests in the UK. The Appellant's posts are shared with a limited circle of people. Given the low level of the Appellant's involvement, he would not be of any interest to the authorities. I have also found the Appellant's claimed fear of the authorities not to be genuine. It is inconsistent with the Appellant having voluntarily presented himself to the KRG authorities in the UK to obtain evidence about his inability to obtain documentation.
83. For those reasons, the Appellant's protection claim fails.
84. In relation to documentation, I have not accepted the Appellant's case that he is not a national of IKR. Nor have I accepted his case that he has lost contact with his family in IKR. He may therefore be able to obtain some documentation by that route. However, even if he cannot, he can now be returned directly to IKR. There he will be able to obtain an INID by using his CSID which I find is likely still to be with his family in IKR. Even if he no longer has that document, he will, on his own expert's evidence, be able to obtain an INID by reporting his CSID lost or missing. As he will be able to obtain an identity document, none of the difficulties set out in the guidance in SMO2 in relation to living in the IKR will apply. He will be able to return to his family there. His claim based on Article 3 ECHR therefore fails.

85. As I understood Mr Solomon to accept, the Article 8 claim is something of a makeweight. I consider that claim briefly.
86. In relation to Paragraph 276ADE(1)(vi), I do not accept that there are very significant obstacles to integration in IKR for much the same reasons as in relation to the Article 3 claim. The Appellant has family in the IKR. Whilst he was not born in IKR, I have found that he is also a national of that country. He lived there for about 15 years before coming to the UK. He was educated there. He worked there. He speaks the language of that country.
87. By contrast, the Appellant has provided very little if any evidence about what he has been doing in the UK (aside his sur place activities). There are brief supporting letters from two friends ([ABS/5-6]) but those are limited to evidence about the visits to the Iraqi Consulate and KRG Representative's Office. They provide no detail about their friendship with the Appellant other than to say that they have been friends since 2018/2019. The Appellant does not claim to have a partner or child in the UK. The Appellant's own statements do not deal with his life in the UK other than in relation to his sur place activities.
88. The Appellant's private life can be given little weight (Section 117B (5)). His immigration status has always been precarious. It is not clear whether the Appellant speaks English. His witness statements do not show that they were translated but he gave evidence via an interpreter. In any event, that factor would be neutral. There is no evidence that the Appellant is financially independent but, even if he were, that too would be a neutral factor.
89. Weighing heavily in favour of the public interest is the maintenance of effective immigration control. I have found the Appellant's protection claim to lack credibility. The Appellant does not meet the Rules.
90. Balancing the interference with the Appellant's private life against the public interest, I come down firmly in favour of the public interest. Removal of the Appellant is a proportionate interference with his private life.
91. For those reasons, I reject the Appellant's appeal on Article 8 grounds also.

NOTICE OF DECISION

The Appellant's appeal is dismissed on protection grounds.

The Appellant's appeal is dismissed on human rights grounds (Article 3 ECHR and Article 8 ECHR).

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
5 September 2023

APPENDIX: ERROR OF LAW DECISION



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002164

First-tier Tribunal No: PA/01377/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....19 April 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

A B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon, instructed by UK & EU Immigration Law Services

For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 22 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the

Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge F E Robinson dated 31 March 2022 (“the Decision”) dismissing his appeal against the Respondent’s decision dated 7 July 2021 refusing his protection and human rights claims for a second time. The Appellant had previously unsuccessfully appealed an earlier refusal of his asylum claim.
2. The Appellant is accepted to be a national of Iran. The Respondent now concedes that he cannot be returned to that country as he would be at risk of ill-treatment there. However, it is also common ground that the Appellant moved with his family to the Kurdish area of Iraq when he was a child. He lived there for several years before coming to the UK. His family remain there. The Respondent contends that the Appellant could therefore return to that country.
3. The Appellant claimed to be at risk on return to Iraq because of his sur place activities criticising the authorities in Iraqi Kurdistan. He also claimed that he could not be returned to Iraq due to a lack of documentation. He also says that he is not a national of Iraq and was able to remain there in the past only on a temporary basis.
4. The Judge applied the “Devaseelan guidelines” as she was required to do. She therefore took into account as a starting point the previous findings made by First-tier Tribunal Judge Bircher in July 2017. Having adopted those findings about which no further evidence had been produced, she went on to find that the Appellant would not be at risk on return to Iraq due to sur place activities. She did not believe that his activities would come to the attention of the Kurdish authorities. She also found that he could be returned on the basis either that he already possessed the necessary documentation or could obtain it via family living in Iraqi Kurdistan. She did not make any finding in relation to the Appellant’s nationality.
5. Having reached her findings, the Judge dismissed the protection claim and found that the Appellant had no grounds for a humanitarian protection claim. She also concluded that there would be no very significant obstacles to return to Iraq and that the Appellant’s Article 8 claim also failed.
6. The Appellant appeals on essentially three grounds which can be summarised as follows:

