Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04588/2018**

THE IMMIGRATION ACTS

Heard at Field House
On 17 April 2019

Decision & Reasons Promulgated
On 9 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SHI
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Mohzad (counsel) instructed by Burton & Burton solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity order deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge R R Hopkins promulgated on 18/05/2018, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 03/06/1984 and is a Kurdish national of Iraq. On 22/03/2018 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 R R Hopkins ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 21/09/2018 Upper Tribunal Judge Chalkley granted permission to appeal stating

> "I believe that the First-tier Tribunal Judge *may* have erred in failing to properly apply and follow AA (Article 15c)) Iraq CG [2015] 00544 (IAC)."

The Hearing

6. Both Mr Mohzad, for the appellant, Mr Walker, for the respondent, joined in asking me to find that there is a material error of law in this decision because the Judge does not follow country guidance caselaw. Of consent, I was asked to set the decision aside and to remit the case to the First-tier Tribunal to be determined of new.

Analysis

7. The appellant is an Iraqi Kurd from Kirkuk. In her decision, the Judge took guidance from BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) and AA (Iraq) v SSHD [2017] EWCA Civ 944. The Judge did not correctly follow the guidance given in AA (Iraq) [2017]. The Judge does not properly explain how she reaches the conclusion that the appellant's home area is not in an area of internal armed conflict (AA (Iraq) says it is). The Judge does not fully consider how an Iraqi Kurd will make his way from Baghdad to IKR.

8. In AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 there was general agreement that for Arab Iraqis there was in general terms no reasonable internal relocation to the IKR. All returns to Iraq were via Baghdad but for a returnee of Kurdish origin in possession of a valid passport or CSID the journey whether by land or air was affordable and practical and can be made without real risk neither are there unduly harsh difficulties on the journey. Without a passport or CSID a flight could not be boarded; as there are checkpoints if the journey is made by road there is a real risk of the returnee being detained at a checkpoint if he cannot verify his identity. The verification would normally require attendance of a male family member with the returnee's identity documents but connections higher up the chain of command could also be called upon. It would not be reasonable to

require the returnee to travel unless he could verify his identity. There is no sponsorship requirement for Kurds so they would normally be permitted to enter after security screening and registering their presence with the mukhtar. Whether a returnee was at risk during the screening process was fact sensitive but coming from a family associated with ISIS, from ISIS territory and being a single male of fighting age may increase the risk but the returnee is likely to be able to show that he arrived from the UK and therefore not immediately from ISIS territory. Family members living in the IKR would in general be required by cultural norms to accommodate him so that he would in general have sufficient assistance from the family not to render his life unduly harsh, but this would have to be determined on a case by case basis. Without the assistance of family, accommodation options are limited – it costs $300 - $400 to rent an apartment in a modern block; whilst critical shelter arrangements are available (living in an unfinished structure, a school, a mosque, a tent etc) it would be unduly harsh for a returnee to live there without basic necessities such as food, clean water and clothing. To consider whether basic necessities could be accessed, account must be taken of the fact the returnee could apply for a grant under the voluntary returns scheme giving access to £1500 – financial support from other sources such as work, remittances from relatives abroad or accessing PDS rations should be considered. So far as securing employment is concerned, lone women are unlikely to secure employment, the unemployment rate for IDPs is 70%, the returnee needs a CSID in order to work, unskilled workers are at a disadvantage, patronage and nepotism are important in gaining employment so that someone with contacts is in a better position, being in a location with an association with ISIS can deter prospective employers.

9. AAH was heard in February 2018, but the decision was not promulgated until 26 June 2018, more than a month after the Judge's decision was promulgated.

10. The Court of Appeal provided the following guidance in AA (Iraq) CG [2017] EWCA Civ 944.

> "A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE
>
> 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."

11. In making that finding the Court of Appeal adheres to what was said in AA (Iraq) CG [2015] UKUT 0054 (IAC). The appellant comes from a contested area where there is an article 15c risk. The Judge does not make sufficient findings of fact to enable her to depart from the country guidance given in AA (Iraq) [2017].

12. The following guidance is also found in AA (Iraq) [2017]

> "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)."

13. In AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 section C of the guidance given in AA [2017] is supplemented with guidance about the factors to consider when considering whether it is possible for the returnee to obtain a CSID or obtain it within a reasonable time frame. Section E of the country guidance is replaced – the new guidance explaining that all returns are currently to Baghdad but a returnee of Kurdish origin in possession of a valid CSID or passport can journey by land or air practically and affordably without real risk and without relocation being unduly harsh. Domestic flights to the IKR cannot be boarded without either a CSID or a valid passport but if the returnee has neither, there is a real risk of his being detained at a checkpoint if he travels by land (other ways of verifying identity at checkpoints such as calling upon "connections" were discussed).

14. AAH did not, however, amend the country guidance concerning internal armed conflict in Kirkuk. AA(Iraq) [2017] tells me that there is internal armed conflict in Kirkuk, which is the appellant's home area.

