



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11308/2019**

THE IMMIGRATION ACTS

**Heard at (IAC) Cardiff CJC
On the 25 March 2022**

**Decision & Reasons Promulgated
On the 30 January 2023**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**HR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Frost, Counsel instructed by Kesar & Co Solicitors

For the Respondent: Ms Rushforth, Senior Presenting Officer

DECISION AND REASONS

History of the Appeal

1. This appeal comes before me for re-making. A panel comprising of myself and Upper Tribunal Judge Jackson set aside the decision of First-tier Tribunal Judge Lever dated 2 October 2020 dismissing the appellant's appeal against the decision to refuse his protection and human rights claims on the basis that there had been a material error of law for the reasons given in the decision dated 2 August 2021 appended to this decision at Annex A.

The issues in this appeal

2. The judge's decision was overturned in its entirety with no findings preserved. The issue in this appeal is whether the appellant has a well-founded fear of persecution for a Convention reason in Iran. I must first determine the appellant's nationality. If I find that the appellant is an Iraqi national, the claim will fail. If I find that he is an Iranian national, I must go onto consider whether he has given a credible account of events in Iran which would put him at risk of serious harm on return and/or whether his "sur place" activities in the UK will have brought him to the attention of the Iranian authorities.

Appellant's Asylum Chronology

3. The appellant arrived illegally in the UK on 8 April 2018 and applied for asylum on the following day. His claim for asylum was refused on 7 November 2019.

Position of the parties

4. The appellant claims to be a an Iranian national of Kurdish ethnicity who was born and brought up in a village called Chowk in the area of Mariwan near the Iranian/Iraqi border. He was involved in smuggling goods across the border and carried out some work for PJAK which came to the attention of the Iranian authorities. If he is returned to Iran, he will be killed. Further, since being in the UK he has posted anti-regime material on Facebook and attended demonstrations which will also place him at risk.
5. The respondent's position is set out in detail in the refusal letter dated 7 November 2019. In summary, the respondent doubts that the appellant is an Iranian national because he speaks Kurdish Sorani and does not speak Farsi. It is also considered that he has a lack of knowledge about Iran and that some of his responses in the asylum interview were inconsistent with the background evidence in relation to Iran. The respondent commissioned a Sprakab report which indicated a high probability that the appellant's linguistic background is from Iraq and that he is therefore not at risk from the Iranian authorities. Further, even if he were to be Iranian, his account of being suspected of working for PJAK is disbelieved. It is not accepted that his "sur place" activities in the UK would have brought him to the notice of the Iranian authorities. He will not be at risk on return to Iran.

Evidence before me

6. I had before me the original respondent's bundle containing inter alia the appellant's asylum interview, the respondent's decision and the Sprakab report. I also had before me the appellant's original bundle which ends at page G- 127 which includes his witness statement dated 13 December 2019, evidence to rebut the comments by the Secretary of State and background Country Information. The appellant served a supplementary bundle to page G26 including an updated witness statement dated 19

November 2021. I was also provided with a supporting witness statement from Mr OMM, and rule 15(2A) Notices. I was provided with an updated skeleton argument by Jeremy Frost of Goldsmith Chambers. Facebook printouts were emailed to counsel on the date of the hearing and handed up. I have considered all of the evidence before me including evidence not mentioned in this paragraph.

7. I have had regard to HB(Kurds) Iran CG [2018] UKUT 00430 (IAC) and XX (PJAK, sur place activities, Facebook) (CG)[2022] UKUT 00023, and when making my decision I also had before me the latest CPINs on Iran including Kurds and Kurdish political groups, Iran, May 2022; Social media, surveillance and sur place activities, Iran March 2022 and smugglers Iran, February 2022.

Oral evidence

8. I heard oral evidence from the appellant who gave his evidence in Kurdish Sorani through a court appointed interpreter. He confirmed that he could understand the interpreter and adopted his witness statements. He was cross examined by Ms Rushforth.
9. The appellant's oral evidence was as follows: Since November 2021 he has carried out two further political activities in the UK. He went to London with a group of people in January 2022 and March 2022 to protest outside the Iranian Embassy. He was protesting against Iranian smugglers being executed. He has also been involved in publicising demonstrations. During the demonstration he carried a picture of those who had been executed by the Iranian regime and he also chanted and verbally protested.
10. If he is returned to Iran, he will be executed because there is a warrant for his arrest. He would continue to be active, but this would pose a risk to him.
11. He was questioned about speaking Farsi. He stated that he spoke basic Farsi but not much. He does not have a full understanding of Farsi. He told his solicitor he spoke a few words. His mother tongue is Kurdish Sorani. He was asked why he said he does not understand Farsi or only a bit when the background evidence indicates that Farsi is understood by most Iranian citizens. He responded that he is illiterate. He did not study. He spent less than 2 years at school between the ages of 6 and 8. He was educated in Kurdish Sorani. It was pointed out that the background evidence is that education in Iran is compulsory between the ages of 6 to 18. He responded that he was from a small village and his parents did not have enough money for him to study because his family could not afford the costs associated with studying such as uniform, clothes and shoes. Although education is supposed to be compulsory, he met many people who did not go to school at all. He has neither approached the Iranian nor Iraqi embassy to confirm his identity.

12. He has not contacted his parents since he left Iran. Both his parents are illiterate and do not have Facebook. His younger brother does not have a smart device and he is not in contact with his married sister. He does not have their telephone numbers. He has not been able to find a friend or neighbour on Facebook because people do not use the internet. His parents do not have phones because they are illiterate, and phones are not cheap to buy. He confirmed that his father telephoned him to call him to tell him that Etila'at had raided his home. He confirmed that he asked his friend Mr OMM to assist him to find his family because he went to Iraq on holiday. He then clarified this by saying he went to Kurdistan.
13. He confirmed that he met his friend A in the market area and knew him for 2 years but started working as a smuggler later and was working as a smuggler in the last two months before he left Iran. He was involved with PJAK for 4 months before he started smuggling. He took an interest in the party because it worked for the interests of the Kurdish people and after he met A he became more interested in the party. The reason he went to collect the medical supplies himself was to demonstrate his loyalty and commitment to the party and so they would know that they could trust him. Otherwise, they PJAK might think he was an informer.
14. It was put to the appellant that it was not credible that Etila'at would not make sure that he was in before visiting the house. The appellant stated that maybe they were trying to find him as quickly as possible. He said that his father phoned him after Etila'at had left his house. He is worried about contacting his family because he thinks the phone might be monitored. He asked his friend who travelled to Kurdistan to make enquires for him.
15. The appellant's earlier Facebook posts did not show privacy settings. His first Facebook account has been deleted. He was not familiar with how Facebook worked when he had his old account. He has now set up a new Facebook account with assistance which is public. He has not provided evidence from the friend who assisted him to load Facebook posts because the friend just showed him how to do it. It was put to the appellant that although his Facebook posts are open there is no evidence that they are being monitored by the Iranian authorities. There are only one or two likes. It was put to him that he could delete his Facebook account prior to applying for a travel document from the Embassy or before he travelled to Iran. He stated that he is Kurdish and active, and he will continue to be active. He has not been able to attend demonstrations because of lockdown. Since lockdown ended he has attended frequently - 3 or 4 times but his means are limited. He does not get much support. It was put to him that it was not credible that his Facebook account has been deleted. He stated that he is not attending demonstrations and posting material to bolster his claim, it is because he is genuinely interested in supporting the Kurdish cause.
16. In re-examination he confirmed that his father had a simple phone. He now has more views on his Facebook page because he has made friends

through attending demonstrations and more people have asked him to post material on the page. If you like their posts, they will like your posts. The more active you are the more interest you get. He previously did not have wifi in his accommodation but has wifi in his new address.

