



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003926
First-tier Tribunal Nos: PA/55651/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of September 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

SN (IRAQ)
(ANONYMITY ORDER CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Brookes, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Miss E Blackburn, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is further 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

Background

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 on 8 November 2021.
2. The Appellant first claimed asylum in April 2016, which claim was refused and dismissed on appeal by the First-tier Tribunal in the decision of Judge Clarke dated 6 February 2017 ("the First Decision").
3. The Appellant made a fresh claim on 16 March 2021 on the basis of his imputed political opinion. He says he fears returning to Iraq due to his father's previous employment in the military and consequent involvement with the Ba'ath party, against the background of the Appellant being a Sunni Muslim and a member of a minority within Iraqi society. He fears that on return, the people and authorities of Kurdistan, who have suffered at the hands of the Ba'ath party, will take revenge on him due to his father's involvement. As those he fears include state actors, he cannot gain protection nor can he relocate within Iraq/the IKR to escape the risk.
4. The Respondent refused the Appellant's claim in a letter dated 8 November 2021 (the "Refusal Letter"). The Respondent relied on the First Decision in saying the Appellant's account of events in Iraq had previously been rejected as not credible. Having considered the evidence adduced since then, the Respondent accepted that the Appellant's father was in the army in Iraq but said the documents provided did not prove the Appellant's account beyond this. It was therefore not accepted that the Appellant would be at risk on return; he had access to the necessary identification documentation and could be returned to Kirkuk or the IKR.
5. The Appellant appealed the refusal decision.
6. The Respondent undertook a review of the matter on 18 March 2022 and maintained the refusal position. The Appellant provided a response to the review, seeking to address the points raised therein.
7. The Appellant's appeal was heard by First-tier Tribunal Judge Blackwell in Birmingham on 8 July 2022, who later dismissed the appeal in its entirety in his decision promulgated on 15 July 2022.
8. The Appellant applied for permission to appeal to this Tribunal, which permission was granted by First-tier Tribunal Judge Grimes on 31 August 2022.
9. Following a hearing on 16 April 2024, Upper Tribunal Judge Pickup allowed the Appellant's appeal and set aside Judge Blackwell's decision. This decision should therefore be read alongside the 'error of law' decision of Upper Tribunal Judge Pickup issued on 30 April 2024. Judge Pickup did not preserve any findings and retained the matter in this Tribunal for remaking on all issues.
10. The Appellant has since added a further element to his claim; that he has undertaken sur place political activity within the UK against the Iraqi and Kurdish authorities which would result in a further/alternative risk. It was agreed by all that this additional claim based on the Appellant's sur place activity constitutes a 'new matter' to which, having taken instructions, Miss Blackburn consented on behalf of the Respondent to the Tribunal considering in this appeal.

The Hearing

11. The papers before the Tribunal comprise of a composite bundle (created by the Upper Tribunal) of 662 pages and an Appellant's supplementary bundle of 46 pages. The parties did not have the composite bundle but it was agreed by all that this bundle contained the correct evidence previously relied upon by the Appellant and the Respondent before the FtT.
12. As to the Appellant's supplementary bundle, prior to the hearing, the Appellant filed a notice under rule 15(2A) of the Upper Tribunal procedure rules requesting permission to adduce this, containing evidence of his sur place political activity in the UK. Miss Blackburn did not object to the Appellant relying upon the evidence set out in that bundle.
13. The issues in the appeal are agreed to be as follows:
 - (a) Whether or not the Appellant's account is credible concerning his father's role in the army and whether perceptions by the Kurdish people and authorities about this (combined with the Appellant's ethnicity) would put the Appellant at risk.
 - (b) Whether the Appellant's sur place activities in the UK have/would come to the adverse attention of the Iraqi authorities (and would the Appellant continue with them on return).
 - (c) Whether the Appellant's credibility is affected by section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("2004 Act") due to his not having claimed asylum in safe countries on route to the UK.
 - (d) Whether there would be effective state protection available on return and/or could the Appellant relocate within Iraq to escape the risk.
 - (e) Whether the Appellant would face very significant obstacles on return as per paragraph 276ADE of the immigration rules (as was).
 - (f) Whether maintaining the refusal would result in a disproportionate breach of article 8 ECHR.
14. As far as the issues in paragraph [13] (e) and (f) are concerned, Mr Brooks concedes that the questions as to whether there are very significant obstacles on return and whether the refusal of the claim on Article 8 grounds is disproportionate are linked to the findings and conclusions we reach upon the international protection claim. In answer to questions from us requesting clarification:
 - (a) Miss Blackburn confirmed that the Respondent accepts that the Appellant's father worked in the army, but nothing more i.e. not for any particular length of time or achieving any particular rank. The alleged connection to the Ba'ath party was also not accepted; specifically, being in the army was not considered sufficient for this perception to arise. She did accept that the Appellant would be at risk if he could show his father was a supporter of the Ba'ath party.
 - (b) Mr Brookes said the Appellant's case concerning his father was 'layered' in that his father was in the army which meant he would be perceived as a

Ba'ath supporter; he was also an officer who worked at the airport which led to the perception that he was a pilot directly involved in harming Kurdish people. He confirmed that, as per the country expert report, the father merely being in army and remaining in the area that he did would mean he supported the Ba'ath party and featured in their records.

- (c) Mr Brookes confirmed that the Appellant has provided a copy of his own CSID which has been confirmed as genuine by the country expert, so there is no question about the Appellant needing to be re-documented in order to return.
- (d) Miss Blackburn considered the Appellant could return to Erbil or Sulaymaniyah in the IKR given the most recent country evidence showed he could not return to Kirkuk. Both representatives agreed that, as the Appellant has his CSID, the point of return is somewhat irrelevant as he could travel on from there.
- (e) There was no objection to us looking at the most up to date Country Policy and Information Notes concerning Iraq.

Oral evidence

- 15. The Appellant gave oral evidence and was cross-examined in Kurdish Sorani via the interpreter, Mrs Maruf, whom it was confirmed he understood. The main points arising from the oral evidence were as follows:
- 16. In cross-examination, he confirmed he had made two witness statements which had been read back to him in a language he understood, had been signed by him, were true and could be relied upon as his evidence.
- 17. He said he maintained that he told the truth in 2017 before Judge Clark; his father was a mechanic/driver in the army between 1980 and 1991; the documents he had provided do not confirm his father had any other role because the army is one thing and being an informer with the Ba'ath party is another (secret) thing; he was promoted because he was involved with the Ba'ath party; he was perceived as a pilot because he was working in a military airport and people could see he had power.
- 18. As to why, if the Ba'ath Party kept meticulous records on all members and all citizens (as per the expert report), the Appellant had not been able to provide any documents showing the father was an informant, the Appellant said he could not bring documents with him and some of them went missing; he knew the Kurdish authorities wanted his father to give himself up because there was an arrest warrant issued for him; he could not provide copies of any warrants because it was a long time ago.
- 19. He said mainly male family members would be targeted due to his father's activities; he did not know if his father was arrested or where he is now; he would not be around his father if he went back but he would need to make himself known wherever he went and then they would know about the association with his father; his father and brother are missing but his sisters are in Iraq, and as females they will not be targeted.
- 20. He confirmed that the documents provided since the last hearing were obtained from his maternal uncle; these were not provided previously as he did not have a

solicitor and had no knowledge of the law to know what should be evidenced or not.

