Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06479/2016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 28 September 2017	**On 27 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

HANI KAREEM MOHAMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Cleghorn (counsel) instructed by Halliday Reeves Law Firm
For the Respondent: Mr M Diwnycz, 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 Fox promulgated on 7 March 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 26/02/1964 and is a national of Iraq. On 9 June 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 Fox ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 30 June 2017 Judge Pedro gave permission to appeal stating

> "2. The grounds assert that the Judge failed to apply correctly the country guidance in AA (article 15(c)) Iraq CG [2015] UKUT 00544(IAC) and made a wrongful assumption regarding relocation to the IKR.
>
> 3. The grounds disclose an arguable error of law capable of affecting the outcome."

The Hearing

5. (a) Ms Cleghorn, for the appellant, moved the grounds of appeal. She told me that the appellant is from Anbar, which is a contested area outside the IKR. At [21], [22] and [34] of the decision the Judge finds that the appellant can safely return to another area of Iraq and can safely go to IKR. Ms Cleghorn told me that those findings are the foundation for a material error of law.

(b) Because the appellant is from Anbar province, he will return to Baghdad. Ms Cleghorn 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. Ms Cleghorn 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 Cleghorn referred me to AA (Iraq) CG [2017] EWCA Civ 944. She asked me to allow the appeal, to set the decision aside and substitute my own decision allowing the appeal on Humanitarian Protection and article 3 ECHR grounds.

6. Mr Diwyncz, for the respondent formally opposed the appeal, but told me that he was limited in the submissions that he could make because

the case of AA (Iraq) CG [2017] EWCA Civ 944 was handed down after the Judge's decision was promulgated. He conceded that in light of AA (Iraq) CG [2017] EWCA Civ 944 the appellant comes from a contested area and, if internal relocation is unduly harsh, he is entitled to humanitarian protection. He accepted that a single man from an ethnic minority is unlikely to be safe. He also accepted that a humanitarian crisis is unfolding in Iraq, and the life of an internally displaced person there amounts to destitution.

Analysis

7. The Judge's decision was written in March 2017 and, relied on background materials which were carefully considered by the Judge. The Judge found (at [21] and [22] of the decision) that the appellant will not be returned to a contested area, but can be returned to the Baghdad Belts or IKR. 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 [21] and [22] are not safe. The Judge finds that the appellant's claim fails on all grounds, 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 three 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. At [24] the Judge finds that the appellant has family and friends in the Kurdish Independent Area, and that the Kurdish Independent area is an area the appellant is familiar with. It is not clear how the Judge reached those conclusions because at [18] the Judge finds that the appellant claims Arab ethnicity and that his hometown is Rotba, in Anbar province. Within [24] the Judge finds that the appellant's relatives were liberated by

the actions of Iraqi military and allies freeing areas around Mosul. Mosul is 665km from Rotba. Neither Mosul nor Rotba are in IKR. Mosul is in the Ninevah governate.

11. Inconsistency creeps into the Judge's findings of fact. It is not clear why the Judge finds that the appellant has family and friends in IKR when the remainder of the Judge's findings of fact relate to the appellant's hometown, which is clearly in Anbar province. The Judge's findings between [21] and [25] amount to a material error of law because inadequate consideration is given to the place of return, or the manner in which the appellant would be able to make his way to IKR. The error is that inadequate consideration is being given to the risks to the appellant on return.

12. The judge falls into further error of law because, although he considers the appellant's claim on asylum grounds and ECHR grounds, he gives inadequate consideration to humanitarian protection and reaches no conclusions in relation to article 15(c) of the Qualification Directive.

13. Because what is contained between [21] and [25] crates a material error of law I must set the Judge's decision aside. There is sufficient material before me to enable me to substitute my own decision. The Judge's error of law relates to the assessment of risk on return to Iraq.

14. The appellant's claimed fear is of forced recruitment into Daesh. At [27] to [29] the Judge finds that the appellant has never been an individual target of Daesh. The appellant is not known to Daesh. Taking the evidence at its highest. All the appellant has done is discretely avoid a general call to arms. He is not known to Daesh; Daesh are not searching for him and have not threatened him. His claim is really that he fears the internal armed conflict in Iraq. I find, on the facts as the Judge found them to be, the appellant cannot succeed under the refugee convention.

15. It is common ground that the appellant comes from Anbar. The respondent intends to return him to Baghdad and insists that he can return to his home area or find safety elsewhere within Iraq. 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.

16. The appellant is a Sunni Muslim of mixed Kurdish/ Arabic ethnicity. 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.

17. 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.*

18. On the facts as the Judge found them to be, the appellant is of mixed ethnicity but identifies himself as an Arab. He is distinguishable by his religion and his mixed ethnicity, and so will be viewed as a member of a minority community. He has no network of support in Iraq. Although he may be able to claim Kurdish ethnicity through his mother, he has not lived in IKR. With that profile, it cannot be reasonable to return the appellant to Iraq. If returned to Iraq the appellant would be an Arab who is not from IKR. The appellant no longer has a CSID; he does not have family members or friends in Baghdad able to accommodate him; there is no suggestion that the appellant can find a sponsor to access a hotel room or rent accommodation; he has no network of support in Iraq.

19. Paragraph 21 of the guidance in the annexe to AA says that is it not likely that the appellant would be able to relocate to IKR. Even if the appellant is treated as a Kurd, he is a Sunni Muslim and, as a young single Kurd, the appellant would be treated as a man from a minority ethnic group. The appellant cannot relocate to IKR. If he goes to Baghdad it is most likely that he will not have access to accommodation and employment within Iraq. He therefore faces the prospect of destitution if returned to Iraq.

20. Even if the appellant could be admitted to IKR for 10 days, and that 10-day period may be extended for a further 10 days, he would only have 20 days to try to establish himself with a job and accommodation. He would be competing with other young men in a region which is starting to struggle with an influx of refugees. The Judge finds, when considering s.117B factors, that the appellant is not likely to be attractive to an employer. As a young man from a minority group without a means of support in Baghdad, there will be significant obstacles to the appellant negotiating his way from Baghdad to IKR. The appellant does not have skills which make him desirable to an employer. Following the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, I find that internal relocation is unduly harsh.

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

Decision

22. The First-tier Tribunal decision promulgated on 7 March 2017 is tainted by material errors of law. The decision is set aside.

23. I substitute my own decision.

24. The appeal is dismissed on asylum grounds

25. The appeal is allowed on humanitarian protection grounds.

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

Signed Paul Doyle Date 2 October 2017
Deputy Upper Tribunal Judge Doyle