Submissions

17. Ms Rushforth relied on the reasons for refusal letter. She submitted that the respondent has discharged the burden of demonstrating that the appellant is more likely than not to be an Iraqi national. She relied on the Sprakab report. Although she appreciates that these reports are not infallible the report should be given some weight. The appellant has also given inconsistent evidence about his knowledge of Farsi. In his screening interview he stated that he only spoke Kurdish and in his witness statement and oral evidence he claims that he speaks very little or only basic Farsi. It is not credible that he only attended school for 2 years because this is not consistent with the background evidence. Education is compulsory in Iran and all education is in Farsi. There is no background evidence to support his claim that in a rural area such as his, he would be able to attend school for only two years and be educated in Kurdish.
18. As far as the Sprakab report is concerned the appellant has adduced no expert evidence to counter it. There is no positive linguistic evidence. He has made no attempt to contact his relatives in Iran to obtain copies of his Iranian identity documents. She asked me to place little weight on the evidence of the witness because he did not attend the appeal and his evidence had not been tested under cross examination. When he gave evidence, the appellant referred to the witness going back to Iraq.
19. In any event even if the appellant is Iranian, she asked me to find that his account of being politically active is not credible. There are discrepancies about when he met Ahmed through work as smuggler for 2 months, then 2 years and the length of time he had been involved with PJAK . His account that he collected medical supplies, Etila'at found out and went to his house and his father notified him by phone is not credible. The extensive background evidence on Etila'at is that they were likely to ensure that he was in. His father's ability to contact him does not sit well with his lack of effort to contact his family. His explanation with regard to the phones is not credible. He did not initially state that his parents did not have a smartphone but that they did not have a phone because they are illiterate and because of the expense. He then changed his evidence to say it was a simple phone.
20. His "sur place" claim is not genuinely motivated and is a cynical attempt to bolster his claim. Although his more recent posts have attracted more engagement there is still no evidence that the Iranian Embassy would be aware of his profile. The authorities monitor the profile of people they are already interested in. The screenshots have limited evidential value. XX is authority for the proposition that someone who is not genuinely motivated could be expected to delete their account before returning to Iran. It is not

plausible that his previous account was suddenly deleted by the Iranian authorities. They would have needed his password to do this. His presence at demonstrations is not genuinely motivated. He is a face in the crowd and there is no evidence that his presence was publicised in the media nor that he has a high profile. He has attended a handful of protests.

21. Mr Frost relied on his skeleton argument. He submitted that the Sprakab evidence is lacking. There is no real inconsistency between the appellant saying he did not speak Farsi and being able to speak only a little Farsi. He is not fluent in Farsi nor does he use it in his everyday life. Kurdish people have access to basic services and the appellant comes from the hinterland of Kurdish territory in a very rural area where Kurdish Sorani is spoken across the border. The appellant clarified the situation regarding his father's phone by explaining it was not an iPhone. The witness did not attend but has been recognised as a refugee from Iran and he says he is from the same village of the appellant. The appellant now has a large following of 3,000 friends on Facebook. He has posted anti-regime material on open posts and is tagged in on other people's posts.
22. As far as his sympathy for PJAK is concerned, most Kurdish people are political because it "comes with the territory". It is not untypical to see those who were sympathetic to Kurdish causes to become more active once in the diaspora where there is freedom to protest. The Secretary of State's cynicism is not warranted. The behaviour of Etila'at is typical of their modus operandi.

Preserved Findings

23. There were no preserved findings.

Findings and Reasons

Nationality

24. The respondent asserts that the appellant is an Iraqi citizen. The central evidence in respect of the appellant's nationality is the answers the appellant gave in an extensive asylum interview, his inability to speak Farsi when set against the background evidence in relation to the use of Farsi in Iraq and the Sprakab report which sets out with a "high degree of probability" that his linguistic background is Iraqi. This evidence must be weighed up together with the appellant's evidence in his statements and his oral evidence. The respondent also relies on s8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 in that the appellant has used behaviour to mislead the Secretary of State because of his claim to be an Iraqi national. Should I find that the appellant is in fact Iranian, the s8 inference falls away.
25. I turn firstly to the asylum interview. The appellant gave his screening interview on 9 April 2018 the day after he entered the UK illegally in a lorry. He spoke Kurdish Sorani. He claimed that he had left Iran in mid-

August 2017 and that he had travelled through several countries including Turkey, Afghanistan, Pakistan and several unknown countries. He was fingerprinted in Greece. He claimed to be aged 23 on arrival. His substantive interview took place on 1 August 2019.

26. During the interview he was asked details about his passport, neighbouring villages to Chawk, nearby towns, tourist attractions, TV channels, vehicle registration plates, currency, surrounding countries and detailed questions about the formation and leadership of PJAK. Subsequent to the substantive interview the appellant corrected a few of his answers.
27. The respondent conceded that the appellant had given consistent information about the documentation he had been issued with, a number of places close to his home village, three cities close to Chawk, a landmark close to Mariwan, a number of TV channels, a description of some licence plates, the currency and four countries that border Iran. I take into account that the questions were wide ranging and specifically designed to determine an applicant's nationality.
28. The respondent took issue with a TV channel called "Payam" which it was said is only broadcast in Iraq. She was unable to substantiate some of the locations close to Chawk. Ambulance licence plates were said not to be red; the 10,000 Toman note was said not to be pink although it was acknowledged that this had been corrected by the appellant shortly after the asylum interview. It was said that the journey from Mariwan to the border only takes 24 minutes by car.
29. The respondent also took issue with the appellant's claim that he unloaded and loaded smuggled goods including tyres and fuel from Iran into Iraq which was said to be inconsistent with the background evidence in the August 2019 CPIN on smuggling.
30. The respondent then went onto consider the Sprakab report which I will address below.
31. In response the appellant has provided significant evidence to demonstrate that many of the respondent's assertions about his lack of knowledge about Iran are incorrect. Specifically, the appellant provided evidence that ambulance numberplates in Iran are in fact red (photographs in a Radio Farda interview). He provided an explanation for the respondent's inability to locate some of the villages near his own village referred to in his asylum interview because the spelling was incorrect, and evidence that Payam is available by satellite and can be accessed in Iran. I also agree with the appellant that the respondent's point about the time for the car journey is vague as in the asylum interview it was not clear from the question to which point on the border the respondent was referring.
32. I find that the appellant has dealt with the majority of the respondent's objections satisfactorily and that the appellant has demonstrated a strong

and detailed knowledge of the area he claims to have come from as well as Iran in general. I also give significant weight to the fact that he used the Iranian calendar and was able to give a detailed description of each page of his pale blue Iranian identity document. This evidence strongly points to the appellant being an Iranian national, albeit immersed in Kurdish culture coming from a Kurdish family that lived in the border area. I find it unlikely that the appellant would have such a detailed knowledge of this area unless he had been resident there. I also give weight to the fact that there were no obvious gaps or lacunae in his knowledge. The respondent does not point to any important local, regional or cultural knowledge which it is said that the appellant should be aware of but is not.

33. The respondent gave a great deal of weight to the fact that the appellant was smuggling goods from Iran to Iraq and that this was inconsistent with his claim to be from Iran because it was contrary to the August 2019 CPIN on smugglers. This was updated in February 2022. I take into account that the emphasis in the CPIN is on everyday goods such food, clothes and electrical items including mobile phones being transported across the border from Iran to Iraq because the US sanctions on Iran make it difficult for ordinary Iranians to afford these items.

34. However, I also take into account the latest CPIN describes smugglers as follows:

‘Kolber is a Kurdish name for workers and tradespersons, who for a small sum of money risk their lives to transport packs of various foreign items on their own back or on the back of horses to transfer them from and to Iranian border territories from border areas of neighbouring Kurdish regions in Iraq and Turkey. The word “Kolber” is composed of two Kurdish words: “Kol”, meaning a person’s “back”, and “ber, which means “delivery”... However, the Iranian government describes them as “smugglers”...(my emphasis)

35. The implication from the above paragraph is that the trade is in fact two-way. The appellant stated in his asylum interview, “I have been loading and unloading the mules when the loads came over the border”. When asked what was being smuggled? He replied “Tyres, fuel, this is what I have seen”. He was then asked where the goods were coming from? He responded, “They were taken from Iran to Iraq”” yes illegally” He was asked were you ever present when goods were coming in from Iraq to Iran. He said “I do not know. I haven’t seen it. I was not very involved in this; I didn’t know everything”.

36. From the appellant’s answers, I note that the appellant’s job was one of unloading rather than undertaking the smuggling route and that he had not doing it for very long. I also give weight to the independent evidence from the Financial Times, Ruda.w.net and Radio Farda that smuggling not only occurs from Iraq into Iran but that in particular fuel was being smuggled out of Iran on a large scale including into Iraq in 2018 and 2019 about the time the appellant claims to have been involved in this trade. The Financial Times evidence is older, but the Radio Farda evidence is dated 21 February 2019 and refers to large scale smuggling of fuel out of

Iran because the low price of gasoline in Iran due to subsidies and devaluation making the trade very profitable. Radio Farda is named as a source in the respondent's CPIN. Ruda.w.net confirms that fuel is trekked over the border on camels.

37. I am satisfied that the respondent's objection falls away and that the appellant's account of being involved in smuggling fuel across the border into Iran is consistent with the background evidence. I also note that the following extract from the CPIN on Kurds demonstrates the large number of individuals from the appellant's place of origin working in this trade because of high levels of underdevelopment and unemployment. It states at 5.1.1.

