



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09727/2019**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 24 August 2022**

**Decision & Reasons Promulgated
On the 13 September 2022**

Before

**UPPER TRIBUNAL JUDGE REEDS
DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

Between

**HMA (Iraq)
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chaudhry of Counsel, instructed on behalf of the Appellant

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

Introduction:

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. We find that it is appropriate to continue the order.

Procedural background:

1. The appellant is a national of Iraq of Kurdish ethnicity from the Iraqi Kurdish Region (IKR – sometimes also referred to as KRG).
2. In a decision letter dated 30 September 2019 the respondent refused his claim. His appeal came before the First-tier Tribunal (Judge Hillis) (hereinafter referred to as the “FtTJ”) who dismissed his protection and human rights appeal in a decision promulgated on 8 January 2020.
3. Permission to appeal that decision was sought. On 15 January 2020 permission was refused. On renewal it was granted by UTJ Lindsley on 17 March 2020. Directions for the further conduct of the appeal were sent on 4 May 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.
4. The appellant made written submissions on 18 May 2020 and did not object to the error of law issue being decided on the papers. The respondent did not file a Rule 24 response or make written submissions or object to the decision being taken on the papers. No extension of time was sought by the respondent.
5. In a decision promulgated on 29 June 2020 Upper Tribunal Judge Coker found an error of law in the decision of the FtTJ for the reasons set out in her decision.
6. The hearing was therefore listed as a resumed hearing in accordance with UTJ Coker’s directions and those subsequently given by UTJ Plimmer on the 11 December 2020.
7. The appeal was listed for hearing in September 2021 however an adjournment application was made on behalf of the respondent to await the decision in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) (SMO (2)) which was not opposed by the appellant’s solicitors (see decision of the UT lawyer date 3 September 2021).
8. Following the promulgation of SMO (2) UTJ Smith issued further directions for the hearing of the appeal.
9. The hearing has come before the Upper Tribunal by way of a Transfer Order made on 29 October 2020.
10. The appellant entered the United Kingdom in January 2017 and made an application for international protection shortly thereafter. The core of his claim is that there is a real risk of being persecuted because he is a victim of a blood feud and, because he informed the Asayish that his local Mullah was assisting Daesh/ISIL, he has been attributed with

having an adverse political opinion and thus at risk from Daesh. The factual matrix of the appellant's claim was accepted by the respondent; the issue in the appeal being sufficiency of protection on return to the IKR and/or internal relocation.

11. The respondent refused the claim on the grounds that the blood feud had been inactive for a long period of time and thus his fear of becoming a victim was not objectively well-founded; and that as a former member of the Asayish he would be offered a sufficient level of state protection and he would be able to obtain the necessary information from his former employers to obtain a replacement CSID.
12. The appellant submitted he had attempted to obtain sufficient protection but been informed it could not be provided; that previous attempts to internally relocate had been unsuccessful and that although the blood feud had been inactive it could be resurrected many years later; there was no evidence he would be able to obtain relevant information for a replacement CSID from his former employers.
13. The appeal came before the FtT judge on 6 December 2019. The FtT judge:
 - (i) Found there was no reliable evidence the "blood feud actually exists but even if one did, both parties are effectively keeping well away from each other. There is therefore no reliable evidence that the appellant faces a real risk of becoming a victim of a blood feud on removal to any area in the IKR other than Erbil" [35].
 - (ii) Accepts the evidence the appellant was told by his superior officer that the Asayish could not provide him with 4 or 5 close protection officers to protect him 24 hours a day, 7 days a week.
 - (iii) Did not accept the appellant's evidence that his superior officer revealed his identity to the Mullah as the man whose information led to his arrest and interrogation. "...despite the appellant having a subjective fear of Daesh it is not objectively well-founded and that the Asayish and the State are able and willing to offer a sufficiency of protection to him on removal from the UK" [39].
 - (iv) Found that the appellant's fingerprints and CSID details are highly likely to be still on record in the IKR and can be obtained either within a reasonable period of his arrival in the IKR or in advance of his removal from the Iraqi Embassy once he has received relevant information from his employer.
 - (v) Found that the appellant will be given every assistance from the State by local standards to re-establish himself and his family in Sulaymaniyah or another area of the IKR other than Erbil.

