



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06694/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 12 November 2020

Decision & Reasons Promulgated
On 25 November 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A K M A C
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Mr A Joseph instructed by Crowley & Co Solicitors

DECISION AND REASONS

1. I make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the respondent (AKMAC) who claims asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the respondent. Any disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.
2. Although this is an appeal by the Secretary of State for convenience I will refer to the parties as they appeared before the First-tier Tribunal.
3. This is the determination of the Upper Tribunal re-making the decision in respect of the appellant's appeal following my earlier decision (sent on 4 September 2020) in

which the Upper Tribunal set aside the First-tier Tribunal's decision to allow the appellant's appeal.

Introduction

4. The appellant is a citizen of Iraq who was born on 22 July 1950. She came to the United Kingdom on 15 June 2015 with entry clearance as a visitor. On 17 June 2015, she claimed asylum. On 7 December 2015, the Secretary of State refused her claim for asylum, humanitarian protection and on human rights grounds. She appealed to the First-tier Tribunal and in a determination sent on 1 August 2016, Judge N J Bennett dismissed her appeal on all grounds. In addition, the judge considered an appeal by the appellant's adult son ("E") and also dismissed his appeal on all grounds.
5. On 12 February 2019, the appellant made a further claim for asylum. On 20 June 2019, the Secretary of State again rejected the appellant's claims for asylum, humanitarian protection and on human rights grounds.
6. The appellant appealed to the First-tier Tribunal. In a decision sent on 23 September 2019, Judge Trevaskis allowed the appellant's appeal on asylum grounds and also under Art 8 of the ECHR.
7. The Secretary of State sought permission to appeal to the Upper Tribunal against that decision which was granted by the First-tier Tribunal (Judge J M Holmes) on 5 November 2019.
8. Following a remote hearing held at Cardiff Civil Justice Centre on 6 August 2020, in a determination sent on 4 September 2020, I concluded that Judge Trevaskis had erred in law in allowing the appellant's appeal on asylum grounds. I set aside that decision and adjourned the hearing in order that it could be re-listed in order to re-make the decision.
9. That hearing was listed before me on 12 November 2020. The hearing took place via Skype for Business. I was based in the Cardiff Civil Justice Centre and Mr Joseph, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business. In addition, "E" (the appellant's son) gave evidence, with the assistance of an interpreter, via Skype for Business.

The Issues

10. In his determination, Judge Trevaskis found that the appellant would be at risk in her home area (Baghdad) for a Convention reason, namely her imputed political opinion and/or her religion because:

"There is clear evidence to show that Sunni Muslims are at real risk of persecution by Shiite militia and the appellant would be at even greater risk as a lone and older female".

11. The judge then went on to find that there would not be a sufficiency of protection in Baghdad (para 61) and that internal relocation could not be expected of her as she would be returning as a lone and older female, with no family or friends to assist her (see paras 62 and 63).
12. It was conceded at the earlier hearing by Mr Howells that if the appellant were a lone returning woman then she should succeed in her refugee claim as she would be at risk in Baghdad (on Judge Trevaskis' findings) and it was not suggested by the Secretary of State that she could internally relocate in those circumstances. That concession was maintained by Mr Howells before me.
13. The principal reason why I set aside Judge Trevaskis' decision was that in concluding that the appellant would be a returning lone woman, he had restricted his consideration as to whether her son, "E" would be involuntarily removed to Iraq as he had no lawful basis to be in the UK since his earlier appeal (together with the appellant's earlier appeal) was dismissed in August 2016. Judge Trevaskis found, and this finding was upheld in my earlier decision, that despite "E" being removable, as he had not been since 2016 it was to be inferred that he would not be involuntarily returned. However, Judge Trevaskis did not consider whether "E" would voluntarily return with his mother which was relevant to the principal issue, on the basis of the Secretary of State's concession, that she could not be expected to return to Iraq as a lone, unaccompanied woman in her circumstances.
14. Before me, as I have already said, Mr Howells maintained the concession he had made at the earlier hearing that, taking into account Judge Trevaskis' findings which were unaffected by his error of law, if the appellant were to return to Iraq as a lone, unaccompanied woman then she would be entitled to refugee status.
15. The main issues in the appeal are, therefore:

- a) Will the appellant's son, "E" voluntarily return to Iraq with her?