21. He said after his father finished in the army, his father set up as a mechanic in Kirkuk but his involvement with the Ba'ath party continued; between 1991 and 2003 the area they lived in was under Ba'ath control and the village was one where the whole family and tribe supported his father; the people surrounding the family were involved with the Kurdish party PUK/KDP and so were able to protect them; when ISIS came, they destroyed the village, the people have dispersed so he cannot seek such protection again.
22. He confirmed that he travelled through several countries on route to the UK, including Greece (where he was fingerprinted), France and Austria, but the agent did not allow him to claim asylum in any of them; his maternal uncle spoke to the agent, telling him to bring the Appellant to the UK.
23. He said he was previously in contact with his mother but she passed away around 8 months ago; he is still in contact with his maternal uncle sometimes; this uncle has a business in Kirkuk and could provide financial support but could not help with protection; the Appellant worked in Iraq previously but would now be recognised.
24. As regards when he commenced his Facebook activity, he said it took a long time for his fear to subside and see himself as having freedom in order to be able to express himself; he did not become interested because he thought it would help his claim but because he found himself being the victim of disgusting politics back home; he makes his own posts and also reposts other people's content; he has not provided his download history as he didn't know how to do this or that he had to do this; he attended one demonstration in August 2022 in London, with no role beyond attending; he found out about it through a Kurdish friend from Iraq; he has been interacting with a lot of other Kurdish people from Iraq but does not know anyone with influence in order to try and recreate the protection his father had previously.
25. He confirmed he considered that, due to his father's involvement with the Ba'ath party, people would see him as anti-Kurd;
26. In re-examination the Appellant confirmed he was born in 1987 and was aged 4 when his father finished his army service; his father was an army officer (which he was told about when he was older) but he did not know his father's rank in the Ba'ath party; he knows people thought his father was a pilot because people were accusing him and there was an arrest warrant issued for him.
27. In answer to our questions seeking clarification, the Appellant said his father worked with the Ba'ath party until 2003, when he ceased being an informant; the Appellant left Iraq in 2015 because of the effects of ISIS arriving in 2014; between these periods, his father was protected by family and relatives; the Appellant was living with his parents and younger brother when he left in February 2015; he could not relocate to Kirkuk at the time because he would not have had the protection of tribe and family there; he did not flee with his father because leaving as a family altogether would not be easy and so his parents decided for him to go; his maternal uncle took his mother, and he does not know where his father and brother went; this all happened after he left; he has not had any contact with his father since he left Iraq; his maternal uncle was able to

provide the father's documents because the uncle took his mother and some documents in 2015 before the village was destroyed.

28. As to whether he had anything to say in answers to the criticism in the First Decision that he had not provided any evidence from family members, the Appellant said he did not have any more evidence than he had provided and he did not know how to bring someone to support what he said.
29. The representatives then made their respective submissions.

Submissions

30. Miss Blackburn said she relied on the Refusal Letter and the review, save that it was accepted that the Appellant's father was in the army. Otherwise, the credibility points still stand and as per Devaseelan, the starting point is the First Decision. There is no further witness evidence despite the First Decision criticising him for this. Even taking the Appellant's case at its highest, nothing has ever happened to him or his family. It is unclear what rank the father had at any time or how his career progressed; the only documentation shows he was a driver /mechanic and nothing more; the Appellant's account that his father was promoted relies heavily on what the Appellant was told by others long after the event given his age at the time. It does not make sense that people would assume the father was a pilot simply because he worked at an airport. Paragraph 12 of OH (risk Ba'athist father) 2004 UKIAT 00254, albeit now quite dated, discusses the difference between those joining the army to get a job and those who actually committed abuses; the Appellant explicitly says his father did not harm anyone. Paragraph 18 of this case says no reprisals would be carried out against Ba'ath party members. The Appellant says his father's whereabouts are unknown so he would not be around his father if returned, which would reduce the risk of reprisals. The Appellant's account was that nothing happened between 2003 until 2014/15 when ISIS came and he even said that people with connections to the Kurdish government were willing to protect his father, which is at odds with the Appellant saying he would now be at risk from them.
31. Miss Blackburn submitted the Country policy and information note: security situation, Iraq, November 2022 ("Security CPIN") confirms that in general it is safe to return and the threat from ISIS has subsided. The Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns ("Returns CPIN") at 1.15 confirms it is generally safe to return to contested areas. She asked us to prefer this evidence and the caselaw to the expert opinion and find that the Appellant is not at risk notwithstanding his father's employment with the army. Those points raised in the Refusal Letter as regards the expert reports are maintained; the expert has been criticised in SM, AH, SI (Kurds, Protection, Relocation) [2005] UKIAT 00111 (paras 121-166 and 252-253) for not remaining impartial when preparing reports in similar cases. The expert report confirms that the Ba'ath party kept meticulous records and that the Appellant's father's role will be known, but no evidence of this has been provided. S.8 of the 2004 Act applies to damage the Appellant's credibility because he did not claim asylum in safe countries when he had the opportunity. Internal relocation and protection are covered in the Respondent's review; the Appellant has his CSID and can relocate. The Appellant will not be at risk on return and he cannot establish that there are very significant obstacles to his integration in Iraq. He has confirmed he still has family in Iraq, his uncle has a business and could support him financially. The Appellant himself worked there previously. As regards the sur place claim, the Appellant expressed no interest in any political activity until

August 2022, despite being in the UK since 2016 which indicates opportunism; he has only attended one demonstration after apparent encouragement from a friend, with no role at the demonstration. BA (Demonstrators in Britain - risk on return) [2011] UKUT 36 and XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023 is relied upon. The Appellant has not provided a full download history but merely screenshots of his account on which very limited weight should be placed. The Respondent's view is that this is a disingenuous and half-hearted attempt to strengthen the Appellant's asylum claim; he is not of interest to anyone and if anything, his pro-Kurdish rights activity serves to undermine his allegation that he would be perceived as anti-Kurd.

32. In answer to a question of clarification from us, Miss Blackburn confirmed she had no specific points of challenge against the expert reports beyond what she had said.
33. Mr Brooks submitted that it has been accepted the Appellant's father was in the army on the basis of the documents provided; the Appellant has explained how he got those documents and why there are not more; what they show is a matter for the expert. The question is whether the evidence that has been provided is sufficient, applying the lower standard, to prove the Appellant's account rather than why no further evidence has been provided. Mr Brooks submitted the Appellant has explained why people considered his father worked as a pilot and people can come to the wrong conclusions. The contents of the expert reports are not challenged and much has changed since the time that the caselaw cited came about; the expert reports are far more up-to-date and the expert addresses recent country guidance in the SMO cases. As per HK v SSHD [2006] EWCA Civ 1037, the Tribunal should be wary of 'inherent probability' and seeing things through 'western eyes'; the Appellant explained that his father did not face risk after his army career because he lived in a village with close family and tribal members who protected him; he has explained why this protection is no longer available. It is also overly simplistic to say his sur place activity will be sufficient to show him as pro-kurd against his father's background; in the UK he is mixing with the Kurdish diaspora from several countries, which is very different to being returned to a country where Shiite militias are in *de facto* control and the Appellant can be identified as the son of a Baathist; the expert report explains why the Appellant would be perceived as anti-Kurd, namely because his father did not flee this area and would have had to show loyalty to the Ba'ath party, and he wears the uniform of the Ba'ath party in the photographs; the records kept would confirm the father's position and these are in the control of the authorities such that the Appellant would not have access to them.
34. We asked Mr Brookes to point to the sources for the expert's opinions as none appear to be cited save for one undated link to an article; he could not assist us in this respect. We asked whether any further objective country evidence was being relied outside the expert reports; he said no, but the CPINs confirm what the expert says about actors of protection being predominantly Shia and not Kurdish; otherwise the CPINs only go to current risk not the risk applicable at the time of the relevant events. We noted that at points, the expert appears to undertake a line by line analysis of the First Decision, which is not their remit. Discussion followed as to there being some inaccuracies in the expert's discussion of the evidence (which we will address in our findings below).
35. Mr Brookes continued his submissions by saying that the expert report and CPINs deal with state protection and internal relocation; as the Appellant fears

the state, he cannot take advantage of either; if we find the Appellant's father was a Ba'athist then the Appellant is at risk due to the records that will have been kept.

