



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02593/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 26 October 2017

Decision & Reason Promulgated
On 7 December 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JAA
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Wilkins, Counsel - Direct Access (advocacy only).
For the Respondent: Mr McVeety Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 2 August 2017 the Upper Tribunal found an error of law in an earlier decision of the First-tier Tribunal, promulgated on 1 February 2017, in which a judge of that Tribunal dismissed the appellant's protection and human rights claims, for the reasons set out in the Error of Law finding, a copy of which is annexed to this decision at Appendix A.
2. It was found that the findings of the First-tier Tribunal other than the conclusion the appellant faces no risk for any reason in Kirkuk and the finding he can reasonably relocate shall be preserved findings.

Background

3. The appellant is a national of Iraq of Kurdish ethnicity born in 1997 who is now 20 years of age. The core of the appellant's account for international protection is that on 20 July 2007 he was playing with a school friend. The appellant ran across the road, his friend followed him and was hit by a car and killed. The appellant ran home in panic and told his parents what had happened. After the funeral, his friend's father telephoned the appellant's father threatening that he will kill the appellant as he had killed his son. The appellant claims this man is an influential and powerful man working for the government. The appellant claims his father arranged for him to change schools and to take him to and collect him from school each day which continued until the appellant was 17 years of age. He was not permitted to leave the house on his own. The appellant claims his friend's father continued to contact the appellant's father to threaten his life. The appellant claims that on 6 August 2009, although not allowed to leave the house on his own, the appellant left secretly to go to the shops. Close to the shops he was hit by a car and was in hospital for several days with a badly broken leg as a result of which he was on crutches for three years afterwards. In 2012 shots were fired at the appellant's house which neighbours said came from a black car. The appellant believed the father of the boy who was killed was responsible and understands threats continued although his father did not inform him. On 16 December 2013, an attempt was made to kidnap the appellant by two men by forcing him into a car. The appellant states the boy's father was one of those men. There were many people around so the attempt was unsuccessful though the men threw the appellant into a sandwich cart causing him to hit a glass wall and split open his forehead as a result of which he was hospitalised for ten days. The matter was not reported to the police. A decision was made that the appellant should leave the place where he lived which he did on 23 September 2015. The appellant's evidence was that since arriving in the United Kingdom there was a kidnap attempt on his brother in late 2015 and also, on 21 March 2016, his younger brother disappeared whilst out with the family on a picnic and the family have been unable to locate him since. The family have reported the disappearance to the police. The appellant believes the incidents are connected with his friend's father's pursuit of him. The appellant fears return to Iraq because of this named person who he claims will continue to try to kill him and that he cannot relocate within the county as this man worked for the government and will be able to find him and he cannot relocate to Baghdad because there is a large Arab Shia population there who would discriminate against him because he is a Sunni Muslim.
4. The preserved findings can be summarised in the following terms:
 - i. The evidence confirmed the appellant was in hospital in August 2009 but did not confirm that he was there because of a hit-and-run incident or who was responsible or alleged to have been responsible for it. It confirms that a report was made to the police of his brother's disappearance in March 2016, but not who is alleged to have been responsible [37].

- ii. The report about the disappearance of his brother undermines the appellants claim because his father specifically says that he has no enemies. The Judge did not understand why, if the appellant was really at risk, and that his father would not wish to name the individual the appellant fears if he feared his son might be killed as a result of doing so, why his father would report the matter to the police at all. The Judge did not find it credible that after nearly 10 years of his family being pursued by the named individual and the appellants father reporting his youngest son's life being in serious danger due to the same man, he would not say that he had no enemies if that was not the case [38].
- iii. The Judge says other questions were raised about the appellant's account, for example why has this named man pursued the appellant for all this time and if he was intent on killing the appellant, as claimed, why is he had not done so before now. The Judge did not find it credible that if the man is so determined to seek revenge for the death of his son he did not make more frequent attempts or succeed before now particularly when it is alleged he is so powerful and influential in the government. The appellant failed to satisfactorily explain these things which leads to a finding the account lacked coherence which undermine the overall credibility of his claim [39].
- iv. The Judge identifies other aspects which it was found undermined the appellant's credibility [40 - 43].
- v. The Judge accepted the appellant received injuries to his face as these are shown in photographs however there was nothing save the appellant's own evidence to connect the injuries to the named individual and nothing to show they were not caused by some other childhood incident [44].

