



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000054

First-tier Tribunal No: PA/50596/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 21 September 2023

Before

UPPER TRIBUNAL JUDGE REEDS

**Between**

**FLA**  
**(Anonymity direction made)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms G. Patel, Counsel instructed on behalf of the appellant.

For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at IAC on 31 July 2023

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal (Judge Lodato “the FtTJ”) who, in a determination promulgated on the 30 November 2022 dismissed the appeal of the appellant on protection, humanitarian protection and human rights grounds.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.
3. 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.

The background:

4. The factual background to the appeal is set out in the decision of the FtTJ, the decision letter and the papers in the parties' respective bundles. The appellant is a national of Iraq of Kurdish ethnicity from Tuz Khurmatu, Saladin Province.
5. The appellant left Iraq on 6th November 2017 before travelling to Turkey where he thereafter travelled via foot, car and lorry before entering the United Kingdom clandestinely on 18th December 2017. He claimed asylum the same day. The FtTJ's decision also records that according to EURODAC records accessed by the Home Office, the appellant was apprehended and fingerprinted in Nuremberg in Germany on 25th November 2017. At that time, it is said that he gave a date of birth of 20th February 1993 and claimed to be from Bokan in Iran.
6. The respondent refused the appellant's claim in a decision taken on the 19 August 2019. The appellant appealed that decision and the appeal came before FtTJ Heap. A copy of his decision is in the CE File and was before FtTJ Lodato. The following information is taken from the decision of FtTJ Heap.

The decision of FtTJ Heap 25 October 2019:

7. The appellant's claim before FtTJ Heap was as follows: he feared a return to Iraq on the basis of his imputed political opinion as a result of his uncle's and his own past involvement with the Peshmerga and that he is wanted by Hashd al-Sha'abi because of that involvement. As a secondary fear, he also feared persecution as a result of his father's previous involvement with the Ba'ath party and also on account of his Kurdish nationality. The appellant's home area is Tuz Khurmatu in the Salah -al Din Province and it is the appellant's position that this was and remains a contested area and thus that it would not be safe for him to return. Lastly, the appellant's position is that he has no CSID card with him in the United Kingdom and it would not be able to obtain replacement documentation. As such, it would not be possible for him to safely relocate to the IKR and even if he were able to make it to the IKR it would be unduly harsh for him to do so. Particularly, as he has no family or employment opportunities in that region.
8. The respondent accepted that as a Kurd from Tuz Khurmatu it was reasonably likely that the appellant had been affected by widely reported events of 16th October 2017 in the disputed areas between the KRI and Federal Iraq (paragraph 23 of the Decision). However, the respondent did not accept that the appellant had a profile which was of interest to Hashd al-Sha'abi and the relevant part of the decision in that regard said this:

"You claim that your uncle supported the local volunteer Peshmerga in Tuz since Da'esh first attacked the town in approximately 2014. You delivered food to them 4 times. When HaS came to Tuz on 16 October 2017 they targeted your uncle, and then you, personally because of this. It is unclear how HaS came to know about this. You were asked to explain, and your answers are entirely speculative (AIR q67-q93). There is no information to substantiate your assertion that HaS had networks of informers in Tuz who monitored everyone who supported the Peshmerga in such low level ways of giving

them food. There is no information to substantiate your assertion that HaS personally targeted everyone who helped the Peshmerga in such a low level way. You were asked how HaS knew where you lived, how they would know what you looked like, and why they raised your house when you were elsewhere at the time. You explained that there was a network of informers in Tuz and that they only gave HaS a person's home address, not their current location (AIR q94- q103). It is unclear how you know any of this information, Your account is based wholly on your own speculation. It is acknowledged that you were affected by the events in Tuz on 16 October 2017. However, your account does not indicate that you were of a profile of interest to HaS. Your account of the problems you personally had it not credible and based on your own speculation. For those reasons, this fact of your claim is considered to be unsubstantiated and will be considered further under Benefit of the Doubt below."

9. The respondent also did not accept the appellant's account that his father had been a member of the Ba'ath party before 2003 and that he would be identified because his father's name is on lists in the KRI. In that regard, the respondent relied on the appellant's failure to make any mention of that matter in his screening interview which was conducted three weeks after his arrival in the United Kingdom (paragraph 28 of the Decision) and that this had also been omitted from his further representations.

10. The relevant part of the decision also said this:

"Claiming to be at risk in Iraq on the basis that your father was a high profile Ba'ath party member is considered to be a material fact of your claim, therefore it is considered that you have failed to remain consistent between submissions. You had no problems on this basis with Kurds of Peshmerga in Tuz. Whilst it is acknowledged that you were a child when the Ba'ath regime fell in 2003, your knowledge of this aspect of your claim is limited and it is unclear how you know that you would be identified by your father's name being on a list [sic] if you returned to Iraq and relocated to the KRI. Further, it is considered inconsistent that your father was in the Ba'ath party, yet his own brother helped local Peshmerga in Tuz. Regarding you are your family's profile (as imputed) Ba'athists, CPIN Iraq: Ba'athists, November 2016 states at 3.1.1 "most high ranking Ba'athists have either fled the country or have already been dealt with by the new regime", which is considered to weight against your assertion to come from a sufficiently high profile Ba'athist background that you would be identified and targeted in the KRI. For these reasons it is not accepted that your father was in the Ba'ath party as you claim."

11. The respondent took issue with the appellant's credibility under Section 8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 on the basis that he had been untruthful in an asylum claim in Germany when he had given false information and had told the authorities that he was Iranian.

12. It was the respondent's case that the appellant was able to return to Iraq and, particularly, to his hometown of Tuz Khurmatu. Alternatively, it was submitted that the appellant would be able to relocate to the IKR. The Presenting Officer confirmed before Judge Heap that it had been accepted that the appellant no longer had access to his CSID card nor otherwise that he would not be able to take steps to replace it either via the Embassy or from family members remaining in Iraq.

13. The appellant's appeal was dismissed in an appeal promulgated on 25 October 2019 by First-tier Tribunal Judge Heap.

14. The findings of fact made by FtTJ Heap can be summarised as follows:

15. Dealing with the factual claim that on 16th October 2017 Hashd Al Shabi attacked and took control of Tuz Khurmatu and that his uncle was arrested and tortured on account of his association with the Peshmerga and gave Hashd Al Shabi his name as someone who had also been assisting that group. The FtTJ found that the background country information supplied by the appellant's solicitors did not support his assertion that as a low level assistance/ association with the Peshmerga that he would be targeted by Hashd Al Shabi. The FtTJ regarded the appellant's evidence as vague and speculative as to how he was aware of informers for Hashd Al Shabi operating in Tuz Khurmatu.
16. The FtTJ found that whilst the appellant's version of events could not be said to run counter to specific and general information - it equally could not be said that that can be realistically given any weight because the FtTJ had not been provided with any supporting material as to why Hashd Al Shabi would be interested in the appellant on account of him having delivered food to the Peshmerga on a few isolated occasions. He therefore gave no weight to this issue ( paras 37-38).
17. As to the appellant's claimed association with the Ba'ath party via his father's membership some years previously, the FtTJ took into account the country evidence in the Country Policy and Information Note - Iraq: Ba'athists - Version 1.0 November 2016. Having regard to the information contained therein he was satisfied that the appellant's contentions regarding the possibility of him being targeted as a result of his father's previous membership of the Ba'ath party some considerable number of years earlier was not consistent with the country background information and that was one of the factors that therefore weighed against him in the FtTJ's determination as to whether to accept his contention that he was at risk because of his imputed political opinion ( para 39).
18. The FtTJ considered the evidence as to whether the appellant had made a claim for asylum at the earliest opportunity or was able to demonstrate a good reason for not having done so. The FtTJ found this factor as relevant given that the appellant transited through Germany and, on the basis of the Eurodac documentation, made an asylum claim in that country but left before it was determined. The FtTJ set out the closing submissions made on his behalf that the appellant had followed the instructions of the agent who brought him to the United Kingdom in his dealings in Germany and that it would not be unusual that he knew nothing of what has been said because of exerted control by traffickers. The FtTJ stated,  
  
"However, I must contrast that with the appellant's evidence when I asked him directly about the matter when he told me that the information in the Eurodac documentation, including about what it is said he had reported as to his nationality, were wrong. He made no mention of the agent or someone else having provided that information on his behalf or of him being told what to say. I equally have no reason to conclude that the Eurodac information is not accurate. It could be possible that a mistake had been made as to his date of birth and given the spelling of Iran and Iraq, that another error had been made but that cannot feasibly be said to be the case here given that a specific reference is made to Bokan which is in the West Azerbaijan Province of Iran. Given that I have not accepted the appellant's explanation that all of those details on the Eurodac documentation are incorrect, but that that was nevertheless his evidence, it follows that I do not find that he was influenced by the agent to provide that information as Mr. Greer suggests nor do I accept the appellant's evidence that the agent encouraged and assisted him to leave Germany. I simply did not find the appellant credible on these points. Having clearly commenced the asylum process in Germany, this is a matter that I weigh heavily against the appellant as to his failing to complete that process. If he

were genuinely in fear of persecution or serious harm, he would have continued to claim asylum at the first port of call where he had the clear opportunity to do so and he would not have sought to deceive the authorities by providing false information” ( paras 42-46).