"The April 2020 DFAT report noted: 'The provinces in which Iranian Kurds are concentrated are relatively underdeveloped economically and have some of the highest rates of unemployment in the country. In April 2019, Kermanshah Province had the highest unemployment rate in Iran (20.9 per cent), with Kurdistan Province recording the second highest (19.6 per cent). West Azerbaijan and Ilam provinces recorded unemployment rates of 15.5 per cent and 10.3 per cent, respectively, in the same period. Many Kurdish men work as kolbers (border couriers) transporting goods between Iran and Iraq, although the Iranian authorities have clamped down on this activity in recent years... (My emphasis)

38. I next turn to the appellant's claim that he was not educated in Farsi or to a high level. He has stated consistently from the outset that he has very little education. He stated that he had been educated for 2 years at primary school and he knew many others who were not educated. In his asylum interview he described his family as being farmers and that shortly prior to leaving Iran he had worked loading and unloading mules in the square along with many other young men. In his oral evidence he elaborated and stated that his parents could not afford to send him to school because the associated costs were too expensive such as uniform and books. This, says the respondent is inconsistent, with the background evidence in relation to education in Iran and more troubling is the fact that he claims to have been educated in Kurdish and that he does not speak Farsi or only a little Farsi.
39. The respondent's position, based on the background evidence reinforced in the latest CPIN on Kurds is that education in Iran is in the Farsi language. Education in the Kurdish medium is banned and the only education available in Kurdish is through civil societies. The current evidence is also that most Iranians are highly educated. Education is compulsory and free. This appears contrary to the appellant's evidence that he was educated in Kurdish Sorani for two years only.
40. Having read the Sprakab report carefully, I find that there is some evidence which undermines the respondent's position in respect of all education in Iran being undertaken in Farsi. Under the heading "language politics", on page 4 it states (Akin 2011:12; Sorani is partly taught in schools in Iran; (see Ethnologue 2016d,18). In the paragraph headed

“language description of Sorani” at page 6 of the report, I note it states the following: “In Iran, education is held in Sorani to a limited extent (Ethnologue 2016d,18)”. Sprakab as an entity is acknowledged to be an expert witness. The generic part of the Sprakab report on Kurdish dialects is very detailed and the respondent has relied on this report. I therefore find that at least prior to 2016 or 2011 (the date of the references) Sorani was taught in some schools in Iran (presumably in Kurdish areas). This may have changed in the last decade as the Iranian government has become increasingly sensitive about Kurds. The CPIN reports relate to the current practice in 2022 but do not consider the historical situation. The Sprakab report supports the appellant’s evidence that he was taught in Kurdish Sorani when he was a young child. He is now 25 and would have attended school at around the age of 8 in 2005. I find that the respondent’s objection in this respect falls away.

41. I also take into account that Iran is a large country and the CPINs do not deal with the percentage of Kurds educated to secondary level as opposed to the general population. Given the description in the CPIN of the levels of unemployment and poverty amongst the Kurdish population in Iran quoted above, I find it plausible that many Kurds do not undertake or complete education despite it being compulsory. The appellant’s evidence is that he knew many people in his local area that did not go to school and that he worked as a farmer and that this is consistent with the fact that he came from a village close to the border rather than living in a big town. Indeed, one of the sentences recorded in the Sprakab report is “I didn’t read”. I give weight to the fact that he comes from a village rather than a town.
42. The appellant speaks Kurdish Sorani. This on its own, is not determinative of his nationality. In the latest CPIN on Kurds it is confirmed that Kurdish is widely spoken in the Kurdish regions in Iran and that there are several different dialects. This is confirmed in the Sprakab report. The recent CPIN on Kurds at 3.5.5 states the following:

“Whilst Central Kurdish (Sorani) was classed as a language of Iraq by Ethnologue, it had 557,000 users in Iran in the following areas: ‘West Azerbaijan and Kordestan provinces; also Hamadan, Kermanshah, and Zanjan provinces; Mahabad area (Mukri dialect); Sanandaj (Sine) area (Sanandaji dialect).”
43. This is the area from which the appellant emanates, and it is therefore consistent with him speaking Kurdish Sorani. I also note from the above that there are numerous Kurdish dialects.
44. Ms Rushforth submitted that there is an inconsistency between the appellant initially stating in his screening interview that he spoke no other languages and in his asylum interview that he did not speak Farsi and his witness statement that he spoke basic Farsi. I do not find this to be a major inconsistency. The appellant in his oral evidence clarified that his mother tongue is Kurdish Sorani and he told his solicitor that he only speaks a few

words of Farsi. I am satisfied that it is plausible that in these circumstances the appellant stated that he does not speak Farsi.

Sprakab Report

45. The other crucial piece of evidence in relation to the appellant's nationality is the Sprakab report commissioned by the respondent. The result of the report is unequivocal. The report finds that the appellant's linguistic background is assessed to be Iraq with a "high degree of certainty" and stated linguistic background Iran, Mariwan "very unlikely".
46. The summary in the report confirms that the appellant is a native speaker of Sorani. It is said that the Ardalani dialect is typically spoken in Mariwan which is similar to Silemani or Sorani as spoken in Sulaymaniyah. It is said that "Farsi is used in schools and among speakers of different languages. Speakers of Sorani in Iran usually display an influence from Farsi". The appellant is said to not to have used traits with expected language use with a background in Iran, used traits consistent with a background in Iraq and importantly traits not consistent with any dialect of Sorani known to the analyst. It is noted that the appellant did not display a clear influence from Farsi.
47. The skeleton argument levels various criticisms at the report. The criticisms include the fact that there is no CV from the anonymised analyst to interrogate their ability to prepare a report, the analyst accepts that there were lexical traits inconsistent with any dialect known, suggesting that there are gaps in the analyst's knowledge or that the appellant speaks a unique and distinctive dialect of Sorani, there is no information on how long the analyst lived in Iran and subdialects are spoken on both sides of the border. Finally, the two main linguists who have overseen the report do not speak Kurdish Sorani, have no qualifications and experience relating to Kurdish dialect and have never lived in or visited that part of the world.
48. The most recent guidance on Sprakab reports is to be found in ASA (Bajuni: correct approach; Sprakab reports) Somalia CG [2022] UKUT 00222 (IAC) which in turn refers to MN and KY [2014] UKSC 30 and RB (Linguistic evidence - Sprakab) Somalia [2010] UKUT 329 (IAC). In general, I am satisfied that Sprakab is entitled to be treated as an expert. Sprakab reports are not infallible. The reports are an honest, serious and useful guide to establishing the location where a person learned to speak and should be given weight. It is important to consider the strength of the reasoning and expertise used to support the conclusions reached. The results of a Sprakab report must be looked at in the round with the remainder of the evidence.
49. My first general comment is that the appellant is from a border area it is apparent that several different dialects of Kurdish Sorani are spoken in the Kurdish areas in Iran. I take into account that the Sprakab report itself states that:

“language use, citizenship and national borders do not necessarily have to coincide. This is the case for example in border areas where the same language and ethnic groups are found on both sides of the border”.

50. The report starts by emphasising the difficulty in categorising Kurdish language and dialects. The Sprakab report confirms that Kurdish Sorani is spoken by 4 million speakers in Iraq and 3.25 million speakers in northwest Iran. The main dialects of Sorani are Silemani, Hawleri, Mukri and Ardalani. It is said that Silemani has many similarities to Ardalani and further states in Iran, education is held in Sorani to a limited extent. The influence of Farsi is typical of speakers from Iran.
51. Later it is said:

“Hawrami is typically spoken in a mountain area called Hawraman that stretches from the provinces of Sulay, Aniyah, Halbaja and Diyala across the border and into the provinces of Kurdistan and Kermanshah in Iran. Mahmoudveysi describes the areas as between Mariwan and Sanadaj in Iran and Halabja in Iraq.
52. The appellant comes from close to this area. It is manifest that there are numerous dialects and sub dialects and that various factors will influence each of these dialects. The linguistic situation is complex.
53. One of the major determinates is how much the language is influenced by the main language. The Sprakab report puts this as follows:

“What distinguishes a speaker of Hawrami in Iran from a speaker of Hawrami in Iraq is not the Hawrami but the influences from the language politics in each land”.
54. The analysis was of a recorded conversation between the Sprakab analyst and the appellant. The analyst found that some of the words used by the appellant were not consistent with the pronunciation (phonology) used in Kurdish Sorani in Iran and some words were pronounced in a way consistent with Kurdish Sorani in Iraq. The analyst gave three examples of syntax used by the appellant which was consistent with syntax used in Iraqi Sorani and six examples of words that would be used by a speaker of Sorani in Iraq rather than a speaker of Sorani in Iran. (I pause to comment that that the six words appear to be completely different, and it seems odd that speakers of Kurdish Sorani would use completely different words for “school”, “help” and “tap”. There is no further explanation for this in the report.)
55. Importantly, the appellant used words that were not consistent with any dialect of Sorani known to the analyst. These included very basic words such as the word for elementary school, room, electricity and wall socket.
56. This is in my view one of the main problems with the report. It appears that the analyst is not familiar with the appellant’s particular version of Sorani. I agree with the submission made on behalf of the appellant that this is not consistent with the analyst’s conclusion that that there is a

“high” degree of certainty that the appellant’s linguistic background is from Iraq. It creates a level of uncertainty and scope for doubt.