36. As regards the sur place activity, Mr Brooks accepted that the Appellant did not have a profile from the activities alone, but this has to be seen against his profile overall such that if the authorities would be looking for him anyway, this would only increase the risk; the Appellant says he would continue his activity on return. He submitted that the Appellant's evidence is consistent with the expert and other objective country evidence and that if his account is found credible, his appeal should be allowed.
37. At the end of the hearing, we reserved our decision.

Legal framework

38. The Appellant appeals on the grounds set out in section 84 of the 2002 Act. Namely that removal from the UK would breach the UK's obligations under the Refugee Convention or in relation to persons entitled to a grant of humanitarian protection and would be unlawful under section 6 of the Human Rights Act 1998.
39. We have considered any matters relevant to the substance of the decision, including matters arising after the date of the decision in accordance with section 85(4) of the 2002 Act.
40. It is for the Appellant to show that there are substantial grounds for believing that he qualifies as a refugee within the meaning of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or that if returned to his own country he would face a real risk of suffering serious harm as defined in the Immigration Rules.
41. So far as the Human Rights Convention is concerned it is for the Appellant to show that there are substantial grounds for believing the evidence. The standard of proof applicable may also be described as a "reasonable likelihood" or a "serious possibility."
42. As regards the immigration rules, the standard of proof is the balance of probabilities.

Discussion and findings

Events in Iraq

43. The guidelines set out in Devaseelan v SSHD [2003] Imm AR 1 are plainly relevant. The decision of Judge Clarke stood as an authoritative assessment of the claim that the Appellant was making at the time (January 2017). The First Decision is our starting point. Since the First Decision the Appellant has provided some documentation and photographs concerning his father's employment in the military, and concerning his own identification. He has also provided three reports from country expert Sheri Laizer; two dating from 3 March 2021 and an addendum report dated 14 February 2022. As a result of these documents, the Respondent accepted in the Refusal Letter that the Appellant's father was in the army in Iraq.

44. It remains the case that the Appellant's father left the army and was able to set up business in Kirkuk without any hindrance; and there have been no attacks on the Appellant, his father or brother, despite living in the same area and visiting Kirkuk. The Appellant now explains that the reason there were no problems was because the family enjoyed the protection of close relatives and tribal members. We do not accept the Appellant's claim to be a credible one. To be successful, the father's business (a car repair garage) would have required customers, and those customers are likely to have included Kurdish people given the business' location. Such people refraining from attacking the family due to tribal/family protection is one thing, but willingly providing custom to someone perceived as a Ba'ath party member is another. We do not consider that the Appellant has properly addressed the First Decision's criticism in this respect.
45. The timing of the Appellant's family disappearing is vague. When asked about it at the hearing, the Appellant said his maternal uncle took his mother to live with him in Kirkuk, whereas his father and brother left separately. He says this happened after he left and so we assume (but do not know) he found out about it from his maternal uncle - if this is the case, the criticism remains that there is nothing to say the uncle has returned to the village to make enquiries. There is no evidence from the uncle.
46. Despite the express criticism made in the First Decision that there is no evidence from the Appellant's uncle, the Appellant has still not provided any such evidence. He is still in contact with his uncle and this uncle has provided the military and other documents to the Appellant, but provides no evidence in a statement.
47. The same applies as regards the Appellant's cousin; if this cousin lives in Glasgow and accompanied the Appellant in leaving Iraq, the cousin could speak to the situation in Iraq and the reasons for leaving, as well as the reasons for not claiming asylum in other countries. The Appellant's explanation at the hearing for not providing such evidence was that he did not previously have legal advice, did not know what evidence could be provided/was needed and he did not know how to gain witness evidence. We reject this explanation. He has had the benefit of legal advice from at least March 2020 when his further submissions were drafted by his current representatives, Duncan Lewis solicitors. Those submissions mention the First Decision and so it appears the solicitors were aware of its contents. We do not know the reasons why further witness evidence has not been provided but we do not accept the Appellant was unaware of the need to provide evidence to support his claim.
48. We also consider the Appellant's credibility is undermined pursuant to section 8 of the 2004 Act because he travelled through at least three countries considered to be safe (Greece, France and Austria) and did not claim asylum despite having the opportunity to do so, particularly in Greece where his witness statement says he stayed for 2-3 months. His explanation was that the agent would not allow him to claim asylum earlier, having been instructed by the uncle to bring him to the UK. We reject this explanation. The screening interview record confirms the Appellant was fingerprinted in Greece. We do not know why the uncle instructed the agent to bring the Appellant to the UK as opposed to the first safe country when he has no family here. Even if the agent was paid by the uncle to bring the Appellant to the UK, this is not to say the agent would have followed these instructions. As above, the Appellant has not provided witness evidence from either the uncle or his cousin to support his explanation. We find the Appellant's

actions in not having claimed asylum earlier in a safe country undermine the credibility of his account.

49. Although it is now accepted the Appellant's father was in the army, the Appellant does not make clear how he came to learn about his father's roles in the army and Ba'ath party and he admits he does not know his father's rank in the latter. It is unclear why he would have been told of his father's role as an informant if this took place before the Appellant was born and it could have put the Appellant at risk. No dates or details have been provided about his father's career progression within the army.
50. The Appellant does not discuss his experience of how the alleged system of tribal/family protection worked. For example, we do not know where the Appellant worked and how such protection would have covered him if he travelled outside his village. At the hearing he said that pro-Kurdish political parties were linked to those providing protection. His witness statement says that the Kurdish government wanted to be seen as fair and he thinks this is why he was not attacked after 2003 when the Kurdish government entered Kirkuk. It is unclear why he would have needed tribal/family protection if the Kurdish government's arrival meant there was no threat. Either way, the father was able to work in Kirkuk between 2003 and the arrival of ISIS in 2014, on the Appellant's account, without issue.
51. The Appellant says he would not be able to return and gain employment now as he would be recognized. We do not understand how he was able to work previously if this is the case.
52. We have considered the documents and we do not accept they establish that the Appellant's father was anything other than a wheelman/driver in the army.
53. We accept the Appellant would not be able to obtain Ba'ath party records regarding his father's employment or activities if they are now in the hands of the authorities and he does not know anyone with influence who could get them. There is however no satisfactory evidence before us regarding the lack of an arrest warrant. The Appellant simply said that he could not provide any warrants as it was a long time ago. We do not understand how the passage of time could affect the availability of the warrant. There is no evidence of the Appellant requesting any assistance to find any documents beyond those he has provided, despite remaining in contact with family members.
54. The Appellant has provided documents that comprise of original and translated papers concerning the employment of the Appellant's father in the army ("the logbook"); original and translated CSID for the Appellant and five photographs purporting to show the Appellant's father during his time with the army. We assess these documents in line with the guidance given in Ahmed (Tanveer) (Documents Unreliable and forged) [2002] UKIAT 439.
55. No issue is taken by the Respondent with the translation of the documents or their authenticity (although the Refusal Letter notes that the expert finds multiple errors in the translation). As above, it is due to these documents that the Respondent accepts the Appellant's father was employed in the Iraqi army.
56. However, the Respondent says that these documents do not prove anything more than the father being a mechanic/driver in the army. We agree.

