Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11310/2016**

THE IMMIGRATION ACTS

Heard at Bradford	**Sent to parties on:**
On 7 September 2017	**On 11 October 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

ALI SALAH AHMED
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain (Counsel)
For the Respondent: Mrs R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal brought with permission, from a decision of the First-tier Tribunal (hereinafter "the tribunal") dated 28 February 2017, whereupon it dismissed his appeal against a decision of the Secretary of State of 29 September 2016 to refuse to grant him international protection.

2. The claimant is a national of Iraq of Kurdish ethnicity. The Secretary of State accepted that and also accepted that he is from Jalawla which is located in the Diyala Governorate and that, more recently, he had spent a more limited amount of time in Kirkuk. The claimant entered the United Kingdom ("UK") on 7 April 2016. It appears that he claimed asylum upon arrival. In pursuing his claim he said that his father had disappeared and it was thought that he had been taken by the organisation sometimes called "ISIS". He said that his mother, brother and sister had subsequently made contact with members of ISIS and had arranged to meet them and pay a ransom to secure his release. However, he asserts that after they went to meet the ISIS members they too went missing and he has not subsequently heard from them. He asserted that if he was returned to Iraq members of ISIS would kill him. He has claimed to have no remaining family in

Iraq. He has also argued that conditions in Jalawla are such that it would be unsafe for anyone to reside there and that he could not internally relocate to Baghdad or to the Independent Kurdish Region ("IKR").

3. The Secretary of State, having given the claimant the "benefit of the doubt", accepted that his "family have been taken by ISIS" and also accepted that he is from what has been termed "a contested area" within Iraq. That would seem to be a reference to Jalawla though Kirkuk has also historically been regarded as such an area. In saying that the Secretary of State was, at the time the decision was taken, accepting that if the claimant was to return to either of those places he would be at risk on the basis of Article 15(c) of the Qualification Directive. However, the Secretary of State took the view that the claimant would be able to internally relocate to the IKR or to Baghdad. That is why the claim for international protection was refused.

4. The tribunal heard oral evidence from the claimant. He was represented at the hearing as was the Secretary of State. Indeed, it was Mr Hussain (who appears before me) who represented the claimant before the tribunal.

5. It is very evident from a reading of the written reasons of 28 February 2017 that the tribunal did not find the claimant to be credible. Indeed, the tribunal's disbelief extended to the contentions he had made regarding his mother, brother and sister being missing and presumed harmed. The tribunal clearly thought he had family in Iraq or, at least, had failed to show that he did not. I have in mind, in particular, what is said in paragraphs 18 and 19 of the written reasons of 28 February 2017. But no challenge is made to the findings in that regard nor is there any challenge on the ground of fairness with respect to the tribunal disbelieving what was believed by the Secretary of State when the original decision was made. The tribunal, though, does not seem to me to have made any clear finding as to whether the claimant's father was taken by ISIS as claimed nor as to where the claimant's Iraqi based family members now reside. In particular, there is no finding to the effect that they reside in Baghdad or in the IKR.

6. The tribunal, notwithstanding what it thought about any risk linked to ISIS and the claimant's father, had to deal with the argument that the Article 15(c) threshold was reached in Jalawla and Kirkuk on the basis of indiscriminate violence. Considerations as to that have been addressed by the Upper Tribunal in the very thorough and well known Country Guidance decision of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544**. The Upper Tribunal had indicated, in that decision, that there was a state of internal armed conflict in parts of Iraq including Kirkuk and the Diyala Governorate. So, on the face of it, it might have been thought that the claimant would have been at Article 15(c) risk in either of those areas. Pausing there though, it seems to me that Jalawla within the Diyala Governorate should properly be regarded as his home area as opposed to Kirkuk where, on his own account, he had only resided for a relatively short period.

