Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2021-001346
PA/52832/2020; IA/00790/2021

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 16 June 2022	**On 22 August 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

NQH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Joseph, instructed by NLS Solicitors
For the Respondent: Ms S Rushforth, 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 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.

Introduction

2. This is the judgment of the Upper Tribunal remaking the decision of the First-tier Tribunal which, on appeal by the appellant, was set aside by the Upper Tribunal (UTJ Grubb) in a decision dated 10 May 2022 (sent on 16 May 2022).

Background

3. The appellant is a citizen of Iraq who was born on 1 January 1978. He is Kurdish and comes from Sulaymaniyah in the IKR.

4. The appellant arrived in the United Kingdom on 19 November 2008 and claimed asylum. On 23 January 2009, the Secretary of State refused his claim for asylum. His appeal to the Asylum and Immigration Tribunal was dismissed by Immigration Judge Harmston on 9 March 2009. The judge made an adverse credibility finding and rejected the appellant's account to be at risk on return to Iraq as a result of a relationship with "N" (he claimed to fear both her and his own family) and from terrorists as a result of his refusal to provide them with a car whilst acting as a car salesman in Kirkuk. On 11 August 2009, the High Court dismissed the appellant's application for reconsideration of the AIT's decision.

5. The appellant lodged further submissions on 26 September 2011 and 17 April 2013, which were refused on 30 November 2011 and 14 June 2016 respectively. On 21 April 2017, the appellant made his most recent further submissions application. These submissions were rejected (with a right of appeal) on 20 November 2020 by the respondent.

6. The appellant appealed to the First-tier Tribunal. In a decision dated 14 September 2021, Judge C E Roblin dismissed the appellant's appeal on all grounds.

7. Before Judge Roblin, the appellant's representatives did not pursue the appellant's international protection claim on asylum grounds, but accepted the 2009 determination of Judge Harmston. The appellant only relied upon Arts 3 and 8 of the ECHR.

8. As regards Art 3, Judge Roblin found that the appellant had family in Iraq who could assist him in obtaining a replacement CSID and that, as a result, consistently with the relevant country guidance decision in SMO and others (Art 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), the appellant could safely return to Iraq and his home area. As a result, the judge dismissed the appellant's appeal under Art 3.

9. In relation to Art 8, the judge accepted that the appellant had a genuine and subsisting relationship with his partner, a Polish national who was living in the UK, and with whom he had undergone a religious marriage. However, the judge found that the decision did not breach Art 8, either under the private life rule in para 276ADE(1)(vi) of the Immigration Rules

(HC 395 as amended) or on the basis of any interference with the appellant's family life with his partner under Art 8 outside the Rules.

The Appeal to the Upper Tribunal

10. The appellant appealed to the Upper Tribunal with permission. He did so on two grounds. First, in considering the appellant's Art 8 claim, the judge had failed to consider para EX.1 of Appendix FM of the Immigration Rules and whether there were "insurmountable obstacles" to his family life with his partner continuing in Iraq. Secondly, the judge had erred in reaching her adverse credibility finding and, therefore, in concluding that the appellant would be able to obtain a replacement CSID in Iraq through his family.

11. Following a hearing on 5 May 2022, I set aside Judge Roblin's decision. It was accepted, by the respondent at that hearing, that the judge had erred in law in considering Art 8 without reaching any findings in relation to para EX.1 of Appendix FM. However, I rejected the submissions of the appellant's (then) Counsel that the judge erred in law in reaching her adverse credibility finding but, I accepted, that the judge had failed properly to consider the Art 3 issue in respect of any risk to the appellant arising from returning to Iraq without the relevant ID documentation. The full reasons for my decision are set out in my judgment dated 18 May 2022.

12. The appeal was listed for a resumed hearing in order to remake the decision in relation to Art 8 and in relation to Art 3 (specifically in respect of any risk arising from return without ID documentation). At the hearing on 17 June 2022, the appellant was represented by Mr Joseph and the respondent by Ms Rushforth.

