Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00172/2018

THE IMMIGRATION ACTS

Heard at : Field House	**Decision Promulgated**
On : 21 July 2021	**On: 18 August 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

YA
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Griffiths, instructed by JD Spicer Zeb Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a hybrid hearing in which Ms Cunha appeared remotely, via Microsoft Teams, but the hearing was otherwise face-to-face as the appellant had requested.

2. The appellant is a citizen of Iraq, born on 30 January 1996. He claims to have entered the United Kingdom on 18 August 2007, aged 11 years, together with his mother (his

father arrived two years later). The appellant was included in his mother's asylum claim, made on 20 August 2007, as her dependant. His mother's application was refused, but she was successful in an appeal against that decision in October 2008. Her appeal, in which the appellant was a co-appellant, was allowed by the First-tier Tribunal on the basis that she was at risk as a Shia in the area in which she was living with her Sunni husband and children and that she could not live elsewhere in Iraq with her husband because of their mixed marriage. The First-tier Tribunal found that she was accordingly at risk as a member of a particular social group and as a result of that decision she was recognised as a refugee and granted leave to remain until 5 February 2014, with the appellant granted leave in line with her. On 9 April 2015 the family including the appellant were granted indefinite leave to remain.

3. On 26 August 2016 the appellant was convicted of having a blade/ sharply pointed article in public and was sentenced, on the same day, to eight weeks' imprisonment. On 5 October 2016 he was convicted of possession with intent to supply class A drug cocaine, possession with intent to supply class A drug heroin and possession with intent to supply class A drug crack cocaine. He was sentenced to three years' detention in a Young Offenders' Institution.

4. On 16 November 2016 a decision was made to deport the appellant in accordance with section 32(5) of the 2007 Act and he was invited to seek to rebut the presumption under section 72 of the Nationality, Immigration Act 2002 that he had been convicted of a particularly serious crime and constituted a danger to the community. His parents responded in a letter dated 1 December 2016. They made further representations in a letter of 5 December 2016 enclosing the appellant's handwritten statement and other documents.

5. On 19 July 2017 the appellant was notified of the respondent's intention to cease his refugee status under Article 1C(5) of the Refugee Convention and paragraph 339A(v) of the Immigration Rules on the basis that the circumstances in connection with which he had been recognised as a refugee had ceased to exist. The respondent considered that the appellant's circumstances had changed in that he was no longer a dependant upon his mother but was an adult, and that the country situation had changed and the background information showed that he would not be at risk as a Sunni Muslim from the Shia militia or from Daesh. On 16 August 2017 the respondent notified the UNHCR of the intention to revoke the appellant's refugee status.

6. The appellant's representatives made submissions in response on 18 September 2017, pointing out that the appellant was Shia and not Sunni Muslim and that he would be at risk as a Shia. It was stated in the submissions that one of the appellant's brothers had been killed in a bomb explosion in Iraq, another brother had been killed by Al-Qaeda, a third brother had drowned at sea when escaping Iraq and his sister had been kidnapped by Al-Qaeda. The family were still at risk from Al-Qaeda and the risk would be particularly high in Baghdad which was dominated by Sunni Muslims. The appellant had no family to return to in Iraq. His surviving family members were all in the UK. He had only limited Arabic and had been educated in the UK. It was submitted further that the

appellant suffered from mental health problems including psychosis and that he had been hospitalised in the UK as a result.

7. In its response of 5 June 2018 to the respondent's notice of intention to cease the appellant's refugee status, the UNHCR noted that the respondent's decision had been based on country information relating to the Sunni minority whereas the appellant was Shia. Further, the respondent had applied Article 1C(5) incorrectly by considering a change in the appellant's individual circumstances, namely his age, rather than the country situation. The respondent therefore still needed to undertake an assessment of the country situation and the appellant's fears as a Shia.

8. On 3 November 2018 the respondent signed a Deportation Order against the appellant and served the Order on him on 5 November 2018, together with a decision to refuse his protection and human rights claim. In that decision the respondent certified that the presumption in section 72(2) of the NIAA 2002 applied to the appellant and that Article 33(2) of the Refugee Convention applied such that the Convention did not prevent his removal from the UK. The respondent also considered that paragraph 399A(v) of the immigration rules and Article 1C(5) of the Refugee Convention applied to the appellant and that his refugee status had therefore ceased. The respondent did not consider that the appellant was at risk as a Shia Muslim and considered that he did not have a profile which would put him at risk from Daesh. As the Shia were in the majority in Baghdad the appellant would be able to return there. The respondent noted that the appellant's mother's appeal had been allowed on the basis that she could not safely live together with her husband who was Sunni, but that she would otherwise be able to live in Baghdad as a Shia Muslim. The respondent considered that the evidence did not show that the appellant's mental health issues reached the high threshold to establish a breach of Article 3. It was considered that the appellant could not meet the requirements of paragraph 399A of the Immigration Rules on the basis of his private life and that there were no very compelling circumstances outweighing the public interest in his deportation. The respondent did not accept that the appellant had a genuine and subsisting relationship in the UK with his claimed partner, did not accept that his relationship with his parents extended beyond normal emotional ties and did not accept his account of the kidnapping of his sister. The respondent accordingly found that the appellant could not meet any of the exceptions to automatic deportation in section 33.