The evidence

5. The Upper Tribunal had available to it to the earlier appeal bundle together with an updated witness statement provided by the appellant. In accordance with the directions the witness statements stood as the evidence in chief of the maker.
6. In his witness statement, the appellant claimed the last time he had spoken to any of his family members was in August 2016 when he spoke to his mother who was still in Kirkuk with his father, brothers and sisters. The appellant claimed the next time he tried to call them the number was not working and that he did not know what had happened to them or any other family members.
7. The appellant states he has never been to Baghdad and does not know anybody living there. He does not speak Arabic and is a Sunni Muslim and a Kurd without family or friends in Baghdad to support him. He believes he would not be able to find housing or a job there and not be able to survive.
8. The appellant states he has never been to Iraqi Kurdistan and does not know anybody living there and was only aware that two of his mother's relatives live

there but did not know where exactly and did not even know their names or what exact relation they are. The appellant claims never to have met them and that he would not have nobody in Baghdad to help him in making arrangements to get to Erbil and that it is not safe to travel overland. The appellant claims in the Kurdish regions he has no one to help him find a job or somewhere to live. He claims never to have lived in Iraq having left aged 18 and is worried that the authorities or members of the community would connect him to his father who worked for the Baath regime under Saddam Hussain. The appellant claims that when they previously tried to go to the Kurdish area he was turned back at the checkpoint which the appellant claims would make the authorities very hostile and unhelpful to him.

9. In cross-examination, the appellant was asked whether he was maintaining his claim never to have spoken to his family since August 2016, which he claimed he was. It was put to the appellant that when he last came to court in January 2017 he had completed a statement in which he referred to the fact his brother was missing and the fact he understood that his brother was still missing and that the family suspected this was the action of the named individual. The appellant was asked how he would know that if he had not been in touch with the family since August 2016 yet claims that he knew the family were still missing 5 months later? The appellant claimed that he had made a mistake as the date of August 2017 had been recorded incorrectly and that the latest statement should say August 2017.

Discussion

10. Mr McVeety posed the question whether, in light of the current position in Kirkuk which has been in the hands of the Kurdish Peshmerga since they forced out ISIS in 2014 until the Iraqi authorities regained control of the city and the Kurdish forces withdrew with minimal recorded conflict having occurred, it is an area in which it can be said a person living there would be subject to a grant of leave pursuant to Article 15 (c) of the Qualification Directive.
11. Although in the country guidance case of AA the Secretary of State's advocate conceded Kirkuk fell within a contested area the circumstances appertaining to that region of Iraq when it was held by ISIS is no longer applicable.
12. It was not disputed by Mr McVeety that there is reference in parts of the country material to ISIS forces being present in northern Iraq forming pockets of resistance, but that the majority of their forces had been defeated and pushed back both in the area around Kirkuk, Mosel, and other areas of the country where they were the previous dominant force. It is accepted that military operations have not concluded in all of Iraq but Mr McVeety's submission that what has occurred represents a fundamental change since the country guidance decision was promulgated has arguable merit.
13. The Kurdish forces are not in control of Kirkuk as this area is now in the control of the Iraqi army. It is not an area that is potentially lawless although there is potential volatility. No country material has been provided of sufficient quality to enable a finding that Kirkuk is a place where the level of violence is at a level