19.The overall credibility findings were summarised at paragraphs 45-51:

“The final relevant matter is whether I considered the appellant to be a credible witness in the evidence that he gave at the hearing. My observations on that matter are best summed up in what I have already said about the Appellant’s evidence on the Germany Eurodac issue. The appellant’s evidence was that the information was incorrect and thus that he had not said that he was from Iran or given a different date of birth. I did not consider in view of the documentation that that evidence was true and therefore I find that the appellant has therefore been prepared to be dishonest in a previous asylum application. That weights very heavily against him. Taking those matters into account, I am not at all satisfied that the appellant gave an honest account at the hearing before me.

Taking all those matters into account, I need to consider whether I accept, to the lower standard, that the appellant was targeted by the Hashd Al Shabi and/or that he is at risk on account of his imputed political opinion by reason of his father’s links to the Ba’ath party. 49. Ultimately, I do not accept any of that. The factors set out above weigh heavily against the appellant and I am not satisfied, even to the lower standard, that the appellant was the target of Hashd Al Shabi. His account relies on unexplained speculation about a network of informants in Tuz Khurmatu and his credibility has been undermined significantly as a result of the matters that I have raised above to the extent that I cannot accept his account as to any alleged threat from Hashd Al Shabi. Moreover, the appellant’s position as to the reasons why he feels that he would be targeted on account of his father’s previous affiliation with the Ba’ath party are, even before me, entirely speculative and do not accord with background country information.

I find it far more likely that the appellant simply fled when Hashd Al Shabi attacked like most of the other residents at the time. There is, quite simply, no link between that state of affairs and the appellant’s claimed political or imputed political opinion. I therefore do not find that the appellant’s life is at risk as a result of his political or imputed political opinion as that is either not credible or amounts only to speculation and runs counter to the Country Information.”

20.Notwithstanding the adverse credibility findings, the FtTJ accepted that the appellant was from Tuz Khurmatu and followed the country guidance to conclude that this area remained in a state of internal armed conflict within the region in which it is located and that Article 15 ( c ) of the QD applied ( see paras 50-58).

21.The FtTJ therefore considered the question of internal relocation to the IKR. The FtTJ accepted that he would be returned to Baghdad and would need to travel to the IKR. To do so, he would require a CSID card to board an internal flight or to make anything approaching a safe and successful passage by road.

22.The FtTJ made the following findings at paragraphs 62 and 65-69 :

“The appellant’s evidence was that he had always carried his CSID card with him in his pocket whilst he was in Iraq because it was an important document that he required with him in his daily life and that he took it with him when he fled the country. He contended that the agent took his CSID card from him along with the identity documents of the others who were being taken out of the country and that he therefore no longer has a copy. His evidence was that he has no way of contacting family in Iraq to assist in providing replacement documents and that he does not know the book and

page number for their family registration details. I turn to whether I accept that evidence below.

The question of transit to the IKR (and thereafter settling into a life in that region) is therefore dependent upon whether the appellant still has or is able to replace his CSID card and that brings me to his evidence in relation to the alleged disposal of that documentation.

I did not find the appellant's evidence to be credible on this point. His evidence, as above, was that his CSID card had been taken by the agent transiting him from Iraq. I remind myself that the appellant's evidence was that he had carried that CSID card day in day out in his pocket since he turned 18 years of age and that had clearly been on account of how important the card was. He had also taken the trouble to take it with him when he fled Iraq. It does not appear to me to be credible that the appellant in those circumstances would hand over that important documentation to the agent. Moreover and more importantly, the appellant will clearly be aware of the importance of having a CSID document to both the feasibility of returning him to Iraq and that the absence of such documentation, if accepted, would bolster his claim. Given that I have already made a negative assessment of the appellant's credibility for the reasons that I have given above, I cannot accept his evidence on that point when considered in the round.

Even if it was the case that the appellant no longer had his CSID card (and I do not accept that he does not) there is also the question of whether the appellant can obtain a replacement document in the United Kingdom. I have reminded myself of the applicable process required as set out at paragraph 26 of AAH and I also have in mind in that regard paragraph 177 of AA which states as follows: "In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring."

I accept that the appellant, even if he is able to contact family members in Iraq, cannot obtain a replacement document in that way as he is of course from a contested area where Article 15(c) serious harm is occurring. However, there is no evidence that the appellant has taken any steps to seek to obtain a replacement CSID document in the United Kingdom. I do not accept his evidence, which again is something of a convenience in terms of the feasibility of his return and which would bolster his claim, that he cannot recall the details of his family book and page number. I consider it highly unlikely that the appellant cannot recall those particular details given that he carried the CSID card on his person at all times for a considerable number of years as a result of the importance that he placed upon it. I therefore do not accept his evidence in that regard. I am therefore satisfied that the Appellant could seek to obtain a replacement CSID card from the Iraqi Embassy in the United Kingdom. Whether he will do so (and thus the feasibility of his return) is not an issue in the assessment of whether the appellant is entitled to international protection.

That being the case, there is nothing to prevent the appellant from travelling to the IKR. However, I then need to consider the position as to what will happen when he reaches the IKR and whether it will be unduly harsh to expect him to relocate there."

23. The FtJ stated she was satisfied that he could take advantage of the Voluntary Returns Scheme which would provide him with access to funds on which to

initially secure accommodation and thus a buffer until he is able to obtain employment. Whilst the appellant did not appear to have family members to assist in the IKR and may face some suspicion on account of his age and association with a contested area, the FtTJ found that his resourcefulness in adapting to life in the UK having travelled to the United Kingdom and resided for a considerable period of time without the support of family or any friendship network enhanced his prospects. The FtTJ found that the appellant did not speak English (or certainly not to a standard where he is not reliant on an interpreter) yet had managed to successfully maintain himself in the United Kingdom for a prolonged period. He could speak Kurdish Sorani and “there are no barriers given his resourcefulness, once he has received a replacement CSID, to him relocating and establishing a life in the IKR as he has apparently done in the United Kingdom” ( see paragraphs 71-73).

24. The FtTJ therefore concluded that the appellant’s relocation to the IKR would not be unduly harsh, nor would it place him at risk of destitution such as to engage Article 3 ECHR. The appeal was dismissed.
25. The appellant applied for permission to appeal that decision, but permission was refused by the First-tier Tribunal and upon renewal, Upper Tribunal Judge Hanson on 30 December 2019 refused permission to appeal. He became appeal rights exhausted.
26. The appellant submitted further submissions which were refused on 31 January 2022 (the “decision letter”). They included a claim based on his sur place activities.
27. The appellant appealed the decision, and the appeal came before FtTJ Lodato on 17 November 2022. In a decision promulgated on 30 November 2022, the FtTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.

#### The decision of FtTJ 30 November 2022:

28. The FtTJ began his assessment of the evidence by setting out the previous findings of fact made by FtTJ Heap and summarising the key findings at paragraph 12 applying the well-established principles in Devaseelan.
29. The FtTJ then set out what he referred to as the “ core facts “ at paragraph 13 of his decision as follows:

“13 The appellant’s primary factual case was set out in his witness statement and the evidence he gave during the hearing. He supported his case with supporting photographic and Facebook evidence. The core facts in support of his new claim were summarised in the skeleton argument in the following terms:

The appellant’s fresh claim is based on his political opinion and activities in the UK. The appellant’s activities comprise online campaigning against the Iraqi and Kurdish authorities, including the Shia Militias. He has also attended demonstrations against the authorities. [...]