57. If the translations are accurate, the logbook says it was issued on 31.12.81 to the Appellant's father who held the position 'G.M.' (which the expert says stands for general military); the occupation is stated as "(Wheelman) Driver", and that the father was educated to primary level. They appear to show a medical examination was carried out in April 1980, with no further medical examinations recorded. The logbook confirms that the duration of service was 36 months.
58. The Appellant relied on black-and-white photographs with no dates and nothing to show locations or who is in them, beyond the typed text that has been added to identify the Appellant's father. He and the other people depicted are wearing military style clothing. In two photographs he is leaning on vehicles, one of which appears to be a military truck. In the absence of criticism from the Respondent, we have no reason to doubt the authenticity of these photographs and find that they support the Appellant's account of his father being a driver and/or mechanic in the army. We cannot see any stars or other markings on the uniform but note there is some kind of symbol/badge on the father's beret.
59. Whilst we have no reason to doubt the authenticity of the logbook and photographs and therefore attach weight to them, the documents simply establish the Appellant's father:
- (a) served in the Army between 1980/1981 and 1983/1984; and
 - (b) was a wheelman/driver or mechanic
60. The logbook does not show that the father was promoted to become an officer, someone with two stars, or other rank of high standing.
61. We have considered whether the Appellant's claims are supported by the expert evidence before us. The Refusal Letter states that (our emphasis in bold):
- "While it is not disputed the information that Sheri J. Lazier has provided, you have provided no evidence of previous persecution against yourself or any evidence that would show that you would be subjected to discrimination or risk of persecution because of your father being in the army in Iraq during the Ba'ath Party".**
62. Miss Blackburn confirmed she would not go behind this position but instead referred to criticisms of the expert contained in the case of SM & other kurds protection and relocation 2005 UKIAT 00111 para 121-166 and 252-253. At paragraphs 152-153 the Tribunal said: (our emphasis in bold):

[252] "We turn to the evidence of Ms Laizer. Mr Kovats made a number of points as a consequence of which he invited us in effect to ignore her evidence. We consider that a number of the points he made are well taken. We do have a concern at her reference to the government in the European human rights cases in relation to which she has advised as being 'the aggressor' as indicative of a partisan attitude. **The criticism of the UK/Danish and Dutch Reports on the basis that they had not been to Iraq is not made out. That again is at best careless and at worst indicative of partisanship, or at least an element of unwarranted contempt for the processes by which the reports were written. We were also concerned by the fact that she criticised the independent observers referred to in the 2003 State Department Report and yet she did not know who they were.** We also would have expected her to have some idea of the number of Kurds outside Kurdistan. **The criticism of the April 2000 Dutch report for failing to contain comment on matters that had occurred after that report was written was again a matter that flawed her evidence.**

There is, we agree, an element of inconsistency in criticising the 2000 Dutch report for lacking weight and being based on out of date information when it was the case that the same was true of a number of elements of her evidence. We did not find persuasive her explanation that she deals with the roots of the social and political structures and has known these people for years. **She appeared to be drawing an unwarranted distinction between her techniques and those employed by the writers of the reports.** We agree also with the point made by Mr Kovats that she demonstrated a degree of a lack of objectivity in her response to the questions about political influence on the judiciary using the example of assassination of a judge in this regard and did not find her response when it was put to her in cross examination to be satisfactory.

[253]. We bear in mind of course the points made by Ms Braganza concerning Ms Laizer's experience and the degree of first hand information and the nature of the sources which she uses to inform her evidence. It is of course the case that a good deal of what she says is uncontentious. We do not consider it appropriate to go as far as Mr Kovats invited us to do in disregarding her evidence in its entirety, but **we consider that it must properly be regarded with a significant degree of caution given the specific flaws in her evidence which we have identified above**".

63. As per MS (Zimbabwe) v Secretary of State for the Home Department [2021] EWCA Civ 941, we are required to reach our own conclusions and in doing so, may we have considered the expert's opinions but we are not obliged to accept her conclusions just because they are the conclusions of an experienced expert. Instead, we need to ask ourselves whether those conclusions are rational conclusions, and whether, and if so, to what extent, they are supported by the material cited in her reports. The more inscrutable her conclusion is, the less likely it is that we are obliged to accept it.
64. Ms Lazier has provided three reports:
 - (a) an authentication report dated 3 March 2021 (the "authentication report")
 - (b) a country expert report dated 3 March 2021 (the "country report")
 - (c) an update to the country expert dated 4 February 2022 ("the addendum report") .
65. The authentication report gives opinion as to the military documents, considering them to be genuine. It is, we accept, uncontroversial that the Appellant's father was in the army. Ms Laizer states that, as regards the two small military photos (which we have considered as part of the logbook):

"you cannot see which UNITS OF WHAT they relate to and a very general view of the uniform, which looks like that of an ordinary soldier at the time as you cannot see any officer rank on the epaulettes nor is there a beret etc. They give only basic information as to military service".
66. The remainder of her descriptions of the logbook and small photos accord with what we have stated above in terms of what they reveal about the Appellant's father's time in the army.
67. The parties accept the CSID card that is relied upon by the Appellant is genuine.

68. The country expert report is far more substantive. In section 3, Ms Laizer lists the documents she reviewed in writing the report, which include the 2016 Refusal Letter and First Decision such that she was ostensibly aware of the criticisms previously made against the Appellant's account. From section 4 onwards, Ms Laizer gives her opinion in relation to several questions posed to her by the Appellant's solicitors. She reaches the following main conclusions:

"As shown on the documents, his father performed military service and plausibly served the Ba'ath Party (4i)

[The Appellant's] father did not flee and did not ever relocate there *[the KRI]* voluntarily with his family. There has to be a good reason for this decision and that can only be that he was secure under the Ba'ath regime. Security meant taking Ba'ath Party membership, whether in order simply to survive, or indeed, to further prosper (4ii)

Kurds that remained living in mixed ethnic areas like Kirkuk, Daquq and Tuz Khormatu were obliged to show loyalty to the Ba'ath government or risk their lives (4iii)

In terms of the timeline and locations therefore, [the Appellant's] father would have had to serve the Ba'ath regime and can have been a jash. That in itself renders the account plausible (4iv)

The black and white photographs taken of [the Appellant's] father show him clearly in the uniform of the Ba'ath Party with the beret with its insignia and military style shirt with epaulette (4ix)

[The Appellant's] father will be known and documented to have been a Ba'ath Party member as can be shown from the Ba'ath records...From these records and local records from Kirkuk or Daquq, his father's precise role is certain to be known and documented as the Ba'ath Party kept meticulous records on all members and all citizens(4x-xi)

"If [the Appellant's] father was even accused of having been deployed in the Iraqi army's strikes against Kurdish villages, he can be accused of having taken part in the Anfal campaign. He himself will be reviled in Kurdistan as a traitor and viewed as the son of a traitor. [The Appellant] is liable to be targeted in the settlement of scores by individuals and by their tribes. This would be in the pursuit of blood feuds and targeted acts of revenge, as he believes". (4xii)

"Blood feuds are not time-limited but remain active and perpetual until resolution is attained in the eye for an eye principle at their foundation. [The Appellant's] identity will automatically be determined by the profile and identity of his father. He will be labelled the son of a Ba'athist traitor to the Kurdish movement. The risks to his life as such will not diminish with time". (4xiii)

Ba'ath Party records have been digitized and copied into the post Ba'ath Shi'a dominated state database. When a citizen returns anything that is known about him or his family will surface from the database (5i)

Family members of former Ba'athists remain under suspicion and at risk, particularly at airports, land borders and checkpoints controlled by the Shi'a forces that also dominate the government. The Appellant's father is clearly recognizable from his ID cards as being dressed in Ba'ath Party uniform of officer rank as in the second photograph ... (5iv)

The risks to his son very likely include disappearance, torture during interrogation, kidnapping for ransom - if any surviving family members were believed to have the means to pay for the hostage's release - and revenge execution (5v)

No state protection exists for former Ba'athists and their families. (6i)

The Appellant will be subject to scrutiny on return to Iraq. Depending on the precise details contained about his father's Ba'ath Party service, he can expect to be subjected to ill treatment including torture on return to Iraq via Baghdad(6iii)

