IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004947
First-tier Tribunal No:
PA/00367/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 August 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M M
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr J. Thompson , Senior Presenting Officer
For the Respondent: In person

Heard at (IAC) on 7 August 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Hillis) (hereinafter referred to as the "FtTJ") who allowed the appeal against the decision made to refuse his protection and human rights claim.

2. Although the appellant in these proceedings is the Secretary of State, for convenience I will refer to the Secretary of State for the Home Department as the respondent and to the appellant before the FtT as "the appellant," thus reflecting their positions before the First-tier Tribunal.

3. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

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

The procedural background:

5. The procedural background can be summarised as follows. The appellant is a national of Iraq of Kurdish ethnicity. The appellant left Iraq on an unknown date and travel to Turkey. He remained there for one day and then travel to the UK on a series of lorries.

6. He arrived in the UK on 9 October 2015 and claimed asylum on the same day. His asylum claim was refused on 28 January 2016. He lodged an appeal against this decision on 17 March 2016 which was heard by FtTJ Robertson on 26th of January 2017. In a decision promulgated on 16 February 2017, FtTJ Robertson dismissed his appeal.

7. The appellant was “appeal rights exhausted” on 6 July 2017. The appellant made further submissions which were submitted on 17 April 2018 which were refused on 9 May 2018.

8. The last set of submissions were submitted on 20 December 2022 which led to the decision made by the respondent on 28 February 2023.

The claim:

9. The basis of his factual claim was that he is of Kurdish ethnicity and his father was a volunteer with the Peshmerga during the rule of Saddam Hussein. The appellant said that after the fall of Saddam Hussein, his father made comments which upset two Kurdish parties and he was advised not to stay in Kurdistan.

10. The appellant’s village was taken by ISIS, and he fled to Duz and then went to Kirkuk. Whilst he was there he was made aware that his father had been killed whilst he was fighting with the Peshmerga.

11. The respondent accepted that the appellant was a national of Iraq and of Kurdish ethnicity and that his village Jalawla was taken by ISIS as it was supported by background evidence.

12. However whilst the appellant stated that he was at risk from the Kurdish authorities in the IKR because his father had been critical of two Kurdish parties and had spoken out against corruption, the respondent did not accept that the appellant would face a real risk of serious harm because although his father was said to have spoken out about corruption, there was no claim that the appellant was threatened, secondly, his father was

stated by the appellant to have died fighting for the Peshmerga cause. It was therefore not accepted that he faced any risk from the Kurdish authorities because of his father.

13. The appellant's appeal came before the FtT (Judge Robertson) on 26 January 2017. FtTJ Robertson recorded at paragraph 24 that the appellant did not wish to give evidence but wished for his appeal to proceed on the basis of submissions only.

14. It is also of note that the FtTJ referred to the appellant having stated during the hearing that his hearing was not good and that he had difficulties communicating with people due to that. The FtTJ referred to a letter where a doctor had stated that the appellant had reported hearing difficulties following an injury and that the appellant had stated that this "unfortunately affected his hearing and thus learning difficulties." At the date of the letter which was 14 November 2016 the appellant had been referred for a hearing test and an appointment was awaited. The FtTJ recorded the information provided by his legal representatives that he would be able to manage to hear if the interpreter was able to sit on the side upon which the appellate could hear better and the interpreter spoke clearly but if I hearing it was available it would assist the appellant (see paragraph 28).

15. IJ Robertson set out his findings of fact between paragraphs 28-40 (on the protection and issues of return). The FtTJ rejected the core of his claim to be at risk from the Kurdish authorities because his father had made remarks about corruption within the Peshmerga after the fall of Saddam Hussain. Those findings of fact was set out between paragraphs 32 – 35. It was not established that the appellant would be at risk from the Kurdish authorities because his father was a critic of the Kurdish political parties many years ago. This was because the FtTJ found that there was no reliable evidence to confirm which parties at friend's father, or if it was particular individuals within the parties, who had been offended and had threatened his father; or that those individuals would (i) still be around to threaten the son;(ii) would threaten the sun, particularly when there was nothing to suggest that the sun had been threatened and particularly because the sun had no particular involvement with politics: and (iii) would threaten or persecute the son of a Peshmerga martyr. The FtTJ found that "there is little cogent evidence before me to establish that the Kurdish authorities bear a grudge against the appellant because of his father. I therefore do not accept that the appellant has established that there is a real risk of serious harm on return at the hands of the Kurdish authorities."