A Preliminary Matter

13. At the outset of the hearing, Mr Joseph raised a preliminary matter relating to the appellant's claim in respect of Art 3. Consistent with what was said by the Upper Tribunal in the most recent country guidance case of SMO & KSP (Civil status documentation, article 15) CG Iraq [2022] UKUT 110 (IAC) ("SMO & KSP") at [67], the appellant had informed the Secretary of State of his local CSA office in order that enquiries could be made as to whether it was a CSA office which still issued CSIDs or had moved to only issuing INIDs. That issue is relevant as to whether a replacement document might be obtained whilst the appellant is still in the UK. However, Mr Joseph acknowledged that the Secretary of State had only very recently been informed of the relevant CSA office and had not had an opportunity to make enquiries. Ms Rushforth confirmed that this was the case and, indeed, added that it was her understanding that no such enquiries could in fact be made of the IKR government rather than the government in Central Iraq. Nevertheless, raising the matter, Mr Joseph contended that it might be appropriate to adjourn the hearing in order to Make the necessary enquiries.

14. Ms Rushforth put before me new evidence, in respect of which she made a rule 15(2A) application that demonstrated that enforced returns were now being made directly to the IKR, namely Erbil and Sulaymaniyah, rather than to Baghdad for Iraqi citizens from the IKR, such as the appellant. Mr Joseph did not object to the admission of this evidence and, as a result, he accepted that the appellant would be returned directly to the IKR where, even if his CSA office had moved to only issue INIDs, for which he would have to personally attend in order to obtain a new one, he would be able to do so shortly after arriving in Iraq, including with the help of his family. Mr Joseph accepted, therefore, that the appellant had no claim under Art 3 based upon his return to Iraq without ID documentation. He accepted, therefore, that there was no purpose served in adjourning the hearing as the appeal, in substance, only raised a claim under Art 8 of the ECHR.

15. I agree with Mr Joseph's position acknowledged in his submissions. The appellant would be returned to the IKR where, even if he had not been able to obtain a CSID in advance, he would be able to obtain either an INID or CSID shortly after arriving from his local CSA office, depending upon which they now issued. He would have, on the sustainable findings by the judge, support and help from his family to do so. No purpose would be served, therefore, by adjourning the appeal in order to allow the respondent to make enquiries about the CSA office and what ID documents it now issued.

The Submissions

16. As a result, the appeal proceeded with submissions by both representatives in relation to Art 8 including para EX.1 of Appendix FM.

The Appellant

17. Mr Joseph indicated that neither the appellant nor his partner (both of whom were present in court) would be called to give oral evidence. He relied upon the material set out in the bundle, including the witness statements from the appellant and his partner, together with a *CPIN*, "Religious Minorities" (July 2021). Mr Joseph accepted that Judge Roblin's primary findings of fact in relation to the circumstances of the appellant and his partner were unaffected by any error of law and were preserved.

18. Mr Joseph submitted that it was accepted that the appellant and his partner had a genuine and subsisting relationship since 2012 and they had gone through a religious marriage.

19. Mr Joseph relied upon the length of time that the appellant's partner had lived in the UK since 2005 studying and being employed by Tesco Stores since 2008. He submitted that the appellant's partner had roots in the UK and no real connection with Poland. Although she had a brother in the UK, they were not in contact.

20. Mr Joseph submitted that the appellant should succeed under the Immigration Rules, as a partner. Mr Joseph submitted that under para EX.1, read with para EX.2, there were "insurmountable obstacles" to their relationship (family life) continuing in Iraq because there were "very significant difficulties" in doing so which could not be overcome without very serious hardship to the appellant and his partner. He relied on the fact that the appellant's partner did not speak Kurdish Sorani. Although, he accepted this was not a reason in itself to engage para EX.1 it was a factor. In addition, he relied upon cultural and social difficulties faced by the appellant's partner, a European woman living in the IKR where the main religion was Muslim. He relied upon the *CPIN* on "religious minorities" (July 2021) and he referred me to a number of passages in it in Section 5. He accepted that the IKR was more religiously tolerant than Central Iraq but nevertheless there was a discrimination, and even threats, directed against women and girls. There was also the issue that the appellant's partner is a Christian; she is Catholic. He acknowledged that Christianity was accepted as a religion in the IKR but there were nevertheless difficulties relying on paras 2.4.15 and 5.2.4 of the *CPIN*. Mr Joseph also raised the issue of whether the appellant's partner would have a CSID or would become part of the appellant's documentation. But, he recognised there was no evidence in relation to this. Mr Joseph accepted there was preserved finding from Judge Roblin's decision that the appellant had family in Iraq but there was no evidence whether they would accept the appellant's partner.

21. Mr Joseph also relied upon Art 8 outside the Rules on the basis that, if the appellant could not succeed under the Rules, there were "unjustifiably harsh consequences" sufficient to outweigh the public interest. However, Mr Joseph accepted that in relation to that claim, the matters relied upon were essentially those relied upon under the Rules, in particular para EX.1 (family life) and para 276ADE(1)(vi) (private life).

