



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04239/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** North Shields

**On 20 February 2018**

**Decision & Reasons  
Promulgated  
On 5 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**S Y S**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Ms R Petterson, Senior Home Office Presenting Officer

For the Respondent: Ms S Rogers, instructed by Immigration Advice Centre Ltd

**DECISION AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made by the First-tier.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Moran, promulgated on 17/07/2017 which allowed the Appellant's appeal on Humanitarian Protection and article 3 ECHR grounds.

## Background

3. The Appellant was born on 01/09/1983 and is a national of Iraq. On 18/04/2017 the Secretary of State refused the Appellant's protection claim.

## The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Moran ("the Judge") allowed the appeal against the Respondent's decision on Humanitarian Protection and article 3 ECHR grounds.

5. Grounds of appeal were lodged and on 06/10/2017 Judge E B Grant gave permission to appeal stating

1. The respondent has applied, in time, for permission to appeal the decision of the FTT J Moran promulgated on 17 July 2017.
2. The grounds submit the FTT J erred in law in finding that the likelihood of the appellant being unemployed upon return amounts to a breach of A3.
3. It is arguable that the FTT J has given inadequate reasons for his findings that the appellant will not be able to find employment either in Baghdad or the IKR and has failed to take into account the high threshold of A3 in finding that the appellant "could (not) be confident of readily finding work" and arguably gave inadequate reasons for finding that the absence of family support makes relocation to Baghdad unduly harsh.
4. The grounds may be argued.

## The Hearing

6. For the respondent, Mr Petterson adopted the grounds of appeal. She took me to [31] of the decision and told me that, there, the Judge finds that the appellant will be able to obtain entry to IKR for 10 days. She told me that the Judge found that relocation is unreasonable solely on the basis that the appellant would struggle to find employment. She told me that that finding is not supported by the evidence and is inadequately reasoned. She told me that there was no reliable evidence that the appellant is expected to leave IKR after being granted entry.

(b) Ms Petterson accepted that the Judge considers how the appellant will get to the IKR from Baghdad but told me that the Judge should have made a finding that the appellant could stay indefinitely in IKR. She told me that the Judge did not give adequate consideration to the employment prospects for a healthy young man. She told me that undue harshness was not made out and was not adequately considered by the Judge.

(c) Ms Petterson told me that new country guidance on the situation in IKR is expected from the Upper Tribunal soon. She asked me to find that there

are material errors of law in the decision and to remit the case for further consideration by the First-tier Tribunal.

7. For the appellant, Ms Rogers told me that the decision does not contain errors of law. She told me that the decision is perfectly adequate and that the Judge properly dealt with the appellant's ability to enter IKR for 10 days and then remain beyond that 10 day period. Ms Rogers told me the Judge's findings are in line with the objective materials. She reminded me that the situation in IKR is deteriorating because of the number of displaced people there. She told me that the Judge properly considered the reasonableness of relocation by looking at the prospect of employment and the ability of the appellant to survive.

(b) Ms Rogers told me that there was sufficient evidence placed before the Judge to justify his conclusion that the appellant would struggle to find work in IKR within 10 days, and that the absence of work would mean that he would not be entitled to remain in IKR for more than 10 days. She told me that it is not disputed that the appellant does not have a sponsor and does not have family members within IKR. She told me that the Judge's findings are entirely in line with the country guidance given in AA (Iraq) CG [2017] EWCA Civ 944.

(c) Ms Rogers told me that the Judge made reasoned findings that the appellant cannot return to Baghdad. She reminded me that it is not disputed that the appellant is Kurdish, that the appellant speaks Kurdish Kurmanji, and that the appellant has no connection to Baghdad. She told me that it is not disputed that the appellant does not have a CSID. She reminded me that the Judge found the appellant to be a credible witness who would have to go to Baghdad initially to try to renew his CSID. She told me that the only reasonable conclusion to come to is that the appellant would have huge difficulty travelling and that internal relocation is unreasonable and unduly harsh. She urged me to dismiss the appeal and to allow the decision to stand.

