



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03585/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 May 2019

Decision & Reasons Promulgated
On 01 July 2019

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

DYM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J McCallum, Latta & Co Solicitors (04/04/19 only)
Mr Caskie, instructed by Latta & Co Solicitors (24/05/19)
For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer (04/04/19)
Mr Mullen, Senior Home Office Presenting Officer (24/05/19)

DECISION AND REASONS

1. The appellant is a citizen of Iraq who appeals against the decision of the First-tier Tribunal promulgated on 8 August 2018, dismissing his appeal against the decision of the respondent to remove him to Iraq.
2. The appellant is, as the First-tier Tribunal found, an Iraqi Kurd from Mosul and his father was a member of Al-Fursan, a military regiment aligned to the Ba'ath Party

operating under the Saddam Hussein regime. The appellant's claim arises from the fact that he feared ISIS who overran Mosul, his home area, in 2014; and, because he is a Sunni Muslim, he fears the Shia militia.

3. The appellant fears that he cannot return to the Independent Kurdish Region ("IKR") because of his father's involvement with the Ba'ath Party. He also claims that as a young Sunni Muslim of Kurdish ethnicity, relocation to Baghdad is unduly harsh and that if returned there he faces destitution. The judge found the appellant to be credible finding at [12(g)] that the appellant was from a contested area; that the respondent had no intention of returning the appellant to Mosul but to Baghdad and that thus the issue was whether or not it would be unduly harsh for the appellant to relocate to Baghdad.
4. The judge then directed himself in line with AA (Iraq) [2017] finding in particular:-
 - (a) That the appellant has no family in Baghdad; that he is from a minority community but is fluent in Arabic; that he had previously lived in Baghdad when he worked for the Ministry of Foreign Affairs, has a CSID and had 27 million dinars in a bank.
5. The judge then went on to refer to the expert report from Dr R Fatah and Miss S Laizer [12(k)], concluding that the appellant's father's membership of Al-Fursan would not create a difficulty for the appellant either in attempting to enter the IKR or after entry [12(o)]. The judge also concluded, having directed himself in line with AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 that there would not be difficulties in the journey nor would internal relocation to the IKR would be unduly harsh noting the appellant's own evidence that he has special forces training, is an accountant, had worked in a bakery for four years before leaving Iraq and had skills and money and so did not face destitution [12(r)]. The judge then held this:-
 - “(s) The only conclusion I can realistically come to is that the appellant can safely return to Baghdad. If he does not want to stay there he can safely travel from Baghdad to IKR.”
6. The appellant sought permission to appeal on the grounds that the judge had erred:-
 - (a) in failing to have regard to the opinion of Miss S Laizer in which she opined that the appellant could not realistically relocate to IKR;
 - (b) that the judge had erred in making a finding that the appellant had been an accountant insisted it arose from a mistranslation which had previously been corrected or it was incorrect to say that he had previously worked in Baghdad without taking into account that he was employed and accommodated by the Ministry of Foreign Affairs on a shift pattern working two weeks on site and two weeks in Mosul and so was not residing and working independently in Baghdad; and, in concluding that he had at least one friend in Baghdad, the oral evidence being that he had had no contact with his friend or anyone else in Baghdad since he left in 2014;