The Appellant will not be able to avail himself of protection in coming from a Ba'ath family background in Daquq. He could not safely have fled to Kirkuk at any time when it was under Kurdish control after being taken from the Baghdad government in March 2003 (6vii)

Kirkuk remains disputed and is under the control of the government of Iraq backed by the Shi'a militia (7vi)

Baghdad is effectively under the control of the Shi'a dominated administration and Shi'a militia forces, as I have experienced on each trip back there. It is also extremely expensive. Mr Nabee would be alone and unprotected there. He could face a risk of kidnapping from checkpoints as Kurd returning from the West.(7xii)

Accordingly, the Appellant could not safely cross into the KRG for a variety of reasons, not least of which is the family's Ba'ath Party support. He could not support himself in the KRG without a sponsor or political/family connections there. It is highly unlikely in my experience that he could find work sufficient to pay for food and accommodation in his circumstances. (7xvi)

Based on the documents provided and on the Appellant's account I consider he comes from s Ba'athist family south of Kirkuk city. His father did not leave this area to live under the Kurdish Autonomous Area after the 1991 uprising when pro-Kurds did so. He comes from the Shwani tribe. (Conclusions) "

69. In the addendum report, Ms Lazier confirms she has now read the Refusal Letter in addition to the previous documents and says she has specifically been asked to comment on the refusal decision. She states that (our emphasis in bold):

"I note that the Home Office has not made the correct distinction between civil functionaries of the Ba'ath Party and career soldiers in the Iraqi Army serving the Ba'ath government. Incorrect tests have therefore been applied in this case. The Home Office comment is erroneous concerning the status of [the Appellant's] father's ID and military book documents. Taken alone, they do not of course reference risk as they must be considered in their due temporal and political context, which then makes the assessment of risks clear. **That risk is primarily that of an ethnic Kurd serving the Iraqi military in a long running career.** It automatically raises the question for the post-Ba'ath regime, what was he doing and what would he have been required to do as a Kurd serving the former regime during this period. That is why I referenced my paper, The Mustashar and the Jash - A View from the Position of 'Iraqi National Unity' on the 'Descendants of Treason' setting forth evidence of what that role consisted of. I did this so as not to put the bulk of that information into the report itself. I could have done so". (3i)

Maternal uncles are not the target of revenge. Revenge is perpetuated through the eldest son according to tribal patrilineal traditions. (3iii)

With regard to imputed opinion concerning former Ba'athist families in all areas of employment I wish to note the following important paper [*no paper is actually referenced*] that provides greater insight and detail into the repercussions than the

Home Office's limited guidance on Ba'athists, which is fragmentary and somewhat dated. It does not address risks to the former military and their families. It is not a question of the rank of members of the Iraqi military as with civil ranks in the party. It was not a matter of military service but of a military career and risks arise to family members on that basis.(3v)

The pro-Iran Shi'a militia groups actively been pursuing revenge ever since being handed power. They have taken over all the former Ba'ath records and facilities (3vi)

Conditions in Kirkuk have further deteriorated since my last report as I will detail in the next section. The risks of persecution to family members of Ba'athist military members, males in particular, have increased since my report. The Home Office has failed to acknowledge the fact that [the Appellant] fears persecution on this basis and not as a family member of a civil servant in the Ba'ath administration. I believe I made this distinction clear in my reports and that the contents have not been adequately considered. Party membership must not be confused with a military career. Given [the Appellant]'s father's Kurdish ethnicity the risks are further compounded. [The Appellant] believes that owing to his ethnicity his father was also obliged to act as an informant (against the Kurdish rebels), which was endemic (WS. Paras 15-16). See my paper, the Mustashar and the Jash. (3vii)

[The Appellant]'s father having been based in Baghdad airport will have heightened his profile as a loyal serving officer in the Ba'ath military. (WS paras. 18-20). **He also served for a long period.** [The Appellant] still does not know what has happened to his father. Hundreds, if not thousands of men and boys have disappeared at the hands of the Shi'a and Kurdish administrations that gained power after the US-led invasion toppled the Ba'ath (3viii)

The Home Office claims in relation to my report that the former judge found that "nothing has ever happened to you or your family in relation to your father being in the army". **The family had moved after the Kurds came to take control of Kirkuk to prevent risks; his father disappeared; ISIS suddenly materialised and the family fled again;** [the Appellant] fled **entirely. These precautions are the reason why nothing happened at each juncture when risks increased.** It does not lessen the fact that there were high risks at each time, but that [the Appellant] was lucky and escaped with his life. The Home Office returns to the wording of the IJ who did not have the evidence of of [the Appellant] father's documents before him in making the assertions cited there. No details of my report are referenced. Instead the refusal decision proceeds straight to the conclusions section of my report. The same circular argument as to past risks not having materialised is then reproduced ignoring the documents and context in which they arise that could have led to severe risks at any time. The Home Office then cites its own limited guidance from 2020, which I also updated and detailed in my report in sections 4-6 with evidence more recent than the Home Office country information. The same error is then reproduced there as to civil rank in the party (2.4.2) and the citations that follow. These all relate to civil party ranks, not the military and are not in point. Both Baghdad and the KRG authorities misuse the old Ba'ath Party records that include details of the Kurdish 'jash' collaborators and of the Shi'a Arabs that officially worked in the previous administration (3ix)

The conditions cited have entirely changed by region. SMO focused largely on risks from ISIS not the subsequent risks from the Shi'a militias. Reference to a small area around Baiji is out of date. I provided precise details of the more recent events in Kirkuk in my report that were ignored. Please also see the following external report in this regard concerning identification of former Ba'athists by the Shi'a administration and pro-Iran militias abusing their position: *[no paper is actually referenced]* (3xiii)

The findings that led to my previous conclusions remain unchanged (Conclusions)

70. We have several concerns about Ms Laizer's reports as follows.

- (a) There is a general lack of reference to any sources, save for to her own publications or repetitive reference to undated Internet links to documents which have not been provided, or to reports which are now several years old. It is therefore unclear what the large majority of her opinions are based on. An example is in the country expert report at 4i. she says "according to recent reports" but then sets out two paragraphs of italicised text from one report, the footnote for which is an Internet link with no date provided. Whilst a number of publications are listed in Annexes to the country expert report, without footnotes or citations within the body of the report, there is no way of knowing which of the sources provides the evidence for which of Ms Laizer's opinions. In terms of referring to her own publications (which she does more often than to external sources), she is supporting her own word by using her own word. Ms Laizer did not visit Iraq between 2006 and 2018 and so, without clear reference to the sources she relies upon for this period, we consider the reliability of her opinion covering this period is significantly diminished.
- (b) She appears to simply accept the Appellant's account of events without question, despite there being no supporting documentary evidence of several aspects of the case (such as working at the airport) and having had sight of the First Decision. For example in 4v of the country expert report she refers to the contents of the Appellant's witness statement without giving an opinion as to whether his account is in accordance with objective, independently sourced evidence. She also at least twice refers to the Appellant's father as having a long running career, which is not supported by any of the documents but can only come from an acceptance of the Appellant's account.
- (c) She refers to the Respondent relying on its own "limited guidance" without appreciating that such guidance, being contained in a CPIN, cites the external sources on which it relies. As above, she does not "provide evidence more recent than the Home Office country information" but relies on her own reports and undated, improperly referenced material.
- (d) She refers to the Home Office not having made the correct distinction between civil functionaries of the Ba'ath Party and career soldiers in the Iraqi Army serving the Ba'ath government, however we cannot see that she has made this clear either, or if she has, she has done so with reference largely to her own evidence.
- (e) She refers to the reason for the father did not flee "can only be that he was secure under the Ba'ath regime" but this is pure assumption as there is no evidence as to why the father remained.
- (f) She discusses the digitization of Ba'ath party records without giving any dates for when this process occurred and how this fits in with the timeline of the Appellant's account and the fact that his family has gone unharmed.

