Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/14035/2016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 28 September 2017	**On 3 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HALKAWT SABIR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr M Diwnycz Senior Home Office Presenting Officer
For the Respondent: Mr C Boyle, of Halliday Reeves Law Firm

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. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Hindson, promulgated on 27 February 2017, which allowed the Appellant's appeal on humanitarian protection and ECHR grounds.

Background

3. The Appellant was born on 14/04/1986 and is a national of Iraq. On 02/12/2016 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 Hindson ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 28 June 2017 Judge Page gave permission to appeal stating

> "The respondent has argued that the Judge has failed to give any consideration to the respondent's objective evidence and country guidance in considering whether the appellant could relocate to the IKR. Given the paucity of reasoning in the Judge's decision which runs into a few paragraphs of findings I am bound to grant the respondent permission to appeal when they are arguing that no proper consideration has been given to the respondent's evidence. Permission to appeal is granted."

The Hearing

5. Mr M Diwnycz, for the respondent moved the grounds of appeal, but told me that he was restricted in what he could say because, since the Judge's decision was promulgated, and after the grounds of appeal had been lodged, the Court of Appeal handed down the decision in AA (Iraq) CG [2017] EWCA Civ 944. He told me that the Judge's findings are supported by AA (Iraq) CG [2017] EWCA Civ 944.

6. For the appellant, Mr Boyle took me to [29] of the decision where the Judge balances the factors for and against the appellant, & then finds in the appellant's favour. He told me that at [29] the Judge manifestly follows the guidance given in paragraphs 57 and 189 of AA (Iraq) CG [2017] EWCA Civ 944. Mr Boyle reminded me that the author of the grounds of appeal complains that the Judge slavishly follows country guidance. He referred me to paragraph 12.2 of the FTTJ practice directions, and told me that the Judge is bound to follow country guidance unless there is good reason to depart from it. He told me that the Judge's decision is a carefully reasoned decision which does not contain errors,

material or otherwise. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The grounds of appeal focus on [28], [29] and [30] of the decision. It is common ground that the appellant is an Iraqi Kurd from Kirkuk. The grounds of appeal argue that relying on the background materials presented to the Judge, the Judge should have found that Kirkuk is safe. In the alternative, the appellant could relocate to IKR.

8. The Judge's decision was written in February 2017 and, relied on background materials which were carefully considered by the Judge at [28]. At [28] the Judge finds that the background materials were not sufficient to overcome the guidance given in AA (Iraq) CG [2015] UKUT 0054 (IAC). 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.*

9. In making that finding the Court of Appeal adheres to what was said in AA Iraq CG [2015] UKUT 0054 (IAC)

10. The Judge's findings at [28] and [29] are therefore safe. There is no error in the Judge's fact-finding. The Judge finds that the appellant's claim does not succeed under the refugee convention, but succeeds on Humanitarian Protection grounds and on article 3 ECHR grounds. 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 four months after the Judge's decision confirmed the guidance given in 2015, and is directly contrary to the background reports the respondent relied on.

11. The remaining ground of appeal is a criticism of the Judge's assessment of risk on return. The respondent still argues that internal relocation is a viable option for this appellant. The respondent's position that the appellant can relocate to IKR.

12. It is common ground that the appellant comes from Kirkuk. The respondent intends to return him to Baghdad and insists that he can return to his home area. 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 to be determined was whether or not it is reasonable for the appellant to internally relocate.

13. At [29] of the decision the Judge deals with Internal Relocation. He finds that the appellant is a Kurd who is not from IKR so that the appellant could be admitted to IKR for 10 days. That 10-day period may be extended for a further 10 days. The appellant would only have 20 days to try to establish himself and to find 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. As a non-Arab 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.

14. The findings at [29] consider the factors set out in AA (Iraq) CG [2017] EWCA Civ 944. Having considered those factors, the findings that the Judge makes are findings which are well within the range of reasonable conclusions available to the Judge. At [30] the Judge finds that the appellant is part of a minority group without any network of support in Baghdad and does not speak Arabic. He finds that the appellant would face destitution if returned to either Iraq or IKR.

15. The appellant is a Kurdish Sunni Muslim. He has only a basic grasp of the Arabic language. 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 question for the Judge was whether or not it is reasonable to make the appellant a displaced person anywhere in Iraq. It is after considering those matters that the Judge finds that the appellant would face destitution if returned to Iraq, and that internal relocation is unduly harsh.

16. The following guidance is now found in 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.*

17. On the facts as the Judge found them to be, the appellant has only a limited grasp of Arabic. He is distinguishable by his religion and his ethnicity, and so will be viewed as a member of a minority community. He has no network of support in Iraq. Although he is a Kurd, he has never lived in IKR. With that profile, it cannot be reasonable to return the appellant to Iraq. Internal relocation is unduly harsh.

18. The appellant is therefore entitled to humanitarian protection and succeeds on article 3 ECHR grounds. That is the decision that the Judge came to, so that the Judge's decision although promulgated prior to AA (Iraq) CG [2017] EWCA Civ 944
is in line with the guidance given in that case. The Judge's findings are guided by and consistent with the country guidance case.

19. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

20. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

CONCLUSION

21. No errors of law have been established. The Judge's decision stands.

DECISION

22. The appeal is dismissed. The decision of the First-tier Tribunal promulgated on 27 February 2017 stands.

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