



IAC-AH-SC-V1

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

Appeal Number: AA/10529/2011

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 December 2015**

**Determination & Reasons  
Promulgated  
On 26 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR KAYWAN KAMAL MOHAMMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Vidal, Solicitor

For the Respondent: Mr E Tufan, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Iraq whose date of birth has been assessed as 20 January 1992, although he claims that his date of birth is 20 January 1993. His appeal against the respondent's decision refusing him asylum on 18 February 2009 was dismissed by First-tier Tribunal Judge S Taylor in a decision dated 23 January 2012.
2. On 22 February 2012 the appellant was granted permission to appeal the judge's decision arguing that the judge erred in relying on **HM (Iraq) CG**

**[2010] UKUT 31**, which was quashed by the Court of Appeal in terms that made it clear that the determination had ceased to be a valid and authoritative country guidance determination. It was further submitted that the judge failed to have regard to a schedule of background material set out in a skeleton argument or to submissions that were relative to the appellant which would put him at greater risk than the general population if returned to Iraq.

3. On 20 March 2012 the respondent in her Rule 24 response submitted that she did not oppose the appellant's application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider humanitarian protection only. The respondent added that the appeal remained dismissed on asylum and human rights grounds.
4. Following a hearing on 22 April 2014 an Upper Tribunal panel noted that it was agreed by all parties at the hearing that it would be appropriate to hear live evidence from Dr Fatah who could be cross-examined on the reports he has recently provided relating to the current conditions in Iraq. The hearing of the appeal was therefore adjourned to a further date.
5. In the meantime, on 30 October 2015, the Upper Tribunal issued a new country guidance decision which replaced all existing country guidance in Iraq. The new country guidance decision is **AA (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC)** (30 October 2015). The Upper Tribunal had heard evidence from Dr Fatah and other experts. The Upper Tribunal issued country guidance on various issues, namely, indiscriminate violence in Iraq; Article 15(c) of the Qualification Directive; documentation and feasibility of return (excluding the autonomous Iraqi Kurdish region ("IKR")); position on documentation where return is feasible; internal relocation within Iraq (other than the Iraqi Kurdish region) and the Iraqi Kurdish region.
6. Ms Vidal submitted a bundle of documents on behalf of the appellant. The bundle included a report by Dr Fatah dated 10 December 2015. She also submitted revised skeleton submissions and the Home Office Country Information and Guidance on the Security Situation in Iraq issued in November 2015.
7. Mr Tufan submitted the Home Office Country Information and Guidance on Internal Relocation (including documentation and feasibility of return to Iraq also issued in November 2015).
8. The appellant's asylum claim was put on the basis of imputed political opinion due to his father's employment. He submitted that his father was a member of a particular social group. His father worked as a guard for the Ministry of Oil and the appellant thought he worked in Kirkuk. From January 2008 the appellant's father began to receive threatening letters that if he did not give up his job that he would be harmed and the appellant would be killed. The letters were written in Arabic so the

appellant did not understand them and his father told him that they were from a terrorist group. His father received three more similar letters between January and March 2008. The family also had graffiti written on the wall of their house during this time. The graffiti was written in Arabic so the appellant did not understand it and the neighbours told him that it was threatening him. The appellant's father reported the matter to the police and he gave them the letters, but the police told him they could not protect the appellant. The appellant's father reported the threats to the Ministry of Oil but they could not help. Between April and May 2008 another letter was thrown into the house which threatened the appellant's life. During May to July 2008 more graffiti was written on the house threatening the appellant and his father. The appellant's father decided that the appellant should be sent to a safe country to avoid being kidnapped. His father did not arrange for the appellant to leave for seven months because he was an only child, but eventually did so when the relatives told him. The appellant's father did not relocate within Iraq because he could not give up his job. The appellant feared that if returned to Iraq he would be harmed by the people who were threatening him and his father. He left Iraq on 16 or 17 July 2008. This evidence was rejected by the judge.

9. The judge also found that the appellant's national identity document was not genuine on examination of the report from the National Documentation Fraud Unit (NDFU).
10. At the hearing before me the appellant was present but was not called to give evidence. The hearing proceeded by way of submissions only.
11. Ms Vidal argued the case on the basis of the profile of the appellant which she submitted would put him at risk on the findings made by the Upper Tribunal in **AA** and the report by Dr Fatah.
12. The appellant's profile is that he is a Sunni Muslim of Kurdish origin, he is a Soranic speaker and not an Arabic speaker and someone with no familial ties or friendship ties with Baghdad.
13. Ms Vidal submitted that the appellant's family hails from Kirkuk city which is now within the contested areas. She relied on paragraph 11 of the respondent's supplementary asylum decision dated 11 December 2014 in which the respondent accepted on the basis of objective evidence that Kirkuk city should also be included in the contested areas.
14. Ms Vidal submitted that the respondent's position is that if an appellant is from Kirkuk he will be returned to Kirkuk but if he is not from Kirkuk he will be returned to Baghdad. This submission was in reliance on paragraphs 150 and 151 of **AA**. At paragraph 150 the Upper Tribunal noted the respondent's assertion that she will only return Iraqi nationals to either Baghdad or to the IKR. She will only return a person to the IKR if that person is from the IKR and such a person has been pre-cleared for return by the IKR authorities.