57. The report is also silent on traits which demonstrate similarities between the appellant’s Sorani and Iranian Kurdish Sorani. It is not clear if this was because there were none.
58. I have other concerns about the report. From the report it is clear that the analyst worked on the assumption that in most areas of Iran, Farsi is used in schools and among speakers of different language. It is said “Speakers of Sorani in Iran usually display an influence from Farsi”. It seems that the analyst was proceeding on the basis that most Kurdish Sorani speakers in Iran display an influence from Farsi. The analyst manifestly gave weight to the fact that the appellant’s language did not display a clear influence from Farsi.
59. From the wording in the report, it is also apparent that although in most areas Farsi is used in schools in some areas it is not and that although speakers of Sorani in Iran usually display an influence from Farsi some may not.
60. It is not apparent from the report whether the analyst was aware of the appellant’s claimed background. Nor is it clear that the analyst was using their expertise in “language politics” to compare the appellant with an Iranian Sorani speaker from his particular background; namely an individual from a village outside Marwan (away from major pockets of language influence), who speaks Kurdish Sorani with his family, who grew up working from the age of 9 or 10 on his parent’s farm, who lives close to the Iraqi border, who had not been educated in Farsi but in Sorani and only for a limited period and thus not exposed to Farsi to the same degree as another individual who had been through the education system in Farsi; and who listens to an Iraqi Sorani TV channel. There will in contrast be Kurdish Sorani speakers from the Mariwan area who live in urban areas, are educated in Farsi to the age of 18, who speak Farsi in their everyday life and who may speak quite differently to the appellant. I find that this undermines the report.
61. The analyst has lived in many countries. They were born in Mosul and speak Arabic. They speak fluent Farsi and have lived in the Kurdish parts of Syria and in Damascus. They are said to have lived in Iran, but it is not apparent from the report where or how long they lived in Iran. What is also not obvious is whether the analyst has recently been to either the Kurdish part of Iraq or the Kurdish part of Iran where the appellant comes from and what kind of exposure the analyst has to the Kurdish Sorani spoken in those areas. Of the two named linguists who have overseen the analysis neither speaks Sorani. This is another weakness in the report.
62. I take into account the fact that the appellant has not produced a positive language report of his own to rebut the respondent’s evidence. However, from my analysis of the report above, I find that the Sprakab evidence is

flawed for the reasons set out above and does not satisfy me on its own that the appellant is an Iraqi national.

63. On appeal the appellant produced a witness statement from a Kurdish Iranian who has been granted asylum in the UK. The writer confirms that he knew the appellant from his home village in Iran. However, the writer of the report did not attend the hearing because he had travelled out of the UK to go to Iraq and there was no evidence of his village of origin. Ms Rushforth submitted that it was telling that the witness had travelled to Iraq. However, the appellant clarified that he meant “home to Kurdistan” and I accept this explanation. The witness is a recognised refugee is not entitled to travel to Iran and it is not known who he planned to visit. In any event, in the absence of the witness’ attendance, I accord no weight to this evidence to support the appellant’s contention that he is Iranian.
64. I find that the application of section 8 of the Treatment of Claimant’s Act in the respondent’s decision only bites if I find that the appellant has lied about his nationality. It is not asserted by the respondent that any other provision of section 8 applies. The appellant claimed asylum on arrival in the UK. There was no delay. It is not asserted that he could have reasonably claimed asylum in a safe third country during his journey to the UK. Nor was it submitted by Ms Rushforth that section 8 should apply. In any event, I accept the unchallenged evidence of the appellant that he was detained in Greece where he was beaten by police officers, he was told he was in the country unlawfully and released and that he was otherwise with a group who travelled across Europe in lorries. I do not find that section 8 applies in these circumstances.
65. Having considered all of the evidence in respect of the appellant’s nationality in the round, I place less weight the Sprakab report because of the weaknesses in the report and I place more weight on the appellant’s detailed knowledge of Iran, his use of the Iranian calendar and the lack of gaps in his knowledge. I find on the lower standard that the appellant is a national of Iran of Kurdish ethnicity.
66. I also accept the appellant’s account of living in a village near the border, of being educated to primary school level in Sorani only and working first as a farmer and then as a kolber or smuggler for the reasons I have set out above, primarily because this is entirely consistent with the background information on a young man growing up in his area as set out in the background material, the Sprakab report and the respondent’s CPIN on Kurds.

Political activities in Iran

67. At the outset of the appeal, Ms Rushforth confirmed that should I find the appellant to an Iranian national and his account of events in Iran to be credible that the appellant would have a well-founded fear of persecution for a Convention reason which would be determinative of his appeal, notwithstanding any claimed “sur place” claim in the UK.

68. The appellant's account of his involvement with PJAK in Iran is relatively simple. He states that a friend of his called Ahmed spoke to him about PJAK contextualised his experience of Kurdish people in Iran and encouraged him to get involved. He was not a formal member. He assisted to bring medical supplies twice from a chemist and gave them to his friend for the use of PJAK. This was a loyalty test. Etila'at came to his home looking for him when he was at work. His father telephoned to warn him, and he fled the country.
69. The respondent considers that it is implausible that the appellant would carry out activities for a Kurdish party knowing the serious consequences and that it is inconsistent with his previous lack of political involvement. The appellant's evidence is that he became involved because as a young Kurdish man, he was sympathetic to the cause because of the way in which Kurdish people are treated in Iran and because he did not like the Iranian government. He describes the Iranian government carrying out mass killings including killing many kolbers. He states, "In the square in Kanimiran everybody was working in the smuggling business, everybody was Kurdish, everyone was doing something banned by the regime, we kept it secret and it was easy to talk about anti-government politics there". His friend Ahmed spoke more to him about the party. Kurdish smugglers and political activists were being shot and he wanted to do something.
70. Firstly, I find it completely plausible that a 23-year-old Kurdish man would sympathise with a Kurdish political party given the discrimination against Kurds and the number of Kurdish people executed by the state. In this respect I refer to 7.2.1 of the latest CPIN in respect of discrimination. This states:
- "7.2.1 The USSD human rights report for 2021 noted that minority groups, including Kurds, reported, '... political and socioeconomic discrimination, particularly in their access to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.'^[footnote 50] Furthermore, 'The government reportedly banned Kurdish-language newspapers, journals, and books and punished publishers, journalists, and writers for opposing and criticizing government policies. Authorities suppressed legitimate activities of Kurdish NGOs by denying them registration permits or bringing security charges against persons working with such organizations.'^[footnote 51]"
71. And in relation to arrests and executions at 7.3.5.
- "7.3.5 A joint letter by 36 civil society and human rights organizations, dated 3 February 2021, stated 'According to Kurdish human rights groups, in 2020, over 500 people from Iran's Kurdish minority, including human rights defenders, were arrested for politically motivated reasons and charged with broad and vaguely worded national security-related offenses. At least 159 of them were subsequently sentenced to prison terms ranging from one month to 17 years and four received the death penalty.'^[footnote 60]"
72. I give weight to the Danish Refugee Council Report 2013 in which it is said "all Kurdish political parties enjoy wide and popular support among Kurds

in Iran” as well as evidence at page 22 of the report of links between Mariwan and the PJAK. There are manifestly numerous young Kurdish people working for different Kurdish parties at different levels despite the risks entailed.

