



IAC-FH-NL-V1

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

Appeal Number: AA/01812/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 January 2016**

**Decision & Reasons Promulgated  
On 25 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**A D**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Whitwell, Home Office Presenting Officer

For the Respondent: Mr Gilbert of Counsel instructed by J D Spicer Zeb  
Solicitors

**DECISION AND REASONS  
EXTEMPORE JUDGMENT**

1. This is an appeal by the Home Office against the decision of First-tier Tribunal Judge Haria allowing the appeal by the Claimant in a Decision and Reasons promulgated on 5 October 2015. The Claimant is a national of Iraq born on 20 June 1989 and is a Shia Muslim. He arrived in the United Kingdom on 8 September 2014 and made his asylum claim nine days later at the Asylum Support Unit in Croydon.

2. The basis of his claim is that he had been working for his maternal uncle in the Green Zone in Baghdad. His uncle had a company, he was a chief engineer and had been working with the Iraqi Government. The Claimant's specific job was to install pipes in the Green Zone which he did. The first problem the Claimant said he had was receiving a threatening phone call on 20 June 2010 which he remembers because it was his birthday. The call was from a militia saying if he did not leave his job they would kill him. On 3 June 2013 the Claimant was at home in Baghdad when two cars with seven men came to his house. The men were armed, they were militia. They kidnapped him, kept him for twelve days during which time he was beaten and tortured on the basis that he had ignored the warnings that he had been given. A ransom was paid and he was released twelve days later. He was then treated in hospital. The family moved to a different area and the Claimant stopped working in the Green Zone.
3. However, on 24 May 2014 the Asaab Ahl Haq militia came to his house in the Al Banuk area of Baghdad. His mother said he was not there but they threatened him again via his mother that if he continued to work in the Green Zone he would pay the price. The Claimant was afraid he would again be kidnapped or killed so he went, along with his family, to stay in a different area, the Al Shab area and then the family relocated to another house in the Al Banuk area.
4. The Claimant took different employment as a barber and then with a friend who set up a business importing and exporting cattle and livestock to Holland. The Claimant travelled to Holland on 8 August 2014 for ten days on a business trip but then returned to Iraq. On 23 August 2014, ten armed men from the Al Haq militia attacked his house, seeking his whereabouts, however, he was not there. They took his laptop, his ID and his passport, stating that he was a traitor and he was accused of working with the Americans. The Claimant subsequently fled the country.
5. His asylum claim was rejected by the Respondent in a decision dated 9 January 2015 and his appeal came before the Judge of the First-tier Tribunal for hearing on 6 May 2015. The appeal was allowed on the basis that the judge at [57] accepted the credibility of the Claimant's account. Although there were minor discrepancies the judge found these were satisfactorily explained in his statement and in the oral evidence. The judge had regard to the background evidence, in particular the most recent Country Information and Guidance Report of 27 April 2015 and found at [61] firstly, that if the Claimant were to be relocated to the southern governorates he may end up residing where persons of his religious sector in the minority may as a result face heightened risk of indiscriminate violence or persecution. The judge also went on to find in the light of the Respondent's latest country information guidance and based on the fact: *"That the appellant has been targeted regardless of where he has relocated as he is perceived to be a government employee, even though he stopped working in the Green Zone in 2007, in the appellant's case it seems to me that internal relocation is not a feasible*

*option*” and at [64] that in light of his acceptance of the Claimant’s account of kidnapping and threats and that the threats have continued despite stopping working in the Green Zone, that there were substantial grounds for believing that the Claimant would on return face a real risk of death or ill-treatment in breach of Article 3 and for the same reasons allowed the appeal in respect of the Refugee Convention.

6. The Respondent sought permission to appeal on 13 October 2015 on two grounds. The first was the alleged failure by the First-tier Tribunal Judge to give reasons or adequate reasons for findings on material matters *viz* the judge’s finding at the first part of paragraph 61 that internal relocation was not feasible and the judge failed to make findings on why the Claimant may end up residing where persons of his religious sect are in the minority. Reference was made to the country report of 26 August 2011.
7. The second point was in relation to the fact that the country guidance decision by the Upper Tribunal in AA (Article 15(c)) Iraq [2015 UKUT 544 (IAC)] had recently been promulgated. It was submitted this was available to the judge at the time of his decision.
8. Permission to appeal was granted by First-tier Tribunal Judge Reid on 23 October 2015 on the basis that it was arguable that the judge did not make adequate findings in respect of why the claimant may face a heightened risk of indiscriminate violence or persecution and why the claimant would end up residing in an area of Iraq where members of his religious sect were in the minority. It was said that it is arguable that her conclusions lack reasoning.