If he will not, Mr Howells conceded that the appellant's appeal should be allowed on refugee grounds.

If, however, I find that "E" will return with his mother, the parties are agreed that the issue is, in the light of Judge Trevaskis' findings in relation to the appellant's home area, whether she could internally relocate now with her son "E" (and, perhaps, his accompanying family).

- b) As regards internal relocation, in his submissions, Mr Howells offered two potential places of relocation.

First, he contended that the appellant could internally relocate to the 'Sunni triangle' which includes Ramadi, Tikrit, Samara and Faluja.

Secondly, he contended that the appellant could internally relocate to the IKR.

- c) Finally, the appellant continued to rely upon Art 8 of the ECHR, in particular para 276ADE(1)(vi) and that there are “very significant obstacles” to her integration in Iraq and her removal will breach Art 8 outside the Rules.

The Evidence

16. In addition to the preserved findings made by Judge Trevaskis, the appellant relies upon the evidence of “E”, her son. He lives in the UK with his wife (who is a doctor) and their two children. At the hearing, “E” gave evidence, in a written statement dated 14 October 2020 and orally, before me.
17. In his written statement, “E” gave evidence about a medical condition suffered by his 11-year-old son. He has a condition known as Thalassaemia major. This required his son to have a stem cell transplant three years ago from his sibling. In his statement, “E” says that this requires his son to have lifelong medical follow-up because he was treated with chemotherapy that could cause long term side effects on his heart, liver and kidneys. He says that this type of care is not available in Iraq due to the poor state of the healthcare system there and that there are no existing bone marrow transplant centres to deal with the follow-up required by his son. He gives as an example of the regular care needed by his son, that last year his iron levels were way above normal and that caused an iron accumulation in his liver which was a serious problem. It was dealt with promptly by medical treatment and close follow-ups have lasted for eight months. He also points out that, due to the chemotherapy treatment, in order to deal with any future infertility of his son, frozen testicular tissue has been taken and kept so that his son may be able to start a family in the future.
18. “E” says that his mother and wife do not get along. He says his wife would not accept living with his mother nor offering her any help as she is very busy with their sick child and also their younger son.
19. “E” says that he would not return voluntarily to Iraq to accompany his mother.
20. In cross-examination “E” was asked questions covering a number of areas. “E” said that he was not in contact with anyone in Iraq and his wife’s family were all living in Turkey. He said that all of his family had left Iraq: he, his wife, his mother and his sisters all lived in the UK.
21. “E” confirmed that his older son had his condition, Thalassaemia, when they were in Iraq. He said that he used to go to have his blood changed every four weeks. He said that his son had a bone marrow transplant in the UK and that he was still under the “control” of his doctors. The treatment had effects on his son such as causing damage to his kidneys, heart and lungs, and that he needed observation and follow-up. When he was asked whether medication and treatment was available in Iraq, “E” said that it did not exist in Iraq, there were no medical centres for such surgeries in Iraq, by which he meant bone marrow transplant centres.