14. The appellant sought and was granted permission on the grounds it was arguable the FtT judge went behind concessions made regarding credibility and the effect of this; there was a failure to consider country information in relation to risk to the appellant and a failure to give reasons for not accepting the appellant's evidence that his superior officer had given the information about the Mullah thus leading to the Mullah's arrest.
15. UTJ Coker set out her assessment of the appeal in a decision promulgated on 10 June 2020 and set out the following under the heading "Error of Law":

"Blood feud

9. The appellant submits the FtT judge erred in connection with the credibility concession of the respondent and that although the FtT judge refers to the objective material and that they can be inactive, he then "somewhat contradicts himself by stating the situation is fine due to the parties keeping away from each other."

10. As indicated in the grant of permission to appeal, this does not appear arguable even though permission is granted, because the FtT judge refers to the blood feud in the alternative. The respondent accepted the appellant's father had been killed in 1996 but did not accept, referring to the appellant's own evidence, that the person who shot his father had or would have any adverse interest in him. The respondent did not concede the appellant was a victim of a continuing blood feud but rather that the death of his father had occurred as claimed. In any event the FtT judge refers to the country evidence of blood feuds, the lack of interest in the appellant and in any event, there had been no problems for the appellant since that date from that person or his family. There is no error of law by the FtT in discounting the claimed blood feud as rendering the appellant at risk of being persecuted in the IKR. The FtT judge adequately considered the country information as relevant to the claim and reached findings that were open to him. The option of remaining away from Erbil was an alternative and one open to the appellant as it had been for many years before he came to the UK.

Disclosure of information to the Mullah; internal relocation

11. The appellant submits the FtT judge failed to give a reasons for not believing the appellant's account that it was his superior who disclosed to the Mullah that he, the appellant, had given information about him to the Asayish particularly given the respondent's concessions re the appellant's credibility in the reasons for refusal letter. The appellant submits that the rejection of this part of the appellant's account goes behind the respondent's concession. The role of the authorities in providing information to the Mullah and through him to Daesh renders, it is submitted, the appellant at risk from Daesh. The judge's rejection of the appellant's account of being unable to contact his former employers without putting himself at risk and the lack of evidence that he retains their contact details has, it is submitted resulted in an error of law without adequate reasoning. The appellant also

submits that the judge has failed to factor into this that he would be returning with his wife and family and would have to obtain identity documents for them which would place them at risk.

12. The appellant does not identify where, in the respondent reasons for refusal, the respondent concedes that the appellant's information led to the Mullah's arrest and that him being the source of the information was disclosed to the Mullah. So far as I can ascertain, the relevant passages in the reasons for refusal letter are:

34. In 2002 you secretly joined the PUK Asayish and covertly reported on illegal activities for the next 14 years....
35. In 2016, as part of your duties, you uncovered a Daesh sleeper cell at your local mosque....the next day you [sic] the Imam wasn't at prayers. Then you got a telephone call from your superiors in the Asayish congratulating you as the information had led to the Imam being arrested by your colleagues and subsequently confessing to being a member of a Daesh sleeper cell (AIR Q87)
36. The day after that your boss rang again to say that, given the importance of the find the information you had given had led to, you should temporarily move to a new house and stay at home for a few days off work – which you did. They also provided you with a new mobile telephone and number.
37. 8-10 days later however, you got a message on Facebook messenger trying to confirm your identity and identifying the sender ...he then rang you and started threatening that you would be beheaded and your family taken away and given to Daesh supporters because of your involvement in exposing the sleeper cell (AIR Q87)
38. You hung up, called your boss at the Asayish office to tell him what had happened, and asked to see him. He told you to come into the office by taxi, and not use your own car.....
39. ...
40. It is noted that your account of these events is highly detailed, coherent and internally consistent and does not run counter to any available external objective evidence. When considered in the round, in the absence of any evidence to the contrary, it is therefore considered that you have met the lower standard of proof required in asylum claims. Therefore this aspect of your claim is accepted.
- ...
60. It is noted that you have approached the police in your own country. It is noted that they refused to provide you

with round the clock security officers or bodyguards to provide you and your family with round the clock protection (AIR Q87). However when you were asked whether they were still both willing and able to provide you with effective protection you agreed that they could. ...

...

