Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-000640
First-tier Tribunal No: PA/005525/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 January 2024	On 16th of January 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'RHA' (IRAQ)
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Mr M Mohzam, Solicitor, CB Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his protection and human rights claim. The issues are touched on in the error of law decision annexed to this decision. Briefly, the appellant claims persecution in his country of origin, Iraq, as someone of Kurdish ethnic origin from the Iraqi Kurdish Region ('IKR'). The appellant had claimed to fear persecution because of his criticism of the Kurdish Democratic Party or 'KDP'. There had been a previous First-tier Tribunal decision dated 6 January 2017 of Judge Cox, who found the

appellant credible as having criticised the IKR government and the KDP, as a result of which he had received threatening phone calls, but not other adverse attention. The Judge rejected his protection claim based on his opposition activities in Iraq and because of his 'sur place' activities in the UK, comprising social media posts. In summary, his profile was not high enough to be at risk of more serious adverse treatment.

2. I have set aside the later decision of a Judge of the First-tier Tribunal, Judge McKinney, of 4 October 2021, without preserved findings, albeit the necessary findings in this case are narrow. This is because Judge Cox had already accepted the genuineness of the appellant's opposition to the KDP, but not other partis of his claim. I therefore take Judge Cox's decision as my starting point.

The issues in this appeal

3. Sections 30 to 36 of the National and Borders Act 2022 do not apply, as the appellant's asylum claim predates those provisions coming into force. I discussed the three issues that I needed to decide with the representatives at the beginning of the hearing. I set these out below. After the appellant gave his evidence, Mr Mohzam confirmed that he would no longer pursue the third ground of appeal (§3(c) below).

   (a) Does the appellant have a well-founded fear of persecution by KDP supporters or IKR government officials, either as a result of pre-flight activities; in combination with sur place activities, and/or because of a continuation of such activities in Iraq?

   (b) Would relocation to another Kurdish city within the IKR, but not governed by the KDP, be unduly harsh? Mr Melvin referred to areas in the IKR such as Erbil and Duhok as being controlled by the KDP, while other governorates were under the control of the Patriotic Union of Kurdistan ('PUK') or the Gorran Movement. Has the appellant discharged the burden of showing why relocation outside KDP controlled areas would be unduly harsh? I bear in mind that Sulaymaniyah, the appellant's home city, is said to be controlled by the PUK.

   (c) Would there be a risk of a breach of the appellant's rights under Article 3 ECHR either because of a return to an internal destination outside the IKR (e.g. Baghdad, - see: SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37 (IAC)) or because travel to Sulaymaniyah to obtain an INID document would result in such a risk? On this third issue, the appellant had previously accepted that his brother, still living in Iraq, had his CSID document. He confirmed in oral evidence to me that he did not know if his brother no longer had his CSID, as he had not asked him. He accepted that he had no reason for thinking that his brother could not send him his CSID. In

any event, the respondent confirmed that the appellant would be returned directly to Sulaymaniyah airport; his family continued to live in that city; and the local register office issuing INIDs was based there. There was no reason that the appellant's return to Sulaymaniyah would breach his rights under Article 3 ECHR by virtue of needing an INID card and Mr Mohzam indicated that this ground was no longer pursued. He also confirmed that no appeal based on Article 8 ECHR was pursued.

The Law

4. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that he falls within the definition of a refugee, as per Article 1(A) of the Refugee Convention. In essence, the appellant has to show that that there are substantial grounds for believing that he is outside Iraq by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country.

9. I have taken Judge Cox's decision as my starting point, but I am conscious that it is not a 'straitjacket'. It may be departed from on a properly principled basis and whilst Judge Cox's decision is an authoritative assessment of the appellant's status at the time it was made, facts happening since that decision can always be taken into account. I also bear in mind that if there are facts which are not materially different from those put to Judge Cox, I should regard his decision as settling the issue in dispute which is based on those facts.