The Respondent

22. Ms Rushforth submitted that the appellant could not meet the requirements of the Rules, in particular para EX.1. She accepted that the appellant had a genuine and subsisting relationship with his partner but that had been formed whilst he was unlawfully here, in the sense that he had never been granted leave to enter or remain in the UK. She submitted that, therefore, little weight should be given to that "family life" applying s.117B(4) of the Nationality, Immigration and Asylum Act 2002 (as amended).

23. As regards the appellant's partner, Ms Rushforth submitted that she had moved to the UK and had adapted and learnt a new language which demonstrated her ability to do so if she were to move to Iraq with the appellant. As regards her religion, it was accepted that she was Christian but there was no evidence about her actively engaging in her religion, for example attending church. Ms Rushforth pointed out that the appellant's partner had gone through an Islamic religious marriage to the appellant.

24. As regards the background evidence in the *CPIN*, Ms Rushforth submitted that it did not establish that there was any state discrimination of religious minorities and that minority religions, including Christians, were allowed to observe their religious holidays and festivals (relying in paras 2.4.2 – 2.4.3). Ms Rushforth submitted that the appellant had family in Iraq and there was no reason, based upon the evidence, to conclude that they would not assist with his and his partner's integration in the IKR.

25. Finally, Mr Rushforth relied upon the case of Chikwamba v SSHD [2008] UKHL 40. She submitted that the appellant could return to Iraq and seek entry clearance given that the evidence was that the appellant's partner earned in excess of the financial requirement in the Rules of £18,600 and their relationship was a genuine and subsisting one. She submitted that, relying upon Younas (s.117B(6)(b); *Chikwamba*, *Zambrano* (Pakistan) [2020] UKUT 129 (IAC), there was a public interest in the appellant's removal in order to seek entry clearance. Ms Rushforth confirmed, having drawn my attention to the relevant documentation, that the respondent had relied upon Chikwamba in the review document before the First-tier Tribunal and at the hearing before the First-tier Tribunal, even if Judge Roblin had not dealt with Chikwamba.

In Reply

26. In reply, Mr Joseph submitted, in relation to Chikwamba, that it was not clear that the sponsor did in fact earn £18,600 on the basis of the evidence in the bundle.

27. Mr Joseph also drew my attention to the case of YMKA and others ('westernisation') Iraq [2022] UKUT 16 (IAC) where reliance had been placed upon risk arising from a perception of 'westernisation' on return to Iraq.

28. The latter point having been raised for the first time in Mr Joseph's reply, Ms Rushforth responded by submitting that YMKA and others was not relevant as that case concerned a returning asylum-seeker (of Iraqi nationality), whom it was said might be at risk because of perceived 'westernisation'. That was not applicable to the appellant's partner.

Discussion

29. I will begin with the relevant Immigration Rules. The relevance of the Rules in this appeal based upon Art 8 of the ECHR is that, if the appellant can succeed under the Immigration Rules (whether on the basis of his family life or private life), it is highly unlikely that his removal would be proportionate under Art 8 of the ECHR (see TZ (Pakistan) v SSHD [2018] EWCA Civ 1109 at [34] per Sir Ernest Ryder, Senior President).

30. I will deal first with para 276ADE(1) and the appellant's claim based upon his "private life". In essence, the appellant's claim was under para 276ADE(1)(vi) namely that, having lived in the UK for less than twenty

continuous years, there would be "very significant obstacles to [his] integration" on return to Iraq.

31. At paras 93–96, Judge Roblin considered para 276ADE, in particular para 276ADE(1)(vi) and concluded that the appellant did not meet that requirement. She said this:

> "**Private life**
>
> 93. Paragraph 276 ADE sets out the requirement for leave to remain based on the development of a private life. The Appellant has not lived continuously in the UK for at least 20 years. The Appellant has resided in the UK since November 2008 so he has not had 20 years residence in the UK. The Appellant is not of an age between 18 and25 and is not under 18 years.
>
> 94. I do not accept the Appellant has demonstrated he has no social cultural or family ties in Iraq.
>
> 95. The idea of integration calls for a broader evaluative judgement to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that country was carried on and the capacity to participate in it so as to have the reasonable opportunity to be accepted there , to be able to operate on a day to day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.
>
> **Very significant obstacles to the Appellant's integration into Iraq**
>
> 96. I have found against the Appellant's claimed account. The Appellant lived in Iraq until 2008. Given the length of time the Appellant spent in Iraq and having been brought up by an Iraqi family I find he will have some understanding of the cultural and societal expectations upon him within the country of return and can be further assisted with his integration by friends and extended family. The Appellant has no health concerns. He is unable to work in the United Kingdom. He speaks English and Kurdish Sorani. The Appellant was working in a car showroom prior to his departure so has been in employment in Iraq. I find the Appellant has failed to demonstrate on his return and will be unable to gain employment on his return to Iraq. The Appellant 's partner could return to Iraq with him. I have considered the recent CPIN: Iraq religious minorities. For all those reasons, notwithstanding the Appellant has been in the UK since 2008 I find that there are not very significant obstacles to the Appellant's integration upon return to Iraq."

32. That finding has not been challenged and is preserved. Mr Joseph made no submissions to the contrary. The appellant cannot, therefore, succeed under para 276ADE.

33. The remaining rule, and the focus of the submissions before me, relates to the appellant's family life and claim to remain in the UK as a partner given that his partner has indefinite leave to remain. That claim relies on Section E-LTRP of Appendix FM. The appellant can only succeed under Section E-LTRP if he can rely upon para EX.1 as, at least, he lacks the relevant leave to meet the eligibility requirements in E-LTRP.2.1 – 2.2. He

may also, fail to meet the financial requirements in E-LTRP.3.1, to which I will turn later.

34. So far as relevant for the purposes of this appeal, para EX.1 provides as follows:

> "EX.1. This paragraph applies if
>
> ....
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, or in the UK with refugee leave, or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK."

35. Para EX.1 goes on to provide a definition of "insurmountable obstacles" as follows:

> "EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

36. In Lal v SSHD [2019] EWCA Civ 1925, the Court of Appeal offered guidance on the approach to applying para EX.1 and EX.2. At [36] – [37], the Court (Sir Terence Etherton MR; Asplin and Leggatt LJJ) said this:

> "36. In applying this test, a logical approach is first of all to decide whether the alleged obstacle to continuing family life outside the UK amounts to a very significant difficulty. If it meets this threshold requirement, the next question is whether the difficulty is one which would make it impossible for the applicant and their partner to continue family life together outside the UK. If not, the decision-maker needs finally to consider whether, taking account of any steps which could reasonably be taken to avoid or mitigate the difficulty, it would nevertheless entail very serious hardship for the applicant or their partner (or both).
>
> 37. To apply the test in what Lord Reed in the *Agyarko* case at para 43 called "a practical and realistic sense", it is relevant and necessary in addressing these questions to have regard to the particular characteristics and circumstances of the individual(s) concerned. Thus, in the present case where it was established by evidence to the satisfaction of the tribunal that the applicant's partner is particularly sensitive to heat, it was relevant for the tribunal to take this fact into account in assessing the level of difficulty which Mr Wilmshurst would face and the degree of hardship that would be entailed if he were required to move to India to continue his relationship. We do not accept, however, that an obstacle to the applicant's partner moving to India is shown to be insurmountable – in either of the ways contemplated by paragraph EX.2. – just by establishing that the individual concerned would perceive the difficulty as insurmountable and would in fact be deterred by it from relocating to India. The test cannot, in our view, reasonably be understood as subjective in that sense. To treat it as such would substantially dilute the intended stringency of the test and give an unfair and perverse advantage to an applicant whose partner is less resolute or committed to their

> relationship over one whose partner is ready to endure greater hardship to enable them to stay together."

37. In [37], the Court of Appeal made reference to what was said by Lord Reed in R (Agyarko) & another v SSHD [2017] UKSC 11 at [43] where he said this:

> "43. It appears that the European court intends the words 'insurmountable obstacles' to be understood in a practical and realistic sense, rather than as referring to obstacles which make it literally impossible for the family to live together in the country of origin of the non-national concerned."

38. I accept that the appellant and his partner have a genuine and subsisting relationship which has existed since 2012. That is not in dispute. They live together and, on the evidence, their relationship is one akin to marriage (they have of course undergone an Islamic marriage) and their relationship has subsisted now for ten years.

39. There is no good reason why the appellant himself should not return to Iraq where he could integrate without "very significant difficulties" as the judge's preserved finding in relation to para 276ADE(1)(vi) confirms. He has family in the IKR and he is, as Judge Roblin found, a young healthy man who could obtain employment in Iraq. He had previously been engaged in employment before coming to the UK. He would also have access to a grant of £1,500 to assist with his resettlement. He speaks fluent Kurdish Sorani and, I accept, given the rejection of the appellant's account, and the judge's findings, he would have extended family in Iraq to assist him.

