



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

Appeal Number: PA/04878/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 June 2017**

**Decision &  
Promulgated**

**On 29 June 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**KKA**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms R Kotak, Counsel instructed by JD Spicer Zeb Solicitors  
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise

to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

2. This decision re-makes the appellant's asylum and humanitarian protection claim following my error of law decision issued on 30 May 2017. The error of law decision is appended.
3. The accepted facts before me are that the appellant is an Iraqi Kurd whose family originally came from Diyala but who, after a land dispute, relocated to Ramadi. The respondent also accepts that both Ramadi and Diyala are contested areas and that the applicant cannot be expected to return there but disputes his ability to relocate to either the Iraqi Kurdish Region (IKR) or Baghdad in order to avoid the risk of mistreatment in his home area. It is accepted that the appellant does not have any form of identify document, including a Civil Status Identity Document (CSID).
4. The relevant parts of the country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) state:

***"A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE***

*1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

...

*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).*

*4. In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.*

***B. DOCUMENTATION AND FEASIBILITY OF RETURN (excluding IKR)***

*5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in*

*possession of a current or expired Iraqi passport relating to P, or a laissez passer.*

6. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

7. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of Iraqi identification documentation, if the Tribunal finds that P's return is not currently feasible, given what is known about the state of P's documentation.*

### **C. POSITION ON DOCUMENTATION WHERE RETURN IS FEASIBLE**

8. *It will only be where the Tribunal is satisfied that the return of P to Iraq is feasible that the issue of alleged risk of harm arising from an absence of Iraqi identification documentation will require judicial determination.*

9. *Having a Civil Status Identity Document (CSID) is one of the ways in which it is possible for an Iraqi national in the United Kingdom to obtain a passport or a laissez passer. Where the Secretary of State proposes to remove P by means of a passport or laissez passer, she will be expected to demonstrate to the Tribunal what, if any, identification documentation led the Iraqi authorities to issue P with the passport or laissez passer (or to signal their intention to do so).*

10. *Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport or other current form of Iraqi identification document.*

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.*

12. *Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.*

13. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's 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 P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

#### **D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IRAQI KURDISH REGION)**

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

(a) whether P has a CSID or will be able to obtain one (see Part C above);

(b) whether P can speak Arabic (those who cannot are less likely to find employment);

(c) whether P has family members or friends in Baghdad able to accommodate him;

(d) whether P is a lone female (women face greater difficulties than men in finding employment);

(e) whether P can find a sponsor to access a hotel room or rent accommodation;

(f) whether P is from a minority community;

(g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

#### **E. IRAQI KURDISH REGION**

17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.

18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.

19. *A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*

20. *Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.*

21. *As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR."*

5. I was also referred to [177], [202] and [203] of AA (Iraq):

"177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring.

...

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.”


6. The appellant’s case is that his family were murdered by Daesh when they took over Ramadi. He maintains that he cannot obtain a CSID as he cannot return to his home area and he has no family or friends in Iraq to assist him to do so. His evidence is that the uncle who lived in Khanaqin and assisted him to leave Iraq has himself left the country.
7. The appellant also submits that as someone with no means of obtaining a CSID he cannot be expected to relocate to either the KRI or Baghdad, relying on the passages set out above from AA (Iraq). He argues that he cannot live in the KRI as he has no CSID to assist him to get there from Baghdad or allow him to remain there. He has no employment skills to assist him to remain longer than the 10 days allowed to non-KRI Iraqis. He has no family or friends there. He maintains that he cannot relocate to Baghdad as he has no family or friends there, has no CSID.
8. The outstanding factual issue that I must decide is whether the appellant has family who can assist him to obtain a CSID so as to be able to travel to and relocate in the IKR and whether he can be expected to relocate to Baghdad.
9. Mr Singh accepted that if I found for the appellant on the issue of his having no family in Iraq to assist him on return to obtain a CSID then the appeal would have to be allowed, following AA (Iraq).
10. I did find the appellant credible on having no family in Iraq to assist him on return.
11. The appellant has been consistent as to his family having been murdered and his uncle leaving Iraq. He stated at 4.1 of his screening interview that his family had been killed by Daesh two to three months earlier. He stated at question 7 of the asylum interview (AIR) that Daesh killed his family. He stated at question 9 that he believed that his uncle had left the country. His uncle had told him this when the appellant was leaving Iraq. He gives details of his family being killed in August 2015. He describes in questions 33 to 48 how he was at a friend’s house when Daesh went to the family home and killed his parents and siblings. A friend telephoned him there to tell him what happened. The appellant gives a detail at question 44 as to the family not having left Ramadi when Daesh came because his brother was disabled.
12. The account at [6] of the appellant’s witness statement dated 21 September is consistent with the account given in his interview. He stated at [10] that he spoke to his uncle by telephone when he got to Turkey and his uncle told him that he was also leaving Iraq.
13. The appellant was not cross-examined before me about what happened to his family in Ramadi. I noted the evidence he is stated to have given in the