The appellant has no identification documents with him in the UK. He is therefore undocumented and states he cannot redocument within the current procedures.

30. The FtTJ’s factual findings and assessment of the evidence is set out between paragraphs 18-26.

31. At paragraphs 18- 20 the FtTJ considered the sur place claim. The FtTJ identified that “an important factual question lying at the centre of the claim is whether the appellant’s political activities in the UK reflect his genuinely-held political beliefs. Not only are the claimed sur place activities the evidential foundation for the fresh claim, but this political activism is said to weigh heavily in the sliding scale analysis I must perform in deciding whether the appellant can safely return to his home area and renders internal relocation to the IKR unduly harsh.”

32. The FtTJ took into account the submissions made on behalf of the respondent and those from the appellant’s Counsel but found at paragraph 19:-

“I am inclined to agree with the submissions made by (the Presenting Officer) on behalf of the respondent that the timing of the overtly political acts in the UK is a matter of concern. The appellant was candid when answering questions during cross-examination that his political interests only started after his first appeal was dismissed. The appellant’s record of attending ten demonstrations, since May 2021, in opposition to those who hold power in Iraq was not the subject of serious challenge. There was also evidence that the appellant’s Facebook profile, set up in December 2020, was used to post commentary critical of the regime, both in the IKR and elsewhere in Iraq. The appellant’s witness statements included political opinions about the plight of the Kurdish people in Iraq. The difficulty with this sequence of events was the pace of change. There was simply no evidence whatsoever that the appellant had shown the slightest interest in politics in more than 3 years following his departure from Iraq in November 2017. The catalyst for the political activism appears to have been the failure of his first claim for asylum. It was argued on his behalf during the hearing that this delay might be readily explained by the fact that he clearly had bigger things on his mind after his initial flight from Iraq as he sought protection in the UK. Not only was this contention unsupported by the appellant’s evidence, but it did not cohere with the enthusiasm with which he embraced political activism approximately a year after his first appeal was dismissed. This all struck me as an orchestrated attempt to provide fresh grounds to obtain refugee status. Such a concerted attempt to mislead is clearly not beyond an individual previously found to be lacking in credibility and to have invented a false Iranian identity which was proffered to the German authorities. I have no cause to doubt that the supporting material which shows that the appellant engaged in public political commentary against the Iraqi regime and participated in a series of protests, but this does not mean that this reflected genuinely held political opinions. For the reasons outlined above, I find that he has not established that these activities were genuine expressions of political opinion but were instead driven by a desire to confer a successful ground of appeal. There is no reason to think that he would be minded to continue to pursue in Iraq the artificial political activism he only recently embarked upon here.”

33. Notwithstanding the findings reached about the credibility of the appellant’s sur place claims, the FtTJ considered whether the arguments advanced on his behalf that the Iraqi authorities monitor social media and protests to such an extent that he would be in danger irrespective of whether he pursued those activities in good faith.

34. The FtTJ said this at paragraph 20:

“The skeleton argument provided detailed references to background information and country guidance authorities. At paragraphs 19-20, reliance was placed upon the establishment of the Security Media Cell whose mission was to monitor and crack down on public dissent with a particular focus on social media. I was also directed to background information reports which highlighted oppressive official responses to public expressions of political opinion before attention turned to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC). What was missing from all of this was any



cogent evidential basis to support the notion that the Iraqi authorities have in place any apparatus to monitor dissidents abroad. At the risk of stating the obvious, Iran and Iraq may be geographical neighbours and have significant Kurdish populations, but they are not the same regime. Country guidance directed to Iran cannot be simply transposed to Iraq. The final two sentences of paragraph 26 of the skeleton argument amount to a misconceived non-sequitur seeking to transplant Iranian risks into Iraqi territory. The appellant has not established that he is at risk solely on the basis that he has already engaged in political activism and that this might have already, or will in future, come to the attention of the Iraqi authorities.”

35. The next factual matter considered by the FtTJ was whether the appellant continued to have access to his CSID card. The FtTJ set out his conclusions between paragraphs 21-23 as follows:

“21. During oral submissions, Ms Khan accepted, if the appellant continued to hold his CSID card, that there was no reason to think that the appellant could not feasibly return to his home area to undergo the redocumentation process. The key question was whether he still had this important document. It was suggested that it was open to me reach my own conclusion on this question unencumbered by the previous determination because no clear finding was reached about whether he had retained the card. The findings summarised above were said to be inconsistent in that it made little sense that the appellant regarded his CSID card to be so important that he would be disinclined to hand it to an agent and yet was also said to have provided false identity information to the German authorities while presumably still in possession of a CSID card which said otherwise. The two conclusions could not stand together.

22. There are a number of difficulties with this argument. First, the two findings are not logically inconsistent. The retention of the CSID does not exclude the provision of false identity information to the German authorities. There is space for both propositions to coexist. Even if I am wrong about that, this was a point to be advanced on appeal against the decision rather than seeking to go behind these findings now.

23. If Judge Heap found that the appellant had his CSID when she heard his appeal in 2019, this must represent my starting point and should only be departed from with good reason. I am satisfied that this finding was reached. The relevant part of the determination, at paragraph 67, bears repetition: Even if it was the case that the Appellant no longer had his CSID card (and I do not accept that he does not) ...”. This strikes me as tolerably clear, notwithstanding that a key part of the finding is in brackets, that the appellant was found to continue to hold his CSID card. There is, in reality, nothing beyond the word of the appellant to indicate that he no longer has this important document. Given the adverse credibility findings against the appellant which also comprise the starting point I must adopt, it would be wholly unsafe to rely on the word of a man previously found to be lacking in credibility to move away from Judge Heap’s findings of fact about the CSID card.”

The FtTJ set out his summary at paragraphs 24-25 as follows:-

“In summary, taking the findings of Judge Heap as my starting point, I too find that the appellant continues to have access to his CSID. This will enable him to travel between the point of return in Baghdad to his home area of Tuz Khurmatu. This is in a formerly contested area. The Upper Tribunal recently provided country guidance about the assessment of whether Article 15 (c) applies in these areas. It is necessary to perform a sliding scale analysis considering the appellant’s personal characteristics. During oral submissions, I was taken to passages of ‘SMO 1’ where the conditions in Tuz Khurmatu were the subject of detailed consideration. Strong arguments were advanced that an individual with the appellant’s characteristics who was likely to engage in political activism would be at risk on return to this area given the continuing danger posed to politically active Kurds. This would engage the first specified factor identified at paragraph 5 (i) of the headnote of ‘SMO 2’. However, for the reasons I have outlined

above, I do not accept that the appellant would engage in such political protest or expression because his motivation for doing so in the UK was to provide the groundwork for a fresh appeal, not as a genuine expression of his political views. Apart from being a Sunni Kurd, none of the other listed factors apply to him. An additional personal factor of relevance is whether he would have the support and shelter of family in his home area. He gave oral evidence that he left several family members behind in his home area. These relatives included his parents, three siblings and two uncles. He maintained that he had lost contact with them and had no idea where there were or if they were alive. He was clear that he did not have telephone number with which to even attempt contact. His attempts to locate them using the Red Cross had proved fruitless.

25. It was put to the appellant in cross-examination that his oral evidence that he never had access to telephone numbers for his family was at odds with paragraph 8 of witness statement dated 21 July 2021 where he said this: I have not been able to contact any of my family on the numbers that I had for them which I find extremely worrying. Beyond asserting that he had not said what was included in the witness statement, he had no sensible explanation for this stark discrepancy. I am driven to conclude that the appellant was not telling the truth about his ability to contact his family. The approaches made to the Red Cross appeared to be little more than cynical box-ticking exercises. I remind myself that the appellant has previously been found to have provided false information in the context of seeking asylum when he gave false details to the German authorities. Overall, the appellant has not established that he has lost contact with his family or that they are no longer in Tuz Khurmatu.

26. The appellant has failed to establish that his personal circumstances are such that he would be at risk on return to Tuz Khurmatu. There is nothing to prevent him using his CSID card to travel between Baghdad and his home area to undergo the redocumentation process. I can see no good reason to depart from the findings reached by Judge Heap. Given my primary findings, the question of internal relocation does not arise."