9. The appellant's appeal against that decision was heard on 8 August 2019 in the First-tier Tribunal by Judge Rothwell. There was medical evidence before the judge stating that the appellant was unfit to give oral evidence and he therefore did not do so. The appellants' parents gave evidence before the judge. Their evidence was that the appellant's father had been back to Iraq to visit the graves of his sons, but it was denied that he had grandchildren in Iraq as had been mentioned in a letter previously sent to the Home Office requesting the return of his passport. The judge dealt firstly with the revocation of the appellant's refugee status and concluded that there were no valid grounds cited by the respondent for ceasing to recognise the appellant as a refugee and that the respondent had misinterpreted Article 1C(5), as explained in the UNHCR letter, by considering his changed circumstances only in relation to him having become an adult. The judge then

addressed the section 72 certificate. She took account of a report from a clinical psychologist, Dr Wheeler, who considered that the appellant remained a medium risk and was not stable. The judge concluded that the presumption in section 72 had not been rebutted by the appellant. The judge found, however, that the appellant was at risk of treatment contrary to Article 3, both as a Shia Muslim and because of his mental health, and further that his removal would breach Article 8 owing to very significant obstacles to his integration in Iraq. She accordingly allowed the appeal on human rights grounds.

10. Permission to appeal against that decision was sought by the respondent on five grounds: that the judge had misunderstood the position of the SSHD in applying Article 1C(5) of the Refugee Convention; that the judge had not adequately explained why the appellant's ethnicity would put him at risk; that the judge had failed to explain which threshold the appellant had met for the purposes of Article 3; that the judge had used Article 8 as a watered down Article 3; and that the judge had failed to assess the appellant's ability to obtain a replacement CSID card.

11. Permission to appeal to the Upper Tribunal was granted on 8 October 2019.

12. At a hearing on 27 November 2019, the Honourable Lord Matthews sitting as an Upper Tribunal Judge, and myself, sitting as a panel, found that there were material errors of law in the judge's decision such that it had to be set aside and re-decided, on the following basis:

> "19. We do not agree with Ms Fujiwala that the judge, having upheld the respondent's section 72 certificate, erred by considering Article 1C(5), as it is clear from the case of Essa that there were other rights flowing from refugee status which were not extinguished by the section 72 certificate. The effect of the section 72 decision was not that the appellant was no longer a refugee, but that his removal was not prevented on the basis of his refugee status, ie he became a "removeable refugee", subject to the identification of an Article 3 risk. It was therefore still necessary for the judge to consider the appellant's ongoing eligibility to be recognised as a refugee and thus the judge properly went on to consider Article 1C(5). We agree with Ms Fujiwala that the section 72 certificate should have been considered first by the judge, but nothing material arises out of that.
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> 20. However we find that the judge erred in law in her actual consideration of the cessation provisions in Article 1C(5). The judge relied on the case of Mosira as undermining the respondent's approach to Article 1C(5). The judge observed that the basis upon which the respondent found that the appellant's circumstances had changed was that he was no longer a child and no longer dependent upon his mother, and she considered that that had been found in Mosira to be an incorrect basis upon which to apply the cessation provisions. In so doing, and in relying upon Mosira in that regard, the judge erred in two respects. Firstly, the circumstances in Mosira were entirely different to those of this appellant and secondly, the respondent did not apply the cessation provisions solely on the basis of the appellant ceasing to be dependent upon his mother.

21. In the case of Mosira, the appellant was admitted to the UK by way of family reunion to join his mother who had been granted refugee status and that was the sole basis upon which he was granted refugee status. His mother's status had been acquired on the grounds of a lack of medical facilities in Zimbabwe to treat her medical condition. The respondent sought to cease the appellant's refugee status on the basis of improvements in the political situation in Zimbabwe. The Court of Appeal considered that the change in the threat posed by the Zimbabwe authorities had no bearing upon the circumstances in connection with which the appellant had been recognised as a refugee, which had been under the 2003 family reunion policy, and that it could not be said that the circumstances giving rise to the grant of refugee status had ceased. However in this case the appellant was granted refugee status as a dependant on his mother's claim to be at risk in Iraq owing to the family's ethnic circumstances, namely his parents' mixed marriage, and therefore the country situation, and any changes in that situation, was entirely relevant. That is consistent with the approach in JS (Uganda), where the Court of Appeal observed at [157] that: "*The word "circumstances" is broad and general. It is apposite to cover both relationship and risk. The "circumstances" in connection with which JS was recognised as a refugee were clearly not simply that JS was his mother's son or that his mother had been granted refugee status; the "circumstances" necessarily included, the risks to which JS's mother was subject arising from her political affiliations in Uganda which led to her being recognised a refugee.*"