- (c) that the judge had erred in concluding that the appellant had 27 million dinars in a bank account, the evidence in his statement being that he obtained some monthly payment in compensation for his mother's death before he left Iraq and had been told that if he were able to complete the process, he would receive 27 million dinars.
7. I heard submissions from both representatives.
8. It was accepted that if it were necessary to consider whether the appellant could relocate to the IKR, then the decision of the First-tier Tribunal was defective in that, despite referring to Miss Laizer's report, the judge had failed to engage with it when assessing the difficulties or otherwise of the appellant relocating to the IKR.
9. Ms O'Brien submitted that in reality the finding that the appellant would be safe in Baghdad was made out and that accordingly, any error with respect to the position in the IKR was not material.
10. There is, despite the respondent's submissions to the contrary, a significant difference between having 27 million dinars in a bank account and it being possible to recover that sum dependent on a number of contingencies. The judge clearly referred to the money being in the bank and thus available to him in terms of being able to support himself which is a major factor in assessing whether it is reasonable for somebody to relocate to Baghdad.
11. Further, the judge appears not to have taken into account the appellant's evidence which he otherwise believed that he had had no contact with a friend in Baghdad for by that point some four years.
12. There is less merit in the submission that the judge had made an incorrect finding with respect to the fact that the appellant had lived in Baghdad and had been accommodated there. Miss McCallum sought to persuade me that because he had been provided with accommodation by the Ministry of Foreign Affairs, this was not an indication that he would be able independently to obtain accommodation. There is little merit in that point. The issue is whether the appellant was familiar with Baghdad to the extent that he would be able to operate there. That includes contacts and it includes money.
13. I do, however, consider that there is an issue regarding the appellant's qualifications as an accountant as opposed to a baker. The point made in earlier evidence and which had been accepted is that he had no qualifications as a baker. The judge appears to have taken into account his skills as an accountant in assessing whether the appellant could reasonably be expected to relocate to Baghdad.
14. Whilst no one of these factors is of itself decisive, I considered that viewed cumulatively, these mistakes of fact are sufficient in the circumstances of limited reasoning with respect to the difficulties or otherwise of relocation to Baghdad, and thus that finding is unsafe. Given that the finding with respect to relocation to Baghdad is unsafe, it follows that the decision must be set aside because the findings

with respect to the safety of relocating to the IKR are, for the reasons set out above also unsafe.

15. I therefore set aside the decision. I did so on the basis that it was not necessary to hear further oral evidence from the appellant given that the facts appear to be established. I therefore adjourned the hearing, and gave directions that it be relisted to hear further submissions and to receive further evidence

Remaking the decision

16. I heard submissions from Mr Caskie and Mr Mullen. In addition, I had the Home Office bundle, and two bundles from the appellant, numbers 6 and 7 as well as a skeleton argument. The representatives agreed that the three bundles contained the entirety of the evidence upon which they wished to rely and that I would not have to read it.
17. There are three primary issues.
 - (a) whether the appellant is at risk in his home area, Mosul, and if so why;
 - (b) if he is at risk in Mosul whether it would be reasonable to expect him to relocate to either Baghdad or the IKR;
 - (c) if he is not at risk in his home area, whether he is able to reach it and/or whether there would be an Article 15(c) breach were he to have to relocate to Baghdad, or in Mosul, or in the IKR.

The Law

18. Given the history of this case it is necessary to consider in some detail Article 15 of the Qualification Directive which provides:

‘Serious harm consists of :

- (a)
- (b) torture or inhuman or degrading treatment or punishment of an application in the country of origin; or,
- (c) serious and individual threat to a civilian’s life of person by reason of indiscriminate violence in situations of international or internal armed conflict.’

19. Equally of note is what the Upper Tribunal held in AK (Afghanistan) at [227] to [229]:

“227. One of the issues we have to decide in revisiting the application of Article 15(c) in the context of present-day Afghanistan concerns internal relocation. Whilst confined to the Article 15(c) context, it is inevitable that what we say below will have implications for consideration of this issue in the context of Article 1A(2) of the Refugee Convention, Article 15(b) of the Qualification Directive and Article 3 ECHR; but it is not our task here to spell out what they are.

When analysing this issue, it is important to clarify that the respondent’s position as expressed in submissions before us must clearly be read in the context of the

concession that has been made in recent Home Office OGNs on Afghanistan, namely that whilst women with a male support network may be able to relocate internally "...it would be unreasonable to expect lone women and female heads of household to relocate internally" (February 2012 OGN, 3.10.8) and the Tribunal sees no basis for taking a different view. (Much the same position was taken by the ECtHR in the case of N v Sweden on the basis of a close consideration of major background sources.)

