



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04269/2017

### **THE IMMIGRATION ACTS**

Heard at North Shields  
On 19<sup>th</sup> September 2018

Decision Promulgated  
On 23<sup>rd</sup> October 2018

#### **Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

#### **Between**

MR.M K F  
(ANONYMITY DIRECTION MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

#### **Representation:**

For the appellants: Ms L Brakaj of Iris Law Firm(Middlesbrough)

For the respondent: Mr Duffy, Home Office Presenting Officer

### **DECISION AND REASONS**

#### **Introduction**

1. This is a resumed hearing from 23 April 2018 when I concluded that the decision of First-tier Tribunal Judge K Henderson materially erred in the assessment of the 15C risk for the appellant. To recap, he was found to be a Kurdish national of Iraq originally from Kirkuk. The judge had found he could not remain in Baghdad because he is a Sunni Muslim and does not speak Arabic. An overland journey to

Kirkuk presented serious risks. To get to the IKR would involve a stopover in Baghdad. Regarding the IKR, there was no evidence of links or support or of his employment prospects.

2. The presenting officer in the First-tier Tribunal accepted that the appellant was in a relationship with a British national and that the marriage was genuine and subsisting. They have a child who is British and at the time of hearing they were expecting their 2<sup>nd</sup> child.
3. The appellant's appeal was allowed on the basis of article 8 by reason of his marriage to a British national and their child.
4. I was advised that there were certain advantages to the appellant if his appeal were allowed under article 15C, including the fact that he could apply for settlement after 5 years.
5. The individual claim for protection was on the basis the appellant would be at risk because his father had been a member of the Ba'ath party. There had been an earlier appeal which did not find a need for protection and this was adopted in the subsequent appeal under the Devaseelan principle. The focus in the subsequent appeal was upon the general security situation and his personal circumstances.
6. The respondent in refusing his claim suggested the situation in Kirkuk had changed since the country guidance case and the appellant could return there. In the alternative, internal relocation was reasonable.
7. The judge rejected the suggestion the appellant could live in Baghdad. The judge referred to the decision of BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC), pointing out that he has no family support or links to Baghdad and is a Sunni Muslim. At paragraph 45 the judge concluded he faced a real risk of serious harm from nonstate agents in Kirkuk or if he had to remain in Baghdad. This then left the IKR.
8. The judge concluded at paragraph 54 that the objective evidence was that Iraq remain volatile and insecure. The judge concluded it was not realistic for the family to go to Iraq. Referring to his wife, the judge said:

“she should not be expected to go to Iraq to an unknown destination where there is no evidence that her partner has any financial support, housing or employment at this stage of her pregnancy or after that when she is a primary carer of 2 children under the age of 5. I consider that the option of returning the appellant with his partner is unreasonable.”

## Conclusions

9. The judge's findings should have led to the conclusion that the appellant was entitled to be granted humanitarian protection on the basis of there being an article 15C risk in Kirkuk. The country information would not suggest that an article 15C risk exists in Baghdad and it certainly does not exist in the IKR. However, the appellant cannot in the circumstance reasonably relocate to either. On the basis relocation therefore is not feasible and the country guidance decision is that there is a 15C risk in his home area it would follow he should be entitled to humanitarian protection.
10. The judge did not go beyond the country guidance case on Kirkuk and is not to be faulted for this. There is no further country guidance case giving an authoritative view that conditions have materially changed. I am dealing with the specifics of this appeal and would not propose straying beyond the country guidance in the circumstance.

## Decision

The appeal is allowed under article 15C.

Francis J Farrelly  
Deputy Upper Tribunal Judge