



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01830/2015**

Appeal Number:

THE IMMIGRATION ACTS

Decided on the papers

On 3 July 2017

**Decision &
Promulgated**

On 4 July 2017

Reasons

Before

UPPER TRIBUNAL JUDGE SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H A A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr Sinker, Counsel instructed by Arden Solicitors
Advocates

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION

Background

1. The Appellant before this Tribunal is the Secretary of State. However, for ease of reference, I refer to the parties as they were before the First-tier Tribunal. The Appellant's appeal against the Secretary of State's decision refusing his asylum claim was allowed by First-tier Tribunal Judge D. Alty in a decision promulgated on 22 June 2016 ("the First-tier Tribunal's Decision"). Although the Appellant's asylum claim was not accepted, his claim for humanitarian protection was accepted on the basis it would be unduly harsh for him to internally relocate to Baghdad. By a decision promulgated on 7 February 2017, I set aside paragraphs [50] to [58] only of the First-tier Tribunal's Decision. My error of law decision is appended to this decision for ease of reference.
2. The effect of my decision is that the Appellant does not have a well-founded fear of persecution on return to Iraq and is not at risk of being personally targeted ([26] to [32] of the First-tier Tribunal's Decision). The Appellant has not challenged those findings. Equally, the Respondent did not challenge the findings at [33] to [35] of the First-tier Tribunal's Decision that Article 15(c) of Council Directive 2004/83/EC ("the Qualification Directive") applies in relation to risk on return to the Appellant's home area of Tikrit. Nor does she challenge [36] to [40] of the First-tier Tribunal's Decision in which Judge Alty found that the Appellant could not be returned to the Kurdish area of Iraq (despite his residence in Erbil before coming to the UK) since he is not Kurdish and the Respondent does not return non-Kurds to that region.
3. The basis on which I set aside [50] to [58] of the First-tier Tribunal's Decision is that Judge Alty found as a fact that the Appellant does not have and would not be able to acquire within a reasonable period a Civil Status Identity Card ("CSID"). His appeal was allowed on that basis. The Respondent challenged that aspect on the basis that the Judge failed to consider whether the Appellant would be able to obtain a CSID prior to return to Iraq from the UK. It has since then transpired that the Appellant does in fact already have a CSID which is held by the Respondent. The issue which remains therefore is whether it is unduly harsh for the Appellant to be returned to Baghdad.
4. Before turning to consider that issue, it is helpful to remind myself of the findings which are preserved in this regard which appear at [42] to [49] of the First-tier Tribunal's Decision. I set out those paragraphs below:-
"[42]AA establishes that the threshold for engaging Article 15(c) is not reached in Baghdad with the exception of certain parts of the Baghdad Belts. The Appellant submits that he is at enhanced risk as a result of his lack of connections in Baghdad, his Sunni beliefs, as a government employee and a member of the Al-Bu Nasir Tribe. In my judgement, the

Appellant has not established enhanced risk. I note the findings of AA in reaching this conclusion, in particular, paragraphs 135 and 136 where the Tribunal concludes that there is not a risk arising from a lack of connections or Sunni beliefs.

[43] The Appellant has submitted that the people of Tikrit are now unable to access Baghdad. Miss Bremang refers me to page 16 of the Supplementary Bundle. The evidence to which I am referred post-dates AA. However, I am not satisfied following SG (Iraq), that it is “*cogent evidence*” demonstrating “*very strong grounds*” for departing from the general position set out in AA which makes no finding to this effect.

[44] Under Article 8 of the Qualification Directive, an applicant “*is not in need of International Protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of serious harm and the applicant can reasonably be expected to stay in that part of the country.*”

[45] I have found that the Appellant does not have a well-founded fear of being persecuted and there is no real risk of serious harm in Baghdad. In deciding whether it would be unreasonable or unduly harsh to expect the Appellant to relocate there, I have considered first, the feasibility of his return. AA says that Iraqi nationals will not be returned to Baghdad by the Respondent if they do not have in their possession a current or expired passport or a laissez passer. It is not in issue that the Appellant used a valid Iraqi passport to enter the UK. That passport is documented as expiring on 9 April 2016 (details at D1 and E5 of the Respondent’s Bundle). This is not in issue.

[46] I find that the Appellant has an expired Iraqi passport. His return to Iraq is therefore feasible.

[47] Having found that his return is feasible, I have considered the following factors in assessing whether it would be unduly harsh for the Appellant to return, as I am required to do, by AA:

- “(a) whether the Appellant has a CSID or will be able to obtain one;*
- (b) whether the Appellant can speak Arabic;*
- (c) whether the Appellant has family members or friends in Baghdad able to accommodate him;*
- (d) whether the Appellant is a lone female;*
- (e) whether the Appellant can find a sponsor to access the hotel room or rent accommodation;*
- (f) whether the Appellant is from a minority community;*
- (g) whether there is support available for the Appellant bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to Internally Displaced Peoples.”*

[48] The Appellant can speak Arabic and is not a lone female. Although the Shia are the majority in Baghdad, I find as a Sunni, he is not from a minority community as envisaged in AA.

[49] However, I find that the Appellant does not have family members or friends that can accommodate him under (c) or sponsor him to access accommodation under (e). It is not in issue that the Appellant and his family are from Tikrit. The Appellant gave evidence today that his parents are now in Turkey and his wife and children are in Qatar. There is no evidence that the Appellant has family or other connections in Baghdad to whom he can turn. The Appellant fled to Erbil when ISIL invaded Tikrit which is consistent with a lack of connections in Baghdad. The Respondent makes no submission that there is a support network in Baghdad. Consequently, I accept the Appellant’s claim that he has no family or other form of support in Baghdad.”

