Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/09561/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 5 November 2020	**On 16 November 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

PL

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an

order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

2. The appellant, a national of Iraq with date of birth given as 15.9.91, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 4.12.19 (Judge Turner), dismissing on all grounds his claim for international protection, first made in 2012 but repeated in further submissions made in 2019. In short, he claimed that he had fled Kirkuk because his life was in danger due to his father's previous association with the Ba'ath Party, for which reason two brothers had been killed, in 2012 and in 2016.

3. First-tier Tribunal Judge Simpson granted permission on 9.1.20, finding it arguable that the decision disclosed a failure to afford the parties and their representatives, primarily the appellant, the opportunity of representations concerning a material matter going to the risk on return, blood feuds in Iraq, and specifically in respect of country background information (CPIN) "*which the judge appeared to have independently sourced and there was further assertion to the exclusion of other relevant information (51, 52)*."

4. On 29.4.20, the Upper Tribunal issued directions proposing that the error of law decision be made without a hearing, granting the opportunity for further written submissions on the grounds of appeal to the Upper Tribunal. In his directions, Upper Tribunal Judge Norton-Taylor observed that, "*it would appear as though the First-tier Tribunal Judge did not simply consider a CPIN that was not relied on by either party, but also failed to consider the appropriate (or at least more appropriate) CPIN relating to blood feuds in Iraq*."

5. Subsequent to the issue of the directions, the Upper Tribunal received the following:

   a. The appellant's further submissions on errors of law in the decision of the First-tier Tribunal, dated 5.5.20, but raising from [22] onwards two further grounds in respect of which permission has not been sought or granted;

   b. A separate document of the same date submitting that an oral hearing was necessary, stating that the appellant wished to be given the opportunity to participate in the proceedings;

c. The respondent's submissions, dated 18.5.20, resist the error of law claims but do not directly address whether this should be determined without a hearing;

d. Finally, the appellant has submitted a reply to the respondent's submissions, dated 18.5.20.

6. Having had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal,* to the *UTIAC Presidential Guidance Note No 1 of 2020*, *Arrangements during the COVID-19 pandemic,* and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), and taking account of the views expressed or not by the parties as to whether to hold a hearing and the form of such a hearing, I was satisfied that it was appropriate to determine the error of law issue without a hearing, for the reasons set out in decision promulgated 1.7.20, including that the primary issue identified in the grant of permission and the Upper Tribunal's directions was eminently capable of resolution on the written submissions and did not require the taking of oral evidence.

7. I found no merit in a second ground of appeal not referred to in the grant of permission, namely that at [43] of the impugned decision the judge relied on an immaterial factor, namely the coincidence of timing between the Home Office's refusal of the appellant's earlier submissions and the request for the production of investigation papers through the appellant's uncle relating to the death of a second brother of the appellant. However, at [49] of the decision the judge accepted that the brother was murdered in 2016 but went on at [56] to reject the claim that this was connected with or related to their father's alleged involvement with the Ba'ath Party. It was is in relation to the death of the second brother that the judge went on to consider a CPIN which had not been before the parties.

8. I also refused permission to add additional grounds which were never previously pleaded and in respect of which no permission has been granted.

9. In relation to the first and primary ground, after considering the written submissions by both parties, I was satisfied for the reasons set out in my error of law decision, promulgated on 1.7.20 and summarised below, that there was a material error in the decision of the First-tier Tribunal which required the decision to be set aside and remade.

The Error of Law Finding

10. As noted at [51] of the impugned decision, the appellant's case as advanced at the First-tier Tribunal appeal hearing was that circumstances relied on by the appellant were tantamount to a blood feud with male members of the family

being targeted because of their father's prior involvement with the Ba'ath Party. After noting that members of the appellant's family had been able to remain in Iraq after his first brother was killed in 2012, and only relocated from Kirkuk after the second brother was killed in 2016, and also observing that the appellant himself remained in Iraq for four months after the first brother was killed without experiencing any personal threats, the judge made reference within the same paragraph of the decision to a CPIN from November 2016 addressing in part the risk to relatives of persons attacked or threatened because of Baathist affiliation. The source cited stated that '*everything is possible*'. The judge observed at [52] that other than that short paragraph and sentence, there was little in that CPIN to suggest that family members of Ba'ath Party members were at risk because of their relative's prior association. The judge also suggested that the passage did not appear to distinguish between male and female relatives. The judge considered that the fact that the appellant's mother had been able to remain in Iraq undermined the claim that the appellant's brothers were killed as a result of the family association with the Ba'ath Party.