228. It is clear from the structure of Article 8 of the Qualification Directive that internal relocation is a necessary element which is relevant not just to establishing refugee eligibility (under Articles 2 and 9) but also to establishing subsidiary (humanitarian) protection eligibility under all three limbs of Article 15 – 15(a), (b) and 15(c). So far as concerns internal relocation being a necessary consideration for Article 15(c) purposes, it has been confirmed by the Court of Justice of the European Union (CJEU) ruling in Elgafaji that an Article 15(c) issue can arise not just in relation to the whole of a country but also part(s) of it: see para 43. If a civilian's home area or region is considered to be in a state of indiscriminate violence at above the Article 15(c) threshold, he will still not be able to establish eligibility for subsidiary (humanitarian) protection unless able to show *either* a continuing risk of serious harm (the Article 8(1) "safety" limb) *or* circumstances that would make it unreasonable for him to relocate to another area or region (the Article 8(1) "reasonableness" limb).

229. If the proposed place of relocation is one which is not significantly affected by armed conflict and/or indiscriminate violence, the established legal principles to be applied are clear."

20. In assessing this appeal, the starting point is the country guidance from AA v SSHD. It is well known and extensive; it is unnecessary to set it out in this decision. It is, however, necessary to set consider SG (Iraq) v SSHD [2012] EWCA Civ 940 at [46] to [47], [50] and [67]:

"46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.

47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so.

...

50. Lastly under this head, I refer to what Mr Ockleton, who has very considerable experience in this area, said in *Qader*:

"33. ... I do not derive any assistance from submissions about what Pill LJ may have thought or intended in granting permission in *HM*, or from speculation about what the outcome of the appeal to the Court of Appeal may be. There are many reasons why permission may be granted, one

(albeit only one) of which is to allow a higher court to give its approval to a process or decision that has been challenged. And it is not unknown for challenges in the Court of Appeal to country guidance decisions to be successful solely in relation to the specific appellant, leaving the guidance itself essentially unimpaired. No substantive conclusion can be drawn from the grant of permission; but nor on the other hand can it be assumed, as Mr Dunlop would have it, that the only issues to be considered by the Court will be related to the Tribunal's procedure.

34. The proposition that a decision endorsed as country guidance by the President of the Immigration and Asylum Chamber of the Upper Tribunal loses its force by being challenged, or even by permission to appeal it being granted, I regard as entirely unarguable. The Tribunal has reached a reasoned decision after a review of a mass of relevant evidence. That conclusion remains binding within the terms of the Practice Direction, unless or until it is overturned on appeal or replaced by other guidance. And even if that were not so, it remains in the highest degree relevant to the issues that a decision-maker (whether the Secretary of State, or a representative seeking to advise a claimant) needs to take into account. On many questions, there is no country guidance at all, but that does not prevent the Secretary of State taking decisions, including decisions rejecting fresh claims and imposing certification under s 94. A challenged country guidance decision cannot be worse than no guidance at all.

35. The country guidance system has been endorsed by Parliament in s 105 of the 2002 Act (as amended), and by the Court of Appeal, and appears to be regarded with the highest respect by the Courts in Strasbourg and Luxembourg. That is not to suggest that individual country guidance decisions are infallible, but it is a good reason for supposing that it would be undesirable to render it wholly ineffectual. But the claimant's submission would, if accepted, have that effect. Whenever a decision was under challenge nobody would be entitled to rely on it, however reliable it might otherwise appear to be, until the challenge was resolved and (if necessary) further guidance had been given – which might itself be subject to challenge. That cannot be right: it is both unnecessary and wasteful of resources."

I would endorse these remarks.

...

67. In my judgment a Country Guidance determination of the Upper Tribunal (Immigration and Asylum Chamber) remains authoritative unless and until it is set aside on appeal or replaced by a subsequent Country Guidance determination."