- (1) The Judge failed to make any clear finding on the Appellant's nationality. No finding had been made in that regard in the previous appeal decision.
 - (2) The Judge failed to have regard to guidance and background country information in relation to assessment of risk arising from sur place activities.
 - (3) The Judge failed to give adequate reasons for her conclusion that the Appellant would be able to obtain documentation and in reaching that conclusion failed to have regard to relevant country guidance.
7. Permission to appeal was initially refused by First-tier Tribunal Judge Athwal on 24 May 2022. However, following renewal to this Tribunal, permission was granted by Upper Tribunal Judge Rintoul on the basis that it was "arguable that the judge failed to reach a proper finding as to the appellant's nationality which is central to the issue of whether he is a refugee". Although Judge Rintoul concluded that there was less merit in the other grounds, he did not limit the grant of permission.
 8. The appeal therefore came before us to determine whether the Decision contains an error of law. If we conclude that it does, we then have to decide whether the Decision ought to be set aside in whole or in part depending on the error found. If we set aside the Decision, we must either remit the appeal to the First-tier Tribunal for re-hearing or re-make the decision in this Tribunal.
 9. We had before us a core bundle of documents relevant to the appeal, and the Respondent's and Appellant's bundles ([RB/xx] and [AB/xx]) respectively) as before the First-tier Tribunal.
 10. Having heard submissions from Mr Solomon and Ms Nolan, we indicated that we intended to reserve our decision and provide that in writing which we now turn to do.

DISCUSSION AND CONCLUSIONS

11. We are satisfied that the Appellant has demonstrated an error of law in the Decision by his first ground for the reasons which follow.
12. The definition of a refugee is that a person is outside the country of his or her nationality (our emphasis) because he has a well-founded fear of persecution there for one of the Refugee Convention reasons. In this case, the Appellant is accepted to be a national of Iran. He is accepted to be at risk there. As such, he may well satisfy that definition.
13. As we understood Mr Solomon to accept, if the Appellant is also a national of Iraq, then subject to the issue whether he can safely be

returned there, he does not satisfy that definition because that is equally a country of which he is a national.

14. We accept as Ms Nolan submitted, that, even if the Appellant is not a national of Iraq, if he was habitually resident there previously and can safely return there, that may indicate that he is able to seek the surrogate protection from the authorities of that country. That is not a matter on which we heard full argument.
15. In her decision under appeal, the Respondent concluded that the Appellant had the right to reside in either Iraq or Iran ([31] of the decision at [RB/9]). It is worthy of note that the Appellant has himself claimed to be a national of Iraq using three alternative identities. The Respondent did not however reach any conclusion whether the Appellant is in fact a national of Iraq.
16. Neither was there any finding in this regard in the previous appeal decision. That decision appears at [AB/48-56]. Judge Bircher noted the Appellant's case that he was born in Iran but moved to Iraq several years previously ([22]). He also noted that a report from Sprakab had concluded that "the appellant's background is assessed to be that of an Iranian and an Iraqi" which was consistent with the Appellant's claim ([33]). At that time, the Appellant was claiming to be at risk on return to Iraq and not Iran ([36]). The Respondent had not conceded that the Appellant could not safely be removed to Iran. It was not therefore the Appellant's case that his nationality was at issue and Judge Bircher did not therefore need to make any finding in that regard.
17. It is not entirely clear that the Appellant's nationality had gained the relevance which is now asserted even before Judge Robinson. The issues as identified by the Judge at [16] of the Decision were merely whether removal to Iraq would give rise to a risk entitling the Appellant to refugee status or humanitarian protection or whether removal would breach Article 8 ECHR. There is mention at [25] of the Decision of the Appellant's case that his family had not obtained nationality or citizenship in Iraq and did not have any documentation. However, that appears to be a submission relating to the background of the case in the context of what is there said. There is reference to there being "no clear findings regarding [the Appellant's] claimed nationality" ([17]) but, again, it is not said that this was required as part of the determination of the protection claim. The submission there made is in the context of the documentation issue. It is also in that context that the reference to (lack of) Iraqi nationality is made in the Appellant's skeleton argument (see [2] and [12] of the skeleton argument at [AB/3-11]).
18. In those circumstances, it is perhaps unsurprising that Judge Robinson did not consider it necessary to make any finding whether the Appellant is a national of Iraq. However, given the definition of a

refugee to which we refer above, we have concluded that it is necessary in this slightly unusual case to make a finding whether the Appellant is a national of Iraq and, if not, whether and on what basis he is returnable to Iraq. We therefore find an error of law to be established on the first ground.