22. We disagree with Ms Griffiths in her attempt to distinguish the appellant's circumstances from those in JS (Uganda) and we disagree with her submission that the respondent considered the wrong circumstances in the appellant's case. The appellant was granted refugee status as a dependant on his mother's claim to be at risk in Iraq as a Shia owing to her marriage to a Sunni man. Those were the circumstances that the respondent had to consider for the purposes of Article 1C(5) and those were the circumstances which the respondent did consider, from paragraph 20 of the 19 July 2017 notification of intention to revoke refugee status (albeit it on the erroneous basis that the appellant was Sunni rather than Shia) and, on the correct basis, from page 5 of the refusal decision of 5 November 2018. The respondent gave specific consideration to the findings of the First-tier Tribunal in the appellant's mother's appeal whereby the Tribunal had found that the risk only existed where the family were to be living together, whereas, as the respondent properly observed at page 9 of the refusal decision, the appellant would not be living in such circumstances on return to Iraq but would be returning as a single Shia man. It was on that basis that the respondent went on to consider the risk to the appellant as a member of the Shia faith. There was accordingly nothing inconsistent in that approach to JS (Uganda) or to the 'mirror image' approach as set out in MA and MS.

23. The judge was accordingly wrong to find that the respondent's decision to revoke refugee status had been made purely on the basis that the appellant had reached the age of majority and on the basis that he was no longer a dependant of his mother and she was wrong to conclude that the case of Mosira precluded the conclusion reached by the respondent. She clearly misinterpreted the respondent's approach to Article 1C(5) and, as a result, failed to consider the relevant issue which was whether the circumstances had changed in regard to the original basis for the grant of asylum, namely the risk to the appellant and his mother on the basis of his parents' mixed marriage. Accordingly the judge's decision on Article 1C(5) cannot stand and must be set aside.

24. That would, however, be largely immaterial if the judge had properly assessed the current risk on return to Iraq. However we do not consider that she did. The judge did not consider the ongoing risk to the appellant on the basis of his parents' mixed marriage and in any event that was not the basis of the case as put in the appellant's submissions of 18 September 2017, which was, rather, a generalised risk from Al-Qaeda as a Shia Muslim. The judge considered the appellant's claim in that respect and found, for reasons given in one paragraph at [72] that he would be at risk on that basis. We do not agree with Ms Griffiths that adequate reasons were given by the judge for so concluding. The judge made limited and selective references to the CPIN report of 2018 and also briefly referred to parts of the expert report of Christopher Bluth which were consistent with the CPIN report, but did not address either report in any depth. The expert report was, in the main, an assessment of the security situation in Iraq in general rather than a focussed assessment of the appellant's situation. We note that the report makes various references to the Shia being in the majority and being the main fighting force of the government (paragraph 5.2.10 to 5.2.12) which the judge did not address. Neither did the judge address the point raised by the respondent at the hearing before her that it was not clear if the expert was aware of the appellant's father's return visits to Iraq. We cannot see how the judge's limited assessment of the background information could possibly lead to a conclusion that all Shias were at risk on return to Iraq, which was essentially what she found at [72].

25. Likewise we consider there to be merit in the respondent's third ground of appeal. We agree with the respondent that the judge's conclusions in relation to Article 3 and the appellant's mental health fail to demonstrate a proper engagement with all the evidence and with the test in J. Although mention is made at [73] to J and Y the judge did not go on to explain how the relevant test, and in particular the particularly high threshold referred to in J at [28], had been met. The judge focussed entirely on the report of Dr Wheeler, who had seen the appellant on one occasion for two hours and 15 minutes, but did not appear to have regard to the extensive medical notes setting out the appellant's medical history or to consider the lack of recent evidence from those treating him.

26. With regard to the judge's findings on Article 8, we do not agree with the respondent that the judge simply used Article 8 as a "watered down" Article 3, since she considered factors in addition to the appellant's mental health in assessing whether there were "very significant obstacles to integration" for the purposes of paragraph 399A of the immigration rules. However, in light of the fact that we have found errors of law in the judge's decision on Article 3, and given that the judge's findings on Article 3 in relation to the appellant's mental health necessarily influenced her conclusions on Article 8, we consider that the decision has to be set aside and re-made in that respect as well. We note, however, in so doing, Ms Fijiwala's indication that the judge's findings at [80] are not challenged in relation to paragraph 399A(a) and (b).