71. On the basis of these concerns, we consider that Miss Blackburn's reference to the criticisms made of Ms Laiser in SM & other Kurds is justified despite the lapse of time, as many of them still apply, particularly the lack of objectivity. This

undermines the weight that can be attached to her reports and we therefore find them of very limited assistance.

72. In terms of wider country evidence, the Refusal Letter refers to the CPIN Iraq: Baathists Version 2.0 January 2020, and relies on it in saying that in general, a person will not be at risk of serious harm or persecution by the state because of their previous involvement with the Baath Party, with factors to be considered including a person's former rank and/or position within the Baath Party; whether the person has been involved in any particular activities such as serving in the intelligence or police services, or if they are associated with the wider abuses of the Baathist regime; and how those activities or their profile have brought them to the adverse attention of those they fear.
73. There is a general dearth of information in current CPINs concerning the perception/treatment of former Ba'athist supporters/army employees and tribal protection in respect of them. There is some indirect support for the Appellant's account as follows:

- (a) CPIN Iraq Blood feuds, honour crimes and tribal violence, Iraq, July 2024

3.1.4 -3.1.6 Tribalism is a defining characteristic of Iraqi society with 75% of Iraqis either belong to, or have kinship with, a tribe. Blood feuds exist which usually involve members of one family or tribe threatening to kill, or take retaliatory acts of vengeance against another family or tribe in accordance with an ancient code of honour and behaviour. There is limited published information that looks specifically at the prevalence of blood feuds across Iraq. In general, the Iraqi government and the Kurdistan Regional Government are neither willing nor able to offer effective protection against such matters (4.1.1) with law enforcement also having been known to 'take sides' in line with their own tribal affiliations (4.1.2). However, tribes may be willing and able to offer effective protection. This will depend on factors such as the size and influence of the tribe (4.2.2). Tribes and tribalism are reported to be 'ubiquitous throughout Iraq', but prominent in Sunni areas including Kirkuk (5.1.4).

- (b) CPIN: opposition to the government in the Kurdistan Region of Iraq (KRI), Iraq, July 2023

10.2.1 Reference to the Kurds taking control of areas including Kirkuk after the fall of Saddam Hussein. 10.2.4 Reference to IS sweeping across northern and western Iraq in June 2014, with troops retaking the area in 2017.

Source cited in 9.2 as saying 'Nearly all Iraqi Kurds consider themselves Sunni Muslims. In our survey, 98% of Kurds in Iraq identified themselves as Sunnis and only 2% identified as Shias. 10.1.3: "Following the 1991 uprising of the Kurdish people against Saddam Hussein, many Kurds were forced to flee the country to become refugees in bordering regions of Iran and Turkey. A northern no-fly zone following the First Gulf War in 1991 to facilitate the return of Kurdish refugees was established. As Kurds continued to fight government troops, Iraqi forces finally left Kurdistan in October 1991 leaving the region to function de facto independently; however, neither of the two major Kurdish parties had at any time declared independence and Iraqi Kurdistan continues to view itself as an integral part of a united Iraq but one in which it administers its own affairs. The 2003 invasion of Iraq by joint coalition and Kurdish forces and the subsequent political changes in post-Saddam Iraq led to the ratification of the new Iraqi constitution in 2005."

Source in 13.1.2 cited as saying: The US-imposed no-fly zone in 1991 in northern Iraq both protected Iraqi Kurds from Saddam's forces and resulted in an equal power-sharing arrangement between the KDP and PUK after the 1992 election. The bloody infighting the two groups engaged in between 1994-8 derived from disputes over energy revenues and power sharing, leading to the KDP seeking support from the same Ba'athist forces who had previously used chemical weapons against the Kurds, and the PUK being supported by Iran, who had used the Kurds to provoke Saddam. The result was once again seriously damaging for the Iraqi Kurds, leaving them close to losing their de facto autonomy in northern Iraq. The US-brokered Washington Peace Agreement between the KDP and PUK in 1998 made the duopoly permanent, institutionalising the separate administrations in Erbil and Sulaimaniya.

(c) CPIN: perceived collaborators, Iraq, November 2021

The focus of this CPIN is those who have assisted 'western' powers but we note at 3.2.3 a Landinfo response from 2016 cited a source saying "Today however, the situation is different. The Shiite militias are now, in spite of internal feuds and power struggles, mainly focused on combating the threat from the Islamic State (IS)".

(d) CPIN Iraq: Sunni Arabs Version 3.0 January 2021

6.1.5 The USSD report on religious freedom in Iraq published in June 2020 stated: 'Some Sunni Muslims continued to speak about what they perceived as anti Sunni discrimination by Shia government officials in retribution for the Sunnis' favored status and abuses against Shia during the Saddam Hussein regime. Sunnis said they continued to face discrimination in public sector employment as a result of de-Baathification, a process originally intended to target loyalists of the former regime. Sunnis and local NGOs said the government continued the selective use of the de-Baathification provisions of the law to render many Sunnis ineligible for choice government positions, but it did not do so to render former Shia Baathists ineligible. Some Sunnis said they were often passed over for choice government jobs or lucrative contracts by the Shia-dominated government because the Sunnis were allegedly accused of being Baathists who sympathized with ISIS ideology.'

74. In terms of caselaw, Miss Blackburn referred to the case of OH (risk Ba'athist father) 2004 UKIAT 00254 in paragraphs 12 and 17. We note that this is not a country guidance case, and it dates from 2004, although it was decided by a panel of three Upper Tribunal judges including two vice presidents. Whilst its value in determining current country conditions is therefore limited, it dates from the time shortly after when the Appellant says his father ceased being an informant for the Ba'ath party and so provides useful discussion as to perceptions within Iraq at the time. The said paragraphs state as follows:

[12] "Paragraphs 6.115 to paragraph 6.125 of the April 2004 country report are concerned specifically with reprisals against Ba'ath party members. It seems from paragraph 6.115 that sources told the 2003 UK Danish fact finding mission that Iraqis differentiated between those who joined the Ba'ath party because it was necessary for them to do so in order to get jobs, whereas others such as members of the security services who committed crimes against them and any former Ba'athists who were known to have abused their position were being targeted by way of reprisals and these would be mainly former members of the intelligence service, the security service or the Fedayeen Saddam, but even in those categories one source said that many people known to have committed abuses would be targeted. That could mean that relatively low ranking Ba'ath party members could be at risk because they had operated at street level.

[17] Paragraphs 6.126 to Paragraph 6.127 of the April 2004 country report deal briefly with this issue. It is said that there is little evidence of widespread deliberate targeting of the families of Ba'ath party members in reprisal attacks, and a source informed the 2003 UK Danish fact finding mission that the families of Ba'ath party officials or people associated with the former regime would not be targeted in revenge for crimes committed during the Saddam regime, saying that Muslims do not attack family members, and such reprisals would not occur in Iraq. There was, however, some evidence of family members being caught up in reprisals on the Ba'ath party member themselves. Examples are given of families of Ba'athists being injured when attacks were carried out on the Ba'athists themselves. As Mr Deller reminded us, it is the case, however, that the appellant's father died in 1999 and he therefore does not face any risk of that account."

