IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI 2022 003812

First-tier Tribunal No: PA/52496/2021
IA/08511/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 January 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

SHQ
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr W Khan, Legal Representative, Fountain Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer.

Heard at The Manchester Civil Justice Centre on 22 November 2023

Order Regarding Anonymity

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

DECISION AND REASONS

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Introduction

1. The Appellant's appeal based on protection and human rights grounds was rejected by the Secretary of State by way of a decision set out within a Reasons for Refusal Letter dated 11 May 2021. At the hearing before us, we have been required to re-make the decision following a material error of law having been found in the decision of the First-tier Tribunal.

Procedural Background

2. There is a detailed procedural history to this matter. It can be summarised as follows.

3. The Appellant arrived in the United Kingdom on 12 December 2016. He claimed asylum and his application was refused by way of a decision of the Respondent dated 30 January 2018. The Appellant's appeal was considered and on 29 March 2018 First-tier Tribunal Judge Bristow ("the earlier Judge") dismissed the Appellant's appeal.

4. The Appellant made further submissions to the Respondent and those further submissions were rejected as set out in a Reasons for Refusal Letter dated 11 May 2021. The Appellant appealed against that further decision.

5. The matter had come for hearing before First-tier Tribunal Judge Lang ("the Judge") and she dismissed the Appellant's appeal by way of a decision dated 25 March 2022. Permission to appeal was granted by First-tier Tribunal Judge Brewer on 18 August 2022 against that second decision. Then by way of a decision issued on 3 May 2023 Upper Tribunal Jackson concluded that the decision of First-tier Tribunal Judge Lang involved the making of a material error of law and Judge Lang's decision was set aside.

6. On 3 May 2023 Principal Resident Judge Blum made a Transfer Order enabling a different Upper Tribunal Judge to consider the matter further.

7. On 13 June 2023 the matter came for hearing before Upper Tribunal Judge Blundell but the Appellant had raised a new matter with reference to section 85 Nationality, Immigration and Asylum Act 2002 and so the hearing was adjourned to enable the Respondent to consider whether he should give consent or not for the new matter to be considered.

8. On 21 July 2023 the matter returned for hearing before Upper Tribunal Judge Blundell but could not conclude because neither the Appellant nor his wife were in attendance and arrangements could not be made for them to travel to the hearing centre in time for the hearing to conclude. Upper Tribunal Judge Blundell adjourned the matter once again and ordered that there be a written explanation from the Appellant's solicitors in respect of the non-attendance of the Appellant at the hearing. That letter has been provided.

9. The matter then came for hearing before us on 22 November 2023 at which we heard evidence from the Appellant and his wife and submissions on behalf of the Appellant and Respondent. We reserved our decision which we now provide with our reasons.

The Issues Before Us

10. The issues were set out within the Appellant's Appeal Skeleton Argument as follows:

    (1) Will the Appellant be at risk on return to Iraq by his wife's family?
    (2) Is there sufficiency of protection available for the Appellant in Iraq?
    (3) Will the Appellant be able to obtain a replacement CSID card?
    (4) Will the Appellant be able to relocate?
    (5) Will the removal of the Appellant breach Article 8 of the ECHR?
    (6) Does the Appellant meet the requirements of paragraph 276 ADE (1) (vi) of the Immigration Rules?

11. In his closing submissions, Mr Khan also referred to the issue of FGM and he referred extensively to background evidence. We shall return to those matters further in this decision.

Factual Background

12. The Appellant is a citizen of Iraq. He arrived in the United Kingdom on 12 December 2016. The Appellant's wife, (we shall call her Mrs NAM), and their then two children also arrived with him. A third child has now been born to the couple here in the UK. Therefore, the family now comprises the Appellant, his wife and their three children. The Appellant's wife and three children depend on the Appellant's claim. The Appellant states that he and his wife had to flee Iraq because the Appellant's wife's family did not approve of them eloping and marrying.

The Hearing and Submissions Before Us

13. The Appellant and his wife provided oral evidence to us. A Kurdish Sorani interpreter was present and there were no issues raised in respect of the interpretation of the matters presented to us. We had before us a very large bundle of documents comprising the Appellant's original bundle and supplementary bundles (including Appellant's skeleton arguments) and at the hearing we also considered a Respondent's skeleton argument referred to by Mr Tan dated 14 June 2023 in respect of the new FGM matter.

14. We heard evidence first from the Appellant. The Appellant adopted his witness statements in examination in chief. In cross examination the Appellant said that he was born in Heria Town (also referred to Harir Town in some of the documents and which is in Erbil). He said his parents live there at the moment. The Appellant was asked why if he was in touch with his family, he could not ask for copies of relevant ID documents. He said he had the ID cards, but they were no longer where they were. Pressed by Mr Tan on why the Appellant had not produced his family's or his brother's ID cards, the Appellant said that it was the first time that he had been asked for those and that if he had been asked for them previously, then he would have produced them.

15. The Appellant said that his wife was also from Heria Town, but that although she previously had an ID card, it had been lost at the same time as the Appellant's ID card. He said the last location he saw the documents was in rented accommodation in Heria Town. He said that was in the year '2000 or something'. It was before he went into hiding.

16. The Appellant was asked how he was able to work in Iraq without an ID card. The Appellant replied that he was able to work even without an ID card.

17. The Appellant was asked to explain why in his first witness statement he had said that he had been in hiding in Gamesh Tapa (also referred to as Gamesthapa in some of the documents) for 5 to 6 years whereas in his asylum interview at question 13 he had said that he was there for only 3 years. The Appellant said that he did not say that and that the interpreter would have made a mistake.

18. Asked about whether he left Iraq straight from Gamesh Tapa the Appellant said he left Gamesh Tapa and then went to the Turkish border. He was asked about his asylum interview in which the Appellant had said that he had stayed in Barmiza. The Appellant said yes and in respect of whether that was in Kurdistan, he said it was in the Kurdish and Turkish border. The Appellant said that he had to pass through Kurdistan to get to Barmiza. He said that his intention was to cross there and then to the Turkish border into Turkey.

19. The Appellant was asked to explain how he managed to pass through all the checkpoints without an ID card through Kurdistan. The Appellant said that the person taking him to the border was showing his ID card and they were passing through.

20. The Appellant was asked to explain why he was today saying that he had left his and wife's ID cards in Heria Town, but that at the Tribunal in 2022 he had said that he had left the ID cards as the last address in Iraq. The Appellant was asked that if the last address was Gamesh Tapa then why was this different? The Appellant said that he had never said that he had left the ID cards in Gamesh Tapa and that he had always said that he had left the documents in Heria Town.

21. The Appellant was asked about his evidence previously at the Tribunal when he had said that he had asked his brother to look for his CSID card in 2017. The Appellant said that was correct. The Appellant was asked why his brother did not send the arrents warrant to him until 2019. The Appellant said that the reason was 'because you have to be present in that place for a copy to be given to you.' The Appellant said that the Appellant did not have a copy of the arrest warrant in 2017.

22. The Appellant confirmed that his brother had provided him with a letter as part of his evidence. He was asked whether that letter had said he had the arrest warrant in 2014. The Appellant was asked why he said that his brother did not have it in 2017 if he actually had it in 2014. The Appellant said, "Well, when it was sent to him by the court, he posted it to me."

23. The Appellant was asked about the photographs of scars to someone's hands as part of his bundle. The Appellant said that these photographs relate to when he was stabbed with a knife in Erbil by his wife's brother. He said it was when he had gone to work in Erbil and it was after he had married his wife.

24. The Appellant was asked whether he left Heria Town to get married or whether he got married in Gamesh Tapa. The Appellant said that he got married in secret in Heria Town and he said, 'she became my proper wife in Gamesh Tapa'.