- where a civilian, solely by reason of being in that area, is at real risk of suffering harm sufficient to entitle them to a grant of Humanitarian Protection.
14. The country material refers to some points of conflict when the Iraqi forces entered Kirkuk but these appear to have been the exception with most of the Peshmerga peacefully withdrawing. The country material was referring to a tense situation at that time but does not show that attacks continued or caused other than minor casualties to the civilian population. The country material also refers to the fact that the Kurdish police force remained in post in Kirkuk when the Iraqi army entered to maintain security for the civilian population.
 15. A BBC News article dated 25 October 2017 refers to the offer by the Kurdish government to freeze the independent vote to enable dialogue to take place between the Kurdish and Baghdad authorities to resolve any potential conflict. This mirrors statements by the Baghdad government of the desire to resolve the matter through discussion/negotiation.
 16. My first finding of fact is that the evidence does not establish that the level of violence in Kirkuk is sufficient to engage Article 15(c) of the Qualification Directive and that there is no evidence of ongoing fighting in Kirkuk itself sufficient to establish a real risk of ill-treatment or harm for those returning. The country material relied upon in the respondent's country guidance note refers to many having fled Kirkuk as a result of the advances by the Iraqi army returning to their homes once it became clear that the situation was not one that created a real risk. There is no evidence that they were not able to return to their homes and continue their lives in Kirkuk.
 17. It was submitted on the respondent's behalf that in light of the fact the appellant has been found not to be credible caution should be exercised in relation to his claim to have no contact with his family members.
 18. I find it is not made out that Kirkuk has an operational international airport at this time or that direct return to this city is currently feasible. Mr McVeety accepted passage by road from Baghdad is not possible due to dangers reflected in the country information and that is therefore necessary for the appellant to return to Baghdad from where he will be able to travel to the IKR by air.
 19. Material in the public domain clearly shows that flights are available from Baghdad (BGW) International airport - Iraq and have resumed to Erbil (EBL) International airport - Iraq or elsewhere in the IKR. It was not disputed that this is the case. In addition to it being accepted that there are available flights it is not made out that the appellant will be unable to travel by car from his point of arrival in the IKR to a chosen destination within the Kurdish areas or northern Iraq. The appellant did not provide sufficient evidence to support a finding that travel from Sulamaniyah or Irbil to Kirkuk are routes that are contested giving rise to a real risk for those seeking to use them.
 20. Mr McVeety submitted that the appellant had not established there was actually any need for him to leave the airport in Baghdad. The country material clearly shows that those with the required documentation, as this appellant has, will be permitted to pass through the airport into Baghdad and no real risk of harm has been made out at the point of return. Mr McVeety's submission is based upon the ability of the appellant to book a connecting flight from Baghdad International Airport to an airport in the IKR online even before he has left the

United Kingdom. Mr McVeety refer to an Internet search revealing a number of carriers and achievable costs, especially in light of the fact the package provided to returnees by the Home Office includes sufficient funds to enable them to travel to their home area.

21. The preserved findings of the First-tier Tribunal also shows the appellant has family in Iraqi including two of his mother's relatives in the IKR with no evidence of the appellant having made any unsuccessful enquiries to try and contact those relations through the NGOs, such as UNHCR or the Red Crescent who ordinarily are willing to assist with tracing displaced family members. It is relevant at this point to note the discrepancy identified in cross-examination referred to above relating to the appellants claim appertaining to when he asserted he last had contact with his family, which was in 2016, which was totally at odds with his claim to have known family were still missing in 2017. Although the appellant sought to correct the date when the discrepancy was pointed out to him by Mr McVeety he had prior to this point maintained that his evidence given relating to last contact in 2016 was true. I do not find the appellant has discharged the burden of proof upon himself to the required standard to establish that he does not have contact with family members in Iraq or that he has not maintained contact in the interim. It is not made out the appellant will be unable to contact family members who can be made aware of the arrangements for his travel to Iraq and be able to assist in his return home. As noted above, the country information made available records many having fled Kirkuk in the face of the advancing Iraqi government forces having returned to Kirkuk indicating that travel is an available option and that for those no real risk sufficient to warrant their staying outside the city was made out.
22. The appellant asserts the starting point in this appeal has to be findings in the country guidance case of *AA (Article 15 (c)) Iraq CG [2015] UKUT 000544 (IAC)*. In addition, Miss Wilkins refers to a number of other relevant authorities in her skeleton argument which have ben considered.
23. Addressing the question of whether there is a real risk of serious harm in the appellant's home area, the appellant relies upon the finding in *AA* that Kirkuk is a contested area where there is a real risk of serious harm due to indiscriminate violence. It is asserted in addition to the finding in *AA* that the Upper Tribunal in *BA(Returns to Baghdad) Iraq CG [2017] UKUT 00018* and the Court of Appeal in *AA (Iraq) v Secretary State the Home Department [2017] EWCA Civ 944* have repeated this position. It is submitted on the appellant's behalf that strong grounds supported by cogent evidence are required to depart from country guidance findings.
24. It is not made out that the point relating to Kirkuk was argued before the Court of Appeal. The question is whether evidence is sufficient quality and cogency has been provided at the date of this hearing. As stated above, the concession by the Secretary of State in relation to Kirkuk was made in 2014 and is not relied on or repeated by Mr McVeety at the date of this hearing. The submission by the Secretary State that the appellant can safely return to Kirkuk, in light of developments, is a clear indication that it is not accepted by the respondent that a real risk exists in the country sufficient to engage Article 15(c) at this time. As stated above, I find the respondent's position to be established as indeed it has