### *Hearing*

9. At the hearing before me the Claimant was represented by Mr Gilbert and the Respondent by Mr Whitwell. Mr Whitwell accepted that the judge signed the decision on 28 September 2015 and that AA (Article 15(c)) Iraq [2015 UKUT 544 (IAC)] had been promulgated on 30 September 2015, which postdated the judge’s decision even though it was prior to the promulgation date.
10. The main thrust of Mr Whitwell’s submissions was based on ground 1 of the grounds of appeal *viz* the adequacy of the reasons for the judge’s findings. He provided me with a copy of the relevant Country Information and Guidance Report that was before the judge (the version dated 27 April 2015) and drew my attention in particular to paragraphs 1.3.12 and 1.3.13. He also submitted that the whole of paragraph 61 was premised on whether internal relocation was feasible but that was not the correct test. He submitted that the assertion by the judge that the Claimant might find himself in a Sunni area was not borne out by the evidence. He also drew my attention to [1.3.29] which makes clear that the levels of violence across the southern governorates are considerably lower than for other parts of the country with the exception of Kri. While the majority of

security incidents involved targeted attacks, mass casualty attacks did occasionally occur in the south, notably Basra and Karbala.

11. He further drew my attention to the fact that the paragraph continues, *“the southern governorates also continue to see targeted killings/kidnappings and sectarian reprisal attacks against individuals including members of political parties, religious and tribal figures, government employees and professionals”* and he submitted that the Claimant did not fall within the categories set out there. He could relocate to the southern governorates. He speaks Arabic, has travelled internationally and has family in the country and he submitted that the judge’s reasons were inadequate.
12. In his response Mr Gilbert submitted that the judge had concluded his determination on 28 September 2015 and so is not cognisant of the promulgation of the country guidance decision in AA (Article 15(c)) Iraq [2015 UKUT 544 (IAC) which has also been promulgated subsequently due to corrections and the judge had not offended any principle in failing to take it into account. He invited me to read the judge’s decision as a whole and he submitted that the grounds sought to extract one part of paragraph 61 from the other. He submitted that the Claimant would be perceived as a government employee and the judge clearly found that at [61] and the judge had not erred in that he submitted that the test for internal relocation is firstly feasibility and, if that is satisfied, the second part of the test is whether or not it would be unduly harsh to expect a Claimant to internally relocate.
13. He submitted that at [64] the judge had clearly made a finding that the Claimant would be at real risk of treatment in breach of Article 3. He pointed out that those who threatened the Claimant were Shia militia i.e. from the same religious background as the Claimant himself and therefore relocating to a Shia area, i.e. the southern governorates would not alleviate the risk that he would face. He drew my attention to the Claimant’s response at question 64 of the Asylum Interview Record where he makes reference to the Ahmadi Army and Asaab Al Haq and to the Country Information and Guidance Report at 1.3.28 which makes clear that the south is predominantly made up of Shia Arabs and that targeted killings have taken place there.
14. He also made reference to paragraphs 12, 15 and 18 of the judge’s decision where he clearly set out the events as described by the Claimant and submitted that these were events where the Claimant had been targeted by Shia militia because of his work assisting foreign governments in the Green Zones and he further submitted that Baghdad was run by Shia militia.
15. Mr Gilbert was prepared to accept that the first part of paragraph 61 was not adequately reasoned but essentially this was not relevant, firstly, because the findings there were clearly in respect of the Article 15(c) risk, i.e. the risk of indiscriminate violence and secondly the judge had

elsewhere in his decision at [64] made clear findings that the Claimant would be at real risk in Baghdad and the south and he submitted it was uncontroversial that the Claimant could not internally relocate anywhere else within Iraq. He further pointed out that there had been no challenge to the credibility of the Claimant and he asked me to uphold the decision of the First-tier Tribunal Judge.

### *Decision*

16. I find for the reasons and submissions provided by Mr Gilbert and despite Mr Whitwell's helpful submissions that there is no material error of law in the decision of First-tier Tribunal Judge Haria. This is particularly in light of the acceptance that whilst the first part of paragraph 61 of the decision is inadequately reasoned this aspect of the decision is clearly in relation to the Article 15(c) risk and not in relation to the asylum and Article 3 risk. I do consider that the judge made clear and adequate findings in relation to the risk to the Claimant of persecution or ill-treatment contrary to Article 3 and those findings were properly open to the judge. I find that proper and adequate reasons for finding that the Claimant could not internally relocate were provided at [61] in light of the Claimant's particular history of being targeted by Shia militia as a perceived government employee because of his former employment in the Green Zone.
17. Mr Whitwell did not pursue the ground in relation to AA (Article 15(c)) Iraq [2015 UKUT 544 (IAC) given that the Judge had written and signed her decision prior to promulgation of the country guidance case, but for the avoidance of doubt I do not consider that it would have made a material difference to the outcome of this case in light of the Judge's findings, which I have found to be sustainable.

### **Notice of Decision**

18. For the reasons set out above, I dismiss the appeal by the Respondent Secretary of State and I uphold the decision of First-tier Tribunal Judge Haria allowing this Claimant's appeal.
19. An anonymity direction was made by the First-tier Tribunal Judge and I uphold that anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Chapman