67. ... you were asked during your substantive asylum interview how the various people you fear would be able to pursue you if you relocated within the KRG. You were additionally asked how they would even know you had returned to the country, how they would be able to track you down and why they would be interested in pursuing you. It is noted that you were unable to provide definitively credible and coherent responses to these questions (AIR Q112).

13. The FtT judge dealt with the appellant's evidence and the reasons for refusal in brief terms:

39. The appellant on his own account was a secret operative for the Asayish working undercover to supply information about suspected sleeper cells in the IKR. In those circumstances I do not accept the appellant's account that his superior officer revealed his identity to the Mullah as the man whose information led to his arrest and interrogation....

...

43. The appellant worked for the Asayish as a secret operative and in my judgment will be given every assistance from the State by local standards to re-establish himself and his family in Sulamaniyah or in another area of the IKR other than Erbil.

14. The judge has not engaged with the general credibility acceptance by the respondent of the appellant's involvement with the Asayish. The issue before the judge turned on whether the fear the appellant had that his disclosure of information to the Asayish had then been onwardly disclosed to the Imam was in fact likely to be correct to the appropriate standard of proof. The judge has failed to engage with the acceptance by the respondent that his account was largely accepted - although the particular element of onward transition does not appear to have been before the respondent during the interview process. The judge failed to provide reasons for disbelieving that element of the appellant's account in the context of the account overall.

15. This error of law infects the finding as regards the CSID, both for the appellant himself and for his family.

Conclusion

16. The judge has erred in law in the failure to provide reasons and to adequately consider sufficiency of protection and thus internal relocation and the ability to obtain relevant identify

documents arising out of his involvement with the Asayish. I set aside that element of the decision of the FtT judge to be remade and make directions for the resumed hearing as set out below.

17. There is no error of law by the FtT judge in his findings regarding the death of his father, blood feud or risk arising out of the death of his father.”

16. UTJ Coker set aside part of the decision of the FtTJ and gave directions for a resumed hearing before the Upper Tribunal.

The resumed hearing:

17. The resumed hearing took place on 24 August 2022 by way of a face to face hearing.
18. The parties have agreed a schedule of issues as follows:
- (i) Whether the information provided by the appellant to the Asayish had been disclosed to the Iman/Mullah as claimed.
 - (ii) Whether the appellant is at risk due to a blood feud.
 - (iii) Whether there is a sufficiency of protection available to the appellant on return.
 - (iv) Whether the appellant can internally relocate.
 - (v) Whether the appellant can obtain his relevant identity documents.
19. In addition to the documentation filed in the FtT, the appellant relied upon a witness statement dated 22 January 2021, information from the respondent in relation to CSA offices in Iraq, letter of instruction sent to Dr George dated 22 December 2020, expert report of Dr George dated 24th of December 2020, UK Home Office, CPIN -Iraq: blood feuds (February 2020) excerpts, UK Home Office CPIN Iraq: actors of protection (January 2021). In addition a skeleton argument was filed after the bundle of documents had been sent.
20. The respondent relied upon the original Home Office bundle which included the screening interview and interview record, the decision of FtTJ Hillis, the decision of UTJ Coker, and a skeleton argument.
21. The appellant gave evidence in Kurdish Sorani with the assistance of the court interpreter. We are satisfied that there was no difficulty in the appellant understanding the interpreter or vice versa and no problems were identified at the hearing.
22. The appellant adopted his witness statement as his evidence in chief. Within that he said he cannot return to Erbil due to the risk arising from the blood feud. He fears Daesh sleeper cells. He cannot be provided with 24 hour protection. The authorities do not get involved in tribal issues. He cannot internally relocate as he is afraid of very

powerful people who have reach everywhere. He would need to register with the Mukhtar, schools, and doctor if he moved. His personal details would be easily found. His identity documents were lost on the journey to the United Kingdom. He does not have copies and does not remember details or reference numbers. He would need to register for new documents if he returned. His details would become known and he could be located. He has not tried to obtain replacement documents as he has heard that the Embassy cannot help as he has nothing to show them who he is. He has no contact with anyone in Iraq.