75. Our attention was not drawn to any other former country guidance cases.
76. In terms of extant country guidance cases, we note that AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) cites the decision of HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC) (upheld by the Court of Appeal in HF (Iraq) and others [2013] EWCA Civ 1276) as saying:
- "Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) for civilians who are Sunni or Shi'a or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to "enhanced risk categories" under Article 15(c)'s "sliding scale" (see [39] of Elgafaji)".
77. BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) does not discuss the question of those with perceived or actual Ba'ath connections but gives guidance of relevance to the Appellant:
- (v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.
- (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.
- (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection".
78. We cannot see anything of particular relevance to the Appellant's account (save as to the safety of return generally) in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC). The same applies to SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) and SMO and KSP (Civil status documentation, article 15) (CG) [2022] UKUT 00110.
79. Bringing everything together and considering all of the evidence in the round, with reference to our discussion above, we reach the following findings and conclusions:

- (a) The Appellant's credibility is undermined by his having failed to satisfactorily address the criticisms made of him in the First Decision, and pursuant to s.8 of the 2004 Act.
 - (b) The Respondent accepts the Appellant's father was in the Army. We find he was a 'wheelman/driver or mechanic and that he left the army and was able to set up business in Kirkuk without any hindrance; and there have been no attacks on the Appellant, his father or brother, despite living in the same area and visiting Kirkuk. Tribal connections/protection do not explain how the Appellant's father was able to successfully run his business in Kirkuk for so long.
 - (c) The timing of his family disappearing is vague. There is nothing to say the uncle has returned to the village to make enquiries.
 - (d) We reject the Appellant's explanation for his failure to provide evidence from his uncle or cousin, which could have been supportive of his account.
 - (e) The logbook and military photographs are accepted as genuine evidence of the Appellant's father's employment in the army as a 'wheelman'/driver between 1980-1 and 1983-4. There is no documentary evidence to show the Appellant's father worked for the military beyond 1983/4, or that he achieved any particular rank beyond 'general military', that he worked in an airport, or that he was in any other way linked to the Ba'ath party.
 - (f) There is no documentary evidence of an arrest warrant having been issued for his father (reference to which is vague in any event), nor to evidence any threats being made against him. We reject the Appellant's claims in this respect.
 - (g) The Appellant's CSID is accepted as genuine.
80. We attach only very limited weight to Ms Laizer's reports for the reasons we have discussed. Her opinions are based upon her having accepted the Appellant's account of events, much of which we reject. It is not clear what she would have made of the Appellant's situation had she not accepted the entirety of his account so readily. Besides these reports, there is a dearth of evidence to support the Appellant's account that: his father supported or worked for the Ba'ath party or was or would be perceived to have done so simply due to having worked in the army, or that his father required and received the protection of tribunal/family members. Even applying weight to Ms Laizer's reports, she refers to the distinction between civil functionaries of the Ba'ath Party and career soldiers in the Iraqi Army serving the Ba'ath government. There is however no evidence of the Appellant's father being a 'career soldier;'. We find the Appellant's family was able to live without harm for the whole of the Appellant's life in Iraq, and his father's business was able to prosper in Kirkuk such as to undermine the Appellant's claim.
81. If the Appellant's father was a civil functionary of the Ba'ath party, Ms Laizer appears to say, and the remaining external evidence and caselaw indicates, that he will not be targeted. There is no reliable evidence before us to support the claim of there being a comprehensive, digitised list of Ba'athist supporters which would identify the Appellant as related to his father on return, or if there is, when this was created and why it was not used to harm the Appellant's family prior to his leaving in 2015. In this respect, we consider it noteworthy that the father's

military papers show a last name [Y] which is not mentioned in the Appellant's CSID and so it is not even clear that a connection would be made between the two names even if the list exists. The Appellant has repeatedly said that the arrival of ISIS is the reason for his departure, rather than anything to do with his father. This is the sole reason he gave in his screening interview for claiming asylum in 2016 and in question 35 of his substantive interview.

82. Overall, we do not consider the Appellant has proved his account even to the lower standard and we reject the core of his account. We do not accept, even to the lower standard, that the Appellant fled Iraq or will be at risk upon return for the reasons he claims. We find the Appellant has fabricated his account of events in Iraq. Subject to his sur place activity, we consider the Appellant would be returning simply as a male, Sunni Muslim failed asylum seeker.
83. We therefore turn to his sur place activity.

Sur place political activity

84. Devaseelan says that facts personal to the appellant that were not brought to the attention of the first adjudicator, although they were relevant to the issues before him, should be treated by the second adjudicator with the greatest circumspection. As the Appellant did not mention any political activism/opinion before Judge Clark, we must therefore treat this with the greatest circumspection.
85. There is no evidence of any political activities in Iraq. Political activity was not part of the Appellant's claim when his appeal was decided by Judge Blackwell on 15 July 2022, nor when applying for permission to appeal against that decision, nor at any point prior to Judge Pickup's error of law decision of 30 April 2024.
86. The Appellant has only mentioned his political interest very recently indeed, in his witness statement dated 9 July 2024. We find this in itself calls the genuineness of his political beliefs into question. His witness statement says "On or around 22 August 2022, I started to use my Facebook account to express my political views in relation to the political situation predominately in Kurdistan but also in Iraq". He also says that "now that I am safely living in the UK, I should express my views and opinions". The Appellant has lived in the UK since 2016 and he claims that it took a long time for his fear to subside and to see himself as having freedom in order to be able to express himself. He claims he did not realise he could express his views on Facebook. We reject the Appellant's claim. Even if he did not realise he could express his views on social media, he was unable to explain why he has never made any mention of genuinely held political beliefs previously. Instead, the Appellant stated 'posting' on a Facebook account one month after Judge Blackwell's dismissal of his appeal against a refusal of his claim for international protection..
87. The Appellant does not explain why he considers himself to have been unfairly treated whilst in Iraq. He fled due to the arrival of ISIS and he does not appear to have been prevented from working as a ceramic worker/tiler (screening interview) due to any discrimination or unfair treatment.
88. He says he has attended one demonstration on 31 August 2022 outside the Iraqi Embassy in London, at which he held up posters and pictures in opposition to the Iraqi/Kurdish authorities, having learned of the demonstration through an unidentified Kurdish friend. He says he has not attended more for want of financial resources. As regards Facebook, he says he posts things himself as well

as reposting other's posts and his account is publicly accessible. He says he will continue to advocate on return but does not explain why, given the risk he would face, and the fact that he did not engage in any political activity in Iraq previously, or following his arrival in the UK.

89. The Appellant has provided several screenshots which appear to be from his mobile phone and do not state they are from Facebook, or show any web address. His surname is not shown. There is no photo in the small profile picture next to his name. There are photos of him standing as part of a crowd outside an unidentifiable building holding up signs and posters. There is nothing to mark him out from the crowd. He has not provided details of his account or a printout of his 'Download your information'. It cannot be ascertained when he set up his account, how many 'friends' he has, or what he has posted on what dates during the history of his account. The translated content of his posts is in opposition to the authorities in general terms. We cannot see that he has specifically highlighted the plight of people such as his father, which could perhaps be expected if this is the reason he considers he was treated unfairly in Iraq.
90. We appreciate the case of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) relates to Iran but its method for assessing the risk posed to demonstrators can be said to apply generally in situations of sur place activity. In essence, the higher the Appellant's profile, the more likely it is that he will have come to, or will come to, the adverse attention of the authorities on return.
91. The Respondent does not accept that the Appellant is genuine in his beliefs nor that he has, or would, come to adverse attention on return because of his activity. We agree.
92. Overall, we accept that the screenshots show the Appellant has attended one demonstration in the UK. There is no evidence to conclude that he played any part in arranging or running this event, or that he was anything more than a member of the crowd. He has not confirmed clear details of who organised the demonstration or why, or who he attended with. There is no evidence to show that this event gained media attention or was monitored by the Iraqi embassy or the Iraqi authorities.
93. No breakdown of his Facebook friends has been provided, nor of his timeline of activities/posts/comments/likes. The printouts consist of a few pages of screenshots and translated posts.
94. The Appellant himself has not set out in any coherent manner what posts were made on what date, what they say, and who they were shared with and when. We do not know what prompted him to post or respond to items. He said his settings were such that all of his content could be seen by the wider public. He has not disclosed documentary evidence of his privacy settings or those of his friends.
95. We accept that the posts contain content critical of the Iraqi regime. However, without a full history of posts, comments and shares, the printouts overall are of very limited evidential value. As above, the profile picture is not a photo, the screenshots do not state the Appellant's full name and they do not confirm anything else about his identity such as his date of birth, his area or even his country of origin.