15. At paragraph 151 the Upper Tribunal noted the respondent's position that, save for those returnees in the category identified below, it would in general be reasonable, and not unduly harsh, to expect a person to relocate to Baghdad city if there is an Article 15(c) risk in their home area. The exception to this generality is identified by the respondent as being:

"A person returned to Iraq who was unable to replace their Civil Status ID Card or Nationality Certificate [would] be likely to face significant difficulties in accessing services and a livelihood and would face destitution which is likely to reach the Article 3 threshold. [6]."
16. Ms Vidal relied on Dr Fatah's report which assessed the security situation in Baghdad. Dr Fatah at 5.1 rates the current security situation in Baghdad as very high. At paragraph 5.2 he gave the figures for the body count in Iraq and the figure for 2015 was the third highest so far since 2003. Relying on these figures and the evidence Ms Vidal submitted that the security situation in Baghdad is such that it would put the appellant at risk. He could be subject to ill-treatment within Article 15(c) and if not, Baghdad is a highly dangerous place because of his particular profile. The security situation such that it will not enable the appellant to be able to live there, and obtain employment there. If he has no family network he will struggle. As a Sunni from the north going to Baghdad, it will be highly dangerous for him. Dr Fatah submitted in his report that corruption is endemic within the defence sector. Ms Vidal submitted that the appellant does not have connections that will help him to survive in Baghdad so Baghdad will present a real danger to him.
17. She submitted that the appellant could not safely relocate elsewhere because although the south is relatively secure, according to Dr Fatah's report, the southern governorates are predominantly Shia and this will present difficulties for the appellant.
18. Ms Vidal submitted that the appellant could not relocate to the IKR by placing reliance on paragraph 224 of 9.4 of Dr Fatah's report. Dr Fatah stated that as a Kurd, the appellant would not have to overcome the hurdle of providing a sponsor in order to enter IKR, and for the same reasons, he is considered unlikely to face the arbitrary procedures existing at entry points. However, as a Kurd from Kirkuk, it may not be possible for the appellant to relocate to the IKR with any permanency, if his civil register is in Kirkuk.
19. Ms Vidal relied on the Human Rights Watch World Report 2015 on Iraq. The report states that human rights conditions in Iraq deteriorated in 2014. Suicide attacks, car bombs, assassinations became more frequent and lethal, killing more than 12,000 people and injuring more than 22,000 between January and December. The report further stated that both government forces and armed groups were responsible for attacks that targeted or indiscriminately harmed civilians.
20. A further report from Amnesty International on Iraq 2014/2015 stated that the conflict has caused the deaths of some 10,000 civilians between

January and October, forcibly displaced almost 2 million people and created a humanitarian crisis. This was exacerbated by the continuing influx of thousands of refugees from Syria, mostly to Iraq's semiautonomous Kurdistan region. The report also stated that government forces and Shia militias armed and backed by the government committed war crimes and human rights violations, predominantly targeting Sunni communities. Ms Vidal submitted that travel warnings have been issued by the US and the UK against travel to Iraq because of fear of terrorism.

21. Ms Vidal submitted that in the light of the appellant's circumstances, he has demonstrated that there are substantial grounds for believing that he would be at real risk of violence if returned to Iraq. He cannot safely relocate outside Kirkuk to another part of Iraq for security and/or practical reasons.
22. In submission Mr Tufan submitted that the appellant was found not credible by the First-tier Tribunal Judge. He had also produced reported identification documents which were found to be forged and not genuine. He accepted that the appellant's claim to be from Kirkuk has not been challenged. He further submitted that the appellant claims he cannot speak Arabic but there has been no proper finding on this. He asked me to assume that the appellant can speak Arabic because, having been educated in the IKR, the appellant is likely to be able to speak Arabic. I find that I am not able to make this assumption. The appellant's claim that he could not speak Arabic was not challenged by the respondent and consequently I have accepted the appellant's claim that he cannot speak Arabic.
23. Mr Tufan submitted that the appellant can relocate to Baghdad and it will be reasonable for him to relocate to the Kurdish zone from Baghdad because he has not been found to be a credible person. The Secretary of State found that the appellant is from Kirkuk. He found that the appellant cannot return to Kirkuk. He also finds that almost everyone can relocate to Baghdad Belts area. The conclusion in **AA** at paragraph 153 is that only a small percentage of Iraqis cannot relocate to Baghdad.
24. Mr Tufan submitted that the appellant does not have to stay in Baghdad. He can relocate to the Iraqi Kurdish region in according with the findings at paragraph 171 of **AA**. **AA** concludes that those who do not originate from IKR are returned to Baghdad. The appellant will be returned to Baghdad. There are flights from Baghdad to the IKR and it would not be unreasonable to expect the appellant to relocate to the IKR from Baghdad.
25. With regard to securing employment, Mr Tufan submitted that the appellant said at his screening interview that he had worked in construction. He would have the availability and assistance of family and friends because his evidence was that his father worked in the oil industry and was a policeman. There was no credible evidence that his family is lost.

