Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13756/2018 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Remotely by Skype for Business** **On 10 December 2020**	**Decision & Reasons Promulgated** **On 11 January 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

P A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Frost, instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I/we make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. This is the determination of the Upper Tribunal remaking the decision in respect of the appellant's international protection claim following the decision of the Upper Tribunal (DUTJ J F W Phillips) sent on 9 August 2019 setting aside the decision of the First-tier Tribunal dismissing the appellant's appeal.

Introduction

3. The appellant is a citizen of Iraq who comes from Kirkuk City. He was born on 10 February 1991. He is Kurdish.

4. The appellant came to the United Kingdom in March 2008 and claimed asylum. The basis of his claim was that his father was a police officer in Kirkuk City and involved with the Ba'ath Party. His father had been killed and the appellant had subsequently been threatened.

5. On 20 August 2009, the Secretary of State refused the appellant's claim for asylum. The appellant appealed and, in a determination sent on 29 August 2009, Judge Alakija dismissed the appellant's appeal on all grounds. Judge Alakija accepted that the appellant's father was a police officer and a member of the Ba'ath Party. However, Judge Alakija did not accept that the appellant had been targeted because of his father's position and, as a consequence, the judge found that the appellant had not established that he would be at risk on return.

6. The appellant made subsequent submissions which were rejected by the Secretary of State and which, following a number of judicial review proceedings, resulted in a reconsideration. On 12 November 2018, the Secretary of State refused the appellant's claim for international protection.

The Appeal to the First-Tier Tribunal

7. The appellant appealed to the First-tier Tribunal. In a determination sent on 1 April 2019, Judge Fowell dismissed the appellant's appeal. The appellant did not pursue any asylum claim before Judge Fowell relying, instead, upon Article 15(c) of the Qualification Directive (Council Directive 2004/83/EC) and Articles 3 and 8 of the ECHR. The judge found that the level of risk of indiscriminate violence in Kirkuk City was not such as to engage Article 15(c) of the Qualification Directive. Further, the judge found that the appellant could safely return to Kirkuk City via the IKR in possession of a laissez passer. Judge Fowell further concluded that the appellant's removal would not breach Article 8 of the ECHR.

The Appeal to the Upper Tribunal

8. The appellant appealed to the Upper Tribunal. Permission to appeal was granted by the First-tier Tribunal (Judge Feeney) on 7 May 2019.

9. Following an error of law hearing on 11 July 2019, DUTJ J F W Phillips allowed the appellant's appeal and set aside the decision of the First-tier Tribunal. He was satisfied that Judge Fowell had erred in law departing from the (then) relevant

country guidance decisions in AA (Iraq) v SSHD [2017] EWCA Civ 944 and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 (IAC). Further, the judge had erred in concluding that the appellant could safely return to Kirkuk City using a laissez passer document which was not the required form of ID such as a Civil Status Identity Document ("CSID"). Judge Phillips adjourned the appeal for a resumed hearing in the Upper Tribunal in order to remake the decision restricted to three issues:

1. whether the appellant would be at real risk of indiscriminate violence contrary to Art 15(c) in Kirkuk City;

2. whether the appellant can safely return to Kirkuk City; and

3. if the appellant cannot be returned to Kirkuk City whether there is an internal relocation alternative.

10. The appeal was further adjourned on 5 March 2020 as the parties were not in a position to proceed.

11. Following that adjournment, in the light of the COVID-19 crisis the UT issued directions for the further conduct of the appeal. Ultimately, on 24 August 2020 the UT (UTJ Sheridan) directed that the appeal be dealt with as a remote hearing.

12. Neither party objected to that direction and on 10 December 2020 the appeal was listed at the Cardiff Civil Justice Centre for a remote hearing by Skype for Business. I was based in court with Mr Frost, who represented the appellant, and Mr Howells, who represented the Secretary of State, joining the hearing by Skype. In addition, the appellant joined the hearing by Skype and gave oral evidence through an interpreter who also joined the hearing by Skype.

The Issues

13. The respresentatives identified the issues in their respective skeleton arguments produced by Mr Frost (dated 10 December 2020) and Mr Howells (dated 14 May 2020). As a result of a number of points made orally, the issues identified by Judge Phillips were narrowed down.

1. Has the appellant established that in Kirkuk City he would be exposed to a real risk of serious harm arising from indiscriminate violence contrary to Article 15(c) of the Qualification Directive?

2. Can the appellant safely return and travel to Kirkuk City and live there safely with the necessary documentation such as a CSID, an Iraqi Nationality Identity Document ("INID") or, as the respondent contends, a 'Registration Document (1957)'?

3. Although Judge Phillips identified as a third issue that if the appellant could not safely live in Kirkuk City could he internally relocate, Mr

Howells in his oral submissions conceded that the Secretary of State did not contend that the appellant could internally relocate either to Baghdad or the IKR. That, therefore was not an issue before me.

4. It is unclear to what extent the appellant can, or does, rely upon Article 8 of the ECHR. Judge Fowell dismissed his appeal on that basis and his adverse finding was not challenged in the grounds of appeal. That is clear from Judge Phillips' decision which does not identify Article 8 as an issue to be determined by the UT in remaking the decision. Mr Frost, however, raised Article 8 in paragraphs 47 – 49 of his skeleton argument. However, he made no oral submissions in relation to Article 8. Indeed, Article 8 was not raised in the submissions of either representative.

The Law

14. In relation to the appellant's humanitarian protection claim under Article 15(b), the appellant must establish that there are substantial grounds for believing that if returned to Iraq there is a real risk that he would suffer serious harm contrary to Article 15(b).

15. Likewise, in relation to Article 15(c) the appellant must establish that there are substantial grounds for believing that if returned to Iraq there is a real risk that he would suffer serious harm as a result of indiscriminate violence.

16. In relation to Article 3, the appellant must establish that on return to Iraq there are substantial grounds for believing that there is a real risk that he would be subjected to torture or to inhuman or degrading treatment or punishment.