73. The respondent analysed the extent of the appellant’s knowledge of the party. The appellant stated that the party was formed in 2004. The respondent acknowledged that there are different accounts of the date on which PJAK was formed, one of which is in fact 2004. It is said that the appellant failed to mention that they were formed from the PKK. He correctly identified the leader of the party and gave a broadly consistent explanation as to how the party hopes to achieve its aims. The appellant is criticised for not having a detailed knowledge of the political ideology of the party, where the leader lives, the existence of other wings and how he became a member.
74. In this respect I take into account that the appellant has never claimed to be a member so he cannot be criticised for not knowing the specific procedure for joining. He claimed to be a supporter in the early stages of supporting the party. His connection to the party was slim. He had only been involved for a few months through his friend Ahmed. He had spoken or met a few other PJAK members but did not know them closely or know their names because he was a newcomer and was not yet trusted. He only spoke to his friend about PJAK. His activities involved collecting medical supplies on two occasions. In my view the on the basis of this new and low level of involvement (as well as his general lack of education and literacy) it is plausible that he would not at that stage have a detailed knowledge of the party’s political ideology (he was aware of its objectives in that it aimed to set up a separate Kurdish state) or other wings. I find that this objection falls away.
75. The respondent’s other objection is that the appellant’s description of his recruitment is contrary to the background material.
76. This is the relevant extract from the latest CPIN at 13.2.2:

“The Landinfo report on the PJAK provided information on membership types, citing various sources: “ Representatives of the PJAK explained in a meeting with Landinfo (October 2019) that there are different types of membership and different ways of being associated with the movement. They distinguish between three types of members:

1. Professional cadres. These are persons who have dedicated their lives to PJAK and are full-time warriors.
2. Regional cadres. These are persons who live primarily in Europe and Iran, but also in KRI
3. “Support members”. These are members who do not dedicate their whole lives to the party, but who still want to make an effort”

77. The extract in the refusal letter in relation to recruitment appears to relate to the professional cadres whereas the appellant in my view falls more under the category of a supporter or support member. The description of the way that PJAK works in the CPIN is consistent with the appellant's evidence in that it refers to a high degree of secrecy, small cells where members try to create national and political awareness amongst the population and of being very cautious and not holding meetings. This is consistent with the appellant's emphasis on secrecy, the fact that he was not introduced to other PJAK members, did not know their names, did not go to meetings, had talks with one friend about general political awareness and of the need to build up trust by carrying out a task.
78. There are also claimed inconsistencies in the appellant's account of what happened in terms of different timeframes. I am in agreement that his account of the timings comes across as muddled in the asylum interview. He said he was active for the party for 4 months. He later said he was involved in smuggling for 2 months only. He was asked how he knew Ahmed and he said "he was my friend I know him through work". Then he said "I know him 2 years prior through work". He said they talked about politics when they went out or during the work when they were having a break or a rest. In his witness statement he clarifies that he had known Ahmed for two years but had only worked with him for two months. He repeated this in his oral evidence and said that in the interview he said he had known him for 2 years and had worked as a smuggler for 2 months. I find that there is some suggestion in the asylum interview that the appellant had known Ahmed for two years prior to working with him because of the use of the word "prior" and I do not give much weight to this inconsistency as the conversation has been recorded in poor English and the situation was not clarified by the interviewer. I also note that the appellant claims to have spoken to Ahmed when they went out or during work. He also clarified in his oral evidence that he became involved in PJAK before he started the smuggling work because of his interest in Kurdish people and he became more interested through Ahmed.
79. His explanation for being asked to pick up the medical supplies to demonstrate his loyalty is in keeping with the background evidence. I also accept that it is plausible that his family would have telephoned him to warn him that Etila'at had visited his home despite the risk because of the knowledge of the local population as to what might happen to a young Kurdish male who is arrested. It is entirely plausible that his family wanted to warn him not to come home.
80. The appellant's evidence that he has not contacted his family since leaving is less compelling. I accept that as farmers living in the village who were illiterate they are unlikely to use sophisticated IT, have access to wifi and to use Facebook. The appellant initially seemed to say that his family do not have phones because they are illiterate and cannot afford them. He then clarified that he meant smartphones. They only had a basic phone. I am not entirely convinced that the appellant would not have tried to contact his family by telephone after arriving safely in the UK and I find

that he is not being truthful in this respect. Nevertheless this does not go to the core of his asylum claim and is a peripheral matter.

81. The respondent's final objection is her contention that the background evidence on Etila'at suggests that they would not have come to arrest the appellant when he was not at home and that they would have taken his family members instead. I find that this is pure speculation on the part of the respondent. It is not possible to know how the authorities in a particular country will act in given circumstances.
82. What is established in the Country Guidance and reaffirmed in the latest CPIN on Kurds is that the Iranian regime is highly sensitive to the Kurdish population in Iran and the regime always reacts disproportionately towards activities conducted by the Kurds. These include low level activities. This is entirely consistent with the authorities coming to his home in connection with providing medical supplies to PJAK. This is consistent with the recent CPIN at 7.3.6:

“Referring to the arrests of various activists since 6 January 2021, the letter noted, ‘... while a few of those arrested in the recent upsurge of repression are activists with a public profile and a prior record of involvement with environmental associations and cultural initiatives, the majority appear to be young men and women in their 20s who have pursued their nascent activism through informal circles focused on the civic and political empowerment of Iran’s Kurdish minority.’⁶¹
83. This is confirmed in the Danish Immigration Service report of 2020 where it is said that “the majority of the arrested people are not party members but rather supporters or people not affiliated with a political party”. “The authorities assume that every active Kurdish individual is connected to a political party and that people get arrested for different reasons”. It is also consistent with headnote (8), (9) and (10) of HB.
84. I find that the appellant has been broadly consistent about the core elements of his account. There are no major discrepancies in his account. He has a plausible level of knowledge about PJAK and I find that his account is broadly in line with the background evidence. I find that it is plausible that the Iranian authorities would be interested in him even for the low-level activity that he undertook because this is consistent with the background evidence as is the fact that the Kurdish population comes under a high degree of scrutiny and that the presence of the surveillance is not always visible. I have also found that s8 of the Treatment of Claimants Act does not apply because the appellant has not lied about his nationality.
85. Having considered all the evidence and submissions in the round, I am satisfied that the appellant has given a credible account of what happened in Iran. I find that he became sympathetic to PJAK through talking to his friend Ahmed who he had known for 2 years. His interest started about 4

months prior to leaving Iran. I find that he worked as a smuggler for the last two months that he was in Iran. He agreed to carry out some low-level activities on behalf of PJAK as a test of his loyalty. His friend introduced him to a pharmacist in a Kurdish chemist. On two occasions he picked up medical supplies for the use of PJAK and took them to his friend Ahmed. I find that the Iranian authorities became aware of these activities and went to his home to arrest him, following which his father phoned him, and shortly thereafter he left Iran without returning home.

86. I am satisfied that the appellant has come to the attention of the Iranian authorities as being someone connected with pro-Kurdish politics who is suspected to have carried out low level activities.
87. On this basis alone I find that he is at risk on return to Iraq in line with headnote (7) of HB. I find that as an individual who has no passport, is of Kurdish origin and who has come to the attention of the authorities he is at real risk of serious harm if returned to Iran. There is no question of sufficiency of protection or of internal relocation as the agents of persecution are the state.
88. I also find that the appellant's support of the PJAK and Kurdish politics is genuine and his activities in the UK of attending demonstrations are a continuation of his support for the Kurdish cause and a protest against the detention and execution not only of political activists but of Kurdish kolbers. I find that the appellant has been able to dissent openly in the UK against the Iranian regime. I find that the appellant previously attended demonstrations in London and outside the Welsh Embassy in June 2021 and October 2021, holding photographs of executions. I find that he attended a further demonstrations in January and March 2022. He has also opened a new Facebook account and posts material critical to the regime as well as information on actions by the Iranian government. I find that his Facebook posts are public. I find that these posts are a genuine expression of his political views. In line with XX I am not persuaded that the appellant's Facebook account has come to the attention of the Iranian authorities. I also find that he could be expected to delete it prior to travelling to Iran. Nevertheless, as someone who is likely to be of interest to the authorities, I find that he will be questioned and come under a lot of pressure. I find that he should not be expected to lie about his activities in the UK and that his attendance at demonstrations will come to light which will add to the risk to him.

Notice of Decision

89. I re-make the decision. The appeal is allowed under the Refugee Convention and Article 3 ECHR.

Anonymity Direction

90. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed R J Owens

Date 11 January 2022

Upper Tribunal Judge Owens



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11308/2019(V)

THE IMMIGRATION ACTS

**Heard at Field House
by Skype for Business
On 11 May 2021**

Decision & Reasons Promulgated

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Before

**UPPER TRIBUNAL JUDGE JACKSON
UPPER TRIBUNAL JUDGE OWENS**

Between

**HR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Steven Galliver-Andrew, Counsel instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr Stephen Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Lever sent on 2 October 2020 dismissing HR's appeal against a decision dated 7 November 2019 to refuse his protection and human rights claim. Permission to appeal was granted by First-tier Tribunal Judge Landes on 15 October 2020.
2. A face-to-face hearing could not be held because it was not practicable due to the current COVID-19 situation. Neither party objected to the hearing being held remotely and we were satisfied that all of the issues could be determined fairly by way of a remote hearing. There were no connectivity issues during the hearing and neither parties complained of any unfairness.

Anonymity

3. First-tier Tribunal Judge Lever made an anonymity direction pursuant to Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and the Upper Tribunal continues this anonymity order because this matter involves a protection claim.