22. "E" was asked about a letter from Dr Lawson, a Consultant Paediatric Haematologist dated 15 July 2016, and which predated the transplant, but said that there was "approximately 90%-95%" cure rate. "E" said that there had been a transfer of cells from his son's brother but his son still needed care and follow-up and checks. He said he needs an MRI. He was asked about up-to-date medical evidence and "E" said that he had provided it. He said that his son had his next appointment on 3 December.
23. "E" was asked about his family. He said that he had two sisters in the UK who were doctors. He agreed that they provided the appellant with financial support. His mother lives with one of his sisters and her family. He was asked why they could not provide financial support if his mother returned to Iraq, and "E" said that her problem was not financial. She is an old woman of 70 years. He asked, rhetorically, who would look after her. She would be living by herself in Iraq and suffers from many health problems. She now lives with his sister in the UK who has responsibility for everything related to her. He agreed that he spoke twice or once in two weeks to his mother. He was asked if he was close to his mother and he said "yes because she is my mother". He was asked whether she had a pension from her job as a headteacher in Iraq and "E" replied that she did not. Because she left Iraq and the security circumstances were unstable over there she lost everything. When asked whether she had been receiving a pension until she left, he said he did not know; he could not remember.
24. "E" said that he had a degree in Computer Science from Iraq. He agreed that he had worked for a US company in Iraq in IT. He said that he had had this job for approximately five years. He had never worked in the UK.
25. "E" was asked whether he would return with his mother to Iraq. He said "No. I can't. I can't escort her". He was asked why he would let her go back to Iraq without a male relative and he said that he could not go back. First, he pointed out the health condition of his son and that if they returned to Iraq with his mother it would be, words to the effect, a death sentence for him. Secondly, "E" said that his wife did not accept his mother. She could not support his mother. He was asked why, as the mother's eldest son, he did not have a duty to look after and protect his mother. He said that his older sister was the one who took care of his mother. He said he had an ill son.
26. "E" agreed that he had no immigration status in the UK and he had made no further application since his appeal had been dismissed in 2016. He said that was because he had been "very busy" with the health condition of his son and pointed out that even now his son had an appointment with doctors at Birmingham.
27. Mr Howells asked "E" if, on the assumption he returned to Iraq voluntarily, why they could not live in a Sunni dominated area in Iraq. "E" said they could not do that because all the country was insecure. In addition, the health system in Iraq has collapsed completely. He referred to what he had said earlier that there were no

bone marrow transplant centres in Iraq and expressed the view of how could he take his son back there if appropriate care was not available.

28. Finally, "E" was asked why they would not, if he returned voluntarily, be able to relocate to the IKR. He said that they could not live there. That was semi-separated from Iraq and even in Kurdistan they did not have appropriate healthcare for his son's condition.
29. In addition, the appellant relied upon a number of documents which, without objection from Mr Howells, I admitted under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The first was a letter from the Birmingham Children's Hospital NHS Foundation Trust dated 15 July 2016 signed by Dr Sarah Lawson, a Consultant Paediatric Haematologist. This relates to the health condition of "E's" older son. Secondly, a letter from the Oxford University Hospital NHS Foundation Trust dated 27 June 2019 relating to storage of testicular tissue of "E's" older son. Thirdly, a letter from Birmingham Women's and Children's NHS Foundation Trust dated 27 June 2019 from Dr Lawson relating to possible abnormalities in the liver function tests of "E's" older son. Finally, there is an NHS letter dated 21 March 2020 identifying the potential dangers to "E's" son arising from COVID-19.

The Law

30. In relation to the appellant's asylum claim, relying upon the Refugee Convention (Art 1A(2)), the appellant must establish that there is a real risk or reasonable likelihood that on return to Iraq she will be persecuted for a Convention reason. The relevant Convention reason relied upon in this appeal is imputed political opinion and religion.
31. It is accepted in this appeal, based upon the preserved findings from Judge Trevaskis' decision, that the appellant has established that she is at real risk of persecution from Shia militia for a Convention reason, namely her imputed political opinion or religion, if she returned to Baghdad.
32. The principal legal issue is whether she can reasonably and without undue harshness be expected to internally relocate within Iraq which, on Mr Howells' submissions, means either to the 'Sunni triangle' or the IKR.
33. In respect of 'internal relocation', para 399O of the Immigration Rules (reflecting Art 8 of the Qualification Directive) is as follows:

"399O(i) The Secretary of State will not make:

- (a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
- (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

34. There are two limbs:

(a) will the appellant be exposed to a real risk of serious harm in the place of proposed internal relocation?; and

(b) if not, will it be reasonable (or unduly harsh) for the appellant to live in the place of proposed relocation?

35. The approach to 'reasonableness' and 'undue harshness' was analysed by the House of Lords in Januzi v SSHD [2006] UKHL 5 and AH (Sudan) v SSHD [2006] UKHL 49. The Court of Appeal provided a helpful summary of the law, drawing together the earlier cases, in AS (Afghanistan) v SSHD [2019] EWCA Civ 873. At [61] Underhill LJ (with whom King and Singh LJJ agreed) said:

"61. I start by summarising the essential points, so far as relevant to this appeal, established by the authorities about the nature of the exercise required by article 8 of the Directive. I emphasise that this is not intended as a comprehensive analysis of all the issues raised by the authorities to which I have referred.