11. It follows from the above that CPIN and this reasoning was relied on by the judge to undermine the credibility of this part of the appellant's factual claim and was, therefore, directly relevant to the outcome of the appeal. However, the CPIN referred to was not within the documentation put before the Tribunal by either party. The appellant argued that the judge acted unfairly in relying on this CPIN passage without giving the appellant the opportunity to respond to the point relied on. The grounds also pointed out that other passages within the CPIN provided some (in my view limited) support for the appellant's claim. It was further submitted that the judge should have addressed the more appropriate CPIN on blood feuds, which stated that women and children are unlikely to be victims of blood feuds, which fact arguably provided an explanation as to why the appellant's mother was able to remain in Iraq without being harmed.

12. Although whether the appellant's brothers had been killed because of their father's Ba'ath Party association was at large in the appeal, the ground as drafted concerns whether the judge acted fairly in determine the issue in reliance on material not before the Tribunal at the hearing and in respect of which the appellant has had no opportunity to respond.

13. I was not persuaded as to the materiality of the other extracts from the CPIN relied on by the judge, or of the CPIN on blood feuds relied on by the appellant. The extracts cited by the appellant in the written submissions do not appear to me to bear directly on the risk to relatives of Ba'ath Party members. However, I was satisfied that the reliance on a small extract from the CPIN to suggest that there was no risk to family members of Ba'ath Party affiliates, and

to do so without giving the appellant the opportunity to respond, was unfair. As I stated in the error of law decision, in general it is inappropriate for a judge to conduct any post-hearing research of their own and to rely on any such material identified in this way without affording the parties the opportunities to make submissions on it, such as by reconvening the hearing, is unfair (see EG (post-hearing internet research) Nigeria [2008] UKAIT 00015).

14. I was satisfied that the single error identified was material to the outcome of the appeal, because it went to the credibility of the core factual claim in the appeal. I concluded, however, that this was not a decision that could be remade immediately and issued directions for the future conduct of the appeal, allowing for submissions as to whether the decision could be remade in the Upper Tribunal or would be more appropriately remitted to the First-tier Tribunal, and if retained in the Upper Tribunal whether the decision could be remade in a remote hearing.

The Issue to be Resolved in the Resumed Hearing

15. Having taken into account responses from both parties to my earlier directions, with neither party objecting to the decision being remade in the Upper Tribunal in a remote hearing, on 17.8.20 I issued further directions for the conduct of the resumed hearing.

16. In those directions, I confirmed that the only error of law identified was the judge's reliance on a CPIN extract without affording the appellant the opportunity to respond. As this related to the single issue as to whether the appellant's brothers were killed as a result of the family's association with the Ba'ath Party and whether there was in consequence any risk to the appellant on return to Iraq, I directed that all other credibility findings would be preserved.

Preliminary Matters

17. At the outset of the remote oral hearing, Mr Palmer informed me that whilst the appellant was attending, it was not proposed to call him to give oral evidence. I raised with Mr Palmer some concerns I had with regard to the police documentation that had been produced to the First-tier Tribunal, which I shall further address below. Mr Palmer was given leave to take instructions from the appellant (who was in an adjacent room) on two separate occasions and the hearing was temporarily adjourned for that reason. There was no application for adjournment or request for the appellant to give oral evidence.