25. The Appellant was asked to explain why even though he has been asked a number of questions on a number of occasions what happened between him and his wife's family in the past, there was no mention in the previous hearings

or in the asylum interview of him being stabbed. The Appellant said that he did not know that it could be used as evidence.

26. The Appellant was asked about the risk to his daughter of FGM. The Appellant said that he did not mention this at any point earlier because he did not know it could be used as evidence. When he knew that it could, he said he then mentioned it.

27. There was no Re-examination.

28. The Appellant's wife was called to give evidence. She confirmed her name and also provided evidence via the Kurdish Sorani interpreter after it was established that the communication and interpretation was of a good quality. After adopting her witness statements as evidence, the Appellant's wife was then cross examined.

29. In respect of the risk to her daughters of FGM from her family, the witness said that she did not mention this earlier because she was embarrassed and shy to mention it. The Appellant was reminded that her eldest daughter was born in 2011 but that asylum claim was initially made in 2016. She was asked if she was worried about what would happen why it took her 6 to 7 years to say this would happen. The witness said that it was Eid time and husband was talking to his mother and mother asked have you done 'sunnat' on the children. The interpreter said that 'sunnat' means genital mutilation. The witness was asked whose mother she was referring to. The witness said she had spoken to her husband's mother and that she did not speak to her own mother. The witness was asked whether she feared FGM from her husband's family and not from her own family. The witness said she feared FGM from both sides.

30. The witness was asked how she could fear FGM from her family as she had not spoken to them. The witness said it was the same as her in-laws and her family would say the same thing. The witness said she had been subjected to FGM herself. The witness was asked why she had not provided medical evidence. The witness said that if she was required to be tested then she was prepared for it to be undertaken.

31. The witness was asked about her ID card. She said she had one previously, but it had been lost. She said the last card was a CSID card, but it was one card with her husband's name also on it. She was asked when she last saw the card. She said, "We fled and left everything behind". The witness was asked again where she had last seen the ID card and she said that it was in Gamesh Tapa.

32. The witness was asked where she got married. The witness said, "Because I was so fearful. I do not recall where we got married. The witness was asked whether she had lived in Heria Town. She confirmed she had. The witness was asked whether she had married before she left Heria Town or after she had left. The witness said, "I swear to god, I do not remember. So fearful."

33. The witness said that after she lived in Gamesh Tapa, they then to had to change places because her husband had told her that they'd been found out and she said she did not know the name of the different place they went to. She said she was so fearful and scared. She said it felt like a dream and she was then woken up.

34. In Re-examination the witness was asked about the discussion with her mother in law about the 'sunnat' (the FGM) on her children. The witness said it was Eid time. The witness was asked to work backwards as to when this was. As to whether it was 12 months ago, 2 years ago or more. The witness said it was 3 or 4 months ago when the schools were closed for holidays.

35. The witness was asked what her reaction to the question was and she said, " I said no and that it will never happen and I do not want my daughters to experience what I have experienced." The witness said that FGM had been carried out on her when she was aged 9 or 10. Her children were aged 12, 10 and 3 (almost 4). She said that her husband had been sorting everything out before they fled including obtaining a car. She said she could not recall the names of all the places that they had been too, but that her parents were in Heria Town. She said she had not lived with her husband in Heria Town, but that she and her husband were in love there. She had been living with her husband. She agreed that she went to Gamesh Tapa and that everything was left behind in Gamesh Tapa. She said she could not recall the journey.

36. We then heard closing submissions. First on behalf of the Respondent from Tan. A summary was that Mr Tan said he relied on the Reasons for Refusal Letter and the contents of the Respondent's Review, alongside the findings of FTT Judge Bristow who had concluded that the Appellant was not at risk on return.

37. Mr Tan said that there were a number of items which placed a number of question marks in respect of Appellant's and his wife's evidence and such matters went to the core aspects of the Appellant's claim. Mr Tan said that the obvious starting point was in relation to the marriage which had taken place between the Appellant and his wife. In the asylum interview this was said to be after they left Heria Town, but in evidence today, the Appellant said that he got married in Heria Town. This was completely different compared to the previous evidence and the asylum interview.

38. It was submitted that the Appellant's wife's evidence was vague and she said she could not even recall where she got married, yet her ID card had her name on it and that of her husband. It was submitted that this different feature, when considered with the Appellant's own evidence, was discrepant with when the Appellant had said to Judge Lang that his CSID was at his last address in Iraq. Was that Gamesh Tapa. Barmiza or Heria Town? It is not Heria Town as he had not been there since 2011. It is now said he left it behind in the process. It was submitted that the evidence has not been consistent.

39. There was reference to Judge Lang's decision which records the evidence at paragraphs 23 to 30. The letter and arrest warrant is supposedly dated 2014 and the brother received it and told the brother of it in 2014. Yet it does not appear in Appellant's hands until 2019. Mr Tan said it seems remarkable that with knowledge of it that the Appellant did not ask for it. Mr Tan said that the explanations today from the Appellant did not make any sense. There was nothing consistent with each other or with the Appellant's evidence. It was the Refusal Letter which led to action being taken.

40. Mr Tan said that another contextual point was that if the Appellant was supposedly wanted in 2014 then it seemed remarkable that there was a move from Gamesh Tapa and Barmiza when the problems in Iraq and checkpoints through whole of Iraq were such that they would have had to pass border controls and to conduct his day-day activities. It seemed remarkable the

Appellant and his wife did not have their CSID document and at the checkpoints and in the IKR. If there was an arrest warrant, the Appellant went through without being picked up on the arrest warrant.

41. Mr Tan said that the photographs of the alleged assault before he left Heria Town was new evidence and was not mentioned at the two previous hearings. We were asked to look at questions 52 to 58 of the asylum interview when the Appellant had simply said that nothing had happened when he had proposed. It was another layer of things made up.

42. The FGM matter had been raised late in the day and the skeleton argument drafted by Mr Wain on behalf of the Respondent was relied upon. If the daughter was at serious risk of FGM then it would have been mentioned. The daughter was aged 5 at that time and if he knew his wife was subject to FGM and as he has two sisters of his own then, he would know of family's wishes. It was not credible that this was not mentioned in the 6 or 7 years which have passed. The Appellant's wife said she has had FGM undertaken on her, but there was no evidence to support this. The Appellant's evidence as set out in witness statement makes no mention of his own family being a risk, only of his wife.

43. In respect of the documentation, it was submitted that even if were to take as a starting point that the neither the Appellant nor his wife could obtain their CSID card's the latest CPIN at paragraphs 3.4.5 and 3.4.9 states that they can get laissez passer and the Appellant said that he could obtain his other family member's ID documents.

44. The Appellant is from Erbil as is his wife. The CPIN sets out that returns can be made to the IKR at 5.4.1 and 5.4.3 to Erbil airport and within section 3. We were referred to paragraph 5.4.1.3 with a series of stages as to various options dependent on how much evidence a returnee can have on return and it sets out that the Appellant and his family could be re-documented within a reasonable time frame.

45. In respect of Article 8, this had been covered in refusal letter. None of the family are qualified children, but in respect of proportionality and in real world there was no credible risk on return and the children were not at a critical stage in their education and there were no medical reasons put forward.

46. We then heard from Mr Khan who made detailed submissions. There were various strands to his submissions. Firstly he said that there was the asylum claim relating to whether there is a real risk to the Appellant in respect of the marriage opposed by his wife's parents and internal relocation is not possible.

47. Secondly, we should separately consider humanitarian protection and whether there is a real risk of harm to the Appellant due to elopement and the subsequent marriage. We were also asked then to consider Article 3 ECHR. If the Appellant made out his asylum, then we should also say that there is a real risk of ill treatment in respect of Article 3.