(1) By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of article 15 of the Directive (which includes treatment which would be contrary to article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.

(2) The ultimate question is whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, ... it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so". That is the formulation of Lord Bingham in *Januzi*, repeated in *AH (Sudan)*. It pre-dates the Directive and is not identically worded: in particular, the reference to whether relocation would be "unduly harsh" is not present in article 8 but derives from the UNHCR 2003 Guidelines (see *Januzi*, para. 20). But it was common ground before us that it states the test required by article 8 [of the Qualification Directive]. When in doubt it is to that question that tribunals should return.

(3) The test so stated is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge - this being the ratio of *Januzi*). It requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (*AH (Sudan)*, para. 13). This is the same as Lady Hale's description of the necessary assessment as "holistic" (*AH (Sudan)* paras. 27-28).

(4) One way of approaching that assessment is to ask whether in the safe haven the applicant can lead "a relatively normal life without facing undue hardship ... in the context of the country concerned". That language derives from the UNHCR Guidelines and is quoted by Lord Bingham with approval in *Januzi* (para. 20) and also used by Lord Hope (para. 47); but it does not appear in the Directive or in Lord Bingham's formulation of the test, and it should not be treated as a substitute for the

latter. Rather, it is a valuable way of approaching the reasonableness analysis – "one touchstone", as Lord Brown puts it (*AH (Sudan)* para. 42). Its value is because if a person is able to lead in the safe haven a life which is relatively normal for people in the context of his or her own country, it will be reasonable to expect them to stay there (*AH (Sudan)*, para. 47).

(5) It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. That is part of what is decided by *Januzi* itself, and the passages quoted at paras. 34 and 35 above reinforce it. It is also vividly illustrated by the outcome of *AH (Sudan)*, where the House of Lords upheld the decision of the AIT that it was reasonable for Darfuri refugees to be expected to relocate to the camps or squatter slums of Khartoum. That may seem inconsistent with the suggested approach of asking whether the applicant would be able lead a "relatively normal life" in the safe haven; but the reconciliation lies in the qualification "in the context of the country concerned".

(6) Point (5) does not mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly harsh: this is the point emphasised by Lady Hale in *AH (Sudan)* and is exemplified by *AA (Uganda)*.

(7) The UNHCR Guidelines contain a full discussion of factors relevant to the reasonableness analysis. These are described by Lord Bingham as "valuable" and partly quoted by him (*Januzi* para. 20); and at para. 20 of her opinion in *AH (Sudan)* Lady Hale endorses a submission made in that case by UNHCR which summarises the factors in question. A decision-maker must consider those factors, so far as material, in each case (though it does not follow that everything said in the detailed discussion in the Guidelines is authoritative).

(8) The assessment must in each case be conducted by reference to the reasonableness of relocation for the particular individual."

Findings

36. I first deal with the issue, and upon which the appeal was principally re-listed in order to re-make the decision, whether the appellant will return to Iraq as a lone, unaccompanied woman.
37. Judge Trevaskis found, and this finding is preserved, that there is no reasonable prospect that "E" will be involuntarily removed to Iraq so that he (and perhaps his family) would be available to provide support to her. The issue now is whether he will voluntarily return and accompany her.
38. Mr Howells submitted that "E" had given three reasons why he would not return to Iraq.
39. First, "E" feared Shia militia. However, Mr Howells pointed out that Judge Bennett, in the first appeal involving the appellant and "E", had not believed their specific account of being abducted and attacks on their family home. Nevertheless, Mr Howells recognised that Judge Trevaskis had found that the appellant had a well-founded fear of Shia militia in Baghdad. However, he submitted there was no evidence before the UT that the appellant and "E" were at real risk from Shia militia if they relocated outside Baghdad to a Sunni area.