Legal Framework

5. Article 8 of the Qualification Directive is headed “Internal protection” and provides as follows:
 - “1. As part of the assessment of international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
.....”
6. The domestic Courts have had cause to consider the issue of internal relocation in the cases of Januzi v Secretary of State for the Home Department [2006] UKHL 5 and AH (Sudan) & others v Secretary of State for the Home Department [2007] UKHL 49. In the former case, Lord Bingham described the issue as being whether a person can reasonably be expected to relocate or whether it would be unduly harsh to expect him to do so. In the latter case, Baroness Hale described the reasonableness test as being “stringent” and confirmed that the burden of proof remains on the Appellant.
7. I have already set out the relevant part of the headnote in AA (Iraq) [2015] CG UKUT 00544 (IAC) (“AA”) at [4] above by reference to [47] of the First-tier Tribunal decision. Paragraphs [151] to [203] of AA set out the substance of the Tribunal’s findings in relation to internal relocation to Baghdad and I have had regard to that guidance when reaching my decision on this issue.
8. I have also had regard to the Upper Tribunal decision in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) (“BA”) which has some relevance to the Appellant’s position.

The Appellant’s case

9. In accordance with the directions given in my earlier decision, I have received a letter dated 23 March 2017 from the Appellant’s solicitors setting out the Appellant’s position in relation to internal relocation. That is accompanied by further evidence, notably letters from various healthcare professionals dated between October 2015 and 31 May 2016. The Appellant’s submissions contained in the letter also refer to AA and two items of background evidence namely Home Office country information entitled “Country Information and Guidance - Iraq: Sunni (Arab) Muslims (August 2016)” dated 14 August 2016 (“the August 2016 report”) and “Country Policy and Information Note - Iraq: Security and humanitarian situation (March 2017)” dated 20 March 2017 (“the March 2017 report”). The first of those two reports has in fact been considered by this Tribunal in BA and I refer to the relevant paragraphs of that decision when I turn to deal with that aspect of the Appellant’s claim.

10. The Appellant says that it will be unduly harsh for him to return to Baghdad based on his personal profile, including his family connections, profession and ethnicity. This encompasses not only a submission that as a Sunni Muslim he will be targeted and/or ill-treated by Shia Muslims but also a repeat of the submission made before Judge Alty that, as a member of Saddam Hussein's tribe he will be at increased risk due to that tribal connection which will be recognised by his place of birth and tribal name. He says that if he is targeted by Shia militias he will not receive effective protection from the police who are mainly Shia Muslims and who are unable in any event to provide protection due to lack of resources.
11. The Appellant also points to a lack of any family or friends in Baghdad to whom he could turn for support to obtain employment and/or accommodation. He says that, as a result, he will be rendered destitute as he will be unable to find work because unemployment levels are high and he will not be able to pay for accommodation. Linked to this, the Appellant says it is also unduly harsh to return him due to his medical conditions. He says that even if healthcare is available in Iraq he will be unable to afford it.
12. In summary, I am asked to allow the appeal under Article 3 ECHR on the basis that the Appellant is entitled to humanitarian protection.

The Respondent's Case

13. Also in accordance with my directions, the Respondent filed a letter dated 7 March 2017. In that letter, the Respondent confirms that she holds both an expired Iraqi passport belonging to the Appellant and his CSID card, copies of which she has provided. The documents are untranslated but the Appellant does not dispute that he has a valid CSID card; indeed, he raised this himself at the error of law stage.
14. The Respondent relies on the factors set out in AA. She submits that, although the Appellant has no family or friends in Baghdad, he would be able to access services and assistance, including healthcare treatment. She also points out that the Appellant has relevant work experience and skills to enable him to secure gainful employment on return.
15. In summary, therefore, the Respondent's case is that it is not unreasonable or unduly harsh to expect the Appellant to relocate to Baghdad and invites me to re-make the decision by dismissing the Appellant's appeal.
16. Both parties agreed in their written submissions that a further oral hearing was not required in this case and that I should re-make the decision on the remaining issue based on the written submissions and the documents before me. I therefore proceed to do so.

Evidence relating to the Appellant's circumstances

17. Before turning to consider the impact of the country guidance in AA and BA and the additional background evidence to which I am referred, it is necessary to say something about the factual background in this case including the health issues from which the Appellant suffers.
18. Although the factual background is set out in the preserved section of the First-tier Tribunal Decision, it is relevant to note that the Appellant left Tikrit as long ago as 12 June 2014 following the invasion by ISIL. Thereafter, he lived in Erbil until 30 May 2015 when he left there and travelled to the UK. Although the Appellant describes in his witness statement the significant difficulties which he and his family faced there because they were not Kurds and although there is no suggestion that the Appellant will be returned to the Kurdish region, I note that the Appellant was able to continue his work in that region. He is a well-qualified man (a chemical engineer) and had been employed as an engineer at the Environmental Department before coming to the UK.
19. The Appellant's health difficulties stem it appears from a shooting incident in 2007. The Appellant was treated for that injury in Iraq. He was taken to Syria for further treatment, undergoing four operations there between 2007 and 2010. He had another operation in Iraq in 2012 which it appears may be the root cause of his health problems since he contracted hepatitis B. He has however been treated for hepatitis B whilst in the UK and the Appellant himself says in his witness statement at [59] that:

"I continue to suffer minor health setbacks; however, my health has improved significantly since I arrived to the United Kingdom".
20. As I note at [9] above, I have been provided with documents regarding the Appellant's health. The latest of those is dated 31 May 2016. That is written by the Appellant's GP and not a consultant. It reads as follows:-

"I hereby certify that [HA] is a patient registered with Dr Alistair Partnership. I am writing this letter to answer several issues in relation to his immigration matter as requested by his solicitors.