21. The respondent's case is that there has now been such changes to the situation in Mosul that the area is no longer such as would fall within the Article 15(c) area as before within the terms of Article 15(c) and that the information show is such that it is no longer necessary to follow the country guidance.
22. I accept that there have been significant changes to Mosul since the country guidance was handed down. ISIS is no longer in charge; that is not in dispute and indeed they

appear to have left the city on 14 July 2017. The respondent's position is set out in the CPIN Iraq: security and humanitarian situation, November 2018 is [2.3.32] that although there has been a consistent and significant decline in security incidents, and civilian fatalities and injuries.

23. The appellant's case is that the assertion that there is no longer an elevated level of indiscriminate violence anywhere in Iraq such that substantial grounds exist for believing that an applicant would, simply by being present there, faces a risk, is illusory.
24. Mr Caskie relied on the civilian fatalities in the six most affected governorates, a table at paragraph [8.6.1] of the same document showing that there is still a risk of civilian fatalities.
25. This data must also be viewed through the observation that the UN assistance by admission for Iraq produced the data and for which some months no data is available as follows (insert 8.6.1). but on any view, the graph shows that civilian casualties have decreased significantly in respect of Nineweh in which Mosul is located. They are well below the 100 and significantly lower than the peaks in September 2014 and between September 2016 and July 2017.
26. Mr Caskie sought also to pray in aid a voluminous set of documents set out at pages 243 to 980 of the bundle being news reports regarding Mosul from Iraqi news sources produced on a monthly basis. Whilst this evidence is clearly relevant in that it documents a large number of incidents in which civilians are killed, without any proper analysis as to the numbers involved, it is difficult to attach much weight to this material or indeed to draw any inferences as to the current situation. Many of the extracts related to arrests of Islamic state militants, of militants being killed but in reality. There is no attempt to tabulate this or to give any idea of the number of incidents per month. It is not the job of the Upper Tribunal to read through reports such as this and to tabulate the number of killings and other incidents. That is the job of the appellant's representatives. Accordingly, I conclude that I am not assisted by this material in determining the level of civilian casualties or other indicators to show that Article 15(c) still is relevant in Mosul.
27. UNHCR has produced a recent report, "International Protection Considerations with regards to people fleeing the Republic of Iraq" published in May 2019. UNHCR is the source which I find can be relied upon even if I do not necessarily agree with its conclusions which are in any event not binding.
28. The report records at page 23 as follows:-

"As of late summer 2017, following the end of the Mosul offensive, monthly casualty figures declined, a trend that continued throughout 2018 and 2019. At the time of writing, civilian casualties are reported to occur mostly in areas where ISIS maintains a presence. Based on statistics provided by UNAMI, Baghdad was the worst affected governorate in terms of total number of casualties in most months of 2018, largely as a result of regular small scale

attacks (shootings, IEDs and “sticky bombs”) and infrequent mass casualty incidents. In 2018, Baghdad (the most populous governorate of Iraq) was followed (or surpassed in some months), although not always in the same order, by Al-Anbar, Diyala, Ninewa, Kirkuk, Salah al-Din and the Babel governorates. Based on an analysis of the Iraq body count (IBC) casualty statistics for 2018, Ninewa governorate saw the highest civilian casualty rate i.e. the number of casualties per 100,000 inhabitants (46.5 casualties per 100,000 of population) followed by Kirkuk ...”