The Evidence

17. The appellant put into evidence a substantial bundle of documents. The documents relied upon by Mr Frost were principally the following: five witness statements from the appellant dated 2 October 2009 (E15 – 18), 11 May 2017 (E14), 23 August 2018 (E12 – 13), 14 March 2019 (E8 – 11) and 27 February 2020 (E1 – 2). In addition, he relied upon a translation of an Iraqi government document concerned with the issue of CSIDs in Kirkuk (F2 – 3). Further, he relied upon a statement from Mark Shepherd from Migrant Legal Project dated 3 February 2020 (E47 – 48). Mr Frost also relied upon the two psychiatric reports from Dr Buttan and Dr Battersby dated 15 March 2019 (E20 – 46) and 22 March 2020 respectively. Finally, Mr Frost relied upon a number of country background documents in Section F of the appellant's bundle: iMMAP – Iraq Humanitarian Response (Jan – August 2020) (F5 – 11); and Middle East Institute, ISIS's dramatic escalation in Syria and Iraq (4 May 2020) (F30 – 32) in relation to the risk of indiscriminate violence in Kirkuk. The file also contained an expert report from Dr R Fatah dated 3 April 2020. This report relates to a different individual to the appellant and Mr Frost neither placed reliance upon it nor did he draw it to my attention at the hearing or in his skeleton argument.

18. Mr Howells relied on the CPIN, "Internal Relocation, Civil Documentation and Returns, Iraq" (June 2020) ("CPIN (June 2020)") in relation to documentation. He also relied upon a translation of the death certificate of the appellant's father (page 11 of the appellant's bundle) setting out, Mr Howells' submitted, the family book details of the appellant's father.

19. Both representatives relied upon, and referred me to, the country guidance decision of SMO and others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) (hereafter "SMO").

20. All the new material was admitted under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) without objection from either representative.

The Appellant's Evidence

21. At Mr Frost's invitation, and with Mr Howells' concurrence, given the evidence about the appellant's mental health I agreed to treat the appellant as a vulnerable witness within the Presidential Guidance Note No 2 of 2010, "Child, Vulnerable Adult and Sensitive Appellant Guidance". I told the appellant that, if during the course of his evidence he wished to have a break, he should indicate that to me. Mr Frost indicated, based upon the medical evidence, that the appellant might become agitated when giving his evidence. In the result, I did not discern the appellant doing so and the appellant did not ask for any breaks during the period in which he gave his evidence.

22. In his oral evidence, the appellant was unable formally to adopt his written statements other than the most recent statement dated 27 February 2020. He said he could not recall his previous statements. The appellant appears to have been in a similar position before Judge Fowell where, as the judge pointed out in paragraph 20, he remembered his recent statement but struggled to adopt his earlier statements saying he could not remember them. Before me, it was agreed that if any matter in his earlier statements was put to the appellant, then it should be clearly read out to the appellant. As will be clear, the appellant does, in fact, dispute the contents, to some extent, of his earlier statements in relation to what is said about continuing contact with his family in Iraq.

23. In cross-examination, the appellant was asked whether he had been in a relationship in the UK with a Polish woman between 2017 and 2018. He confirmed that he had and that they had communicated with each other in English. He also agreed that he had been to college in the UK for four years and had been taught in English.

24. The appellant was asked about his relatives in Iraq when he left in 2008. He agreed that he had left behind his mother, two sisters and maternal uncle. He agreed that he had other relatives in Iraq but because of his father's involvement with the Ba'ath Party, his family were unhappy and he had no relationship with them. He said that he had last been in contact with his family in Iraq a "very long time ago". He could

not remember exactly but then said it was 2009 – 2010. He had then been in contact with his mother. He was asked why he had not mentioned that he had lost contract with his mother in his statements in 2017 and 2018. He replied that he had not been asked about that and he had only answered what he had been asked about. He said that, in relation to his statements, he had told his solicitor when he had last had contact with his family.

25. The appellant was asked why in his 2017 statement (at para 4), he had said that his mother and sisters lived in Kirkuk but he did not know where and why did he know, then, that they were still in Kirkuk if he had had no contact with them since 2009 – 2010. He replied that when he had been asked about this, he had told his representatives that he had been in contact with them in Kirkuk but did not know now whether they were alive or not.

26. The appellant was asked why in his statement he had said in relation to his mother that he was "occasionally in contact". He said that he had mentioned that he lost contact with his mother in 2009 – 2010 because of a problem concerning his sister's marriage. He had never said that he was in contact with his mother "occasionally". He said that might have been an interpretation problem. He was asked why in paragraph 6 of his statement in 2017 he had given detail concerning his mother's health including that she had been hospitalised with a heart attack and he had lost contact with her in 2009 – 2010. He replied that his answer related to what he knew when he was last in contact with her even though it was in the present tense.

27. The appellant was asked about his maternal uncle and when he had discovered that he was dead. He said he had discovered that in 2010 when he was in contact with his mother. Two weeks later he lost contact with his family. He was asked why he had only mentioned that his uncle was dead in his 2020 statement. And why, given he had made four statements, attended an appeal hearing in Birmingham and had spoken to two doctors all since 2010, he had made no mention of the fact that his uncle had died. He replied that he had not been asked about his uncle and at the appeal he had been asked questions about matters years apart. He said that he had not had contact with his uncle for ten years.

28. The appellant was asked about his answer in his screening interview which gave his address in Kirkuk. He agreed that was the address from fifteen years ago. When he was asked why he could not write to his family at that address, he replied "from where?" He then said that he not only gave his address but submitted to the Home Office all the proofs about his father.

29. The appellant was asked why, if the judge in his 2009 appeal had not believed he was telling the truth on all aspects of his asylum claim, why he should be believed now. The appellant said, in a number of answers, that he was being honest and had told the truth. He said that if he was not believed, he could not make anyone believe him. He was honest.

30. The appellant was asked about a document (Iraqi NID card) that he said in his screening interview in 2008 (at 9.2 and 9.3) he had left in Iraq. He said that a CSID was like an ID in his country. He was asked whether he had one of these documents and he said he did not know because back home he did not keep his ID as he was a child. He was asked whether he needed his CSID for work and study in Iraq. He said he did not need a CSID for his work and for study, he was a child and his parents had ID. Asked whether he had any ID documents in Iraq he said "I don't know". He said that he was being asked about what happened fifteen years ago and that was very difficult for him. As regards the Iraqi NID card that he said he had left at his mother's and which he said was a renewed document issued in Kirkuk in 2004, he said that he could not remember talking about it. He said he did not now remember that document. He was asked why his family in Kirkuk could not send that original document to him, the appellant said he was not in contact with his family and so who was he supposed to ask.

31. The appellant was asked a number of questions about his mental health. He was asked whether he last took any medication for his mental health and he said he had been to see a doctor about a month or so ago and he had been given tablets to calm him down and help him to sleep. He had a blood test and a few weeks ago but had not received the results back. He said that he had received counselling but not continuously – only two sessions. He said he could not handle it and he was told not to go back. The last session was on 21 March 2020 at 11.30am in Plymouth.