48. Thirdly we should consider Article 8 ECHR and family and private life and the best interests of the children in accordance with section 55 Borders, Citizenship and Immigration Act 2009.

49. Mr Khan said that finally we should consider the risk of FGM to the children and their welfare if they have to go the IKR.

50. In respect of the asylum claim, the starting point was the decision of Judge Bristow in 2018. In so far as the cross examination today was concerned, there was a discrepancy between the evidence of the wife and the Appellant as to where they left the ID documents, whether Haria Town or Gamesh Tapa. Mr Khan said whether it was place A or B did not really matter. The fact was how they can obtain the documents. It was not a critical point because at some point in their journey they had no documents.

51. The Appellant was able to leave the country in 2016 because the person taking them through the Turkish border had documents. It was perfectly plausible. It is not possible to cross all the t's and dot the i's. It may be that was acceptable.

52. The Appellant's wife remembers very little and perhaps that can be accepted by the Tribunal. She is a young woman in a confined society. She fell in love and took an enormous decision to leave the country with the Appellant. It was hardly surprising that she did not recall when she left and when she got married.

53. The couple have three children. It was not unreasonable that the Appellant's wife was fearful and scared and felt she was having a dream and waking up which was a nightmare for her. It was submitted that the evidence in respect of falling in love was entirely plausible. At paragraph 35 Judge Bristow had stated that the Appellant had proved his account and had given consistent account in his screening and asylum interviews, but at paragraph 43 the judge found that there was no real risk on return to Iraq. It was submitted that one has to ask has anything been said to depart from Judge Bristow's decision after hearing the evidence today and looking at the whole of the evidence? There were bound to be some inconsistencies. It was submitted that in a perfect world they would get it right, but the question was do the inconsistencies taint it in a sufficient manner? It was submitted that when considering **Devaseelan** and the first judge's decision as a starting point today's evidence does not detract from that and the core of the story.

54. It was submitted that the FGM claim was highly sensitive and the presenting officer had criticised there being no medical evidence. We were invited to accept that the Appellant's wife provided a truthful account and in the IKR FGM is still prevalent. We were told that she was asked 3 to 4 months ago why her children had not undergone this appalling ritual and she said it would never happen to her children. We were asked whether it was reasonable for her to be examined in the most personal manner.

55. It was submitted that looking at the whole of evidence of the Appellant and his wife in respect of the asylum claim they had left Iraq because of a real fear and because the Appellant would be subject to an honour killing. There was also some supporting evidence in the injury to Appellant's hand. This was as a result of an attack by the Appellant's wife's brother and there were photographs with scars to his hand.

56. In relation to arrest warrant, the brother had sent the arrest warrant in 2019. There was a delay in sending it to the UK. On arrival to the UK in 2016 the Appellant had made an asylum claim and it led to appeal in 2018. The evidence of the arrest warrant was not before Judge Bristow, but it was available in March 2022. There was some delay, but not undue delay and it was submitted that it was matter for us what weight to put on the complaint the wife's family put on it. It was submitted that this was supporting and corroborative evidence of the real risk to the Appellant if he was removed to the IKR. Mr Khan said that putting

it another way if the Appellant had not produced evidence, then the Respondent would have asked why not. It was not fatal to the Appellant's claim that he had not received the arrest warrant until after the first hearing but before the second hearing.

57. Mr Khan took us in detail to the background evidence. We do not refer to all of it and refer to some when we consider the matter further. In summary however, Mr Khan took us to the same Country Policy and Information Note, Internal Relocation, Civil Documentation and Returns, Iraq Note of October 2023 (updated on 1 November 2023) as Mr Tan.

58. Mr Khan said that page 9 referred to undocumented appellants. Here the Appellants have no documents. It did not matter whether they were at place A or place B. Paragraphs 3.2 and 3.3 were very helpful. Mr Khan said assuming a return, the risk is what happens to them on IKR soil. What happens at the airport at Erbil without documents and what happens to their life and if they are destitute. That was the risk. Paragraph 3.3.4 was important because it says that since promulgation of SMO (2) there are no longer any offices producing CSID and nationals need biometrics and scans of the iris. Even if the Secretary of State is correct that a laissez passer could be obtained, it is not an acceptable form of ID. It is a means of travel. The Appellants do not have the documents needed. There is also reference to the Appellants being able to go to the Iraqi embassy in London but that is only once family members verify them from Iraq and then the information is sent from there to the Iraqi embassy. But the laissez passer is not an acceptable document to access services or to travel from place to place.

59. Pages 13 to 14 showed the practicalities of internal relocation. The Appellants will be at risk it was submitted. Paragraph 3.6.7 showed that returnees cannot obtain a CSID. Paragraph 3.6.8 showed what the case of **SMO** had said. Paragraph 3.7 sets out the key documents but the Appellants do not have those and it is not practical for them to be sent to the UK. It is impossible to have an INID from the UK and now impossible to get a CSID. Paragraph 3.7.11 shows that the Appellants cannot obtain CSIDs and so fact of matter is that both Appellants would be returned without documents and they will be at real risk of treatment likely to breach Article 3 on return.

60. The Appellants would have to personally attend to enrol their biometrics. Page 19 deals with relocation within the IKR. Only those documented can enter the IKR. It is on a case by case basis. Paragraph 6.5 deals with the ability of the children to obtain documents. They will require them for school and health. On page 56 at paragraph 9.5 there is a section for entry and residence requirements for Erbil and the need for documentation and the need to report to the local authorities. Clearly the answer to the question "do you have any documents" will be "no".

61. In respect of the risk to the children of FGM, Mr Khan said that he disagreed with the Respondent's skeleton argument dated 14 June 2023 which stated that there was no risk.

62. Mr Khan said that he regarding honour crimes he relied on the original bundle at page 158 the whole of pages 162 and 163 that revenge never finishes, page 166 at paragraph 2.3. Page 168 dealt with whether there is realistic protection. Pages 169-170 referred to the police. Pages 172-174 referred to hiding.

63. Page 170 showed that although there was some protection, it was not effective and background material supports that the Appellant is at real risk however long the length of time that they fled.

64. FGM was said to be a serious problem as set out in the supplementary bundle. The Human Rights Watch report was dated 2010 and the Respondent says that things have improved because IKR says it is an outlawed practice but if one looks at the more recent documents, such as page 13 in the supplemental bundle (European Union Agency for asylum). It says that the practice is still prevalent. Page 16 showed another report dated 25 Feb 2021 showing that FGM continues despite it being illegal.

65. Mr Khan said that he finally referred to the Article 8 claim. He said that it must be right that family life has been established and he said he accepted that it was outside the Immigration Rules and so the question was are there exceptional circumstances which permit the family to stay? It was a question of proportionality and whether it is in public interest to remove them to IKR after this length of time and where the children have established life in the UK and was it not in the interests of immigration control to do so. It was submitted that the children had established strong life at school and the evidence was in the bundle of school reports plus there were family photographs too. It was submitted that it was interesting to note that the two older children 10 and 12 were 20 days short of having lived in the UK for 7 years. They could argue that under Paragraph 276ADE(iv) they have lived in the UK for 7 years and would it be unreasonable for them to leave having established such a strong family life. It was suggested by the Respondent that they can return to Iraq, but would it be reasonable? What was in their best interests pursuant to s55 BCI 2009 had to be considered and their welfare has to be considered. They had put roots put down in this country. Effectively they would have to start their lives again and **ZH Tanzania** says it is not in their best interests and not in public interest in terms of proportionality to do that.