Background

4. HR claims to be an Iranian national of Kurdish ethnicity. He arrived in the United Kingdom on 8 April 2019 and claimed asylum on 9 April 2019. The appellant claimed to have been born in Chawik, Mariwan in Iran very close to the Iranian/Iraqi border and that he worked as a smuggler for a short period. He claims to have become a supporter of PJAK and carried out some humanitarian work and that the Iranian intelligence secret service became aware of his activities and visited his home, after which he fled from Iran. He also claims that since his arrival in the United Kingdom, he has taken part in various demonstrations and posted anti-regime material on his Facebook page. He fears that he will be killed or tortured by the Iranian authorities.
5. The respondent's position is that the appellant is in fact an Iraqi national and that even if he is not an Iraqi national his account lacks credibility in any event. This is because there were various gaps in relation to the appellant's knowledge of Iran; the appellant's account of carrying out activities for PJAK contained inconsistencies and the appellant's account of smuggling from Iran to Iraq is inconsistent with background material on the direction of smuggling. The respondent did not accept the appellant's motivation for supporting PJAK given the severe consequences for Kurds carrying out anti-regime activities and found that there were inconsistencies with the background material in relation to how the appellant came to be recruited to the party. Further, the appellant failed to provide evidence that the images taken of him at the demonstrations have been shared and the photographs failed to demonstrate the appellant's role in the demonstrations. Finally, the respondent also applied Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

The Hearing

6. We had before us the original appellant's bundle, the original respondent's bundle, the skeleton argument before the First-tier Tribunal, the application for permission to appeal, the grounds of appeal, the grant of permission, the Rule 24 response and skeleton arguments from both parties. Both parties confirmed that they had all of the documentation. Both representatives made submissions and a record of these were noted on the Tribunal file.

The Decision of the First-tier Tribunal

7. HR gave oral evidence in Kurdish Sorani. The judge noted that the burden of establishing that the appellant is an Iraqi national lies on the respondent. The judge firstly turned to credibility issues in the appellant's account. The judge pointed to a lack of information as to what the appellant was doing in the fourteen years between leaving school and starting smuggling. The judge found that it is most unlikely that the Iranian intelligence services would have discovered the appellant, given his extremely limited involvement with PJAK and that it was implausible that they would have visited his home when he was not there. It was also implausible that the intelligence services would not have detained the appellant's friend. The judge took the view that there was very little credibility in the appellant's account.
8. The judge also took into account the appellant's failure to claim asylum whilst travelling to Europe and found that this was not the action of a genuine asylum seeker seeking international protection but rather the act of an economic migrant picking and choosing where he will place himself. The judge also pointed to the fact that the appellant claimed to be illiterate with only two years of schooling whilst in Iran and yet on arrival in the United Kingdom set up a Facebook page and attended University College Cardiff to study English. The judge found that the motivation behind the Facebook entries and attendance at demonstrations was opportunistic and cynical on the appellant's behalf and designed to create a claim for asylum.
9. The judge then turns to what he categorises as the central issue of the appeal which is the appellant's nationality. The judge states that in many ways this issue could be said to be "academic" since the appellant is Kurdish potentially from one side of the Iraqi/Iranian border or the other. The judge found that the appellant's poor credibility was such that he could not take at face value his claim to nationality and that there was no objective or supportive evidence of his claim. The judge then considered the Sprakab Report produced by the respondent and took into account the fact that there was no countervailing report prepared for the appellant.
10. The Sprakab report concluded that the appellant was found to a "high degree" to be from Iraq and very unlikely to be from the area of Iran with which he identified. The judge found the report to be persuasive and that

the respondent had discharged the burden of proof in order to demonstrate that the appellant is from Iraq as is claimed.

11. The judge concluded that the appellant is not in fear of persecution from the Iranian authorities, firstly because he does not find his account to be credible and secondly because he finds him to be from Iraq and not Iran. Finally, the judge comments that if the appellant genuinely feared the Iranian authorities given his proximity to the border and his knowledge of crossing places, he would have simply crossed the border into Iraq where he would have been amongst people who speak the same language as himself and are from the same cultural background and religious upbringing.

The Grounds of Challenge

12. The grounds of challenge prepared by the Migrant Legal Centre categorise the material errors as follows.

Ground 1

Treatment of Sprakab Language Analysis Report as expert evidence - making a finding counter to case law and Tribunal guidance and misconstruing the appellant's argument

13. It is said that the judge failed to take into account various criticisms of the report including:
 - a) The analyst had no CV, no list of qualifications and no cited body of work.
 - b) It was claimed that the analyst had lived in Syria and Iran but did not specify where, how long or what they were doing at the time.
 - c) The analyst relied on six words and three phrases as being inconsistent with Iranian Kurdish but admitted not knowing four words used by the appellant. It is unclear how the analyst could claim to be familiar with the appellant's dialect when they did not recognise words the appellant was using.
 - d) The analyst had never lived in Sulaymaniyah or Erbil, two large governorates along the border with Iran.
 - e) The report acknowledged that subdialects of Kurdish Sorani were spoken on both sides of the border, yet was somehow able to conclude with 'high certainty' that the appellant was from Iraq and not Iran.
 - f) The two linguists involved did not speak Kurdish, had no qualifications or experience relating to Kurdish dialects and had never lived in or visited that area of the world.

14. The judge has accepted the report as being expert evidence at face value without evaluating the quality of the evidence in light of criticisms.

Ground 2

Making findings based on criticisms never put to the appellant

15. It is said that various criticisms were not put to the appellant by the respondent nor by the judge, neither in cross-examination nor in the respondent's decision at any stage prior to the hearing. There followed a list of matters which it is said were not put to the appellant including an explanation for what he was doing in the 14 years since he left school. It is said that the failure to put these matters to the appellant amounted to procedural unfairness. The appellant relied on RR (Challenging evidence) Sri Lanka [2010] UKUT 000274 (IAC) in this respect.

Ground 3

Findings contrary to background evidence - credibility

16. The judge's finding that it was 'theoretically possible' but 'most unlikely' that the appellant's activities would have come to the attention of the authorities is contrary to the unchallenged background evidence before the judge, which showed that the Iranian authorities actively monitor political activity among Kurds in Iran and that even if he were suspected of low key involvement with Kurdish political parties he would face detention and persecution on return as the response is said to be "hair trigger" in accordance with [9] to [10] and [91] to [93] of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC). The background evidence indicates a high level of surveillance over the Kurdish population of Iran. The assertion that the judge found it highly unlikely that the intelligence services would have gone to his family home looking for him was also contrary to unchallenged background evidence.

Ground 4

Findings contrary to country guidance and background evidence - real risk

17. The judge's finding at [26] that there was no real risk as to the Iranian authorities because of his Facebook posts runs contrary to the guidance in HB (Kurds), which found that Kurds would face additional scrutiny returning to Iran through an international airport, at which point their online presence including their Facebook would be scrutinised as a matter of routine. The Facebook posts show that the account is held in his name and shows him at multiple demonstrations, his face clearly visible. The finding also ignored the background evidence given in the reported determination of AB and Others (internet activity- state of evidence) Iran [2015] UKUT 0257.

Ground 5

Finding contrary to the Qualification Directive that the appellant could relocate to Iraq to seek safety

18. At [32]the judge concluded that if the appellant were a genuine refugee, he could have crossed over to Iraq to seek safety. However, pursuant to Article 12(1)(b) of the Qualification Directive the appellant would be recognised as a refugee only where he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country. It is said that Iraq is not a party to the Refugee Convention and does not offer citizenship to Kurds from Iran. The evidence from SMO, KSP and IM (Article 15(c):identity documents (CG) [2019] UKUT 00400 (IAC) and prior country guidance on Iraq is that even an Iraqi citizen lacking documentation and supportive networks would be unable to live sustainably in Iraq.
19. The grounds were clarified and expanded upon in the appellant’s skeleton argument prepared by Mr Galliver-Andrew which were categorised as broadly relating to two issues,
 - a) the findings on credibility and
 - b) the findings on the disputed nationality.
20. It is argued in respect of the credibility issue that there are a number of adverse credibility findings which are materially perverse or irrational; there is a failure by the judge to give reasons or adequate reasons for findings on material matters, a failure to take into account and give weight to material matters and procedural unfairness because the judge made findings of fact on topics which have never been put to the appellant for him to rebut or to respond to. Mr Galliver-Andrews expanded on the grounds submitting that there was a failure on the part of the judge to take into account relevant evidence.