He is currently under the care of the Department of Gastroenterology and Hepatology in Royal Liverpool University Hospital. He has background of Hepatitis B infection and has previously undergone right hepatectomy and left colocolic fistula secondary to gunshot abdominal injury. He was also diagnosed to have early portal hypertension secondary to a chronic portal vein thrombosis.

He is currently on Carvedilol which was advised by the gastroenterologist to keep his portal pressures low and is due for repeat blood tests including his liver function tests and a follow up clinic in September 2016.

In view of his medical history, the treatment that he is having at the moment is vital to prevent worsening of his portal hypertension which could potentially lead to complications such as liver failure, bleeding varices and death if left untreated. He also needs regular follow ups by the Liver Clinic to monitor the progression and management of his liver disease.

Should you require any further information, do not hesitate to get in touch with us."

There then follows a summary of the Appellant's current medical conditions as being a hepatitis B virus and varices and a summary of his medication which is a daily dose of Carvedilol and Omeprazole.

21. Letters from the Department of Gastroenterology dated October 2015 confirm that the Appellant suffered from hepatitis B and was reviewed for that and other symptoms until January 2016 but the letter dated 13 January 2016 confirms that the hepatitis had by then cleared and the Appellant was well. The medical records, read as a whole, disclose regular reviews by the Appellant's GP and ongoing medication but do not show any further surgery since the Appellant has been in the UK.
22. More importantly, the records cease in May 2016, therefore approximately one year ago and no effort has been made to provide an up-to-date report on the Appellant's current condition. Nor has any evidence been produced by the Appellant about the availability of the medication he takes in Iraq nor its cost.
23. I deal with the general position in relation to healthcare below. However, based on the evidence which the Appellant puts forward I accept that the Appellant has some health issues but those are not at such a level as to reach the Article 3 threshold. It appears that he requires regular reviews and monitoring and daily medication to keep his symptoms under control but there is no specialist opinion that, without such monitoring and medication, he would suffer very extreme consequences (the GP speaks only of "potential" consequences if his hypertension is not controlled). I accept though that availability of healthcare is a factor which I need to take into consideration when looking at internal relocation although I also note that the Appellant's medical condition pre-dates his arrival into the UK and that he was either able to obtain treatment then or to manage without it for a period.

Position as a Sunni Muslim in Baghdad

24. I turn then to the Appellant's claim that he will be targeted by Shia militias as a Sunni Muslim and additionally because he is from Saddam Hussein's tribe. The evidence in this regard is based on the Appellant's own evidence which was before Judge Alty. The Judge did not accept that evidence and found at [31] that the Appellant was not personally targeted due to his tribal connections. That finding was not challenged. It is preserved as part of the First-tier Tribunal decision to which I refer at [4] above. The Appellant has not produced any further background evidence to show that he would be targeted based on tribal connections. He is not at enhanced risk on that account.
25. The Appellant has produced further background material concerning his position as a Sunni Muslim. He relies, in particular, on the August 2016 report as support for an assertion that he would be at risk or at the very least it would be unduly harsh for him to return to Baghdad because, as a Sunni Muslim, he will be targeted by Shia militia and that the Iraqi authorities will be either unable or unwilling to protect him against the threat from those organisations.
26. Although it was found by the First-tier Tribunal that the Appellant is not at enhanced risk because of his Sunni beliefs and that is one of the findings

which I preserved (referred to at [4] above), it remains incumbent on me to consider the position as at the date of my decision.

27. The August 2016 report was considered by the Tribunal in BA. Although that appeal focussed principally on the risk to those who are perceived to have collaborated with the foreign coalition forces, the Tribunal also considered the position of Sunni Muslims in Baghdad. In that context, it considered the August 2016 report under the heading Sunni identity at [84] to [101] of the decision. That section concludes at [101] with the following summary of the August 2016 report:-

“The respondent’s most recent policy statement recognises that Sunnis may face a real risk of persecution or serious harm from Shia militias in Baghdad. It goes on to state that tribal, family or political links, might mean a person is not at risk and can return or relocate to Baghdad. We find that the significance of a person’s religio-political identity to risk on return will inevitably depend on the circumstances of each case. The increasing levels of sectarian violence in Baghdad, albeit not sufficient if taken alone, are likely to be an important consideration in assessing whether a person can demonstrate individual characteristics that would place him or her at real risk of serious harm.”

28. That then finds its way into the headnote in relation to the risk based on Sunni identity as follows:-

“(v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

(vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.

(vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.”

29. As is accepted in BA, the risk arises from the Shia militia rather than the Shia government itself. It is though relevant in this case because of the existence of checkpoints throughout Baghdad (said to number approximately 200 - [89]). Although the Tribunal refers at [90] to a Finnish Immigration Service report which rejects the suggestion that Sunni Muslims are likely to be capable of identification by name alone, and finds at [98] that the evidence does not disclose a real risk based on religious identity alone on return to Baghdad, the Appellant’s religious background as a Sunni Muslim is clearly a factor which is of some significance when considering whether it is unduly harsh for him to return to Baghdad.
30. Before leaving the decision in BA, it is worthy of mention that the Tribunal there found that, although the level of general violence in Baghdad city

remains significant, the background evidence at the date of the hearing in that case (August 2016) did not justify a departure from the conclusion of the Tribunal in AA.