27. For all these reasons we conclude that the judge's decision cannot stand and must be set aside and re-made to the extent we have stated. We do not agree with the parties that the matter ought to be remitted to the First-tier Tribunal. The underlying facts of this case are essentially unchallenged, as is the section 72 certificate and the findings at [80], and therefore it is appropriate for the case to be retained in the Upper Tribunal.

DECISION

28. Accordingly we allow the Secretary of State's appeal and we set aside Judge Rothwell's decision in the appellant's appeal to the extent stated. The matter will be listed for a resumed hearing at a date to be notified to the parties, for the decision to be re-made."

Hearing and Submissions

13. The matter then came before me for the decision to be re-made. The delay in that happening was due to the pandemic which resulted in various adjournments, and due to the appellant objecting to a remote hearing. The matter was eventually listed for a face-to-face hearing, when that became possible, and the appellant and his father, as well as Ms Griffiths, attended in person. However, as Ms Cunha had tested positive for Covid-19, her attendance was remote, but that did not cause any problems and the appeal was able to proceed.

14. Ms Griffiths confirmed that there would be no oral evidence since the underlying facts were not in dispute. She was relying upon an updated skeleton argument together with a consolidated bundle containing an updated country expert report from Christoph Bluth dated 1 April 2020 and an updated clinical psychology addendum report from Dr Vicky Wheeler dated 16 March 2019, as well as further general background country reports.

15. Prior to the hearing Ms Fijiwala, who had represented the respondent at the error of law hearing, produced a skeleton argument for the resumed hearing, although it was Ms Cunha who was the presenting officer at the hearing itself. In her skeleton argument, Ms Fijiwala raised a new issue, namely that the respondent wished to withdraw the concession that the appellant was a refugee as defined under the Refugee Convention, and that there was therefore no onus on the respondent to show that the circumstances under which the appellant had (mistakenly) been granted refugee status, had ceased to exist. Ms Fijiwala relied on the case of JS (Uganda) in that respect, where the same issue occurred. In the alternative it was argued that the circumstances under which the appellant had been granted refugee status had ceased to exist as he would be returning to Baghdad as a single man and was therefore no longer subjected to the risk to his family arising from his parents' mixed ethnicity marriage. It was also not accepted that the appellant's mother would be at risk on return to Iraq as a Shia Muslim if she returned without her Sunni husband and it was not accepted that the appellant would be at risk as a Shia Muslim given in particular because Shias were in the majority in Baghdad. Reference was made to the fact that the appellant's father had been able to return to Iraq on several occasions, despite being a minority Sunni and that he would be able to obtain a CSID for the appellant in Baghdad. It was also submitted that the appellant would have access to medical treatment for his mental health concerns and that the high threshold in Article 3 was not met on medical grounds, and in addition that there were no very significant obstacles to the appellant's integration in Iraq for the purposes of paragraph 399A, nor very compelling circumstances outweighing the public interest in his deportation.

16. Ms Cunha, at the hearing, confirmed that she was not pursuing the withdrawal of the concession as set out in Ms Fijiwala's skeleton argument and she accepted that the appellant had been granted refugee status as the member of a family of mixed ethnicity background. She did not object to the matter of the section 72 presumption being re-visited as a result of the passage of time, although she maintained that the appellant was still to be considered a danger to the community.

17. I also confirmed, at Ms Griffiths' request, that the appeal decision would be anonymised and that the appellant would be treated as a vulnerable witness, albeit that he was not actively participating in the hearing in any event.

18. Ms Griffiths then made her submissions. She submitted, with reference to Dr Wheeler's updated report, that the appellant was someone who acknowledged he needed help and was trying to do what he needed to do and that he did not currently present any risk to the public, such that the threshold for the section 72 certificate had not been met. His last conviction was five years ago, he had been off licence for some time and had not been recalled, and he had now rebutted the presumption under section 72. As for the cessation decision, Ms Griffiths maintained that the principles in Mosira applied and a child becoming an adult was not a correct basis for ceasing refugee status. The respondent had jumped to a consideration of the appellant's current circumstances as a Shia returning to Iraq but had failed to consider the relevant circumstances, namely whether his mother could safely return to Iraq as a person in a mixed-marriage. Ms Griffiths relied upon Dr Bluth's report where he gave his opinion about the risks to Shias in Iraq. The Shias, albeit in the majority, were nevertheless under attack from ISIS. The appellant would end up as an internally displaced person. Although his father went back to Iraq intermittently, that was only to visit his sons' graves, and it could not be said that that amounted to him being available to provide support for the appellant. There was no durable change and the appellant would still be at risk on return to Iraq. It was not feasible for him to return as he did not have a CSID card or a national identity card and could not obtain one by proxy or from outside Iraq. There was nowhere to relocate within Iraq as he was from Baghdad and it would not be reasonable to relocate since he had no family support, he had mental health problems and he would not be able to find employment. The appellant was also at risk under section 15(c) owing to the general humanitarian situation but also as a result of his personal characteristics including his level of vulnerability, his lack of contacts and his trauma-related mental health problems including psychosis.

