IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-004704
First-tier Tribunal No:
PA/51002/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

IMA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood, instructed on behalf of the appellant
For the Respondent :Mr Diwnycz, Senior Presenting Officer

Heard at (IAC) on 22 April 2024

DECISION AND REASONS

1. Pursuant to section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007, this is the remaking of the decision of Judge of the First-tier Tribunal Lodato promulgated on the 11 October 2023, following the decision dated 8 February 2024 of the Upper Tribunal setting aside the decision of the FtT in the light of both parties having agreed a material error of law in that decision.

2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. 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.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Iraq who claimed to have left Iraq on 9 November 2015 and travelled initially to Turkey before travelling through unknown countries before reaching and entering the United Kingdom Illegally on 27/11/2015. The appellant was encountered by immigration police and claimed asylum the same day.

5. The appellant's claim for asylum was refused in a decision made on 4 May 2016. His appeal against this decision at the First-tier was dismissed on 9 January 2016 (see decision of FtTJ Manchester).

6. His application to appeal this decision at the First-tier was refused on 24 April 2017 and refused permission to appeal the decision to the Upper Tribunal on 23 May 2017.

7. The appellant lodged further submission on 12 February 2018 which were refused on 08 November 2018 and further submission on 22 August 2019 which were refused, and his appeal was dismissed on 2 December 2020.

8. The appellant lodged his current further submissions on 15 June 2022 which were considered and refused in a decision of the respondent taken on 13 September 2022.

9. The appeal came before FtTJ on 29 September 2023 and in a decision promulgated on 11 October 2023, the FtTJ dismissed the appeal.

10. The FtTJ set out the previous findings of the FtTJ's decisions in 2017 and 2020 at paragraphs 5 -7 of his decision). In respect of the decision reached in 2017 he summarised the factual findings as follows:

> (1) The appellant's credibility was called into serious question on account of his claimed decision to reside in Erbil for 8 months after the risk materialised [29].
>
> (2) The appellant's primary account about the disappearance or death of his father was found to be dubious owing to a lack of clarity and consistency [30- 31].
>
> (3) The appellant's account of remonstrating with his father's Peshmerga commanders was said to be implausible [32].
>
> (4) The entirety of the factual account was rejected [34-35] and, in the alternative, it was found that the appellant could reasonably relocate in the IKR [37].

11. The decision in 2020 was summarised by the FtTJ. Follows His claim to have obtained a copy of this document via a friend, was not found to be credible or plausible because of inconsistencies and weaknesses in his various accounts. [110-127 and 151- 152]Little weight was attached to the appellant's approach to the Red Cross [143].There was no evidence capable of supporting the proposition that the appellant was at risk from the Karawi tribe [144-147].The appellant's evidence that he no longer had direct or constructive access to his essential Iraqi identification documents was rejected. It was instead found that his CSID card remained with his family in Iraq with whom he remained in contact. [176]. Between paragraphs 128 and 142, the judge dealt with the sur place political

asylum claim. It was noted that there were only limited screenshots from Facebook as well as photographs which purported to show the appellant at demonstrations in X. Between paragraphs 140 and 153-155 the FtTJ set out his overarching factual findings. The FtTJ accepted that the appellant had a Facebook account but not "open" and that it had or would not come to the attention of the Kurdish Peshmerga or the Iraqi authorities. He accepted the appellant had attended a meeting or demonstration on one occasion but not satisfied that he played a leading role/organised it nor that it had or would have come to the attention of the Kurdish Peshmerga or the Iraqi authorities as a result of attendance at one meeting. The FtTJ concluded that the sur place activities were not reflective of his genuinely held opinions.

12. The FtTJ set out the issues in dispute at paragraph 9 that principally were directed to the fresh claim and evidence of his sur place activities and the issue of whether he could access his documents from his family.

13. Dealing with the principal issue and what the FtTJ set out at paragraph16 and whether the appellant's political activism are a manifestation of his genuine views" the FtTJ set out his findings of fact at paragraphs 18-24. The FtTJ found that the Facebook account was the main medium through which the appellant "criticised those in power in the IKR, and to a lesser degree, other parts of Iraq"(paragraph 18). After hearing the appellant's evidence as to when he had begun his political activity, the FtTJ concluded that the appellant had set out his political grievances as "instinctive and genuine politically commentary." The judge found that at the time the appeal was heard by the previous FtTJ in 2020 the appellant had only "tentatively engaged in political activism". The judge found that on the evidence before him, the evidential picture over 3 years since was of a "very different character" (see paragraph 19). At paragraph 20 the FtTJ referred to the "comprehensive package of evidence which included almost 200 pages of the appellant's Facebook profile showing the appellant's prolific involvement in emphatically criticising the Iraqi authorities, particularly those in power in the IKR", and noting that the profiles in the appellant's name, open to the public and was followed by over 1000 people. The FtTJ also accepted that he had participated in multiple protests and was interviewed on a live broadcast against the KRG. At paragraph 21 the FtTJ assessed the letters of support from organisations and also the evidence of a witness whose had been granted asylum based on his own political activism as a journalist. The FtTJ balanced against those positive evidential features the fact that the Tribunal not been provided with a full download of the Facebook profile but having considered the issue was satisfied that the full profile had been made available and thus he attached some weight to the Facebook evidence in the round in the light of the other evidence.

14. In summary at paragraph 24, the FtTJ reached the conclusion that he was satisfied that the appellant had become a "committed political activist, with organisational responsibilities, against those who held power in Iraq, particularly but not exclusively in the IKR. " Whilst the FtTJ noted the previous rejection of his sur place claim he found that "his political activism is now an entirely different order of magnitude". The FtTJ concluded that "the appellant is a genuine political activist to a reasonable degree of likelihood. It follows that I do not doubt his evidence that he would be minded to continue his political activism if returned to the IKR and that it would only be the fear of persecution or serious harm which might convince him to remain silent."

15. On the other issues identified, the FtTJ considered the risk on return to his home area in the Diyala Governorate, which the FtTJ found was an area outside the IKR (I note that in this context the decision letter at paragraph 47 referred to the

family living in an area in Diyala but referred to it as being in the IKR). Between paragraphs 25 to 26 the FtTJ applied the sliding scale analysis to assess whether the appellant had any characteristics which might expose them to serious harm on return. Whilst the FtTJ was satisfied that he had demonstrated political opposition against the KRG, he found that there was little to support on the papers the submission that the appellant had been vocal against those in power in Diyala and found that from the material there was little political interest in those who are in control of his home area. He therefore concluded that the appellant had not demonstrated meaningful political opposition to the local security actors in his home area. In addition the FtTJ found that being a member of an ethnic minority in the governorate that is not in control of the area was not sufficiently weighted in favour of being at risk of indiscriminate violence on return. He also found "there is no new evidence to warrant a departure from the previous determinations which rejected the appellant's claim that he was at risk because of things he said in the aftermath of his father's claimed disappearance" (see paragraph 25). The FtTJ therefore concluded that the appellant was not at risk of persecution or serious harm on return to his home area (see paragraph 27).