16. As to return, the FtTJ that it was accepted by the respondent that the appellant is of Kurdish ethnicity and that his town was taken over by ISIS. He did not have an ID document, but it is clear that he did have one in Iraq (he stated his father's name was on it) he did not have one on him when he came to the UK and the FtTJ took judicial notice of the fact that agents frequently tell those who travel with them to destroy their ID card. As to risk in Baghdad and whether he would be able to contact his family members to obtain his CSID, the FtTJ that it was "clear that the appellant,

despite his disability has shown tenacity and the ability to travel across Europe, albeit with an agent, to journey to the UK. I do not find that the appellant is likely to have family in Afghanistan whom he can contact, even before leaving the UK, to obtain his CSID. These family members can assist him to then journey from Baghdad to the IKR and he can be assisted by his family members to settle there, despite his disabilities, the extent of which was not, in any event, proven. I therefore find that it would not be unduly harsh the appellant to relocate in Iraq and that he would not be at risk of the breach of his rights under articles 2 and 3 on the basis of his individual characteristics."

17. The FtTJ also addressed article 8 between paragraphs 41 – 44 but found that the decision to refuse Article 8 leave was not disproportionate and the appeal was dismissed.

18. Following the dismissal of his appeal the appellant remained in the United Kingdom. Further submissions were sent to the respondent as set out in the decision letter of 28 February 2023 as having been contained in a letter from his representatives dated 25 November 2022. This is exhibited at p 66 of the bundle. Those further submissions relied upon the new country guidance relevant to the return of individuals to Iraq without documentation and that the applicant, would face persecution on return to Iraq (see SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)). Reliance was also placed on the CIPN June 2020 Version 11.0 . It was stated that the appellant maintained he does not have any contact with any family in Iraq and submits this is plausible as he is from a previously contested area. It would be wrong to conclude that family remain in the same place they were when he left prior to arrival in the UK in October 2015 due to this situation in his hometown. As Diyala is a previously contested state, it is perfectly reasonable to assume this.

19. The respondent refused the further submissions in a decision taken on the 28 February 2023. The decision set out the submissions that had previously been considered by reference to the earlier decision of FtTJ Robertson applying the Devaseelan principles (see paragraphs 13-14). As to the issue of documentation, this was considered in the light of the CPIN : Iraq: internal relocation, civil documentation and returns July 2022 alongside SMO (2).

20. The respondent noted that in order to enter and pass through security checkpoints, a person will require a CSID or an INID in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 of the ECHR.. Reference was made to those who would arrive in Iraq or the KRI in possession of a CSID or INID or could be provided with an original or replacement document soon or shortly after arrival, would be able to return to their home governorate via the various security checkpoints and are, in general unlikely to encounter treatment conditions which are contrary to Article 3 of the ECHR.

21. Reference was made to the decision of FtTJ Robertson (paragraphs 31 and 32) where it was stated that the appellant does not have an ID document.

It is clear that he did have one in Iraq (he stated his father's name was on it .Reference is also made to paragraph 40 of the decision of FtTJ Robertson. In conclusion at paragraph 41, it was stated that the appellant had not provided any evidence that it made any attempt to acquire the necessary documentation to return to Iraq nor had he provided any evidence that his family members in Iraq would be unable or unwilling to assist him in this regard. The appellant would be able to return to his home governorate without encountering treatment or conditions contrary to Article 3 of the ECHR (see paragraph 42). Paragraphs 44 – 52 dealt with internal relocation to the IKR.

22. The appellant sought to appeal that decision and the appeal came before FtTJ Hillis on 5 September 2023. The appellant was not represented at the hearing and appeared in person. The respondent was represented by a Presenting Officer. In a decision promulgated on 16 September 2023, FtTJ Hillis allowed the appeal under Article 3 of the ECHR, having concluded on the evidence before him that the appellant had demonstrated to the lower standard required that it was not only plausible but there was a reasonable likelihood due to his home area being under the control of ISIS in the past, that he cannot have his CSID card sent to him in the UK by relatives who were in Iraq (or Afghanistan as found by Judge Robertson), as they would likely to have been lost or destroyed. The FtTJ accepted that the appellant had no contact with his relatives having concluded they have all been killed by ISIS. The FtTJ concluded on the evidence taken as a whole that the appellant could not travel onwards in safety from Baghdad to his home area and obtain a new INID card; he could not obtain a replacement CSID card by proxy at his local CSA office no longer issues them having had the new INID terminals installed. He therefore allowed the appeal based on the inability to travel onwards and safety from Baghdad to his home area in the Diyala province as he faced a real risk of serious harm. The FtTJ therefore allowed his appeal.