23. He added orally that the Mullah has no connection to the government or political party but he has contacts with Daesh and sleeper cells. Whoever leaks information about them is beheaded. In exiting Iraq his priority was his safety. He used an agent due to his pain and anxiety. He was employed by the IKR security service. He had his documentation in Iraq. He brought the documents such as his CSID card with him. They were in a bag. He had brought them with as he wanted to tell people who he was when he arrived. He forgot them on the boat as it was overcrowded and when they were just about to leave the boat his wife passed out. He was looking after the children and it made him forget the documents. He had been employed by the security services for 14 to 15 years. He had undertaken many missions before the incident with the Mullah. His boss gave the appellant's name away when the Mullah was released as he was not prepared to shoulder the responsibility and be targeted by any action. He may have feared for his position or his life and may have been ordered by people above him. The Mullah was a member of a Daesh sleeper cell. He does not know if the Mullah was released. The appellant does not have address or contact details for his previous work colleagues and since he left Iraq has had no contact with them. He has no one to assist him be redocumented. He has a married step-sister living in the Kirkuk region. His wife has a step-brother but they are not in contact and she does not know where he lives.
24. At the conclusion of the evidence we heard submissions from the advocates.

The respondent's submissions

25. Mr McVeety relied upon the written submissions dated 10 August 2022.
26. Dealing with issue (i) of whether the information provided by the appellant to the Asayish had been disclosed to the Iman as claimed, the written submissions note that in the RFRL at paragraph 35, the respondent notes that he said that in 2016, as part of his duties, he said he uncovered a Daesh sleeper cell at his local mosque (AIR Q85-86). He gradually became suspicious and so included it in his next report to his Asayish handler. The next day the Iman wasn't at

prayers. Then he got a telephone call from his superiors in the Asayish congratulating him as his information had led to the Iman being arrested by the appellant's colleagues, and subsequently confession to being a member of a Daesh sleeper cell. The RFRL does not concede that it is accepted it has been disclosed to the Iman upon release who had given the information. This is also supported at [12] of the Error of Law decision. It is not considered likely even to the lower standard of proof that the Asayish would have disclosed the identity of the appellant to a person who was arrested and detained as a member of Daesh. Further any claim to be of interest to Daesh must be considered within the context of the defeat of Daesh.

27. In oral submissions it was noted that orally the appellant said that he did not know if the Imam had been released, this being a discrepancy from his previous evidence as recorded in the FtT judge's decision that the Mullah had been. It makes no sense that a trained undercover operative would be disclosed by his boss as the informant. They had stood up to Daesh and would not be afraid of a Mullah when they had spent years fighting Daesh.
28. In relation to issue (ii) as to whether the appellant is at risk due to a blood feud, this conclusion was found to be without error as per [17] of the Error of Law decision. The written submissions note that the report of Dr George adds little if anything to this settled matter.
29. In relation to issue (iii and iv) and whether there is a sufficiency of protection available to the appellant on return and whether the appellant can internally relocate, the respondent's written submissions note the CPIN Iraq: Actors of Protection (version 1.0) December 2020.

2.3.16 Within the KRI sources state that the security apparatus have the potential to provide effective security with law enforcement being described as more effective than in the south/central areas of Iraq (see Capabilities of law enforcement agencies - Kurdistan Region of Iraq security apparatus). While the security forces in the KRI may be able to provide effective protection, the willingness to do so may depend on the profile of the person. While Kurds and other ethnic or religious minorities may be able to access effective protection, for individuals who are in conflict with politicians or those with a perceived affiliation with Daesh, in particular Sunni Arabs, protection is unlikely to be available.

5.1.2 The August 2020 DFAT report stated that Asayish is the KRG's primary security and intelligence agency. Its official functions include counterterrorism, counter-espionage, gathering intelligence, assessing security threats and countering smuggling, economic and political crimes and sabotage.'

