



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00702/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 11<sup>th</sup> April 2018

Decision & Reasons Promulgated  
On 15<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[ I ]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Mannan, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq, born on [ ] 1991. The Appellant left Iraq on 1<sup>st</sup> October 2015, arrived in the UK on 15<sup>th</sup> October 2015 and claimed asylum. The Appellant's application for asylum was based on a fear that if returned to Iraq his life would be in danger as ISIS had raided his village and because of his father's involvement in Saddam Hussein's regime. The Appellant's application was refused by Notice of Refusal dated 12<sup>th</sup> January 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal C Burns sitting at Birmingham on 6<sup>th</sup> January 2017. In a notice of decision promulgated on 10<sup>th</sup> January 2017 the Appellant's appeal was dismissed on all grounds. On 26<sup>th</sup> January 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 6<sup>th</sup> February 2017 First-tier Tribunal Judge Page refused permission to appeal. Amended and more specified Grounds of Appeal were lodged and served on 23<sup>rd</sup> February 2016. On 17<sup>th</sup> March 2016 Upper Tribunal Judge Jackson granted permission to appeal. The way in which that permission is granted is of some importance. Judge Jackson noted that the Appellant appealed on the grounds that Judge Burns erred in a central finding of fact, namely that the Appellant's home area of Gojali, near Mosul, was not a contested area identified in AA (*Article 15(c) Iraq CG [2015] UKUT 00544 (IAC)*) which it was; and that despite stating that she was not departing from that country guidance, the judge did in fact do so on the basis of taking "judicial notice" of the offensive for Mosul from late 2016. Further, the Appellant appealed on the grounds that Judge Burns had erred in finding that there is no Article 15(c) risk en route to the Appellant's home area from Baghdad despite the fact that he would be required to travel through the "Baghdad Belts" contested areas to do so.
3. Judge Jackson found that all grounds were arguable and that Judge Burns had arguably made contradictory findings about the location of Gojali in Iraq and erroneously concluded that it is not in a contested area identified in AA; as well as arguably departing from that country guidance case on the basis of judicial notice of news reports and the bare assertion of improving conditions by the Respondent which arguably was not sufficient reason to depart from country guidance.
4. There does not appear to be any Rule 24 response on file. It was on that basis that the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appeared by his instructed Counsel, Mr Mannan. The Secretary of State appeared by her Home Office Presenting Officer, Mr Clarke.
5. I was satisfied that there was an error of law in the decision of the First-tier Tribunal Judge and despite the submissions of Mr Clarke that it is not material. It is actually conceded that Gojali is in a contested area and therefore would be covered by the findings in AA and the approach adopted therein. It consequently does not sit well for the First-tier Tribunal Judge firstly to have made a finding at paragraph 61 that the judge could live in Gojali which clearly he could not and secondly to make findings without evidence before him that the Appellant would be able to travel from Baghdad to Gojali as set out at paragraph 66. I do acknowledge that the position is ever changing and I further note that at paragraph 64 there has been rejection of the core of the Appellant's claim and that the claim lacked credibility.
6. What is of relevance here is whether or not there is an Article 15(c) risk as set out in the country guidance given within AA. It seems to me that once it is accepted that Gojali is in the contested area that it is mere semantics to try and indicate that by stating

*"I am entitled to take judicial notice of what has been reported widely in the media over recent months that the Iraq Army and coalition have been involved in an offensive in Mosul and have retaken large parts of the city"*

would constitute an acceptance that the judge has used this implicitly in determining whether or not the Appellant could or could not live in Gojali.

7. That statement by the judge was one that he was perfectly entitled to make. He has not however linked it to the Article 15(c) risk which is based very much on the basis that Gojali was contended not to be in the contested area. As such the error of law is material. Further as to whether or not he could return from Baghdad to Gojali still remains a matter of conjecture. What the judge has said is that he could live there and that he could travel there but there seems to have been very little evidence considered in reaching that finding.
8. The correct approach consequently was to find that there was a material error of law but that it is limited purely and simply to the Appellant's risk pursuant to Article 15(c) and as to whether or not Gojali remains within the contested area and whether or not the route to Gojali is one upon which he could travel. That is a matter that can be addressed by consideration of up-to-date objective evidence and by way of submission only. To the extent that that is the only issue involved I consequently found that there was a material error of law restricted to that point, retained the matter before myself within the Upper Tribunal and attached directions for the rehearing of this matter which will be by submission only.
9. I gave directions that the decision of the First-tier Tribunal Judge had contained a material error of law solely relating to whether or not the Appellant had a risk of return to Gojali but fell within the ambit of Article 15(c) risk as set out within the authority of *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)*. All other findings of fact made by the First-tier Tribunal Judge were maintained. Thereafter, I granted leave to either party to file and exchange a bundle of objective evidence upon which they sought to rely relating to:
  - (a) whether or not Gojali is or is not within now a contested area;
  - (b) as to whether or not the Appellant would be able to travel from Baghdad to Gojali without passing through a contested area.

I directed that the hearing was to be dealt with by way of submissions only.

10. It is on that basis that the appeal comes back before me for rehearing. I am considerably assisted by the fact that the advocates who appeared before me last time, namely Mr Mannan for the Appellant and Mr Clarke for the Secretary of State, are again in attendance.
11. This was an appeal that at a directions hearing in August 2017 was recommended to go before a country guidance panel. No party has heard anything since then and it is the agreed decision of both representatives that the matter should proceed today.