<u>The appeal before the Upper Tribunal:</u>

23. The respondent sought permission to appeal, and permission was refused v=by a FtT Judge but was granted on renewal on 15 December 2023 by Upper Tribunal Judge Gill.

24. At the hearing before the Upper Tribunal the appellant appeared in person and Mr Thompson appeared on behalf of the respondent. Prior to the hearing that had been directions given by the tribunal to ensure that the appellant would be able to participate in the hearing as a result of his hearing impairment. In particular a direction was issued for the appellant to provide a medical report from his general practitioner to assist the Tribunal in making suitable arrangements for the hearing. In a response to the directions provided in a letter dated 19 June 2024 from Justice First , it was confirmed that he was unable to provide a medical report, although he had attended an appointment. It was also stated that whilst he had a hearing impairment and occasionally wore a hearing aid but that most of the time MM did not wear a hearing aid and that he had attended

appointments where he was freely able to converse the help of a Kurdish Sorani interpreter.

25. A court interpreter attended the hearing, and steps were taken to ensure that both the interpreter and the appellant were able to understand each other. The court interpreter confirmed that after speaking to the appellant, he was able to understand him, and the appellant also confirmed that he understood the court interpreter. The interpreter was seated next to the appellant during the hearing there were no problems identified by either the appellant or the interpreter in understanding what had been said during the hearing. The court process was explained to the appellant so that he would understand what was happening at each stage.

26. Mr Thompson relied upon the written grounds of challenge. They are as follows:

    (1) The Judge arguably fails to properly apply the burden of proof which rests upon the Appellant in his Article 3 claim, and which requires a fact specific assessment.

    (2) At [20] the Judge concludes that simply because of the Appellant's home area being under the control of ISIS at one time that the Appellant would be unable to have his CSID card sent to him by family members. This is conclusion without adequate reasoning and without reference to the Appellant's own evidence.

    (3) The same error also applies to the broad conclusion at [20] that the Appellant's documents would have been lost or destroyed and that the Appellant has no contact with his relatives; in the absence of adequate reasons this appears simply to be an assumption. It is also a departure without adequate reasoning, from the previous Judges findings in 2017 who not only held that the Appellant could have his CSID sent to him but also that he would have family members to assist him to travel from Baghdad to the IKR where they could assist him to settle. The previous Judge held that the Appellant, who had not credibly explained how his travel to the UK was funded, would be able to obtain 'his CSID' and made no reference to obtaining one by proxy and so it is arguable that the current Judge fails to properly interpret the determination of the previous Judge in implicitly criticising a perceived lack of clarity on this point.

    (4) The Judge also fails to identify where the Appellant's family registration office is, it is upon the Appellant to provide evidence of where his registration is held and there is no reference to this.

27. In his oral submissions he submitted that the respondent's position was that Judge Hillis did not give sufficient reasoning as to why he departed from the decision of Judge Robertson, applying the principles in Devaseelan. This was the starting point and whilst he was not bound by the decision of Judge Robertson, Judge Hillis was required to justify any departure from that starting point.

28. Mr Thompson submitted that the respondent challenged the reasoning at paragraph 20 and that even if it was accepted that the appellant had previously been a contested area, it did not explain why his relatives could not send him his CSID card. In essence it is submitted that the FtTJ failed to explain why he could not have his card sent to him. This was a previous finding made by Judge Robertson. The FtTJ acknowledged the Devaseelan principles but had failed to apply them by departing from Judge Robertson's decision.

29. Mr Thompson further submitted that paragraph 17 of the decision of the FtTJ where reference has been made to the lack of clarity as to whether or not Judge Robertson had accepted that the appellant's card was no longer available to him, that was inconsistent with paragraph 40 of Judge Robertson's decision.