Preserved Findings

18. The following findings are either not in dispute or are preserved:

    a. The appellant is an Iraqi national of Kurdish ethnicity;

b. The family home was in Kirkuk, a former contested area;

c. The eldest brother was shot dead in 2012;

d. The second eldest brother was killed in 2016;

e. The appellant has an Iraqi National Identification Card;

f. The appellant's claim as to being unable to redocument himself has been rejected as not credible;

g. The appellant has not lost contact with family members in Iraq and in particular can call upon the practical assistance of his uncle in Sulaymaniyah which is within the IKR in obtaining a CSID either before or shortly after return to Iraq;

19. Very late in the day and outside the time limits set by the directions issued on 17.8.20, the appellant has submitted his consolidated appeal bundle, together with a skeleton argument, dated 4.11.20. This includes the country expert report of Dr Joffre dated 1.11.20, the date of which may explain the delay in compliance with directions.

20. All of these matters have been carefully considered and taken into account, together with the oral submissions made and evidence taken in the remote hearing, before making any findings of fact or drawing any conclusions. I have borne in mind and applied the lower standard of proof when considering the appellant's claims. Whilst I have addressed matters in the order set out below, I confirm that all of the evidence has first been considered in the context of the whole, whether or not specifically addressed below. I have also taken into account and applied the decisions in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC) and SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 004100 (IAC), the latter of which was issued after the impugned decision of the First-tier Tribunal to which the present appeal relates.

21. The appellant is now 29 years of age. He claims to have left Iraq in 2012 at the age of 20 and came to the UK. His claim for international protection was refused by the Home Office and his appeal against that decision dismissed by the First-tier Tribunal in October 2012 (Judge Lea). That decision accepted that the appellant was from Kirkuk and that his eldest brother had been shot dead in February 2012. However, Judge Lea rejected the claim that the family's alleged difficulties in Iraq arose from his father's claimed involvement with the Ba'ath Party; concluding that he would not be targeted on return to Kirkuk and could in any event relocate to the IKR. Judge Lea specifically noted the vagueness of the appellant's account, and that he was unable to provide much detail of what precisely his father's role was.

22. The further submissions made in 2019 relied on a claim that the appellant's second eldest brother had been killed in 2016 at a time when the appellant had been in the UK for approximately 4 years. He also claimed to have lost contact with family members in Iraq and to have no CSID to enable him to return to Iraq. However, Judge Lea had found that the appellant had an Iraqi personal identification card.

23. In summary, the appellant asserts that the killing of a second brother and the expert evidence country background information in the public domain supports his claim that the killing of his brothers is directly linked to their father's Ba'ath Party association and justifies departure from the findings of Judge Lea and which render Judge Turner's decision in error of law.

24. Pursuant to Devaseelan, the starting point is the previous First-tier Tribunal finding that the killing of the eldest brother, the first to be killed, was not related to the claimed association of the father with the Ba'ath Party. However, I have carefully considered whether the evidence now available to the Tribunal, including the fact that a second brother was been killed in 2016, as well as the expert evidence and country background information now available, justifies departure from the previous findings of fact. For the reasons set out below, I reach the conclusion that there is no adequate basis to depart from the findings of Judge Lea and the findings identified above must stand.

The Country Background Information

25. In considering the appellant's claim to be at risk on return because of his father's Ba'ath Party involvement, and his account of his father's role, I have carefully considered the current country background information.

26. Reference in the grounds has been made to the CPIN on Ba'athists, reissued in January 2020, which continues to refer to the now somewhat dated Danish fact-finding mission of 2010. The passage relied on by Judge Turner is repeated at 6.4.5, to the effect that when questioned whether relatives of persons threatened or attacked due to their professional background or Ba'athist affiliation may be at risk from armed groups or criminal gangs, an anonymous 'source' stated that '*everything is possible*.' As Judge Turner inferred, this is not very helpful.

27. However, reference is also made to section 6.4.6 where it is noted that the UNHCR Eligibility Guidelines identified political opponents as a risk category and can be arrested arbitrarily on vague terrorism-related charges, often coupled with accusations of Ba'ath Party ties. In particular, "*there are reports that they also single out Iraqis of various profiles for kidnapping and assassination, including former Ba'athists*."