36. FtJ Lodato therefore dismissed the appeal.

#### The appeal before the Upper Tribunal:

37. Permission to appeal was sought on behalf of the appellant which was refused by FtJ Buchanan on 4 January 2023 for the following reasons:

GOA(1): In the context of sur place activities which started only after an unsuccessful asylum appeal, the issue of genuineness of the activity is plainly relevant, with the onus on the appellant to establish its relevance and therefore the genuine nature of the activity to succeed in his appeal. The conclusion was open to the judge and adequate reasons are given, therefore.

GOA(2): The appellant's argument is a disagreement with conclusions open to the Judge in the state of the evidence before him. The Judge appears to have had access to material now cited in PTA #6. The Judge gives adequate reasons for concluding that the evidence did not persuade him as to the outcome sought.

GOA(3): This argument is an extension to the GOA(2) argument. The Judge concludes that there is "no evidential basis to support the notion that the Iraqi authorities have in place any apparatus to monitor dissidents abroad" #20. There are adequate reasons for rejecting the XX argument.

GOA(4): It is expressly acknowledged by the FTTJ at #23 that there is "nothing beyond the word of the appellant to indicate that he no longer has this important document", so it is plain that the FTTJ did in fact (and contrary to PTA submission) have regard to the appellant's explanation.

It is not arguable by reference to the Grounds of Appeal that there may have been error of law in the Decision as identified in the application. I refuse to grant permission to appeal.”

38. On renewal to the Upper Tribunal UTJ McWilliam granted permission on grounds 2 and 3 only but not grounds 1 and 4. UTJ McWilliam stated :

“I grant permission on grounds 2 and 3, which overlap, on the basis that it is arguable that the judge did not consider the appellant’s social media presence and the ability and intention of the authorities to monitor this. While such an error may impact on the overall assessment of risk, I do not grant permission on grounds 1 and 4 as they stand alone. There was no such concession made by the SSHD in the refusal letter. Credibility was clearly an issue in this appeal. The judge properly applied Devaseelan. The findings in respect of the CSID card were open to the judge. I endorse the decision of the First-tier Tribunal (Judge SPJ Buchanan) refusing permission in respect of grounds 1 and 4”.

39. At the hearing, Ms Patel of Counsel appeared on behalf of the appellant and Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent.

40. At the outset of the appeal Ms Patel sought to raise a preliminary issue as to the grant of permission and indicated that she sought to argue that the decision of Upper Tribunal Judge McWilliam was not a limited grant of permission and that the grant of permission did not comply with the case law to amount to a limited grant of permission.

41. The decision of UTJ McWilliam was dated 13 February 2023 and sent on 22 February 2023. but there had been no prior notice to the Upper Tribunal or the respondent that this was an issue that was going to be raised. There was no skeleton argument setting out the points or by reference to any legal authorities. Ms Patel indicated that there was a new novel point that arose on this issue and invited the Tribunal to hear the arguments from each advocate and hear all the grounds of challenge and to decide the preliminary issue in the written decision as to whether it was a limited grant of permission rather than delay the hearing. That seemed a sensible solution proposed by Ms Patel and Mr Diwnycz did not seek to argue that he would not be able to address the points raised.

Preliminary issue:

42. Ms Patel submitted that the grant of permission was not a limited grant of permission by reference to the decision in Safi and others [2018] UKUT 388. She referred the tribunal to the head note (1) of that decision where it was stated that it is essential for a judge when granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.

43. Ms Patel referred to paragraph 8 of Safi and submitted that when looking at the decision by UTJ McWilliam, the UTJ did not make any distinction between permission to appeal on limited grounds and permission being granted.

44. Ms Patel took the tribunal to paragraph 38 of Safi, where it was stated that “ the time has come when it needs to be clearly stated that it is unacceptable to produce a decision on an application for permission to appeal which is so unclear that it gives the rise to the need for judicial interpretation, of the kind we have to undertake in the present case. A decision on a permission

application must be capable of being understood by the tribunal's administrative staff (the reasons we have given above): by the parties: and by the tribunal or the court to which the appeal lies."

45. Ms Patel also relied on paragraphs 43 and 44 of the decision in Safi and she submitted that the reasons for the decision must not include any words that are intended to form part of the decision.

46. Ms Patel also submitted that a later case decided by the Upper Tribunal in Ali ([: errors: slip rule) [2020] UKUT 249 set out at paragraph 4 of the head note the following:

"In the Upper Tribunal, where a judge grants permission when they clearly meant to refuse, the error is unlikely to be identified at a case management stage, if and insofar as that stage is undertaken by the same judge, immediately after their mistaken grant. This highlights the point, emphasised in Isufaj (PTA decisions/reasons: EEA reg. 37 appeal) [2019] UKUT 283 (IAC), that it is the responsibility of the permission judge, whether in the First-tier Tribunal or the Upper Tribunal, to make sure there is no contradiction between their decision and the reasons for it."

47. She submitted that the first part of the headnote was not relevant but that the second part of that paragraph set out that it was responsibility of the judge granting permission to make sure there was no contradiction between the decision and the notice .

48. Ms Patel submitted that the decision which was operative was the decision in the notice of decision sent with the grant of permission in this case on 22 February 2022. She submitted that this was the formal document sent by the Tribunal and that document stated, "the application permission to appeal to the Upper Tribunal has been granted by the Upper Tribunal." She submitted that this notice of decision sent by the clerk was the notice of the decision saying permission had been granted. As the notice of decision did not say it was granted on a limited basis in that document, it was ambiguous, and the document seem to imply that permission had been granted on all grounds. Therefore she submitted the grant of permission by UTJ McWilliam is not the decision, but the letter sent out with the decision attached to it.

49. Ms Patel also relied upon the decision in Isufaj (PTA decisions/ reasons; EEA Regulations 37 appeal [2019]UKUT 283 and in particular paragraph 1 of the headnote as follows:

(1) Judges deciding applications for permission to appeal should ensure that, as a general matter, there is no apparent contradiction between the decision on the application and what is said in the "reasons for decision" section of the document that records the decision and the reasons for it. As was said in Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC), a decision on a permission application must be capable of being understood by the Tribunal's administrative staff, the parties and by the court or tribunal to which the appeal lies. In the event of such an apparent contradiction or other uncertainty, the parties can expect the Upper Tribunal to treat the decision as the crucial element.

50. Ms Patel submitted that the UTJ had not said that it was a limited grant of permission in the notice of decision (that is the front page of the decision) and that there was ambiguity in the notice therefore this was not a limited grant of permission.

51. Mr Diwnycz on behalf of the respondent submitted that the decision of UTJ McWilliam was compliant with the decision in Safi, and that looking at the grant of permission itself it stated: "the application permission to appeal is GRANTED and underneath and underlined it stated in bold "**on grounds 2 and 3 only**".
52. He further submitted that the submission that the accompanying letter was the notice of decision could not apply. It was simply an accompanying letter and was not part of the judicial decision.
53. Mr Diwnycz submitted that as set out in the decision in Safi, if this was to be a limited grant of permission it had to be set out clearly above with the reasons given. Here the UTJ clearly stated that permission to appeal was granted only on grounds 2 and 3 and gave reasons for limiting the grant of permission.

Decision on preliminary Issue:

54. I am grateful for the submissions given by the advocates relevant to the preliminary issue as summarised above. I have been able to consider the legal authorities cited by Ms Patel and her arguments in order to consider whether this was an unlimited grant of permission as she seeks to submit.
55. In support of her submission Ms Patel relies principally upon the decision in Safi as recorded above. That decision stated in the headnote as follows:

"(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.

(2) It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document."

56. The decision in Safi set out that if the grant of permission is to be granted only on limited grounds, it should say so and be expressly articulated. The decision described the standard form of document as it was at the time stating that it falls into 2 discrete sections; first there is the decision itself which in that case read "permission to appeal is granted" and the decision separated from the 2<sup>nd</sup> by a black horizontal line. The 2<sup>nd</sup> section is described as "reasons for the decision" and that on its face therefore the first section distinguishes itself from the 1<sup>st</sup> section: the 1<sup>st</sup> being the decision and the 2<sup>nd</sup> by the reasons for the decision (see paragraph 27 of Safi).
57. The UT at paragraph 28 found that in the appeal before them, it was of clear significance that in the decision section of the document for permission to appeal it categorically stated to be "granted" and that there were no words of limitation in that section. The UT concluded that given the terms of the decision of Rodriguez makes it plain that any ambiguity in the reasons which followed fell to be resolved in favour of the appellants. Thus the UT concluded that the decision to grant permission was on its face unrestricted as the "reasons" section in the decision needed to be unambiguous in order to contradict the general grant and it did not apply on the facts of that case(see paragraph 35).
58. The Upper Tribunals set out its summary as follows:

**“b) The requirements to be met when granting permission.**

38. The time has come when it needs to be clearly stated that it is unacceptable to produce a decision on an application for permission to appeal which is so unclear that it gives rise to the need for judicial interpretation, of the kind we have had to undertake in the present case. A decision on a permission application must be capable of being understood by the Tribunal's administrative staff (for the reasons we have given above); by the parties; and by the tribunal or court to which the appeal lies.