30. When asked if he had any submissions to make on the document entitled "appellant's explanation of case" which had been before FtTJ Hillis, Mr Thompson submitted that whilst weight was a matter for the FtTJ it does not negate the need to justify a departure from the previous decision with reasoning. The judge did not give reasons as to why he departed from the earlier findings.

31. The oral submissions made by Mr Thompson were translated at each stage to the appellant and the appellant was asked if he had understood what had been said during the summary that had been given. The appellant stated that he did understand what had been said and wish to add that he did not have family in Afghanistan. In order for the appellant to understand why a reference had been made to Afghanistan, it was explained to him that the previous judge had made reference to the appellant having family in Afghanistan. The appellant was asked if he had a stepmother (which was referred to by Judge Robertson) the appellant stated that he did have a stepmother, but she died a long time ago in 2012 – 2013.

32. MM was asked if he wanted to say anything about the appeal. The appellant reiterated that he had never been to Afghanistan just Iraq. He did not wish to add anything else. It was explained to the appellant that a decision on whether FtTJ Hillis had made a "mistake" or error of law in his decision would be given in writing which he would receive. He said that he understood that would be the position.

Decision on error of law:

33. Mr Thompson on behalf of the respondent submitted that the key point relied upon by the respondent was that the FtTJ failed to apply the Devaseelan principles when reaching his decision on the sole issue identified at paragraph 6 (a) of his decision. In this regard, it is also submitted that paragraph 20 was a departure from the earlier findings of FtTJ Robertson and was an inadequately reasoned departure from those earlier findings.

34. As this is a reasons based challenge, I bear in mind the Practice Direction issued by the Senior President on 4 June 2024 which said:
"Judges and members in the First-tier Tribunal should expect that the Upper Tribunal will approach its own decisions on appeal in accordance with the well settled principle that appellate tribunals exercise appropriate restraint when considering a challenge to a decision based on the adequacy of reasons, **TC [2023[UKUT 164**. As the Court of Appeal has emphasised, a realistic and reasonably benevolent approach will be taken such that decisions under appeal will be read fairly and not hypercritically [ibid] ."

35. Yalcin v SSHD [2024] EWCA Civ 74 is recent authority for the proposition that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal (see Â§50). Where a relevant point may not have been expressly mentioned, I should be slow to infer that it had not been taken into account.

36. To assess the issues it is necessary to discern what were the earlier findings of fact made by FtTJ Robertson. There is a copy of the decision in the respondent's bundle. It is also referred to verbatim in the respondent's decision letter.

37. Those findings of fact can be summarised as follows. IJ Robertson set out his findings of fact between paragraphs 28-40 (on the protection and issues of return).

38. The factual findings made on the core of his claim to be at risk from the Kurdish authorities because his father had made remarks about corruption within the Peshmerga after the fall of Saddam Hussein, as a result of which the appellant will be targeted by the Kurdish authorities was set out between paragraphs 32- 35. They are summarised earlier in this decision.

39. As to return, the FtTJ that it was accepted by the respondent that the appellant is of Kurdish ethnicity and that his town was taken over by ISIS. He did not have an ID document, but it is clear that he did have one in Iraq (he stated his father's name was on it) he did not have one on him when he came to the UK and the FtTJ took judicial notice of the fact that agents frequently tell those who travel with them to destroy their ID document.

40. The FtTJ applied the decision in AA (article 15 (c) Iraq CG [2015] UKUT 00544 and found that there was nothing to suggest that the appellant would be able to obtain a replacement ID document because he hails from Diyala which is a contested area and the central archive registers in Baghdad for IDP's from Anbar and Salahaddin ((paragraph 31). The FtTJ found that the appellant could not return to his home area because he is from a contested area (applying AA (Iraq).

41. The FtTJ addressed the argument advanced that even if the FtTJ found on the basis of AA there were areas of Iraq with the level of indiscriminate violence was not such as to result in risk the appellant on the basis of him being a civilian, he had particular characteristics such as hearing, speech and possible learning difficulties which would put him at risk of article 15

(c) harm. The FtTJ found that as he had stated earlier, those characteristics did not hinder the appellant when he fled his home area and travelled to Duz and Kirkuk and then to the UK and found that it was "not established that his individual characteristics of putting a particular risk of article 15 (c) harm (see paragraph 37).