19. We, as Judge Rintoul, consider the two remaining grounds to have less merit. There is some overlap between the nationality issue and the documentation issue. For that reason, it would be inappropriate to retain the Judge's findings in relation to documentation. However, as Mr Solomon accepted, the appeal before Judge Robinson was heard prior to the reporting of SMO and KSP (Civil status documentation, article 15) CG Iraq [2022] UKUT 110 (IAC) ("SMO2"). The most recent country guidance in relation to documentation on return to Iraq was that cited by Judge Robinson (SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) ("SMO")). We accept however as Mr Solomon submitted, that it was incumbent on the Judge to consider background information regarding the position as it was at the date of the hearing and to the extent that it was before her background evidence which was before the Tribunal in SMO2.
20. Mr Solomon accepted that the Respondent in the decision under appeal had set out in considerable detail at [47] to [91] the position regarding documentation for returnees to the Kurdish area and had cited extensively from the country information and policy note ("CPIN") in force at that time. At that time, Civil Status Identity Documents ("CSIDs") remained the main identity document which would be required for return to Iraq. Whilst there is some reference to Iraqi National Identity Cards ("INIDs"), the position had not progressed to the stage where those had overtaken CSIDs.
21. The Judge made the following findings in relation to documentation:

"47. The Appellant continues to assert that he has no CSID, INID or entry in a family book, that he is no longer in contact with any family in Iraq and that he does not know their whereabouts. However, I have seen no evidence which causes me to depart from the previous findings of Judge Bircher where he concluded that the Appellant could benefit from family support in KRI. The Appellant asserted in oral evidence that he was able to rent a shop and attend school in Iraq without documentation apart from a temporary residence permit but no evidence has been adduced in support of this assertion. Whilst I bear in mind that corroboration is not required for a positive credibility finding, I have regard to Judge Bircher's previous credibility findings. For these reasons, I am satisfied, to the lower standard, that the Appellant either has some form of documentation or has family in Iraq who would be able to assist him. I find that this family in Iraq could for example act as a nominated representative in order to obtain documentation, as set out in SMO and CPIN Iraq: Internal relocation etc."

22. So far as we can see, neither party produced the relevant CPINs in their bundles. However, we accept that the Judge did refer to those which were relevant at that time. The hearing and Decision both pre-date the version of the CPIN issued in July 2022 after SMO2 was reported. The version in place at the time of the hearing and Decision was therefore that cited in the Respondent's decision under appeal (June 2020). Although Mr Solomon submitted that the position as set out in the CPIN and later considered by the Tribunal in SMO2, was "supportive of very real difficulties in the obtaining of documentation", we can see nothing in the passages cited in the Respondent's decision taken from the June 2020 CPIN and SMO which undermines the Judge's reasoning in relation to whether the Appellant could obtain documentation on return.
23. The Judge relied on some of the findings of Judge Bircher but not in relation to the obtaining of documents. That is understandable since Judge Bircher's decision pre-dated even SMO. The point made by the Judge is that, based on Judge Bircher's findings, the Appellant has not lost contact with his family in Iraq and could therefore look to them for any assistance required in order to return to Iraq or obtain support there. The Judge did not believe the Appellant's evidence that he had not had any documentation previously.
24. The Judge's reasoning is not inadequate. She has explained her conclusion that the Appellant could return to Iraq and was not prevented from doing so by a lack of documentation.
25. We are equally unpersuaded that the Judge erred in her consideration of the Appellant's sur place activities. Her reasoning for rejecting the Appellant's claim to be at risk on this account is to be found at [44] to [46] of the Decision as follows:

"44...I do not find that it would be dangerous for Appellant, having regard to the evidence and his particular circumstances, to return to Iraq. This is for the following reasons. I have seen no evidence to indicate that the Appellant's posts and participation in demonstrations have come to the attention of the Kurdish political parties and this was confirmed by the Appellant in his oral evidence. The number of posts, likes and comments are limited and there is no evidence of wider media coverage or that he would be identified in Iraq. He has only participated in three demonstrations in this country, in August and September 2021 and in March 2022. Besides holding up posters there is nothing to indicate that he played a prominent role in these demonstrations or that he would be identified for his role. Moreover the demonstrations appear to be more in the way of reform of the regime rather than violent overthrow.

45. In addition, whilst I have regard to caselaw which states that consequent risk on return from his activity sur place is essentially an objective question, I find that his motivation is doubtful. The Appellant stated in oral evidence that he participated in demonstrations against

the Iraqi government before 7th July 2021 but that he didn't post this activity on social media until after this date. The reason he gave is that before then he '...*didn't know that the Home Office didn't accept my nationality as Iranian and I didn't want to mix things together.*' I do not find this a plausible explanation and in light of the previous credibility findings his activities appear to be opportunistic.