30. As a Kurd with lengthy and loyal service to the Asayish, it was submitted that the appellant would clearly be able to benefit from a sufficiency of protection.
31. Dr George refers to the inability of the authorities to provide protection in cases involving honour crimes, blood feuds and domestic violence [paragraphs 163-165 of his report, pages 72-73 Appellant's Consolidated bundle]. The appellant's does not fall into any of those categories and his claim to be a risk from a blood feud has already been determined. Those categories identified by Dr George, have a cultural element involved rather than the focus being of state security as in the appellant's claim. As set out by Dr George at paragraph 249 [page 104 Appellant's Consolidated bundle] it states:
- The KRG authorities are unable to protect persons from threats arising from honour- and revenge-related conflicts although they are able and willing to protect individuals from other risks that they might encounter in Iraq.*
32. It was submitted that the opinion of Dr George supports the submission that the appellant could avail himself to the protection of the authorities.
33. It was submitted orally that the appellant was given tasks to preform by Asayish and had to report to them, and would have access to people who can help him.
34. In relation to issue (v) namely whether the appellant can obtain his relevant identity documents it was submitted in writing that the IKR is issuing INIDs rather than CSIDs. The appellant needs to personally attend the Civil Status Affairs ("CSA") office where he is registered to enrol his biometrics, including fingerprints and iris scans as per SMO (2) headnote 12. As he is a former resident of the IKR, as per headnote 7 of SMO (2), his return will be to the IKR. This position is supported by the CPIN Iraq: Internal relocation, civil documentation and returns July 2022 at paragraph 3.1.1 which states:
- 3.1.1 Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region.*
35. The appellant can return directly to the IKR, for example directly to Sulaymaniyah. He would not have to cross any governate boundaries and therefore no checkpoints if the local CSA office is within Sulaymaniyah. The appellant has not provided the details of his local CSA office to the respondent. The Shia militia does not operate within the Kurdish region of Iraq. This is supported by the CPIN Iraq: Blood feuds 14 February 2020 at 5.2.1 which states:
- 5.2.1 In the Kurdistan region, the Peshmerga and "militias of the KDP and PUK" are responsible for maintaining order in KRI...*

and headnote 11 of SMO (2) which states:

Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass.

36. The appellant would therefore be able to obtain the necessary documentation within a reasonable timeframe and presumably not need to travel outside of his home governate. As per paragraph 2.6.7 of the CPIN Iraq: Internal relocation, civil documentation and returns July 2022:

2.6.7 The onus is on the person to show why they cannot reasonably obtain necessary documentation.

37. It was submitted orally that it was not credible he would leave his documents on the boat. We note that in the refusal letter the respondent asserts that the appellant's credibility is damaged by his failure to claim asylum in Italy.

Submissions on behalf of the appellant

38. In the skeleton argument it was submitted that there is no issue relating to the credibility of the account given by the appellant. The Mullah was released and the Mullah was advised who gave this information. As a result the Mullah seeks revenge and would utilise Daesh in order to do so. The authorities placed him in danger by their actions of revealing information to the Mullah, jeopardising his position as someone who had performed his duties secretly in the past. It was submitted orally that it is likely the Mullah knows the appellant informed on him. It could be explained by there being Daesh sleeper cells and as there may be infiltration into the security system. It is possible the appellant's boss may have disclosed the information to protect himself from Daesh. It is also possible the Mullah was aware of his own discussion with the appellant leading to his arrest.
39. In the skeleton argument it was submitted that the authorities have rejected the appellant's requests to obtain effective protection, and whilst 24 hour protection may not be possible in every case, the consequences of revealing this information to a Mullah upon release and the requirement for assistance must be properly considered. Examples would include assistance to relocate and change identity for example, however it is suggested the appellant approach his former employer to obtain a copy of his CSID in order to be able to return and relocate with his own identity. One he is being sought under. The credibility of the account was accepted. It was submitted orally that the Mullah's hands are far reaching given clan and community connections. The appellant had worked for the authorities, so it made sense for him to leave illegally. There was an imminent danger to the

appellant and so he used the methods he did. He could not be sure of the loyalty of those he met.

40. In the skeleton argument it was submitted that the ability to relocate must be considered in light of the documentation requirements. The appellant must be able to obtain relevant documentation without putting himself at risk. He is unable to do so and has no means of contacting Asayish or his former employer. He has been outside Iraq for some time. There is no indication he retains their contact details or that they would assist. His ability to relocate and register elsewhere must be considered in light of who he fears.
41. The appellant is not a single male but would be returning with a wife and children, making identification more difficult. His family would also require identity documents. He would be required to return to his home area to obtain replacement identity documents, which would in itself place him at risk. SMO (2) is relied upon. It was submitted orally that it is plausible he has lost his documents. He have to report to his local office which is separate to having had his fingerprints already done. There are INID terminals.
42. The appellant relies on the report of Dr Alan George of 24 December 2020. He concluded that the Appellant could plausibly be at risk upon return for the reasons he has claimed, and that internal relocation would not be a viable option for him. The report is detailed, well sourced, and significant weight should be given to it. Dr George states that:

146. ... although ISIS no longer controls territory in Iraq it remains active an north-central parts of the country...where it continues to target antagonists. In my view, however” the appellant’s “anti-ISIS activities in 2016 could trigger violent retribution.