19. Ms Griffiths submitted that the appellant's mental health concerns were such that his return to Iraq would breach Article 3 and she relied upon Dr Wheeler's report in that regard. Even if he could access medication in Iraq there were concerns as to his ability to comply with his medication requirements. His mental health had started to deteriorate at the time of his conviction in 2015/16 and had fluctuated around that time. Ms Griffiths relied upon the case of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 in relation to the relevant Article 3 test and upon the case of Savran v. Denmark - 57467/15 (Judgment : Article 3 - Prohibition of torture : Fourth Section) [2019] ECHR 651 in relation to the question of access to treatment. She submitted that there was a risk of suicide or deterioration in the appellant's mental health if he was to be returned to

Iraq and it was for the Secretary of State to dispel concerns about access to treatment which she had not done. In any event the appellant succeeded on Article 8 grounds as he had spent more than half his life in the UK, he was socially and culturally integrated in the UK and there were very significant obstacles to his integration in Iraq or alternatively very compelling circumstances outweighing the public interest in his deportation.

20. Ms Cunha submitted that the appellant continued to pose a risk to the community. Although he had not committed further offences, he had an incentive not to do so because of the threat of deportation. He had continued to demonstrate violent behaviour and an unwillingness to cooperate and there was no evidence to mitigate the case of him being a danger. There was no evidence to show that he had turned his life around. The section 72 certificate therefore remained. As for cessation under Article 1(C)(5) of the Refugee Convention, Ms Cunha submitted that Ms Griffiths was wrong in her reliance upon Mosira as that case was specific on its facts. The relevant case was JS (Uganda). The appellant had derived his refugee status from his mother's claim and had been granted refugee status, not under the family reunion provisions, but on the basis of an imputed risk as a child of a mixed household. Ms Cunha relied upon the 'mirror-image' approach in MA (Somalia) [2018] EWCA Civ 994 and the cases of Secretary of State for the Home Department v MM (Zimbabwe) [2017] EWCA Civ 797, Secretary of State for the Home Department v JS (Uganda) [2019] EWCA Civ 1670 and Secretary of State for the Home Department v KN (DRC) [2019] EWCA Civ 1665 in relation to the test for cessation. She submitted that Dr Bluth's report failed to provide direct evidence from people on the ground and failed to provide proper reasons why the appellant, returning to a majority Shia area, would be at risk as a Shia. She relied upon the country guidance in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 as showing that Baghdad was now secure for Shias and that ISIL no longer posed a threat there. The appellant would be returning to Iraq as a Shia and no longer in a perceived relationship as previously. His father, a member of a minority ethnic group, had not had problems when returning to Iraq, and therefore the appellant would be able to return. He would be able to obtain a replacement CSID and would be at no risk in Baghdad. As such, his refugee status had to be ceased.

21. As for the appellant's Article 3 claim, Ms Cunha submitted that there was no evidence in the form of medical records confirming Dr Wheeler's reference to the appellant having been diagnosed with paranoid schizophrenia. The medical records referred only to him suffering from psychosis since 2013. Ms Cunha relied on the cases of AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397, as well as the long-standing cases of J v Secretary of State for the Home Department [2005] EWCA Civ 629 and Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362 in relation to the risk of suicide and cases involving mental health concerns, and the more recent case of AM (Zimbabwe) and submitted that the relevant threshold was not met. The medication the appellant needed was available in Baghdad, he had not demonstrated suicidal ideation and he would be able to stabilise his health on return to Iraq with the help of family members who could support him. Ms Cunha accepted that Article 8 was where the Secretary of State's case was at its weakest, but she submitted nevertheless that there were

no very significant obstacles to integration in Iraq and no very compelling circumstances outweighing the public interest in deportation.

22. In reply, Ms Griffiths reiterated the points made previously and submitted that the Secretary of State had failed to show that the appellant could access relevant treatment and medication in Iraq.

Discussion and Findings

23. The starting point in this case is the current status of the section 72 certificate, the findings of Judge Rothwell upholding the certificate at the time of the appeal before her having been preserved. I find myself in agreement with Ms Cunha that there is insufficient evidence before me to show that the situation is materially different from that before Judge Rothwell. I note that Ms Griffiths' skeleton argument, at [8], refers to the appellant having been arrested in May 2021 in connection with an alleged burglary, but no charges having been brought, and there is therefore no evidence of further offending. Nevertheless, the appellant has been very much aware of his liability to deportation in the meantime, serving as a significant incentive to refrain from offending, as Ms Cunha submitted.