been found to be by the High Court. All the available evidence relating to this area does not support the finding that Kirkuk is in a contested area where there is a real risk of serious harm due to indiscriminate violence.

25. The appellant's submission in relation to Kirkuk, in addition, that it is a disputed area between the Iraqi government and the Kurdish regional government has been addressed above. The appellant fails to make out any real risk on return, as in Iraqi Kurd with no adverse profile returning from the United Kingdom to Kirkuk, at the hands of the Iraqi government forces.
26. It is not suggested by this Tribunal that ISIS has no presence in Kirkuk; in the same way it may be argued this group has a presence in the UK and other European countries amongst its supporters and those committed to acts of terrorism. It is not disputed that as a result of the Iraqi army taking control of Kirkuk ISIS launched an attack on villages south of Kirkuk which is a clear indication of a terrorist organisation seeking to exploit what they perceived to be a weakness in the opposing forces. It has not been made out that this represents a sustained campaign or one that will create a real risk for the appellant on return. It is similarly accepted that the respondent's own country policy information from March 2017 records that incidents in Kirkuk Governorate were at the same level or slightly higher in November 2016 than they were when AA was heard, but insufficient evidence has been provided by the appellant demonstrating that the position at the date of this hearing warranted a finding on this point in the appellant's favour. It is also relevant to consider that the Kirkuk Governorate covers an area of 3,737 square miles following the addition of Arab dominated areas as part of Saddam Hussein's 'Arabisation' policy of this oil-rich area. Within that area there may be flashpoints or points of great conflict and a generalised statement does not arguably establish the appellant's point in relation to this issue.
27. The appellant fails to establish a real risk of serious harm in his home area.
28. In relation to the question of whether internal relocation is safe and reasonable it is not made out that the ability of the appellant to return to Baghdad, to fly from Baghdad to the IKR, or travel from the IKR to Kirkuk is unsafe.
29. The appellant argues that it will be unreasonable for him to relocate to Baghdad as the appellant is only a Kurdish Sorani speaker of limited education, he has no one he can stay with in Baghdad, that it appears there is no prospects of the appellant obtaining a sponsor to access a hotel room or to rent accommodation as he has no connections to Baghdad, and he is Kurdish and a Sunni Muslim and arguably from a minority community in Arab dominated Baghdad.
30. In relation of the ability of the appellant to return to the IKR; it is submitted on his behalf that this is also unreasonable as a result of the practicality of travel from Baghdad to the IKR by air. The appellant claims he has no one to help him arrange his travel to Baghdad by air [skeleton 30(a)] but this will be arranged by the respondent as part of the return process. In relation to the submission by Mr McVeety that the appellant can arrange onward flights to the IKR from within the United Kingdom online, the only response on the appellant's behalf is that this is not possible as he does not have a credit card. In relation to this point, it does not appear the appellant has explored with the respondent or those who provide the resettlement grant, the possibility of such arrangements being made.

Neither has the appellant established that once his date and time of return to Baghdad is known he cannot arrange a flight in transit from Baghdad airport. Even if there is a delay in making the connection it may only require the appellant to remain in Baghdad for days rather than a longer period where the points advanced in his favour, relating to the reality facing the appellant if he has to stay in Baghdad, maybe more applicable. The country guidance case does not highlight such a risk for an individual who is only required to undertake a short stay in Baghdad. The fact of the matter is that the appellant seeks to run his case on the basis of the findings in AA which envisages a situation of internal relocation to Baghdad and problems that may be encountered rather than the prospect of only having to remain there effectively as a visitor until the appellant moves on. The appellant also fails to establish that the cost of connecting flight to the IKR is unsustainable, especially in light of these statement by Mr McVeety at the resettlement grant paid to returning Iraqis includes the cost of onward travel to an individual's home area.