7. Indeed when the Secretary of State made her decision it was accepted that the claimant could not safely return to either of those places and that is why that decision focused upon the question of internal flight. But before the tribunal it was argued that the situation had changed. As the tribunal recorded at paragraph 12 of its written reasons, the Secretary of State's representative had contended before it that the situation had eased in both Diyala and Kirkuk to the extent that the Article 15 (c) threshold was no longer met in either place. Reliance was placed, in that context, upon a "Country Information and Guidance" (CIG) document which had been issued in August on 2016. I note in passing that a "Country Policy and Information Note" issued in September of 2017 gives a similar indication. The tribunal, in light of the argument put to it had to decide whether or not it should or should not follow the Country Guidance decision of **AA**. This is what it said and all it said about that particular question;

> "I note that the Upper Tribunal in AA found that the Governorates of Diyala and of Kirkuk were contested areas reaching the Article 15(c) threshold. However I find that there is now credible evidence that the Country situation has changed in line with the above referred to Country Information Guidance document of August 2016, this making clear that these Governorates no longer meet the Article 15(c) threshold."

8. So, the tribunal decided that the claimant was able to safely return to his home area of Jalawla (see paragraph 22 of the written reasons). It also found that he had, as it put it "failed to show that he cannot return to Kirkuk". But nevertheless, it went on to consider the question of internal flight. As to that, it said this;

> "23. I furthermore find that the appellant failed to show that he cannot return to Kirkuk. Indeed, according to his witness statement he was unsafe anywhere in Iraq, I remind myself that case law shows that as a general matter it will not be unreasonable or unduly harsh for a person from a contested area of Iraq to relocate to Baghdad City or, subject to certain exceptions, to the Baghdad Belts, or to the IKR. I find that the appellant failed to credibly address the key issues relating to his return to Iraq, making unsupported assertions, such as shown at his witness statement paragraph 6 that '*I would also like to state that the IKR is under threat by Isis as it is a safe area. Isis aim will always be to take over parts of IKR. I am very afraid of them, and I really do not wish to return back'.* I find as follows. Firstly, there is not a shred of credible evidence that Isis poses any, or any real threat to the IKR. Secondly, the appellant stated that he did '*not wish to return back*' to the IKR, which clearly runs contrary to both his witness statement and to any of his previous documented claims. Irrespective however, I note from **AA,** *ibid*, that the IKR is virtually violence free, there being no Article 15(c) risk to an ordinary civilian in the IKR. I find that it is open to the appellant to go to the IKR as, apart from any other considerations, he has no political profile and would go there as an ordinary civilian.
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> 24. I find that the appellant failed to show that he cannot travel to the IKR by air, for example to Erbil, if returned to Baghdad. I note that **AA** makes clear that a Kurd not originating from the IKR can nonetheless obtain entry for ten days as a visitor and then renew the entry permission for a further ten days. I find that if the appellant found employment, as he has previously done in Iraq when selling mobile phone accessories, he could remain for longer, although he would need to register with the authorities and provide details of his employer. I find that he failed to show that this is not open to him or that it is not possible. I additionally note that he stated at his initial contact interview at 5.1 that he once worked for the Peshmerga, albeit he was inconsistent as to the length of time he did so as between his initial contact and his asylum interviews. With regard to his witness statement paragraph 3 claim that he required a sponsor in order to enter and remain in the IKR, I find that this is unsupported by evidence and runs contrary to head note 19 of **AA**. Importantly, **AA** also makes clear that there is no evidence that the IKR authorities proactively remove Kurds whose permits have come to an end. I find that the appellant failed to credibly explain why he could not go to the IKR. I furthermore find that he failed to show that his return to Iraq and his relocation to the IKR is not both feasible and reasonable and not unduly harsh.
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> 25. With regard to whether it would be unreasonable or unduly harsh for the appellant to relocate outside the IKR and outside the contested areas of Iraq, for example in Baghdad City or in the Baghdad Belts subject to the exceptions set out in **AA**, I note there is no evidence that he is anything other than a fit and able-bodied young man in his early twenties with no significant health issues. He has clearly demonstrated resourcefulness in making his way to the United Kingdom and has, as above mentioned, previously worked in Iraq selling mobile phone accessories, and has worked for the Peshmerga. I find that he failed to show that he cannot obtain a CSID and failed to show that he cannot effectively compete for employment in Iraq and financially support himself, particularly in circumstances where the United Kingdom government would provide him with financial assistance if he decides to take advantage of voluntary return. **AA** shows that 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 to the Baghdad Belts, subject to named exceptions. I find that the appellant also failed to show that he faces a general or real risk of article 15(c) serious harm as a Kurd outside the IKR, or that he would be at any greater risk of ill-treatment upon return to the non-contested areas of Iraq than any other members of the general Kurdish population."