26. Mr Tufan relied on paragraph 3.1.3 of the Home Office country information and guidance which stated that relocation to the Iraqi Kurdistan region (IKR) is possible in general for Iraqi Kurds from IKR and those not from the IKR via Baghdad.
27. Mr Tufan submitted that the appellant is in a similar position to the applicant in **AA**. He is Kurdish and comes from Kirkuk City, which is one of the contested areas of Iraq. He would face an Article 15(c) risk if he is returned there. However the Tribunal held at paragraph 206 that the Respondent has confirmed that the appellant would be returned to Baghdad city. Mr Tufan submitted that the lack of documentation should not affect a finding on Article 15(c).

## **Conclusions**

28. I accept that the appellant's core claim has been rejected as lacking credibility by the judge. I also accept that he has produced identity documents which have been found to be false documents.
29. I accept the profile attributed to the appellant by Ms Vidal. He is a Sunni Muslim of Kurdish origin. I find that he is a Soranic speaker and not an Arabic speaker. I accept, as submitted by Mr. Tufan, that the appellant's circumstances are similar to the applicant in **AA**. As he is Kurdish and comes from Kirkuk, which is one of the contested areas of Iraq, I find that he would face an Article 15(c) risk if he returns there.
30. Consequently, the appellant would be returned to Baghdad City. The issue as to whether the appellant has the required documentation to enable the respondent to return him to Baghdad City was not argued by Ms Vidal. Consequently, I accept Mr Tufan's submission that the lack of documentation should not affect a finding on Article 15(c).
31. The Upper Tribunal held in **AA** head note 14 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 (subject to certain parts of the "Baghdad Belts" i.e. the urban environs around Baghdad City) or the Baghdad Belts*".
32. The Upper Tribunal at head note 15 identified factors that were likely to be relevant when assessing whether it would be unreasonable/unduly harsh for an appellant to relocate to Baghdad. One of the factors was whether the appellant has a CSID or will be able to obtain one. No evidence was led on this issue and Ms Vidal made no submission on this either. I have already found that in the absence of a challenge by the respondent, the appellant is not an Arabic speaker. Ms Vidal submitted that the appellant has no family members or friends in Baghdad who would be able to accommodate him and that he would have difficulty obtaining accommodation. This was not challenged by Mr. Tufan. It was held in **AA** that those who cannot speak Arabic are less likely to find employment in Baghdad. On balance I find that it would be unreasonable and duly harsh

for the appellant to relocate to Baghdad City where he would be returned to.

33. I consider Mr. Tufan's submission that the appellant can relocate to the IKR by catching a flight from Baghdad to Erbil or Sulaymaniyah. In the light of Dr. Fatah's evidence, the Upper Tribunal held in **AA** that there is no Article 15(c) risk to an ordinary civilian in the IKR; and neither does a person's ethnicity, religion or sex, whether taken individually or cumulatively, enhance the level of risk so as to engage Article 15(c). The KKR is virtually free of violence.
34. In **AA** head note 20 the Upper Tribunal held
- "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"
35. I take note of Dr. Fatah's assertion that as a Kurd, the appellant would not have to overcome the hurdle of providing a sponsor in order to enter the IKR and is unlikely to face the arbitrary procedures existing at entry points. Dr. Fatah however expressed the reservation that it may not be possible for the appellant to relocate to the IKR with any permanency, if his civil register is in Kirkuk. There was no evidence from the appellant as to where in the IKR his civil registration is. I take note of the fact that the evidence on which the appellant based his asylum claim was rejected by the First-tier Judge. The judge went on to say that the appellant was not able to provide evidence on the current whereabouts of his father, although he stated that he had been told that they had moved out of the area, which suggested that the appellant's father had found somewhere to relocate away from perceived danger.
36. When the appellant left Kirkuk in 2008, his father still worked there according to his evidence. In the further statement he submitted dated 7 December 2011 he said he had no contact with his family since 2008. Indeed I have no evidence that his family has remained in Kirkuk given the security situation since the appellant's departure. In the absence of familial ties and friendship ties in Baghdad or Kirkuk, I find that it would not be safe for the appellant to be returned to Baghdad and expect him to then relocate to Kirkuk.
37. As a Sunni Muslim, I find that the appellant cannot relocate to the relatively safe areas in the south which are predominantly occupied by the Shia. He will be faced with sectarian violence.

### **Notice of Decision**

38. The appellant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Eshun