Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09057/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 5 October 2018	**On 16 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

KORSH [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Irvine, advocate, instructed by Latta & Co, solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge D H Clapham promulgated on 25/08/2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 26 February 1995 and is a national of Iraq. He arrived in the UK on 14 February 2016 and claimed asylum. The respondent refused the appellant's protection claim on 12 August 2016

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge DH Clapham ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 03 January 2018 Upper Tribunal Judge Canavan gave permission to appeal stating inter alia

> 3. The Judge accepted that the appellant was a Sunni Kurd from Salah Al Din province (a contested area). She did not purport to make any finding that the area was now safe, but went on to find that it would be reasonable to expect the appellant to relocate from Baghdad (the place of return) to the Iraqi Kurdish Region (IKR). However, it is at least arguable that she failed to give sufficient consideration to the guidance given in AA(Iraq) relating to admissibility to the IKR when, on the face of it, there appeared to be no evidence to show that the appellant had any connections there. If the Judge arguably erred in that respect, then it is also arguable that she failed to give sufficient consideration to factors that might be relevant to a proper assessment of risk on return to Baghdad in accordance with the country guidance decision in BA(Iraq)
>
> 4. Permission to appeal is granted.

The hearing

5. (a) For the appellant Ms Irvine that told me that the Judge failed to apply the country guidance given in the cases of AA (Iraq CG) IJR [2017] UKUT 00119 (IAC) and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212. She took me straight to [61] of the decision and told me that it is there that the error lies. She told me that the Judge finds that the appellant is an Iraqi Kurd from Salah Al Din province; that Salah Al Din province is a contested area to which the appellant cannot be returned; that the appellant has lost his family and his only surviving relative is his uncle, who remains in a contested area; that the appellant has no other family contacts in either Baghdad or IKR, and that the appellant has no identity documentation.

(b) Ms Irvine relied on R (H)v the Secretary of State for the Home Department (application of AA (Iraq CG) IJR [2017] UKUT 00119 (IAC) and told me that the Judge's findings of fact are inadequate, and that the Judge had not correctly applied the country guidance.

(c) Ms Irvine told me that IKR is impoverished and struggling to cope with the number of IDPs who have flocked to the comparatively safe region. She told me that

the appellant's prospects of finding employment there are negligible. She then took me to the guidance given in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.

(d) The thrust of Ms Irvine's argument was that the country guidance given in AA (Iraq) 2017 indicates that the appellant cannot return to Salah Al Din because it has been judicially determined that there is internal armed conflict there, and that mere presence in Salah Al Din creates a need for article 15c protection. As the appellant is a Kurd he can enter IKR. He will be allowed to stay there legally for 20 days and then be allowed to remain if he finds employment; with the appellant's profile he has no chance of obtaining employment. If he remains in IKR, he will have to remain illegally.

(e) Ms Irvine told me that the respondent cannot return a man to a region where he will inevitably become an unemployed, illegal, resident. She told me that return will make the appellant a destitute IDP deprived of status in IKR. She told me that means that internal relocation is unduly harsh, the appellant is therefore entitled to humanitarian protection. By analogy there are very significant obstacles to reintegration.

(e) Ms Irvine urged me to allow the appellant's appeal and set the decision aside.

6. (a) For the respondent, Mr Govan urged me to dismiss the appellant's appeal. Mr Govan told me that the guidance given In AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 makes it clear that the appellant can go to IKR. He reminded me that the respondent accepts that the appellant is an Iraqi Kurd, and argued that the appellant can recover a CSID and safely relocate to IKR.

(b) Mr Govan told me that the respondent's report dated March 2017 indicates the level of violence in Iraq has dropped. He told me that the Judge had correctly taken guidance from relevant case law and that the Judge reached conclusions which were open to her on the facts as she found them to be. He told me that there is no real challenge to the credibility findings made by the Judge. He urged me to dismiss the appellant's appeal.

Analysis

7. The Judge found that that the appellant is an Iraqi Kurd from Salah Al Din province; that Salah Al Din province is a contested area to which the appellant cannot be returned; that the appellant has lost his family and his only surviving relative is his uncle, who remains in a contested area; that the appellant has no other family contacts in either Baghdad to IKR, and that the appellant has no identity documentation. It is not disputed that the appellant cannot speak Arabic. The permission to appeal notes that there is no challenge the Judge's credibility findings.