Humanitarian situation in Baghdad

31. I turn then to consider the humanitarian situation in Baghdad based on the Appellant's lack of family and friends in that city and the problems facing the Appellant of obtaining employment, accommodation and healthcare.
32. My starting point is what is said in AA. The Tribunal there based itself on evidence dating back to 2014. At that time, the unemployment rate was said to be 18% to 24% for 2013/14 ([189]). The Iraqi state was the dominant employer and the economy was in a poor position, principally because of the depletion of oil revenues due to the price of oil and a number of the facilities being in the contested areas. Healthcare was said to operate better in Baghdad than elsewhere in other places ([192]). The Tribunal's consideration of the accommodation available ([194]) was taken from an IOM snapshot for September 2014 which divided the IDP statistics into those staying with relatives (60%), those hosted by Mosques and holy sites (all Shia muslims) and over 130 staying in vulnerable housing. It was noted however that a majority of internally displaced persons ("IDPs") live in rented houses although were struggling to pay rent. It is also there noted that IDPs receive food assistance through local NGOs and other groups and generally have access to water, sanitation and healthcare.
33. Having drawn together the evidence in relation to employment and accommodation, the Tribunal concluded as follows:-
 - [197] There are a number of relevant features in these statistics for decision-makers determining whether, in any given case, it is reasonable for a person to relocate to Baghdad. First, a significant proportion of displaced persons live in host family's accommodation. This accords with evidence set out above regarding the 'draw' factors of Baghdad for displaced persons. Careful consideration will have to be given by decision-makers to the question of whether an individual being returned to Baghdad has family there to accommodate them. If this is so then consideration will have to be given to the issue of whether those family members will provide sufficient assistance to render relocation reasonable irrespective of whether the applicant has a CSID.
 - [198] The second significant feature is the percentage of displaced persons who reside in rented accommodation in Baghdad. Although we have no evidence to show how such persons obtained the financial capability to fund their accommodation, we do not think it beyond the realms of reasonableness to draw from this that there are opportunities available in Baghdad for displaced persons to earn sufficient funds to enable them to rent accommodation if they have a CSID.
 - [199] The third relevant feature of these statistics is the small percentage of displaced persons who are recorded as living in places other than a host family's or rented accommodation.
 - [200] In addition to that which we have observed above, we have also been provided with evidence regarding numerous organisations operating in Baghdad that provide assistance to displaced persons. However we take cognisance of the fact that a staff member at the Ministry of Displacement

and Migration informed Dr Fatah that failed asylum seekers are not treated as IDPs by the Ministry and that the Ministry only had an obligation to assist IDPs. An organisation named Harikar also told Dr Fatah that they focused on IDPs and not failed asylum seekers. UNHCR and the Ministry of Interior were not able to provide any information about whether or not failed asylum seekers would be able to access support or assistance provided to IDPs.

[201] As identified above, evidence from UNHCR-Iraq reveals that as of April 2015 it had a branch office in Baghdad and that it had established a network of Protection and Assistance Centres through its partner agencies, which include:

(i) the Norwegian Refugee Council, which is funded by USAID's Iraq's access to justice programme and provides cash assistance, food distribution and shelter;

(ii) the International Organisation for Migration ("IOM") which has implemented several projects directed towards IDPs in Iraq including; income generation projects, emergency response in a crisis, and livelihood projects, which were implemented in conjunction with the Ministry of Displacement and Migration ("MoDM"); and

(iii) the International Rescue Committee ("IRC") which provides a number of services for, and on behalf of, IDPs, including: legal assistance, protection monitoring, capacity building and development, protection interventions and referrals, advocacy and information dissemination.

[202] It is clear from the evidence before us that Arabic speaking males with family connections to Baghdad and a CSID are in the strongest position. At the other end of the scale, those with no family connections in Baghdad who are from minority communities and who have no CSID are least able to provide for themselves. There are a wide range of circumstances falling between these two extremes. Those without family connections are more vulnerable than those with such connections. Women are more vulnerable than men. Those who do not speak Arabic are less likely to be able to obtain employment. Those from minority communities are less likely to be able to access community support than those from the Sunni and Shi'a communities.

[203] On the evidence before us, whilst we accept that for a person who has no family or other support in Baghdad and who also does not have a CSID, and cannot obtain one reasonably soon after arrival, it would be unreasonable and unduly harsh to relocate to Baghdad, for the generality of Iraqis, despite difficulties that may be experienced in respect of such matters such as access to health care, education and jobs, we consider that relocation to Baghdad is safe and not unreasonable or unduly harsh - one reason being that a person can only be returned to Baghdad if such person has a current or expired Iraqi passport or a laissez-passer"

34. I turn then to consider the background evidence as to the position since AA. The Appellant relies on the March 2017 report. That report is not specific to Baghdad. Having made reference to the findings in AA at [2.3.11] in relation to the humanitarian situation at that time, the report continues as follows:-

"[2.3.11]...Humanitarian coverage expanded significantly in 2016, although partners remain disproportionately located in the north of the country... Although it is one of the highest funded appeals in the world, gaps do exist. The number of those targeted for assistance in 2017 (5.8 million) is lower than the number in humanitarian need (11 million projected in 2017)...The

experience of humanitarian assistance varies depending on location and need....

[2.3.12] Sources differ in their assessment of the effectiveness of humanitarian support. The ...UNHCR in their returns paper, assessed that support had deteriorated and that partners were struggling with displacement, but the more recent OCHA Humanitarian Response Plan assessment observed that humanitarian assistance was impressive and effective...

