Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07065/2016**

THE IMMIGRATION ACTS

Heard at Glasgow
On 28 April 2017

Decision & Reasons Promulgated
On 3 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

REBAZ OMAR TOFIQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E MacKay of McGlashan MacKay, solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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 Moran promulgated on 24 November 2016, which dismissed the Appellant's appeal on all grounds.

Background

2. The Appellant was born on 2 December 1990 and is a national of Iraq. On 7 January 2016 the Appellant entered the UK and claimed asylum. On 24 June 2016 the Secretary of State refused the Appellant's application.

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The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Moran ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 7 March 2017 Upper Tribunal Judge Chalkley gave permission to appeal stating

> I believe that for the succinct reasons set out in paragraph 3 of the grounds, it is properly arguable that the First-tier Judge *may* have materially erred in law in his determination.

The Hearing

4. (a) Mr MacKay, for the appellant moved the grounds of appeal. He told me that the focus in this appeal is on internal relocation, and argued that the Judge has failed to properly assess whether it is safe and reasonable for the appellant to relocate. He relied on AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011]UKUT 00445 (IAC) and Jasim v SSHD [2006] EWCA Civ 432. He told me that the Judge had failed to make any findings at all on the questions of travel to IKR from Baghdad.

(b) Mr Mackay told me that the Judge had failed to consider whether internal relocation would be unduly harsh. He told me that the Judge has not taken account of the factors listed at paragraph 15 of the head note to AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). He told me that the Judge has not assessed the three factors set out in AA.

(c) Mr Mackay told me that the decision contains a material error of law because the Judge draws the conclusion that the appellant can safely go to IKR without making a full assessment of the difficulties that would be faced by the appellant travelling within Iraq. The appellant is a Sunni Muslim Kurd from Diyala province. The appellant has not lived in the IKR and so would be granted access to IKR for 10 days only. If he had not secured a job and accommodation within that ten-day period he would not be allowed to stay. Mr Mackay told me that none of those factors feature in the Judge's decision. He urged me to set the decision aside and to remit it to the First-tier to be determined of new.

6. For the respondent, Mr Govan relied on the rule 24 notice dated 24 March 2017. He told me that the decision does not contain errors of law, material or otherwise. He reminded me that the appellant is a Kurdish, single, male. He told me that the appellant circumstances are similar to those of the appellant in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)**.** He told me that it is for the appellant to establish why he cannot relocate, and that that evidence was not before the First-tier. He told me that the decision contains a careful analysis of the appellant's circumstances and that between [22] and [26] the Judge considers relocation and explains why internal relocation is a viable option for the appellant. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. In AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) it was held that (i) Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer; (ii) No Iraqi national will be returnable to Baghdad if not in possession of one of these documents; (iii) In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification documentation, if the Tribunal finds that P's return is not currently feasible, given what is known about the state of P's documentation.

8. In AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) it was also held that (i) It will only be where the Tribunal is satisfied that the return of an Iraqi national (P) to Iraq is feasible that the issue of alleged risk of harm arising from an absence of Iraqi identification documentation will require judicial determination; (ii) Having a Civil Status Identity Document (CSID) is one of the ways in which it is possible for an Iraqi national in the United Kingdom to obtain a passport or a laissez passer. Where the Secretary of State proposes to remove P by means of a passport or laissez passer, she will be expected to demonstrate to the Tribunal what, if any, identification documentation led the Iraqi authorities to issue P with the passport or laissez passer (or to signal their intention to do so); (iii) Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport or other current form of Iraqi identification document; (iv) Where P's return to Iraq is found by the Tribunal to be feasible, it will generally be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID; (v) Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P; (v) P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been

established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

9. In BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) it was held that (i) The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC). (ii) The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq. (iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator. (iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone. (v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm. (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case. (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.

10. What is not in dispute in this case is that the appellant is a Kurd; he is a Sunni Muslim; the appellant does not speak Arabic, and the appellant has no family in Iraq.

11. At [22] the Judge finds that the appellant will be at risk in his home area. At [23] the Judge finds that relocating to IKR

> …. Presents various challenges

The Judge goes on to find that the appellant will be returned to Baghdad because he is not a former resident of the IKR.

12. The Judge finds at [24] that the burden of proof is on the appellant, and then, at [25], finds that the appellant is a Kurd who does not speak Arabic and does not have any family in the IKR. The Judge finds that the appellant does not have accommodation immediately available to him.

13. Having made those findings, all of which represent the

> ……..various challenges

that the appellant would face, the Judge declares at [26] that he has balanced those considerations & find the appellant "*is capable of rising to the challenge*". On that basis finds that relocation is not unduly harsh.

14. Nowhere in the decision does the Judge ask whether relocation is reasonable or safe. Although the Judge considers the difficulties that the appellant would face, the Judge does not carry out adequate consideration of what faces the appellant in Baghdad or how he will travel from Baghdad to IKR

15. BA tells me that the authorities are likely to be disinterested in the plight of a Sunni Kurd in Baghdad. The background materials tell me that the appellant will be allowed to visit IKR 10 days. The Judge's decision contains no realistic consideration of what is likely to happen to the appellant at the end of that 10 day period. The Judge has found that the appellant is returning as a single man with no support and does not speak the dominant language in Baghdad. Those findings have not been factored into consideration of whether it is safe and reasonable for the appellant to return to an area of Iraq other than his home area.

16. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

17. I therefore find that the decision is tainted by material errors of law because the Judge, having found that the appellant will not be safe in his home area, the Judge does not go on to consider whether internal relocation is safe and reasonable for this appellant. A fuller fact finding exercise might have resulted in a different outcome

to this appeal. I must, therefore, set the decision promulgated on promulgated on 24 November 2016 aside.

18. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 24 November 2016. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In this case I have determined that the case should be remitted because a new fact finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

21. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Moran.

Decision

22. The decision of the First-tier Tribunal is tainted by material errors of law.

23. I set aside the Judge's decision promulgated on 26 November 2016. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed *Paul Doyle* Date 1 May 2017

Deputy Upper Tribunal Judge Doyle