24. At the time of the hearing before Judge Rothwell the appellant had been assessed as being a medium risk and that level of risk was confirmed by Dr Wheeler in her report at that time, in June 2019 (at [18(i)]. At [18(g)] Dr Wheeler said that "*I would suggest that at times of poor mental health, in particular periods including the presence of psychotic symptoms, he poses a greater risk of reoffending and harm than when he is stable and not experiencing problematic symptoms*." Dr Wheeler's more recent report, dated 16 March 2020, refers to the appellant's mental health having deteriorated since she last assessed him and, at [2.22], she mentioned that his medical records referred to him becoming agitated and "a bit threatening" during discussions in regard to his access to mental health services. At [2.43] she referred to him having achieved very little since she last saw him and at [2.50] to [2.56] she addressed his offending behaviour and the risk of re-offending, noting at [2.55] his "*propensity to become agitated and potentially aggressive*". In the same paragraph Dr Wheeler stated that she considered the appellant to be at low risk of committing further drug related offences but at medium risk of potentially aggressive behaviour and at [2.62] she stated that her views remained the same as previously in relation to reoffending risk and recommendations for rehabilitation.

25. In the light of Dr Wheeler's observations, and in the absence of any evidence to the contrary, it seems to me that there remains a strong case for concluding that the presumption under section 72 has not been rebutted by the appellant and that he remains a risk to the community.

26. Moving on to the issue of cessation of refugee status, I reject Ms Griffiths' attempt to re-argue the relevance of Mosira and I maintain the conclusions I reached at [20] to [23] of my error of law decision. Those conclusions are consistent with the decision in KN (DRC),

where the Court of Appeal, in distinguishing the applicant in their case from Mosira, said at [35]:

> "… the circumstances in which Mr Mosira was granted refugee status did not include any history or fear of persecution of either his mother or himself. Thus, as stated by Sales LJ at paragraph 49 of his judgment in *Mosira*, any change in the threat posed by the authorities in Zimbabwe had no bearing on the circumstances in connection with which he was recognised as a refugee. The decision of this court in *Mosira* does not apply to all dependents of refugees, but rather is confined to cases where the basis for granting the refugee status to the parent and/or the child was not covered by the Refugee Convention. I therefore disagree with the Upper Tribunal's analysis of this issue at paragraph 23 of its judgment on which its decision in this case was based."

27. In this case, it is clear that the basis for the grant of refugee status was covered by the Refugee Convention. It was not, as Ms Griffiths' persists in arguing, solely the fact of the appellant being a dependant of his mother. The appellant had been granted refugee status in line with his mother following their successful appeal before the First-tier Tribunal where it was found that there was a risk on the basis of being a member of a mixed marriage household.

28. Neither is it the case, as Ms Griffiths' argued, that the only relevant question the respondent was required to consider, for the purposes of cessation, was whether the appellant's mother could now safely return to Iraq. The correct question was the one considered by the respondent in the refusal decision, as I said in my error of law decision at [22], namely whether the appellant would still be at risk as a member of a mixed faith household. The answer the respondent reached was that he would not, as he would be returning to Iraq as a single Shia man living independently of his parents. There is no evidence to suggest that appellant would be at risk as the son of mixed parentage living an independent life in Iraq, just as the First-tier Tribunal found, in allowing his mother's appeal, at ([66(2)], that she would not be at risk if she were living apart from her husband.

29. Applying the 'mirror-image' approach, I consider next whether there remains any other basis for finding that the appellant would be at risk on return to Iraq. It is claimed by the appellant that he would be at risk as a Shia.

30. As an aside, I would mention that whilst the appellant, in his representations of 18 September 2017 responding to the notice of intention to cease his refugee status and in his statement before Judge Rothwell, criticised the Secretary of State for erroneously referring to him as Sunni, it was in fact his mother's own evidence at her appeal hearing that her children were Sunni. Her evidence, as recorded at [12] on pages 7 and 8 of the First-tier Tribunal's decision (pages S61 and S62 of the respondent's appeal bundle) was that her children were all considered to be Sunni because children followed their father's side. Yet the representations of 18 September 2017 stated that the children were Shia because they followed the mother's religion. That contradiction raises questions as to very basis upon which the appellant claims to be at risk in Iraq. However, that is not a matter I can take into account, or that I have taken into account, as it was not in issue before Judge Rothwell and the appellant's more recent application and appeal had always proceeded on the

undisputed basis that he was Shia. The contradiction was never raised before me and I therefore proceed on the basis that the appellant is a Shia Muslim and fears return to Iraq as such.