31. In relation to the reasonableness of return to the IKR; the appellant asserts he will face stringent entry and residency restrictions. It is accepted the appellant's home area is Kirkuk but is also the case that the appellant has been in the United Kingdom for a number of years and will be known to be returning as a failed asylum seeker by the Iraqi authorities and therefore able to establish that he has had no connection with the city or ISIS in that region, meaning it has not been made out that he will be thought of as being connected with ISIS.
32. The appellant asserts that as a result of his lack of connections and huge influx of refugees and IDP's he will find it difficult to secure employment. Underpinning this alleged need to function as an independent individual is the appellant's assertion that he has not been in touch with any family members in Iraq and does not know the name of his relatives in the IKR or whether they could help him. The issue of the credibility of the appellants claim to have lost or not make contact with family is discussed above. It has not been made out that the appellant does not have family members who will be able to assist him on return. If the appellant returns to Kirkuk, this is outside the boundaries of the IKR where issues of displaced persons and job opportunities in the Kurdish region not is arguably applicable.
33. In relation to the appellant's assertion that his father worked for the Ba'ath party in Iraq; this is an issue that arose frequently at the time of Saddam Hussain and after his immediate downfall. Cases relevant to this issue include *BKA v Sweden App 11161/11 ECtHR (Fifth Section)* in which the court found that former members of the Ba'ath party and Fedayeen whose memberships dated back more than 10 years were no longer systematically attacked. Individuals might be at risk but only in certain parts of your Iraq and only if they had held on a prominent position in these organisations. In *M A-H (Iraq) v Secretary of State for the Home Department [2013] EWCA Civ 445* the Court of Appeal upheld a first-tier tribunal decision that an appellant who was the son of a former member of the Baath party and who was targeted by members of a militia lead by Iraqi MP, Al-Daini would be at risk in the KRG. The Court held that *HM and others (Article 15(c)) Iraq (No longer a CG case since October 2015) [2010] UKUT 331 (IAC)* did not

- address the issue of whether relocation provided security for an individual targeted by a specific terrorist group (paras 22 - 23).
34. The appellant does not claim that he has been targeted by any militia as a result of his father's previous involvement, even if the claim is credible, or that his father held a prominent position in the Ba'ath party sufficient to create a real risk to the appellant on return in 2017. It must be remembered that during the time of Saddam Hussain many joined the Baath party as a means to get on with their careers and within society. It is also noted the appellant does not claim that he himself is a member of the Baath party, which is a prescribed organisation within Iraq. The appellant fails to establish that his father's activities in Iraq were such as to create a real risk especially in the absence of any evidence that prior to the intervention of ISIS the family faced any difficulties for this reason alone. Most high-ranking Ba'athists have either fled the country or already been dealt with by the new regime. While it is accepted there may be an element of score-settling, random attacks and discriminatory treatment towards former Ba'ath Party members, relatives of former Ba'athists, or those accused of being Ba'athists, such treatment is not systematic and will not, in general, be sufficient to reach a real risk of serious harm or persecution. The appellant fails to establish a credible real risk arising from his father's activities or that the same would prevent his entry to the IKR.
 35. The appellant's submission that Shia militia have been active in his home area which may cause difficulties if they man road blocks and checkpoints is noted but the country material clearly records that a number who fled before the Iraqi forces into the IKR have successfully returned. Is it reasonable to assume that a number of these may, in addition to being Arabs, be ethnic Kurds. The appellant has provided inadequate country material to suggest that those previously from Kirkuk of Kurdish ethnicity cannot return.
 36. The appellant also refers to the fact that given recent developments there may be violence in the IKR against warring factions and difficulties in light of the forthcoming elections in the Kurdish regions. Whilst in Iraq anything appears to be possible depending upon who is involved and the situation prevailing at any particular point in relation to a number of issues, it is not made out that any such real risk arises at the date of this hearing and the finding that the appellant is entitled to a grant of international protection based upon such issues would amount to no more than mere speculation which, in itself, will amount to an arguable legal error.
 37. I find the appellant has failed to discharge the burden of proof upon him to the required standard to make out that he is entitled to a grant of international protection or that it is unreasonable to expect him to return to his home area via Baghdad and the IKR. The appellant possesses all the necessary documents to enable his return and to facilitate onward transportation.