[2.3.13] In general, the humanitarian situation is not so severe that a person is likely to face a breach of Articles 15(a) and (b) of the Qualification Directive/ Articles 2 and 3 of the ECHR. However, decision makers must consider each case on its merits. There may be cases where a combination of circumstances means that a person will face a breach of Articles 15(a) and/or (b) of the Qualification Directive/ Articles 2 and 3 of the ECHR on return. In assessing whether an individual case reaches this threshold, decision makers must consider:

- where the person is from (as humanitarian conditions are more severe in some areas than others, and this may also impact on whether the person becomes an IDP on return, if they were not already prior to leaving the country);
- a person's individual profile, including, but not limited to, their age, gender and ethnicity;
- whether the person can access a support network."

35. In relation to general living standards and conditions, the report provides the following information:-

"[7.1.1] In 2015 (the latest assessment), the UN Human Development Index, which measures length and health of life, level of education and standard of living, ranked Iraq as 121st out of 188 countries, in the category of 'medium human development'.

[7.1.2] The ...IMF's World Economic Outlook, issued in October 2016, noted that 'higher-than-expected oil production has pushed up the projected growth for 2016'. From a decline of 2.4% of GDP in 2015, it was projected as 10.3% rise in 2016, and a 0.5% rise in 2017.

[7.1.3] Using 2015 data (their latest at the time of writing) the UN Development Programme noted that:

- 99% of government revenue comes from oil but only 1% of Iraqis are employed in the oil industry;
- 40% of people are employed in the public sector (45% in urban areas, 28% in rural areas)
- 17% of the workforce are women;
- 11% of people (653,000) are unemployed (7% of men; 13% of women, with youth unemployment (15-24 year olds) at 18%, and higher among the higher-educated);
- 23% of people live on less than US\$2.2 a day;
- 75% of surveyed Iraqis identified poverty as their most pressing concern

[7.1.4] The UN categorised the situation in Iraq as a Level 3 emergency. Level 3 emergencies are defined as 'the global humanitarian system's classification for the response to the most severe, large-scale humanitarian crises'."

36. Of the 11 million people assessed by the OCHA as requiring humanitarian assistance, 1.9 million are said to be returnees and 400,000 of current

returnees. A table at [8.3.1] of the report shows that of the overall numbers in need, 650,000 are in Baghdad. The OCHA in December 2016 noted that “[10.3.1].’ Humanitarian coverage has expanded significantly in 2016, supported strongly by the Joint Coordination and Monitoring Centre (JCMC) in Baghdad and the Joint Crisis Coordination Centre (JCC) in Erbil’. The report notes that “By the end of 2016, partners were active in more than 25 major operational locations, an increase of 67% from 2015. However, they remain disproportionately concentrated in the north of the country.” It appears from the statistics provided that the OCHA has targeted 7.3 million for assistance as against 5.8 million people that it aims to assist.

37. A humanitarian assessment of IDPs carried out by REACH in June 2016 reported that:-

“[9.11.1] IDP households outside camps have often depleted their financial resources and are resorting to increasingly negative coping mechanisms to afford basic needs. Taking on debts to satisfy basic needs has increased by over one third to a total of 30% of all households...whilst relying on savings decreased drastically...indicating a depletion of resources. Limited financial means have negatively affected access to basic services: whilst overall reported access to basic services such as healthcare or education remained constant...financial costs are currently the single most reported barrier to accessing these services.”

The assessment is also reported at [10.5.1] as showing that there is a wide variation in the frequency and amount of humanitarian support available to IDPs with IDP households in Baghdad being less likely to receive support than some other areas. The OCHA in December 2016 however is reported (at [10.7.2]) to have noted a dramatic expansion in access and coverage.

38. In relation to employment, the same assessment noted that:

“[9.11.2] Employment was the second most reported need across Iraq, reported by 52% of IDP households. The majority of IDP households reported not having access to a regular source of income, primarily relying on seasonal work or short-term employment. The lack of sustainable livelihoods negatively affected households’ ability to access food, health and education services, with more than three out of four IDP households reporting that they did not generate sufficient income to meet their basic needs. In addition, 17% of IDP households reported not having had any source of income in the month prior to the assessment.”

39. Food security is stated to be a problem (2.9 million people “food insecure”); it is also noted that 8.3 million people are in need of water and sanitation. Those in need of health care has been revised upwards from 8.5 million in April 2016 to 10.3 million. Due to the destruction of primary health facilities the number of health consultations in health clinics has “increased eightfold”. It is noted that “the average household is just over 20 minutes away from their nearest health facility”. The REACH assessment noted that “Whilst the reported presence of functioning health services increased, the ability to afford these services has steadily decreased..”

40. In terms of accommodation of IDPs, the report notes that 12% are hosted in Baghdad. In terms of shelter, the statistics are set out at [9.5.1] as:-

“the majority of identified IDPs (61% or 1,853,892 individuals) are reportedly housed in private dwellings. Of the total IDP population, 46% (1,387,518) are living in rented houses, 16% (456,432) are with host families, and less than 1% (9,942) are in hotels/motels;

- 16% or 495,840 individuals are in critical shelters. Of these, 8% (245,802) are in unfurnished buildings, 4% (127,614) are in informal settlements, 3% (98,682) are in religious buildings, and 1% (17,328) are in school buildings;
- IDPs living in camps represent 20% of the total IDP population (603,084 individuals). Those whose shelter arrangements are unknown represent 3% of the total IDP population (77,190)”

The report goes on to note a report from OCHA dated December 2016 that “4.7 million need ‘shelter and non-food items’” and that “2.7 million people are in need of ‘camp coordination and camp management’ support”.