31. Reliance is placed on Professor Bluth's reports in asserting that the appellant would be at risk as a Shia. I have considered both of Professor Bluth's reports and have noted his more recent report of violent Shia militias provoking countermeasures from the Iraqi authorities (paragraph 5.2.1) and ISIS fighters still operating close to Baghdad. However, as Ms Cunha submitted, the reports are largely based upon a consideration of other sources, the majority of which pre-date the country guidance in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400. Whilst Professor Bluth opines, at paragraph 5.2.17 of his recent report, that the situation has changed since SMO, I do not consider his report to provide a proper basis for undermining that guidance or for concluding that the level of violence has reached the threshold to enable the appellant to qualify for humanitarian protection under Article 15(c), either on the basis of the general situation or on the 'sliding scale' taking account of his personal characteristics. I do not consider that Professor Bluth's reports, or the background material in general, go anywhere near making out a case for concluding that all Shias are at risk in Baghdad. It is clear that the Shias form the majority in Baghdad and there is no basis for concluding that the appellant would be at risk as part of that majority ethnic group.

32. As for the question of the appellant's ability to obtain a CSID card or national identity card to enable him to return to Iraq, that was not a matter upon which Ms Griffiths made any detailed submissions. I do not consider any merit in a suggestion that there would be difficulties in that respect, in any event, as the appellant's father has managed to make regular trips to Iraq and would no doubt be able to assist the appellant in securing the relevant documentation. There is nothing in SMO to suggest that the appellant would be unable to obtain a replacement CSID or identity card, particularly as he would be returning to Baghdad.

33. For all of these reasons I conclude that the respondent's decision to cease the appellant's refugee status was properly made on the basis that the circumstances in connection with which he was recognised as a refugee have ceased to exist and that he could now return to Baghdad without being at risk of persecution. For the reasons given above in relation to section 72 of the 2002 Act the appellant is also excluded from humanitarian protection under paragraph 339D, but in any event the evidence produced does not show that he has made out a case for entitlement to humanitarian protection. The same reasoning applies to Article 3 in relation to the risk on return to Iraq.

34. Turning to the medical issues under Article 3, the relevant test has now become that in Paposhvili v. Belgium - 41738/10 [2016] ECHR 1113 as endorsed in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, namely "a real risk of the applicant's exposure to a serious, rapid and irreversible decline in his health resulting in intense suffering". Ms Griffiths also relies on the case of Savran v. Denmark - 57467/15 (Judgment : Article 3 - Prohibition of torture : Fourth Section) [2019] ECHR 651, in relation to mental health. I have to agree with Ms Cunha that, whilst there is a recent, detailed

clinical psychologist report from Dr Wheeler in addition to the report previously submitted from the same clinician, the medical evidence is otherwise somewhat outdated and limited, with the appellant's general medical notes and records ending in 2017. It appears from the substantial amount of medical notes produced that there were particular concerns in 2013 about the appellant's mental health, which deteriorated as a result of two incidents when he was assaulted by a gang of youths and he was admitted to hospital and remained in the mental health unit for a period of time. He was diagnosed as suffering from psychosis at that time. He subsequently engaged with the mental health services in prison following his offending in 2016. The earlier reports in 2014, prior to his imprisonment, made mention of his poor engagement with the mental health services and lack of compliance with his medication (see for example page 232). Reports from 2015 refer to him being in a stable mental state (page 426) but then subsequent reports in 2017 refer to him relapsing, at a time when he was in prison (page 431) and to him declining psychiatric support at some stage. There are no medical reports extending beyond the appellant's release from prison, which is not particularly helpful. Accordingly the only current medical evidence is that of Dr Wheeler.

35. Dr Wheeler assessed the appellant on two occasions. The first occasion was on 17 June 2019 when she saw him for about two hours but was unable to complete the assessment as he left part-way through the appointment. Dr Wheeler observed at that time that the appellant was not in the care of a community mental health team. She found it difficult to elicit a coherent response from him but understood that his mental health had deteriorated as a result of his inability to find employment and his financial problems, as well as the threat of deportation (page 13). Dr Wheeler noted that the appellant had attempted self-harm at the height of his mental health deterioration in 2013 but was not currently describing any suicidal intent. At page 18 she considered that he would require support from medical and legal professionals and family and friends to manage a return to Iraq and that his medication needed review by his GP. At [13(d)], [13(e)] and [21] Dr Wheeler recommended mental health intervention to support recovery. On the second occasion, in February 2020, Dr Wheeler spoke to the appellant for two hours, but again could not complete the assessment because he could not focus and provide competent answers. She referred to a diagnosis of paranoid schizophrenia made during a mental health assessment in October 2019 although it is not entirely clear if such a diagnosis had actually been made as she went on to refer to the mental health assessment revealing that he was presenting with symptoms "suggestive of" paranoid schizophrenia. It also appears, from [2.22], that whilst there was such presentation in October 2019, the appellant was not currently accessing mental health services, and was just in receipt of medication from his GP. Dr Wheeler anticipated a deterioration of the appellant's mental health if he were to be removed to Iraq and at [2.21] stated that it was likely that his sense of fear and uncertainty would result in an increase in mental health symptoms which would lead to an increased risk of suicide or self-injurious behaviour. Dr Wheeler refers at [2.27] and [2.28] to the appellant's mental health having deteriorated and to the impending threat of removal exacerbating his symptoms. At [2.34] she recommended that he engaged in therapeutic intervention.