Decision

38. **The First-tier Tribunal Judge has been found to have materially erred in law and that decision set aside. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

39. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 7 December 2017

Annex A

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02593/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 2 August 2017

Decision Promulgated

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JAA
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Smith - Direct Access Barrister.

For the Respondent: Mr A McVeety – Senior Home Office Presenting Officer

ERROR OF LAW FINDING

1. This is an appeal against a decision of First-tier Tribunal Judge Chapman promulgated on 1 February 2017 in which the Judge dismissed the appellant's protection and human rights claims.

Background

2. The appellant is a national of Iraq born on 18 February 1997. It was found by the Judge that the appellant is from Kirkuk.

3. It was conceded by Mr McVeety that the appellant is not entitled as of right to return to the IKR.

4. The Judge noted at [45], having rejected the appellant's account about his reasons why he claimed to be at risk in Iraq, that the issue of protection or relocation from the named individual did not arise. The Judge noted the appellant can return to Kirkuk [47]. This statement was expanded on in [49] where the Judge finds:

49. I must assess the risk on return now. On the evidence available, there is nothing to suggest that the Appellant cannot return to his family in Kirkuk. He has his parents and siblings there, and other family members, who appear to be living their lives as normally as is possible in the very difficult situation which continues to exist in Iraq. In the light of my findings, there is nothing to suggest that the Appellant cannot return to live with his family, and thus any vulnerabilities which might be exposed by having to relocate elsewhere will not be exposed.

5. At [52] the Judge finds "In the light of this objective information, and given the Appellant's history and personal circumstances, I find that there is currently no risk if he is returned to Kirkuk.

6. Miss Smith asserted the appellant had provided country information of his own and that the Judge failed to address any other evidence contained within the respondent's guidance and explain why that evidence led to the Judge to depart from the country guidance in *AA (Article 15 (c)) Iraq CG [2015] UKUT 544* wherein it was decided that 'return to the appellant's home area of Kirkuk is a contested area'.

7. An issue that has arisen in relation to Kirkuk is that at the date of the hearing of *AA*, and indeed from approximately October 2014 Kirkuk had been captured by the Kurdish Peshmerga and was no longer under the control of IS. It appears that in *AA* a general concession was made by the representative of the Secretary of State in relation to the extent of the contested areas. Notwithstanding, *AA* is a current country guidance decision for which good reasons are required to be given if a judge intends to depart from the same. It is also argued that evidence provided to the Judge showed that since mid-2015 the number of security incidents in Kirkuk had remained steady, and the number of civilian fatalities and injuries either decreased or remained steady, but did not suggest a drastic improvement in country conditions in Kirkuk.

8. The main point of dispute and discussion at the error of law hearing related to whether the Judge's conclusions in relation to Kirkuk were infected by arguable legal error. The case of *AA* identified regions in Iraq where the extent of internal armed conflict was such that a civilian being returned to that area will be likely to face a real risk solely as a result of being there, entitling such individual to protection pursuant to Article 15(c) of the Qualification Directive.

9. The concerns this tribunal has is the Judge fails to adequately explain what is meant by the finding there was currently no risk if the appellant is returned to Kirkuk. The Judge was entitled to find there was no individual risk as the finding the appellant faced a real risk from the named individuals had been dismissed by the Judge and found to lack credibility. It is not necessary, however, for an individual to establish a subjective risk to be entitled to succeed in a claim for humanitarian protection. The failure of the Judge to adequately deal with the issues identified in the grounds seeking permission to appeal, relating to *AA* as a country guidance decision, and to make a specific finding in relation to the humanitarian protection element does give rise to arguable legal error.