32. The appellant was asked how many years he had spent in school in Iraq and he said seven years – something like that. He was asked why he had said that he had hoped to become a doctor or architect when talking to Dr Buttan. He said he enjoyed school and he was good at school before Saddam was toppled. Even in this country he had been doing very well he said. He agreed that he had certificates in this country in English and computer skills. He said college had been free but now he had to pay for it and it was expensive and he could not afford it.

33. As regards work, he said that he had worked as a carpenter in Iraq with his uncle but no-one else. In the UK he had volunteered in a coffee shop that helped volunteers by serving food. When it was pointed out to him that he had told Dr Battersby that he had done jobs such as painting, gardening and helping in a shop, he agreed and said how else was he expected to live. When it was put to him that his mental health had not stopped him studying or working in the UK, the appellant said that he was not up to studying anymore and that he could not settle in the job. He would do one for two days then quit and then do another one.

34. Finally, when it was pointed out him that the UK authorities would, on his voluntary return to Iraq, pay him £1,500, the appellant said that he had no family, no ID, nothing and he had been living in the UK for thirteen years. He had no-one in Iraq and what was he supposed to do with £1,500.

35. In re-examination, the appellant was asked about his evidence concerning the detail of his mother's health which he gave in his witness statement in 2007. He said that

he had learnt about her health before he had lost contact with his family. He said he had only been asked about his mother in 2017.

The Submissions

The Respondent

36. I will deal with Mr Howells' submissions as follows: *first*, in relation to findings based upon the appellant's evidence; *secondly*, the Art 15(c) issues; and *thirdly*, the risk on return based upon an absence of documentation.

37. As regards the appellant's evidence, both in his oral submissions and in paragraph 14 of his skeleton argument, Mr Howells invited me to make an adverse credibility finding and conclude that the appellant was not to be believed that he had lost contact with his family in Iraq or, if he had, I should find that he could re-establish contact with them.

38. First, Mr Howells submitted that I should treat the appellant's evidence with caution. He had been found not to be wholly honest by Judge Alakija in his 2009 appeal.

39. Secondly, on his evidence, the appellant had lost contact with his four relatives in Iraq in 2009 – 2010 but had not mentioned that until his 2019 appeal statement. In between, Mr Howells submitted, he had made a number of statements without mentioning it. Mr Howells relied upon the appellant's evidence in his 2017 statement where he said he had "occasional" contact with his mother. He had also referred to his mother's health condition clearly in the present tense. Mr Howells submitted that the statement from his legal representative, Mark Shepherd went nowhere near explaining why the appellant repeatedly referred to his family in the present tense in his evidence and did not raise the fact that he had lost contact with them until 2019. Mr Howells reminded me that the appellant's English was good; his evidence was that he had a Polish partner who whom he communicated in English.

40. Thirdly, as regards the death of his maternal uncle, Mr Howells submitted that the first time that the appellant mentioned this was in his February 2020 statement despite his evidence being that he found out in 2010 that his uncle had died. Mr Howells submitted that the appellant had given no credible explanation why it took him ten years to refer to his uncle having died. He had made statements in 2017, 2018 and 2019 without mentioning it. He had not mentioned it to Dr Buttan or to Dr Battersby. There was no mention of it at the appeal hearing in March 2019 before Judge Fowell. This was his last male relative in Iraq and it was not credible that it would take him ten years to mention it.

41. Mr Howells invited me to find that, not only was the appellant's mother, uncle and sister still living in Kirkuk, but also that he was able to contact them.

42. Mr Howells submitted that, with such a finding, I should also conclude that the appellant could obtain ID documents from his family in Iraq.

43. As regards the appellant's claim under Art 15(c), Mr Howells submitted that in SMO, the Upper Tribunal had concluded that there was in general no risk to civilians of indiscriminate violence engaging Art 15(c). He referred me to the evidence at [25] – [50] and the Tribunal's findings at [251] – [257].

44. Mr Howells submitted that the issue was whether, applying the 'sliding-scale' assessment, the appellant had established an Art 15(c) risk. Mr Howells submitted, referring to [313] of SMO, that the appellant could not could not establish a relevant personal characteristic based upon his opposition to the government of Iraq or IKR or that he was in a minority. The former did not arise on the facts as he was not a critic and, in Kirkuk City as a Sunni Kurd, he as not in a minority but in a substantial part of the population.

45. The only potentially relevant characteristic, Mr Howells' submitted, was the appellant's "disability", i.e. his mental health. Mr Howells relied upon the absence of any evidence of treatment which the appellant was receiving under the NHS for his mental health. He accepted that Dr Buttan in her report, which was twenty months old, had concluded that the appellant was suffering from mild PTSD and adjustment disorder – mixed anxiety and depressive reaction. However, the appellant was not taking any medication or any therapy for it. He had not received any medication as Dr Buttan's report envisaged. As regards Dr Battersby's more recent report in March 2020, she noted that the appellant was not currently taking any medication as he did not like any side effects and he had not had any counselling. She had diagnosed him as suffering from moderate PTSD and moderate depressive disorder. As regards Dr Battersby's observation that the appellant's risk of suicide was at its highest at a time when he might be informed of his deportation, Mr Howells confirmed that in those circumstances appropriate measures would be taken to reduce any risk of self-harm or suicide. He submitted that on his return to Iraq, the appellant would have family in Kirkuk with whom he could live. He was not receiving any medication and, in considering whether he was at 'enhanced' risk under Art 15(c), the evidence was that he had no physical disabilities and he said he did not go out very much. Mr Howells submitted that it was difficult to see how, even taking the evidence about his mental health problems at its highest, that the level of risk required to engage Art 15(c) was reached

46. As regards the issue concerning the appellant's risk on return without documentation, Mr Howells acknowledged that, following SMO, the appellant would be at risk if he returned without relevant ID documentation.

47. First, Mr Howells pointed out that the appellant said he had left an ID card with his mother in Iraq. It was unclear whether that was a CSID. He was in contact with his family and could obtain this.

48. Secondly, as regards replacement documentation, Mr Howells accepted in the light of the recent CPIN (June 2020) that it was unlikely that the appellant could obtain a replacement CSID from the Iraqi Embassy in the UK even though, from his father's death certificate, he would have the relevant information concerning his family's

records. Mr Howells also accepted that the appellant could not obtain an INID from the Embassy – that was a biometric document which could only be obtained from a local CSA office. However, Mr Howells submitted that it was unclear from SMO whether the CSA office in Kirkuk City had moved from issuing CSIDs to only issuing INIDs. He accepted that the UT had said it was likely that the office in Kirkuk only issued INIDs now (at [430]) but Dr Fatah's evidence (set out at [369]) was that a CSID could be obtained in Kirkuk which was in his evidence in June 2019. Mr Howells, however, accepted that the appellant's evidence, set out at F1 – F4 of the bundle, showed that INIDs were being issued in Kirkuk.