147. I would stress that in Iraq (as in the wider Middle East) religion and politics are inseparable. Beyond their extended families and tribes, Iraqis identify principally with the ethnic and religious communities to which they belong. Membership of a particular religious community is not so much a matter of faith as a matter of cultural and political identity. Iraqis identified themselves as Shias or Sunnis... Sunnis and Shias can now be targeted purely on the basis of their religio-political identity.

43. At the conclusion of the hearing we reserved our decision which we now give. We are grateful to the advocates for their help and assistance.

Discussion

44. In reaching our assessment, we bear in mind the appellant bears the burden of substantiating the primary facts of his protection claim. The

standard is a reasonable degree of likelihood. The burden and standard of proof applies to the factual matters in issue in this appeal. Also that it is for the appellant to establish his claim under Art 3 of the ECHR or under Art 15(b) of the Qualification Directive. In order to do so, he must establish that there are substantial grounds for believing that there is a real risk of serious harm on return.

45. Helpful guidance on the judicial analysis of credibility was provided in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 0049. The Upper Tribunal highlighted the dangers of overly focusing upon matters of plausibility or demeanour, especially where assessments are made about States and cultures unfamiliar to the judge, who will necessarily look at such matters through a UK – cultural lens. Sufficiency of detail, internal and external consistency, and plausibility provide a useful framework (but not a straitjacket) to assess credibility in the round rather than affixing on a narrow dimension of the case to reach a broad finding of fact.
46. When considering the appellant's general credibility in the context of Paragraph 339 of the Immigration Rules and section 8 of the 2004 Act, we are conscious that section 8 is only an element to be considered in relation to the appellant's credibility and is not determinative.
47. The starting point of our assessment of the appeal are the factual findings made by the FtT Judge which were preserved findings in accordance with the error of law decision which is issue (ii) referred to above in [18]. Whilst the appellant gave a credible account of working with the Asayish and we take that into account in the assessment of credibility, but it does not necessarily follow that all parts of his account are similarly credible.
48. Whilst the appellant in his statement refers to the previous details of the blood feud, we note UTJ Coker's finding in this regard at [17] of her decision that

“There is no error of law by the FtT judge in his findings regarding the death of his father, blood feud or risk arising out of the death of his father”

and the finding of the FtT Judge at [35] that

“There is therefore no reliable evidence that the appellant faces a real risk of becoming a victim of a blood feud on removal to any area in the IKR other than Erbil”.
49. Ms Chaudhry accepted that UTJ Coker had found no error of law in the assessment of the blood feud by FtTJ Hillis and expressly preserved that finding in her decision. Ms Chaudhry did not seek to argue that the appellant would be at risk of persecution or serious harm on account of a blood feud in Iraq.

50. Regarding issue (i) namely whether the information provided by the appellant to the Asayish had been disclosed to the Mullah, we are not satisfied it is reasonably likely it was for these reasons. It would prevent the appellant from continuing to operate undercover. It would undermine the capacity of the Asayish and the appellant to continue their work. It would also place the appellant at risk. On our assessment of the evidence, it would undermine the effectiveness of the Asayish if it became known they did not protect the identity of sources. The discrepancy in the evidence as to whether he did not know if the Mullah had been released as stated in his screening interview (4.1) or as he said to us that he did not know not if he had been released, undermines his credibility. Whilst there are Daesh sleeper cells, it is speculative to suggest that there may be infiltration into the security system. We have to assess the evidence on the basis of what is reasonably likely, and not what is theoretically possible. We do not find that it is reasonably likely that the appellant's boss disclosed the information to protect himself from Daesh as they had been defeated in the IKR and it would still leave this boss vulnerable. Whilst it is possible the Mullah was aware of own discussion with the appellant, it is speculative to suggest that he has connected that to his arrest.
51. Regarding issue (iii and iv), as we are not satisfied there is a real risk of harm either due to a blood feud or due to his work the Asayish, he would not need to seek state protection or internally relocate. For the sake of completeness however we are satisfied there is a sufficiency of protection available to the appellant on return and he can internally relocate for these reasons. The respondent's CPIN Iraq: Actors of Protection (version 1.0) December 2020 notes its availability.
- 2.3.16 Within the KRI sources state that the security apparatus have the potential to provide effective security with law enforcement being described as more effective than in the south/central areas of Iraq ...*
- 5.1.2 The August 2020 DFAT report stated that Asayish is the KRG's primary security and intelligence agency. Its official functions include counterterrorism, counter-espionage, gathering intelligence, assessing security threats and countering smuggling, economic and political crimes and sabotage.'*
52. We note that Dr George makes no mention of having sight of the decision of UTJ Coker. He refers to the blood feud as being an issue despite UTJ Coker's finding that there was no material error of law in the FtTJ's rejection of that part of the claim. We were not helped by the reports excessive length of 94 pages particularly regarding what is happening in the part of Iraq that is not the IKR, and the report's consequent lack of focus on the issues in this appeal, and the report's age as it is now 1 year and 8 months old. Consideration of the appellant's claim begins at [126] on page 48. We take no account of [131-144] as that assesses the blood feud claim that has been

