



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

Appeal Number: AA/12999/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20th May 2016**

**Decision & Reasons
Promulgated
On 3 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**B I I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp (Counsel)

For the Respondent: Mr T Wilding (Home Office Presenting Officer)

DECISION AND REASONS

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

Anonymity having previously been ordered in the First-tier Tribunal and there being no application to remove the order, I see no reason to do so and the

order remains in place. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Appellant appeals, with permission from the First-tier Tribunal, a decision of Judge Talbot promulgated on 16th March 2016. The Respondent has now conceded that on the findings of the judge the Appellant is entitled to leave to remain on private life grounds under paragraph 276ADE of HC 395. In that context the grounds in the alternative complaining about the Article 8 consideration fell away. The grounds remaining before me are to the point that this Iraqi Appellant, originating from Kirkuk, should have succeeded on his Grounds of Appeal in relation to Article 15(c) of the Qualification Directive.
2. Following AA (Article 15(c)) Iraq CG [2015] UKUT 00544. The judge found that because the Appellant comes from Kirkuk he faces a real risk of being subjected to indiscriminate violence amounting to serious harm, as per head note A 1. The judge found that the Appellant was not returnable to Baghdad re head note B 2, because he has not provided the documentation required by the Iraqi authorities i.e. a current or expired Iraqi passport or a laissez passer. Using the terminology of the country guidance case the judge found that the Appellant's return "is not currently feasible" [27].
3. The judge continued to consider whether or not return to Baghdad, outwith the documentation difficulties, would give rise to a real risk of persecution or serious harm. The judge found that the Appellant is a young healthy man from Kirkuk of Kurdish ethnicity who, in Baghdad, would have access to a sizeable Kurdish community so that even though he did not speak Arabic, and did not have any family or other connections in Baghdad, he could in the event of being returned there, live there. In this regard the judge found that return to Baghdad would not be unreasonable or unduly harsh, nor give rise to a risk of Article 3 mistreatment, or violate Article 15(c) of the Qualification Directive.
4. The grounds argue that the question of internal relocation would be unreasonable or unduly harsh because absent documentation he would be unable to access services, accommodation and a livelihood. In those circumstances there was no viable internal relocation and the Appellant was entitled to humanitarian protection.
5. AA (Article 15(c)) Iraq CG [2015] UKUT 00544 states in its head note:

"COUNTRY GUIDANCE

Note: References to Iraq herein are to the territory of Iraq excluding the autonomous Iraqi Kurdish Region ("IKR") unless otherwise stated.

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.*

2. *The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.*

3. *The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).*

4. *In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (excluding IKR)

5. *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.*

6. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

7. *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.*

C. POSITION ON DOCUMENTATION WHERE RETURN IS FEASIBLE

8. *It will only be where the Tribunal is satisfied that the return of 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.*

9. *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).*

10. *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.*

11. *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.*

12. *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.*

13. *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.*

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IRAQI KURDISH REGION)

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)."*

6. I find that the grounds are no more than a straightforward misreading of AA. Although Mr Fripp, who had not drafted the grounds, valiantly sought to persuade me that the findings in relation to those for whom return is feasible and who had not provided and could not obtain documentation, and whom AA confirms would find it unduly harsh/ unreasonable to relocate to Baghdad, could assist this Appellant. The argument fails to recognise the different starting points in respect of those in a position to establish, through factors including for example documentary difficulties outside of the context of the narrow issue of return, a factual matrix sufficient to establish entitlement within "C" of the head note, and the Appellant, who falls squarely within "B". Even for those of Kurdish ethnicity who are in "C" there remains the issue of possible internal relocation to the Kurdish areas, not considered here because the consideration satisfactorily stops at "B".
7. Mr Fripp mooted the possibility that AA had been incorrectly decided through a misunderstanding of the proper approach to the earlier case of HK (Iraq) but this was not an avenue which he pursued with any vigour, and I find that the position is not established.
8. I find that the judge has made no material error in respect of Article 15(c) of the Qualification Directive and his decision in respect of the same stands.

9. As mentioned above it is now conceded by the Respondent that the judge's decision in respect of paragraph 276ADE is flawed by legal error and I am invited to set the decision aside on that ground, and remake the decision allowing the Appellant's appeal on Immigration Rules 276ADE grounds.

Notice of Decision

10. The judge's decision dismissing the Appeal on Asylum, Humanitarian Protection and Article 8 grounds stands. The judge's decision on Immigration Rules grounds is, by consent, flawed by legal error in respect of paragraph 276ADE, and I set the decision aside on that ground, and remake the decision allowing the Appellant's appeal on Immigration Rules 276ADE grounds.

Signed

Date

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 3 June 2016

Deputy Upper Tribunal Judge Davidge