49. Thirdly, therefore, Mr Howells relied upon the CPIN (June 2020) that acknowledged that a person could obtain from the Iraqi Embassy in the UK a 'Registration Document (1957)' as a step to obtaining a CSID or INID from their local CSA office in Iraq. He acknowledged that the UT in SMO had not considered whether the 'Registration Document (1957)' was an ID document which allowed an individual to safely travel within Iraq. He submitted, however, that in SMO at [361] the Upper Tribunal had recognised that the 'Registration Document (1957)' was a civil status document. There was, he acknowledged, a gap in the evidence concerning a person's ability to use this document to travel. However, he submitted it was most unlikely that the Iraqi Embassy would issue such a document as a step to obtaining a CSID or INID in a local CSA office if it was not intended that that person could travel there safely to obtain one of those documents. Otherwise, the individual would be stranded in Baghdad unable to travel.

50. Mr Howells, therefore, invited me to dismiss the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR.

The Appellant

51. Mr Frost relied upon his written detailed skeleton argument which he developed relatively briefly in his oral submissions.

52. First, as regards the appellant's evidence, he invited me to accept the appellant's evidence that he had lost contact with his family in Iraq. He asked me to bear in mind the appellant's level of English and that he was a vulnerable witness. He relied upon the statement from Mark Shepherd explaining the omission to mention, in earlier statements, that the appellant had lost contact with his family. Mr Frost submitted that it was not crucial, in all the circumstances, that the appellant sometimes was recorded as using the present tense when referring to his family. In relation to the rejection of his earlier asylum claim, Mr Frost submitted that the judge had not disbelieved the whole of the appellant's claim. The appellant had said that he did not accept that he had given false evidence previously but his claim had now moved on and there was no fresh evidence so it was no longer pursued.

53. In relation to Art 15(c), Mr Frost placed reliance upon the 'sliding-scale' assessment set out in SMO. He relied upon the appellant's personal circumstances, in particular his mental health. He submitted that this put the appellant at enhanced risk. He

relied upon the EASO 2019 Report (at F121 – 122) of the bundle referring to "societal discrimination", a lack of health services in Iraq and, in particular, services for mental health did not meet demand. He relied upon the report statement that:

> "records that there is sadly discrimination, inadequate provision of healthcare and a high risk of violence, particularly against those with mental illness".

He accepted that there was no evidence of treatment being given to the appellant for his mental health within the NHS but he relied upon the two psychiatric reports and the diagnosis that the appellant suffered from moderate PTSD and adjustment disorder – mixed anxiety and depressive reaction. He also relied upon Dr Battersby's comment that the appellant was at a moderately high risk of suicide if he returned. Mr Frost submitted that the appellant would have no family to support him on return. In addition, he relied upon the background evidence, in particular at F1 – 4, F5 – 11 and F30 – 32 of increased ISIS activity and increased security threat in recent months. Applying the 'sliding-scale', Mr Frost submitted that the appellant reached the threshold under Art 15(c).

54. Thirdly, in relation to documentation Mr Frost submitted that the appellant does not have a CSID or INID. He submitted that the appellant could not obtain either document from the Iraqi Embassy in the UK and he relied upon the CPIN at para 2.6.17. Further, he submitted that on the basis of the evidence concerning the issue of INIDs by the appellant's local CSA office in Kirkuk City, his family could not obtain a CSID from that office and he would have to apply in person to obtain an INID. Mr Frost submitted that the respondent's proposal that the appellant should obtain a 'Registration document (1957)' from the Iraqi Embassy in the UK which would allow the appellant to travel within Iraq was speculation not supported by the evidence. Mr Frost invited me to find that the appellant does not have a relevant ID document, and could not obtain one before return to Iraq, that would allow him to travel safely to Kirkuk from Baghdad to which he would be returned.

55. In those circumstances, Mr Frost invited me to allow the appeal on humanitarian protection grounds under Art 15(b) of the Qualification Directive and Art 3 of the ECHR.

Discussions and Findings

The Outstanding Factual Issue

56. The appellant's case is that he left his family in Kirkuk City in 2008 when he came to the UK – that was his mother, his two sisters and maternal uncle. His case now is that he has not been in contact with any of them since 2009 – 2010 and, in fact, he discovered in 2010 that his maternal uncle had been killed.

57. On this issue, I do not accept the appellant's evidence for the following reasons.

58. First, the appellant has not relied upon a crucial part of his claim until, at the earliest, 2018. The appellant did not mentioned that he had lost contact with his family in his

written statement of 11 May 2017. Even then he made no reference to having lost contact as long ago as 2009-2010 as he now claims. The first possible disclosure is in his 2018 statement when he said that he had "not had contact" with his family since his last (i.e. 2017) statement. That is not an explicit statement that he has lost contact, certainly from when he now claims in 2009-2010. Indeed, it appears to only relate to a period *since* the 2017 statement. The loss of contact is not made explicit until his statement of 2019 where he says he has "no contact with my family in Kirkuk for a long time" and it is not until his February 2020 statement that he says specifically that he has had no contact with them "since 2009 or 2010".

59. Indeed, in his statement of 11 May 2017 the appellant said something inconsistent with his claim that he had already lost contact with his family. There, in paragraph 4 he said this: "My mother and two sisters still live in Kirkuk but I do not know where. My sisters are now married and I am not in contact with them. My mother is elderly. I am occasionally in contact with her." He refers to his family, in the present tense, as still living in Kirkuk and he specifically states that he is "occasionally in contact" with his mother. Further, in paragraph 6 he gives a number of details concerning his mother's health, including that she has diabetes and a heart condition and he has learnt that she was hospitalised with a heart attack.

60. The appellant contests what is said in his May 2017 statement that he was "occasionally in contact" with his mother. In his most recent statement of February 2020 he says that his earlier statements were given where no interpreter was present. He states that although he does speak and understand English to a reasonable extent, he does "struggle and have concatenation problems". He says that it is not correct to say that he was, at the time of his statement, occasionally in contact with his mother. He states: "I was in occasional contact with her up until 2010 when our relationship broken down". In his oral evidence, the appellant stated that he had never said that he was in contact with his mother occasionally – that may have been an interpreter problem. He said that what he had said about his mother, and her health, was what he had learnt when he was in contact with them. He said that he was not in contact with them now and he did not know whether they were alive or dead.