10. In relation to whether internal relocation would be unduly harsh, by exclusion, the respondent has identified areas in the IKR not controlled by the KDP. The burden of proof in that context remains on the appellant to prove why such relocation would be unduly harsh (see MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC)).

Findings of fact

11. I considered all of the evidence presented to me, whether I refer to it specifically in these findings or not.

12. I start by considering Judge Cox's findings, which, generally speaking, accepted the appellant's credibility as someone who opposed the KDP government while in Iraq, up to 2015, and since entering the UK, had engaged in some 'sur place' activities. I set out the relevant passages of her findings:

"24. The Appellant provided a detailed account of his reasons for opposing the ruling party and highlighted the conditions for public sector workers. For example, he described how prior to leaving Iraq they had not been paid for some time. He told me that this had been one of the factors that they had recently been campaigning against. I note that this is consistent with the background material. Amnesty International (AI) reported that 'in October, hundreds of public sector employees protested in Sulaymaniyah and other eastern cities to demand payment of overdue salaries'. In addition, AI reported that KDP militia forces fired at protesters in Qaladze and Kalar (page 617 of the Appellant bundle).

25. In support of the appeal, the Appellant provided screenshots from a Facebook page under the name of '[name redacted]'. The Appellant stated that this is his Facebook page (Q73 of the AIR). The Presenting Officer noted that the Appellant initially used an account under the name [name redacted] which was also used by some of his friends. However, there was no evidence linking the Appellant to that Facebook page. The Presenting Officer also noted that the Appellant claimed that he started using his own Facebook page in 2014 and frequently lodged posts on criticising the government. However, the Appellant had only provided copies of a few posts for April, May and August 2015, which is inconsistent with his claim that he had frequently criticised the government.

26. In any event, the Presenting Officer submitted that the profile photo is unclear, and I cannot be satisfied that '[name redacted]' is the Appellant's Facebook page. The Appellant told me that the page is private, and he had used his password to access the pages. It seems to me that if the respondent doubted that this was the Appellant's Facebook page, then the officer ought to have asked to see him open the page.

27. In any event, the Appellant provided a screenshot from the page, which includes a clear photograph of him (page 21 of bundle C).

28. I appreciate that the Appellant has not provided a certified translation of the posts. However, the pages have been translated and, in my view, the Respondent could easily have used Google translation to determine whether the translations were an accurate reflection of the posts. Although the translations may not be an exact translation, I am satisfied they broadly represent the contents of the posts, and I am satisfied that the Appellant has been critical of the Barzani family. I note this is consistent with the Appellant's description the posts during his interview (see Q82 of the AIR). For example, the Appellant stated he was grateful to the Gorans movement

disclosing the reality of the dirty policies of Barzani (page 4 of bundle C).

29. The Appellant provided photographs of the damage to the car. There is a photograph that shows a dent that appears to be consistent with something hitting the car (pages 28 - 29 of bundle C).

30. Further, the Appellant has now provided evidence of his complaints about the abusive phone calls (pages 55 to 72 of the Appellant bundle). For example, there is a complaint dated 20 June 2015 lodged by the Appellant. The complaint stated that he had been threatened because he had posted comments on Facebook against the KDP. He provided the police with the telephone number that the calls had been made from (translated at page 58 of the Appellant's bundle). I note that the investigating judge asked a telephone company for full details regarding the phone number and a copy of the contract holders the number.

31. I also had the benefit of the Appellant's oral evidence. I found him a credible witness. He generally answered the questions clearly and without hesitation. The Presenting Officer did not draw my attention to any inconsistencies, and I am satisfied that his oral evidence is consistent with the information provided during his interview.

32. I am also satisfied that the Appellant did not seek to bolster his account. For example, the Appellant confirmed that he was still in contact with his family, and he has not suggested that his family have had any problems. In my view, if the Appellant was seeking to manufacture an asylum claim, then he could easily have claimed that they had had some problems. However, he did not say that and in my view, this goes to his credit.

...