40. Secondly, Mr Howells submitted that as regards the medical condition of "E's" older son, he had this condition in Iraq. The letter from Dr Lawson dated 15 July 2016 indicated that there was a very good prospect of cure through transplant from a younger sibling. The letter said 90% to 95% chance of being cured. Mr Howells accepted that there was limited post-operative evidence, following the bone marrow transplant, Dr Lane's letter referred to the option of tissue storage because of the impact of treatment on his son's fertility. The most recent letter of 27 June 2019 from Dr Lawson referred to abnormalities in his son's liver function tests. Mr Howells submitted that "E" had made assertions about the need for follow-up care but there was no supporting medical evidence of this.
41. Thirdly, Mr Howells submitted that "E's" third reason, namely that his wife would not agree, was not a persuasive reason. Mr Howells submitted this was not a reason why "E" would allow his mother to be alone in Iraq.
42. Mr Howells invited me to find that "E" had not given a persuasive explanation why he would not go with his mother to Iraq. He invited me to find that for cultural reasons "E" would not allow his mother to return alone.
43. On behalf of the appellant, Mr Joseph submitted that "E's" evidence could not be clearer: he would not go back. Mr Joseph submitted that "E" had given several persuasive reasons to support this view. He pointed out that the appellant had never lived with "E" in the UK. She was living with her daughter(s) at different times and "E" had never taken any responsibility for her in the UK. Mr Joseph submitted that the evidence was that they hardly saw each other. She lived in Cardiff and he lived in Derby.
44. Further, Mr Joseph invited me to accept the medical evidence albeit that it is limited. But, he submitted, it 'paints a picture'. The letter of 15 July 2016 noted that there was a 90% to 95% chance of cure but also said that there was a need for lifelong follow-up. The letter of 27 January 2017 showed the impact upon "E's" son's fertility as a result of the treatment. The letter of 27 June 2019 showed that there were liver complications.
45. Mr Joseph submitted that what was important was "E's" belief whether it was justified or not. He said that there was no bone marrow centre in Iraq and that was his genuine belief. Mr Joseph submitted that if "E" had to make a choice, he had already made it albeit that it was not an easy decision but it was a very human response.
46. Finally, Mr Joseph submitted that "E" had said that his wife did not get on with his mother and did not want to care for her, whether or not that was borne of any animosity, it was consistent with his wife's care of their son given his condition.
47. Mr Joseph invited me to find that "E" would not voluntarily go back to Iraq with the appellant and that, therefore, she would return as a lone female which, it was accepted by the Home Office, if that was the case then the appellant was entitled to refugee status.

48. Whilst Judge Bennett dismissed “E’s” appeal, and did not accept the claim then made by the appellant and “E” of Shia attacks directed against them, it was not suggested to me that Judge Bennett made a general adverse credibility finding. Indeed, as Judge Bennett pointed out at para 50 of his decision, “E’s” claim was dependent on the first appellant’s claim “in terms of credibility” because he was not at home when the kidnap and attack was said to have occurred. There were, however, unsatisfactory aspects in their evidence (see paras 67 and 68 of Judge Bennett’s determination) and I bear that fully in mind in reaching my findings in relation to “E’s” evidence before me.
49. “E” gave his oral evidence clearly and without any significant inconsistency. Mr Howells did not seek to rely on any inconsistencies in “E’s” evidence but rather sought to contend that his reasons for not voluntarily returning to Iraq should not lead me to accept his clear and unequivocal position that he would not return, accompanying his mother.
50. Having heard “E” give evidence, I am satisfied that he was seeking to tell the truth and gave honest evidence as to whether he would return to Iraq. His son has, undoubtedly, suffered from a very serious medical condition that has required significant and serious treatment in the form of a bone marrow transplant from a sibling. Bearing in mind, as Mr Howells submitted, there is limited medical evidence, nevertheless that bone marrow transplant is not in doubt as, indeed, is the need for “E’s” son to have follow-up care even if, as appears to be the case, the transplant is successful. The letter of 27 June 2019, refers to “E’s” son undergoing a “recent MRI scan” and that he had abnormalities in his liver function tests. The letter goes on to propose a treatment for this which involves “taking a certain amount of blood from him approximately every four weeks and this avoids a potentially toxic medication”.
51. The ongoing care and need for follow-up is, no doubt, a continuing concern for “E” and his wife, who is herself a doctor. Even in the absence of positive evidence relating to the availability of follow-up treatment in Iraq, I accept “E’s” evidence that he believes there is none. In my judgment, this is a significant factor that supports “E’s” evidence that he would not return to Iraq with his mother.
52. Further, I accept “E’s” evidence as to his family’s circumstances. The appellant has never lived with “E” and his wife. She has lived with her daughters, presently living with her elder daughter in Cardiff. The appellant’s bundle for the First-tier Tribunal hearing contains a statement from the appellant’s daughter dated 21 August 2019 (at pages 5-7). In that statement, her daughter makes plain that the appellant lives with her and her own daughter (the appellant’s granddaughter). It notes that the appellant has mental health difficulties, and that her physical health is “in a very bad state”. The appellant’s daughter provides support for her in her daily activities and in her mental health. The statement says that the appellant is “fully dependen[t] on me”. Mr Howells invited me to find that for cultural reasons “E”, as the appellant’s elder son, would be duty-bound to protect his mother by returning with her. There was no evidence of this cultural context. However, even if that were established in