8. The Court of Appeal 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.*

9. 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).*

10. The Judge's decision was promulgated after AA(Iraq) [2017], but before AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 and K(H) v SSHD.

11. If the Judge had followed the country guidance in AA(Iraq) [2017], the facts as she found them to be should have lead her to conclude that the appellant cannot return to his home area. The Judge should then have considered internal relocation. Insofar as the Judge considers internal relocation at [61] of the decision, her reasoning there is inadequate. The Judge does not properly explain why she finds that internal relocation to IKR is a viable alternative. The Judge does not resolve the conflict between the facts as she found them to be and the guidance given at paragraph 15 of the annexe to AA(Iraq)[2017]. The guidance in AA (Iraq) [2017], when applied to the facts as the Judge found them to be, should have drawn the Judge to the conclusion that not one of the considerations in paragraph 15 of the annex to AA (Iraq) [2017] favour the appellant.

12. The decision promulgated on 25 August 2017 is tainted by a material error of law. I set it aside. I am able to substitute my own decision.

13. AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 amended the guidance given in AA (Iraq) [2017] insofar as it relates to Iraqi Kurds (ie the guidance relating to this appellant)

> *Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*
>
> 1. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
>
> 2. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
>
> 3. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
>
> 4. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
>
> 5. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*

6. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*

7. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*

8. *For those without the assistance of family in the IKR the accommodation options are limited:*

    (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

    (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

    (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

    (iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

9. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*

    (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

    (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

    (iii) P cannot work without a CSID;

> *(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
>
> *(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
>
> *(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.*

14. AAH was promulgated after the Judge's decision. That case does not amend the country guidance concerning internal armed conflict in Salah Al Din. AA(Iraq) [2017] tells me that there is internal armed conflict in Salah Al Din, which is the appellant's home area. The respondent argues that the violence there has diminished, but I am not persuaded that I should depart from country guidance. The appellant cannot return to a contested area.

15. AAH and the respondent's own country policy and information document dated March 2017 indicate that IKR is struggling to cope with an influx of refugees. The appellant is a young man of fighting age who comes from an area which had been dominated by ISIL The appellant does not have skills which would make him attractive to an employer, and has no connections within IKR. The appellant does not have a CSID. AAH tells me that he cannot board a plane in Baghdad and that travel overland will be dangerous and unduly harsh. The appellant does not have the assistance of family in IKR so that his accommodation options are "limited".

16. The background materials and caselaw tells me that the unemployment level amongst IDP's in IKR is 70%. There is no evidence placed before me to indicate that the appellant has education, skills, experience and attributes which would place him within the top 30% who obtain employment. It is therefore more the likely appellant will face unemployment. As an unemployed person who does not originate from IKR, his legal right to remain within IKR will expire 20 days after arrival.

17. It is most likely that the appellant will be returned to life as an unemployed, homeless, illegal resident. The inevitable illegality of his residence reduces the already slim chance of finding employment. The assisted voluntary return grant is nothing more than a short-term solution. When the money runs out, the appellant faces homelessness.

18. Within three weeks of return it is most likely that the appellant will be an unemployed, homeless, man with no legal right to remain in IKR. UNHCR say that the situation in IKR is a serious humanitarian crisis. It must be unduly harsh to expect the appellant to relocate from an area of internal armed conflict to a life of destitution as an illegal immigrant.

19. Relying on the background materials and the country guidance caselaw, I find that the appellant is entitled to humanitarian protection because there is no viable alternative option of internal relocation.

20. As I find that the appellant is entitled to humanitarian protection, by analogy I find that return will breach his article 3 ECHR rights. My analysis of the facts as the Judge found them to be tells me that (as the appellant is entitled to Humanitarian protection and as return would breach his article 3 rights) there are very significant obstacles to reintegration in Iraq. The appellant therefore meets the requirements of paragraph 276ADE(1)(vi) of the rules.

21. There is no challenge to the Judge's credibility findings. The Judge rejected the appellant's account of a fear of the Hashid Shabi group, and rejected his account of his father's involvement with the Ba'ath party. The appellant's asylum appeal cannot succeed.

Decision

The decision of the First-tier Tribunal promulgated on 25 August 2017 is tainted by material errors of law. I set it aside.

I substitute my own decision.

The appellant's asylum appeal is dismissed.

The appellant is entitled to Humanitarian Protection.

The appeal is allowed on article 3 & 8 ECHR grounds.

Signed Date 10 October 2018
Deputy Upper Tribunal Judge Doyle