



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

Appeal Number: AA/07627/2015

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**Decision & Reasons  
Promulgated**

**on 8<sup>th</sup> March 2016**

**on 31<sup>st</sup> March 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**[ R R ]**

Appellant

**and**

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

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Maguire Solicitors  
(Scotland) Ltd

For the Respondent: Mrs S Saddiq, Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Iraq, born on [ ] 1986. He has not asked for an anonymity direction. He was detected on 10<sup>th</sup> November 2014 as an illegal entrant to the UK in the rear of a heavy goods vehicle, and then sought asylum.

2. The appellant has not disputed the respondent's summary of his original claim, as derived from the information he gave, summarised at paragraphs 1 and 2 of the respondent's refusal decision dated 27<sup>th</sup> April 2015. He was educated to first year university level (sports/physical education) and was the proprietor of a women's clothing shop. His father had been in the *jash* militia. In their home area the population was 75% Arab. The appellant thought that the *peshmerga* would target him due to his father's and uncle's involvement with the *jash* and with the *Ba'ath* party. On 7<sup>th</sup> August 2014 the appellant was warned of an impending ISIS incursion into his area. He fled across the border and eventually to the UK. His fear on return was of ISIS, a risk increased due to his Kurdish background.
3. The respondent accepted that the appellant is a Kurdish Iraqi national. His claim was considered to suggest no increased risk beyond that of the general Iraqi Kurdish population, and was considered "at highest". The respondent held that there was a viable relocation alternative, namely to the Kurdish regions which had been affected only to a lesser degree by ISIS offensives, and where Kurdish security forces were actively engaging against ISIS incursions (paragraph 16). As a further alternative, the appellant might relocate to Baghdad (paragraph 17). The country guidance cases did not apply to his benefit. The general country situation did not establish a need for protection under Article 15(c) of the Qualification Directive ("QD").
4. In his rather sketchy grounds of appeal to the First-tier Tribunal, the appellant said that he qualified as a refugee on grounds of imputed political opinion and of his Kurdish ethnicity; that Articles 2, 3 and 8 of the ECHR applied; that he qualified for humanitarian protection; and that "sufficiency of protection [is] not an option in Iraq".
5. Judge Fox heard the appeal at Glasgow on 22<sup>nd</sup> July 2015. Mr Caskie, who appeared at that stage, confirmed that the appellant did not insist on any case under Article 8 of the ECHR and made his case on the background evidence such that he could not safely return to Iraq, based on a level of indiscriminate violence meeting the terms of Article 15(c) of the QD.
6. At paragraph 18 of his decision promulgated on 21<sup>st</sup> September 2015 Judge Fox held that the figures referred to by Mr Caskie did show a slight increase in the level of violence but "nothing comparable to the previous full scale war"; that there were certain pockets of the country subject to violence, but these were well defined, and other areas were relatively calm; and that there was not a general level of indiscriminate violence throughout the country such that any individual was at real risk (paragraph 18). At paragraph 24, the judge said that he had taken account of the UNHCR's views published in October 2014.
7. The appellant's Grounds of Appeal to the Upper Tribunal are as follows:
  - "1. The appellant predicated his case upon Article 15(c) of the Qualification Directive.

2. The evidence before the judge arguably established that the situation in Iraq had sufficiently deteriorated so as to allow the appeal [reference is made to an unreported decision, which was not followed up at the hearing in the UT].
  3. In light of *R (EM (Eritrea))* [2014] UKSC 12 the judge arguably erred in limiting his consideration of the views of UNHCR.
  4. At paragraph 19 the judge drew a comparison between the rate of violence in Iraq and that in Northern Ireland from 1968 to 1998, and so arguably had regard to an irrelevant matter.
  5. The judge suggested the situation in Iraq was substantially better than five years ago. Five years ago the killing rate was half of what it is now albeit nine to seven years ago it was higher. The judge arguably failed to accurately analyse the evidence of the changing rate of atrocity in Iraq and failed to provide adequate reasons.
  6. At paragraph 22 the judge stated accurately that the Country of Origin Information Report indicated that the appellant could move to Baghdad, but he provided no reasons for preferring that over the UNHCR evidence, despite the guidance of the Supreme Court of the weight to be given to such evidence.
  7. The judge repeatedly referred to the most recent Iraq country guidance cases, but in a country so changed he arguably erred in law in doing so.”
8. On 12<sup>th</sup> November 2015 UT Judge Bruce granted permission, observing that the appellant is from a contested area within Iraq and that following AA (Article 15(c)) Iraq CG [2015] UKUT 00544 it was arguable that the judge erred in rejecting the appellant’s submissions in respect of Article 15(c), and that the findings on whether he would be able to internally relocate were unclear and incomplete.
  9. *Rule 24 response by the respondent.* The conclusion reached by the FtT on Article 15(c) was open to it, and properly takes into account the background evidence which was before it. Although the grant of permission suggests there may be error in light of AA, that decision was promulgated after the determination of the present appeal, so the FtT could not be criticised for failing to refer to it. The FtT properly considered the case in light of the background evidence and country guidance as it stood.
  10. *Submissions for appellant.* It was accepted that AA had not been available to the FtT. The sensible outcome in light of AA would be to remit the case to the FtT to reach a fresh decision in the light of that case. The relevant questions posed in AA had not been asked and answered in the FtT decision. The judge referred at paragraphs 22 and 24 to the respondent’s Country of Origin Information Report and to the UNHCR recommendations, but gave no reason for preferring one over the other. At paragraph 19 the judge erred in his comparison of rates of violence, which was arithmetically wrong. Although there was some force in the respondent’s Rule 24 point, it was an error not to ask and answer the central questions even if these had not then been laid out in country guidance. The judge

had effectively been invited to go beyond country guidance, and had not adequately explained why he declined to do so.