29. This last figure was gleamed from an EASO report, “Iraq security situation (supplement) – Iraq body count – civilian deaths 2012, 2017 to 2018”, published in February 2019. The EASO report sets out in a graph the number of deaths as well as incidents and the report further breaks down the overall figures for Ninewa into districts showing that Mosul had by far and away the greatest number of incidents and the second highest rate of killings per 100,000. Only Sinjar was higher on that level. The raw figures show 1,369 killed, and 183 incidents in 2018 compared to 8,407 and 532 for 2017.
30. Of note also is the observation from UNHCR that there are obstacles for return including destroyed or damaged housing, unresolved housing land and property disputes, as well as continued insecurity in areas of origin.
31. It appears also that there are significant UN rights violations in respect of the arbitrary arrest, detention, abduction, disappearance and torture as well as extrajudicial killings of mostly Sunni Arab men perceived to have been affiliated with ISIS. The UNHCR report notes at page 32, footnote 191 that after liberation of Mosul many IS members were captured and released after paying bribes.
32. Mr Caskie submitted also relying on what is said in the UNHCR report at footnote 381:

“... in this context lists of ISIS suspects grew to include approximately 100,000 names including people suspected of involvement with ISIS in any capacity some even being killed because suspicion including some who are under suspicion because of family members’ involvement. There is significant evidence here that a prescription of guilt is made against an entire family up to the fourth degree. This is, however, evidence of a risk of persecution per se.”
33. I accept that this does indicate a degree of instability engendering no doubt a climate of fear given the risk to a significant number of people, the implication that people are detained and held for the extraction of bribes rather than any proper investigation. It is almost as though having removed ISIS, the Iraqi state has allowed another form of arbitrary rule to take its place.
34. The overall conclusion of UNHCR at page 1 to 8 of the report is that there should be no forcible returns of people who originate from areas previously controlled by ISIS or with a continued ISIS presence. Of note also is the observation at page 114 to 115

dealing with eligibility for subsidiary protection under the Qualification Directive that:

“Iraqis and former habitual residents of Iraq who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Iraq.⁷⁰⁸ In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death penalty or execution;⁷⁰⁹ or torture or inhuman or degrading treatment or punishment),⁷¹⁰ either at the hands of the State or its agents, or at the hands of non-state agents.⁷¹¹ Equally, in light of the fact that Iraq continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Considerations, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence [my underling]. In the context of the armed conflict in Iraq, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Iraq, relevant factors in this respect are (i) the continued presence of ISIS in areas outside of urban centres, where effective government control has not been established following the retaking of these areas from ISIS and the latter’s ability to threaten, intimidate, extort, kidnap and kill civilians and restrict their freedom of movement; (ii) the high level of fragmentation of security actors, the prevalence of corruption and the ability of security actors to commit human rights violations with impunity; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty, the destruction of homes, livelihoods and the loss of assets; and (iv) constraints on women’s participation in public life. These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part of Iraq that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm.⁷¹² [my underlining] Where, after all relevant evidence has been considered, this is found not to be the case in the part of Iraq from which the applicant originates, it falls to be considered whether the applicant’s individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and

the extent of the violence, give rise to a serious and individual threat to the applicant's life or person."

35. I note from the material that many people have returned to Ninewa mostly to the Mosul area as indicated by the Home Office. The evidence of this is, however, conflicting given that the respondent relies on material from IOM pages 127 and 128 of the report but 129 from OCHA. Further, it is evident from the respondent's report at 8.1.2 that there is conflict still continuing in the Mosul area albeit outside of population centres.
36. Taking all of this into account and bearing in mind that the situation has changed for the better with the removal of ISIS, there is still evidence of continuing violence and significant instability. Looking at the evidence in the round, I consider that there is insufficient evidence before me that at this stage I could decline to follow the country guidance accordingly, with respect to the Article 15(c) risk at least in Mosul and surrounding area. If I were considering another area, my decision may have been different. Further, and in any event, I bear in mind that the appellant is not a Shia, but a Sunni. There is some evidence that they are at greater risk, albeit that much of that evidence relates to Arabs rather than Kurds.
37. As I am satisfied that the appellant faces an article 15 (c) risk in his home area, I go on to consider whether the appellants would be at risk in Baghdad.
38. The principal objection raised by Mr Caskie as to why the appellant could not return to Baghdad is that he would simply not be allowed in. This is based on a section of the most recent CPIN on the issue, which indicates that there are restrictions on the ability of Internally Displaced people relocating to areas. One specific reference to Baghdad, at [8.2.3], has as its source, a report from Human Rights Watch entitled "Iraq: curbs put war as displaced at risk". This report, when considered in detail, shows that there are restrictions placed on people trying to enter specific areas so that displaced people can only enter Baghdad if they can present a local resident as a guarantor or a sponsor at entry checkpoints.
39. Internally displaced people are, however, not defined in any of the documents to which I have been taken to not a term of art. Mr Caskie did not take me to any definition nor has he taken me to any passage which identified that the appellant would be treated as an IDP as opposed to a returnee from abroad. That said there does appear to be difficulties at checkpoints the source for paragraph 8.3.1 is a publication from the Internal Displaced Monitoring Centre, IDMC: "Nowhere. to return to: Iraqi's search for durable solutions continues" published November 2018. The report does, however, contain at page 24 a section entitled "returns from Europe" but this says little about the difficulties that such people may face in terms of documentation or relocating.
40. What is said at page 30 of the report is illuminating: -