34. On the totality of the evidence and applying the lower standard of proof, I find that the Appellant has given a credible account. He provided supporting evidence consistent with his account and I found him to be a reliable witness. Accordingly, I find that:

- the Appellant is a Kurd from Sulaymaniyah;
- the Appellant was a public sector employee and was opposed to the government. He attended demonstrations against the KDP and has lodged posts against the government on Facebook;

- the Appellant received threatening telephone calls and reported them to the police. The police were unable to identify the caller,
- the Appellant was travelling in a car, when it was shot at;
- a few days later the Appellant flees Iraq; and
- the Appellant has been issued with an Iraqi passport.

35. I now consider whether the Appellant has a well-founded fear of being persecuted in Sulaymaniyah. In my view the Appellant's claim for asylum hinges on whether the Appellant has demonstrated that he was the target, when the car was attacked in October 2015.

…

40. Further, the Appellant believes that he had been targeted because of his political activities. However, the Appellant has not provided copies of any Facebook posts after he had been threatened in June/July to show that he would have been of continuing interest to the KDP or anyone acting on their behalf.

41. In addition, I have carefully considered the background material. There are newspaper articles that refer to a journalist who spoke out against the government being killed. The articles reported that agents acting on behalf of the KDP have been suspected. I note that the journalist had a high profile and published many articles critical of the government. In my view, the Appellant's circumstances are very different. He merely posted comments and very few people have shared these comments. The article shared most was published on 13 May 2015 and had 109 'shares'. I am satisfied that the background material does not suggest that the KDP are prepared to kill or assassinate individuals with the Appellant's type of profile.

42. Although I found the credible, on the totality of the evidence, the Appellant failed to discharge the burden of proof. The Appellant has not satisfied me to the lower standard, that he was the targeted by the KDP. I am not satisfied that he was the target, when the shots were fired at the car.

43. I accept that the Appellant has been threatened. However, I am not satisfied that, there is a real risk, members of the KDP or their agents have any interest in the Appellant now".

The new evidence

13. The appellant adopted two statements, contained in the respondent's bundle ('RB') and in the appellant's bundle ('AB'). I refer to page numbers by reference to [xx]/AB or [xx]/RB. He gave evidence through a Kurdish Sorani interpreter. There were noobvious difficulties, or any difficulties about which the appellant complained in the interpretation.

14. I do no more than summarise the gist of these two statements on which the appellant was cross-examined. In his first statement at [D1-D6]/RB, dated November 2019, the appellant referred to a police report in which he had complained to the Iraqi police of the attempt to shoot him and the absence of police protection. He also referred to a Facebook post made on 2 May 2009 that received 116 comments and other posts he had made. In a second statement at [1-7]/AB, dated 22 July 2021, the appellant referred to having had his most recent Facebook account since the end of 2019. He referred to an interview by an independent news outlet called NRT on 4 May 2021 during his attendance at a political demonstration outside the Kurdistan Mission in London, which had been posted on YouTube and which had received 1,500 views. His current Facebook account included posts which, on average, around 100 people had viewed, including by some who did not know him and some of whom threatened and criticised him. His Facebook account was had "public" settings and anyone on Facebook could access it. He had only been able to disclose Facebook posts since 2019, because while he had previously posted on another Facebook account, it was now private. I add that in oral evidence, he said that the earlier account had been hacked and he had closed it.

15. I also pause to observe that despite specifically being given the opportunity to do so after I set aside Judge McKinney's decision, the appellant has not adduced any further documentary evidence since 2021.

16. In addition, I accept Mr Melvin's submission that there is nothing within the Facebook material to which I have been referred about the appellant having any contact with IKR opposition groups, despite his claim in oral evidence that he had contact with a group called 'Dakok', about which the appellant has provided no further details; and an unidentified friend in the UK with whom he had worked in Sulaymaniyah, although there is no witness statement from that friend, or in what activities they are said to be involved. Also, there was no documentary evidence of any demonstration since 2021, although the appellant asserted in oral that he had most recently attended a demonstration on 28 December 2023 in Birmingham. He accepted that he had not made any further Facebook posts since 2022. He also accepted that despite claiming to have received threatening comments while in the UK in response to earlier Facebook posts, he had not complained the police. He said that he would continue to protest against the IKR government if he were returned to Iraq and that he would be unsafe anywhere within the IKR.

