



by members of ISIL, and who also feared the Hashdi Shaabi (aka "PMF"). The Judge rejected the claimant's account of past persecution and future risk in his home area, but he allowed his appeal on humanitarian protection grounds because he found that the claimant would be unable to obtain a CSID on account of his home area being contested; and that the claimant would be at risk in travelling to his home area from Baghdad.

### **The Reasons for Granting Permission to Appeal**

2. On 6 March 2018 First -tier Tribunal Judge Hodgkinson granted permission to appeal for the following reasons: *"The grounds argue that the Judge fell into error: first, inadequately reasoning why the appellant was entitled to humanitarian protection and, second, in making contradictory findings, having concluded that the appellant's core account lacked credibility. The grounds as pleaded display arguable errors of law."*

### **Relevant Background Facts**

3. The claimant is a national of Iraq, whose date of birth is 5 May 1996. He arrived in the UK hidden in the back of a lorry in January 2017, and he is recorded as having claimed asylum on the same day.
4. His claim was that he had worked for his paternal uncle, who owned a car mechanic shop and garage in Tuz Khormato. His uncle was approached by members of ISIL on 26 December 2016 as they wanted him to work for them. Specifically, they wanted him to give them the use of his garage to fit bombs to their vehicles. His uncle asked for some time to think about the proposal. The ISIL members returned to the garage seven days later, on 2 January 2017, and his uncle gave his answer, which was a refusal.
5. As the result of his refusing to work with ISIL, his uncle was abducted. After his uncle disappeared, the claimant went to stay with his maternal uncle who also lived in the same town. Several days later, his mother asked him to go and open up the shop as at this point they were not certain that his uncle had in fact been taken by ISIL. Around midday, the claimant was approached in the shop by three people who identified themselves as being members of ISIL. They asked him to work for them and to give them the use of the garage. He said that he would need to get his mother's permission. He was allowed to leave the shop for this purpose, but he was told that they would kill him if he refused. With the help of his maternal uncle, the claimant left Iraq immediately afterwards. This was on 8 or 9 January 2017.
6. On 20 July 2017 the Secretary of State gave her reasons for refusing the claimant's protection claim. It was not accepted that his uncle was abducted by ISIL, and it was also not accepted that he had been approached and threatened by members of ISIL. In any event, he had the option of internal relocation away from the people he claimed to fear, and sufficiency of protection was provided by the Iraqi authorities. He had failed to demonstrate that either ISIL or PMF had the power or influence to locate him throughout Iraq.

7. On the issue of the practicalities of his return to Iraq, the case-worker cited paragraph [170] of **AA Iraq [2015] UKUT 544** in which the Upper Tribunal held that an application for a *laisser passer* was considered on a case-by-case basis by the Iraqi Embassy in London. The applicant needed to produce a CSID, national identity card or photocopy of a previous passport, and a report confirming that it had been lost or stolen. If a person did not have any of those documents, they could not obtain a *laisser passer*, and therefore could not be returned.
8. It was noted that, during his asylum interview, he had stated that he had had a CSID, and also a passport at the point he left Iraq, but they had been taken by the agent. It was also noted that he had family in Tuz Khormato who had helped him to leave Iraq. Therefore, it was considered that he would be able to obtain replacements, or at least a copy of these documents, with his family's assistance. This would in turn facilitate his return to Iraq.
9. On the issue of Article 15(c) of the Qualification Directive, at paragraph [81] the case-worker noted the guidance given on contested areas in **AA (Iraq)**, but asserted that since **AA (Iraq)** had been promulgated, the security situation had changed in the contested areas. In particular, ISIL had lost territory and the Government of Iraq ("GoI") and/or associated forces had regained control of some areas. The level of violence had declined, and internally displaced persons were returning to their areas of origin. Therefore, internal relocation was in general possible to all areas of Iraq except, amongst other areas, those parts of the Baghdad belts that bordered Anbar, Diyala and Saladin.
10. Since Erbil was not one of the contested areas in Iraq considered to trigger the Article 15C threshold, it was considered that it was reasonable for him to relocate to Erbil, which was located within the KRI, and which was approximately 175 kilometres away and about 2 hours and 50 minutes by car from Tuz Khormato. It was reasonable for him to relocate to Erbil if he did not wish to return to Tuz Khormato due to any subjective fear that he might hold, and as such he did not qualify for international protection.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

11. Both parties were legally represented before Judge Malik. The Judge received oral evidence from the claimant, who was cross-examined by the Presenting Officer.
12. In his subsequent decision, the Judge set out his findings at paragraphs [26] to [41]. He found that the claimant's account of the reasons why he claimed to have left Iraq with his mother lacked credibility. He found that the claimant had given an incredible account of being at risk from ISIL for the reasons claimed by him, and accordingly he found that neither he nor his mother would have had any reason to leave Iraq in the manner claimed and at the time that he claimed. It was not reasonably likely that his mother had in fact left Iraq. He found that the appellant had fabricated the core of his claim.