The respondent’s submissions

21. Mr Whitwell relied on his rule 24 response and skeleton argument. His oral submission was that stepping back from the grounds and looking at the determination as a whole, the first question is “has the judge carried out proper critical analysis of the Sprakab Report?” His argument is that at [28], [29] and [30] the judge has done just enough. The judge was aware of the claimed weaknesses and criticisms levied against the report in the skeleton argument and was entitled to rely on the report’s finding that there was a “high degree of likelihood” that the appellant came from Iraq and it was “highly unlikely” that he came from Mariwan in Iran, which were strong findings. The judge finds that the report is persuasive and his comments on the report are enough to demonstrate that he critically analysed the background of the linguistic expert. Mr Whitwell commented on the fact that the analyst correctly only commented on the syntax and linguistics and did not offer any views or knowledge of the local area.

22. As far as the appellant's credibility is concerned, he submits that this should have been assessed in the round and the fact that the First-tier Tribunal looked at the appellant's credibility first and the report separately afterwards, could not be to the disadvantage of the appellant. His overall submission was that the decision could not be said to be irrational or perverse and rather was an attack on the weight attached to various pieces of evidence.

Analysis and Discussion

23. We will deal with the grounds we consider to be strongest first.

Ground 1 -Flawed approach to Sprakab Report.

24. The judge dealt with the Sprakab Report at [29] and [30] of his decision. At [29] the judge states:

"His credibility is such that I do not find I can take at face value his claim as to nationality. There is certainly no objective or supportive evidence of his claim. However, the burden lies on the respondent. The respondent has produced a language report from Sprakab. I am aware of the claimed weaknesses in Sprakab Reports including the issue of anonymity which have been made from time to time. I am also aware of the Upper Tribunal case law some years ago that noted Sprakab Reports are proper expert reports worthy of consideration and anonymity does not detract from such reports. There is no contravailing(sic) report prepared on behalf of the appellant, although the Sprakab Report was sent to the appellant's solicitors on 20 December 2019."

25. At [30] the judge continues:

"The report is a collaboration of individuals, not simply dependent on one individual. The report confirms that Kurdish languages and dialects can be spoken across country borders. After analysis, the appellant was found to a high degree to be from Iraq and very unlikely to be from the area of Iran with which he identified. The reasons given for that conclusion are persuasive. The analyst was born in Mosul in Iraq and has lived in parts of Iraq, Syria and Iran. The analyst analyses various types of Sorani and is also fluent in Farsi. I find the language report persuasive and find that in its production the respondent has discharged the burden of proof upon the Secretary of State to demonstrate the appellant is from Iraq as they claim. The appellant has produced no evidence that I find reliable to rebut that position. Additionally, as I have noted above, the appellant's credibility is such that I do not find that which he claims to be reliable and accordingly I have concluded that the appellant, applying the appropriate standard of proof, is far more likely to be from Iraq than from Iran as he has claimed."

26. We agree with Mr Galliver-Andrew that the Upper Tribunal caselaw referred to by the Judge must be the guidance given in RB (Linguistic evidence

Sprakab Somalia [2010] UKUT 329 (IAC), in which the Upper Tribunal emphasised that the reports do not claim to be infallible, should be considered with other evidence, involve a developing discipline and are a useful guide. The guidance is that this opinion evidence must be considered with other evidence.

27. RB referred to above was considered by the Court of Appeal in RB (Somalia) v SSHD [2012] EWCA Civ 277 and Moses LJ largely endorsed the Upper Tribunal decision.
28. Mr Galliver-Andrew's written submissions relied on an authority from the Scottish Court of Sessions but as he conceded in his oral submissions, in order for us to find whether his grounds were made out in respect of the Sprakab report, it was not necessary for us to decide whether we are bound by the reasoning in Secretary of State for Home Department v MN and KY (Scotland) [2014] UKSC 30. On that basis we do not deal with that issue.
29. The starting point in evaluating the Sprakab Report was that the appellant was of Kurdish ethnicity and came from a border region between Iraq and Iran where nationals from both countries speak Kurdish Sorani. Indeed, the town where he comes from is right on the border. There was acknowledgement in the report that "languages, citizenship and national borders do not necessarily have to coincide. This is the case for example in border areas where the same language and ethnic groups are now found on both sides of the border". The appellant also claimed to come from a rural area, to have been educated to primary level only.
30. Mr Galliver-Andrew submitted that the report expressly acknowledged that there "are different opinions about which languages and dialects are Kurdish and the question is controversial".
31. In paragraphs 22 to 27 of the skeleton argument placed before the judge, the appellant highlighted a significant number of concerns with the Sprakab assessment in the present appeal. These concerns were as follows:
 - a. There was no CV for the anonymised analyst in order to interrogate their ability to author such a report. No qualifications are listed. It was not possible to show whether this person is qualified to undertake this sort of analysis.
 - b. There was nothing to say how long the analyst had lived in Iran. It could have been a month, a year or ten years. This has a material bearing on their ability to conduct such an assessment.
 - c. There was nothing to state where in Iran the analyst had lived, it could have been Tehran or Mariwan near where the appellant is from, it is not stated. Where the analyst lived would give the analyst a very different exposure to Iranian Kurdish Sorani.

- d. It can be inferred from the limited information provided that the analyst that they have never lived in Sulaymaniyah or Erbil, dialects upon which an opinion is expressed. The analyst is said to have visited parts of Iraq in 2018. There is no indication as to which parts of Iraq this person visited or how long they stayed.
 - e. Of the two named linguists who have overseen the analysis and supplied CVs neither speaks Sorani.
 - f. The analyst accepted that there were a number of lexical traits which were not consistent with any Sorani dialect known to the analyst.
32. It was argued that either there were gaps in the analyst's knowledge or qualifications and that the appellant hails from a rural area and speaks a unique and distinctive dialect of Sorani.
33. It was argued before the judge that there was a significant level of uncertainty and considerable scope for doubt in the language report and given its shortcomings, in particular the lack of knowledge of some of the words spoken by the appellant, that the finding that the appellant is from "Iraq" with a "high level" of certainty is not sustainable. It was submitted that the respondent had not demonstrated on the balance of probabilities that the appellant was from Iraq.
34. Mr Whitwell does not contend that any of these criticisms were not valid. His contention is that the judge has taken these criticisms on board because the judge states at [29],
- "I am aware of the claimed weaknesses in Sprakab Reports including the issue of anonymity which have been made from time to time."
35. Mr Whitwell quoted [171] of RB (UKUT) which states:
- "But where there is clear, detailed and reasoned linguistic analysis leading to an opinion expressed in terms of certainty or near-certainty it seems to us that little more will be required to justify a conclusion on whether an applicant or appellant has the history claimed"
36. His submission is that the judge adopted a "properly critical approach" in accordance with RM (Sierra Leone) v SSHD [2015] EWCA Civ 541 and he drew our attention to those parts of the report which did not support the appellant's claim to be Iranian including that he did not display any influence of Farsi as well as the fact that that the analyst compared a number of words noting pronunciation and intonation together with inflections and word order together with common words and expressions. He pointed to the fact that the report does not suggest that the samples provided were exhaustive.
37. We are not satisfied that [29] and [30] demonstrate that the judge did take into account the numerous criticisms of the report set out in detail in the skeleton argument.

38. Firstly, the sentence at [29] refers to the claimed weaknesses in Sprakab Reports in general rather than to the individual report in respect of the appellant.
39. Secondly, the judge's reference to the Upper Tribunal case law of some years ago is vague and states that the reports are proper expert reports worthy of consideration and anonymity does not detract from such reports. However, the appellant's objection was not only in respect of anonymity but in respect of the lack of a CV to indicate how the expert had the skills and experience to carry out such analysis as well as a lack of detailed information as to in which parts and during which periods the analyst had lived in the various parts of Iran and Iraq, all of which would have had a bearing on the ability of the analyst to have been able to accurately pinpoint the nationality of an individual speaking Kurdish Sorani from a cross-border region where the difficulties in identifying nationality conclusively were expressly acknowledged in the report. There was no mention by the judge of the lack of reference to the analyst's skills or the lack of detail as to which parts of Iraq and Iran the analyst had lived. The judge refers to the report being a collaboration of individuals, not simply dependent on one individual, but does not acknowledge that the second and third analysts do not speak Kurdish. The judge's conclusion that the analyst is persuasive because the analyst was born in Mosul in Iraq and has lived in parts of Iraq, Syria and Iran does not engage with the criticisms of the appellant at all and does not engage with the fact that the analyst was not familiar with some of the words spoken by the appellant which indicated that there were gaps in the knowledge.
40. The judge did not look at the report in the context of the appellant's background or upbringing, has not engaged with the criticisms and has not demonstrated that he has taken a robust critical approach to this evidence.
41. On this basis we are satisfied that the judge erred in the approach to the Sprakab evidence.
42. We also note in this respect that by the time the judge came to consider the report, the judge had already formed a view on the appellant's overall credibility, and this clearly informed his view of the report. Mr Whitwell conceded that it would have been preferable if the judge had not made a distinction between credibility and nationality and had considered matters in the round.