My assessment of the Facebook and other witness evidence

17. I bear in mind the low risk that the appellant needs to demonstrate to succeed in a protection claim (see the authority of MAH (Egypt) v SSHD [2023] EWCA Civ 216). I also bear in mind that there is no requirement for corroboration in a protection claim. I am also conscious of the need to consider the new evidence in the round and not in isolation from Judge Cox's positive findings in 2017 that the appellant was a credible witness (albeit he rejected his protection claim).

18. However, the evidence that the appellant has produced since Judge Cox's decision is very limited. The appellant has given no explanation for why he has not produced any updated Facebook evidence in the period from 2021 to 2022, nor, for example, has he disclosed any account information which is available in a matter of minutes, using the 'Download Your Information' or 'DYI' tool (see XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC). While relating in large part to the capabilities of the Iranian regime, rather than the IKR authority, to monitor Facebook, the guidance in XX includes the following:

> "Guidance on Facebook more generally
>
> 5) There are several barriers to monitoring, as opposed to ad hoc searches of someone's Facebook material. There is no evidence before us that the Facebook website itself has been "hacked," whether by the Iranian or any other government. The effectiveness of website "crawler" software, such as Google, is limited, when interacting with Facebook. Someone's name and some details may crop up on a Google search, if they still have a live Facebook account, or one that has only very recently been closed; and provided that their Facebook settings or those of their friends or groups with whom they have interactions, have public settings. Without the person's password, those seeking to monitor Facebook accounts cannot "scrape" them in the same unautomated way as other websites allow automated data extraction. A person's email account or computer may be compromised, but it does not necessarily follow that their Facebook password account has been accessed."
>
> 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"

19. The appellant's Facebook evidence before me includes those very limitations. The printed excerpts, at [8-48]/AB comprise a number of untranslated passages (presumably in Kurdish) of an account in a name

previously used by the appellant (but not the name he uses in his claim) together with a number of photographs appearing to show the claimant attending a demonstration outside what may well be the IKR mission in London. One photograph appears to show the appellant speaking into a microphone with a band around it, with a logo, (sometimes called a 'microphone flag') marked 'NRT'. I indicated to Mr Mohzam during the hearing that I was unable to click onto any link to watch any YouTube material, which he indicated was not in English and was not translated, so it would have served little purpose in my doing so. The Facebook page excerpt ([16]/AB) refers to the post having 'reached' 153 people and 58 had commented.

20. Bearing in mind the previous positive assessment of the appellant's credibility, I am just about prepared to accept that the appellant attended some form of demonstration in 2021 outside the IKR Mission in London in 2021, but I find that there is insufficient evidence about what impact such attendance has had on the appellant's profile in the context of KDP supporters or IKR government officials, beyond the basic figures of views on YouTube and those "reached" by the posts. I have no sense of what the appellant said during the NRT video. The appellant has adduced no evidence to the extent of which the KDP authorities are able to monitor or 'scrape' data from Facebook, even public Facebook, and while noting the appellant's claim to have been threatened, it is unclear to me where in these pages in the appellant's bundle he is said to have been threatened in 2021. Presumably, such threats are in Kurdish although they have not been translated. On the appellant's own account, he has ceased posting since July 2022. The material includes nothing (at least to which I have been referred) relating to involvement with specific oppositional groups.