36. What the reports reveal is that Dr Wheeler made various recommendations for the appellant to have therapeutic intervention, yet there is nothing aside from her reports to explain any progress or to confirm if any of her suggestions had been taken up. Indeed, both reports referred to the appellant not having any current engagement with mental health services but simply being compliant with his anti-psychotic medication, olanzapine. There are no medical records clarifying matters further and neither is there any suggestion that the appellant would be unable to access his required medication in Iraq or that mental health services would not be available to him in Baghdad. Although Professor Bluth, in his recent report, refers at section 5.3 to mental health care in Iraq being limited, he relies again on sources dating back several years. His reference to the death of a man deported from the USA is limited in its detail and cannot simply be extrapolated to the appellant. There is more recent information in the Home Office Country Policy and Information Note Iraq: Medical and Healthcare Provision version 2.0 January 2021, at section 13 on Mental Health, as referred to by Mr Cunha, which provides information about relevant medical services being available, both private and public, and confirms the availability of the medication currently prescribed to the appellant.

37. Furthermore, Dr Wheeler's references to the risk of suicide or self-harm are not based upon any recent suicidal inclinations and indeed it is clear from [2.35] of her recent report that she did not have a complete picture of the appellant's circumstances. I therefore agree with Ms Cunha that Dr Wheeler's recent report has its limitations and I do not consider that it provides a sufficient basis to conclude that the Article 3 threshold has been met by the appellant., either in relation to the risk of suicide in line with the relevant test in J and Y or in relation to his mental health concerns more generally.

38. Where Dr Wheeler's report is useful, however, is as confirmation of the appellant's inability to cope with the demands of daily life without support from friends and family, and his difficulty progressing in life owing to his mental health concerns, all of which are relevant matters in the overall assessment of the question of "very significant obstacles to integration" for the purposes of paragraph 399A of the immigration rules, albeit not in themselves sufficient to meet the Article 3 threshold. It is already accepted that the appellant has spent more than half his life lawfully in the UK and that he is socially and culturally integrated in the UK. Ms Cunha confirmed that that was the case and that any attempt by Ms Fijiwala in her skeleton argument to distance herself from that was not being pursued. Ms Cunha also accepted that Article 8 was where the Secretary of State's argument was at its weakest.

39. The appellant came to the UK as a boy of 11 years of age, having experienced the death of one brother and then learned of the subsequent death of his two other brothers. There is no realistic suggestion by the Secretary of State that he has family members remaining in Iraq and it is said that, whilst his father returns to Iraq on occasions, that was to visit his sons' gravestones and not to visit family. I accept that the appellant has no close family members remaining in Iraq and he would therefore be returning to a country which he left as a child and where he has never lived independently, where he has no accommodation and no support network and where there are serious security concerns as confirmed by Professor Bluth, albeit not sufficient to meet the Article 15(c) threshold. Whilst the

appellant has not demonstrated that he would have no access to medication and medical facilities, his mental health condition is nevertheless a significant contributory factor in assessing the obstacles to integration in Iraq, even if the high threshold for making out an Article 3 claim is not met, given the difficulties he would have in supporting himself and providing a life for himself. Professor Bluth's report provides some assistance in that regard, and I refer to the last few sentences of paragraph 5.2.17 and the beginning of 5.2.18, and likewise Dr Wheeler's reports are particularly relevant, as stated above, in regard to the possible deterioration of his mental health, at least in the short-term. All of those circumstances taken cumulatively lead me to conclude that there would be very significant obstacles to the appellant's integration in Iraq. I consider that the appellant is accordingly able to meet the requirements of paragraph 399A of the immigration rules as an exception to deportation and that his removal to Iraq would be disproportionate and in breach of Article 8. It is on that limited basis, therefore, that I find that the appellant's appeal succeeds.

DECISION

40. The original Tribunal was found to have made an error of law and the decision was set aside. I re-make the decision by dismissing the appellant's appeal on asylum, humanitarian protection and Article 3 human rights grounds, but allowing it on Article 8 grounds.

41. The appeal is allowed on Article 8 grounds.

Anonymity

The anonymity order previously made by the First-tier Tribunal is maintained.

Signed *S Kebede*
Upper Tribunal Judge Kebede Dated: 29 July 2021