42. The FtTJ found that "the respondent has not explicitly accepted that the appellant's father died fighting ISIS or that is stepmother ill-treated him, which would leave open the possibility that the appellant has family in Afghanistan. There is nothing before me to confirm the appellant's evidence that his father has died and that he had been ill treated by his stepmother. The appellant's evidence could not be tested in cross-examination. I find that it is not established even to the lower standard of proof that the appellant's family circumstances were as stated by him and that his father had in fact been killed fighting against ISIS, and despite risk as a sunny Muslim it was not raised in submissions" (see paragraph 39).

43. As to risk in Baghdad and whether he would be able to contact his family members to obtain his CSID, the FtTJ that it was "clear that the appellant, despite his disability has shown tenacity and the ability to travel across Europe, albeit with an agent, to journey to the UK. I do not find that the appellant is likely to have family in Afghanistan whom he can contact, even before leaving the UK, to obtain his CSID. These family members can assist him to then journey from Baghdad to the IKR and he can be assisted by his family members to settle there, despite his disabilities, the extent of which was not, in any event, proven. I therefore find that it would not be unduly harsh the appellant to relocate in Iraq and that he would not be at risk of the breach of his rights under articles 2 and 3 on the basis of his individual characteristics" (paragraph 40).

44. For the purposes of the hearing before FtTJ Hillis, the relevant findings of fact were those set out at paragraphs 31, 39 and 40, which dealt with the issue of the CSID and the appellant's family. At paragraph 11 those findings of fact were properly identified as the "starting point" for his assessment and thereby applying the Devaseelan principles and the FtTJ set out verbatim those findings of fact at paragraph 12.

45. Issue arise from those findings of fact as identified by FtTJ Hillis in his decision. In his decision, FtTJ Robertson made a finding of fact that it was likely that the appellant had family in Afghanistan whom he could contact to obtain his CSID (see paragraphs 39 and 40). The decision letter which addressed the fresh claim made in November 2022, a number of years later, made no reference to the finding of fact on the basis that the appellant had family in Afghanistan and where the FtTJ had referred to "Afghanistan" the word "Iraq" had been substituted when recording the earlier findings of fact made. It is clear from reading the decision letter that the respondent took the view that the FtTJ had made an error as to the country where the appellant's relatives were despite that occurring at 2 different paragraphs. At paragraph 14 of his decision, FtTJ Hillis noted that discrepancy stating that FtTJ Robertson did not find that the appellant had relatives in Iraq that he could contact obtain a CSID card but that he

had relatives in “Afghanistan” whom he was in touch with and could assist him. FtTJ Hillis concluded that “I am not in a position to conclude that this was a simple mistake of the country name by the judge as I do not have before me the evidence that was before Judge Robertson.” Whilst it seems on any fair reading of the decision that FtTJ Robertson had made a typographical error as to the name of the country, which is the basis upon which the respondent had approached the earlier decision, it is also clear that FtTJ Hillis did not depart from the earlier findings on that basis because in his conclusion at paragraph 20 he reached his conclusion as to whether the card could be sent to him by relatives who were either in Iraq or Afghanistan.

46. The second point of lack of clarity in the decision of FtTJ Robertson came from paragraph 31. The FtTJ accepted that he did not have an ID document. “It is clear that he did have one in Iraq (he stated that his father’s name was on it), he did not have one on him when he came to the UK, and I take judicial notice the fact that agents frequently tell those who travel with them to destroy their ID documents. The respondent does not dispute that he does not have a Civil Status Identity Document (CSID)”.

47. On any fair reading of the decision of FtTJ Robertson what he had set out at paragraph 31 was not a finding of fact but an observation and that is further supported by paragraph 40 of his decision where the FtTJ considered the factual case on the basis that he had a CSID (albeit on the basis of family in Afghanistan). FtTJ Hillis was correct to highlight the lack of clarity contained in that paragraph in his decision at paragraph 17, and that it was not clear whether the judge had accepted his CSID card was no longer available to him as it had been taken by an agent or alternatively he destroyed it as told by the agent or it had been destroyed or lost in Iraq. Nonetheless, FtTJ Hillis in his decision approached the appeal on the basis that Judge Robertson had found that he had a CSID which had not been destroyed. In any event, the appellant’s own case expressed in the document “appellant’s explanation of case” dated 11 May 2023 made it clear that the appellant did have one previously.