61. In addition, the appellant relies upon a witness statement from his legal representative, Mark Shepherd dated 3 February 2020. In that statement he states that he previously took instructions from the appellant in English in 2015, 2017 and 2018 including preparing the short statements of the appellants in 2017 and 2018. At paras 5 – 6, Mr Shepherd says this:

> "5. I became aware when preparing his appeal in 2019 that the appellant had poor mental health which was affecting his concentration, particularly in a second language, and so I decided to prepare his appeal with a Sorani interpreter. In reviewing those previous statements prepared without an interpreter (2017 and 2018) it became clear there was a factual error with regard to his contact with his mother (please see appellant's statement dated 27/02/2020).
>
> 6. I am preparing this statement as I hope that he Tribunal will not prejudice the appellant. It was our mistake in not preparing all this *(sic)* statements with a Sorani interpreter to ensure their accuracy."

62. It is important to see what Mr Shepherd says and what he does not say. He attests that a mistake was made in the earlier statements in referring to the appellant as having said he was "occasionally in contact" with his mother (the 2017 statement) and, presumably, in failing to mention in that statement (and apparently accepting the same in respect of the 2018 statement) that the appellant had lost contact with his family. He says that the mistake arose, in effect, due to the absence of an interpreter. That explanation does not explain the complete omission of a matter which, as must have always been clear, was crucial to the appellant's claim, namely whether he has any family in Kirkuk who could assist him on return or, potentially, assist him in obtaining documentation to return safely. Mr Shepherd offers no explanation as to how the absence of an interpreter led to that matter not being addressed at all.

63. As regards the specific statement made by the appellant in his 2017 witness statement that he was "occasionally in contact" with his mother, that has obviously not in itself been mistranslated. At least in his most recent written statement the appellant does not deny that he was occasionally in contact with his mother but states that it was before he lost contact with her in 2009-2010. In his oral evidence, the appellant was a little more emphatic but he had never said that he had been in contact with his mother "occasionally"

64. In assessing these explanations, I bear in mind that the appellant was legally represented throughout. Mr Shepherd's statement post-dates the hearing before Judge Fowell in March 2019 when it was very much in issue what if any contact the appellant had with his family in Iraq. I have no doubt that Mr Shepherd is relaying, via his written statement, the appellant's instructions that he did not say what is contained within his 2017 statement. Mr Shepherd does not, however, specifically state, as drifted in and out of the appellant's oral answers, that the reason why it is not stated that the appellant had lost contact with his family is because he was never asked about that. It is difficult to understand how, over the course of more than ten year' litigation, the important fact about whether the appellant has contact with his family in Iraq – if it is the case – was not mentioned in 2017 and was not fully articulated until his 2020 statement. If, as the appellant claims, he lost contact with his family in 2009 – 2010, I find it highly improbable that that he would not have raised it earlier so that it would have emerged and found a prominent place in his many statements that he has given since 2010.

65. Secondly, Mr Howells placed some weight on the fact that the appellant's statements refer to his family in Iraq in the present tense. The appellant's explanation as to how he came to be referring to his family's circumstances in the present tense including the detail of his mother's health, despite having no contact with them for some years is not plausible. Although that is not a determinative factor bearing in mind that the appellant was either giving his account in English or through an interpreter, it nevertheless merits some weight.

66. Thirdly, in his statement in 2018 the appellant does acknowledge that he has had no contact with his family since his last statement. However, his account given there is inconsistent with what he now says, namely that he lost contact with them in 2009-

2010. In para 6 of his 2018 statement he says: "I have not had contact with my family in Iraq since my last statement. I currently have no contact with any family member in Iraq." This is not susceptible to a nuanced reading. The appellant is explicitly saying he has had no contact since his last statement. He is not saying he has had no contact since 2009-2010.

67. Fourthly, it is striking that the appellant's failed to mention until his 2020 statement that he has known since 2010 that his maternal uncle is dead. He makes no mention of that in any of his witness statements or indeed in what he said to Dr Buttan or Dr Battersby. Further, it is not, however, as if he did not refer to his uncle in his earlier statements. His uncle is, for example, extensively referred to his 2019 witness statement, not least in the role he played in assisting the appellant to leave Iraq. At no point does the appellant say that he discovered in 2010 that his uncle had been killed. This is raised for the first time in his statement of February 2020. Remarkably, before Judge Fowell at the March 2019 appeal hearing, it was also not raised by the appellant nor was it claimed by him that he knew his uncle was dead having been told in 2010 despite the fact that the appellant was cross-examined about his uncle (see para 21 of Judge Fowell's determination).

68. In reaching my conclusions on this issue I bear in mind the evidence, to which I will refer to later, in relation to the appellant's mental health in the reports of Dr Buttan and Dr Battersby. I also bear in mind what is said by Mr Shepherd in his witness statement. However, nothing in that material leads me to conclude that there is any satisfactory explanation as to why the appellant failed to mention that he had lost contact with his family in 2009–2010 and, at that time, he had discovered that his maternal uncle had died. There is no credible explanation why it took him ten years to specifically state that he had discovered that his uncle had died. I do not accept that there is any satisfactory explanation for not explicitly identifying earlier that he had lost contact with his mother (and sisters) in 2009–2010. I accept Mr Howells' submissions that that case is in a number of respects, as I have identified, inconsistent with what he had said about "occasionally" being in contact with his mother in 2017 and the textual context in which he spoke of his family in Iraq in his statements. I have already dealt with the evidence of Mr Shepherd and I need not repeat that here. I accept Mr Howells' submission, although this is only a minor matter, that the appellant has in fact a good facility in English. He communicated with a former Polish partner in English and he has been to college for four years in the UK and completed a number of courses in English.

69. For these reasons, therefore, I reject the appellant's evidence that he has lost contact with his family in Iraq. I do not accept his evidence that his maternal uncle has died. In his oral evidence, the appellant gave the address of the family home in Kirkuk City. I am satisfied that he remains in contact with them and has the ability to contact his mother and maternal uncle, not least as he knows the address of his family home in Kirkuk City.

70. I have made that finding on the basis of all the evidence before me. I have done so without regard, in particular, to Judge Alakija's partial adverse credibility finding

made in the appellant's 2009 appeal. That appeal was some time ago and, in a number of respects, Judge Alakija accepted what the appellant said.