11. *Submissions for respondent.* The judge's findings were sound, based upon the country guidance and the background evidence before him. The judge correctly said that the appellant could relocate in Baghdad or in Kurdish areas. He did not explicitly say why the UNHCR position recorded at paragraph 24 did not lead him to another view, but he was not bound to reach another conclusion, and he plainly took the evidence into account. The judge might have erred in his arithmetical comparison of levels of violence in Northern Ireland during the troubles and in recent years in Iraq, but the general analogy was tenable and in any event those observations could be regarded as irrelevant to the rest of the decision. There was no case for remitting to the FtT. It had not been shown that the appellant was likely to benefit from the guidance in AA.
12. *Reply for appellant.* The comments of Lord Kerr in *EM* on UNHCR recommendations showed that these were more than part of the general evidence, and merited "a gold star". The respondent's Country of Origin Information Report might properly be preferred, but only if a good reason was given. The appellant would succeed on an analysis in terms of AA because he "ticked at least five of the seven boxes", missing out only on not being a "lone female".
13. I reserved my determination.
14. I was not referred directly to what *EM (Eritrea)* said about UNHCR statements. I note that UNHCR criticisms about Dublin transfers to Italy were given significant weight, but I detect no ruling that UNHCR was a source of evidence generally to be preferred over others. At paragraph 74 Lord Kerr said:

"The UNHCR material should form part of the overall examination of the particular circumstances of each of the appellant's cases, no more and no less."
15. The UNHCR material referred to in this case states a position taken on returns to Iraq in October 2014. The conclusion reached at paragraph 27 is that as the situation:

"... remains highly fluid and volatile, and since all parts of the country are reported to have been affected, directly or indirectly, by the ongoing crisis UNHCR urges states not to forcibly return persons originating from Iraq until tangible improvements in the security and human rights situation have occurred."

That is a recommendation, and not strictly a conclusion about general level of risk throughout the country. UNHCR does go on to state that in principle denial of protection on the basis of internal flight or relocation is not considered appropriate, but that does not exclude state parties to the Refugee Convention reaching other conclusions either in particular cases, or in relation to different parts of Iraq.

16. The question here is not what UNHCR recommended at the time, but whether the judge went wrong in law by concluding that the background evidence as a whole failed to establish the case of the appellant, who had invited a finding of a state of affairs throughout Iraq which justified protection for all Iraqis under Article 15(c) of the QA. The judge declined so to find. So did the UT subsequently in AA, having considered much more extensive evidence.
17. The UT in AA found a state of internal armed conflict in certain parts of Iraq, but not all. The evidence in AA included the UNHCR's position. Relocation to certain areas was not found to be generally unreasonable or unduly harsh. In assessing such issues, certain factors are set out at paragraph 15(a) to (g). There is no conclusion that by ticking a certain number of those boxes an individual will qualify for protection. Nor is it clear that the appellant would readily meet as many of the factors as was claimed. That assertion was made without going through the specific matters. For example, there is no immediately obvious reason why the appellant would not be able to obtain suitable identification. He would be offered support on return by the respondent. There appears also to be some support available internally within Iraq. He said at his initial interview that he spoke Kurdish Sorani and "a little Arabic", but that claimed minimal level of Arabic might be thought a little surprising, given his quite high level of education and his evidence that his home village of Gwer had a 75% Arab population.
18. The conclusions of Judge Fox are broadly consistent with AA, a case contested in much more copious detail between the parties upon all background evidence available at a hearing in May 2015. This case was decided in July 2015. It was not suggested that there was any significant difference between the background evidence at those respective dates.
19. Indeed, there appears to have been reference in AA to information from UNHCR which was more recent than that before Judge Fox about protection of civilians in the armed conflict in Iraq - see Appendix A, page 62, citing UNHCR sources dated 23<sup>rd</sup> February 2015 and 17<sup>th</sup> March 2015.
20. The appellant has not shown that the judge ought to have reached conclusions which were any more favourable to his case, based on the background evidence before him.
21. If the appellant does consider that he can construct a case for protection under reference to the guidelines later produced in AA his route is by way of fresh submissions, not by identifying error in this case. I am fortified in the conclusion that there was no material error by noting that it is not obvious that the appellant necessarily has any better a case once reference is made to the detailed findings in AA.
22. The judge's arithmetic about casualty rates in Iraq and in Northern Ireland was wrong, but that is irrelevant.

23. The determination of the FtT shall stand.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

14 March 2016  
Upper Tribunal Judge Macleman