rejected by the tribunal. Likewise [147-161] is of little relevance as the appellant would not be returned to an area outside the IKR.

53. We note that at [162] Dr George states that:

“the KRG authorities do not face violence on the scale plaguing the rest of Iraq and in that sense are better placed than the Baghdad authorities to extend protection to individuals. Self-evidently, however, the ability or willingness of the KRG authorities to protect targeted individuals is a relevant consideration only where the targeted person is able to reside permanently in the KRG. The KRG imposes significant controls on permanent entry to the KRG by persons not originating from that territory...”

54. We further note [178] where Dr George states:

“Leaving aside his testimony that he has good reason to fear being targeted...by Islamic State in the Kurdish-controlled part of Iraq” the appellant “is from the KRG and would therefore have no difficulty returning and residing there.”

55. We do not accept Dr George’s assertion in [180] that:

“relocation within the KRG would not be a viable option...because the authorities would be unable to protect him from attack by his protagonists”

as we have rejected his account that there is a real risk from them as there is no real risk his identity as an informant will have been disclosed.

56. As a Kurd with lengthy and loyal service to the Asayish, who is not in conflict with politicians or those with a perceived affiliation with Daesh, the appellant would clearly be able to benefit from a sufficiency of protection if so required. He does not fall within the category of those Dr George refers to regarding the inability of the authorities to provide protection in cases involving honour crimes, blood feuds and domestic violence. There is no cogent evidence to suggest that the Mullah’s hands are far reaching despite clan and community connections. Furthermore, whilst the IKR are described as imposing significant controls on permanent entry to the IKR by persons not originating from the territory, and that the ability or willingness of the authorities there to protect targeted individuals is only relevant consideration where the targeted person is able to reside permanently there, there is no dispute that the appellant’s home area is the KRG and thus the ability or willingness of the IKR will extend to him should it be required. However on our primary finding of fact, the appellant does not require protection as we have not found that there is a real risk on return to his home area.

57. The respondent did not challenge the assertion that the appellant left Iraq illegally, and the FtT Judge made no finding on that. We have no reason to doubt that he did leave illegally in the absence of any challenge to that assertion. It is not for us to speculate as to the reason for that. Given the appellant's past employment, he would not need to rely on family support as it is reasonably likely he could obtain work again. He will therefore have the communal and tribal support considered important by Dr George at [179].
58. Regarding issue (v) we are not satisfied it is reasonably likely the appellant lost his original documents on route here for these reasons. Those documents were his CSID, Nationality Certificate, Information Card, Food Ration Form, and Asayish membership ID card as set out in Q27 of his substantive interview. The documents are so important, that he brought them with him when he left Iraq. Given their importance it is not reasonably likely they were not on him at all times, even when in the boat, and when exiting the boat, whatever the challenges, it is reasonably likely as they were on his person, they would not have been left behind.
59. He will therefore be reasonably likely to obtain a Laissez Passer as explained for example in the respondent's CPIN Internal relocation, civil documentation and returns May 2022 (2.5.6) and in the CG decision of SMO(2). The UT in SMO (1) referred to the Laissez Passer at paragraph 375 of its decision. It sets out that the further enquiries of Dr Fatah with the Iraqi consulate in London suggests that an individual must simply be able to establish their Iraqi nationality in order to obtain a Laissez Passer. In the absence of documentation, an Iraqi national can request family members to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or failing that, "legal procedures will then be started to prove the Iraqi nationality of the failed asylum seeker with a list of questions in relation to their life in Iraq. These details are checked against Iraqi records and once verified the individual will be issued with a document enabling the individual to return to Iraq". Dr Fatah also stated that in his report the website of the Iraqi Ministry of Foreign Affairs states the resulting document is valid for 6 months and that it "permits a single entry into Iraq". After considering evidence regarding Laissez Passers in SMO(2) the UT held that "there is in sum, no proper basis from which to depart from the conclusions previously reached in respect of the Laissez Passer "(at paragraph 97). On the basis of that material, both in the CG decision of SMO (2) and the most recent CPIN, we are satisfied that the appellant has sufficient evidence and documentation available to demonstrate that he is an Iraqi national and to verify his past employment history in order to obtain a Laissez Passer. Whilst the Upper Tribunal in SMO (2) found that such a document is retained at the airport, as the appellant has his CSID it will enable him to travel internally (see paragraph 2.6.4).