71. Also, I have not taken into account that Judge Fowell in fact made a specific finding on this issue in para 33 of his determination where he stated: "I therefore conclude that [the appellant] is in contact with his family in Kirkuk or at least is able to do so." Judge Fowell accepted that the appellant had a maternal uncle there, as well as his mother. That finding was not, in fact, challenged in the grounds of appeal which led DUTJ Phillips to set aside Judge Fowell's decision and which, in these proceedings, I am remakimg. He did not, however, specifically preserve Judge Fowell's finding and, at the hearing before me, neither representative referred to Judge Fowell's finding. It could be said that, given that that finding was not challenged, as an unchallenged finding, it stood. As I have said, I have not begun from that base position as I was not invited to do so at the hearing. My finding, which I have made on the basis of all the evidence before me, is however entirely consistent with Judge Fowell's unchallenged finding.

The Article 15(c) Claim

72. Mr Frost did not contend that there was a real risk to all civilians in Kirkuk City of serious harm arising from indiscriminate violence. That, in my judgment, is a correct reflection of the CG decision in SMO (see, in particular [425(30)]). Mr Frost relied upon the 'sliding-scale' assessment identified in SMO.

73. In SMO & Others the UT adopted the 'sliding-scale' approach when applying Art 15(c) based upon the CJEU's decisions in Elgafaji v Staatssecretaris van Jutsitie (C-465/07) [2009] 2 CMLR 45 at [39] and Diakite v Commissaire général aux réfugiés et aux apatrides (C-285/12) [2014] 1 WLR 2477 at [31]. The UT said this (at [32]):

> "At [31] the Court [in Diakite] reaffirmed the view it expressed in Elgafaji at [39] that Article 15(c) also contains (what UNHCR has termed) a "sliding scale" such that "the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection." The Court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the "sliding-scale" notion."

74. The UT went on in [250(32)] to identify the 'sliding-scale' assessment as follows:

> "The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. 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."

75. At [425(33)] and [425(34)] the UT identified the relevant matters or personal characteristics which were to be taken into account in applying the 'sliding-scale' assessment. The only one relied upon in this appeal was the final bullet point in [425(34)] which was "individuals with disabilities".

76. The UT explained the basis for this factor in [312] as follows:

> "The inclusion of category (xvi) – persons with disabilities – is justifiably premised on a section of the EASO Report which records that there is sadly discrimination, inadequate provision of healthcare and a higher risk of violence, particularly against those with mental illness".

77. What, then, is my assessment of Art 15(c) in this appellant's particular circumstances?

78. Looking at the background material post-SMO relied upon by Mr Frost, I accept that there is some evidence of an increased level of indiscriminate violence in Iraq. The report of the Iraq Humanitarian Fund, "iMMAP – Iraq Humanitarian Response: ISIS Sleeper Cells Activities amid the COVID-19 Pandemic" (at F5-11) noting that:

> "From January to August 2020, ISIS caused 292 incidents taking place mainly in Diyala, followed by Anbar, Kirkuk, Salah al-Din, Mosul, Erbil, and Baghdad, which experienced fewer incidents compared to other provinces".

79. In addition, Mr Frost relied upon a report by Charles Lister, Senior Fellow and Director of MEI Countering Terrorism and Extremist Programme (at F30–32) that ISIS armed attacks increased by

> "At least 69% in April 2020 (171 attacks), a marked increase that comes amid U.S. military withdrawals from remote but strategically key posts in Iraq, the arrival and challenges posed by COVID-19 to the region, and continuing political stagnation in Baghdad."

80. That document also notes that:

> "The most dramatic recent escalation in ISIS activity is common in Iraq, where the group has especially increased attacks in Kirkuk (by as much as 200%) and Diyala (with near-daily attacks)."

81. The appellant's bundle also contains an article from the Middle East Institute, "ISIS's dramatic escalation in Syria and Iraq" (May 2020) (F30-32) noting an increase by:

> "At least 69 percent in April 2020 (171 attacks), a marked increase that comes amid US military withdrawals from remote but strategically key posts in Iraq, the arrival and challenges posed by COVID-19 to the region, and continuing political stagnation in Baghdad".

82. That report also refers to the "increased attacks in Kirkuk (by as much as 200%)".

83. I did not understand Mr Frost to suggest that this evidence would entitle me to depart from SMO as to the general risk to civilians per se. In my judgment, it comes nowhere near close to providing "very strong grounds supported by cogent

evidence" (see SG (Iraq) v SSHD [2012] EWCA Civ 940 at [47]). I do, however, take it into account when assessing the appellant's relevant personal characteristics which are relied upon and applying the 'sliding-scale' assessment.

84. Mr Frost relied upon a number of further matters, including the appellant's mental health and the diagnosis of moderate PTSD and moderate depressive disorder from Dr Battersby in her report. Mr Frost submitted, following SMO at [312], that a relevant personal characteristic in applying the 'sliding-scale' included a person with "disability". Further, he relied on the EASO 2019 report (at F121 – 122 of the appellant's bundle) which formed the basis for the UT in SMO identifying this as an additional personal characteristic. Further, Mr Frost relied upon the appellant's family circumstances, in particular, his claim that he was not in contact with his mother and that his uncle was dead. He would have, in Mr Frost's submission, no family in Kirkuk. In addition, and finally, Mr Frost relied upon some background evidence post-dating SMO which, he submitted, showed an increase in ISIS-caused incidence nationwide.

85. Mr Frost placed reliance upon a passage in the EASO 2019 Report as follows:

> "Persons with disabilities face a wide array of societal discrimination. The prevailing perception among the public is to treat persons with disabilities as charity. According to UNAMI, persons with disabilities 'face common experiences of often multiple, intersecting and aggravated forms of discrimination which hinder, prevent or impair their full enjoyment of their rights and their full and equal participation in all aspects of society'. This often leads to isolation of persons with disabilities and exacerbates negative psychological effects. Adults and children with disabilities are at a higher risk of violence than non-disabled, and those with mental illnesses could be particularly vulnerable.
>
> Hospitals and other health services in Iraq are heavily concentrated in urban areas. Such facilities are either scarcely or not at all available for inhabitants of the poorer governorates. Both health services and medication are available in a public and a private sector system. There is no public health insurance system.
>
> The lack of materials and specialised staff create difficulties in treating high numbers of patients. In addition, the system lacks doctors and medical staff who have reportedly left the country over the past years due to the conflict, lack of payment of salaries and corruption.
>
> Following the conflict against ISIL, many civilians and members of the security forces have been left with injuries and disabilities, which require aftercare, prosthetics, and support equipment
>
> Government and public health facilities that provide secondary treatments to emergency care, especially those treating long-term disabilities, have difficulty providing free treatment.
>
> With regard to mental health, it has been reported that there are huge needs and the available services do not meet the demand. Challenges to the mental health system in Iraq include the lack of funding and infrastructure, limited number of mental health professionals, location of services, as they are often too far away for people to travel, as well as stigma.