39. What the Court of Appeal said at paragraph 80 of Rodriguez must, henceforth, be followed. If a judge intends to grant permission only on limited grounds, he or she must make that fact absolutely clear.

40. Particularly given the delay and expense that have been occasioned in the present proceedings by the First-tier Tribunal Judge's failure to produce a clear decision, the Upper Tribunal considers that the time has also come to build upon Rodriguez, as follows.

41. Henceforth, it is not to be regarded as merely good practice to do what is set out in paragraph 80 of Rodriguez; we regard it as essential for a judge who is granting permission only on limited grounds to say so, in terms. The place to do so is in the section of the document that contains the decision.

42. There is one point of detail in paragraph 80 with which we would respectfully disagree. We do not consider that it is appropriate to state "Permission is granted, limited as hereafter set out", unless the limitation occurs specifically in the section of the completed document which contains the decision, as opposed to the reasons for that decision; that is to say, in the first and not the second section (see paragraph 27 above)

43. Thus, permission granted on limited grounds should state "Permission is granted, limited to grounds 1 and 4" (as the case may be) or "Permission is granted on grounds 1, 2 and 3 but is refused on grounds 4 and 5" (as the case may be).

44. The "reasons for decision" section is to be construed as just that; i.e. the reasons for the decision which has just been made. The reasons for decision must not include any words that are intended to form part of the decision. The reasons section is the place where the reasons for refusing permission, either generally or on particular grounds, should be stated, pursuant to the duty imposed on the judge by rule 34(4)(a) of the 2014 Rules or, in the case of the Upper Tribunal, rule 22(1) of the 2008 Rules.

45. The reasons section is also the place where, if and insofar as permission is being granted, the reasons for doing so are "clearly identified" (see paragraph 37 of the Guidance Note). Although paragraph 37 is not reflected in the Procedure Rules of the First-tier Tribunal or the Upper Tribunal, it is plainly necessary in pursuance of the overriding objective to explain to the parties (albeit briefly) why permission has been granted.

46. Henceforth, it is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission. That is highly likely to be so, regardless of what may be said in the reasons for decision section of the document.

47. Where the judge who has granted permission generally is of the view that certain of the grounds are such that they would not themselves have given rise to a grant of permission; the judge should say so in the reasons for decision section. Some suitable formulations might be along the following lines:-

(a) "Although I grant permission on all grounds, ground 3 is not, in my view, of sufficient arguable merit as to have justified a grant on that ground alone. The appellant may wish to bear this in mind in preparing his/her case in the Upper Tribunal";

(b) "Permission is granted on all grounds but, in my view, ground 1 is the strongest and is the reason I have granted permission".

59. That decision was approved in Isufaj (PTA decisions/reasons; EEA reg. 37 appeals) [2019] UKUT 283 (IAC) where it was stated (1) Judges deciding applications for permission to appeal should ensure that, as a general matter, there is no apparent contradiction between the decision on the application and what is said in the "reasons for decision" section of the document that records the decision and the reasons for it. As was said in Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC), a decision on a permission application must be capable of being understood by the Tribunal's administrative staff, the parties and by the court or tribunal to which the appeal lies. In the event of such an apparent contradiction or other uncertainty, the parties can expect the Upper Tribunal to treat the decision as the crucial element.

60. In the decision of TC (PS Compliance "issues based reasoning) Zimbabwe [2023] UKUT 164 the Upper Tribunal comprising of a Presidential Panel of the Presidents of both the FTT and the Upper Tribunal and thus is a decision which has considerable weight attached to it, approved the earlier decision of Joseph (permission to appeal requirements) [2022] UKUT 217 at paragraphs 63-64 stating as follows:

63. There should be no underlying ambiguity in the grant or refusal of permission. It is not helpful to merely summarise the grounds of appeal and then only address some. Where a judge considers a ground to be unarguable and another arguable they should say so, and give concise reasons - see Joseph (permission to appeal requirements) [2022] UKUT 218 (IAC); [2022] Imm AR 1360.

64. When the order provides that permission to appeal is granted, the reasons for that grant should be concise, crisp, clear and focussed. This provides the parties with an understanding of what is the point upon which argument for the UT is being granted. Where permission is granted on a limited basis, and for identified grounds only, that must be specified in the heading, so that it is clear when it comes to an error of law hearing what the parties are preparing to argue. It is most unhelpful if that phrase is used and then the reasons for the decision undermine it by being unclear as to, for instance, in cases where there are several grounds of appeal, which of those grounds are being granted permission and which are not. This is another dimension of identifying the principal controversial issues which require to be resolved to determine the appeal, applying the same legal principles which have been set out above, on this occasion for the proceedings in the UT.

65. Whilst sometimes it may be that a judge granting permission to appeal would provide some indication of their view as to the relative strength of grounds, strictly speaking, that is of no assistance at all. A ground is either arguable or it is not. What the reasons for the decision need to focus upon, in a laser-like fashion, is those grounds which are arguable and those which are not. To secure procedural rigour in the UT and the efficient and effective use of Tribunal and party time in resolving the issues that are raised, it is necessary for the grant of permission to clearly set the agenda for the litigation for the future."

61. In applying those principles to the decision of Upper Tribunal Judge McWilliam it is necessary to consider the decision itself. The standard form now used by the Upper Tribunal has changed slightly to allow the court seal to be provided for on

the left-hand side. However that does not change the significance of the different parts of the decision as identified in the case of Safi and as set out above.

62. In the decision reached by UTJ McWilliam she stated;

“the application from permission to appeal is GRANTED

**On grounds 2 and 3 only”**

Under the hearing “**Reasons**” in a separate part of the form the UTJ stated as follows:

“I grant permission on grounds 2 and 3, which overlap, on the basis that it is arguable that the judge did not consider the appellant’s social media presence and the ability and intention of the authorities to monitor this.

While such an error may impact on the overall assessment of risk, I do not grant permission on grounds 1 and 4 as they stand alone. There was no such concession made by the SSHD in the refusal letter. Credibility was clearly an issue in this appeal. The judge properly applied Devaseelan. The findings in respect of the CSID card were open to the judge. I endorse the decision of the first-tier Tribunal (Judge Buchanan) refusing permission in respect of grounds 1 and 4”.

63. When looking at the grant of permission, the limitation to the grounds is clearly and unambiguously stated in the notice of decision- it is in bold and underlined and is wholly consistent with the format set out in the decision in Safi, that if the decision to grant permission is a limited one it should say so in the first part of the decision as can be seen here and that the body of the decision under the heading of “reasons” should state that it is a limited grant of permission setting out the reasons why.

64. Again there is no ambiguity of any kind in the decision of UTJ McWilliam. The decision to grant permission on limited grounds fell within the President’s description of what should be a “concise, clear and focused” decision. The UTJ properly and unambiguously provided the parties with an understanding of what the points of argument from the UT were being granted. Furthermore the decision fell within the correct type of notice i.e. where permission is granted on a limited basis and the identifiable grounds it must be specified in the heading. Here the decision clearly set out in the heading that this was a limited grant of permission on grounds 2 and 3. It is not the case that the section giving the reasons for the limited grant undermined that heading. UTJ McWilliam expressly gave reasons as to why she did not grant permission on grounds 1 and 4 and in addition endorsed the decision of FtTJ Buchanan who had also refused permission in relation to grounds 1 and 4.

65. Dealing with the 2<sup>nd</sup> point raised by Miss Patel, the pro forma standard letter which attaches to it the decision of the grant of permission cannot properly be described as the “notice of decision” as Miss Patel submits. The letter is no more than a standard pro forma document indicating that permission is granted. Whilst the letter states “notice of decision” it is nothing more than a standard pro forma letter which is attached to the decision which is the sealed decision which is signed and dated and annexed to that letter.