60. Even if he no longer has his original documents, we are satisfied it is reasonably likely he can obtain identity documents for these reasons. He has not been to the Iraqi Consul here for assistance. We are satisfied that the reason for this is that he knows that when he tells them who he is and what his job was, they will be able to identify him from records held by Asayish and issue him with the relevant documentation to get into the IKR. His evidence was that the Asayish have his biometric details and therefore will be able to identify him by the details they hold already. We are also satisfied that they will be reasonably likely to assist him with relevant correspondence to pass any checkpoints within the IKR to reach an office where his INID can be issued. We are also satisfied that given its importance and his past occupation he will know the volume and page reference in the Family Book in Iraq.
61. We note the email of 7 July 2022 at 9.52am noting that all 8 of the CSID-issuing CSA offices are in Mosul and the surrounding areas of Nineveh Governate, and that the other CSA offices including the IKR now issue the INID. We accept given SMO (2) headnote 12 that the appellant needs to personally attend the Civil Status Affairs (“CSA”) office where he is registered to enrol his biometrics, including fingerprints and iris scans. As he is a former resident of the IKR his return will be to the IKR as explained in the CPIN Iraq: Internal relocation, civil documentation and returns July 2022 (3.1.1). He would not have to cross any governate boundaries and therefore no checkpoints if the local CSA office is within Sulaymaniyah if that is where he is returned to. The Shia militia does not operate within the Kurdish region of Iraq as explained in the CPIN Iraq: Blood feuds 14 February 2020 at 5.2.1 and headnote 11 of SMO (2). We further note that upon entry to the IKR (at the airport in Sulaymaniyah) and following security screening, the Asayish generally provide such persons with a temporary entry authorisation valid for 30 days (see 6.2.1 p 197 of appellant’s bundle). As the appellant is a former member of the Asayish he will be able to provide details of his former employment to them to enable his entry.
62. No additional submissions were made in respect of article 3. The article 3 claim stood and fell with the asylum claim.
63. In relation to article 8 as the family will remain together, their removal would not breach the right they are entitled to in respect of their family life. Their removal would interfere with such private life as they have developed. Consequences of gravity can flow given the low threshold. Removal would however be lawful as they do not meet the immigration rules and for the lawful aim of retaining the integrity of immigration control. In relation to proportionality it is plainly in the children’s best interest for the family to remain together. They have only been here 6 years. He is from the majority religion and speaks the language used. He has failed to establish he speaks English and would not be an economic burden on public funds. Given his past

employment the appellant would be able to obtain the necessary documentation within a reasonable timeframe to enable him and his family resettle and reintegrate without there being any undue hardship, despite the economic and social challenges in the IKR noted by Dr George at [186-244]. In all those circumstances it would be both reasonable and proportionate to require the family to leave and reintegrate into the IKR.

Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside; the appeal is to be remade as follows:

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or his family members. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Laurence Saffer

Deputy Judge of the Upper Tribunal
1 September 2022

Fee/costs order

We have dismissed the appeal and make no fee or costs award.

Laurence Saffer

Deputy Judge of the Upper Tribunal
1 September 2022