28. At 6.4.7, the source stated that today members of the former Ba'ath Party or the regimes armed forces or security and intelligence services "*are reportedly no longer systematically singled out for attack by armed groups. They may still be targeted in individual cases, although the exact motivation behind an attack may not always be known. Many former Ba'athists have found new identities as politicians, academics, tribal leaders, or members of the current Iraqi Security Forces (ISF). It is difficult to determine if attacks against them are motivated by their role under the former regime or by the person's present profile.*"

29. I have also taken account of the references from [10] onwards in the skeleton argument to other country background information now relied on by the appellant, including UNHCR reports and the updated CPINs on Iraq Baathists and on Blood Feuds.

30. I accept the country background information that there can be hostility to the Ba'ath Party and its former members. However, it is stated that whilst former members of the government and Ba'ath Party continue to be targeted, the precise motivation is not clear. It also appears from the background information that those targeted are, in general, those who were in positions of authority or seniority.

31. Whilst it is clear that the appellant's mother has never been targeted despite remaining in Iraq, I accept that the CPIN information is to the effect that women and children are unlikely to be the victims of blood feuds; a situation that may have changed more recently. Nevertheless, I do not find any reliable or credible evidence to support the claim of the appellant and/or his family being the victims of a blood feud, or that the circumstances of this case either amount to or are akin to a blood feud. Whilst two brothers have been killed, one in 2012 and the other in 2016, the reasons for those tragic events are neither obvious nor objectively discernible from the evidence before the Tribunal.

32. None of the country background information directly assists the appellant's case. Whilst the information is consistent with risk for former Ba'ath Party officials or those in higher roles, the information does not directly demonstrate or support the appellant claim of his family being targeted because of the father's former Ba'ath Party association and involvement. The Tribunal has to bear in mind, as did Judge Lea, that tens of thousands of Iraqis cooperated with the Regime. Mere assertion of some form of vague role of the father with the Ba'ath Party is inadequate to establish a risk for this appellant, even against the background information and expert evidence. As Mr Tan pointed out, even now the father's role remains unclear but could not have been in a senior role or had a higher profile. The CPIN extracts relied on are suggestive of a risk for those in senior positions or with higher profiles, none of which reflect the account of the father's role, which even taking the appellant's case at its highest could have been no more than an informant. That any risk arises now because

of the father's role is entirely speculative. The assertion that either of the appellant's brothers was killed because of their father's Ba'ath Party involvement is even more speculative. In his witness statement of 23.7.19, the appellant stated, "*I maintain that my brother was killed (by) unknown men but I believe they sought revenge against us due to my father's past activities with the Ba'ath Party. I cannot think of any other reason why would those people attack us and kill my brother other than my father's links and activities with the Ba'ath Party.*" It follows that whilst he may suspect such a link, the appellant does not know and is merely guessing as to the motivation for the two killings.

33. In the First-tier Tribunal appeal hearing before Judge Lea, the appellant's account (summarised at [13] to [14] of that decision) was that his father had been employed by the Ba'ath Regime to spy on people and collect information about those who were anti-Ba'athist. This allegedly led to people he had reported being arrested, detained and sometimes tortured and executed. His father did not wear a uniform, as far as the appellant knew. It is significant that Judge Lea noted that, because of his young age at the time, the appellant did not know a great deal of detail about what his father did.

34. According to the account summarised by Judge Lea, at the time of the allied invasion of Iraq in 2003/2004 the appellant's father disappeared from the family home and the appellant understood he had fled to Syria. At that time, the appellant would have been around 13 years of age. The account given by the appellant was that about 6 years prior to the hearing in 2012 some strange men came to the house as a result of which his family was shaken and upset, but he was not told what it was all about. He claimed that occasionally people would come to the house looking for his father and that this was to seek revenge for what had happened to their loved ones as a result of his father's spying activities. On a number of occasions men in a vehicle with a KDPI flag attended the house to question the family about the whereabouts of his father. On occasion they were violent. There was said to be telephone discussion between one of his brothers and his father, who offered to make peace by paying compensation, but the men wanted him to return in person and threatened the family. I have carefully considered this account in the context of the evidence as a whole but in reality there is little if any support for this account.