9. So, it was finding that there was an internal flight alternative either to Baghdad or to the IKR. I would add that, although the tribunal seemed quite close to coming to a finding that the claimant was in fact from the IKR, (see paragraph 23 above) I do not regard it as having made such a finding. I think it was intending to merely hint at that possibility.

10. The claimant sought permission to appeal. He advanced three separate written grounds of appeal and I have to say that I found ground 2 to be somewhat confusing although Mr Hussain clarified matters for me at the hearing. So, in summary, the propositions contained within the grounds were to the effect that the tribunal had erred through failing to follow Country Guidance as contained in **AA** with respect to "contested areas"; in failing to adequately consider the availability of an internal flight alternative in Baghdad; and in failing to adequately consider the availability of an internal flight alternative to the IKR. Mr Hussain, when I sought clarification from him at the hearing, did not pursue a specific argument that the tribunal had erred simply through concluding the claimant would be able to obtain sufficient documentation to render his return feasible.

11. At the hearing before me, which was for the purpose of deciding whether the tribunal had or had not erred in law, Mr Hussain, with that clarification, essentially relied upon the written grounds. Mrs Petterson argued that even if the tribunal had been wrong to depart from Country Guidance it had made clear findings regarding internal flight and those were sustainable.

12. I have concluded that the tribunal did err in law but that it did not do so in a way which was material.

13. There was really no dispute between the representatives before me as to when Country Guidance cases are to be followed or when what is said therein may be departed from. In this case what the tribunal had decided was that the Country Guidance in **AA** had become outdated by reason of developments in Iraq. As is stated in the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 no. 2, the First-tier Tribunal should normally follow a Country Guidance decision unless there is credible fresh evidence relevant to the issue and which has not been considered in the Country Guidance case. It is fair to say that other pertinent case law effectively requires the First-tier Tribunal, when being invited to depart from established Country Guidance on the basis of fresh evidence or material changes in country conditions, to consider whether there are very strong grounds for departure which are supported by cogent evidence of well-established and durable change. I did not understand Mrs Petterson to be arguing anything different before me.

14. I would accept that the CIG document issued in August 2016 did amount to evidence capable of pointing to a change of circumstance in a number of the so-called contested areas in Iraq including Diyala and Kirkuk. In my judgment, in light of what was stated therein, it may have been open to the tribunal to depart from the established Country Guidance contained in **AA** so long as it gave proper and considered reasons for so doing. But I have decided that the tribunal did not give sufficient reasons in that regard. It has to be borne in mind that **AA** had been decided relatively recently and after much detailed evidence had been given to it regarding conditions then prevailing in Iraq. Against that background, if the tribunal was departing from what was said therein, it was incumbent upon it to give reasons which demonstrated it had properly considered matters such as the nature, durability and sustainability of any change. However, the explanation it did give was, I have concluded, too fleeting and insubstantial. So, it did err due to inadequacy of reasoning as to that specific issue.

15. The tribunal though, as already noted, went on to make alternative findings regarding the availability of internal flight. So, the error I have identified above could only be material if the alternative findings were also erroneous in law. Mr Hussain clearly appreciated that which is why a lot of his focus was upon the way in which the tribunal had dealt with internal flight. The tribunal had identified two possible areas of relocation and it is necessary for me to consider what it had to say about both.

16. First of all, it decided that the claimant had, available to him, an alternative of internal flight to Baghdad City. Internal flight to Baghdad was considered in **AA**. It is right to say that some of the Country Guidance given therein was adjusted to a limited extent by a judgment of the Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944** but what was said about internal flight and Baghdad was untouched by that.