13. The Judge turned to consider the issue of risk on return and the viability of internal relocation. At paragraph [37], he considered the findings in **AA (Iraq) v SSHD [2017] EWCA Civ 944** where the Court of Appeal had held (amending the 2015 Country Guidance by consent) that a CSID was not simply a return document. It was feasible that someone could acquire a passport or a *laisser passer* without possessing or being able to obtain a CSID. Regardless of the feasibility of P's return, it was necessary to decide whether P had a CSID, or would be able to obtain one reasonably soon after arrival in Iraq. CSIDs were generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P showed that there were no family or others likely to be able to provide a means of support, then P was in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the SSHD or her agents to assist P's return had been exhausted, it was reasonably likely that P would still have no CSID.
14. At paragraph [38], the Judge found that it was feasible for the claimant to acquire a passport or a *laisser passer*. He found that it was not reasonably likely that he was no longer in contact with his maternal and paternal uncles or his mother in Iraq. Therefore, there was no reason to suggest that he could not seek their assistance in obtaining the necessary information required to prove his identity and obtain the required documents. As such, he found that return to Baghdad was feasible.
15. At paragraph [39], the Judge said that he was now required to assess what harm, if any, would arise from the absence of a CSID and an inability on the claimant's part to obtain a CSID in Iraq. As the claimant had family in Iraq, he would be able to obtain from them the page and volume number of the book holding this information (and that of his family). He found that they would also be able to assist him, if required, in persuading officials that he was the person named on the relevant page.
16. However, the Judge continued, in paragraph [40], the claimant's ability to obtain a CSID was likely to be severely hampered if he was unable to go to the Civil Status Affairs Office of his Governate because it was in an area where Article 15(c) serious harm was occurring. The Secretary of State contended that there were grounds to depart from the assessment of Article 15(c) risk in **AA**. But, as the claimant was a Kurd, and claimed not to speak Arabic, then, notwithstanding his finding that return was feasible and that he had family members who could assist him, there was no cogent evidence before him to depart from the findings in **AA**: "*On this basis I find the [claimant] would be unable to obtain a CSID as his home area is contested and he would be at risk in travelling there from Baghdad.*"
17. Consequently, while he found that the claimant had not discharged the burden of proving that he had a well-founded fear of persecution, he was allowing his appeal on humanitarian protection grounds.

### **The Error Law Hearing in Liverpool**

18. At the hearing before me to determine whether an error of law was made out, Mr Bates developed the arguments advanced in the grounds of appeal to the Upper Tribunal.
19. On the topic of whether Saladin Governate was no longer a contested area, he acknowledged that the CPIN of September 2017 cited in the grounds of appeal did not appear to have been placed before the First-tier Tribunal. However, the March 2017 CPIN, which was before the First-tier Tribunal, conveyed the same information at paragraph 3.2.2. It specifically stated that Saladin Governate no longer met the Article 15(c) threshold.
20. However, the central flaw in the Judge's decision was that, having found that he was in contact with his family members in Tuz Khormato, the Judge had not given adequate reasons as to why they could not provide him with the necessary information or documentation to obtain a replacement CSID from the Iraqi Embassy in London.
21. On behalf of the claimant, Mr Royston (who did not appear below) submitted that the First-tier Tribunal Judge had not rejected all aspects of the claimant's account. He accepted that the claimant originated from Tuz Khormato, and he did not err in holding that his home town continued to be in a contested area. In **AA (Iraq) -v- Secretary of State for the Home Department [2017] EWCA Civ 944** published on 11 July 2017, the Court of Appeal had affirmed the country guidance given by the Upper Tribunal in 2015, *inter alia* as follows:
  - “1. There is at present a state of internal armed conflict in certain parts of Iraq, involving Government security forces, religions of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called contested areas, comprising the governates of Anbar Diyala, Kirkuk, Ninewah and Salah Al-Din is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. ....
  10. Where a return is feasible but P does not to have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governate, using an Iraqi passport (whether current or expired), if P has one ...
  11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office at P's Governate because it is in an area where Article 15(c) serious harm is occurring.”
22. Accordingly, notwithstanding the Judge's adverse credibility findings against the claimant, he was right to find that there was a real risk of the claimant not being able to obtain a replacement CSID from the Civil Status Affairs Office in his home Governate.
23. He acknowledged that, in paragraph [37] of his decision, the Judge had cited the following guidance from **AA (Iraq)**: “*If P shows that there are no family or other members likely to be able to provide means of support, P is*