First-tier Tribunal hearing which is at [13], [14] and [20] of that decision. He told the First-tier Tribunal that he found out about what had happened whilst at a friend's house. The friend's brother telephoned to inform him of what had occurred. The appellant stated that the confusion about whether his friend told him or his friend's brother told him arose because the brother was also his friend. In re-examination he clarified that the friend was called Mohammed and Mohammed's brother was called Ali. Set against the overall consistency of the appellant's evidence and the account being consistent with the country evidence of the extreme brutality of the regime operated by Daesh in the areas they occupied, it was not my conclusion that the evidence given in the First-tier Tribunal was sufficient as to undermine the credibility of his account. Indeed, the First-tier Tribunal did not find his account of what happened to his family to lack credibility, failing to make a finding on this point.

14. Mr Singh's cross-examination of the appellant focussed on the possibility of the appellant's uncle still being in Iraq in his questioning and submissions, referring me to the discussion of this part of the case in the First-tier Tribunal decision at [49]. The First-tier Tribunal found at [49] that the uncle "may be "in Turkey. The appellant stated before me that he spoke to his uncle once after he left Iraq and this is consistent with his earlier evidence. It has never been his claim that he had no contact after he left. The suggestion that the agent would have kept in contact with the uncle so as to be able to report the appellant's safe arrival in the UK appeared to me to be speculative. On the basis of the consistent evidence set out above and the country evidence on the violence in the northern regions of Iraq in 2015, the appellant's account of his uncle leaving Iraq was, in my judgment, credible to the lower standard.
15. For all of these reasons I accepted the appellant's claim that his family was killed in Ramadi in 2015 and that he has no other relatives now living in Iraq.
16. It follows, as set out above and conceded for the respondent, that he has therefore shown that he cannot return to his home area because of the risk from Daesh because of his imputed political opinion as someone opposed to Daesh and his Kurdish ethnicity. He cannot relocate internally. The appellant has therefore shown that he is entitled to asylum.

### Decision

17. The decision of the First-tier Tribunal disclosed error on a point of law and is set aside.
18. The asylum appeal is re-made as allowed.

Signed: 

29 June 2017

Upper Tribunal Judge Pitt







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

Appeal Number: PA/04878/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 18 May 2017**

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**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**KKA**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms H Short, Counsel instructed by JD Spicer Zeb Solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

19. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise

to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

20. This is an appeal against the decision promulgated on 23 December 2016 of First-tier Tribunal Judge Beach which refused the appellant's protection and human rights appeals.
21. The appellant is a citizen of Iraq. It is not disputed that he is of Kurdish ethnicity. It is also common ground that before coming to the UK he was living in Ramadi which is one of the disputed areas identified as unsafe in the country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) because of the presence of Daesh.
22. The appellant's case before the First-tier Tribunal was that his family had been murdered by Daesh after they took over Ramadi. He also maintained that, following AA, he did not have the requisite identity card and could not be expected to relocate to Baghdad or the Independent Kurdish Region (IKR).
23. At [49], Judge Beach declined to make a finding on whether the appellant's family had been murdered by Daesh. She also found at [48] and [49] that the appellant could be expected to relocate to the IKR. She refused the appeal on all grounds as a result.
24. The appellant submits that the First-tier Tribunal erred in law in failing to make a finding on whether his family was murdered by Daesh. A finding on this point was required as, in addition to being of intense personal importance to the appellant, it was relevant to the issue of whether he could obtain an identity document with the assistance of family or friends and so be in a better position to relocate to the IKR.
25. The appellant also maintained that the First-tier Tribunal, in the internal relocation assessment, had proceeded on a mistake of fact as to his family having come from the IKR. He had never maintained that he or his family had ever lived in or came from the IKR.
26. Before me, the respondent accepted that the First-tier Tribunal's mistake as to the appellant or his family coming from the IKR amounted to an error of law such that the internal flight assessment to be set aside to be remade.
27. There was also agreement that a finding on what happened to the appellant's family had to be made in order for the internal flight assessment to be re-made correctly.
28. In light of the respondent conceding the merits of the error of law appeal I found that the decision of the First-tier Tribunal disclosed an error on a point of law such that it should be set aside to be remade.

## **Notice of Decision**

29. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
30. It was not possible to remake the appeal on the day of the error of law hearing because an interpreter was not present.
31. The appeal will be re-made before Upper Tribunal Judge Pitt on Wednesday 28 June 2016.
32. A Sorani Kurdish interpreter is required.

Signed:   
Upper Tribunal Judge Pitt

Date: 24 May 2017