> Concerning the access of disabled persons to the educational system, USDOS has noted reports that persons with disabilities experienced discrimination due to social stigma and 'many children with disabilities dropped out of public school due to insufficient physical access to school buildings, a lack of appropriate learning materials in schools, and a shortage of teachers qualified to work with children with developmental or intellectual disabilities."

86. Dr Buttan, some 21 months ago, and Dr Battersby, more recently, in their reports identify that the appellant suffers from PTSD and depressive disorder. In her earlier report Dr Buttan described the appellant's PTSD as in the "mild" range and his depressive disorder as "mild/moderate". Dr Buttan also noted that the appellant was not taking any medication or receiving any therapy. She recommended that he be assessed by a GP and receive appropriate antidepressant medication and CBT. At the time of Dr Battersby's report in 2020, the diagnosis of PTSD had become "moderate" and the appellant's depressive disorder also had become "moderate". However, in the interim period the appellant was not receiving medication as contemplated by Dr Buttan. It appears that the appellant did not like the side effects of any treatment. He said that he had been receiving counselling – a few sessions – the last one being on 21 March 2020. That coincidentally is the date of the interview with Dr Battersby and may have been confused by him as being a counselling session. In any event, the appellant is not receiving therapy and his evidence was that he could not handle it and he was told not to go back.

87. Mr Howells invited me to give less weight to the reports as neither Dr Buttan nor Dr Battersby had considered whether the appellant was feigning or exaggerating his symptoms as required by the Istanbul Protocol. Despite this submission, given the experience of both doctors, in particular Dr Battersby, I do not consider this as a matter which both doctors must be taken to have ignored. I therefore give weight to their views, in particular those of Dr Battersby as they are the more current. In addition to the conditions which Dr Battersby has diagnosed, and which I set out above, I note what she says in paragraph 12 about the risk of the appellant committing suicide in the UK or on return. As regards the UK, she concludes that the "risk of completed suicide … is moderately low (low end of moderate)". In relation to return, Dr Battersby concludes that the risk is 'moderately high (high end of moderate)'. The highest time of risk would be if informed of deportation. In that case, I would respectfully request that those responsible for his onward care are made aware of my concerns so that appropriate measures can be put in place."

88. Mr Howells indicated that such measures would be put in place in the UK to affect the appellant's removal and I am satisfied the risk would thereby be obviated. As regards the appellant's circumstances in Kirkuk, I bear in mind that it has not been established that he would be at risk on return on the basis that he claimed to fear persecution in his original claim dismissed by Judge Alakija in 2009. I also bear in mind that the appellant would return to Kirkuk City where he has family, including his mother, two sisters (although they are married) and his maternal uncle. He would, undoubtedly, have family support in Kirkuk to deal both with his emotional needs and also his financial and accommodation needs. I also bear in mind, and I find, that the appellant has a number of skills and the ability to find employment. He

accepted, in his evidence before me, that he had aspirations to be a doctor or architect prior to Saddam's fall. Although those aspirations may not be realistic now, the appellant accepted that he was good at school and that he had done very well in this country when he had studied both English and computer skills. He has qualifications in both. He also has some experience in the UK of volunteering in a coffee shop and doing jobs such as painting and gardening. He also accepted that he worked as a carpenter for his maternal uncle before leaving Iraq.

89. I accept that the appellant is suffering from moderate PTSD and moderate depressive disorder but he does not take any medication for that in the UK. The appellant will return to Kirkuk City with a family support network and employment opportunities. Whilst the background evidence, to which I was referred, demonstrates that the health system in Iraq is not entirely adequate or the equivalent of that in the UK, particularly including in relation to treatment for mental health, I do not consider that the appellant's circumstances will give rise to a real risk in a deterioration in his mental health such that, applying the lens of Art 15(c), that personal characteristic (taken together with the background evidence to which I have referred) would expose him to a real risk of indiscriminate violence despite the evidence of some discrimination against those with mental illness.

90. Taking all these matters into account, including the implications (if any) for the appellant's mental health on return, his family circumstances in Kirkuk City, I am not satisfied that he has established that there is a real risk of serious harm arising from indiscriminate violence contrary to Art 15(c) on his return to Kirkuk City.

The Documentation Issue

91. Mr Frost began his oral submissions relying upon Art 15(b) of the Qualification Directive and Art 3 of the ECHR. He submitted that the appellant would not have the necessary ID documentation on return to Iraq and, as was recognised in SMO para (11) of the judicial headnote, without such a document the appellant would not be able to travel or live within Iraq without encountering treatment or conditions contrary to Art 3 of the ECHR (and, therefore, contrary to Art 15(b) of the Qualification Directive).

92. It is accepted that the appellant does not have a CSID in the UK. There was also no clear evidence before me that allows me to conclude that the appellant had a CSID in Iraq which could be obtained from his relatives. The appellant's evidence was that he had an Iraqi national ID card which he had left behind but he was unclear whether this was a CSID. His evidence was, that as a child, he had not had a CSID only his parents would have had had that document.

93. Mr Howells did not pursue in his oral submissions the argument that the appellant could obtain an existing CSID from his family in Iraq. His oral submissions, reflecting, I think, para 15 of his skeleton argument, were that the appellant could ask his family in Iraq to send his national ID card with which he could then apply to the Iraqi Embassy in London for a CSID using that original identity card and the family

book details from his father's death certificate. Alternatively, in para 16 of his skeleton argument, Mr Howells submitted that his relatives in Kirkuk could use that ID card and the family book details in order to obtain a CSID from the CSA office in Kirkuk.

94. Mr Howells did not pursue those final two arguments in his oral submissions because, he accepted, matters, had moved on concerning the obtaining of ID documents since SMO. He accepted, based upon the Home Office CPIN (June 2020) that the Iraqi Embassy in the UK would not issue a CSID. Further, he accepted that the new INID could only be obtained in person from the Kirkuk CSA office if they were still issuing such documents. Mr Howells recognised that, in [430] of SMO, the UT had concluded that it was likely that the CSA office in Kirkuk had an INID terminal and was, therefore, no longer issuing CSIDs. However, he pointed to the evidence of Dr Fatah, given in June 2019, at [369] of SMO that CSIDs could be obtained in Kirkuk. In my judgment, Dr Fatah's evidence is now out of date. The evidence in the appellant's bundle at F1 – F4 clearly indicates that the Ministry of Interior has issued "more than 165,000 national ID cards for Kirkuk citizens during the year 2011". The document, whose contents I accept, makes plain that the CSA office in Kirkuk now has an INID terminal (as the UT in SMO at [430] thought likely) and no longer issues CSIDs. The appellant's family could not, therefore, even in possession of his ID card and family book details (which are on his father's death certificate) obtain a CSID from the Kirkuk CSA office as an INID could only be issued to the appellant in person as it is a biometric document.