40. The position of his partner is somewhat different. She is a Polish national who has lived in the UK since 2005. On the basis of the evidence, it is clear that she has moved her locus of living from Poland to the UK, where she has indefinite leave to remain and has worked since 2008 for Tesco Stores. She does not speak Kurdish Sorani, which is the predominant language in the IKR. She is not Muslim but a Catholic Christian although she has gone through an Islamic marriage with the appellant. Although the appellant's partner has a brother in the UK, it is accepted that they are not close. She has no family roots in the UK apart from with the appellant. Whilst I accept the appellant and his partner have established "private life" in the UK, there was no evidence established any rich or sustained private life of the appellant or his partner in the UK. The evidence was no more than this. In his partner's witness statement, she says that "cultural ties, connections, friends, social, and work ties are strongly embedded in the UK" (see para 3 of her witness statement dated 14 June 2021). The appellant's statement says that he has "made many friends within my local community" whilst in the UK (see para 4 of his witness statement dated 14 June 2021).

41. Mr Joseph relied upon the *CPIN*, "religious minorities" (July 2021). I have taken into account the passages to which I was referred, in particular

Section 5 dealing with the "Treatment of religious minority groups". Para 5.1.1 states that in the IKR:

> "Instances of discrimination by the authorities against members of minority groups and suppression of their political freedom have been reported."

42. Para 5.1.5 refers to material stating that:

> "In 2020, religious freedom conditions in Iraq remain poor …"

43. However, that goes on to state that:

> "Religious freedom conditions in Iraq, *apart from Northern Iraq* remain poor."

44. The position in the IKR is, therefore, contrasted with that in Central Iraq.

45. The section dealing with "Christians" at para 5.2 is largely concerned with Central Iraq rather than the IKR. Para 5.2.4, however, directly concerns individuals in the IKR. It states:

> "The same source further stated:
>
> > 'Additionally, Christians in KRI have reported that they were subjected to politically and territorially motivated movement restrictions. Violence against Christians in the KRI has been less common, but Christians in the region have face discrimination in the form of intimidation and denial of access to services. Christian NGOs have reported that some Muslims threaten and harass women and girls who are refusing to wear the hijab or not adhering to strict interpretations of Islamic norms regarding public behaviour.'"

46. I accept Ms Rushforth's submission that there is no evidence that the appellant's partner actively pursues her Catholic Christian religion. Indeed, her undergoing a Muslim religious ceremony with the appellant might well reflect her (at least_ lack of engagement with her religion since birth. There is no evidence that she attends church, for example, in the UK.

47. There is no doubt that the appellant's partner would encounter difficulties living in the IKR as a woman from Poland who has lived in the UK since 2005. I do not accept, however, on the basis of the *CPIN* that she would experience a real risk of discrimination as a result of her being both a woman and a Christian originating from Europe. I accept Ms Rushforth's submission that the case of YMKA and others is directed to a risk to (and a claim by) an Iraqi national seeking asylum in the UK who has taken on the values and appearance of a western woman. It has no direct application, in my judgment, to a woman, such as the appellant's partner, who is not from Iraq and is European in origin.

48. However, Judge Roblin found, and I agree and accept that finding, that the appellant would have family in Iraq to which he could return and there is no evidence that they would not provide support, not only to the appellant but to his partner in the IKR.

49. I take all these matters into account and the submissions made, particularly helpfully by Mr Joseph on the evidence. I must reach a finding applying the approach in Lal and Agyarko. Applying the test of "insurmountable obstacles" in a "practical and realistic sense" but objectively, I am not satisfied that there would be "very significant difficulties" sufficient to meet that test faced by the appellant and his partner in continuing their family life together in Iraq even though, inevitably, there will be difficulties and life in the IKR is likely to be different from life in the UK. The difficulties they will face can be assisted (and mitigated) by the support of the appellant and his family.

50. For these reasons, therefore, I am not satisfied that the appellant meets the requirements of the Immigration Rules, under Appendix FM, on the basis of para EX.1.