66. We were invited to allow the appeal.

Self-Directions

67. We remind ourselves of several aspects including but not limited to the following.

68. The starred decision in **Devaseelan v Secretary of State for the Home Department** [2002] UKIAT 000702 makes clear that decision of First-tier Tribunal Judge Bristow of March 2018 must be our starting point in assessing the Appellant's claim and his credibility. Matters which occurred since the first decision can always be taken into account. Positive points were made in respect of the Appellant's credibility in that earlier decision.

69. The burden of proof is on the Appellant, but the standard of proof in respect of the protection claim is low given the gravity of the consequences. The Court of Appeal decision in **Karankaran v Secretary of State for the Home Department** [2000] EWCA Civ 11 makes clear we are required to consider whether there is a 'serious possibility' of persecution and we must take all material considerations into account cumulatively. We must apply the most anxious scrutiny to the Appellant's claim. Put another way, we must consider whether there are substantial grounds for believing that the Appellant would be at risk of suffering serious harm.

70. We must consider the entire picture in respect of the Appellant's claim in accordance with the decision of the House of Lords in **Horvath v Secretary of State for the Home Department** [2000] UKHL 37. In addition we must examine both the general and individual claimant's situation to ensure that there will be sufficient protection. Here the Appellant fears his wife's family and also contends that they are connected politically.

71. If the Appellant does not satisfy us that he is a refugee then we must consider whether the Appellant has a valid claim for Humanitarian Protection pursuant to paragraph 339 of the Immigration Rules.

72. In respect of human rights, if the Appellant shows an interference with his human rights (or those of his family) then it is for the Respondent to establish that any interference with those rights is justified.

73. People may not tell the truth for all sorts of reasons and we remind ourselves of the Lucas directions as explained in **Uddin v Secretary of State for the Home Department** [2020] EWCA Civ 338.

74. We have firmly in mind that giving evidence is not an easy experience and that is made more difficult for this Appellant and his wife because they provided their evidence through an interpreter. The unfamiliarity with the language and culture of the UK is a matter we take into account and we remind ourselves that we might expect would occur in the UK is not the way things operate in Iraq. We also have in mind the Equal Treatment Bench Book and note that Mr Khan referred specifically to the Appellant's wife hailing from a community which is a closed community and thereby her evidence may be affected. We bear firmly in mind that explaining matters such as FGM may cause embarrassment and even fear.

75. Section 8 of the Asylum and Immigration (Treatment of Claimant's) Act 2004 requires us to consider if the Appellant failed to claim asylum in a safe country as damaging to his credibility. This cannot be a starting point though because applicants may not claim asylum for all sorts of reasons.

76. No corroboration is required from the Appellant. Where an Appellant relies on documents then it is for him to show that they can be relied upon in accordance with the decision in **Tanveer Ahmed** [2002] UKIAT 00439 and we will consider the documents in the round.

77. We must follow Country Guidance unless there are very strong grounds, supported by cogent reasons not to do so as explained by the Court of Appeal in **SG (Iraq) v Secretary of State for the Home Department** [2012] EWCA Civ. In this case the Upper Tribunal's Country Guidance is to be found in **SMO, KSP and IM (Article 15(c) Identity documents (Iraq)** [2019] UKUT 00400 IAC (CG) **(SMO1)** and **SMO & KSP (Civil status documentation; article 15) Iraq CG [**2022] UKUT 00100 (IAC) **(SMO2).**

78. **SMO2** confirms at paragraph 24 that even where it is safe for an individual to relocate to a formerly contested area, it would not be feasible or reasonable without a prior connection to, or a support structure within the area in question.

Decision and Analysis

79. Making clear that we have considered in a non-linear way, but in the round the Appellant's claim taking the earlier judge's decision of 2018 as the starting point, we turn to assess the evidence to the required lower standard of proof. We therefore first consider the earlier decision and which had recorded the evidence as follows.

First-tier Tribunal Judge Bristow's decision in 2018

"The Appellant's Account

19. The Appellant met his wife in 2010. They fell in love. He asked her family' for permission to marry on three occasions. Her family refused to give permission. He believes that they withheld consent because he was from a different tribe.

20. On 01 January 2011 the Appellant and his wife eloped to Gamesh Tapa. He married her there on the same date. They stayed in Gamesh Tapa for around 3 years. During that time, they encountered no problems with his wife's family but they were in fear of them.

21. The Appellant and his wife then left Gamesh Tapa. He says this was for two reasons. The first is that his wife's family had found out where they were living. The second is that Daesh were advancing on the area.

22. The Appellant and his wife then moved to Barmiza. They stayed there for two years and five months. The Appellant and his wife did not encounter any problems with her family whilst they were in Barmiza. Her family did not know they had moved there.

23. The Appellant still felt in fear of his wife's family and so they left Barmiza and eventually arrived in the UK.

24. The Appellant has never been attacked by his wife's family.

25. The Appellant fears that if he is returned to Iraq he will be killed by his wife's family and that his children will suffer emotional and economic hardship as a result.

26. The Appellant confirmed to me in evidence that his fear arises solely from the hostility felt by his wife's family towards him. He does not fear Daesh.

27. I asked the Appellant specifically whether his fear was of persecution because of his race, religion, political opinion, nationality or membership of a particular social group. He confirmed that his wife's family's hostility towards him was solely based on the fact that he married his wife and had eloped,

28. He conceded in cross examination that if the problem with his wife's family went away then he would be safe to return to Iraq,

29. The Appellant understands his wife's family may have reported him to the authorities. He thinks the sentence for what he did is imprisonment but does not know for how long."

80. Judge Bristow in 2018 went on to say at paragraph 35 that he found the Appellant's account to be proved but he went on to dismiss the appeal. Judge Bristow set out the following matters at paragraph 43:

> *"On the basis of my finding of fact, I am not satisfied that the Appellant has proved to the lower standard that there are substantial grounds for believing that he would face a real risk of suffering serious harm if he returned to Iraq:*
>
> *a. he has not suffered any physical attack at the hands of his wife's family during the five and a half years or so since his marriage in POH;*
>
> *b. he did not have any problems with his wife's family whilst he was in Gamesh Tapa and Barmiza;*
>
> *c. he could re-locate to a part of Iraq where his wife's family could not find him;*
>
> *d, this strategy proved effective after 2011. His wife's family did not find them for five and a half years;*
>
> *e. nothing seems to have changed in relation to this situation in 2016 when he left Iraq; and*
>
> *f. the Appellant asserts that he has been reported to the authorities but if they do know about him they have not taken any action since 2011."*

81. The decision of 2018 concluded that the appeal was dismissed on both protection and human rights grounds. Paragraph 276 ADE was also considered.

Decision of First-tier Tribunal Judge Lang in 2022

82. We turn then to the decision of First-tier Tribunal Judge Lang in 2022. That decision was set aside. The recording of the evidence provided by and on behalf of the Appellant remains a matter of record though. That evidence has not been submitted to us as being recorded incorrectly by the Appellant.

83. Judge Lang recorded amongst other things at paragraph 23 onwards as follows,

> *"I would draw specific reference to the following , at this stage: in his evidence at the hearing Appellant stated that he became aware of the arrest warrant against him when he came to the UK in 2018. His brother told him. He said that he was not concerned about it at that time and had not asked his brother to send him a copy. This was why he had not provided it to the previous FTT. In answer to a question from his representative, the Appellant stated that the authorities had handed a copy of the arrest warrant to his family; at least that is how he thinks his brother got a copy of it. He couldn't be sure. He is not sure exactly when his brother sent him a copy of it, but he has it now.*
>
> *24. The HOPO drew attention to a letter from the Appellant's brother (at page 108 of the appeal bundle) which said that a judge had ordered the arrest warrant for the Appellant on 15 May 2014 and that the Appellant's brother have notified the Appellant about it in May 2014, one week later. The Appellant stated that this was not true because after he left Iraq,*

he had no contact with his brother until he arrived in the UK. They Appellant was unclear on when he exactly left Iraq in his evidence at the hearing; he said he left in 2015 but couldn't be sure exactly when and it took him till December 2016 to get to the UK. Again, when pressed, he could not explain why it took him so long to get to the UK or give any details of the journey.