16. Whilst the parties had identified the issue of relocation to the IKR, in light of the conclusion that he would not be at risk on return to his home area, the issue of relocation to the IKR was considered to be academic. Therefore the question of whether he would be targeted in the IKR by agents of the KRG did not arise (see paragraph 27).

17. Between paragraphs 28 – 30 the FtTJ addressed the issue of whether the appellant had access to his documentation and the location of his family. It is not necessary to set out those factual findings for the purposes of this decision as those findings of fact were not challenged by the appellant in the grounds of permission. In essence, the FtTJ considered the fresh evidence concerning efforts to find his family, but the FtTJ considered he could not rely on that evidence and found that he had not lost contact with his family and that they could take the necessary steps to reuniting with his documentation.

18. Whilst the FtTJ had concluded that the appellant had been genuinely politically active against those in power in the IKR, the FtTJ found that he had shown little interest in expressing political views against those in control of his home area. The FtTJ therefore was not satisfied that he was at risk of persecution or serious harm and that there was no need to relocate to the IKR, and that the new evidence relied upon did not displace the previous findings that he could return via his family to gain access to his documentation. He therefore dismissed the appeal.

19. The appellant sought permission to appeal, and FtTJ Dainty granted permission on 30 October 2023 for the following reasons:

> "The grounds assert that the judge failed to take into account material matters in that it is argued that the Appellant would be at risk in the Diyala Governorate by reason of being at risk in the IKR and there being a presence of Kurdish forces in Diyala (in particular in Khanqin) at checkpoints (as confirmed in SMO).
>
> It is further averred that the judge failed to make findings on material matters in particular whether the Appellant was of adverse interest to the authorities of the IKR. It is again said that this is wrong because of the presence of Kurdish forces at checkpoints in the Khanaqin area and because the judge had

made a finding that the Appellant was a committed activist against those who held power particularly in the IKR.

It is further argued that the judge should have addressed HJ (Iran).

The argument about Kurdish forces being in control of checkpoints in Khanqin based on some of the evidence in SMO no 1 was not made to the judge at the hearing and therefore appears to me to be an attempt to reargue the case. That being said the sliding scale requires an examination of particular circumstances and given that this information was in the public domain in the SMO decision it is arguable that the judge ought to have considered the relevance of the Kurdish forces being in control at Khanqin. This would have likely been material to the consideration of risk to the Appellant".

20. Following the grant of permission the respondent sent a Rule 24 response to the grounds of appeal and the grant of permission. It set out the position of the respondent as follows:

> "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant' argument about Kurdish forces being in control of checkpoints in Khanqin based on some of the evidence in SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC).
>
> At [24] of his decision First Tier Judge Lodato (The Judge) accepts that the Appellant is a committed political activist, should have applied HJ (Iran) on risk upon return to his home area".

<u>The error of law:</u>

21. In accordance with the rule 24 response, at the error of law hearing on 22 January 2024, there was agreement between the parties that the decision of the FtTJ involved the making of a material error on a point of law and that the grounds were made out and agreed with the submissions made in the Rule 24 response that there should be a fresh hearing on those issues and those identified in the grounds

22. In the light of that concession and also on the basis of the grounds and oral submissions, it is agreed between the parties that the FtTJ's decision discloses the making of a material error on a point of law and as both advocates now agree, should be set aside to be remade on the issue of risk on return In the circumstances it was only necessary to give short reasons as to why that concession was made.

23. They were set out as follows:

(1) The grounds of challenge at paragraphs 2 –7 submit that the FtTJ failed to take account of material matters when considering risk on return to his home area. The grounds seek to identify the last place that the appellant lived at in Diyala governorate and that contrary to the findings made at paragraphs 25 – 26, they failed to take into account specific and relevant evidence about the area and Khanaquin as set out in *SMO, KSP and IM (article 15 (c); identity documents) CG Iraq* [2019] UKUT 400 and the evidence relating to Kurdish forces at the checkpoint. The grounds submit that the FtTJ failed to take account

of that evidence and that if the appellant was of adverse interest to the authorities of the IKR, then the presence of Kurdish forces would put him at real risk of harm.

(2) The respondent accepts that there was no analysis of that evidence and that this was relevant to the issue of risk on return to the home area. As set out in the factual findings, the FtTJ accepted that the appellant had become a committed political activist, with organisational responsibilities against those who hold power in Iraq, although he found principally the evidence related to the IKR. However in reaching his conclusions on risk on return to the home area, the FtTJ, whilst finding that his posts or political statements were almost exclusively directed to the authorities in the IKR, the FtTJ did not take into account the evidence as to the presence of the Kurdish forces in the appellant's home area and that whether the appellant's political views would be either known or would become ascertainable at the point of return and therefore give rise to risk on return.

(3) Dealing with the 2nd ground summarised at paragraph 10-11, Mr Wood rephrased that ground as a challenge as whether the appellant would be at risk at the checkpoint in the area as a result of his political opinion or which would be imputed to him. The third ground set out at paragraph 12 was that the FtTJ failed to make findings of fact as to whether the government of Iraq holds an adverse interest in him given that the route of return would be via Baghdad.

(4) The last ground of challenge relates to the factual findings made that the appellant is a committed political activist but that the FtTJ failed to make any reason findings as to how the appellant will conduct himself upon return to Iraq or the IKR and what would be the consequences applying the principles in HJ(Iran). The respondent in the rule 24 response accepts that no assessment was made of those principles when assessing risk on return to his home area. The FtTJ did set out at paragraph 24 that the appellant was a genuine political activist, if returned to the IKR and that it would only be the fear of persecution or serious harm which might convince him to remain silent. However, that assessment did not relate to his home area. Further, in light of the error of law in relation to how the appellant's views would be perceived at the point of return (as identified in the 1st ground) as to how he would act or what the consequences would be.

<u>The resumed hearing before the Upper Tribunal:</u>

24. The agreed position between the parties is that the FtTJ erred in law in his assessment of risk on return to Iraq based on the positive factual findings made as to the political opinion held by the appellant and the genuineness of those views. It is agreed between the parties that the appeal needed to be reconsidered on the issue of risk on return in the light of those positive findings of fact applying the country materials, and the country guidance available and by reference to the appellant's circumstances and the area of return, which is to the GOI. As set out earlier, the decision letter at paragraph 47 appeared to consider the appellant's home area as being in the IKR, although the FtTJ proceeded on the basis that it was outside of the IKR.

25. The preserved findings of the FtTJ are as follows: Paragraphs 17-24 concerning the appellant's sur place claim. There was no challenge to the finding made at

paragraph 25. Paragraphs 28-30 relating to his CSID and his family which were not the subject of challenge before the Upper Tribunal that there was no evidence to warrant a departure from the previous determinations which rejected the appellant's core claim that he was at risk because of things he said in the aftermath of his father's claimed disappearance.

26. The issue to be remade relates to risk on return and the assessment of the country materials alongside the application of the relevant country guidance decisions and by consideration of the evidence filed by the parties.

27. Thus the issues are :

i. Whether the appellant would be at risk of persecution or serious harm in his home area as a result of his political views held when considering evidence as to who would be present at the relevant checkpoint. It is noted that the decision letter (at paragraph 47) refers to the appellant's home area as in the IKR although the FtTJ proceeded on the basis that it was outside the IKR. It will be for the parties to identify the evidence relevant to this issue.

ii. ii. Whether the GOI have any adverse interest in the appellant in light of the possible route of return via Baghdad (see paragraph 12 the grounds).

iii. iii. An assessment of how the appellant will conduct himself on return to Iraq and the consequences applying the principles in HJ(Iran).

The evidence:

28. At the outset of the hearing steps were taken to ensure that the evidence was available to both advocates and the Tribunal. There had been a large bundle of documents provided by the appellant which had been before the FtT and relied upon by the appellant at the error of law hearing. It also contained the respondent's bundle which included the previous decision of the FtT, the interview record and decision letter. Mr Wood had prepared a skeleton argument for the hearing. Mr Diwncyz confirmed that there was no skeleton argument filed on behalf of the respondent.

29. The appellant gave his evidence with the assistance of an interpreter in the Kurdish Sorani language. There were no problems identified with the interpretation and both the interpreter and the appellant confirmed that they were able to understand each other.

30. The appellant confirmed the 2 previous witness statements that had been filed for the previous proceedings dated 16/3/2022)(p 663) and 28/3/2023 (p.101) as his evidence in chief. There was no up-to-date witness statement filed on behalf of the appellant. No further questions were asked in examination chief.

31. In cross-examination he was asked who it was that he feared on return to Iraq, the appellant stated that he considered all of them to be his enemy and that he participated in demonstrations against "all of them". He said there was no difference in that "all of them will be against me if I am returned". He was asked if he had demonstrated against all of them before he came to the UK the appellant stated that he had not demonstrated against them whilst in Iraq would have done so while in the UK.

32. He was asked about the interview he gave for the NRT. That he had been so interview but also there were a number of other TV channels that broadcast the interview on a number of occasions. He could not remember exactly but he was on TV on NRT and Payam. He was asked if anything had occurred as a result of his appearance on Kurdish TV and the appellant stated that he had been threatened on Facebook. He stated that he could show that they tried to hack his email and Facebook and a week ago he received information that somewhere they tried to hack into Facebook and got into his email. He said 3 times in 3 different years that they were trying to access Facebook. He said he had already provided it to the solicitors. He was asked if it is reported the attempts to the Facebook administration? The appellant said that he had not but had received an email stating that he should change his password because someone had accessed it. When asked who had sent in the email asking to change the password he said "Facebook". He was asked if Facebook had said they were going to take action against the persons involved? The appellant stated, "no they just sent this". He was asked if his evidence was that Facebook told him of the hacking attempts but had not done anything? The appellant replied "I do not know how do you expect me to know that? He was asked if it changes password and he said "yes". When asked if there had been any subsequent attacks to hackers Facebook since he said that there had been an even 2 weeks ago they tried to do it. He said it changes password, but they hacked into it and that he had it on his phone.

33. The appellant was asked if anyone had threatened him on Facebook and he said that he had been and when asked if they were anonymous or whether they identified themselves the appellant stated that the one who had threatened him was a man who is a well-known family and there is a photograph of him with a peshmerga.

34. The appellant was asked who else he feared, and he said, the PUK, KDP and Hash Ali and the PMU and also a prominent man in the Diyala area who has a lot of power in the Baath party, undertook when militia and the Shia militia.

35. There was no re-examination.

36. Following the oral evidence of the appellant, 2 issues arose. Dealing with the 1st issue, Mr Wood was asked what he was asking the tribunal to do with the oral evidence given by the appellant which was not in any witness statement about his Facebook account being hacked. Mr Wood stated that this was not before the tribunal and the respondent has not had sight of the evidence although he had offered the emails to be viewed. Mr Wood said that appellant did not know who hacked his account there was no witness statement evidence about this issue. Mr Wood stated that further evidence could be filed but that he did not want to delay consideration of the appeal and it may be felt that the appellant had the opportunity to put his evidence and that time had now passed. However he invited me to take the evidence into account "in the round". Mr Diwnycz responded by saying that the evidence did not take matters further and that the issue under consideration was the return of the appellant.

37. The 2nd issue arose as to the threats the appellant had received on Facebook. Mr Wood submitted that the risk from the man identified had been infected by the FtTJ's failure to consider the evidence regarding the checkpoints and that they had Kurdish forces present and the PUK and therefore the threat affected that finding. Mr Wood explained that in the FtT decision there was an absence of who was in charge at the checkpoints. He referred to the witness statement of th appellant. Mr Diwnycz referred to the FtTJ's finding at paragraph 26 and that the

finding that he was not at risk on return to his home area in Diyala "had the effect of rendering academic the threats the appellant claimed to have received from DS, a seemingly well-connected man in the IKR. There was no suggestion that this man might be able to reach the appellant in his home area to which he will ultimately return."

38. Mr Wood stated that he relied upon this evidence (identified at page 106;para 24 and p 109 and the material at page 600-605). Although those issues had not been raised as factual issues in the skeleton argument, Mr Wood confirmed that they were issues that required resolution. In the circumstances, further time was given to Mr Diwnycz to consider that evidence before resuming for the cross-examination on those areas.

39. Mr Diwnycz asked the appellant about page 602, and the appellant confirmed that was the man known as DS. The appellant was asked the nature of the threat was and confirmed that this man was the only man who had made threats to him on Facebook. He said that all of the threats made were dangerous. The appellant was directed to page 601 which was read to him, and he was asked whether the author of the threats meant the appellant? The appellant stated, "definitely yes, or else he would not have posted it to me." When asked about the man's profile, the appellant stated that he was influential and had influence everywhere. He referred to his home area which was near to the Kurdish -controlled region and that it was ruled sometimes by the Sunni Muslims and other times by Shia's and then sometimes Kurds. He said it was also taken by ISIL as well.

40. The appellant confirmed that his home area was in the Diyala governorate and when asked if he would have to pass or go through a checkpoint between Sulaymaniyah and Diyala, the appellant said "definitely". He also confirmed that 2 travel from Diyala to Sulaymaniyah he would have to pass through a checkpoint. When asked about the "line of control" the appellant stated that he would have to go through a checkpoint.

41. When asked about travel from Baghdad airport, he said that it was a long distance and that there were a number of checkpoints between his home area and Baghdad. He agreed in cross-examination that each governorate had a boundary. He also said that there was definitely a checkpoint between Baghdad and Diyala and that he had been to Baghdad when he left Iraq.

42. The appellant was asked again about pages 602 – 605 and the photograph of DS with President Barzani. The profile picture at 600 showed President Barzani. It was suggested that the photograph was dated 30 June 2015. The appellant agreed that the man who had sent the message lived in Erbil. He was asked if there was any more recent evidence relating to this man and President Barzini. The appellant replied that he did not know the man but from the photograph you could see that he was "powerful and influential."

43. There was no re-examination.

<u>The submissions:</u>

44. At the conclusion of the evidence each party had the opportunity to provide their closing summary. I am grateful for the helpful submissions proved by both advocates.

45. The submissions made on behalf of the respondent are summarised as follows. Mr Diwnycz submitted that the essential feature of the evidence and cross-

examination was that the appellant was against everyone and that everyone was against him. What he had said about the hacking incident was indigestible and even if it was digestible the evidence demonstrated that the appellant has done everything that Facebook advised him to do, such as change his password. Thus somebody has hacked his account, but it cannot be said that it was the individual DS. Therefore the finding made by Judge Lodato still remained and that the appellant would not be at risk in Diyala. Mr Diwnycz submitted that the appellant may be at risk in Erbil if he saw DS in the street and he was recognised by DS but was not at risk him from DS in his home area.

46. As regards checkpoints, Mr Diwnycz submitted that there was a checkpoint between Baghdad and Diyala and this was the nature of governorate boundaries but that it was still for the appellant to show that at a checkpoint it would raise a problem for the appellant with the authorities. The facts preserved was that he had contact with his family and thus had access to his CSID and therefore he is returnable to Baghdad and can make his way through to Diyala and through the checkpoints.

47. Mr Diwnycz was asked to assist the tribunal as to any evidence the respondent wish to rely upon concerning the issue of the authority's monitoring social media in the UK. Mr Diwnycz submitted that there was no guidance in the CPIN for Iraq that dealt with the GOI as to monitoring or any intent to do so. He submitted that even if the appellant was a committed political activist the Iraqi authorities would not necessarily do anything about it. It is a matter for the appellant to persuade the tribunal. He submitted that there were transgressions in the IRK but he was not expected to relocate. His home area in Iraq was controlled by the government. Mr Diwnycz stated that he accepted that the appellant's evidence where he said the travel between the home area and the IKR was not very far away.

48. Mr Wood relied upon his skeleton argument and supplemented them with his oral submissions. I summarise them as follows.

49. Mr Wood submitted that there were 3 points identified at the error of law hearing and set out in the schedule of issues at paragraph 3 and the skeleton argument.

50. It was found by First-tier Tribunal Judge Lodato in his decision of 11.10.2023 at [24] (see consolidated bundle ("CB") of 10.1.2024 at page 10) that the Appellant was a: "…committed political activist, with organisational responsibilities, against those who hold power in Iraq, particularly but not exclusively in the IKR…" [Emphasis added]

51. The Appellant identified in his witness of statement of 16.3.2022 that he was born in Kalar in Sulaymaniyah, lived in Jalawla (Diyala governorate), Kulajo (Diyala governorate) and finally Khanaqin (Diyala governorate) (CB 663). It is therefore submitted that his home area is Khanaqin in Diyala governorate.

52. Mr Wood, in his oral submissions referred to paragraph 6 of his skeleton argument which set out paragraph 112 of SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) at [112]: where the Upper Tribunal noted:

> "Like Dr Fatah, EASO considered the situation in Khanaqin in the east to deserve separate consideration. It noted that the district was ethnically diverse and that a range of pressures had been brought to bear on it during the Saddam Hussein years and thereafter. Suburbs had been taken by ISIL

in June 2014, but not Khanaqin city itself. When these areas were recaptured by the (Shia) PMU and the Peshmerga in 2015, it was the former who took over control of the area. This caused many, especially the Kurds, to flee in fear of reprisals. Many had not returned. Security was now shared between the Iraqi forces and the Badr Organisation, although Kurdish forces continue to stand at checkpoints…" [Emphasis added].

53. He submitted that this paragraph supported the that Kurdish forces stand at the checkpoints and that or members of the Kurdish forces present. In the light of the findings of fact made by Judge Lodato the appellant is a committed political activist and has organised activity and is not just an observer. He has attended a number of demonstrations and is engaged in political comment, and this is reflected in his evidence that he had spoken to media outlets. Mr Wood referred to the "social graph" and that he would feature highly on the graph in terms of profile (See decision in XX (PJAK)).

54. In his oral submissions Mr Wood referred to the reports in the object material that social media was monitored: see page 39 Freedom House report: which states, "journalists and activists are frequently harassed and intimidated online, and they are at times subjected to physical violence – including assassinations – by state and nonstate actors in reprisal for the content they post. Those who perpetrate physical tax assassinations often go unpunished (see C1)."

55. Mr Wood submitted that there was credible background evidence of monitoring and interference with on social media and that it is possible to come to the conclusion that his profile is such that there is a real risk of falling foul of the monitoring if he already being monitored by the Iraqi authorities. If that is so, there is a real risk at Baghdad airport the authorities will have interest in him at that point. The background evidence shows that there is torture and mistreatment and arrest and detention which happens in Iraq and the detention conditions are harsh.

56. He further submitted that if the appellant was not detained at Baghdad airport he would have to make his way back to the home area. He referred to the CG decision of SMO, and that there were Kurdish forces at the checkpoint.

57. By reference to the background evidence, Mr Wood submitted that the PUK/KDP actively monitored social media and there was a likelihood that the appellant will be of adverse interest to the authorities whether or not he has a CSID. Mr Wood submitted the issue was what would they think of the appellant as the IKR authorities mistreat activists in the Kurdish part of the country.

58. In his written skeleton argument Mr Wood relied on the following submissions. There is therefore a real risk that if the Appellant were to return to his home area he would have to pass through at least so, the question remains what me checkpoints manned by Kurdish forces. The likely treatment of the Appellant is to be informed by background country evidence.

59. Reliance is placed on the background country evidence contained in the CB and in particular the key passages index (CB 1187-1193). Where in it is confirmed that government officials employed torture and other cruel, inhuman, or degrading treatment or punishment (CB 58).

60. There are reports of activists being killed for their online content in recent years (CB 39) and the KRG authorities arbitrarily detained journalists, activists, and protesters (CB62).

61. At CB 69 it is reported that Security Forces, mostly those under the Ministry of Interior, within the NSS, or from the PMF, in addition to KRG forces (primarily Asayish), arrested and detained protesters and activists critical of the central government and of the KRG.

62. It is therefore submitted that if the Appellant's political activity is known to the Iraqi or KRG authorities then there would be a real risk of him being stopped at the airport upon return, or at a checkpoint on his journey, or in his home area and placed in detention in conditions that are described as harsh and occasionally life threatening due to food shortages, gross overcrowding, physical abuse, inadequate sanitary conditions and medical care, and the threat of communicable illnesses (see CB 58).

63. In his oral submissions Mr Wood returned to the background evidence showing that there was monitoring of demonstrations in the UK. In this context Mr Wood relied on the decision in YB(Eritrea) which he had cited in his skeleton argument at paragraph 10 as follows:

> In YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 it was held by the Court of Appeal: "…Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant…"

64. Mr Wood submitted that there was a reasonable inference that the demonstrations would be viewed and there were reports of human rights abuses. Therefore it is not a leap to suggest that in his country he is likely to be of adverse interest already in Iraq.

65. Mr Wood again refer to the findings made by the FtTJ that his political opinion was accepted and that this separated the appellant's case from someone whose activity is not as detailed or committed.

66. In his skeleton argument Mr Wood had set out the references to the factual findings of the FtTJ which were preserved findings. At [20] of his decision Judge Lodato was accepted that the Appellant has taken part in a live broadcast with NRT in which he was critical of the KRG authorities. At [21] of the same decision Judge Lodato records that he was struck by the evidence of Mr N that the Appellant is "one of the prominent activists here, demonstrates exceptional commitment in both street demonstrations and through various social media platforms".

67. The skeleton argument submits that in light of the guidance in YB (Eritrea) in conjunction with the background country evidence it is therefore submitted that there is a real risk that the Appellant's political opinion is known both to the authorities of Iraq or the KRG and that he is already of adverse interest and therefore at real risk of harm at the point of return or on his onward journey to his home area.

68. In the alternative that the Appellant's political opinion is not already of adverse interest to the authorities of Iraq or the KRG, then based on the positive findings made by Judge Lodato it is reasonably likely that the Appellant would continue his political activity upon return to Iraq. Based on the background country evidence this would place him at real risk of harm (see examples above). Alternatively, if the fear of persecution would make him cease his political activities this would still entitle him to succeed as per the principles set out in HJ (Iran).

69. He submitted that the respondent's position is that the CPIN only focuses on the IKR, however the combined bundle relates to the area not controlled by the IKR of those who are critical of the authorities in a public way.

70. In his oral submissions Mr Wood submitted that if the appellant was not known to the central government of Iraq or the Iraqi authorities, the question arises what would he do on return in his home area. In this context he submitted that the appellant had been critical of the authorities in the area and have been critical of Hash Al Shabab and the PMF. About him previously the question is what he would do on return as a committed political activist. The appellant would engage in further political activity and as such is likely to be of risk of harm and would fall foul of those who are in control of his home area whether they are the Kurdish forces and the PMF and the government of Iraq. Whether he had a CSID or not the question is what would happen to him in his home area, and would he be forced between choosing being politically active because of persecution and if that is the case, he is entitled to succeed.

Discussion:

71. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention.

72. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country.

73. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.

74. The Immigration Rules provide at paragraph 339L as follows:

> 'It is the duty of the person to substantiate the asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

(i) the person has made a genuine effort to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim.

(ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given.

(iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case.

(iv) the person has made an asylum claim or sought to establish that they are a person eligible for humanitarian protection or made human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and

(v) the general credibility of the person has been established.'

75. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to.

76. The starting point of the assessment of the evidence are the preserved findings of fact by FtTJ Lodato. Those relating to his political opinion (sur place activities) can be summarised as follows:

(1) The appellant has a Facebook account which is the main medium through which the appellant criticises those in power in the IKR , and other parts of Iraq. This was set up in 2020 (para 18).

(2) The FtTJ accepted the reasons as to why the appellant became politically aware and active. The FtTJ stated " the way in which the appellant set out his political grievances struck me as instinctive and genuine political commentary. "

(3) The FtTJ found the evidential picture on the issue of political activities was of a very different character to that of 3 years ago (see para 19).

(4) The FtTJ found that he had been provided with a comprehensive package of evidence which included almost 200 pages from the appellant's Facebook profile showing the "appellant's prolific involvement in emphatically criticising the Iraqi authorities, particularly those in power in the IKR. The material revealed that the profiles in the appellant's name, open to the public that he was followed by over 1000 people."

(5) The appellant had participated in multiple protests where he can be seen to be wearing different clothes and in different locations.

(6) He was interviewed at one protest in a live broadcast; and who was "passionately decrying the excesses of the KRG authorities" (see paragraph 20).

(7) The FtTJ found that the letters of support from the international freedom of Iraqi refugees and from an organisation from the KRI described the appellant participating in several demonstrations against

the Kurdish authorities. The FtTJ also accepted the evidence of a witness who had been granted asylum following an appeal based on his political activism as a journalist. The FtTJ recorded the evidence that he was described as "one of the prominent activists here, demonstrates exceptional commitment in both street demonstrations and through various social media platforms." The FtTJ found that he was "particularly struck by the consistent evidence of both the appellant and the witness that they were not personally close but simply shed political views. They appear to be more like colleagues and friends." The FtTJ found, "(the witness) would appear to have little to gain by blindly supporting the asylum claim of a man with whom he is not close socially " (para 21).

(8) Whilst the appellant had not provided a full download of the Facebook profile, the FtTJ was satisfied that it was safe to attach some weight to the Facebook evidence in the round given the other evidence before him (paragraph 23).

(9) In summary, the FtTJ found that he was "satisfied that the appellant has become a committed political activist, with organisational responsibilities, against those who hold power in Iraq, particularly but not exclusively in the IKR". The judge found that the evidential picture provided now compared with that before demonstrated "political activism" of "an entirely different order of magnitude." "The evidence of the prolific political activism disclosing the evidence since Judge Cope's previous determination provides ample justification to reach a different conclusion on this issue."

(10) The FtTJ found that the appellant" is a genuine political activist" to a reasonable degree of likelihood. "It follows that I do not doubt his evidence that he will be minded to continue his political activism if returned to the IKR and that it would only be the fear of persecution or serious harm which might convince him to remain silent."

77. There has been no evidence to undermine those factual findings and Mr Diwnycz did not seek to challenge those findings. One issue that arises from the sur place material concerns the focus of the appellant's political views and opinions as relevant to the issue of risk. Mr Wood invited the Tribunal to find that the appellant had not only expressed political opinion against those who held power in the IKR but also those in Iraq. In this context he referred to the factual findings made at paragraph 24 that the appellant was "a committed political activist with organisational responsibilities against those who held power in Iraq particularly but not exclusively in the IKR".

78. Whilst the FtTJ considered that there was little to support the claim that he was vocal against those in power in Diyala, Mr Wood pointed to the postings of political opinion which run counter to that. There was a post in which the appellant referred to there being no human rights in Iraq, which was under the control of the PDK, PUK thieves and Mafia with Hasid Washdi (p117). At a demonstration on 20 August and he posted photographs on Facebook of the same demonstration against Hasd-Al-Shabi (Iraqi Shia militia are taking Kurdish and Sunni people without reasons, and that they belonged to the Iraqi army. The appellant's evidence was that he demonstrated against the Kurdish authorities and also the Iraqi government (see p640) and that the appellant had said that it was important to attend demonstrations to show the "real face of the Kurdish and the Iraqi authorities to remove those people from power". His aim was said to

change the government. Also at page 646 he referred to attending a demonstration 2022 in front of the Iraqi Consulate and condemned the authorities in Kurdistan and in Iraq. Reference was made to the TV interview where he talked about the Iraqi government and also the Kurdish government in terms of corruption (see page 647). The evidence when viewed " in the round " demonstrates that his political views were critical not only of the authorities in the IKR but also the Iraqi authorities which would include those in his home area of the GOI.

79. In terms of where the appellant is on the social graph, his profile places him at a high level having undertaken political activity both through social media and also by way of demonstrations.

80. In his witness statement (28/3/23) at paragraphs 23-26 the appellant set out the following evidence. In response to the above, I have 2,964 Facebook friends. I have over 1038 people following my Facebook account. My Facebook friends are based in the UK and in Iraq.

81. People have been watching/following my activities. For this reason, I have received threats on Facebook. The threatening messages on Facebook were from D S (from Erbil). In his message he states "if we reach you we will cut you into pieces. I know you are in Britain, but the day will come. I let you know that we know everything. If you criticize the family of Barzani you need to dig your grave alive."

82. If this person has been able to access my Facebook account, I am sure that the Iraqi authorities will also be able to do so.

83. Mr Wood submitted that there was credible background evidence of monitoring and interference with on social media and that it is possible to come to the conclusion that his profile is such that there is a real risk of falling foul of the monitoring if he is already being monitored by the Iraqi authorities. If that is so, there is a real risk at Baghdad airport the authorities will have interest in him at that point.

84. As to the evidence of the threatening messages (see evidence at 600-605 CEF) there is no explanatory evidence as to how this particular person became aware of the appellant. The Facebook profile purports to be sent by someone who lives in Erbil. Whilst the appellant refers to the man standing next to a prominent politician, this was a photograph taken in 2015. The appellant did not refer to any more recent evidence than the picture in 2015 when cross-examined about this issue. Merely having a photograph taken with someone of importance does not necessarily mean that person is also of a high particular profile. Whilst the appellant stated that this man DS was influential and powerful, there is no supporting evidence that this is the case based on material from Iraq. His relatively low number of followers, namely 216, would demonstrate that this person does not have any real prominence. Furthermore, he does not live in the appellant's home area and even if the threats were credibly made, there was no evidence that he had any influence nor the means to cause harm to the appellant in his home area.

85. In support of his submission that there is evidence of monitoring he relied upon the report referred to in the Rule 15 (2A) application and key passage index from the Freedom House, Freedom on the net 2023 – Iraq, 4 October 2023 report and also to the US State Department, 2022 country reports on human rights practices

Iraq, 20 March 2023. Whilst there is a key passage index identifying particular paragraphs, it is important to read the content of those reports in their entirety.

86. Having assessed the passages referred to on behalf of the appellant, whilst they provide some evidence of monitoring of social media and interference with posting material, the references in the Freedom House report referred to the circumstances internally in Iraq and the IKR and do not provide credible evidence of the monitoring or interference with social media of accounts outside of Iraq.

87. By way of example, the reference at page 25 where it is stated that the Iraqi government and the KRG exercise control over the Internet infrastructure and restrict connectivity during the times of protests or arrests, does not refer to monitoring social media outside of Iraq. Similarly the reference at page 26, where it is stated that many telecommunications companies operating in Iraq and the IKR are linked to powerful political parties or militias, which provide them with the necessary protection of any accountability for disruptions, that part of the material is under the heading of "are there regularity or economic obstacles to restrict diversity of service providers?" and thus has no relevance to monitoring outside of Iraq. The reference given at page 28 in the key passage index relates to the IKR mission statements warning media organisations and social platforms to abstain from publishing articles criticising the IKR, which again does not demonstrate monitoring of accounts outside of Iraq. Neither do the references at pages 29, 30, 35, 36.

88. As to evidence of monitoring, p37 Freedom House Report states "Neither the Kurdistan region nor the rest of Iraq has data-protection legislation or a cybersecurity authority. As the Iraqi communications landscape lacks oversight or sufficient regulation, technical experts believe that the state may possess the ability to monitor online activities. Militias—specifically Iran-backed groups—are likely able to conduct surveillance of their own. [205] However, Iraqi government departments generally lack modern electronic devices and applications and tend to use rudimentary methods of electronic communication, making it unlikely that they have the technical means to surveil private user activity. [206]

89. Whilst the material referenced by Mr Wood refers to the Washington Post and other outlets reporting Iraqi citizens were amongst those who may have been targeted with Pegasus spyware, the person named was the president and also the KRG Prime Minister and individuals close to Barzini who may also have been targeted. Whilst there are references to the authorities being known to search electronic devices during arrests, sometimes as a tactic to force journalists to reveal their source, the example given is a journalist who had a phone searched while covering protests in the IKR. Also that material (p38) does not demonstrate that the Iraqi authorities are searching electronic devices outside of Iraq.

90. The reference made at page 39 again refers to the intelligence services in the IKR and the monitoring of communications including the phones of employees. It is not refer to Iraqi authorities and also it does not demonstrate that they are monitoring communications of those outside of Iraq.

91. The 2nd source of material relied upon as the US State Department Report. None of the references set out in the key passage index have any reference to the ability of the Iraqi authorities to monitor and to undertake surveillance outside of Iraq.

92. What the material does refer to is credible evidence of material on social media being the subject of adverse interest when acting inside Iraq. The reference at page 28 does not apply to the Iraqi authorities but refers to the KR G.

93. The constitution of Iraq guarantees freedom of opinion and expression however factors such as harsh criminal penalties for online content and harassment or intimidation by government authorities, political parties and armed groups create an environment to encourage self-censorship. Self-censorship is not a driven by fear of government retaliation, but also by the fear of being targeted by the citizens (p30).

94. There is also reference to the Iraqi penal code of 1969 which includes various defamation related crimes and often employed to threaten or punish journalists, publishers and Internet users. Whilst the punishments received referred to few individuals receiving defamation related prison sentences, the process itself amounts to a form of punishment and charges are filed to intimidate activists and journalists who know the cases will eventually be dismissed or end in acquittal. Intimidation, arrests, and assassinations of social media users, online activists, and journalists are not uncommon, with social media posts sometimes triggering violent reprisals (see p30).

95. On the basis of the assessment of the country material, it has not been demonstrated that there is a reasonable likelihood or a real risk that the Iraqi authorities will have monitored the appellant's Facebook page or social media account.

96. Whilst the appellant refers to his Facebook account being hacked, and having to change his password, that evidence was not supported by any other evidence to demonstrate who had made an attempt to hack his account. In his evidence he was asked if he had reported the attempts to the Facebook administration and the appellant said that he had not but had received an email stating that he should change his password because someone had accessed it. When asked if Facebook had said they were going to take action against the persons involved, the appellant stated that they did not but had sent an email. On the basis of the evidence as it stands, the identity of whoever had attempted to hack his account has not been demonstrated. Hacking of accounts is commonplace for a number of reasons, and it has not been demonstrated that there is a reasonable likelihood that this was at the hands of the Iraqi authorities because they had monitored his account. I also accept the submission made by Mr Diwnycz that it is not reasonably likely that the evidence supports the appellant's view that it was DS. That is merely speculative on the appellant's behalf.