35. As stated above, Judge Lea rejected the appellant's factual account of the family being targeted because of the father's Ba'ath Party activity. The judge found that there was not a reasonable degree of likelihood that the father was actually a Ba'ath Party member. The judge considered that there were any number of reasons why his brother might have been shot and killed in 2012. When interviewed, the appellant was unaware whether the shooting of his brother had even been reported to the authorities or any protection sought.

Subsequently, he produced documentation suggesting that the killing had been reported in February 2012, whilst the appellant was still in Iraq. The judge found it not credible that although he was still in Iraq, the appellant was unaware of the reporting of the brother's killing to the authorities. Neither was there any adequate explanation as to why the appellant was to leave Iraq when the next to be targeted would more likely be the second oldest brother. The judge also noted that the appellant had remained in Iraq for four further months without any difficulty. Even then, his leaving was not prompted by any attack or even threat; he was never threatened whilst in Iraq. I find these points made by Judge Lea to have force and remain valid.

36. Taking into account the expert evidence, the country background information, the vagueness of the appellant's account and in particular as to his father's role, there is in reality no credible or satisfactory evidence to support the claim that this first brother was killed because of their father's Ba'ath Party membership or activity. As Judge Lea noted, there could be any number of reasons why the brother was killed, and I am satisfied that the same argument applies to the killing of the second brother in 2016.

37. In summary, I can find nothing in the evidence sufficient to displace the finding of Judge Lea that the killing of the eldest brother in 2012 was not related to any family Ba'ath Party association. Further, on the limited evidence, taken in the context of the whole, including matters referred to below, and applying the lower standard of proof, I am unable to accept that the killing of the second eldest brother in 2016 was in any way related to their father's previous Ba'ath Party association or activity.

The Police Documentation

38. In assessing the credibility of the appellant's claim, I have carefully considered all the documentation adduced in support, including the more recent police documentation in relation to the killing of the second-eldest brother in 2016. Weight to be accorded to evidence is a matter for me to consider. However, for the reasons set out below, I find that only very limited weight can be given to this documentation in support of the appellant's case.

39. Generally, this documentation is of very poor quality, appears to be photocopied, and the dates on the documents vary and are to some extent inconsistent. In the refusal decision, the respondent has pointed out that the documentation includes a judge's investigation dated and stamped 11.4.16, which date in fact precedes the alleged date of death of the second brother on 13.4.16, rendering the document unreliable and, in my view, not credible. It also tends to undermine the rest of the police documentation.

40. The testimony of the appellant's uncle allegedly taken on 26.4.16 asserted that both brothers had been killed a "*while ago*" by a group of unknown gunmen, because his sister's husband, the appellant's father, was a member of the Ba'ath Party who had escaped to Syria, fearing for his life "*because he was a member of the former system of the Ba'athists, also they the gangs claim that their father (of the two killed brothers) has tortured their family and insulted, for that reason they are taking revenge on his family*." The translated document dated 10.10.17 states that the gangs killed both sons and "*chase his family*" but being chased by gangs has not been mentioned by the appellant. The reference to 'gangs' tends to undermine the appellant's case, but in any event confirms that the assassins are unknown persons and does not demonstrate that the killing was related to the father's Ba'ath Party involvement. Even if the documents are accurate, the assertion of motivation by the uncle making the report is no more than that, an assertion. The theory advanced is not supported by the Police or any investigation or other supporting evidence and can be little more than speculation.

41. The documents also include the appellant's uncle's claim that following the shooting, the uncle's brother (KTM) and this appellant had not returned home and "*we did not know their fate*." This is repeated in two separate documents. However, at the time the appellant was in the UK, where he had been since 2012, which fact the uncle well knew. Concerned about this and the general reliability of the documentation, I raised this Mr Palmer at the outset of the hearing, resulting in his taking further instructions. On return, he informed me that the appellant could not account for what the documents as translated state on their face. I also raised concern that the documents relating to the killing of the second eldest brother in 2016 included a map which was marked with the legend, 'location of accident.' Despite further instructions taken, this could not be explained although Mr Palmer suggested that his solicitor's reading of the original suggested the word used could also be translated as 'incident.' I also pointed out to Mr Palmer that in the refusal decision, the respondent had also criticised these same documents, so that the appellant was on notice about the issues. I find that the claim made by the uncle in the police report or complaint about the disappearance of the appellant seriously undermines the reliability and credibility of these documents.