25. The Appellant confirmed that he had been working in Iraq up until the time he left. Despite there being an arrest warrant out for him, he was not tracked down by the police. His wife's family never tracked it him or his wife to the place to which they had relocated. Once, on a day trip to the city of Erbil, he claims that he was noticed by his wife's family who then pursued him by car but did not follow him all the way home. They had never discovered where he lived.

26. Evidence to the hearing from the Appellant's wife contradicted this version of events.She claims that they both knew that there was an arrest warrant out for her husband whilst still in Iraq but could not remember when it was issued. She claimed that it was one of the reasons they decided to run away.

27. In his witness statement, the Appellant states that he and his wife eloped in 2011 and travelled to Gampeshtapa, where they lived in hiding for 5 to 6 years during which time they married and had two children. They then found an agent who took them to Turkey. They travel from Turkey to Italy where they were arrested and fingerprinted. They then travelled to France by train and then by lorry arriving in the UK in December 2016 .

28. In answer to a question from his representative about why his wife's family did not report him to the authorities until 2015, some four years after they had eloped, the Appellant said that the family wanted to take matters into their own hands. They want to sort out the problem themselves. He did not explain why they then did report him to the authorities or why they decided to do so at that time.

29. The Appellant confirmed that he has one brother in Iraq with whom he is in regular contact. The Appellant said that he could not remember where his CSID card is. He does not know where he left it, but he does not recall having it with him when he left Iraq. He understands that the CSID card is a very important document in Iraq but cannot remember where he left it or if he lost it.

30. However, in answer to a question from the HOPO, the Appellant changed his evidence. He claimed that he left his CSID card at the last address he lived in in Iraq but from that moment on it was lost. He then stated that he sent his brother to try and find it, but his brother could not locate it. He sent his brother to look for it in 2017, some three months after they arrived in the UK. The Appellant had not mentioned this fact in his witness statement or in his asylum interview. The Appellant further claims that his brother cannot send him the details of the family book and number for the purposes of getting replacement CSID card because his brother cannot remember those details, and neither can he.

31. The Appellant went on to explain family life in the UK at the hearing. He stated that his children cannot speak Kurdish; they only speak English. Despite the fact that they live with two parents who only speak Kurdish, the Appellant insisted that his children no longer understand any Kurdish because they have learnt English at school. His wife and he manage to communicate with his children without a shared language. He claims that they are old enough now to deal with such things as showering and making their own supper

without their parents intervention. They are approximately 10 and 7 years of age. They were 5 and 3 years of age when they arrived in the UK. The Appellant claimed that, because he is illiterate, he was unable to teach his children to speak Kurdish. He claims that , even though his oldest child was 5 years of age when they arrived in the UK , he and his wife have been unable to teach her to speak Kurdish . Despite living in Iraq and then travelling to the UK as a family unit, he persists that neither he nor his wife taught their children to speak Kurdish. He offered no explanation of how they communicated on that journey. He claims this was because they were both very busy and working and simply did not have time to teach the children how to speak Kurdish.

32. The Appellant's wife confirmed that her eldest daughter is 10 years of age and is at school. She enjoys it a lot and tells her mother so. When asked how she understood her daughter if her daughter speaks no Kurdish, and she speaks no English she clarified that the speaking in 'gestures'. She says her daughters explain that English is easier to understand, and they do not like the Kurdish language anymore. She, too, stated that even when still in Iraq, when her eldest child was 5, she had not taught her daughter how to speak in Kurdish because she had been busy."

Other Evidence and Assessment

84. We are aware of the screening and asylum interviews and will refer to those where relevant in the assessment of the evidence. We also take into account the written statements of the Appellant and his wife and take them into account, but will not repeat their contents except for where necessary.

85. We consider the letter provided by the Appellant from his brother and the arrest warrant. Those documents were delivered to the Appellant's home here in the UK via DHL courier because we have been provided with a DHL envelope stating that was the method of arrival.

86. The undated letter from the Appellant's brother to the Appellant has been translated into English and it states that, *"…They registered a case against you at the Harir Police Station and it was taken to court in the Harir District, and the judge ordered your arrest on 15/05/2014 and I notified you of the arrest a week later in 22/05/2014. I sent the order to you that's why I inform you never come back because your life is in absolute danger, and don't think about us, knowing that our lives are in danger as well".*

87. In addition there is an arrest warrant. This has also been translated into English, but the original also has a heading in English with "Judicial Council" typed on it. The arrest warrant is dated 15 May 2014.

88. We note that the Secretary of State specifically queried in the Reasons for Refusal Letter how or why the arrest warrant was in partly in English stating, *"… It is unclear why an Iraqi arrest warrant would have English written on it. It is not known why Iraqi officials letter templates would have English writing on them, considering the document would be issued in Iraq. It is considered that this damages the credibility that the document is a genuine Iraqi document".* We note that the Appellant in relation to this merely says in his witness statement of August 2021 that he does not know why the arrest warrant uses English. We consider that the Appellant was aware that this was an inconsistency in his case that required to be dealt with and that he has had some years to deal with it. We do not seek corroboration.

89. We also note that the Appellant said he eloped with his wife on 1 January 2011 but that the complaint to the Police and the arrest warrant are dated 15 May 2014, more than 3 years later. We note that the Appellant said that there were said to be attempts at resolving this matter without the police. We have set out above the duties which arise pursuant to the decision in **Tanveer Ahmed.**

90. We note too that the letter from the Appellant's brother is undated but states that the Appellant was informed of the arrest warrant a week later by his brother on 22 May 2014. It is not clear what form of communication passed between the Appellant and his brother, but there clearly was communication.

91. We consider the evidence of the marriage between the Appellant and his wife. In his witness statement of 14 August 2021 the Appellant said at paragraph 14 that he and his wife eloped on 1 January 2011 and they then married in Gamesh Tapa. In his oral evidence the Appellant was asked whether he left Heria Town to get married or whether he got married in Gamesh Tapa. The Appellant said that he got married in secret in Heria Town and he said, 'she became my proper wife in Gamesh Tapa'.

92. We revisit the findings of Judge Bristow of 2018 and use those findings as a starting point. We conclude that there are good reasons to depart from the findings that Judge Bristow made.

93. Reminding ourselves that these are relatively old matters in respect of the marriage and making every allowance for nerves and that the witnesses were giving evidence through an interpreter, we conclude to the required lower standard that the evidence about the claimed marriage having taken place the way alleged is not true. We do not accept that the Appellant's wife would have forgotten when she married. The event would have been such a significant event that it is not possible for us to be able to accept that the Appellant's wife would have forgotten about where she married. We conclude that the Appellant's wife was clearly seeking to deal with the inconsistency in the evidence which revealed itself between the written documents and the Appellant's previous oral evidence. The Appellant himself sought to deal with this by suggesting that they married first and then she became his 'proper wife' later. We see no basis upon which we can accept that there were two weddings or that the marriage was not undertaken 'properly' in the first place. We consider that the Appellant and his wife have sought to conceal a glaring inconsistency with the evidence that they have provided.

94. We make it clear that we accept that the Appellant and his wife are indeed a couple and they have had three children together, but we conclude that in view of the inconsistencies and the unreliability of their evidence in respect of when, where and how they came to be married means that we cannot accept their claimed version of events.