96. We have not been provided with any evidence of authorities in Iraq monitoring online activity such as would likely encompass the Appellant's Facebook account. We do not know what their capacity for monitoring is, how many people do it and how, who is targeted and why and when etc. There is nothing we can see on the Appellant's Facebook page which would attract particular scrutiny. There is no evidence of the Appellant having any association with an individual with a profile of sufficient prominence that the Iraqi authorities would be alerted to it. Overall, there is nothing in the evidence before us that persuades us even to the lower standard that the Appellant has undertaken his sur place activity for any reason other than to bolster his protection claim. The Appellant says that this is not correct and that he has undertaken his activities in the UK because it is only recently he has felt safe enough to express his views and learn of his ability to use Facebook. We do not accept this explanation for three reasons.
97. First, he came to the UK as an adult, and made a claim for protection based on his father's perceived affiliations with the Ba'ath party (albeit he only referred to ISIS initially) such that, were he credible, he would likely have been aware of the political situation in Iraq before he left. Second, he did not mention any political activity, whether in Iraq or the UK, at any time prior to his witness statement from July 2024, despite having two hearings before the First-tier Tribunal. Third, he set up his Facebook account and attended a demonstration only after (and within a matter of weeks of) having his appeal dismissed by Judge Blackwell, with an earlier appeal having been dismissed by Judge Clark who found him not to be credible. This indicates to us that as soon as he knew he had been dismissed on appeal for a second time, he looked for a further basis on which to be able to remain in the UK and began working towards that basis immediately, there previously having been no substance to it. We find the Appellant's sur place activities arise from a misguided attempt to create a profile for himself. They are not, even to the lower standard, based upon a genuinely held political belief.
98. We note the CPIN: opposition to the government in the Kurdistan Region of Iraq (KRI), Iraq, July 2023 states that:

"2 .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. Decision makers must consider each case on its merits.

3.1.3 However, available evidence does indicate that the following groups of people may be at higher risk of arrest, detention, assault, excessive use of force and extrajudicial killing by the KRG authorities:

Individuals with higher profiles: Those who have a prominent public presence, who are actively involved in or have previous history of organising or participating in protests and demonstrations.

Journalists: Those who are seen to be criticising government officials or engage in critical reporting on controversial political or other sensitive issues, for example protests and demonstrations, corruption, abuse of authority etc".

99. Overall, we find that the Appellant is at best of low political profile due to his sur place activity, he is not genuine in his activities and will not be active on return to Iraq. We therefore find it reasonable in all the circumstances, and will not contravene the principle in HJ (Iran) v SSHD [2011] AC 596, for the Appellant to close down his Facebook account and that he would likely do so in advance of return to protect himself. As per the case of XX (P/JAK – sur place activities – Facebook) Iran CG [2022] UKUT 00023 (IAC), this will have the effect of removing all posts he has created. We appreciate that case related to Iran, not Iraq, but the general findings made concerning the use and operation of Facebook apply nonetheless.
100. The Appellant has not produced any evidence specific to him personally that would indicate his account has already come to the attention of the authorities in Iraq. As such, there is no evidence to indicate he would be subject to particular scrutiny on return over and above any other returnee. Due to his lack of profile, we do not find it proved that the authorities on return would have the ability or desire to access the Appellant’s Facebook account and that, even if questioned on return, they would have any knowledge of those matters which the Appellant claims will place him at risk. We find the Appellant will not be required to reveal to the authorities that he previously had a Facebook account or if asked, he would not reveal it in any case as his beliefs are not genuine. On the evidence before us, we do not accept that the Iraqi authorities have the capacity or ability to access a Facebook account once it has been closed down, nor even for accessing it if it is still active as they have no reason to, the Appellant lacking in profile and being of no adverse interest.
101. We do not therefore accept that the Appellant will be at risk upon return to Iraq on account of his sur place activities.
102. We find the evidence is insufficient to show the Appellant is entitled to humanitarian protection. Caselaw shows that the humanitarian situation in general is not so severe as to necessitate subsidiary protection under Article 15(b) QD.
103. As to contact with his family, we see no reason to depart from Judge Clark’s findings that the Appellant has not shown that his family are not still living in their village. In any event, he has the option of returning to live with his uncle. He admits he is still in contact with this uncle and that this uncle would be able to financially support him. We see no reason why such support could not be provided even if the Appellant went to live in a different area, given that the uncle also funded the trip to the UK. In any case, we do not find it proved that the Appellant has lost touch with his father and brother give the vagueness of the evidence in this respect and because we have not found his account to have been proved. Overall, we find it likely that the Appellant is still in contact with his family which means he would have a support network on return.
104. We have taken into account the factors listed in SMO1 and SMO2 regarding the feasibility of return to the IKR for those not originally from the area and do not consider that the Appellant has proved he would not be able to enter and establish himself in the IKR if this is the point of return, as suggested by Miss Blackburn. Alternatively, whatever the point of return within Iraq, the Appellant can use his CSID to travel onwards where he can utilize his family’s assistance, previous employment experience and voluntary returns scheme to avoid becoming subject to in humanitarian conditions.

Conclusion on Appellant's account

105. Overall, and assessing everything in the round, we do not find it proved to the lower standard that the Appellant has a subjective fear of anyone in Iraq. We find he is not at risk by reason of his imputed or actual political opinion or his ethnicity.
106. The Appellant's claim for asylum and humanitarian protection on the basis of his account therefore fails, as do his claims under articles 2 and 3 ECHR.
107. We therefore do not need to consider questions of sufficiency of protection or internal relocation. The Appellant can return to his home area, or could relocate elsewhere given he has his CSID and family support and previous work experience and education.

Article 8 ECHR

108. Mr Brookes confirmed that the Appellant's article 8 claim is predicated on risk which would mean, based on our above findings, that it fails.
109. The Appellant has been here for eight years and is over 18. He speaks Kurdish Sorani, an official language of Iraq. He left Iraq when he was 29 years old, having grown up there. He is still in contact with his uncle. We have found it likely that he is also still in contact with his father and brother who he has not shown do not live in the same family home as when he left. He would have them as a support network and as a source of accommodation. He will be familiar with the life, language and culture of Iraq. He has shown the fortitude and resilience to migrate from Iraq to the UK. There is nothing in the evidence before us to suggest that he is not capable of finding work and working, as indeed he did previously in Iraq. We have found the Appellant does not have a subjective or well-founded fear of harm in Iraq.
110. We do not accept there would be very significant obstacles to the Appellant's integration into Iraq. The requirements of 276ADE(1)(vi) are not met.
111. We have no supporting evidence of the Appellant having made friends or having formed ties in the community. We accept that whatever private life the Appellant has would be interfered with by his being removed to Iraq.
112. Addressing the Razgar test, this interference is in accordance with the law and necessary in the interests of the economic well-being of the country. We consider it to be proportionate to the legitimate aim of having efficient immigration controls. What private life the Appellant has developed has been commenced whilst his immigration status has been precarious and, pending the outcome of this appeal or leave being granted, he could have had no legitimate expectation of being permitted to remain. We are also mindful of the factors in s117B of the Nationality, Immigration and Asylum Act 2002 in that the Appellant is not financially independent, he does not meet the requirements of the immigration rules, he has not evidenced that he speaks English to the required standard and the maintenance of effective immigration controls is in the public interest.
113. On balance, we find it would be proportionate to remove the Appellant. It follows that we dismiss the Article 8 claim too.

Notice of Decision

114. We dismiss the appeal on all grounds.

L. Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
25 September 2024