



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00291/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 27th November 2017**

**Decision Promulgated
On: 3rd January 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**TWANA SALIH QADER
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: -
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Iraq born in 1995. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Raikes), who on the 21st February 2017 dismissed his protection claim.

Background and Matters in Issue

¹ Permission was granted by Designated Judge of the First-tier Tribunal Shaerf on the 8th June 2017

2. When he claimed asylum in July 2016 the Appellant stated that he was from Baqert village, Makhmour, Mosul. He said that he had fled ISIS who had taken control of his local area and were threatening him because he had not joined their ranks.
3. The Respondent refused the claim by way of letter dated the 23rd December 2016. The Respondent disbelieved the Appellant's claim that he had personally received threats from ISIS. She found, based on a 'google map' search that Baqert village is within the Independent Kurdish Region (IKR). The Respondent found that if the Appellant had any protection concerns there, he could move to Erbil or Makhmour, both places where he had previously lived. The Respondent relied on the assessment made in AA (Article 15(c)) Iraq CG [2015] UKUT 544 that the IKR is "virtually violence free" and noted the Appellant's evidence that he has relatives in the region, including uncles and cousins with whom he had previously stayed. In light of this it was considered reasonable that the Appellant relocate within Iraq to avoid any contact with ISIS.
4. The Appellant appealed to the First-tier Tribunal. He gave oral evidence which the Tribunal found to be inconsistent and implausible. It rejected his account of receiving threats from ISIS. The Tribunal noted the Appellant's evidence that he is not from the Kurdish region, but agreed with the Respondent that Makhmour, the district where the Appellant lived, is part of the Erbil governate, and as such is part of the IKR: "I am satisfied that the area he is from does not appear to be a contested area, and he has provided no evidence to suggest that it is". It went on to find that if the Appellant did not wish to return to Makhmour it remained open to him to relocate to Erbil, where he had previously lived, and where a number of members of his family had lived. Applying the guidance in AA the Tribunal found that the Appellant would be given entry to the IKR, and that it would be reasonable for him to live there. Alternatively, he could go to Baghdad.
5. When the Appellant lodged his onward appeal to the Upper Tribunal Judge Shaerf very fairly noted that the Appellant had been unrepresented throughout the asylum process. Whilst he found the grounds drafted by the Appellant failed to identify any arguable errors in the decision of the First-tier Tribunal, he granted permission for two reasons. First, he was concerned that the Tribunal may have failed to take into account evidence in the Respondent's own Country Information and Guidance Note to the effect that there has been fierce fighting around Mosul and that many of the areas in the border of Nineveh governate do remain 'contested'. Secondly he thought it arguable that the Tribunal had not dealt adequately with internal flight.

Discussion and Findings

6. This case is perhaps the perfect example of how difficult it is for decision makers in the asylum context to keep abreast of the complex and fast-changing picture on the ground in Iraq. It is further testament to the importance of having accurate country background evidence. Both Respondent and First-tier Tribunal in this case felt confident in placing the town of Makhmour in the Erbil governate. That being so, they were able to say with certainty that it is part of the IKR. Given the findings in AA that the IKR is “virtually violence free” the claim was rejected and the appeal dismissed. That line of reasoning was all based on the premise that ‘google maps’ was correct to place the town of Makhmour in the Erbil governate: see paragraph 39 of the refusal letter.
7. Had either decision maker looked at an alternative source of information they would have seen that in fact Makhmour is officially, as far as the Iraqi government are concerned, part of the Nineveh governate. Since the Respondent accepts that Nineveh remains ‘contested’ the decision in this case could have been very different. The starting point would have been that there is an Article 15(c) risk to the Appellant, and the only question would have been internal flight. As it happened this unrepresented appellant failed to produce any objective evidence to counter the view expressed by ‘google maps’ and all he could do was to reiterate his own view that Makhmour was not part of the IKR. I note for the record that Makhmour was on the frontline of fighting in 2014 when it was seized, just as the Appellant describes, by ISIS. It was subsequently liberated by PKK *peshmerga* but remains ‘contested’ today. A Kurdish town subject to the ‘Arabisation’ programme under the Ba’athists it is now on the frontline of the new war in Iraq, between the Kurdish forces seeking to claim it for the IKR, and the Baghdad government seeking to keep it part of Iraq. There have for instance been significant clashes in and around the town the past few weeks between *peshmerga* and Iranian-backed Shi’ite militias acting on behalf of the Iraqi government. In the last week there has been a major terrorist attack on the Kurdish refugee camp there.
8. It is therefore arguable that the First-tier Tribunal erred as a matter of fact when it categorised Makhmour as “virtually violence free”, being part of the moderately safe IKR. It is however not an error for which this decision could be set aside. That is because there is no arguable error in the Tribunal’s ultimate conclusion that this Appellant could safely relocate to Erbil. Given that the Erbil government claim Makhmour as part of its territory it would appear unlikely that a resident of that area would be refused entry to the IKR. As the First-tier Tribunal note [at paragraph 30] Kurds are able to obtain an initial period of 10 days entry after which the permit can be renewed. There was no evidence before the First-tier Tribunal to suggest that it would be unduly harsh for a healthy young man, with a large extended family in the area (with whom he remains in contact), who speaks fluent Sorani, who has lived there previously, to travel to Erbil. The fact that he may need to transit in Baghdad is not of any great

significance. The findings in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018(IAC) are not to the effect that a Sunni Kurd would experience problems transiting in Baghdad airport to get on a domestic flight to Erbil.

Decision

9. The decision of the First-tier Tribunal contained no error of law and it is upheld.
10. There no order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', written in a cursive style.

Upper Tribunal Judge Bruce
14th December 2017