51. That then leaves the issue of whether the appellant can succeed outside the Rules under Art 8 of the ECHR. In doing so, I apply the five stage approach in R (Razgar) v SSHD [2004] UKHL 27 at [17]. First, I accept that the appellant's removal would sufficiently interfere with his private and family life in the UK so as to engage Art 8.1 of the ECHR. Secondly, I am satisfied that that inference would be in accordance with the law, namely the Immigration Rules. The crucial issue is whether that interference is proportionate, in the sense that the public interest in the maintenance of effective immigration controls outweighs any interference with the private and family life of the appellant and his partner. In determining proportionality, a "fair balance" has to be struck between the public interest and the individual's rights (see Razgar at [20] per Lord Bingham). In Agyarko, the Supreme Court recognised that in order to succeed outside the Rules under Art 8, when an individual could not succeed under the relevant Art 8 Rules, a decision would be disproportionate if it would result in "unjustifiably harsh consequences" for the individuals concerned (see [60] per Lord Reed).

52. In this case, the public interest in the maintenance of effective immigration control is engaged under s.117B(1) of the NIAA Act 2002. It was not suggested to me that the public interest recognised in s.117B(2) or s.117B(3) were engaged in this case on the basis that the appellant was not able to speak English or was not financially independent (at least by reliance upon the income of his partner). The appellant has never had leave to remain in the UK and so his private and family life have been formed whilst he was "unlawfully" in the UK and so, in principle, s.117B(4) states that "little weight" should be given to that private and family life with his partner. I do, however, bear in mind the need for flexibility in applying that provision given the duration of their relationship.

53. I bring forward and adopt my earlier findings in relation to the appellant and his partner in respect of para 276ADE and para EX.1. Mr Joseph candidly accepted that there were no additional factors to be considered under Art 8 outside the Rules beyond those which were relevant to the application of the Rules themselves. I have already found that there are

not “insurmountable obstacles” to the appellant and his partner continuing their family life in Iraq although there would be some difficulties. Judge Roblin’s finding, which is preserved, was that there were not “very significant obstacles” to the appellant’s integration on return to Iraq. Carrying out the “fair balance” exercise required for proportionality and the need to establish “unjustifiably harsh consequences” in order for the public interest to be outweighed, I am not satisfied that the public interest is outweighed on that basis.

54. For these reasons, I am satisfied that any interference with the appellant and his partner’s private and family life on their removal to Iraq is proportionate and not a breach of Art 8 of the ECHR.

55. One final point concerns the case of Chikwamba. Ms Rushforth, rather than Mr Joseph placed reliance upon Chikwamba. However, the underlying basis of that case is that, in certain circumstances, it will not be proportionate to return an individual to their home country where they would succeed in an entry clearance application to return to the UK. The point being that, in those circumstances, there may be no public interest in enforcing a procedural requirement of return simply to obtain entry clearance. It is, therefore, a position relied upon, usually, by an appellant to resist removal. Here, there is no need to address in any detail the Chikwamba point. Mr Joseph did not rely upon it and, as he indicated, the evidence is not clear whether the appellant’s partner earned sufficient for the appellant to meet the requirements of the Rules. The evidence was, as I understand it, that her basic salary did not meet the £18,600 threshold but that she could reach that with overtime. In any event, as the UT’s decision in Younas makes plain, simply because an individual would succeed in gaining entry clearance (here as a partner) on return does not mean that, following Chikwamba, his removal would be disproportionate. The public interest still had to be factored in (see [92] – [97]). Mr Joseph did not make any submissions that it was not in the public interest to require the appellant, given his immigration history, to return to Iraq to gain entry clearance if Chikwamba was relied upon. Suffice it for me to say, given that Chikwamba was not relied upon by Mr Joseph, I am satisfied that the public interest, in particular under s.117B(1) of the NIAA Act 2002, in the light of the appellant’s circumstances on return to Iraq is sufficient to outweigh any interference, on a temporary basis, with his private and family life by requiring him to return to Iraq in order to seek entry clearance if, which is far from clear, he would otherwise meet the requirements for entry clearance.

56. For these reasons, therefore, I remake the decision dismissing the appellant’s appeal under Art 8 of the ECHR.

Decision

57. The decision of the First-tier Tribunal to dismiss the appellant’s appeal was set aside by my decision dated 10 May 2022.

58. I remake the decision dismissing the appellant's appeal under Arts 3 and 8 of the ECHR.

59. The First-tier Tribunal's decision to dismiss the appellant's appeal on asylum and humanitarian protection grounds is preserved. I therefore, also, dismiss the appellant's appeal on asylum and humanitarian protection grounds.

Signed

Andrew Grubb

Judge of the Upper Tribunal
1 July 2022