42. In summary, none of the documentation explains how the uncle making the complaint knows that the killing in either 2012 or 2016 was for the reasons stated, particularly when it is made clear that the attack was by unknown gunmen. Neither is it explained why there was an uneventful gap of some four years between the killing of the eldest brother in 2012 and the second-eldest in 2016. There is no evidence that there were any ongoing threats or actions taken against any family member in the intervening period. There is no credible evidence to support the claim that these killings were motivated by the father's

Ba'ath Party role. The issues with the police documentation highlighted above begs far more questions than it answered in support of the appellant's case. I reached the conclusion that the documentation is unreliable and that little weight could be given to it in the overall credibility assessment.

The Expert Report

43. In assessing the claim overall, I have also considered and taken into account the very recent country expert report of Dr Joffe, dated 1.11.20. However, following a long discursive on the history, the part dealing with the appellant's situation is relatively short. Mr Tan made a large number of criticisms of the expert report, including that it does not appear to take into account the February 2020 CPIN on blood feuds, which suggest a resurgence in attacks on women since 2014. Neither does the report engage with the findings of the First-tier Tribunal in 2012. Mr Tan pointed to other deficiencies in the report, including that it is not clear what materials were considered and what specific instructions Dr Joffe was given or what questions he was asked to answer. Mr Tan submitted that the report did not comply with guidelines for expert reports and was worthy of little weight. For the reasons set out below, I found force in these submissions.

44. The first sentence of the first paragraph at [50] of the report makes no grammatical sense. The overall impression created by this report is that it has been rushed and is not a considered assessment or opinion. Whilst the author takes his information from the appellant's witness statements of 23.7.19 and 28.10.19, neither of these demonstrates anything other than the appellant's speculative belief as to the motivation for the killing. In this regard, it is worth noting that according to the expert report it is stated that it is the appellant's belief or suggestion that those responsible, "*were unknown and (he) has suggested that they were either criminals or connected to the Shi'a militias that have now come to dominate the security forces in Kirkuk after the misconceived independence referendum in September 2017*." However, the killings were in 2012 and 2016, not 2017. Not only are the reported facts inaccurate, but it makes clear that even now the appellant is unclear as to the motivation for the attack. The report takes the appellant's belief at its highest and makes no allowance for it being mere speculation rather than fact. Obviously, the assessment and expert opinion has to be based on the appellant's case, but took as fact assertions which have been rejected as not credible, including that he has lost contact with his family. Dr Joffe does not seem to have been apprised of that preserved finding.

45. It follows from the above that various premises relied on by Dr Joffe are incorrect or mere speculative and thereby undermine the reliability of his professional opinion as to the risk to this appellant. By way of further example, at [54(iv)] reference is made to personal threats to the appellant where there is no evidence of any such threats. Secondly, as already pointed out, the

assumption that he had lost contact with his family and would therefore be alone and lack all family support is incorrect. All of the reasoning appears based on the account of risk arising from the father's Ba'ath Party affiliation or activity; without which there is basis for any risk on return.

46. There are further difficulties with the report. At [54(v)] there is a footnote reference to the CPIN on Ba'athists at section 6. However, the sources referred to in the CPIN relate to 2015 and the treatment of high-ranking officials of the Ba'ath Party. For example at 6.1.14 the risk to regular Ba'ath Party members is assessed as minimal. The father's role does not feature in the ranking table at 3.2.4 of the CPIN. In reality the source relied on by the expert report does not support the point being made; it rather appears that limited evidence of risk of mistreatment of senior Ba'ath Party members or officials has been enlarged and expanded by the expert into risk for family members of low-level Ba'ath Party associates. I am not satisfied that the expert has justified this by any adequate reasoning. The CPIN does not in fact support the case of their being any real risk for family members of low-level Ba'ath Party members.