*in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or agents to assist P's return had been exhausted, it is reasonably likely that P will still have no CSID.*" But he submitted that the Judge had not erred in failing to ask himself whether, notwithstanding the absence of a replacement CSID, the claimant nonetheless did not face a real risk of destitution because there were family members in Iraq who were likely to be able to provide him with a means of support. The Judge had not erred in this regard, he submitted, because the Secretary of State had not argued this point below.

### **Reasons for Finding an Error of Law**

24. The essential premise which underlies the Secretary of State's error of law challenge is encapsulated in paragraph 2.4.10 of the CPIN September 2017, to which reference is made in the grounds of appeal to the Upper Tribunal. This paragraph provides as follows: *"It is likely that most people who do not possess a CSID, and whose return is feasible (i.e. they possess a current or expired passport, or a laissez passer) will be able to obtain a CSID from the Iraqi Embassy in London, or through proxies in Iraq."* This is not a novel proposition. It is also to be found in earlier Policy Guidance documents, such as the documents which were cited in the refusal decision.
25. I consider that the Judge's fundamental error was to focus exclusively on the prospects of the claimant obtaining a replacement CSID from the Civil Status Affairs Office in his home Governate, while ignoring the easier route of the claimant obtaining a replacement CSID from the Iraqi Embassy in London. On the face of it, the Judge's findings at paragraph [39] invite the conclusion that the claimant should be able to obtain a replacement CSID by this route.
26. Moreover, the Judge did not make a finding on the discrete issue of whether the claimant had in fact handed over his CSID to the agent who had brought him to Europe. If in fact the claimant had left his CSID behind, then there was the simple solution of his family sending him his CSID so that he could take it to the Iraqi Embassy to obtain a passport.
27. In conclusion, having found that the claimant was in contact with the family members that he left behind in Tuz Khormato, the Judge did not give adequate reasons for concluding that there was a real risk of him being returned to Baghdad without a CSID; and, in broader terms, the Judge did not give adequate reasons for finding that the claimant was likely to face a real risk of destitution, amounting to serious harm such as to qualify for humanitarian protection.

### **Directions for Remaking**

28. Mr Royston submitted that, in the event that an error of law was made out, the appeal should be remitted to the First-tier Tribunal. Conversely, Mr Bates submitted that this was a suitable case for retention by the Upper

Tribunal. As there had been no cross-appeal to the adverse credibility findings of the Judge, including his rejection of the claimant's evidence that he has lost contact with family members in his home area, I considered that the Judge's findings on this issue should be preserved. Accordingly, this was not a suitable case for remittal to the First-tier Tribunal.

29. I directed that there should be a further hearing before me to remake the decision on the viability of internal relocation and/or whether the appellant's appeal should be allowed on humanitarian protection/Article 3 ECHR (real risk of destitution) grounds.
30. I envisaged that this would be primarily a submissions-only hearing, taking into account the latest Country Guidance authority of **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)**. But I give the claimant's representatives permission to adduce further oral evidence on the discrete issue of what he said happened to his CSID, as the Judge below did not make a clear finding of fact on whether he accepted or rejected this aspect of the claimant's evidence.

### **The Resumed Hearing at Field House**

31. For the purposes of remaking the decision on the issues which I had identified as being outstanding, Ms McCarthy relied on the following additional evidence that was not before the First-tier Tribunal: two letters from the British Red Cross relating to an inquiry into the whereabouts of the claimant's mother which the claimant said he had put in train; and a supplementary report on the security situation in Iraq and Kurdistan from Professor Joffe dated 20 March 2018 contained in a supplementary bundle served in July 2018; and a further supplementary bundle served in November 2018 containing an additional witness statement from the appellant; a witness statement from Farhad Ibrahim; and photographs evidencing the attendance of the appellant and Mr Ibrahim at the Iraqi Consulate in Manchester on 30 August 2018.
32. My attention was also directed to the Home Office Country Policy & Information Note on "Iraq: Internal relocation, civil documentation and returns" (dated 20 October 2018); and to the Home Office Country Policy & Information Note on "Iraq: Security and humanitarian situation" (dated November 2018).
33. The claimant was called as a witness, and he spoke through a Kurdish Sorani Interpreter who he clearly understood. He adopted as his evidence in chief his witness statement dated 17 September 2018.
34. Since his arrival in the UK on 29 January 2017, he had been desperately trying to find his mother and to contact his maternal uncle, Ali. He tried to call his uncle's number, but some man answered in Arabic, and when he asked for his uncle, he said something in Arabic and cut off the line. He called again, and "he" disconnected the line. He had contacted the British Red Cross for help in finding his mother. He had provided two letters to