Credibility Findings - Expanded oral submissions and skeleton argument

Failure to consider evidence adduced by the appellant

43. We now turn to the claimed errors in respect of the judge's credibility assessment. In the respondent's decision letter, numerous points are taken against the appellant, particularly in respect of the gaps that are said to exist in relation to his knowledge of Iran. However, the respondent

also accepts that the appellant gave a lot of information consistent with his asserted Iranian nationality, including an accurate identification of a number of cities close to Chawk, accurate identification of a landmark in Mariwan, correct identification of a number of TV channels watched in Iran, an accurate description of licence plates in Iran, correct identification of the currency, correct identification of four of the seven countries which border Iran. The judge's description of these questions as fairly "basic" is not sustainable.

44. The respondent then gave further reasons for rejecting the appellant's nationality including the fact that he is said to have referred to locations close to Chawk which could not be verified, i.e. Safi Saru, Khuar and Guli Zeba. The TV channel watched at home by the appellant has only been substantiated as being in Iraq. The appellant's assertion that Iranian ambulance licence plates are red was not found to be consistent.
45. In the appellant's appeal statement and bundle he dealt with all of these objections. He demonstrated that the locations referred to were spelt incorrectly by the respondent and provided evidence showing where the locations were located in Iran. He provided evidence that the TV channel said to be Iraqi also has a presence in Iran. He provided images of ambulances with red licence plates, corroborated by a Wikipedia article. He addressed how long it would take to travel to the Iranian border.
46. Importantly, the respondent also claimed that the appellant's account to have been involved with smuggling goods out of Iran, was not consistent with the background country guidance which demonstrates that goods are smuggled into Iran. However, the appellant provided objective evidence supporting the appellant's account of two-way smuggling across the Iran/Iraq border, at the relevant time particularly in respect of oil.
47. The judge makes no reference to the fact that these adverse credibility points were addressed by the appellant. At [28] he states:

"I have finally returned to the central issue whether he is Iranian or Iraqi. In many ways it could be said to be academic. He is Kurdish potentially from one side of the Iraqi/Iranian border or the other. A close proximity to the border would in all probability allow him some knowledge of both Iraqi and Iranian matters, particularly as I find it most likely he is a person of some education. I do not find his ability to answer some fairly basic questions in the Home Office interview on Iran to therefore be determinative of his nationality. In like manner had he been asked similar basic questions about Iraq he may well have been able to answer in the same way. I also bear in mind that he has spent months before arrival in the UK with an agent and possibly others and with every opportunity to learn stories and information as required."
48. We find that this demonstrates the judge's failure to have addressed the evidence adduced by the appellant in support of his assertion of those criticisms levied against him by the respondent in relation to his nationality. The Secretary of State's questions are wide ranging and

specifically designed to determine an applicant's nationality. Although the questions may not have been determinative of his nationality, the fact that he was able to respond to the criticisms put to him went some way to dealing with adverse credibility findings in respect of his nationality, particularly in respect of the fact that the respondent placed considerable weight on the fact that the direction of smuggling did not support the appellant's case. This was manifestly rebutted by weighty evidence put forward by the appellant.

49. The judge's failure to deal with these issues indicates a lack of preparedness to engage with the positive aspects of his claim. Further, the appellant was not asked questions about Iraq and without any evidence of this, the assertion that he would have been able to answer in the same way is pure speculation on the part of the judge as is the contention that because he spent months before arrival in the United Kingdom with an agent he had every opportunity to learn stories and information. Further and importantly these concerns were also not put to the appellant during the hearing.
50. We are satisfied that the judge erred by failing to take into account relevant evidence which was adduced specifically to deal with the respondent's reasons for refusing the application. This indicates a lack of anxious scrutiny.

Grounds 3 and 4 -Failure to put the claim in the context of the Country Guidance and background material.

51. The starting point in the skeleton argument is that the respondent accepted in the decision letter at paragraph 35 that even the low-level activism asserted by the appellant could put him at real risk of harm or persecution.
52. The appellant provided an account in his asylum interview and witness statement as to how he became involved with carrying out activities for the PJAK and this was put into context by his representative in the skeleton argument which referred to the Country Guidance case of HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) as well as background material in the appellant's bundle at C11-12 that all Kurdish political parties enjoy wide and popular support among Kurds in Iran. The background evidence also pointed to the Iranian government not being popular with Kurds.
53. The appellant's evidence in his asylum interview and witness statement that his introduction to the PJAK came from his friend (Ahmed) who contextualised his experience of the Kurdish people. The appellant repeated this under cross examination. In his witness statement he explained that

"in the square in Kanimiran everyone worked in the smuggling business, everyone was Kurdish, everyone was doing something banned by the regime, we kept it secret but it was easy to talk about anti-government politics there. I had not been active about politics before, but this does not

mean I didn't care about anything. I am Kurdish and Kurdish smugglers and political activists are being shot or arrested. I wanted to do something".

54. The judge does not give reasons for rejecting this evidence apart from to note at [21] that the appellant had no involvement or interest in politics prior to meeting Ahmed; his family and extended family had no interest or involvement in politics and that if the appellant was illiterate it is unlikely that he would have read or written anything of a political nature. The inference is that there was no reason for the appellant to become involved in politics and his interest had come out of a vacuum.
55. It is submitted that this finding is materially irrational and fails to take into account the evidence presented in the background material that most Kurds in Iran are sympathetic to the Kurdish cause, which is set out in the Danish Refugee Council report. Indeed, one page referred to in the skeleton argument at C23 points to a connection between Mariwan and the PJAK. The appellant's willingness to carry out activities should have been placed by the judge in this context. The judge appears to have ignored the country background evidence when finding that the appellant's political involvement appears to have come out of a vacuum and failed to give reasons for rejecting the appellant's evidence.
56. Further at [23] the judge finds that it is "most unlikely that Etellaat would have discovered the appellant, given his extremely limited involvement which essentially only occurred through Ahmed".
57. This finding also runs contrary to the background evidence in respect of the Iranian authorities' surveillance and suspicion of the Iranian Kurdish community and their "hair-trigger" approach to even seemingly innocuous acts of charity. It is accepted by the respondent and in the Country Guidance that even "the most cursory of actions" such as peaceful protest or involvement with social welfare or charitable activities can put an individual at risk. The judge's finding that the appellant would not have come to the attention of the authorities because of his extremely limited involvement fails to take account of the background material as do the judge's failure to acknowledge the background information on the surveillance of the Kurdish population through spies and surveillance. These errors infect the assessment of the appellant's credibility.
58. In summary, we are satisfied that the judge also failed to assess the claim in the round against the background situation and in light of the country guidance and that this failure is a material error on the part of the judge which infected his assessment of the appellant's credibility.

Materiality

59. These errors are material to the outcome of the appeal. Had the judge taken into account the relevant evidence, assessed the claim against the background evidence and Country Guidance, made a properly critical assessment of the Sprakab Report and assessed the report in the round with the other evidence, the judge may well have come to a different

conclusion in relation to the appellant's nationality and credibility. We set aside the decision of the First-tier Tribunal Judge in its entirety.

60. Having found that there is material error of law, we do not go on to consider the other grounds of appeal for instance in relation to the appellant's "sur place" activities.

Disposal

61. Despite the number of findings that will need to be made in this appeal the issues are complicated and the matter can be dealt with more swiftly by remaking in the Upper Tribunal in line with Statement 7 of the Senior President's Practice Statements of 10 February 2020.

Preserved Findings of Fact

62. No factual findings are preserved.

Decision

63. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
64. The decision is set aside with no findings preserved.
65. The appeal is adjourned for remaking before the Upper Tribunal at a date to be notified.

Directions

66. Despite having considered the present need to take precautions against the spread of COVID-19 and the overriding objective expressed at Rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and also Rule 2(2) to (4) we have reached the provisional view that it would in this case be appropriate to hear the appeal by means of a face-to-face hearing, including because HR will be giving evidence through an interpreter and credibility is an issue. We therefore make the following directions.
- a) The appellant is to file and serve no later than 14 days before the resumed hearing a skeleton argument together with any authorities addressing as well as any further evidence accompanied by the requisite notices. It is a matter for the appellant, but he may wish to address in more detail what he was doing in Iran along with his family details, background and attempts to contact his family and obtain documentation in respect of his Iranian nationality.
 - b) The respondent is to file and serve a position statement and skeleton argument in respect of the same no later than five days before the resumed hearing.

- c) Liberty for the parties to provide reasons as to why a remote hearing is required in this matter no later than seven days after this notice is sent if they consider that to be more appropriate. The date of sending is on the covering letter or covering email.

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

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

Signed

Date 2 August 2021

RJ Owens
Upper Tribunal Judge Owens