66. If that standard letter were the notice of decision, it would be reasonable to expect that in the case of a limited grant of permission, there would be a part of the decision in the letter which stated that. Ms Patel was not able to demonstrate



any standard form letter where such information had been set out. Thus the decision which is the operative decision is that which is annexed to the pro forma letter sent to the parties.

67. Consequently for those reasons there is no ambiguity or any lack of clarity in the decision of UTJ McWilliam and it is entirely consistent with the legal authorities cited above setting out clearly and concisely why grounds 2 and 3 were arguable but not grounds 1 and 4.
68. As the Presidential Panel set out in the decision of TC (as cited above) the decision to grant permission is to be focused in a “laser-like fashion” on the grounds that are arguable and those which are not. This is to secure procedural rigour in the UT and the effective and efficient use of Tribunal and the parties time to resolving issues that are raised. The grant of permission sets out clearly the agenda for the future and this is plainly what the decision of UTJ McWilliam did.
69. I therefore conclude that this is properly construed as a limited grant of permission with the grant of permission limited to grounds 2 and 3.

#### The grounds 2 and 3 :

70. Ms Patel relied upon the written grounds. In respect of ground 2, she submitted that the FtTJ accepted that the appellant had been engaging in political activity in the UK, campaigning online against the Kurdish and Iraqi authorities as well as the Shia Militias but dismissed that there would be any risk to the appellant because of this. The FtTJ based this conclusion on the lack of evidence relating to monitoring dissidents abroad.
71. Ms Patel provided the page numbers of the reports set out in the grounds. The reports were from reputable and informed organisations and showed the laws in place creating criminal offences relating to social media and telecommunications: Gulf Centre for Human Rights (GCHR), Who Will be Left to Defend Human Rights? Persecution of Online Expression in the Gulf and Neighbouring Countries [Iraq excerpt], 9 November 2021, activists have been unfairly tried for offences relating to social media and telecommunications . Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights and Freedom of Expression: Trials in the Kurdistan Region of Iraq, 22 December 2021) that there is an appetite for social media monitoring within the authorities which has manifested in the establishment of the Social Media Monitoring Committee. The CPIN which contained information and examples indicating that there is systemic persecution in KRI (sections 11.1.7, 11.1.13, 11.2.2, 11.2.10, 11.5.1 and 11.5.3). When asked to provide a summary of the contents of the report, Ms Patel stated that those who are active are being targeted in Iraq and the Iraqi authorities are monitoring social media.
72. Ms Patel submitted that the FtTJ erred in law by failing to consider the appellant’s case against the information contained in these reports and drawing a false distinction between social media accounts inside Iraq and those outside Iraq. She submitted that was nothing in the evidence before the Judge that a distinction is drawn in monitoring between accounts inside the country and those outside. In fact there is no such distinction within social media accounts themselves which are globally accessible through the same platform (i.e. all publicly accessible Facebook accounts appear on Facebook.com).

73. As regards grounds 3, she submitted that the FtTJ had failed to assess the appellant's position in accordance with the guidance provided in XX(PAK) . She submitted that whilst it was a CG decision relating to Iran it has implications for all asylum seekers who have social media accounts and undertake sur place activities. The written grounds assert that the FtTJ erred in seeking to distinguish the relevant guidance by surmising it only relates to Iran.
74. Ms Patel referred to paragraph 9 of the grounds which referred to paragraph 95 of XX which held that had notes 3 and 4 of the decision in BA remained accurate and that the factors identified the were relevant to where a person fits on the social graph which then impacts on the level of surveillance to which they may be subject. She relied on the grounds and that the judge should have assessed his social graph as the appellant attended several demonstrations and had several online group memberships with accessible membership lists this would enable easier monitoring of opposition activists.
75. Mr Diwnycz submitted that the distinction as to the appellant's profile was not such that he could show that the Iraqi authorities have any interest in him or that he would come to their attention. He referred to the evidence as speculative, and there being a spectrum of interest between those who agitate and those at a low level , and those who were not "a thorn in the side" of the authorities and thus not likely to be of any interest. As a general point he submitted that the appellant's claim that he was from Tuz Khurmatu and not the IKR. The appellant would be returned via Baghdad, but the findings of FtTJ Heap as upheld by Judge Hanson and by FtTJ Lodato would be that he could return to Iraq as was documented.
76. By way of reply, Ms Patel submitted that the FtTJ did not apply XX and it is not country specific as the judge stated.

#### Discussion:

77. I am grateful for the help and assistance given by the advocates during the submissions. As UTJ McWilliam observed in her grant of permission, grounds 2 and 3 overlap on the basis of the assessment made by the FtTJ and that he did not consider the appellant's social media presence and the ability and intention of the authorities to monitor this. Both ground 2, which refers to the FtTJ failing to have regard to the country background material concerning the issue of social media monitoring and ground 3, also referred to the appellant's social media activities and whether he would be monitored.
78. The first issue raised in the grounds and the oral submissions made by Ms Patel is that the FtTJ accepted that the appellant had engaged in political activities in the UK but dismissed his claim on the basis that there would be no risk to the appellant and that the FtTJ based his conclusions on the lack of evidence relating to the monitoring of dissidents abroad. Paragraph 6 of the grounds refers to the material in the appellant's bundle which it is said showed laws in place creating criminal offences relating to social media and telecommunications.
79. The grounds highlight specific reports. It is submitted that the FtTJ failed to consider information in those reports and drew a false distinction between social media accounts inside Iraq and those outside Iraq. Ms Patel submitted that there was no such distinction within social media accounts, for example, Facebook was globally accessible through the same platform.

80. The FtTJ's assessment of this issue is set out at paragraph 20.

"20. Notwithstanding the findings I have reached about the credibility of the appellant's sur place claims, I must also consider whether the arguments advanced on his behalf that the Iraqi authorities monitor social media and protests to such an extent that he would be in danger irrespective of whether he pursued those activities in good faith. The skeleton argument provided detailed references to background information and country guidance authorities. At paragraphs 19-20, reliance was placed upon the establishment of the Security Media Cell whose mission was to monitor and crack down on public dissent with a particular focus on social media. I was also directed to background information reports which highlighted oppressive official responses to public expressions of political opinion before attention turned to XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC). What was missing from all of this was any cogent evidential basis to support the notion that the Iraqi authorities have in place any apparatus to monitor dissidents abroad. At the risk of stating the obvious, Iran and Iraq may be geographical neighbours and have significant Kurdish populations, but they are not the same regime. Country guidance directed to Iran cannot be simply transposed to Iraq. The final two sentences of paragraph 26 of the skeleton argument amount to a misconceived non-sequitur seeking to transplant Iranian risks into Iraqi territory. The appellant has not established that he is at risk solely on the basis that he has already engaged in political activism and that this might have already, or will in future, come to the attention of the Iraqi authorities."

81. When assessing the risk on return to the appellant's home area which is in the GOI, ( not the IKR), the FtTJ set out with clarity the issue raised in the appellant's skeleton argument which he then went on to address at paragraph 20. The FtTJ said " I must consider whether the arguments advanced on his behalf that the Iraqi authorities monitor social media and protests to such an extent that he would be in danger irrespective of whether he pursued those activities in good faith. The skeleton argument provided detailed references to background information and country guidance authorities."

82. Contrary to the grounds and when addressing the central issue, and that which is the focus of grounds 2 and 3, he plainly had regard to the background evidence. The FtTJ expressly stated that he had regard to the skeleton argument which provided "detailed references to background information in country guidance authorities." He further highlighted paragraphs 19 and 20 of the skeleton argument and noted the reliance placed on the establishment of the security media cell was to monitor and crack down on public dissent with particular focus on social media. Additionally he referred to being directed to the "background information report which highlighted oppressive official responses to public expressions of political opinion."

83. It is not necessary for a judge of the FtT to set out and itemise every piece of background evidence that he had regard to in his decision and it is tolerably clear from paragraph 20 that he had regard to the background evidence relevant to the assessment of risk.

84. The FtTJ also considered the background evidence in the context of the arguments advanced based on the decision in XX (PJAK-sur place activities – Facebook) Iran CG [2022] UKUT 000 23 (IAC). The conclusion he reached was what was missing from the evidence relied upon by the appellant was "any cogent evidential basis to support the notion that the Iraqi authorities have in place any apparatus to monitor dissidents abroad." He went on to state, "at the risk of stating the obvious, Iran and Iraq may be geographical neighbours and have significant Kurdish populations, but they are not the same regime. Country guidance directed to Iran cannot be simply transposed to Iraq. The final two

sentences of paragraph 26 of the skeleton argument amount to a misconceived non-sequitur seeking to transplant Iranian risks into Iraqi territory. The appellant has not established that he is at risk solely on the basis that he has already engaged in political activism and that this might have already, or will in future, come to the attention of the Iraqi authorities.”