the Tribunal from the British Red Cross that he had received in response to his request.

35. On 16 October 2017 the PMF had taken control of the Tuz Khormato area, where his family and that of his maternal uncle had lived. Dozens of Kurds had been killed by the PMF, and others had fled the area. Prior to the fighting in October 2017, Tuz Khormato had about 50% Kurds and the rest of the population was made up of Turkmen and Arabs.
36. He had had his ID document and passport until they had arrived at the Turkish border. At the border, their agent had taken their ID documents. In order to obtain proof of his ID from Iraq, someone would have to obtain copies from the Iraqi Internal Ministry. Only a father or brother could obtain ID documents if a person himself was unable to do so. So, even if he could find his maternal uncle, it would be impossible for his maternal uncle to obtain any documents on his behalf.
37. Despite not having enough information to prove his identity, he had approached the Iraqi Consulate in Manchester on 30 August 2018 at 1pm, and had asked them to issue him with a passport and Iraqi ID. However, they said that they could not document him. He had attended the Consulate with his friend Farhad Ibrahim. As well as providing photographs to show their attendance at the Consulate, he was also providing a list of documents required by the Consulate for them to re-issue a passport, or a replacement ID, or a nationality certificate.
38. He had no way of providing the necessary ID documents to the Consulate to document him, as he had lost touch with his family. He feared that he would be at grave risk if he returned to Iraq undocumented.
39. The claimant was cross-examined by Ms Everett, and he answered questions for clarification purposes from me. He knew that Uncle Ali's phone was switched off, as he had received a message in Kurdish saying that it was turned off. Later, another person had answered the phone, and had talked in a different language. This person had then hung up. He had not tried to contact anyone else in Tuz Khormato. This was because the only person he had ever had contact with in his home town was his maternal uncle. He did not have any friends in his home town. He just went to work at the garage and came straight home from work. He had not tried to find his uncle or his mother by using the internet or social media.
40. They had travelled to the border between Iraq and Turkey by car and on foot. This had taken 12 hours. They had not needed to show their ID cards at any point. They crossed the border into Turkey illegally. He had not seen a checkpoint, and he had not seen any border guards or soldiers. The agent had spoken to people, but these people were in plain clothes. Before they crossed the border, the agent had taken his ID card, and the ID cards of the others who were with him, including his mother. When they crossed the border, he had asked for his ID card to be returned. The agent had refused to return it - for his protection. He said that if he gave it back, he (the claimant) would be deported.



41. Farhad Ibrahim was called as a witness, and he confirmed his attendance at the Iraqi Consulate with the claimant. He had been recognised as a refugee from Iraq, and was now a British national. In cross-examination, he said that he came from an area between Mosul and Erbil. He was in touch with people in Iraq. The claimant had told him that he had tried to contact his family back home in Iraq without success. It was his understanding that the claimant's former home area was dangerous, and that there was no means of communicating with people in that area.