### Analysis

8. Between [3] and [4] of the decision the Judge summarises the respondent's position. It is accepted that the appellant comes from Nineveh province in northern Iraq, but the respondent argues that there is no longer an article 15(c) risk there. In any event, the respondent argues that there is a viable option of internal relocation open to the appellant.

9. The grounds of appeal do not challenge the Judge's credibility findings. At [17] the Judge rehearses the appellant's evidence. At [18] the Judge sets out the respondent's challenges to the appellant's evidence. At [20] the Judge finds the appellant to be a straightforward and credible witness. At [21] the Judge draws a clear focus on article 15(c) and the article 3 ECHR grounds of appeal.

10. The Judge's finding at [23] that there is an article 15(c) risk to the appellant in Nineveh province is entirely consistent with the guidance

given in AA (Iraq) 2017. That finding is not challenged in the grounds of appeal. The grounds of appeal focus on the Judge's finding in relation to return to Baghdad and the option of internal relocation. Although submissions were made in relation to the Judge's findings that (for this appellant) return to IKR is not possible because the appellant would not find employment within this initial 10 days there, that is not something raised in the grounds of appeal. The grounds of appeal focus on return to Baghdad only.

11. At [24] the Judge finds that the appellant speaks Arabic, that he is a Kurd and his first language is Kurdish Kumanji. It is not disputed that the appellant is single and has no dependents. The Judge finds that the appellant has no family or other support network available to him outside Nineveh province. At [26] the Judge's finding that the appellant does not have a CSID card is not challenged.

12. At [28] the Judge draws this appeal clearly into focus by identifying the two potential areas for relocation to be Baghdad and the IKR.

13. The Court of Appeal has provided the following guidance in AA (Iraq) CG [2017] EWCA Civ 944.

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.*

14. In making that finding the Court of Appeal adheres to what was said in AA (Iraq) CG [2015] UKUT 0054 (IAC). The following guidance is also found in AA (Iraq) 2017

D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

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.*

15. This appeal concerns the Judge's findings in relation to return to Baghdad. The focus is therefore on [29] of the decision. At [29] the Judge finds that six of the seven factors to be considered at [15] of annex A to AA (Iraq) 2017 mitigates against the appellant (the seventh factor is neutral)

16. At [30] and [31] the Judge deals with the potential of relocation to IKR. At both [30] and [31] the Judge makes findings drawn from the evidence placed before him. At [31] the Judge finds that the background materials indicate that the prospect of the appellant finding employment, which would enable him to remain in IKR, is remote.

17. The findings that the Judge makes are well within the range of findings reasonably available to the Judge. The findings are drawn from the evidence placed before the Judge. At [14] the Judge carefully takes correct guidance from AA v SSHD [2017] EWCA Civ 944.

18. The grounds of appeal are gathered under the heading “material misdirection of law”. In this case the Judge clearly took correct guidance from AA v SSHD [2017] EWCA Civ 944. The grounds of appeal do not really drive at a misdirection of law but are just a disagreement with the facts as the Judge found them to be. The Judge found that employment, sponsorship, accommodation, a CSID and means of support are not available to the appellant. Those findings which were well within the range of reasonable findings available to the Judge of the evidence placed before him.

19. Having taken correct guidance in law and made findings of fact the Judge reached his conclusion. It is not a conclusion that the respondent likes but it is a conclusion which was reasonably open to the Judge on the facts as he found them to be.

20. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

21 There is nothing wrong with the Judge’s fact-finding exercise. In reality the appellant’s appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The respondent might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

22. The Judge’s decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

**23. No errors of law have been established. The Judge's decision stands.**

**DECISION**

**24. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 17 July 2017, stands.**

Signed Paul Doyle  
2018

Date 28 February

Deputy Upper Tribunal Judge Doyle