17. In the decision of the Upper Tribunal in **AA** it was said that, as a general rule, it would not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City. It was said that the number of persons who would not be able to do so was likely to be small. The Upper Tribunal referred to a number of factors which ought to be taken into account when considering such relocation. Those matters were whether the particular claimant possessed or could obtain a Civil Status ID ("CSID") card; whether there were family members or friends available to accommodate and provide assistance; whether any other form of support could be accessed; whether a sponsor could be found enabling the claimant to rent accommodation; whether the claimant could speak Arabic; whether the claimant is a lone woman and whether the claimant is from a minority community.

18. The tribunal's primary reasoning as to internal flight to Baghdad appears at paragraph 25 of the written reasons. It is fair to say it did not consider and refer to all of the factors which it was said in **AA**, ought to be taken into account. Its reasoning, essentially, rested upon its view that the claimant had failed to show an inability to obtain a CSID, was young and able-bodied, was healthy and had previous work experience in Iraq. Was that adequate?

19. The tribunal did not make a finding or address the issue as to whether or not the claimant was capable of speaking Arabic. I note that in his substantive asylum interview he had claimed not to be able to do so. But against the background of an adverse credibility finding which has not of itself been subject to challenge, in my judgment it was open to the tribunal to conclude that the claimant had failed to show an inability to obtain a CSID. That, coupled with his previous work experience, was a matter of significance. The assessment in this regard could have been more complete but what was said was adequate. I find, therefore, that the tribunal did not err in law in concluding that the claimant, in his particular circumstances, would be able to relocate to Baghdad.

20. There remains the further conclusion that he could relocate to the IKR. The tribunal's key reasoning as to that is to be found at paragraph 24. Mr Hussain, before me, argued that the tribunal had failed to explain how, given that he would be returned to Baghdad, the claimant could get to the IKR and that it had failed to conclude, as it should have done, that, even if admitted to the IKR he would have to live there "in a precarious state".

21. Internal flight to the IKR was also addressed by the Upper Tribunal in **AA**. In short, it was said that it might be possible for persons of Kurdish ethnicity not from the IKR to relocate there. It was said that such a person could obtain entry for ten days as a visitor and then renew the entry permission for a further ten days. It was said that if such a person is able to find employment he will be able to remain for longer albeit that he will have to register with the

authorities and provide details of the employment he has found. It was said that there was no evidence to show that the authorities in the IKR would pro-actively seek to remove Kurds from the IKR whose permits had expired. It was said that relevant matters, when assessing the feasibility of internal flight to the IKR, would be the practicality of travel from Baghdad (the point of return); the likelihood of securing employment in the IKR; and the availability of assistance from family and friends in the IKR.

22. The tribunal's opening sentence of paragraph 24 of the written reasons is more of an assertion that the claimant could travel to the IKR by air rather than an explanation. Nevertheless, it is given against the background of an adverse credibility finding and a lack of any clear explanation from the claimant as to why he could not do so. In his very brief witness statement of 8 February 2017, for instance, he says he cannot go there, essentially, due to a lack of ID documentation (but of course the tribunal decided he could obtain a CSID) and because he does not know anyone there. The tribunal clearly did take the view that he was likely to be able to obtain employment and it is very difficult to read what is said at paragraph 24 in any other way. It was right to conclude, in light of **AA**, that the absence of a "sponsor" in the IKR was not a significant factor. It did not make any finding to the effect that he has friends or family in the area but what it did say, in my judgment, amounts to a conclusion that, notwithstanding that, relocation was feasible on the basis of his having good prospects of finding work.

23. I would conclude, therefore, that the tribunal did not err in its conclusion that the claimant would be able to take advantage of an internal flight alternative in the IKR.

24. For the above reasons, then, I conclude that the tribunal did not make a material error of law and that its decision, therefore, shall stand.

DECISION

The decision of the First-tier Tribunal did not involve the making of a material error of law. Accordingly, that decision shall stand.

No anonymity direction is made. None was made by the First-tier Tribunal and none was sought before me.

Signed

M R Hemingway
Judge of the Upper Tribunal **Date** **11 October 2017**

FEE AWARD

I make no fee award.

Signed

M R Hemingway
Judge of the Upper Tribunal **Date** **11 October 2017**