95. In the light of this, Mr Howells made a submission based upon the CPIN (June 2020) at paras 2.6.15 and 2.6.16 that the appellant could obtain a 'Registration Document (1957)' which could then be used, with appropriate process, so an INID to be obtained on his return in Kirkuk. In addition, Mr Howells submitted that the 'Registration Document (1957)' would allow the appellant to travel safely to Kirkuk City in order to apply in person for an INID at the local CSA office. He pointed out that at [361] of SMO the UT considered that this document was a civil status document. He submitted it was unlikely, if the Iraqi Embassy was issuing such a document as a step to obtaining a CSID or INID at a local CSA office, that it was intended to leave an individual stranded in Baghdad unable to travel because he would be at risk of Art 3 ill-treatment en route.

96. Paragraphs 2.6.15 – 2.6.16 of the CPIN (June 2020) provide as follows:

> "**2.6.15** Since SMO was promulgated in December 2019 further information regarding the issuance of CSIDs in the UK has been obtained by the Home Office in April 2020 [see Annex I]. When asked to describe the process of obtaining a CSID from the Iraqi Embassy in London the Returns Logistics department stated:
>
> 'CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

'The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document [see paragraph 2.6.24 for list of national identity documents] and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.'

'Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.'

'The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.'

2.6.16 Based on the above information, it is highly unlikely that an individual would be able to obtain a CSID from the Iraqi Embassy while in the UK. Instead a person would need to apply for a registration document (1957) and would then apply for an INID upon return to their local CSA office in Iraq."

97. The argument presented by Mr Howells based upon paragraphs 2.6.15-2.6.16 of the CIPN (June 2020) mirrors those he made in a previous appeal heard by (PA/03933/2019). In that appeal, I rejected his argument. It is appropriate that I reproduce my reasons here which were at paras 116-119 of that earlier appeal decision signed on 2 November 2020:

"116. On the face of it, the purpose of issuing a Registration Document (1957) is in order to permit an individual to apply for an INID on return to Iraq. Of course, that document can only be obtained by an individual attending the relevant CSA Office (which issues such documents) as it is a biometric document. Mr Howells, however, submitted that possessing a Registration Document (1957) was the equivalent of possessing a CSID for the purposes of safe travel from, for example, Baghdad to an individual's home area.

117. The evidence from the Iraqi Embassy set out in the *CPIN* does not, however, contemplate the document's use in this way. It is silent on whether the document would allow an individual's safe passage to their home area. Mr Howells invited me to infer that that was the case otherwise why would the Iraqi Embassy issue such a document. The answer to that may be that the document is issued in order to allow an individual to obtain an INID in their home area. That may, for example, be Baghdad itself to where there may be no travel difficulties.

118. More specifically, however, the Iraqi authorities are not issuing Registration Documents (1957) in order to facilitate safe passage to an individual's home area. The evidence from the Iraqi Embassy is not concerned with that issue. In my judgment, it cannot be inferred that is the case on the basis of the limited evidence set out in the *CPIN* from the Iraqi Embassy.

119. The UT in SMO did not express any view on whether that document would allow safe passage in Iraq. The UT in SMO was concerned with the relevance of a CSID, an INID, a 'laissez passer' or a 'certification letter'. Neither of the latter two documents was considered by the UT to allow for such safe passage (see [374] and [378]) and, as [counsel

> or the appellant] submitted, that view was taken in the face of a (potentially) contrary position taken by the Iraqi Embassy itself. Here, of course, there is not even a view expressed by the Iraqi Embassy. In SMO, the UT referred to with approval the expert evidence that Shi'a militia were unlikely to find acceptable alternative forms of identification to a CSID or INID (see [378]). In the light of this evidence, I am not satisfied that even if the appellant obtained a Registration Document (1957) – and assuming he has not already obtained a CSID as I have concluded he could – that document would obviate any risk to him, for example at Shi'a militia checkpoints on his journey home to Kirkuk Governance. The evidence in this appeal simply does not make good Mr Howells' submission as to the potential use of the document beyond it being a document that allows an individual, once in their home area, to obtain an INID."

98. The evidential position is no different in this appeal and I adopt those reasons here which are, in my judgment, equally applicable to this appellant's claim and justify the rejection of Mr Howells' submission in this appeal that a 'Registration Document (1957)' would allow the appellant to safely travel from Baghdad to Kirkuk City where he would then be able to obtain an INID.

99. Consequently, I accept that the appellant would not have a relevant ID document which would allow him safely to travel from Baghdad (to which he would be returned) to Kirkuk City which is his home area. As SMO recognised at para (11) of the judicial headnote, in these circumstances an individual such as this appellant is at real risk of serious harm contrary to Art 3 of the ECHR from Shia Militia travelling from Baghdad to his home area. That risk also amounts to a real risk of serious harm contrary to Art 15(b) of the Qualification Directive.

100. For that reason, the appellant has succeeded in establishing that he is entitled to humanitarian protection by virtue of Art 15(b) and that his removal to Iraq would breach Art 3 of the ECHR.

Article 8

101. As I indicated earlier, Mr Frost did not raise Art 8 in his oral submissions although he briefly referred to Art 8 in paras 47 – 49 of his skeleton argument. Judge Fowell dismissed the appellant's appeal under Art 8 and that was not challenged in the grounds of appeal. It was not envisaged as being a live an issue when re-making the decision by DUTJ Phillips in his error of law decision.

102. To the extent that the Art 8 decision turns upon a claim based on the matters relied upon in the appellant's humanitarian protection and Art 3 claims, clearly the appeal should also be allowed under Art 8 on that basis. The appellant's inability to safely travel from Baghdad to Kirkuk or, if he could, to live in Kirkuk without documentation would breach Art 8 as much as it amounts to a breach of Arts 15(b) of the Qualification Directive and Art 3 of the ECHR. Having heard no argument on a wider application of Art 8, it is on that basis alone that I also allow the appeal under Art 8.

Decision

103. The decision of the First-tier Tribunal to dismiss the appellant's appeal was set aside by DUTJ Phillips' decision dated 5 August 2019.

104. I remake the decision allowing the appellant's appeal on humanitarian protection grounds under Art 15(b) of the Qualification Directive and under Arts 3 and 8 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
31 December 2020