95. We are fortified in our view about the unreliability of the Appellant's and his wife's evidence in relation to the marriage because if there really was an arrest warrant in May 2014 then it is not clear how the Appellant managed to evade the authorities for a period of some two years after it.

96. Further, if the Appellant really was wanted by his wife's family and if her family really did have the claimed links to the PDK then the Appellant would have been found, especially with the number of checkpoints even within the IKR. We come this view because we note that the Appellant's brother's letter states that the

Appellant was told of the warrant a week after it was provided to the Appellant's family. This means that the Appellant's family's address in Iraq must be known to the Appellant's wife's family otherwise they would not have been able to arrange for the warrant to be provided just 7 days later.

97. In addition we note according to the Appellant's brother's letter, the Appellant's brother told the Appellant of the arrest warrant on 22 May 2014. This therefore must mean that the Appellant's brother and the Appellant have been able to communicate with each other.

98. Whilst the way things work in Iraq in respect of honour will be different to the UK, it still remains unanswered that the Appellant and his wife said they eloped in January 2011 but the complaint to the police and the arrest warrant are dated 15 May 2014. That was some three years later. We make clear that we accept that the background material refers to honour crimes against men as well as women.

99. The suggestion in the previous hearing by the Appellant that the Appellant's family wanted to sort the matter out themselves raises more questions. Such as how did the Appellant know that his wife's family wanted to sort the matter out themselves and why they would wait such a long period of time if the intention was to get their daughter returned or to punish the Appellant? As we say, we carefully note the background material about honour crimes in Iraq, but in our judgment the Appellant's claim is not assisted by generalised background evidence that honour crimes exist and that marriage without family agreement leads in some cases to difficulty. It is the specifics of this Appellant's claim which simply does not present itself as credible, even to the lower standard.

100. If it was necessary, we note that there is yet further unreliability in the Appellant's case because his wife is recorded as having provided evidence to Judge Lang at paragraph 26 which contradicted the Appellant's version of events. She claimed that they both knew that there was an arrest warrant for her husband even whilst they were still in Iraq and she claimed it was one of the reasons that they decided to run away. This is a glaring unexplained inconsistency in the evidence. It shows us that the events have been fabricated.

101. Whilst we accept that memories can fade, we conclude that events such as for how many years the couple were in hiding in Gamesh Tapa would be remembered, if that event was true. As was clear during the cross examination of the Appellant, on the one hand the Appellant said that he and his wife has been in hiding in Gamesh Tapa for 5 to 6 years, whereas in his asylum interview the Appellant said they were hiding in Gamesh Tapa for 3 years. That is very different evidence. The Appellant said it must have been the fault of the interpreter. We do not accept that because the Appellant has had years to correct his interview and to point out mistakes. In our judgment, the Appellant's failure to do so is because he has not told the truth about the events he claims. We are of the view that if the Appellant really was in hiding and fearing for his life then he would vividly recall how long he had been in hiding. The vagueness and the incorrect time periods come about from the evidence because the Appellant and his wife have fabricated the events and alleged hiding.

102. We have sought to piece together the different versions of the account provided to us, but there are simply far too many inconsistencies for us to be able to make more favourable findings of the Appellant's claim, despite us making every allowance for the matters that we have referred to above.

103. We note the new evidence in respect of the Appellant's scar and the photographs. It is alleged by the Appellant that he was stabbed or hurt when in Iraq. We do not accept the Appellant's version of events. Whilst we can see some marks on the hands in the photographs, we conclude that if those marks really were caused as alleged, then the Appellant would have referred to this some years ago. The Appellant has had expert solicitors and counsel representing him for some years. The Appellant has had interviews with the Home Office inviting him to provide full details. The Appellant has also provided extensive written evidence, including witness statements. There were numerous opportunities to raise this. He did not. We consider that this late introduction of marks to his hands is an attempt to bolster his weak case.

104. We conclude that the inconsistencies in the Appellant's evidence and its unreliability go to the core of the Appellant's account. Therefore despite the positive findings of Judge Bristow relating to why the Appellant left Iraq , the further evidence presented requires us to re-assess those findings. We conclude that the Appellant's account about him eloping with his wife, that he is at risk from his wife's family and thereby at risk from the PDK is not true. We reject the Appellant's account.

105. Even if we are wrong and the Appellant and his wife had been evading the Appellant's wife's family, we conclude that Judge Bristow's decision of 2018 made clear that the Appellant's ability to live relatively freely in another area of Iraq meant that the Appellant and his wife were able to continue family life. Two children were born to the couple. The Appellant was able to secure a job despite there being an alleged arrest warrant seeking him. The Appellant and his wife must have been able to get medical treatment and the like for the Appellant's wife's two pregnancies and we are sure, like for all children, there would have been child ailments over the years which were remedied by the Appellant and his wife. We conclude that there is nothing of significance which has changed since the conclusions reached by Judge Bristow about a return being possible because the arrest warrant is an unreliable document.

106. We have considered the Appellant's evidence in respect of the Civil Status Identity Document [CSID] card. Whilst the position in respect of the availability for new cards may have altered, it is still necessary to consider the different versions of the evidence provided on behalf of the Appellant. One version, provided by the Appellant's wife to us is that there was one card which on which there were both of their names as they were married. Another version is that the cards (in the plural) were left in Heria Town. Another version is that the cards were left in the last place that they stayed in Iraq, which was Gamesh Tapa. Yet another version referred to at paragraphs 29 of the decision by Judge Lang was that the Appellant said to his own advocate that he could not remember where he left the card or if he had lost it. Paragraph 30 of the same decision states that the Appellant said to the Presenting Officer in cross examination that he had left the CSID card at the last address that he lived at in Iraq. The Appellant even said that he asked his brother to look for it there in 2017, some three months after arriving in the UK. We are unable to piece together which version of events is true. That is a situation of the Appellant's own making, but we conclude that we are not satisfied, even to the lower standard that the Appellant does not have available to him his and his wife's CSID card.

107. Even if we are wrong, the Appellant clearly has the extensive assistance of his family and indeed, the Appellant's brother sent a copy of his own CSID card to the Appellant with the letter and arrest warrant dated 15 May 2014. The Appellant clearly has extensive assistance available to him in Iraq. For example, we note how promptly the Appellant's brother communicated the arrest warrant to him in 2014, just one week after it was allegedly issued.

108. We find that the appellant has not discharged the burden of proof for us to find that he is not in contact with his family and that they do not have his and/or his wife's CSID.

109. Further, as was explained in **SMO (1)** (which we conclude applies to Erbil from where this Appellant hails, as much as it does to Kirkuk which **SMO(1)** refers to),

The starting point, in considering this issue, must always be to consider and to make a finding about the actual availability of a CSID or INID. In the event that the appellant's CSID is at home in Kirkuk, it can be sent to him in the UK or taken to him upon arrival in Iraq and there will be no breach of Article 3 ECHR as he travels to Kirkuk.

110. We conclude that the Appellant's brother and the rest of his family can send the CSID document to the Appellant. According to the Appellant's wife this was one card with her name on it as the Appellant's wife as she was married to the Appellant.

111. In accordance with **SMO(2)** we are clear that the Appellant has a strong support structure available to him, as evidenced by his brother and family remaining in contact with him, sending him documents and generally supporting him. The Appellant's wife told us that she has been in recent communication with her husband's (the Appellant's) mother. There is clearly significant support for the Appellant and his family available to him in the IKR. The couple hail from the IKR and they retain their culture, religion and links to the IKR.

112. We turn to the issue of FGM. We accept the background material which has been highlighted to us that FGM is practised in Iraq, including in the Appellant's and his wife's home area. We accept that some females' families in Iraq perform FGM against the wishes of the females. We also accept the evidence that the Appellant and his wife are completely opposed to FGM for their daughters and that they will not permit it to be performed on their daughters.