principal, it is plain from the evidence of "E" (which I accept) and the appellant's daughter (which I also accept) that, in this family, it is the appellant's daughters who provide the support and care for her. While "E" accepts that he is close to the appellant because she is his mother, in fact their contact is limited – one living in Cardiff and the other in Derby – and that they speak on the telephone twice or once in two weeks. The intra-family support comes from the appellant's daughters and not "E". Perhaps connected to this is the fact, as "E" told me, that his wife does not get on with his mother and would not be prepared to live with her or support her. Whether or not that has led to the situation in the UK where the appellant's daughters have taken on the role of supporting the appellant, it remains a factor in assessing whether "E" would voluntarily return to Iraq with his mother. It would not be reasonable to expect "E" to return to Iraq without his own family, leaving his wife and son in the UK. Mr Howells did not raise this possibility in his submissions. On the evidence before me, I accept that the family dynamic is such that "E's" wife would not wish to return to Iraq. The reality here is that the appellant's daughters (presently her older daughter) is the person who takes care of her in the UK. "E" has never undertaken that role.

53. Having considered all the evidence, I find that "E" would not voluntarily return to accompany his mother if she had to return to Iraq. In my judgment, the appellant has established that if she is returned to Iraq she would do as a lone, unaccompanied woman.
54. In the light of that finding, Mr Howells accepts that the appellant has established that she is entitled to refugee status. She is at real risk of persecution for a Convention reason in Baghdad and could not reasonably be expected to internally relocate within Iraq as a lone, unaccompanied woman.
55. For that reason, the appeal is allowed on asylum grounds.
56. In the light of that finding, it is not strictly necessary to determine whether the appellant could internally relocate if "E" (and perhaps his family along with him) voluntarily returned to Iraq. However, I heard detailed submissions from both Mr Howells and Mr Joseph on this issue and so I will reach findings on the counterfactual position that "E" does return to Iraq with the appellant.
57. Mr Howells first suggested that the appellant (together with "E") could internally relocate to the so-called 'Sunni triangle'. He accepted that in SMO and Others ((Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) at [425(47)] the UT concluded that internal relocation to a formerly contested area (which included the 'Sunni triangle') was unlikely to be either feasible or reasonable unless the individual had a prior connection to, and a support structure within, that area.
58. Nevertheless, Mr Howells submitted that following SMO and Others, there was no general Art 15(c) risk in the 'Sunni triangle'. There were no particular circumstances which, applying the 'sliding-scale' assessment, put the appellant particularly at risk of indiscriminate violence as she would not be a woman returning without family

support. Mr Howells accepted the earlier evidence that the appellant suffered from mental health problems. The evidence before Judge Trevaskis, which was not disputed, was that the appellant suffered from vertigo, hypertension and depression. That was spoken to both in her written statement and oral evidence given by the appellant's daughter who is a doctor. Mr Howells submitted, however, that there was no up-to-date medical evidence in relation to the appellant.

59. Further, he submitted that there was no difficulty with documentation such as possession of a CSID perhaps because the family had come to the UK with valid passports.
60. Mr Howells submitted that the family had clearly been prosperous and was an educated family. He submitted that the appellant would be able to rely on financial support from her daughters in the UK. "E" had a Computer Science degree from Iraq and had previously worked for five years in IT with a US company and he had good prospects, Mr Howells submitted, in finding a good job with a reasonable salary on return. He submitted that, despite what was said in SMO and Others at [425(47)], the appellant and "E" would relocate with certain advantages.
61. Further, Mr Howells submitted that the appellant (and "E") could relocate to the IKR. He relied on para [425(58)] of SMO and Others, that recognised that non-Kurds could relocate to the IKR. They did not require a sponsor and Erbil and Sulaymaniyah were recognised as "accessible for such individuals". However, he recognised that the UT had said that "particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable". Mr Howells relied upon the submissions he previously made concerning financial support from the appellant's daughters in the UK and "E's" ability to obtain work. She would not become destitute.
62. Mr Joseph reminded me that Judge Trevaskis had found that the appellant would be at risk in Baghdad and that she had no accommodation there; her former house was no longer available. As regards the 'Sunni triangle', Mr Joseph pointed out that they had no prior support network there. "E" had said that there were no other family members available in Iraq. He accepted that, to some extent, they might return in a more privileged position, but there was no evidence that the daughters in the UK would continue to support the appellant in Iraq. That, he submitted, may not be possible. Further, the fact that "E" had a degree did not mean that he was going to obtain a job. Mr Joseph submitted it was not reasonable and it would be unduly harsh for the appellant to relocate in Iraq.
63. As regards the so-called 'Sunni triangle', that is a formerly contested area. In [425(47)] the UT recognised that if it were safe for an individual to relocate:

"It is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question".
64. I accept Mr Howells' submissions, which were not contested by Mr Joseph in his submissions, that there would be no Art 15(c) risk to the appellant if she internally

relocated to the 'Sunni triangle'. I also accept that the appellant would be likely to obtain financial support from her daughters in the UK. Both are doctors and I see no reason to infer they could not, and would not, provide financial support. It would, in my judgment, be speculative to assume that "E" would be able to obtain employment in Iraq.

65. However, even though the appellant would be returning with her son, "E", financial support alone is not the issue. She clearly suffers from some mental health issues even though there is no up-to-date evidence about that. It was accepted by Judge Trevaskis in September 2019 based, inter alia, upon the evidence from her daughter who is a doctor. I see no reason not to accept that evidence as relevant to the appellant's current health situation. There is also the evidence from her daughter that she requires personal care such as "helping her walk from place to place, bathing her and often driving her to see her sisters and friends if required". The evidence of the appellant's daughter was that the appellant is fully dependent upon her. The appellant would have no accommodation available to her in the place of internal relocation. She has never lived there and, on this I accept the evidence of "E", they have no family in Iraq. Likewise, assuming that she accompanies "E", "E's" wife has no family in Iraq. The guidance of the UT in SMO and Others is that it is unlikely to be either "feasible or reasonable" to internally relocate to a formerly contested area unless a person has (1) a prior connection to that area, and (2) a support structure within that area. Even if the appellant's family returning with her provides a "support structure" once they are there, none of them have any prior connection to the area of proposed internal relocation. Their home area is Baghdad. In my judgment, looking at the circumstances of the appellant as a whole in the 'Sunni triangle' if she relocated there, it would not be reasonable and it would be unduly harsh to expect her to live there even if accompanied by "E" (and his family).
66. In relation to internal relocation to the IKR, for non-Kurds the UT in SMO and Others noted that there were no entry or residence requirements to live in Erbil and Sulaymaniyah as a non-Kurd returnee but that "particular care" must be taken in evaluating whether internal relocation for a non-Kurd was reasonable. The UT added:
- "Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there".
67. The appellant (and "E") would have no support network in the IKR. They are not Kurdish and have no prior connection to the IKR. Even for Kurds, the UT noted the problems in securing employment in an area where "patronage and nepotism continue to be important factors" (see [425(57)]). That was said in the context of a returning Kurd who seeks to internally relocate to the IKR. The position of non-Kurdish returnees would, in my judgment, for all the reasons I have given why it would be unreasonable and unduly harsh for the appellant to internally relocate to the 'Sunni triangle', plainly be unreasonable or unduly harsh for her to internally relocate to the IKR as a non-Kurd.