### **Discussion and Findings on Remaking**

42. According to the background evidence provided in the main bundle ("AB") for the hearing in the First-tier Tribunal, Tuz Khormato (aka "Khurmatu") is the central city of the Tuz District in Saladin Province, Iraq, located 55 miles south of Kirkuk. The town is multi-ethnic, with a majority of Shia Turkmen and minorities of Sunni Turkmen, Arabs and Kurds.
43. From a series of news articles in the main bundle it is possible to reconstruct the following broad picture. ISIL never took control of the city, but between June 2014 and January 2016 more than 700 civilians, presumably from the Sunni Arab minority population, joined ISIL; and security forces in the city conducted several operations to detect ISIL sleeper cells (AB 91). In June 2015 Kurdish Peshmerga forces took control of the city (AB 75). From October 2015, Kurdish armed groups and Shia Turkmen armed groups repeatedly clashed in and round the city (AB 77). An article dated 18 April 2016 (AB 75) reported that the city had witnessed increased tensions between Shia Turkmen and Kurdish residents, resulting in division of the city (population 60,000) into Turkmen and Kurdish quarters. According to local media, an agreement between Peshmerga forces, local administration and the PMF had been reached earlier in 2016: the PMF were to withdraw from the centre of the city, and a joint military force would share control over the city. In an article dated 7 July 2017 (AB 70) - which is the latest I can find - it was reported that the security situation in the city was stable after deadly clashes between Kurdish and PMF forces "*last year*". The same article stated that the PMF jointly provided security in the town along with the Kurdish Peshmerga.
44. The claimant says that the PMF took complete control of the area in October 2017, precipitating a further exodus of Kurds. But I can find nothing in the background and expert evidence provided by the appellant which supports this claim, with the arguable exception of a passage in Professor Joffe's supplementary report which I discuss below.
45. The implication of the latest CPIN on the security situation in Iraq is that generally there has been a vast improvement in Saladin Governate and other formerly contested areas as reflected in the much lower statistics for civilian deaths and the large number of people returning. The number of returnees to the Saladin Governate is over 500,000.
46. Having carefully considered both Professor Joffe's report of 19 March 2017 and his supplementary report of 20 March 2018, I do not discern any

support from him for the proposition that an Article 15(c) risk continues to exist in Saladin Governate.

47. In paragraph 14 of his supplementary report, he makes reference to the Iraqi Federal authorities retaking control of Tuz Khormato, “*forcing thousands of Kurdish families to flee.*” But he does not give a date for when this occurred, and the only source identified in the footnotes for the information given in paragraph 14 is an article published on 2 August 2017. This article was published only a month after the article at AB 70 was published, reporting a stable power-sharing arrangement. So Professor Joffe may be referring back to an earlier event, such as that alluded to in the news article of 15 February 2017 at AB 73, which reported that 2,500 Kurds had fled the city due to atrocities committed by the PMF.
48. But even if I am wrong about this, the claimant does not assert past persecution by the PMF (AIR Q&A 86). A notable feature of the claimant’s account is that even though he resided in the city throughout the highly turbulent years of 2015 and 2016, he and his family were not prevented from leading a relatively normal life by the power struggle between the Kurdish Peshmerga and the PMF, and the consequential sectarian violence. The claimant complained in his interview about harassment by the PMF, but not persecution, and this was in the context of him asserting that there used to be Peshmerga forces in the city, but they were kicked out, and so the only security force was the PMF (Q&A 123). So there is no reason to suppose that the retaking of control of the city by Iraqi Federal authorities, thus restoring the *status quo ante*, would have precipitated his family’s flight from the city.
49. Ms McCarthy submits that the general security situation in Saladin Governate has deteriorated over the past year. At 8.1.2, the CPIN states that, as of October 2018, Iraqi security operations were ongoing in a number of provinces, including Saladin, against IS (aka “ISIL” or “ISIS”) fighters. These operations were intended to disrupt IS fighters’ efforts to re-establish themselves and keep them separated from population centres. At paragraph 8.1.5, a report in July 2018 said that IS had lost all of its urban strongholds in Iraq, including Mosul. However, the recent surge in IS activity indicated that the group was now pursuing its old ‘hit and run’ tactics in Iraq. Although most recent attacks had been on relatively small targets, IS carried out a number of larger operations against Iraqi forces and Shia militias in Saladin Province in May and June 2018. These challenged the Iraqi authorities’ claim that the situation in Iraq was stable and back under their control.
50. However, what is said at section 8 of the CPIN needs to be set in a broader context. At section 2, it is said that since 2015 ISIL’s territorial control has collapsed and their operational capabilities has been significantly degraded. The Iraqi Government officially declared victory against ISIL in December 2017. The threat from ISIL has not disappeared entirely, but the group were confined to small pockets and the conflict has changed in nature from open conflict to periodic asymmetric attacks by ISIL against

Iraqi security forces, the Shia militia PMF and the Kurdish Peshmerga re-established control of most of Iraq's territory. Since 2014, security incidents, fatalities and injuries had significantly declined across all governorates. The number of security incidents was at its lowest for 15 years. Saladin Province is identified as one of a number which have shown a consistent and significant decline in security incidents and civilian fatalities and injuries. Current numbers are said to be typically tens of times lower than they were in mid-2014. Since 2015 displacement had significantly declined, and there has been a significant increase in people returning to their homes.