47. More significantly in relation to risk on return, much of the focus of the report where it addresses the appellant specifically, is on his return to Kirkuk and the single sentence suggesting that relocation to the IKR would not be possible is entirely inadequate and unsupported by any evidence or reasoning.

48. In all the circumstances, only limited weight can be given to the expert report.

49. Considering the evidence as a whole, I find that the appellant has failed to demonstrate to the lower standard of proof that either brother's death related to any alleged Ba'ath Party affiliation or involvement by his father or any other family member. I reach the conclusion that there is no real risk for him on return for that or any other reason.

Identity Documentation & Return to Iraq

50. In light of the above findings, there is no risk on return to Iraq for the appellant. It follows that there is no basis for risk for actual or perceived association with the Ba'ath Party or ISIL. Neither is he "*embroiled in a blood feud*" as the grounds assert.

51. Whilst the skeleton argument goes from [21] onwards to address the issue of documentation, this was addressed by Judge Turner from [57] onwards of the First-tier Tribunal decision and I have preserved the findings that the appellant has an Iraqi National Identification document and that his claim to be unable to redocument himself is not credible. It follows that the issue of documentation is not open for debate in this decision. However, I note Mr Palmer's early submission was that the respondent has the appellant's CSID card. Mr Tan was unable to confirm this and when I referred to the findings of the previous

Tribunal, Mr Palmer admitted that he may have confused the CSID with the national identity document referred to. In respect of the appellant's claim to have attended the Iraqi Consulate in Manchester in order to attempt redocumentation, I pointed out to Mr Palmer that it is known to the Tribunal that the Consulate does not deal with documentation and enquiries are referred to the Iraqi Embassy in London. It follows that little significance can be attached to the appellant's claimed attendance at the Iraqi Consulate.

52. In any event, on the evidence I am satisfied that return to Iraq is feasible. The appellant has some form of Iraqi national identity document and with the support of his family either in Kirkuk or the IKR, he will be able to obtain a CSID or other documentation before leaving the UK to enable him to return to Iraq. SMO confirms that most Iraqis will know their registration volume and page details by heart, but even if he does not, his family will be able, either directly or with the use of an agent, obtain a replacement CSID from the Registry in Kirkuk, which is relatively close to the IKR. According to SMO the appellant will likely be able to redocument himself within the UK, as he will have access to all the information listed there as required.

53. As he does not emanate from the IKR the appellant's return will be to Baghdad but with a CSID he can travel onwards either to Kirkuk, if that is his choice, or to the IKR where he will be admitted as a Kurd. Whilst emanates from Kirkuk, he has an uncle in Sulaymaniyah, which is within the IKR, and I have preserved the finding that he has not lost contact with this uncle, so that will have family support and assistance on return and relocation to the IKR, and will not be left destitute or require critical shelter. He is physically able and will be able to seek employment to sustain himself, or pursue further education.

54. In relation to return to Kirkuk, Mr Tan submitted that the level of Article 15(c) violence in Kirkuk has reduced so that there is no risk on return on the appellant's profile; the only possible risk factors are that he is a Sunni Kurd, which is insufficient to establish a risk on return. SMO held that Kirkuk is ethnically diverse, so that he could safely return to his family there. The headnote states, "*Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*"

55. The situation in Kirkuk is more complex, as SMO held. "*Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*" However, the appellant does not have an actual or imputed association with ISIL. Neither do any of the characteristics at [5] of the headnote apply to this appellant. No

evidence was adduced that the conditions now prevailing in Kirkuk were such as to give rise to an Article 15(c) risk of indiscriminate violence. There are no factors relevant to this case which render return to Kirkuk unsafe.

56. Further, SMO held, "*The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD.*" "*With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area.*"

57. It follows that there is no reason why the appellant could not return safely to Kirkuk. However, having considered SMO, I am satisfied that he will also be able to relocate to the IKR, if he chose to do so.

58. Neither human rights nor any other basis for the appeal has been pursued. It follows that the appeal cannot succeed on any basis.

DECISION

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remake the decision in the appeal by dismissing it on all grounds.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 9 November 2020