12. Mr Mannan starts by advising that it is conceded by the Secretary of State that Gojali is in a contested area. He indicates that it is further conceded that in order to travel by road to Gojali it would be necessary to proceed through a contested area, namely the Baghdad Belts, and that it is not safe to travel. Consequently he submits that it is not possible for the Appellant to return to Gojali. He reminds me that AA (*Article 15(c)*) is the only country guidance and constitutes good law and he submits that the correct approach is to apply that authority and to allow the appeal. He submits the only reason to go against that is if there is some new objective material to the effect that AA would nowadays be decided differently and that that does not exist and that the additional objective evidence that is before the Tribunal does not in any way detract from AA remaining good law. He asked me to allow the appeal.
13. In response, Mr Clarke poses the question is there an Article 15(c) risk? He submits that there are strong grounds to warrant departure from AA. He accepts that AA shows that Gojali is in a contested area but that was because ISIS was then in control and that they no longer are. He reminds me of the preserved findings of the First-tier Tribunal to be found at paragraphs 63 and 64 and head note 9 of AA relating to the availability/provision of CSIDs and laissez-passers. Based on such availability he advises that there are documents that are available which would enable the Appellant to be returned. He points out that at paragraph 64 of the First-tier Tribunal Judge's decision it was not accepted that the Appellant's parents were dead and that he has a sister in Mosul. He advises it is necessary to look at the facts of each case. He accepts that the Practice Direction indicates that country guidance is binding unless there are strong grounds or cogent evidence to the contrary. He points out that Gojali is on the outskirts of Mosul and that Mosul was liberated on 20<sup>th</sup> February 2017. He refers me to the objective documents that are produced to me pointing out that the eastern half of Mosul is rejuvenating although he accepts that the western half is not rejuvenating so quickly. He submits that it is now a question of rebuilding. He contends that the whole basis upon which AA was decided was that the area in question was under the control of ISIS and that this no longer exists and consequently the reason for it being contested has gone and that the Appellant now has to demonstrate an Article 15(c) risk in this context.
14. He turns to the question as to whether or not the Appellant can return to Mosul. He advises that he can. He submits it would be possible for him to fly to Irbil and refers me to the June 2017 Home Office Country Policy and Information Note on Iraq contending therein that given the finding of the First-tier Tribunal the Appellant will be able to evidence his nationality and that he would be able to travel from Baghdad and then cross the border to Mosul. Consequently he submits the evidence shows he could be returned and get a CSID card. On the basis that there has been a significant change in the area he invites me to dismiss the appeal.
15. In response, Mr Mannan reminds me that the First-tier Tribunal Judge's decision was in January 2017 and that at paragraph 60 therein the Secretary of State was asserting that ISIS had at that time been thrown out of Mosul albeit that that was not correct but that the judge had proceeded on that basis. He accepts Mosul has now been freed and accepts that there has been some construction work carried out but to suggest that it is

possible for the Appellant to return is, he submits, wrong. He refers me to the up-to-date objective evidence. He further submits that to contend ISIS has gone forever is a bold statement and may well be a big mistake without backing and submits that until there is clear country guidance it is difficult to see the objective evidence produced at this hearing would overturn AA.

### **The Objective Evidence**

16. I asked the parties to provide a bundle of additional objective evidence. I am referred to the following documents:

- One displaced family's return to Mosul by Reuters – 28<sup>th</sup> March 2018.
- Mosul – Rising from the rubble: World Bank helps Iraqis bring back life to their liberated cities – 5<sup>th</sup> April 2018.
- Moving into Mosul – Report from Logistics Cluster – 23<sup>rd</sup> March 2018.
- Special Report: This man is trying to rebuild Mosul – 21<sup>st</sup> March 2018.
- UNESCO launch flagship initiative to revive the spirit of Mosul – 14<sup>th</sup> February 2018.
- Rising from the rubble – Iraq's Mosul takes steps to deal with war debris – 26<sup>th</sup> March 2018.
- VICE News report – 10<sup>th</sup> April 2018.
- Asharq Al-Aws – After ISIS defeat Iraq scouts make comeback in Mosul – 3<sup>rd</sup> April 2018.

17. I have read all the relevant additional objective material to which I am referred. It is clear from this that there is a rebuilding infrastructure to the economic and social fabric of Mosul and that the humanitarian operation in Iraq has reached a critical juncture with the re-taken areas including Mosul facing a high number of returnees despite huge levels of destruction. However, there is a constraint to humanitarian operations due to the ability to cross from one side of the Tigris River to the other.

18. I note that Lise Grande has said:

“If we don't stabilise these areas quickly violent extremism might emerge again and the gains against ISIL could be lost”.

### **Findings**

19. It is clear that circumstances are changing and the objective evidence shows that Mosul, whilst not being under the control of ISIS and is rejuvenating, is still at risk of a resurgence. It further seems clear that one half of the city is developing better than the other. There is, however, nothing within the current objective evidence to show that it is possible to get to the contested area by land and there is no objective evidence produced with regard to the ease of making a journey from Irbil to Mosul (or in this case Gojali).

20. Despite Mr Clarke's submissions, I am of the view that there has been nothing produced to me to show that I should take the step of not following AA (*Article 15(c)*) which is the country guidance authority on the situation and remains good law. I have given full and due consideration to the submissions made and in such circumstances, taking into account all the evidence that is produced to me, I am satisfied that this is an Appellant who is not in a position to return to Gojali and in such circumstances his appeal succeeds.
21. I add the proviso that is added in many similar cases, namely that whilst I acknowledge at present the Secretary of State is not making involuntary returns to Iraq, Appellants who succeed on the basis that the area they are returning to, or that they are unable to reach a safe area, have their appeals allowed on the basis that if there is a change of circumstances then the Secretary of State may well review the grant of leave that has been made to them.

**Notice of Decision**

22. The Appellant's appeal is allowed pursuant to Article 15(c).
23. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris