Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00006/2017**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 3 August 2017	**On 14 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

S M Z
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Mendoza (counsel) instructed by Halliday Reeves Law Firm
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Handley promulgated on 06/02/2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [ ] 1987 and is a national of Iraq. On 09/12/2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Handley ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 22/05/2017 Judge Page granted permission to appeal stating

> "The grounds of appeal are arguable. They take issue with the finding by the Judge that the appellant could relocate to the IKR and that the Judge has erred in law in considering AA (article 15(c)) Iraq CG [2015] UKUT 544 as the appellant has never lived in the IKR and this would not be return but relocation. The grounds argue that the appellant would be return to Baghdad but he was from outside the IKR and return to the IKR would require the appellant to have resided there previously and for their identity to be pre-cleared by the authorities. It is arguable that the decision provides no consideration of the difficulties that the appellant had claimed. At paragraph 47 of the decision I note that the Judge found that the appellant's passport, which the respondent had retained, would enable the appellant to obtain the required documents on return to Iraq. The background reports confirm that the "Civil Status Identity Card" (CSIC) and the Iraqi Nationality Certificate (INC) are the two most important forms of civil documentation. The Judge referred to AA where it was held that the CSIC was generally required in order for an Iraqi to access assistance from the authorities. It is arguable that the appellant may face insurmountable difficulties in relocating and that the Judge may have erred in finding it reasonable to expect the appellant to return to the IKR when he had never lived there. If the appellant could not obtain the necessary documentation on return it begs the question as to whether he could reasonably be expected to go to the IKR. The grounds of appeal are arguable so permission to appeal is granted."

The Hearing

5. (a) Ms Mendoza, counsel for the appellant, adopted the terms of the skeleton argument and the grounds of appeal. She told me that the appellant is from Kirkuk, which is outside the IKR. At [6] of the decision the Judge clearly finds that the appellant is from Kirkuk, but having made that finding goes on to conclude that the appellant can return to IKR. Ms Mendoza told me that the finding that the appellant can return to IKR is the foundation of a material error of law.

(b) Because the appellant is from Kirkuk, he will return to Baghdad. Ms Mendoza told that the Judge failed to consider the pre-clearance requirement for entry to IKR set out in AA (Iraq) CG [2017] EWCA Civ 944. She told me that the Judge failed to consider the importance of a CSID card, and that the Judge had failed to consider how the appellant could get from Baghdad to IKR. She told me that the decision is devoid of consideration of what would happen to the appellant if he enters IKR. She told me that the decision is fundamentally flawed.

(c) Ms Mendoza referred me to BA(Returns to Baghdad) Iraq CG [2017} UKUT 00018 (IAC) and AA (Iraq) CG [2017] EWCA Civ 944. She asked me to allow the appeal, to set the decision aside and thereafter remit this case to the First-tier for further fact-finding.

6. (a) For the respondent, Ms Petterson told me that the decision does not contain errors, material or otherwise. Ms Petterson focused on [47], [48] and [49] of the decision. She agreed with Ms Mendoza that the Judge finds that the appellant is from Kirkuk. She told me that between [34] and [45] the Judge considers the substance of the appellant's claim, and at [46] rejects the appellant's claim to have a well-founded fear of persecution because of an adulterous relationship. She told me that at [46] the Judge correctly turns his attention to assessing risk on return to Iraq.

(b) Ms Petterson told me that the Judge's assessment of risk starts at [49] of the decision, where, having considered the background materials, the Judge finds that the situation in Kirkuk has changed since the appellant arrived in the UK. IS no longer have a presence there. Kirkuk has been liberated. She told me that the Judge's finding that the appellant can therefore return to his home area is correct.

(c) Ms Petterson told me that this appellant has never claimed not to have a CSID. The Judge finds that the appellant travelled to the UK using his passport, and at [47] the Judge finds that the appellant can use that passport to return, and use that passport to ensure that his CSID is reissued.

(d) Ms Petterson told me that at [47] the Judge clearly considers the background materials. The Judge's consideration of relocation to IKR is unnecessary because the appellant's home area is now safe. If there is an error in the Judge's consideration of returned to IKR it is not material because there is no risk to the appellant in his home area.

(e) Ms Petterson asked me to dismiss the appeal and allow the Judge's decision to stand.

Analysis

7. The Judge's decision was written in February 2017 and, relied on background materials which were carefully considered by the Judge between [47] and [49]. Relying on those background materials, the Judge found that three areas, including Kirkuk, no longer meet the threshold to engage article 15(c). On 22 June 2017, the Court of Appeal issued updated country guidance on Iraq. In the annex to the decision of AA (Iraq) CG [2017] EWCA Civ 944 the Court of Appeal said

> *A.* INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE
>
> 1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

8. In making that finding the Court of Appeal adheres to what was said in AA Iraq CG [2015] UKUT 0054 (IAC)

9. The Judge's finding at [49] is therefore not safe. There is no error in the Judge's fact-finding between [34] and [46]. The Judge finds that the appellant's claim does not succeed under the refugee convention, however the country guidance given by the Court of Appeal in June 2017 indicates that the appellant's claim for humanitarian protection must succeed. The guidance given by the Court of Appeal four months after the Judge's decision confirmed the guidance given in 2015, and is directly contrary to the background reports the respondent relied on.

10. Because what is contained at [49] is a material error of law I must set the Judge's decision aside. But there is sufficient material before me to enable me to substitute my own decision. As I have already indicated, the Judge's findings of fact in relation to the refugee convention are beyond criticism. The Judge's error of law relates to the assessment of risk on return to Iraq.

11. I therefore find, on the facts as the Judge found them to be, the appellant cannot succeed under the refugee convention.

12. It is common ground that the appellant comes from Kirkuk. The respondent intends to return him to Baghdad and insists that he can return to his home area. The guidance given by the Court of Appeal in AA (Iraq) CG [2017] EWCA Civ 944 clearly indicates that the respondent's position is wrong. If the appellant return to his home area he must succeed both in terms of article 15(c) of the qualification directive and on

article 3 ECHR grounds. The question for me to determine becomes whether or not it is reasonable for the appellant to internally relocate.

13. The appellant is a Kurdish Sunni Muslim. He has only a basic grasp of the Arabic language. The background materials indicate that there are so many internally displaced persons in Iraq that UNHCR refers to the plight of internally displaced people there as a humanitarian crisis. The simple question that I have to answer is whether or not it is reasonable to make the appellant a displaced person anywhere in Iraq.

14. I take the following guidance from AA (Iraq) CG [2017] EWCA Civ 944

> *D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)*
>
> *14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.*
>
> *15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
>
> *(a) whether P has a CSID or will be able to obtain one (see Part C above);*
>
> *(b) whether P can speak Arabic (those who cannot are less likely to find employment);*
>
> *(c) whether P has family members or friends in Baghdad able to accommodate him;*
>
> *(d) whether P is a lone female (women face greater difficulties than men in finding employment);*
>
> *(e) whether P can find a sponsor to access a hotel room or rent accommodation;*
>
> *(f) whether P is from a minority community;*
>
> *(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*
>
> *16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*
>
> *E. IRAQI KURDISH REGION*
>
> *17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities.*

The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.

18. *The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.*

19. *A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*

20. *Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.*

21. *As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.*

15. On the facts as the Judge found them to be, the appellant has only a limited grasp of Arabic. He is distinguishable by his religion and his ethnicity, and so will be viewed as a member of a minority community. He has no network of support in Iraq. Although he is a Kurd, he has never lived in IKR. With that profile, it cannot be reasonable to return the appellant to Iraq. Internal relocation is unduly harsh.

16. The appellant is therefore entitled to humanitarian protection and succeeds on article 3 ECHR grounds.

Decision

17. The First-tier Tribunal decision promulgated on 6 February 2017 is tainted by material errors of law. The decision is set aside.

18. I substitute my own decision.

19. The appeal is dismissed on asylum grounds

20. The appeal is allowed on humanitarian protection grounds.

21. The appeal is allowed on article 3 ECHR grounds.

Signed Paul Doyle Date 11 August 2017
Deputy Upper Tribunal Judge Doyle