51. Following **SG (Iraq) -v- SSHD [2012] EWCA Civ 940**, decision makers and Tribunal Judges are required to take Country Guidance determinations into account, and to follow them unless there are very strong grounds supported by cogent evidence, are adduced justifying that they are not doing so. I consider that there are very strong grounds supported by the cogent evidence in the CPIN to depart from the country guidance assessment made in March 2015 that Saladin Governorate engages the high threshold of Article 15(c). I consider that there is no longer such a high level of indiscriminate violence in Saladin Governorate such that substantial grounds exist for believing that the claimant would, solely by being present in Tuz Khormato or anywhere else in the province, face a serious and individual threat to his life or person.
52. Accordingly, in theory at least, the claimant can safely return to his former home area of Iraq, and does not need to internally relocate to the KRI. But the claimant needs his CSID, or a replacement, in order to travel safely from Baghdad to his home area. So, the issue is whether there are substantial grounds for believing that the claimant genuinely does not have access to his CSID; and, if not, that he is genuinely unable to call upon family members in Iraq to provide the assistance that is required to obtain a replacement CSID.
53. The claimant's evidence about the whereabouts of his CSID and his professed inability to contact family members in his home area (or elsewhere) was the same in the First-tier Tribunal as it is now, namely that he had handed over his passport and CSID to the agent while in transit; and that, after arriving in the UK, he tried to contact his maternal uncle by telephone without success, and that he had lost contact with his mother who did not have her own mobile telephone anyway. However, this evidence was rejected by the First-tier Tribunal. Judge Malik did not accept that the claimant had left Iraq with his mother, and he found that there was nothing to suggest that he could not resume contact with his family in Iraq and seek their assistance in obtaining the necessary information required to obtain the documents to prove his identity. As he rejected the core of the claimant's claim, he did not accept that the claimant's paternal uncle and stepfather (he had married the claimant's mother after she was widowed) had disappeared from the city, and hence was not contactable. Similarly, he did not accept that the claimant could not contact his maternal uncle or mother in Tuz Khormato.

54. The Judge did not make a specific finding on the claimant's evidence that he was not currently in possession of a passport or CSID as he had handed over these documents to the agent before crossing the border into Turkey. Ms Everett invited me to disbelieve this evidence. On the detailed account of his journey which he gave in his oral evidence before me, the claimant did not need his passport – and still less his CSID – in order to undertake his journey to the West, including making an illegal and clandestine crossing of the border into Turkey; and having these documents in his possession was going to constitute a significant impediment to the claimant making a successful protection claim down the line, as the claimant is likely to have known – or at least he is likely to have known that it was going to be advantageous to be undocumented. I also note that in his screening interview the claimant said that he had lost his passport in Turkey, not that he had given it to the agent. He also did not mention parting company with an ID card at this juncture. Having regard to the preserved adverse credibility findings made by Judge Malik, I am not persuaded to the lower standard of proof that it is true that the claimant took his CSID with him, rather than leaving it behind in the family home.
55. The claimant has also not discharged the burden of proving to the lower standard of proof that he is genuinely unable to contact the family members he left behind in the city, with the consequence that they are unable to send him his CSID or to provide him with accommodation on his return.
56. I do not consider that the claimant's correspondence with the Red Cross has any probative value since it is not suggested that he has asked the Red Cross to find his mother in his former home area. On the topic of contacting his maternal uncle, the claimant has not given a consistent account. In his witness statement dated 22 August 2017 he said he had tried to contact him, *"but the number is switched off"*. He gave a different account in his statement dated 17 September 2018. The implication of this latest version of events is that the telephone was not switched off, but had been commandeered by another person who spoke in Arabic. It is also highly significant that the claimant does not profess to have tried to contact his paternal uncle and stepfather, who ran a garage on the outskirts of Tuz Khormato on the motorway running towards Kirkuk. Of course it is implicit in the claimant's core claim that his paternal uncle is uncontactable, as he was kidnapped by ISIL. But, since the First-tier Tribunal rejected the core claim, it follows that the claimant has not discharged the burden of proving to the lower standard of proof that he does not have a contactable male family member in Tuz Khormato who can send him the CSID which he left behind.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: this appeal is dismissed on all grounds raised.

### **Direction Regarding Anonymity**

**Unless and until a tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.**

Signed

Date 29 January 2019

Deputy Upper Tribunal Judge Monson