113. We consider that the way in which this new s85(5) NIAA 2002 matter has come to the front is a concern. This was a new matter raised by the Appellant almost 7 years after the Appellant and his wife arrived in the UK. We accept the background material about the existence and practice of FGM. Whilst we make every allowance for a witness being shy or embarrassed about the topic of FGM, we are unable to accept that the Appellant and his wife were so affected by shyness and embarrassment that they felt they could not raise the matter of FGM with the Respondent or anyone else before. We conclude that a casual recent conversation during Eid with the Appellant's mother about 'sunnat' (FGM) did not lead to the concern for their daughters. We conclude that the Appellant being legally represented in recent years by experienced immigration law solicitors has had ample opportunity, as did his wife, to provide details of

the alleged risk of FGM. Had it been true, then it would have been raised much sooner. We consider this was merely an opportunistic new claim with no truth behind it. Added to that is the uncertainty and unreliability in the evidence as to whether the risk is from the Appellant's family, from the Appellant's wife's family or from both families.

114. Even if we are wrong and there is a risk of FGM from one or both families, we conclude that the Appellant and his wife are adamant that FGM will not be performed on their daughters and therefore they will provide protection for their daughters. Whilst we accept that the fact that FGM is outlawed does not mean that it does not occur, we see no reasonable scenario to the lower standard whereby the couple's families would be able to access the Appellant's daughters to perform FGM. The Appellant and his wife will have the opportunity to keep their daughters safe from their families and indeed they have the option of seeking assistance from the authorities. We conclude that the authorities are able and willing to provide assistance. Just as crime takes place in the UK, crimes also take place in Iraq. There can be no guarantee of protection. The Appellant and his wife, we are sure, will continue to provide good care for their daughters.

115. The CPIN Note of October 2023 shows the following (which we set out in bold for emphasis):

(1) **"3.4.6 The UT in SMO1 held that a person 'must simply be able to establish their nationality in order to obtain a Laissez Passer.' (Para 375)."** We note that the Appellant's nationality has never been disputed. He is an Iraqi national of Kurdish ethnicity. He will have no difficulty in proving his nationality and nor will his family.

(2) **"3.4.1 If a person has a valid passport, an expired passport or a laissez-passer then return is feasible."** Therefore once the family have their laissez passer, they will be able to return as they will be able to board their flight. We note that the Appellant's brother has already sent to the Appellant his CSID card. The Appellant's brother CSID is in the Appellant's bundle before us. Therefore it will not be difficult for the Appellant to obtain a laissez passer for himself and his family.

(3) **"3.5.1 A lack of documentation, in itself, is not sufficient to be granted HP. It is only where a person would be at real risk of serious harm because of a lack of documentation that a grant of HP would be appropriate. 3.5.2 In SMO2, the UT concluded 'In light of the Court of Appeal's judgement in HF (Iraq) and Others v Secretary of State for the Home Departments ([2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.' [144(9)]".** We conclude that naturally the Appellant and his wife will be asked to confirm their identify as Kurdish Iraqis, which they will be able to do with the current evidence from the Appellant's brother, but also with their own CSID which we conclude that they will have access to because it can be sent to them in the UK or it can be available for them by the Appellant's family at the airport in Erbil.

(4) **3.8.13 The Tribunal in SMO2 also held: 'Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds. 'Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory. 'If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a "relatively normal life", which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case-by-case basis."** For the reasons we set out previously, we conclude that this Appellant and his family will clearly be able to look to the Appellant's family for assistance.

(5) **9.1.1 The UT in SMO2 held:**

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

'… There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah…"

9.5 Erbil Governorate

9.5.1 The UNHCR report published in November 2022 stated: 'Iraqis from any KR-I governorate have access to basic services such as health and education, can access employment, and rent an apartment in Erbil. They are required to regularize their stay with the Asayish and the local authorities." In our judgment, this will clearly assist this Appellant and his family even if he does not have his CSID (or his wife CSID) if the Appellant needs time to undertake the formalities in obtaining new ID cards, such as the Iraqi National Certificate (INC)

(6) **Annex C: "2. Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region, as stated in section 3.1.1 of the Home Office's Country Policy and Information Note: internal relocation, civil documentation and returns, Iraq, July 2022."** We conclude that the Appellant and his family can board a flight to Erbil with their laissez passer, which he can obtain by way of interview, if necessary. However, the easier avenue open to the Appellant and his family is that the Appellant uses the

CSID which we conclude he has access to. He will also have access to his mother's and father's registration number as he is in recent contact with his mother, according to the Appellant and according to the Appellant's wife.

(7) At worst we note that the CPIN states as follows which provides reasonable steps for the Appellant to take to prove his link to the IKR and for security purposes. Even without family in Iraq, the Appellant will be able to access the IKR and start the process of obtaining ID: "**5.1.3 The Inspection Report on Country of Origin information, Iraq and Myanmar (Burma) undertaken by the Independent Chief Inspector of Borders and Immigration (ICIBI), published June 2023 (ICIBI report June 2023), quoting Dr Rebwar Fateh, an expert witness on the Middle East, stated:**

'If a failed asylum seeker is returned to Iraq without an ID document, they will be detained at the airport.

a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee's Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.

b) At this time, the returnee's claimed name and address will also be cross referenced against suspect names in possession of the security services.

c) Next, the returnee will be asked to phone their immediate family to bring their ID.

d) If they claim to have no immediate family, the returnee will be asked to contact a paternal uncle or cousin for their ID.

e) If this is negative too, another relative will come to the airport with their own IDs to act as a guarantor for the returnee. This would allow the returnee a seven-day residency permit pending proof of identity.

f) During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID – such as a letter from the nationality department to show that their ID is pending via the usual procedure.

g) If the returnee has no such luck, they must find a local Mukhtar [local chief or village elder] by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID.

h) If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence on their identity.

i) The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the

witnesses will ned [sic] to give evidence under oath, stating how they know the returnee.

j) Once the chief has been convinced, the process of obtaining the ID will start. Once these steps have been completed, the returnee needs to communicate back to the security services at the airport, or their guarantor will face legal consequences.'".

(8) Whilst we note the sections in the CPIN note refer to lone women and children, in this case before us, the Appellant, his wife and the children are all part of one family unit and are not in the category of lone women or lone children.

116. Section 8 of the 2004 Act considerations mean that the failure to claim asylum sooner adds to the overall unreliability of the Appellant's account.

117. Overall, we conclude that the Appellant and his family have not proved that they would not be able to access the necessary documents to enable them to live a normal life within Iraq. We see no reason why the Appellant's family, with whom he lived previously, could not assist him in re-establishing himself in his home area. The core of his account relating to the events that he claimed led to his departure from Iraq have been rejected. There was no specific argument about how an Article 15(c) risk arises in the Appellant's home area.

118. Therefore, we conclude that neither the Appellant nor his family have a viable claim because there is no general risk of harm, irrespective of the individual's personal circumstances. There are no sufficient personal circumstances that lead us to conclude that the Appellant or his family face a real risk of being subjected to indiscriminate violence. The background material refers to millions of families living in Iraq and in the home areas and surrounding areas of Iraq without there being a sufficient risk of indiscriminate violence.

119. The same facts reveal themselves in relation to the Article 3 ECHR claim and we find no basis upon which we can conclude that the Appellant or his wife or their children can succeed in respect of such a claim. Nothing presented to us enables us to do so. The Appellant, his wife and the children are relatively fit and able. We are not satisfied that the Appellant and his family's return will result in having to face ill treatment sufficient to entitle him or the family to a grant of international protection pursuant to Article 3 ECHR or on any other basis.