85. Whilst the grounds have cited specific reports with the complaint that the FtTJ failed to have regard to them in his assessment of the appellant’s case, it has not been established firstly that he failed to have regard to those reports and secondly, that the reports cited in fact do support the claims made in the grounds. Thus when assessing the grounds it is relevant to set out what the grounds and Ms Patel’s submissions say about the content and relevance of those particular reports cited in the grounds.
86. It is submitted on behalf of the appellant that the first piece of background evidence referred to in the grounds is Gulf Centre for Human Rights(GCHR), who will be left to defend human rights? Persecution of online expression in the Gulf and neighbouring countries 9 November 2021 and that “activists have been unfairly tried for offences relating to social media and Telecommunications”. The second report cited is the OHCR Human Rights and Freedom of expression: trials in the Kurdistan Region of Iraq, 22 December 2021, “that there is an appetite for social media monitoring within the authorities which is manifested in the establishment of the social media monitoring committee. The third piece of background evidence cited is the respondents CPIN Iraq: opposition to the government in KRI version 2.0 June 2021. It is stated that “the CPIN also contained information and examples indicating that there is a systemic persecution in the KRI” by reference to paragraphs 11.1.7, 11.1.13, 11.2.2, 11.2.10, 11.5.1, and 11.5.3.
87. Dealing with the first piece of background material identified, the body of the document indicated that between 1 May 2018 and 31 October 2010 there were 12 reported incidents in Iraq and the IKR of targeting HRD’s (“human rights defenders”) whose online platforms for used to support public protests. References are made to the government and the KRI ordering the closure of TV and radio stations and blocking social media accounts to limit communications. As to online expression, reference is also made to the failure to adopt a cybercrime law but that the Iraqi Penal Code 2010 was described as allowing the authorities to target protected speech and to encourage individuals in self-censorship. There was reference to organised protests online which were taking place in Iraq (p151AB) and the approach of the authorities in both Iraq and the IKR sought to eliminate online support for the protests.
88. When the content of the report is properly read, there is no evidence within that report to demonstrate that the Iraqi authorities in the GOI monitor or undertake surveillance of social media accounts in the UK.
89. The second piece of background material is the OCHR report OHCR Human Rights and Freedom of Expression: trials in the Kurdistan Region of Iraq, 22 December 2021( p. 173AB, CE file p259). Whilst the grounds assert that the report demonstrates laws creating criminal offences relating to social media and telecommunications and that activists have been unfairly tried for offences relating to social media and telecommunications, it is important to note that this report is about the IKR. There is no dispute that the appellant is not from the IKR and that the FtTJ was considering risk on return to his home area in the GOI and not the IKR. This evidence did not relate to the GOI. Furthermore, the thrust of the

contents of the article examined judicial proceedings in four cases in Erbil criminal courts concerning individuals known for their public criticism of the authorities and considered the right to a fair trial and procedural guarantees. The article does not make reference by either direct evidence or by inferential evidence that the authorities in the GOI monitor social media accounts outside of Iraq.

90. The last piece of evidence cited in the grounds relies upon the respondent's CPIN Iraq: opposition to the government in KRI version 2.0 June 2021. The grounds assert that the report shows systemic persecution in the KRI by reference to section 11 "treatment of opponents to the KRI authorities". In fact paragraph 2.4.8 does not reach the conclusion that there was systemic persecution in the KRI.
91. The following observations can be made about that material. Firstly, the report relates to the KRI, and the appellant is not from that area and the FtTJ was considering risk to the appellant in his home area. Secondly none of those paragraph references cited in the grounds demonstrate that the authorities in the GOI have any particular interest or ability to monitor social media accounts or have the systems available to do so outside of Iraq.
92. Paragraph 11.1.7 refers to the arrest of civil society activists, journalists and teachers and reference is made to earlier background evidence concerning protests led by the KRI government employees, including teachers (11.1.1 - 11.1.6). Paragraph 11.2.2 should be read in the context of 11.2.1 in the context of journalists and the restrictions on media, and closure of media outlets. And 11.5.3 reference is made to the KRG applying the more stringent Iraqi criminal code involving journalists instead of the IKR's own press law.
93. Thus the FtTJ's reasoning based on that background evidence and that which was particularly relevant to the GOI and not the IKR, properly took account of the contents of those reports on the background material. Whilst it is submitted on behalf of the appellant that the FtTJ drew a false distinction between social media accounts and that there was no distinction between social media accounts which are accessible globally, that submission misreads the decision of the FtTJ. He was plainly referring to the use of social media by those inside Iraq and the material relied on by the appellant which referred to the monitoring of known individuals inside Iraq, and that there was no cogent evidence that social media accounts, even if globally accessible, would be monitored and that there was no cogent evidence of the use of surveillance inside Iraq against those outside Iraq for possible breaches of the Iraqi Penal Code. That was the finding made by the FtTJ at paragraph 20 and was one that was reasonably open to him on the evidence before him.
94. This leads to ground 3 where there is some overlap. The grounds challenge the FtTJ's assessment of the decision in XX (cited above). Ms Patel submits that the FtTJ erred in law by seeking to distinguish that guidance by surmising that it only related to Iran and that it generally applied to all cases involving social media activities. Ms Patel referred to paragraph 95 of XX which she submitted stated that the headnotes 3 and 4 of the decision in BA remain relevant to risk on return of sur place activities and that this indicated where on the "social graph" the appellant was and turns on the impact and level of surveillance.
95. The thrust of ground 3 is that the appellant's activities in the UK would enable him to be monitored by the Iraqi authorities. When addressing this ground it is

important to read the decision of the FtTJ set out at paragraph 20. It is set out in full earlier in this decision. The FtTJ referred to the decision of XX in the context of the background evidence that he had been referred to which in turn asserted that it “highlighted oppressive official responses to public expressions of political opinion.” He further considered this by reference to paragraph 19 – 20 at the skeleton argument. Paragraph 19 of the skeleton argument referred to the establishment of the social media cell whose mission was to monitor and crackdown on public dissent with a particular focus on social media. Paragraph 20 asserted that Iraq had a specific organ of state dedicated to social media issues and that “social media sites have already unlikely extensively be monitored, and that the Iraqi state authorities are taking serious and decisive action to actively monitor social media sites in the future”.

96. The headnote in XX expressly referred to the issue of surveillance (see paragraphs 1 – 4) but that is in the context of the Iranian state. The decision refers to there being several barriers to monitoring as opposed to ad hoc searches of someone’s Facebook material.
97. When looking at the decision in XX and the issue of surveillance, the decision was based on evidence relating to Iran and the Iranian state. Whilst the grounds refer to paragraph 95 as relevant to the issue of surveillance, based on the appellant’s place on the “social graph”, it is necessary to read paragraph 95 in the context of the earlier paragraphs set out at para’s 90 – 96. The section begins “what Facebook material is visible to the Iranian authorities on application for an ETD or at arrival at an Iranian port? The paragraphs between paras’s 90, 91 and 92 all refer to the position of Iranian nationals and what material would be available to the Iranian authorities. The Upper Tribunal did refer to the decision of BA but referred to the inability of the Iranian government to monitor all returnees (see paragraph 93) and paragraph 94 refers to the screening of Iranian citizens upon return. Whilst paragraph 95 referred to the factors set out in BA, as to the role in demonstrations etc and the level of surveillance to which they may be subject, the level of surveillance referred to within the context of Iran as set out in the preceding paragraphs.
98. There is no dispute that XX (PAK) does have wider application as set out in the headnote between paragraphs 5 and 6 and 7-9. However the FtTJ’s reasoning at paragraph 20 was not that XX (PAK) had no relevance to the assessment of risk but that what was missing was the evidence to link that set out in XX(PAK) and the background material relied on in the appeal and that there was no cogent evidence in that background material to support the notion (as the appellant argued) that the Iraqi authorities have in place any apparatus to monitor dissidents abroad. In other words there was no evidence to establish the risk to the appellant on the basis that the Iraqi authorities were monitoring individuals outside of Iraq.
99. The grounds also misread the FtTJ’s reasoning set out at paragraph 20. As the FtTJ stated, he was addressing the last 2 sentences of paragraph 26 of the skeleton argument. The skeleton said this, “the tribunal in XX accepted that the Iranian state targets dissident groups, including religious and ethnic minorities, such as those of Kurdish ethnic origin (paragraph 85 XX). It is submitted that the Iraqi authorities, are also likely to target political and social activists who are criticising and opposing them, as established by the objective information and reports.”