41. The March 2017 report is not limited to the situation in Baghdad and therefore it is not possible to discern the exact scale of the difficulties faced in that city. It is clear from the report that the situation is challenging. The report does not though show a materially different position to that faced by returnees in Baghdad at the time of AA. A large percentage of returnees live in rented accommodation in the city. Finding employment is difficult. Healthcare services are available but their provision is patchy and cost may be a barrier to access. Food security remains a problem. There is some humanitarian assistance but the scale of that in comparison with need is difficult to assess and it is not clear whether returnees are entitled to it in the same way as IDPs. Having carefully considered the updated position as set out in the March 2017 report, I consider that the guidance in AA remains valid and it is therefore that guidance which I apply when considering the humanitarian position on return for this Appellant.

Decision and Reasons

42. The issue for me then is whether the background evidence as considered within the guidance in BA and AA shows that the position for this Appellant on return to Baghdad would be unduly harsh. I need to consider the position which this Appellant will face in Baghdad in terms of the security and humanitarian position, coupled with his personal characteristics, particularly as a Sunni Muslim with no family support in Baghdad and with some health problems. That I now turn to do.
43. As I note at [30] above, the Tribunal in BA accepted that, although the generalised violence in Baghdad remains significant, the background evidence there considered did not disclose that a departure from the position in AA is appropriate. Accordingly, [3] of the headnote in AA continues to apply. That reads as follows:-
- “3. The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).”

44. I have preserved the finding that the Appellant is not at enhanced risk because of his tribal connections. I also preserved the finding that the Appellant is not at enhanced risk because of his Sunni beliefs. Unlike the Appellant in BA, the Appellant is not someone with past associations with a Western company. As the Tribunal noted at [118] of BA:

“There is a significant minority of Sunnis living in Baghdad. The incidents of targeted violence against Sunnis, albeit of concern, are not of such a persistent or widespread nature to create a real risk on return just by virtue of a person’s Sunni identity.”

As noted at [(v)] of the headnote:

“...A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.”

45. On the other hand, as the headnote in BA continues at [(vi)]:

“Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.”

It is accepted in that case that a Sunni complainant cannot look to the authorities in Baghdad for protection since they would be either unable or unwilling to offer protection. The Appellant’s ethnicity is therefore a relevant factor when considering the situation facing him on return to Baghdad.

46. As a person with no family support but with a CSID, the Appellant falls between the two ends of the spectrum identified at [202] of AA. On the one hand, the Appellant has a CSID which will enable him to take up employment if he is able to find a job and to access services in the meanwhile. He speaks Arabic and has a qualification as a chemical engineer and an employment history which may assist him to find a job. On the other hand, he has no family or friends in Baghdad who would be able to accommodate him immediately on return and might help him find a job. He would therefore be forced to rent accommodation if he could find it and to fall back on the willingness of other Sunni communities in Baghdad and/or organisations affording humanitarian protection to find somewhere to live and the wherewithal to support himself moving forward. As recorded at [119] of BA, “there are a large number of Sunnis living in Baghdad who are ‘living adequately’”. The Appellant may therefore be able to rely on some support from the Sunni community to assist him to find accommodation.

47. I have accepted that the Appellant has medical problems which are currently controlled by regular monitoring and medication although ones which are insufficient in themselves to lead to a real risk of Article 3 treatment on return. He may be able to manage without medication and monitoring in the short term but he still has a medical condition which is

likely to require some treatment in the medium or longer term to avoid a downturn in his condition.

48. Akin to the position of the Appellant in BA, the Appellant is likely to need to travel around Baghdad to find employment (and possibly also to secure support to find accommodation). To do so, he would have to cross checkpoints at which there is a potential risk of targeting by Shia militias. Whilst that risk alone does not reach the threshold of a real risk because the evidence does not show that such attacks are so persistent or widespread to give rise to that level of risk, it remains a factor to take into consideration when looking at whether it is unduly harsh for this Appellant to relocate to Baghdad.
49. I find the issue whether it would be unduly harsh for the Appellant to relocate to Baghdad to be finely balanced. The risk to him of travelling around Baghdad and having to cross checkpoints to do so is a significant factor in terms of the difficulties he would face in finding employment. The difficulty in finding employment given the rates of unemployment and despite his qualifications and employment history, is in turn a barrier to him finding accommodation given his lack of family and friends in Baghdad. Although he might be able to look to one of the Sunni communities to find accommodation, the evidence as to what support is available is unclear and although large numbers of Sunni Muslims are able to live in Baghdad “adequately” it is not clear to what extent they have resources to help others.
50. In addition, the Appellant has medical problems which are likely to need some treatment in the medium to longer term. The evidence shows that, although the Appellant has a CSID in order to access services, the provision of healthcare in Baghdad is limited and cost of that healthcare may be a barrier to access.
51. In summary, the need for the Appellant to travel around Baghdad to find employment and possibly accommodation and the risk which that might entail of targeting by Shia militias, coupled with the lack of family or friends to support him on return, his medical condition and the challenging humanitarian conditions in Baghdad, leads me to conclude that it would be unduly harsh for the Appellant to relocate to Baghdad. For those reasons, his appeal is allowed.

Notice of Decision

By my decision promulgated on 7 February 2017, I found a material error of law in the findings of First-tier Tribunal Judge D Alty at [50] to [58] of his decision promulgated on 22 June 2016. I therefore set aside that part of the First-tier Tribunal decision by my earlier decision. I now re-make the decision. I allow the appeal for the reasons given above.