48. Notwithstanding the lack of clarity in the decision of FtTJ Roberton, and as properly identified by FtTJ Hillis, he did adopt as his starting point those findings of fact which he set out at paragraph 11 and 12, therefore did approach the case by adopting the principles in Devaseelan.

49. The challenge brought to the decision of the FtTJ is whether he gave adequate reasons for departing from the decision of FtTJ Robertson and the grounds particularly identify paragraph 20.

50. Paragraph 20 needs to be seen in the context of the earlier paragraphs. On a fair reading of those earlier paragraphs, the FtTJ properly took into account that since the earlier decision was reached in January 2017 (the appellant having arrived in the United Kingdom and made a claim for asylum in October 2015), the country guidance relevant to Iraq had changed significantly. That was correct. He properly identified that the legal landscape has changed and that in light of the most recent CPIN

taken with the country guidance (which was SMO & KSP (Civil status documentation; Article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO(2)")) that the importance of possession of a document such as a CSID or INID had become a central importance to the issue of return to Iraq.

51. The issue surrounding the documents required to return to Iraq and to survive in that country have played a prominent part in the country guidance cases thus far decided. Those documents are referred to as the Civil Status Identity Card ("CSID"), the Iraqi Nationality Certificate (INC) and the public distribution system ("PDS") card/ food ration card and the new digital identification document known as Iraqi National Identity Document ("INID)." Reference is also made to the 1957 Registration Document (see paragraphs 115 -137 of SMO(2)).

52. The importance of the CSID was set out in the previous CG decisions as it is required to access financial assistance, employment, education and housing etc. it was described as an "essential document for life in Iraq" (at [39] AA (Iraq) [2017]).

53. It is not in dispute that the relevant country guidance at the time of the decision of FtTJ Hillis was SMO(2). That decision set out at paragraph 11 that the CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans.

54. As reflected at paragraph 317 of SMO (1) and also in SMO(2) headnote C 11 (the amended section C), the Secretary of State's position is that person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID may be at risk of enduring conditions contrary to Article 3 of the ECHR.

55. As the FtTJ set out at paragraph 18, the appellant's point of return would be Baghdad and that he could not return or relocate to Baghdad city without a CSID or INID card which cannot be obtained from the relevant authority in Baghdad. That is consistent with the country guidance decision of SMO.

56. At paragraph 19 the FtTJ set out the position in the Country Policy and Information Note Iraq: internal relocation, civil documentation and returns dated May 2022 (sections 2.6.4-2.6.9), that the appellant cannot travel onwards in safety from Baghdad airport's home area without a CSID or an INID card. The FtTJ found the local CSA office had the new INID terminal installed resulting in the appellant being required not only to providers identity documents would also attend in person to provide his biometrics.

Again that is entirely consistent with the country guidance decision and the CPIN.

57. Against that background the FtTJ was required to determine the sole issue he identified at paragraph 6 (a) which he did between paragraphs 18 – 21 of his decision.
In reaching his decision at paragraph 20, the FtTJ stated that he had "concluded on the evidence as a whole" that the appellant had shown to the lower standard of proof that it was not only plausible but that there is a reasonable likelihood that his card could not be sent to him as it was likely that the card was destroyed or lost (I paraphrase paragraph 20).

58. Contrary to the respondent's grounds, the FtTJ did give adequate reasoning for that finding. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge: *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 85 (IAC). There was no dispute that the appellant was from a formally contested area, his home area being within the Diyala governorate, and this was referred to in the decision letter. The FtTJ had before him a document prepared on behalf of the appellant entitled "appellant's case" dated 11th of May 2023. In that document there was a section entitled "reasons to depart from the previous Judges findings," where reference was made to the appellant having claimed asylum on 9 October 2015 and the decision of Judge Robertson which was 6 years ago. Reference was made to the situation in Iraq being fluid and referred to the issue of the lack of identity documentation leading to a breach of Article 3 rights was not prevalent at the time of the decision of Judge Robertson. The point was made that it had been seven ½ years since his original asylum claim and he had consistently maintained that he did not have any contact with his family in Iraq. Reference was also made to the security situation in Iraq and that given the passage of time when taken with the country materials and that the area in which he had previously lived had been a contested area that any family contact previously thought to exist was likely to have been lost and that it should be accepted as plausible in the light of the country materials. The respondent's CPIN was expressly referenced to demonstrate that there had been significant conflict in Iraq in particular in the contested area from which the appellant came during the time of his departure to the present which also demonstrated the likelihood of him having lost contact with his family.