97. Dealing with the issue of return, the factual findings preserved from the decision of Judge Lodato is that the appellant had not lost contact with his family and that they could take the necessary steps to reunite him with his CSID card (see findings preserved from paragraphs 28 – 30). Those findings have not been challenged for the remaking hearing and remain.

98. What is in dispute is whether the appellant will be at risk of persecution or serious harm in his home area as a result of his political views as held when considering the route of return via Baghdad to his home area. Mr Wood identifies the question as to who would be present at the relevant checkpoint and also whether the government of Iraq and would have any adverse interest in the appellant in light of the possible return of route via Baghdad.

99. The appellant therefore will return to Iraq with documentation. The appellant will return via Baghdad. It is not demonstrated that the appellant, who would be in possession of his documents, would be detained at the airport .The appellant was cross-examined about the journey between Baghdad and his home area, and the evidence given by him was that he had travelled to Baghdad from his home area previously and there had been a checkpoint . Mr Diwnycz describes the boundaries as the "line of control " and that appears to be correct. It is reasonably likely that there are checkpoints when travelling from Baghdad to the appellant's home governorate. The relevant CPIN of internal relocation, civil documentation return October 2023 version 4 point 14.0 sets out that with documentation internal travel is possible (see 3.6.6) and that the person can pass through checkpoints (5.1.3). Whilst CSID's are no longer produced in Iraq they can still be used to pass through checkpoints (3.6.9).

100. The CPIN make's the distinction between those who have documentation and those who have not. Many of the checkpoints are manned by Shia militia by the government of Iraq and those who do not present a document are unlikely to be able to pass through the checkpoints (see 3.1.1).

101. Whilst Mr Wood seeks to refer to what might happen at a checkpoint, the circumstances and return to Iraq cannot be equated to those set out in the CG decisions that refer to Iran and what is referred to as the "pinch point" of return. No reference has been made to any evidence to demonstrate that those at the checkpoints ask for the Facebook passwords of those who seek to pass through or that they check any social media accounts. There is no evidence to support any similar type of questioning on return to Iraq as that which exists in Iran.

102. At its highest the CPIN sets out that when passing through a checkpoint in the area some might face further questioning (single able boded Arab men and single women) and having their names checked against the security list (see 3.8.7). However as the CPIN records, being treated with suspicion does not necessarily amount to a finding of a real risk of serious harm. There is a reference made to the exit ban list (the security list) in the CPIN, but the appellant was not known to the Iraqi authorities before he left Iraq and he confirmed that he had not been political when in Iraq previously therefore he is not likely to be on a security list (6.15.6) The earlier findings made on the country material is that the Iraqi authorities are not able to monitor Facebook accounts/social media outside of Iraq apply in this context, therefore it has not been demonstrated but when passing through a checkpoint, those in control would have any evidence concerning this appellant.

103. As regards the appellant's home area, there is no dispute that it is in the Diyala governorate which is described as being ethnically diverse with Arabs, Kurds and Turkmen comprising the majority. It has hosted insurgents since 2004 and is considered to be good territory for such groups due to its difficult terrain providing good cover from security forces. Because of its proximity to Baghdad, it is a priority for the government and the PMU to exercise control over the area. The area was occupied by ISIL in the north and the area was brought back under government control in January 2015. The evidence of Dr Fatah set out in SMO(1) at paragraph 98, referred to the ethnically heterogeneous nature of Diyala making it amongst the most unstable areas in the country. The materials referred to the changes in that governorate and Dr Fatah gave evidence that there were parts would be controlled by the Kurds prior to 2017 and others which were not (paragraph 103). The EASO report considered the situation in Diyala through noting that the PMU's are particularly strong in the government and that the Iranian backed Badr organisation is considered to be the main security actor.

104. The specific area relevant to the appellant is also referred to in SMO at paragraph 112, and that the situation in that area deserved separate consideration. It was a district that was ethnically diverse and that a range of pressures had been brought to bear on it during the Saddam Hussain years and thereafter. When the suburbs had been recaptured by the Shia PMU's and the peshmerga in 2015 it was the PMU's who took control over the area, and this had caused many Kurds to flee in fear of reprisals and many had not returned. Reference was made to security being shared between the Iraqi forces and the Badr organisation, although Kurdish forces continued to stand at checkpoints.

105. Based on that material, there is a reasonable likelihood that some of the checkpoints which provide access to the appellant's home area would be manned by Kurdish forces. However what is missing by way of supporting evidence of risk of harm is that it has not been demonstrated that the appellant's political activity in the UK has been monitored by either the Iraqi authorities or by any particular person who would be likely to be manning a checkpoint. As set out earlier, the appellant's name would not be on any exit list as he has not come to the attention of the authorities whilst in Iraq previously due to his political opinion or otherwise. The evidence referred to by Mr Wood that the security forces under the Ministry of interior arrest and detain protesters critical of the central government and of the KRG references those who are already in Iraq.

106. I therefore turn to the last issue identified which relates to risk of harm to his home area on account of his political opinions. The preserved factual findings as to the extent of the appellant's genuinely held political views and as found by FtTJ Lodato are summarised earlier. Furthermore, the appellant's political opinion and criticism of the authorities whilst they are primarily based against the KRG authorities I find that they are also aimed at the Iraqi authorities and criticism of the PMU's. In the light of the positive credibility findings made concerning the level of political opinion held and his particular profile, and why the appellant holds those views, there is a reasonable likelihood that the appellant will continue in his political activities on return to Iraq. That was a finding made by the earlier Judge. The country materials that Mr Wood has referred to demonstrate that the profile of someone like this particular appellant, who is someone who holds particular political views and seeks to express them as an activist and is allied to the journalist Mr N (see previous factual findings by the FtTJ), has the profile that is likely to bring him to the adverse attention of the authorities and also those rogue elements such as the PMU. There is reference to online journalists and activists been routinely detained and arrested in Iraq and that those who criticise the government publicly are not without fear of reprisal. The material in the US State Department report refer to the prison and detention centre conditions as being harsh and occasionally life-threatening due to food shortages, gross overcrowding, physical abuse, inadequate sanitary conditions and medical care and the threat of communicable illnesses (p59). There are also numerous reports of local and international NGO's indicating that government officials employed torture and other cruel, inhuman, or degrading punishment or treatment.

107. When assessing the political opinion of the appellant, FtTJ Lodato found that he did not "doubt his evidence that he will be minded to continue his political activism if returned". I concur with that assessment and as Mr Wood submits, the appellant has a particular political profile. Each case has to be considered on its own individual facts and on the basis of the evidence including the preserved factual findings and the assessment of the materials, I accept the submission made that it is reasonably likely that he will continue his political activism on return to Iraq and it would only be the fear of persecution or serious harm that might convince him to remain silent, although his evidence is that he would

continue in any event. That being the case the appellant satisfies the test set out in HJ(Iran) . This is principally concerned with the question, namely whether an individual can be required to modify his conduct (including what he says) if that conduct or what he says would otherwise put him at risk of serious ill-treatment or persecution. In other words, whether an individual can be expected to act differently from how he otherwise would act (including what he would say) in order to avoid any persecution. The Supreme Court held that the principle in HJ (Iran) applied to a person who had political beliefs and was obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them. At [26] Lord Dyson stated: "The HJ (Iran) principle applies to any person who has political beliefs and is obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them."