Signed

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

Dated: 3 July 2017

Upper Tribunal Judge Smith



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01830/2015**

THE IMMIGRATION ACTS

Heard at Liverpool

On 16 January 2017

**Decision & Reasons
Promulgated**

.....
Before

UPPER TRIBUNAL JUDGE SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR HAA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mrs Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr Sinker, Counsel instructed by Arden Solicitors
Advocates

**Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules
2008**

Although an anonymity order was not made by the First-tier Tribunal, as this is a protection claim it is appropriate to make that order.

ERROR OF LAW DECISION AND DIRECTIONS

Background

52. This is an appeal by the Secretary of State for the Home Department. However, for ease of reference I refer below to the parties as they were in the First-tier Tribunal.
53. The Appellant's appeal against the Secretary of State's decision refusing his asylum claim was allowed by First-tier Tribunal Judge D. Alty in a decision promulgated on 22 June 2016 ("the Decision"). Although the Appellant's asylum claim was not accepted, his claim for humanitarian protection was accepted on the basis it would be unduly harsh for him to internally relocate to Baghdad. The Respondent's appeal is on one ground only and that is the judge's failure properly to apply the terms of the country guidance case of AA (Iraq) [2015] CG UKUT 00544 (IAC) ("AA"). The Judge found that the Appellant would be unable to obtain a Civil Status Identity Document ("CSID") within a reasonable time of return. It is this finding which is challenged by the Respondent.
54. Permission to appeal was granted by First-tier Tribunal Judge Keane on 13 July 2016. The matter comes before me to decide whether the Decision contains a material error of law and if so to remake the Decision or remit the appeal for rehearing to the First-tier Tribunal.

Submissions

55. The Judge accepted that the Appellant could not return to his home area of Tikrit based on the findings in AA as he would be at real risk there. That finding is not challenged. The Respondent's position though is that the Appellant can internally relocate to Baghdad. Mrs Aboni directed my attention to what is said at paragraphs [173] to [177] of AA. It was accepted by the Judge that the Appellant has an expired passport ([45] of the Decision). The Judge found, based on what is said at [178] to [187] of AA, that the Appellant would not be in a position to obtain a CSID within a reasonable period following return. The Appellant has no family in Baghdad or anyone who could sponsor him in relation to obtaining accommodation. He also requires medical treatment which he could not obtain without a CSID. The Judge therefore found that it would be unduly harsh for him to internally relocate to Baghdad. Mrs Aboni submitted, however, that the passport, albeit expired, would have reference to the details which were required in order to obtain a CSID. Based on what is said in AA, she submitted that the Appellant could in fact obtain a CSID prior to return whilst in the UK. The Judge failed to consider this argument.
56. Mrs Aboni submitted that the error is material because even though the Appellant does not have family in Baghdad, it would not be unduly harsh for him to return there if he is supplied with a CSID. He is educated and has worked in Iraq in the past and would be able to re-establish himself even without family support.
57. In response Mr Sinker contested the Judge's factual finding that the Appellant does not in fact have a CSID. That is based on instructions obtained from his client. The Appellant says that he does have a CSID

which he gave to the Secretary of State with his expired passport. No document has been produced before the First-tier Tribunal and Mrs Aboni indicated that documents such as these would not be held on the Home Office file so she had no way of checking at the hearing whether the Appellant has in fact produced a CSID in the past.

58. Mr Sinker fairly accepted that if the Appellant does have a CSID then there is an error in the Decision. However, based upon the evidence which the Judge had before him, he submitted that there is no material error based on the Judge's failure to consider what is said at [173] to [177] of AA. First, he pointed out that at [173] one of the criteria for obtaining a CSID whilst in the UK requires the applicant to authorise a person in Iraq to act as his representative. It is also said at [174] that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraqi Embassy in London will not be able to obtain a CSID without a person going to the local office in Iraq which is clearly not an option in this case. Mr Sinker did accept that this appeared to be somewhat at odds with what is said at [177] of AA which appears to set out the requirement as either an expired passport or the book and page number for family registration details and not necessarily both. He referred however also to the summary at [204] and [11] of the headnote where the following is stated:

"11. Where P's return to Iraq is found by the Tribunal to be feasible, it will generally be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID."

Mr Sinker submitted, based on this paragraph, that there was no obligation on the Judge to consider also whether the CSID could be obtained prior to return whilst in the United Kingdom.

59. At the conclusion of the hearing, I reserved my decision in relation to whether there is an error of law which I indicated that I would provide in writing with reasons.

Discussion and Conclusions

60. The Judge directed himself at [47] to the factors to which AA refers. The judge's findings at [49], that the Appellant does not have family members or friends in Baghdad able to accommodate him and that the Appellant does not have a sponsor to access a hotel room or rental accommodation, are not disputed. What is disputed is the passage beginning at [50] which reads as follows:

- “50. With regard to the Civil Status Identity Document (CSID) paragraph 11 of **AA** provides that where an appellant’s return to Iraq is found by the Tribunal to be feasible it will generally then be necessary to decide whether he/she has a CSID or will be able to obtain one reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment.
51. In the Reasons for Refusal Letter, the Respondent does not make a finding that the Appellant has a CSID. Rather she concludes at paragraph 41 that official documentation can be replaced and a lack of civil documentation will not make return to any part of Iraq unsafe or unreasonable. Mr Malarkey submits today that a CSID would allow the Appellant to re-establish himself in Iraq. However, I am not directed to a CSID nor am I addressed on the Appellant’s prospect of obtaining one.
52. Paragraphs 2.5 and 2.6 of the screening interview refer to the Appellant’s passport and identity documents. It is not clear whether these documents include a CSID. Copies have not been provided by the Respondent. When questioned today the Appellant said that he had provided a “*Certificate of Nationality*” to the Border Force along with his passport. However, this could be an Iraqi Nationality Certificate. Miss Bremang was asked to address me on the CSID but did not assist me in establishing whether the Appellant had or could obtain one.
53. Taking everything into account, I am not satisfied that the Appellant has a CSID. I have therefore gone on to consider whether he could obtain one reasonably soon after arrival in Iraq as required under paragraph 11 of **AA**.
54. Paragraphs 12 and 13 of **AA** provide that “*where return is feasible but [the appellant] does not have a CSID [the appellant] should as a general matter be able to obtain one from the Civil Status Affairs Office for [his] home Governorate, using an Iraqi passport (whether current or expired)*” ... *[the appellant’s] ability to obtain a CSID is likely to be severely hampered if [he] is unable to go to the Civil Status Affairs Office of [his] Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the “Central Archive”, which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is however a National Status Court in Baghdad to which [the Appellant] could apply for formal recognition of identity. The precise operation of this court is, however, unclear*”.
55. The appellant is from an Article 15(c) area. Following **AA**, any attempt to obtain a CSID in Iraq would be severely hampered by that and I find that there is a real risk he could not obtain one reasonably soon after arrival.
56. At paragraph 203 of **AA**, the Tribunal concluded that although generally relocation to Baghdad is not unreasonable or unduly harsh,

where a person does not have family or other support in Baghdad; does not have a CSID and could not obtain one reasonably soon after arrival then it would be unreasonable and unduly harsh to expect that person to relocate.

57. I find that those circumstances apply in this case. Although **AA** does envisage a scenario where an appellant is able to support themselves without connections in Baghdad and without a CSID, I am not satisfied that the Appellant in this case would be able to do so given his evidence in respect of his financial difficulties. I note in particular his evidence that his assets in Tikrit are frozen. Mr Malarkey says that he could get a job given his qualifications. However, this would be difficult without a CSID.
58. In conclusion, I find that it would be unduly harsh for the Appellant to be returned to Baghdad until either a CSID is obtained or it is demonstrable that he could obtain one reasonably soon after arrival. I have taken into account in reaching this decision that without a CSID the Appellant's access to medical services could be restricted and he is in receipt of ongoing medical treatment."
61. I am unable to find an error based on Mr Sinker's submission that the Appellant may well have a CSID. It is quite clear that the Judge has considered that but was unable to take the matter any further because neither side could produce the document. It appears that the document is held by the Respondent and it was for the Respondent to produce a copy if that was relied upon.
62. However, I am satisfied that there is an error in the Judge's failure to have regard to the totality of the guidance about CSIDs in AA. Whilst I accept that there may remain some difficulties in the way of this Appellant, in particular based on what is said about the need to provide the page and book number for family registration details, it does appear from [177] of AA that this is an alternative to having an expired passport. On the face of what is said in AA the expired passport ought to be sufficient. At the very least it was necessary for the Judge to refer to that part of the guidance when considering whether it would be unduly harsh for the Appellant to relocate to Baghdad.
63. I have considered carefully whether it could be said that the error is not material because of the other difficulties standing in the Appellant's way. It did not seem to me from Mr Sinker's submissions however that this was the basis on which he sought to persuade me that the error was not material. Mr Sinker did urge me however, if I found an error of law, to preserve the findings set out at [49] of the Decision. Those are not challenged in the Respondent's grounds and Mrs Aboni did not dispute that that was the appropriate course.
64. Both representatives agreed that if I found a material error of law I could remake the decision following further submissions and if necessary evidence. In that regard Mrs Aboni accepted that the Respondent should check the identity documents submitted by the Appellant to see whether

there is in fact a CSID which would put the matter beyond doubt and if not what details are given in the expired passport.

Notice of Decision

I am satisfied that the Decision contains a material error of law in relation to the Judge's findings at [50] to [58]. I set aside that part of the Decision. The remainder of the Decision stands. I make the following directions in relation to the remaking of the decision so far as concerns the issues which remain:-

- (1) Within 28 days from the date when this decision is sent, the Respondent is to file with the Tribunal and serve on the Appellant a position statement setting out what evidence is held in relation to the Appellant's identity and annexing copies of those identity documents.**
- (2) By the same date she is also required to set out her submissions in relation to AA and whether (if the Appellant does not already have one) a CSID could be obtained in the UK or shortly following return to Iraq. Those should include also her submissions regarding whether it would be unduly harsh for the Appellant to relocate to Baghdad.**
- (3) By the same date the Respondent shall indicate whether she requires a further hearing prior to the remaking of the decision.**
- (4) Within 28 days from service of the Respondent's submissions, the Appellant shall file with the Tribunal and serve on the Respondent submissions and any further evidence dealing with any documentation produced by the Respondent and the question of whether, if he does not have a CSID, he could obtain one in the UK or shortly following return to Iraq and whether it would be unduly harsh for him to return to Baghdad.**
- (5) By the same date the Appellant shall indicate whether he requires an oral hearing prior to remaking of the decision.**
- (6) If neither party requests an oral hearing by the dates stated, the Tribunal will proceed to remake the decision based on the written submissions and any further evidence without an oral hearing.**

Signed



Dated: 6 February 2017

Upper Tribunal Judge Smith