100. The FtTJ expressly addressed that submission at paragraph 20. He was correct to state as he did, “Iran and Iraq may be geographical neighbours and have significant Kurdish populations, but they are not the same regime. Country guidance directed to Iran cannot be simply transposed to Iraq. The final 2 sentences of paragraph 26 of the skeleton argument amounts to a misconceived non sequitur seeking to transplant Iranian risks into Iraqi territory”. When properly read, the FtTJ was not stating that the decision in XX (PAK) had no relevance but that he was plainly referring to paragraph 26 of the skeleton argument which asserted that the decision demonstrated that as the Iranian state targeted particular groups that this meant that the Iraqi authorities were also likely to target social media accounts outside of Iraq.
101. Whilst reference is made in the skeleton argument to paragraph 85 of XX(PAK) that is a reference to the Iranian authorities similarly paragraphs 27 and 28 and the skeleton argument refers to evidence relating to the Iranian authorities ability to monitor political activists. At paragraph 29 of the skeleton argument, it was submitted that the appellant’s activities was such that he was likely to have already been monitored by the Iraqi and Kurdish authorities. On any reading of paragraph 20, it is tolerably clear that the FtTJ was addressing those submissions when he found that they were a “misconceived non sequitur seeking to transplant Iranians risks into Iraqi territory”. Thus the FtTJ considered that that there were differences from the Iranian context and that there was no cogent evidential basis to support the notion that the Iraqi authorities (as opposed to the Iranian authorities) have in place any apparatus to monitor dissidents abroad. Secondly, the judge found that the appellant had not established that he would be at risk solely on the basis that he had already engaged in political activism and that this might have already, or will in future, come to the attention of the Iraqi authorities.
102. The grounds and submissions made have not pointed to any background evidence to contradict or demonstrate that the factual assessment reached by the FtTJ on the background evidence was wrong or in error. There was no evidential basis advanced for the FtTJ to find that because a face book account existed that there was a likelihood it was monitored. Whilst the FtTJ accepted the appellant’s account as to his activities and that he had participated in demonstrations and posted comments and photos on Facebook, it was reasonably open to the judge to find that on the background material that those activities were not likely to be known to the Iraqi authorities.
103. The FtTJ’s overreaching assessment of the appellant’s evidence was that set out at paragraph 19 where the judge found that the appellant’s expression of political opinion was not out of “genuine expression” and that “there was no reason to think that he would be minded to continue to pursue in Iraq the artificial political activism he only recently embarked upon here” ( see paragraphs 19 and set out at paragraph 24). Therefore the FtTJ assessed that the appellant had not demonstrated that he would be at risk on return, either on account of his activities in the UK which the FtTJ found were not likely to be monitored and thus would be aware of them, there was no dispute that he had not been politically active in Iraq prior to leaving and thus had no past profile and the FtTJ found that as his views were not genuinely held, he would pursue any activities that would give rise to any risk.
104. When considering the substance of the submissions made by Ms Patel, as set out earlier in this decision they do not demonstrate that this was an unlimited

grant of permission for the reasons set out above by reference to the decision made by UTJ McWilliam and in the context of the relevant legal authorities.

105. However, even if it could be argued that this was an unlimited grant of permission (which I do not accept for the reasons given) grounds 1 and 4 do not demonstrate any error of law in the decision of the FtTJ.
106. As to ground 4, it is submitted by Ms Patel that the FtTJ refused to depart from the findings of the FtTJ and in refusing to do so failed to have regard to the appellant's explanation at paragraph 17 of his witness statement where he stated he had no choice to hand over the card to an agent and although he understood the significance of the document in Iraq, he did not understand its importance outside of Iraq. Ms Patel submitted that the judge failed to make a finding on this evidence, and it was an error of law.
107. However there is no error of law based on that ground. The FtTJ was entitled to adopt as his starting point (by applying the principles in Devaseelan) the factual findings made on the appellant's evidence by FtTJ Heap ( see paragraphs 7 and 11 - 12). The relevant findings made by FtTJ Heap are set out earlier in this decision citing paragraphs 62, 65 - 69. The previous judge plainly found that the appellant's evidence on this issue not be credible for the reasons that she gave. FtTJ Lodato set out his assessment of the evidence between paragraphs 21 - 24 and plainly addressed the arguments advanced on behalf of the appellant that he should reach his own finding unencumbered by the previous determination because the findings were inconsistent.
108. For the reasons amply given between paragraphs 22 - 23, the FtTJ rejected those submissions on a sound basis. The FtTJ was plainly entitled to consider the findings of FtTJ Heap as his starting point and that they should only be departed from with good reason. The FtTJ set out the previous findings and considered the evidence now given by the appellant. He concluded, "there is, in reality, nothing beyond the word of the appellant to indicate that he no longer has this important document. Given the adverse credibility findings against the appellant which also comprise the starting point I must adopt, it would be wholly unsafe to rely on the word of a man previously found to be lacking in credibility to move away from Judge Heap's findings of fact about the CSID card. In summary, taking into account the findings of Judge Heap as my starting point, I too find that the appellant continues to have access to his CSID."
109. Contrary to that set out in the grounds and in the submissions, the decision demonstrates that on any reading of that paragraph that the FtTJ did consider the appellant's evidence but rejected it when reaching his conclusion that even having taken the findings of Judge Heap as his starting point, he also found that the appellant continued to have access to his CSID.
110. As to ground 1, it is argued that the FtTJ went behind a concession by considering the genuineness of the appellant's sur place activities. Ms Patel submitted that the decision letter did not raise issues as to whether the appellant had generally carried out political activities and therefore the judge erred in law by going behind what was a concession.
111. Having read the decision letter there is no concession made that the appellant's political activities were genuinely held. There is simply a recitation of the activities that have been carried out. Furthermore, as set out in the respondent's review, the issue was raised. It is stated in that document that the respondent



relied upon the findings of FtTJ Heap that the appellant “was not a witness of truth” in the counter schedule and the respondent set out that she would “invite the tribunal to approach the appellant’s testimony and all supporting material with due caution in the instant appeal.” Reference was also made in the respondent’s review to the Facebook print out and it is stated “as it is not accepted that the views expressed in his Facebook are genuinely held by the appellant the respondent will argue that there is no reason why he would be unable to take down his Facebook page before returning to Iraq..” (see p550CEFile).

112. At the hearing, the FtTJ recorded the respondent’s case as being that set out in the refusal letter, the respondent’s review and the oral submissions ( see paragraph 15). It is also plain from the decision that the issue of the genuineness of the political activities had been explored during the hearing as demonstrated by the FtTJ’s recording of the relevant evidence at paragraph 18. The appellant was cross examined on this issue, and it is also clear that there were submissions made on behalf of the appellant which included the points made on his behalf concerning the delay in beginning his political activities. It was therefore appreciably clear that the issue was a “live issue” upon which the FtTJ heard evidence and also heard submissions made on behalf of the appellant. It has not been demonstrated that there was any concession or any unfairness to the appellant and the respondent’s review plainly referred to the issue of genuineness which was explored during the hearing in the evidence given and responded to in the submissions made by the advocates.

113. Nor is there any failure to give adequate reasons by FtTJ Lodato as Ms Patel submits in the alternative. The FtTJ gave adequate and sustainable evidence-based reasons at paragraph 19 and at paragraph 24 complying with the duty to give reasons (see MD (Turkey) v SSHD [2017] EWCA Civ 1958 in which Singh LJ (with whom Longmore and Treacy LJ agreed) noted at [26] that "The duty to give reasons requires that reasons must be proper, intelligible and adequate" and that an assessment of adequacy does not "provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.") The FtTJ was required to consider the evidence that was before the First-tier Tribunal as a whole, and he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The findings made were ones reasonably open to the judge on the evidence before him and the findings made.

114. Consequently the appellant has not established that the FtTJ’s decision involved the making of an error on a point of law, therefore the decision of the FtTJ shall stand.

Notice of Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law; the decision of the FtTJ shall stand.

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds

14 September 2023