21. The very limited social media evidence, when considered in the context of the appellant's wider witness and other country evidence, is of a similar nature to the evidence adduced to Judge Cox. It demonstrates that the appellant has a genuine belief in opposition to the KDP, and he sporadically posts on Facebook and it appears has attended one demonstration at which he has been interviewed by a media organisation, but it is impossible to ascertain from that evidence the extent of the coverage which he will have received, the nature of any threats, or how he would thereby be linked to the material, given the different account name he uses in his 2019 Facebook account. Just as Judge Cox was not satisfied that adverse interest had not gone beyond telephone threats to the appellant with regard to the previous posts in 2015, I am not satisfied that the adverse interest that the appellant has received has proceeded beyond anything other than critical remarks of him on social media to a limited extent. Taking the appellant's case at its highest that he attended some sort of demonstration in Birmingham in 2023, once again I know nothing about it other than that fact. I have been told nothing about the size of the demonstration, why it was being held, who organised it and the attention, if any, that it attracted. There is no reliable evidence to which I have been referred that the appellant would be detained on return to Sulaymaniyah airport, a 30 minute drive from his family home, or that any

supporters acting as proxies for the KDP government would seek to target him on return as a result of the posts while he has been in the UK, or that they would even be aware of his return to the IK, having been absent since 2015 and with a low political profile.

22. I turn to the question of the risk of persecution (if any) that the appellant would face if he continued activities as he currently has, on return to the IKR. The appellant has, on occasion, attended demonstrations in the past in particular relating to the failure to pay salaries to government employees, which occurred when the appellant was himself a government employee or just thereafter. I accept Mr Mohzam's submission that the appellant's opposition activity has not been limited solely to salary disputes but has also been more generally in relation to what he sees as corruption within the KDP dominated government within the IKR. I also accept that he cannot be expected to hide such opposition activities, were he to do so out of a fear of persecution. I have considered the respondent's Country Policy and Information Notes, including the 'CPIN - Iraq: Opposition to the government in Kurdistan Region of Iraq (KRI) of July 2023. It includes the following assessment, at §3.1.2:

> "The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having played a low level part in protests against the KRG. Despite evidence that opponents of the KRG have been arrested, detained, assaulted and even killed by the Kurdistan authorities, there is no evidence to suggest that such mistreatment is systematic. The instances of mistreatment are small in relation to the vast numbers who attended the protests. Additionally, there 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. As such, in general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI. The onus is on the person to demonstrate otherwise".

23. §3.1.3 of the CPIN states that 'available evidence' indicates that the following groups may be at high risk, namely individuals with higher profiles, such as a prominent public presence, active involvement or a previous history of organising or participating in protests and demonstrations. Judge Cox had found that the appellant did previously attend demonstrations and made sporadic Facebook posts, and as a result had received threatening phone calls, albeit this was many years ago, the latest such activity in Iraq being in 2015.

24. Mr Mozham argued that the respondent's analysis was in the 'policy' section of the CPIN, and that other parts of the CPIN referred to state detentions of those attending demonstrations, in some cases for more than brief periods, which would risk amounting to persecution given the detention conditions in Iraq. Even accepting the poor detention conditions in the KRI, I am not satisfied that the examples he has cited demonstrate a real risk of any prolonged detention (as opposed to

immediate release) in the event of the appellant's attendance at demonstrations in the Sulaymaniyah governorate, which is the home city of the PUK and which is the appellant's home city. The details of more prolonged detentions and ill-treatment recorded are in Erbil and Duhok, in governorates dominated by the KDP (see §§14.1.2; 14.1.9; 14.1.17 and 14.1.19) in contrast to those released on the same day in Sulaymaniyah (§§14.1.12; 14.1.14). I accept that there is a reference to detentions of those attending a demonstration in August 2022 in Sulaymaniyah for 'several days' at §14.1.2, but I am not satisfied that there is a principled basis on which to depart from Judge Cox's assessment that the risk of adverse treatment is dependent on profile, the evidence for which suggests that the appellant has a very limited profile. Indeed, when he received threats from KDP supporters when he was in Iraq, the appellant reported them to the IKR police authorities, and his complaint was that they were ineffective, as distinct from the risk on which he focusses in this appeal of state detention and ill-treatment.

25. I find that if returned to Iraq, the appellant may well post material critical of the KDP dominated government sporadically, and also attend demonstrations sporadically. I am not satisfied that in the Sulaymaniyah governorate, there is a real risk that he has a profile such that he would attract attention amounting to persecution from KDP supporters or government agents or proxies, or that if he were to attend demonstrations, he has demonstrated a real risk of arrest and detention which would also amount to persecution.

26. It is unnecessary for me to consider internal relocation, where the safest part of the IKR for the appellant is likely to be his home city of Sulaymaniyah. In any event, the appellant has adduced no evidence of why it would be unduly harsh to relocate to governorates not dominated by the KDP, other than his assertion (and the CPINs to which I have referred) that none are safe.

Note of Decision

27. The appellant's claim under Article 3 ECHR on the basis that he does not have a CSID card is not pursued and is dismissed. Mr Mohazam also confirmed that an Article 8 ECHR claim was not pursued.

28. The appellant's claim under the Refugee Convention as a refugee fails and is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **10th January 2024**

ANNEX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000640

First-tier Tribunal No: PA/52368/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE KEITH

Between

'RHA' (Iraq)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Mohzaan, Solicitor, instructed by CB Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 8 June 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 REASONS

1. These reasons reflect the oral decision which I gave to the parties at the end of the hearing. At the core of this appeal is the appellant's claim to have a well-founded fear of persecution in his country of origin, Iraq, as someone of Kurdish ethnic origin from the 'Iraqi Kurdish Region' or IKR. The appellant had claimed to

fear persecution because of his criticism of the Kurdish Democratic Party or 'KDP'. There had been a previous First-tier Tribunal decision of Judge Cox, who found the appellant credible that he had criticised the IKR government and the KDP, as a result of which he had received threatening phone calls. Separately, the appellant had been shot at whilst travelling in a car, but Judge Cox did not accept that the appellant was the intended target of the attempted shooting. Judge Cox had found that the appellant was not at risk on return because he had not posted any comments on social media since being threatened in June/July 2015 and given his low profile, he would not be at risk of adverse interest from the KDP.

2. Following a fresh claim which Judge McKinney of the First-tier Tribunal considered (and rejected) in a decision promulgated on 4th October 2021, the appellant relied on subsequent social media posts critical of the KDP on Facebook, which had resulted in threatening messages via social media. There was also a YouTube link of a recording in which it appeared that the appellant was protesting outside the IKR Consulate in London, during which it was said that the appellant was interviewed.

3. Judge McKinney took Judge Cox's positive credibility findings as his starting point. She considered whether the appellant's fear of persecution was now well founded and whether it was reasonable to expect the appellant to relocate internally to an area not governed by the KDP. Separately, in relation to Article 3 ECHR, the Judge considered whether the appellant would be able to travel within Iraq, in the context of the appellant now claiming to have lost his civil status identity card or 'CSID'.

4. The Judge concluded at paragraph 47 that despite having received threats on Facebook, his more recent 'sur place' activities were of the same kind as those before Judge Cox and there was no material difference or change in his position. The Judge analysed the threats made, which had been a couple of years previously and none of the senders could be identified as members of the ruling party, nor was there any evidence that the senders would be able to identify him upon his return. Whilst the appellant had attended demonstrations, he was one of a large number of protestors, with his appearance obscured. He was not interviewed on the video and had not received any threats in response. At paragraph 62, the Judge considered what would happen if the appellant were to continue posting social media posts and attending protests in Iraq, upon his return. The Judge accepted at paragraph 64 that the country background evidence showed the use of excessive force against protesters in the past but also that protesters were likely to be released quickly if they were arrested. The Judge concluded that there was no evidence that detention conditions would breach Article 3 ECHR.

5. The Judge went on to conclude at paragraph 69 that the appellant had not established that it would be unreasonable to expect him to relocate internally to another Kurdish city not within the IKR and not governed by the KDP.

6. In terms of the route of return, the Judge concluded at paragraph 71 that if the appellant were to return voluntarily to the IKR, then it would be reasonably likely that he would be able to obtain a replacement CSID or INID card by attending his local CSA office in person. He would be assisted by his brother and would be able to take advantage of the voluntary return package that the respondent offers until such time as he could obtain his identity card. The Judge also found that if removal were enforced to Baghdad, then the appellant could apply to the Iraqi

Embassy for a '1957' registration document which would enable him to travel internally by air from Baghdad to the IKR or his brother could assist in obtaining a replacement CSID. If the CSA office in the home area of Sulaymaniyah had already started issuing INID cards, then the Judge accepted that the appellant's brother would not be able to obtain an identity card for him and consequently his return would be in breach of Article 3. However, no evidence however had been placed before the Judge that the CSA office in Sulaymaniyah no longer issued CSID cards. The Judge went on to consider various other aspects of the appellant's claim, which it is unnecessary to repeat.

The appellant's appeal and the grant of permission

7. First, the appellant says that the Judge's consideration of voluntary return was contrary to authority, which required consideration of removal by reference to Article 3 – see KF (Removal directions and statelessness) Iran [2005] UKIAT 00109 and J v SSHD [2005] EWCA Civ 629.

8. Second, the Judge had erred in the analysis of whether the local CSA office in Sulaymaniyah would still be issuing CSID cards, which could be obtained by proxy. The guidance in paragraph 389 of SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) recited the respondent's own case which spoke of CSID cards only being issued now in "rural areas," not Sulaymaniyah, Kurdistan's second largest city.

9. Third, the Judge's recital that there was no evidence the detention conditions would breach Article 3 ECHR (paragraph 64) was in contrast to the respondent's own Country Policy and Information Note ('CPIN') "Opposition to the Government" dated June 2021, which was before the Judge, which referred to detainees being kept in places that lacked the basic requirements, which reflected the "catastrophic" situation in detention centres including the lack of proper medical treatment due to overcrowding, and the absence of meals.

10. Judge Kamara granted permission on 7th March 2022. The grant of permission was not limited in its scope.

Discussion and conclusions

11. I do not recite all of the parties' submissions, except where it is necessary to explain the decision I have reached. Having heard Mr Mohzam's submissions, Mr Walker formally conceded that the Judge had materially erred at paragraph 64 in concluding that there was no evidence that detention conditions risked breaching Article 3 ECHR. Mr Walker also accepted that this was relevant to the protection claim, as the IKR state was the claimed persecutory actor. Mr Walker further accepted that the error was such that the Judge's decision was not safe and could not stand.

12. Mr Walker also accepted, in relation to the CSID/INID issue, that the respondent's CPIN, Iraq: Internal relocation, civil documentation and returns (July 2022), Annex D, confirmed that the Sulaymaniyah CSA is no longer issuing CSID cards and is instead issuing INID cards.

Disposal

13. I turn to the question of whether it is appropriate to retain the remaking of the appellant's appeal in this Tribunal as opposed to remitting the matter to the First-

tier Tribunal. I am conscious of the Court of Appeal's decision in AEB v SSHD [2022] EWCA Civ 1512, Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal. Both representatives urged me to retain remaking in the Upper Tribunal. Paragraph 7.2(a) does not apply. In relation to paragraph 7.2(b), the issues and extent of any fact-finding are narrow, as while there are no preserved findings from Judge McKinney's decision, Judge Cox already accepted the genuineness of the appellant's opposition to the KDP. While there is no preserved finding on whether the appellant has lost his CSID, the Judge had taken this part of the appeal at its highest and the appellant's general credibility has not been contested. There are also the two CPINs already referred to. It is therefore appropriate to retain remaking in the Upper Tribunal.

14. The following directions shall apply to the future conduct of this appeal:

14.1 The Resumed Hearing will be listed at Field House, at the first available date, time estimate 3 hours, with a Kurdish Sorani interpreter, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

14.2 The appellant shall no later than 21 days before the Resumed Hearing file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated electronic bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

14.3 The respondent shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 14 days before the Resumed Hearing.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings. Judge Cox's earlier decision is unaffected by this. Remaking is retained in the Upper Tribunal.

The anonymity directions continue to apply.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8th June 2023