46. Looking at all the circumstances and all the evidence I do not find that there is a real risk of him being targeted by the Iraqi government as a result of his activities."

26. Whilst we accept that the Appellant's motivation in his actions is not relevant to whether he would thereby be placed at risk, it is evident from the Judge's reasoning that she recognised that the focus of her assessment had to be on the objective question of risk. She analysed the content of the social media posts in evidence and considered the photographic evidence at [41] of the Decision. She properly directed herself to guidance in relation to the assessment of risk arising from sur place activities of this nature including the most recent guidance about Facebook evidence in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC) at [42] of the Decision. None of the guidance there referred to concerns risk in Iraq and it was relevant only to the approach to be taken.
27. The Judge referred to the sorts of criticism of which the authorities in Kurdistan are intolerant by reference to the CPIN at [43] of the Decision. Mr Solomon took us to the CPIN (including [11.2.10] to which the Judge herself made reference). However, none of the extracts were directly relevant to the Appellant's situation, concerning as they did the authorities' interest in their critics within Iraq itself and interest in individuals disseminating information critical of those authorities (for example journalists).
28. The Judge clearly had regard to the background evidence to which she was taken. She directed herself by reference to the most up-to-date guidance which was relevant to this aspect of the Appellant's case. She gave adequate reasons for rejecting this part of his case.
29. In conclusion, we accept that there is an error disclosed by the Appellant's first ground relating to the lack of any finding in relation to nationality but reject the grounds challenging the Judge's conclusions concerning his sur place activities and documentation.
30. We have carefully considered Ms Nolan's submission that the error we have found is not material because it makes no difference to outcome. She submitted that, on the findings which we have accepted were open to the Judge, the Appellant can safely return to Iraq. Whilst, as we said at the outset, the fact that the Appellant may be able to return safely to Iraq might be relevant to the issue whether he is entitled to be recognised as a refugee in the UK, that also depends, in part, whether he is a national of that country and, if

he is not, the circumstances in which he would be placed as a non-national. We reject the submission that the nationality issue is not material. For that reason, we consider it necessary and appropriate to set aside the Decision at least in part.

31. We have also carefully considered whether we should preserve the findings and conclusions in relation to the Appellant's sur place activities and documentation. However, we have concluded that we cannot do so. In order to re-assess the protection claim in relation to Iraq, we would have to consider whether the Appellant could safely be returned to Iraq at date of hearing. That involves considering not only the nationality issue but also whether anything has changed in relation to his sur place activities and ability to access documentation. That includes of course the guidance given in SMO2 and background evidence post-dating that guidance. We observe in passing that Ms Nolan informed us that circumstances may actually have changed for the better in relation to return to Kurdistan as the Respondent may now be returning failed asylum seekers directly to that area.
32. We also do not preserve the findings made in relation to Article 8 ECHR. There is some overlap between the Article 8 claim and the protection claim particularly as regards obstacles to integration in Iraq. We also have to assess the position on a re-making as at date of hearing.
33. We do however preserve the finding at [34] of the Decision which relied on Judge Bircher's previous findings that the Appellant is not at risk on return based on his father being a member of the Peshmerga and is not at risk of revenge from the father of a woman with whom he claimed to have had a sexual relationship in Iraq.
34. In light of the foregoing, a number of issues still require redetermination and there will be a degree of fact finding to be done. However, the issues which remain largely turn on assessment of documentary and background evidence rather than credibility (although we accept that the evidence in relation to nationality may involve issues of credibility). Mr Solomon was content to leave to us the matter of disposal if we found an error of law. Having regard to the Practice Statement regarding disposal of appeals following a finding of error of law, we have concluded that the appeal should remain in this Tribunal for re-making.
35. The Appellant has not made any application to adduce further evidence. Given our conclusion that nationality is now a highly relevant issue, however, he and the Respondent may wish to produce evidence in that regard. We have for that reason given a direction for the parties to produce further evidence if they wish to do so.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge F E Robinson dated 31 March 2022 involves the making of an error of law. We set aside the decision whilst preserving the findings at [34] of the Decision. We retain the appeal for re-making of the decision in this Tribunal. We make the following directions:

DIRECTIONS

1. Within 28 days from the date when this decision is sent, the parties shall file with the Tribunal and serve on the other party any further evidence on which they wish to rely.
2. Within 6 weeks from the date when this decision is sent, the parties shall file with the Tribunal and serve on the other party skeleton arguments setting out their submissions on the law.
3. The appeal will be listed for a face-to-face hearing to re-make the decision on the first available date after 8 weeks from the date when the decision is sent. Time estimate $\frac{1}{2}$ day. If an interpreter is required, the Appellant's legal representative is to inform the Tribunal within 7 days from the date when this decision is sent.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
3 March 2023