15. The Judge's findings of fact start at [21]. At [32] the Judge finds that the appellant can live in areas of central government-controlled Iraq, and that the

appellant can live in Kirkuk. The last sentence of [32] is at odds with the guidance given in AA (Iraq) [2017]. The Judge does not explain why she departs from the guidance given in that case.

16. The Judge's decision was promulgated after AA (Iraq) [2017] and R (H) v the Secretary of State for the home Department (application of AA (Iraq CG)) IJR [2017] UKUT 00119 (IAC), but before AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.

17. If the Judge had followed the country guidance in AA (Iraq) [2017], the facts as she found them to be should have led her to conclude that the appellant cannot return to his home area. The Judge should then have considered internal relocation. Insofar as the Judge considers internal relocation at [61] of the decision, her reasoning there is inadequate. The Judge does not properly explain why she finds that internal relocation to IKR is a viable alternative. The Judge does not resolve the conflict between the facts as she found them to be and the guidance given at paragraph 15 of the annexe to AA (Iraq) [2017]. The guidance in AA (Iraq) [2017], when applied to the facts as the Judge found them to be, should have drawn the Judge to the conclusion that only one of the considerations in paragraph 15 of the annex to AA (Iraq) [2017] favour the appellant.

18. At [33] the Judge finds that the IKR is virtually violence free, but the Judge does not consider either how the appellant will find his way from Baghdad to IKR, or the circumstances the appellant would find himself in if he enters IKR. The Judge's decision gives no consideration to the ability of the appellant to enter IKR. AAH says that the place of birth is crucial to recovering a CSID, and that the place of birth defines a "home area". Case law says that Kirkuk is an area of internal armed conflict.

19. In R and Others v SSHD (2005) EWCA civ 982 the Court of Appeal endorsed Practice Direction 18.4 which states that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal said that it represented a failure to take a material matter into account.

20. The decision promulgated on 18 May 2018 is tainted by a material error of law. I set it aside.

21. In a direction dated and served on 23 April 2019 parties' agents were invited to make written submissions in relation to the protection claim. Neither party chose to make any further submissions. There is sufficient material available to enable me to substitute my own decision

Asylum

22. The appellant is an Iraqi Kurd from Kirkuk. The appellant claims to have a well-founded fear of persecution as a member of a particular social group because he

says he was involved in a family feud. At his screening interview, in answer to question 4.2 when the appellant was asked to summarise his claim, he said that his village been attacked by ISIS and he could not go back.

23. The problem for the appellant is that the very foundation of his account is riddled with inconsistency. The appellant participated in a screening interview on 9 July 2015. In that interview he did not mention a family feud.

24. In his asylum interview the appellant makes excuses for not mentioning a family feud earlier, and then claims that the family feud started 17 years ago when his father became involved in a fight in which a man lost his life; one year later his father was killed in revenge. Having tried to set out the basis for the claim, at question 97 of the asylum interview the appellant says that he does not know the name of anyone from the tribe he says he fears. That answer follows the answer to question 96 in which the appellant says that he has never met anyone from that tribe.

25. Throughout the asylum interview the appellant displays a startling lack of knowledge of the tribe he claims he fears and admits (in answer to question 119) that he has never been targeted, that he has never been threatened, that he has never been attacked. The appellant says that neither he nor his brother nor his mother has suffered at the hands of the tribe he claims he fears.

26. In answer to question 94 the appellant says that he does not know the name of the person who killed his father. Throughout the asylum interview the appellant says that he relies on what he was told by his mother. It is the appellant's own account that he lived peacefully, untroubled by the tribe he claims are an agent of persecution, for 17 years. On the appellant's own account, he has never been threatened, he has never been assaulted, and no efforts have been made to pursue a feud or to embroil him in an historic dispute.

27. The appellant gives a weak account, the essence of which is that his father lost his life in a violent attack 17 years ago and since then the appellant has lived peacefully, able to go about his daily business without fear or inhibition. The standard of proof is low, but it is for the appellant to prove his case. The appellant fails to establish that there is a real risk that he faces attack from another tribe because of a dispute nearly 2 decades ago. The appellant fails to establish that he has a well-founded fear of persecution.

28. The appellant's fear of ISIS is a generalised statement of fear of the conditions in his home town. His claim to fear ISIS relates to humanitarian protection and article 3 ECHR grounds of appeal, and has no relevance to the refugee convention.

29. Therefore I find that the appellant is not a refugee

Humanitarian Protection

30. Although the appellant is not a refugee, I must consider whether he qualifies for humanitarian protection.

31. It is beyond dispute that the appellant comes from Kirkuk. AA (Iraq) [2017] says that there is internal armed conflict in Kirkuk. The appellant cannot return to an area where there is an article 15c risk. I must consider where else he can safely go in Iraq.

32. AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 amended the guidance given in AA (Iraq) [2017] insofar as it relates to Iraqi Kurds (i.e. the guidance relating to this appellant)

> "Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:
>
> 1. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.
>
> 2. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
>
> 3. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
>
> 4. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.
>
> 5. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.
>
> 6. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.
>
> 7. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for

decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

8. For those without the assistance of family in the IKR the accommodation options are limited:

   (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

   (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

   (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

   (iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

9. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

   (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

   (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

   (iii) P cannot work without a CSID;

   (iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

   (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

   (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers."

33. In KO (Iraq) v SSHD [2018] CSOH 71 the Court of Session reduced the SSHD's decision to refuse to treat further Article 8 submissions as a fresh Article 8 claim. When considering paragraph 276ADE the SSHD had failed to take into account the

relevant CPIN indicating the "dire" humanitarian situation in the KRG in circumstances where the petitioner was unlikely to be able to obtain any employment as he was not fully medically fit and had been unemployed for years. The decision letter had only considered positive features about reintegration but had made no attempt to consider the very real obstacles to integration which existed - in particular personal problems for the petitioner in a situation which appeared very problematic even for an able-bodied adult with employment skills.

34. The appellant's home area is Kirkuk. Case law says that Kirkuk is an area of internal armed conflict. Kirkuk is controlled by the Iraqi central government and is not within IKR. The Kirkuk status referendum was the Kirkuk part of a planned plebiscite to decide whether the disputed territories of Northern Iraq should become part of the Iraqi Kurdistan region. The referendum was initially planned for 15 November 2007, but did not take place. The referendum was mandated by Article 140 of the Constitution of Iraq. Thousands of Kurds returned to Kirkuk following the 2003 invasion of Iraq. The referendum was to decide whether enough had returned for the area to be considered Kurdish. Kurdish resentment over the government's failure to implement Article 140 was one of the reasons for the 2017 Iraqi Kurdistan independence referendum, which posed the question, "*Do you want the Kurdistan Region and the Kurdistani areas outside the Region to become an independent state?*" The referendum led to episodes of Iraqi–Kurdish conflict and the government takeover of Kirkuk.

35. AAH was promulgated after the Judge's decision. That case does not amend the country guidance concerning internal armed conflict in Kirkuk. AA (Iraq) [2017] tells me that there is internal armed conflict in Kirkuk, which is the appellant's home area. The respondent argues that the violence there has diminished, but I am not persuaded that I should depart from country guidance. The appellant cannot return to a contested area.

36. AAH and the respondent's own country policy and information document dated March 2017 indicate that IKR is struggling to cope with an influx of refugees. The appellant is a young man of fighting age who comes from an area which had been dominated by ISIS. The appellant does not have skills which would make him attractive to an employer, and has no connections within IKR. The appellant does not have a CSID. AAH tells me that he cannot board a plane in Baghdad and that travel overland will be dangerous and unduly harsh. The appellant does not have the assistance of family in IKR so that his accommodation options are "limited".

37. The background materials and caselaw tells me that the unemployment level amongst IDP's in IKR is 70%. There is no evidence placed before me to indicate that the appellant has education, skills, experience and attributes which would place him within the top 30% who obtain employment. It is therefore more than likely that appellant will face unemployment. As an unemployed person who does not originate from IKR, his legal right to remain within IKR will expire 20 days after arrival.

38. It is most likely that the appellant will be returned to life as an unemployed, homeless, illegal resident. The inevitable illegality of his residence reduces the already slim chance of finding employment. The assisted voluntary return grant is nothing more than a short-term solution. When the money runs out, the appellant faces homelessness.

39. Within three weeks of return it is most likely that the appellant will be an unemployed, homeless, man with no legal right to remain in IKR. UNHCR say that the situation in IKR is a serious humanitarian crisis. It must be unduly harsh to expect the appellant to relocate from an area of internal armed conflict to a life of destitution as an illegal immigrant.

40. Relying on the background materials and the country guidance caselaw, I find that the appellant is entitled to humanitarian protection because there is no viable alternative option of internal relocation.

ECHR

41. As I find that the appellant is entitled to humanitarian protection, by analogy I find that return will breach his article 3 ECHR rights. My analysis of the facts tells me that (as the appellant is entitled to Humanitarian protection and as return would breach his article 3 rights) there are very significant obstacles to reintegration in Iraq. The appellant therefore meets the requirements of paragraph 276ADE(1)(vi) of the rules.

42. I therefore find that the appellant tis entitled to Humanitarian protection because internal flight is unduly harsh. I find that the appellant succeeds on article 3 and 8 (private life) ECHR grounds.

Decision

The decision of the First-tier Tribunal promulgated on 18 May 2018 is tainted by material errors of law. I set it aside.

I substitute my own decision.

The appellant's asylum appeal is dismissed.

The appellant is entitled to Humanitarian Protection.

The appeal is allowed on article 3 & 8 ECHR grounds.

Signed Date 7 May 2019
Deputy Upper Tribunal Judge Doyle