10. It is also the case, as identified by Miss Smith, that there appears to be a contradiction in the decision in that although having found the appellant faces no risk on return to Kirkuk, the Judge at [53] states:

53. I am, however, still obliged to follow the country guidance case of AA (Article 15 (c)) Iraq CG [2015] UKUT 544 (IAC), which deals with the security situation in Iraq [sic] although this has now been revised, so far as Baghdad is concerned by BA (returns to Baghdad) Iraq CG [2017] UKUT 00018. In AA it was decided to return to the Appellant's home area of Kirkuk would amount to a breach of Article 15 (c) of the Qualifying Directive as it is a contested area. It also decided that there is not a real risk of serious harm to civilians from levels of indiscriminate violence in other parts of Iraq.

11. There is an arguable contradiction in that the Judge finds on the one hand the appellant faces no risk on return to Kirkuk, which appears to be a departure from the country guidance case, but then explains that he is required to follow that case and refers to the fact that an individual returning to Kirkuk will be entitled to a grant of humanitarian protection on the basis Kirkuk is a contested area, unless he or she is able to relocate.

12. In [54] the Judge purports to consider the position if he is wrong about there being no risk on return to Kirkuk and the risks that arise solely on the basis of the guidance contained in *AA* and *BA*. Had the Judge properly assessed the issue of internal relocation and arrived at sustainable finding it may have been that any error in relation to the first ground concerning Kirkuk would not have been material.

13. As stated above, it was accepted the appellant cannot return to the IKR and so the issue relates to whether it is reasonable for him to internally relocate to Baghdad and to consider how he will be able to travel from Baghdad to his home area of Kirkuk if it is found he can safely return there to be with his family. The Judge's findings regarding the existence of family have not been shown to be affected by any arguable legal error and are therefore preserved.

14. It was accepted by both advocates that in relation to the internal relocation option, which was raised by the respondent in the reasons for refusal letter, the Judge failed to adequately assess this issue by reference to the prevailing country guidance caselaw and to give adequate reasons for why it is reasonable in all the circumstances for the appellant to be expected to internally relocate on the facts of this case.

15. It is submitted on the appellant's behalf that particular circumstances relevant to a proper assessment include:

- a. the appellant originates from Kirkuk, a contested area;
- b. the appellant has never been to Baghdad or the IKR;
- c. the appellant has no known family in Baghdad or the IKR;
- d. the appellant is a Kurd;
- e. the appellant is a Sunni Muslim;
- f. the appellant does not speak Arabic;
- g. the appellant did not complete his education;
- h. the appellant has no work experience;
- i. the appellant will be returned to Baghdad and to relocate to the IKR he would have to make that onward journey alone (*AA*, [150]).

16. I find the Judge has erred in law in a manner material to the decision to dismiss the appeal in relation to the assessment of the risk of return to the appellant in Kirkuk and the issue of internal relocation to Baghdad if he cannot return directly to his home area. I therefore set aside the decision of the First-tier Tribunal, although the findings other than the conclusion the appellant faces no risk for any reason in Kirkuk and the finding he can reasonably relocate shall be preserved findings.

17. The following directions shall apply to the further hearing of this appeal:

a. List for a Resumed hearing before Upper Tribunal Judge Hanson on the first available date after 1 September 2017 with a time estimate of three hours, subject to the availability of both Miss Smith on behalf of the appellant and Mr McVeety on behalf of the Secretary of State for the Home Department. The advocates shall file with the listing office at Field House details of the dates when they shall not be available in the three-month period commencing 1 September 2017, no later than seven days from the date of these directions.

b. A Kurdish (Sorani) interpreter shall be provided by the Tribunal.

c. The parties shall, no later than 14 days before the date of the Resumed hearing, file with the Upper Tribunal and send to the opposing party consolidated, indexed and paginated bundles containing all the evidence upon which they intend to rely. Witness statements from everybody intending to give oral evidence must be signed, dated, contain a declaration of truth, and shall stand as the evidence of chief of the maker who shall be tendered for cross examination and re-examination only.

d. The findings other than the conclusion the appellant faces no risk for any reason in Kirkuk and the finding he can reasonably relocate shall be preserved findings.

Decision

18. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. The appeal shall be listed for a Resumed hearing in accordance with the directions set out above to enable the Upper Tribunal to remake the decision by either allowing or dismissing the appeal.

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 3 August 2017