68. Consequently, even if “E” were to return to Iraq with the appellant, I am satisfied that internal relocation is not a reasonable option.
69. The remaining claim relied upon by the appellant is Art 8 of the ECHR.
70. Mr Howells submitted that there were not “very significant obstacles” to her integration so that para 276ADE(1)(vi) of the Immigration Rules did not apply. Further, as regards her claim outside the Rules, she had established private and family life in the UK – the latter, in particular, with her daughter with whom she lived and upon whom she is dependent. He submitted that any interference was proportionate given the public interest under s.117B(1) of the Nationality, Immigration and Asylum Act 2002 (as amended) and that her “private life” should be given “little weight” as a result of s.117B(5). “E”, her son, would, of course, on this scenario be returning with her to Iraq.
71. Mr Joseph submitted that para 276ADE(1)(vi) did apply. He relied upon A’s medical condition which had not been disputed before Judge Trevaskis that she suffered from vertigo, hypertension and depression and needed personal care. He relied, for the first time, upon Appendix FM dealing with adult dependent relatives and submitted that she required long term personal care which she obtained in relation to her day-to-day activities from her daughter. “E” would not be able to provide that care in Iraq. He reminded me of “E’s” evidence concerning his wife’s attitude to the appellant. Mr Joseph submitted that the appellant was fully dependent on her daughter in the UK relying on para 29 of Judge Trevaskis’ decision. Mr Joseph submitted that if the appellant were to make an out of country application she would qualify as an adult dependent relative. Outside the Rules, he submitted that there were exceptional circumstances looking at all the circumstances in the round. In particular, the appellant was not going to have support from her son in Iraq and she had no family there.
72. It is somewhat artificial to consider Art 8, given my previous findings in relation to the appellant’s refugee claim. However, the appellant does succeed under para 276ADE(1)(vi) in establishing that there would be “very significant obstacles” to her integration in Iraq. That decision would follow from the finding in relation to her asylum claim but it also follows, in my judgment, taking the counterfactual of return with her son, “E”. I will express my reasons briefly which should be read together with my reasons in respect of internal relocation.
73. I approach that issue on the basis that there is a high threshold required to establish “very significant obstacles” and also taking an holistic approach to integration (see, e.g. Parveen v SSHD [2018] EWCA Civ 932 and SSHD v Kamara [2016] EWCA Civ 813).
74. The appellant is a 70-year-old woman. She would be returning with her son (and perhaps his family also). I have accepted the evidence of her medical condition, namely that she suffers from vertigo, hypertension and depression. There is also the evidence from her daughter that she requires personal care such as “helping her

walk from place to place, bathing her and often driving her to see her sisters and friends if required". The evidence of the appellant's daughter was that the appellant is fully dependent upon her. Mr Howells, in his submissions, accepted that the appellant was dependent on her daughter following Judge Trevaskis' findings at paras 29 and 68. Judge Trevaskis found that there would be "very significant obstacles" to her integration given her individual circumstances and (on Judge Trevaskis' then finding) that "E" would not return with her. I have also reached that latter finding in considering her return under Art 8 based upon the counterfactual that "E" does return with her. Nevertheless, given the circumstances on her return, I also find, in addition to concluding that internal relocation is not an option for her, that if she were to live in an area where she had no prior connection, albeit with her son "E" (and perhaps his family), there would be very significant obstacles to her integration and her removal would be contrary to para 276ADE(1)(vi) and therefore Art 8 of the ECHR.

75. For these reasons, I would also allow the appeal under Art 8 of the ECHR.

Decision

76. The decision of the First-tier Tribunal to allow the appellant's appeal was set aside by my decision sent on 4 September 2020.
77. I re-make the decision allowing the appellant's appeal on refugee grounds and under Art 8 of the ECHR.



Signed

Andrew Grubb

Judge of the Upper Tribunal
20 November 2020