59. The FtTJ had that evidence before him and as also reflected in the CPIN and this was also set out in detail in the CG decision of SMO. As regards the appellant's home area, there is no dispute that it is in the Diyala governorate which is described as being ethnically diverse with Arabs, Kurds and Turkmen comprising the majority. It has hosted insurgents since 2004 and is considered to be good territory for such groups due to its difficult terrain providing good cover from security forces. Because of its proximity to Baghdad, it is a priority for the government and the PMU to exercise control over the area. The area was occupied by ISIL in the north

and the area was brought back under government control in January 2015. The evidence of Dr Fatah set out in SMO(1) at paragraph 98, referred to the ethnically heterogeneous nature of Diyala making it amongst the most unstable areas in the country. The materials referred to the changes in that governorate and Dr Fatah gave evidence that there were parts would be controlled by the Kurds prior to 2017 and others which were not (paragraph 103). The EASO report considered the situation in Diyala through noting that the PMU's are particularly strong in the government and that the Iranian backed Badr organisation is considered to be the main security actor.

60. The specific area relevant to the appellant is also referred to in SMO at paragraph 112, and that the situation in that area deserved separate consideration. It was a district that was ethnically diverse and that a range of pressures had been brought to bear on it during the Saddam Hussain years and thereafter. When the suburbs had been recaptured by the Shia PMU's and the peshmerga in 2015 it was the PMU's who took control over the area, and this had caused many Kurds to flee in fear of reprisals and many had not returned.

61. The FtTJ had that evidence before him and he was entitled to place weight on that evidence when reaching his analysis that it was not only plausible but reasonably likely that against that background and due to his home area being under the control of ISIS in the past that his CSID card was not reasonably likely to be available to him and therefore this was based on the circumstances set out in the country materials alongside the length of time that it had elapsed since the earlier decision. Against that evidential background the FtTJ's conclusion that the appellant's account that he had no contact with his relatives as it was likely they had been killed by ISIS was reasonably open to him. The weight that the FtTJ gave the country materials as support for the appellant's account was a matter for the FtTJ and it has not been either demonstrated that the conclusion was not reasonably open to the FtTJ or that he should not have placed weight on the country materials which he clearly had regard to.

62. In summary it has not been demonstrated that the FtTJ failed to have regard to the previous decision or that he failed to apply the Devaseelan principles. It is necessary to consider the proper approach to findings of fact made in a previous appeal. Such findings are not *res judicata* and a party is not estopped from seeking to persuade a second tribunal to take a different view. The findings represent a starting point, not a straitjacket, and the later authorities have emphasised that the strength of the Devaseelan guidelines lies in their flexibility and the fact that they do not impose any unacceptable restrictions on the second judge's ability to make the findings which he/she conscientiously believes to be right (see: SSHD v BK (Afghanistan) [2019] EWCA Civ 1358 and Djebbar v SSHD [2004] EWCA Civ 804). The FtTJ in his decision gave adequate reasons for concluding on the evidence as a whole that in the light of the country materials relevant to his home area and taking into account the length of time since the last decision, that he was satisfied to the lower standard required that the appellant had demonstrated that it was not

only plausible but there was a reasonable likelihood that the card would not be available to him.

63. That being the case, the FtTJ's conclusion at paragraph 21 that the appellant could not travel onwards and safety from Baghdad his home area and obtain a new INID card was in accordance with the CG decision and the material in the relevant CPIN.

64. When addressing the adequacy of the analysis undertaken, and when addressing the issue of adequacy of reason in MD (Turkey) v SSHD [2017] EWCA Civ 1958 the Court of Appeal confirmed that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he or she has lost, and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.

65. Having considered the decision reached, the FtTJ was required to consider the evidence that was before the First-tier Tribunal as a whole, and he did so, giving adequate reasons for his decision on the material evidence available. The FtTJ was entitled to have had regard to the background material referenced in the "appellant's case" document and place the weight upon it as he thought it merited and there is no requirement to set out each and every reference to this in his factual assessment.

66. Consequently the decision of the FtTJ did not not involve the making of an error on a point of law, and the decision shall stand.

Notice of decision:

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

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

15 August 2024