120. In respect of the children more specifically, of whom there are now three, with the ages of 12 (a girl), 10 (a girl) and 3 (a boy), two of whom were born in Iraq, we again refer to and state that we have carefully considered section 55 Borders, Citizenship and Immigration Act 2009. The Supreme Court's decision in **ZH (Tanzania) v Secretary of State for the Home Department** [2011] UKSC 4 makes clear that the best interests of the children are a primary consideration. We note that the children are enjoying school and we do not doubt that they will have made friends and that they will be liked by their friends and teachers. We note the pictures of the children in the bundles and some of the school communications about good school attendance and work done by the children. Clearly the children are engaged with their school studies and with the element of enjoyment that brings.

121. We are also sure that the children are dearly loved by the Appellant and his wife and that they will not permit harm to come to them. The children's best interests are clearly to be with their parents. The Appellant and his wife are a family unit and will remain a family unit with the children.

122. We note the unusual evidence on behalf of the Appellant that the children could not speak Kurdish and that instead some form of gestures were used to communicate with them. Even putting that to one side, we are of the clear view that there is no sufficient evidence presented to us, despite the number of hearings at the Upper Tribunal and at the First-tier Tribunal, that it would not be reasonable for the children to live in Iraq. As we say, we are sure that the preference is likely to be that the Appellant and thereby the children will wish to remain in the UK, but preference is not the appropriate test. Schooling of any child is important, but there is nothing of significance presented to us about the children being at crucial stages in their schooling, although we accept that schooling is important across the ages. We note the stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.

123. Even if we ignore the curious evidence that the Appellant and his wife used or use gestures to communicate with their children because of language issues, we conclude that there is no sufficient evidence presented to us that the children will not be able to quickly adapt to schooling and life in Iraq. Two of the children moved to the UK and they have familiarity with their nationality and culture. The third child is still very young. We accept it might not be easy, but no sufficient evidence was presented to us to contend that it would not be reasonable for the children to live with their parents in Iraq.

124. We note too that one version of the Appellant's evidence is that he is in touch with his family in Iraq. At the very least he is in extensive contact with his brother. Therefore the Appellant will have assistance for himself and his children from them, if he requires it.

125. Importantly we note too that the Appellant was able to secure work, a home and assistance, even whilst purportedly under risk of being arrested and we are sure that the Appellant will be able to secure work and a home on return. Indeed, the Appellant said that he was able to secure work, a home and assistance even without a CSID card.

126. We consider the House of Lords decision in **Razgar**. We consider that Article 8(1) is engaged in relation to the Appellant and his wife. We find the private life that they have accumulated in the UK was as a consequence of a claim for asylum which failed, and that their status has always been precarious. In respect of the older two children and their ages, we conclude that Article 8(1) is engaged in respect of their family life with their parents and sibling and private life in view of the time that they have spent in the UK. The younger child has built no separate family life but has a private life which is limited but significant enough to engage Article 8 in our view, with regard to his age. There will be no interference with the family life as the proposal is to return the family as a whole to Iraq.

127. The real issue is whether interference with the protected rights is justified as the 2 girls are at school, but also in respect of the younger boy. In this case, as at the date of application, the children had not been in the UK for 7 years or more. Therefore Paragraph 276 ADE (iv) does not apply.

128. Even if Article 8(1) is engaged, Paragraph 276 ADE (vi) of the Immigration Rules provides as follows (noting that sub-paragraph (iv) does not apply because the children had not been in the UK for at least 7 years at the date of the application),

> "276ADE(1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of the application, the applicant:
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

129. In the Court of Appeal's recent decision in **NC v Secretary of State for the Home Department** [2023] EWCA Civ 1379, Whipple LJ, with whom Newey and Snowden LJJ agreed, re-affirmed and set out with clarity the previous decisions of the Court of Appeal in respect of reintegration stating,

> "25. It is not in doubt, based on these authorities, that (i) the decision-maker (or tribunal on appeal) must reach a broad evaluative judgment on the paragraph 276ADE(1)(vi) question (see *Kamara* at [14]), (ii) that judgment must focus on the obstacles to integration and their significance to the appellant (see *Parveen* at [9]) and (iii) the test is not subjective, in the sense of being limited to the appellant's own perception of the obstacles to reintegration, but extends to all aspects of the appellant's likely situation on return including objective evidence, and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles (see *Lal* at [36]-[37]).
>
> 26. I would add this. The test posed by paragraph 276ADE(1)(vi) is a practical one. Regard must be had to the likely consequences of the obstacles to reintegration which are identified. In a case like this, where the only obstacle identified is the appellant's genuine but unfounded fear, particular care must be taken to assess the ways in which and the extent to which that subjective fear will or might impede re-integration. It cannot simply be assumed that it will. The likely reality for the appellant on resuming her life in her home country must be considered, given her subjective fear, and the availability of support and any other mitigation must be weighed. It is against that background that the judgment on whether the obstacles to reintegration will be very significant must be reached."

130. In undertaking the broad evaluative judgment the obstacles to integration in this case will be limited because of the familiarity that the Appellant and his wife have with Iraq and the IKR and because the Appellant has retained communication links with his family in the IKR. The Appellant and his wife speak Kurdish Sorani, the language of the IKR, as is evidenced by them giving evidence through an interpreter today. The Appellant, his wife and the children will be able to secure health care and education after they have obtained the necessary paperwork. Whilst that might seem burdensome, in our judgment, any country acting reasonably will wish first to establish on what basis the Appellant and his family seek to re-enter Iraq. We conclude that with the assistance of the family, this will not be of any great difficulty for the reasons that we have set out above. The Appellant was able to secure employment when in Iraq in the past and according to him, even without an ID

card. We conclude that he will be able to do the same again. Similarly, the Appellant was able to secure accommodation for himself and his family and we conclude that he will be able to do so again, even if his family cannot assist him for some other reason we were not told about. We also consider that the children are of an age that they will be welcomed by the Appellant's family in Iraq. We conclude that there are no very significant obstacles preventing the Appellant, his wife or any of the three children from returning to Iraq and reintegrating or re-establishing themselves. Indeed we conclude that there are no reasons to conclude that it would not be reasonable for the children and family to live in Iraq with their caring, committed and loving parents there. It is reasonable for the children to be with their parents and it is in their best interests that they are, for the reasons that we have set out previously. The family will remain as a family unit as they will all be reintegrating together.

131. We have also considered whether there are exceptional reasons for the appeal to be allowed outside of the Immigration Rules, noting that the two older children have now been in the UK for more than 7 years and the younger one was born here in December 2019. We conclude that there are no exceptional circumstances, noting the background to the family's entry to the UK and the precarious nature of their time here. The situation of the children is the fault of their parents, but there is nothing exceptional about that situation. The children are not to be blamed for that situation. Paragraph 276ADE of the Rules required proof that "The applicant is under the age of 18 years and has lived continuously in the UK for at least 7 years and it would not be reasonably to expect the applicant to leave the UK". The evidence at the date of promulgation is that the seven year residential requirement has now been satisfied, it was not at the date of application nor at the time of the Respondent's decision, but we do not find it has been made out that it would not be reasonable to expect the children to return to Iraq, for the reasons we set out above.

132. In the circumstances, despite the persuasive submissions of Mr Khan, we are unable to agree with him.

133. The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

Notice of Decision

There was a material error of law in the decision of the First-tier Tribunal
The Upper Tribunal has remade the decision.
The appeal is dismissed on asylum grounds.
The appeal is dismissed on humanitarian protection grounds.
The appeal is dismissed on Article 3 and Article 8 ECHR grounds.

An anonymity order is made.

Abid Mahmood
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 December 2023