108. On the factual assessment of this particular appellant that is satisfied and therefore he succeeds in his application to demonstrate that on return to Iraq there is a reasonable likelihood or real risk that he will be at risk of persecution or serious harm from the authorities or from the Militia and PMU's from which there would be no sufficiency of protection on account of his political opinion as expressed.

109. Even if I were wrong on the issue under the Refugee Convention, the alternative basis would be the consideration of the issue of humanitarian protection (Article 15 (c) and the " sliding scale".

110. The relevant CG relied upon by both parties is SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 001100 (IAC) ("SMO(2)").Reference has also been made to both parties to the earlier decision SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) ("SMO (1)"). In SMO (1) at paragraph 299 the following is set out: Those who are opposed, or perceived to be opposed, to the Government of Iraq or the Kurdistan Regional Government may be at enhanced risk on return to territory controlled by those bodies. A detailed analysis is beyond the scope of this decision but there are credible reports, for example, of journalists who are critical of the KRG encountering difficulties as a result. There is also evidence of such intolerance on the part of the authorities in Baghdad, albeit to a lesser extent. As noted in Mr Thomann's cross-examination of Dr Fatah, the examples he gave in his report of such targeting were limited and outdated, but it was not suggested by Mr Thomann that criticism of the authorities is wholly tolerated. The background evidence including the recent EASO report would not have supported such a submission. The fact that an individual is so opposed might serve to enhance the risk of specific targeting, which is relevant to the assessment under Article 15(c), even where that risk is insufficient to found a claim under the Refuge Convention.

111. At paragraph 320, reference is made to journalists who engage in critical reporting on political or other sensitive issues. "As we have already stated, any decision maker should first consider whether such an individual is deserving of protection under the Refugee Convention on grounds of actual or imputed political opinion or, conceivably, membership of a particular social group. Where they are not, it is possible that such an individual will be at enhanced risk for the purposes of Article 15(c). There is an appreciable overlap between this category and those who are opposed to the GOI or the KRG and those who fail to adhere to Islamic mores. As the UNHCR document makes clear, however, journalists and other media professionals might find themselves at risk or enhanced risk on account of criticism of a range of actors, including tribal leaders or the PMUs. As

with the other categories, a full appreciation of the area in question is necessary if such a submission is to be assessed in its proper context."

112. The appellant's home area has been described earlier in this decision and are set out in SMO. Because of its proximity to Baghdad, it is a priority for the government and the PMU to exercise control over the area. The area was occupied by ISIL in the north and the area was brought back under government control in January 2015. The evidence of Dr Fatah set out in SMO(1) at paragraph 98, referred to the ethnically heterogeneous nature of Diyala making it amongst the most unstable areas in the country.

113. The CPIN: Iraq ; security situation (November 2022) refers to the Popular Mobilisation Units (PMU) at paragraph 5.3.1:

5.3.1 The EUAA report stated:

114. 'The PMU (also known as the Popular Mobilisation Forces, PMF) are "an umbrella of Iraqi state-sponsored armed groups and militias under the command of Iraq's prime minister"; some of the prominent militias overtly oppose the US presence in Iraq and "answer to Iran despite being part of the Iraqi state's security apparatus".

115. 'The total manpower of the PMU is 164,000 members, of whom 110,000 are Shia, 45,000 Sunni, and 10,000 minorities. Of the Shiite factions, around 70,000 are loyalists to the Islamic Republican Guard Corps (IRGC) of Iran, while the rest are affiliated with other religious authorities, including the Iraqi cleric, Muqtada Al-Sadr.

116. '… The PMU maintain a large margin of autonomy and have independent military, legal, and economic structures. Moreover, those groups have staged military parades in Baghdad, e.g., in March 2021 by Rab'Allah and in June 2021 when PMF factions flooded Baghdad's Green Zone following the arrest by the ISF of PMF leader Qassim Musleh… Iranian-backed militias in Iraq have caches of "short-range ballistic missiles, armed drones, and smaller-scale rockets" and produce Iranian weaponry under Iranian supervision and transport Iranian weapons to Syria through Iraq.

117. That evidence is supported by the material in the appellant's bundle (the US State Department report on human rights practices; Iraq, 20 March 2023 (page 55) and that the regular armed forces and domestic law enforcement bodies struggle to maintain order within the country, operating in parallel with the PMU's composed of approximately 60 militia groups. Whilst they report officially to the chairman of the popular mobilisation commission and under the authority of the Prime Minister, several units, were also responsive to Iran and the Islamic Revolutionary guard Corps influence.

118. The US State Department report also refers to human rights organisations reporting that the PMF militia groups engaged in killing, kidnapping and extortion throughout the country, particularly in ethnically and religiously mixed provinces (see p57 and also as quoted in the CPIN). References also made to credible reports of government forces including the federal police, the NSS and the PMU abusing and torturing individuals during arrest and pre-trial detention and after conviction (p58).

119. In the light of the factual findings preserved as to the extent of this particular appellant's political profile, that is the personal circumstance which is capable of

being relevant to the sliding scale analysis required by Article 15 (c) as set out at paragraph 314(i) of SMO (1) opposition to or criticism of the GOI, the KRG and local security actors. The type of political protest set out in his posts and at demonstrations to all criticism of all 3 categories including the local security actors, namely the PMU. That personal characteristic when assessed against the situation in the area of return, and of the security actors in control of that area demonstrate that there is a real risk that the appellant would come to the adverse attention of those in control of the local area, including the PMU's. The appellant can therefore satisfy in the alternative "the sliding scale approach" such that "the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection".

120. Mr Diwnycz did not submit that the appellant could internally relocate to the IKR. Reference had been made to the CPIN-Iraq opposition to the government in the Kurdistan region of Iraq (KRI) July 2023 in the context that it did not deal with the issue of matters in the GOI.

121. The material set out in the CPIN demonstrates that the evidence is not such that being an opponent or having played or playing a part in low-level protests in the KRG will demonstrate a real risk of serious harm or persecution. Much depends upon the particular profile of the person concerned and the activities that are undertaken. The preserved findings made in relation to this particular appellant would place his profile and role outside that of "low-level" and therefore would be more likely to be described as an activist based on the preserved findings made by the previous judge. Consequently there is a reasonable likelihood that if he continued to express the type of political opinion that is directed towards the authorities of the KRI that it would bring him to their attention and would be at risk of serious harm or persecution. That being the case, it would be unreasonable or unduly harsh for him to relocate to the KRI.

Notice of Decision:

122. The decision of the FtTJ is set aside as it involved the making of a material error of law and is remade as follows: The appeal is allowed on Refugee Convention grounds and Article 3 of the ECHR.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

30 June 2024