"For those who do wish to return, freedom of movement restrictions can be significant barriers. The rules that govern moving into a new city in another

part of the country or even in the same governorate are opaque. IDPs are requested to present documents, some of which are relatively impossible to obtain in that return to their areas of origin. One ...participant in Hamam Ali Alili saying "We are from Saladin. Our documents are missing. If we return they will keep us in we will not be able to leave without our papers.

Movement restrictions appear to be unequally imposed dependent on IDPs' ethnic and religious identity. Sunni IDPs are particularly affected. Akram who currently lives in Hamam Ali Alili tried to return to Zumar but was prevented from doing so by Kurdish forces. ... many Sunnis returning from Syria had been blocked from entering areas under Kurdish control because of their perceived affiliation with ISIL. Others have returned to destroyed villages with allegations that the destruction of villages was caused either as a retaliation or to limit returns."

41. I turn now to the guidance set out in AA (Iraq) as amended by AAH (Iraq).

"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)."*

42. The starting point here is that it will not in general be unduly harsh to expect the appellant and his family to go to Baghdad. Here, point 15 (a) is met. The appellant had obtained work in Baghdad before, albeit that this was some years ago. It is also clear that the appellant can speak Arabic; that is evident from what he said in his

Screening interview and from his response thereto in which he said that he is more comfortable speaking Arabic than Kurdish.

43. I am satisfied that he does not have family in Baghdad, and that he has lost contact with the friend whom he did have there. It is less clear that he could find a sponsor, and I accept it is now some years since he went to Baghdad in 2014, fleeing ISIS. He did on that occasion stay with a friend, but I accept that he has lost contact with him.
44. The appellant did work previously in the Green Zone in Baghdad, but he did so on a basis of 15 days on duty, 15 days off spent in Mosul, and spent his time while on duty in accommodation provided for the job. That was a very different existence from having to find accommodation and a means of support by himself.
45. Given that the appellant spent a relatively short time living in Baghdad proper (as opposed to living in the Green Zone), I conclude that it would be difficult for him now, as a member of a minority, being both Kurdish and Sunni, to find either accommodation or employment.
46. I turn next to the report of Dr Fatah from 11 May 2017. I am satisfied that Dr Fatah, whose expertise has been recognised in several Country Guidance cases, is an expert on whom I can rely; no submissions to the contrary were made.
47. In his report at section 7.1, Dr Fatah opined that the appellant may be at greater risk given that his documentation will show him as coming from Mosul, and, as a Sunni, he may well be identified as coming from there. I consider that risk factor is unlikely to have diminished since the retaking of Mosul; on the contrary, there are indicators that Sunnis from Mosul are likely to be viewed with even greater suspicion.
48. I am not, however, persuaded that the appellant would face difficulties as an IDP. He has not satisfied me that he would be seen as an IDP as opposed to a returnee from abroad. They are distinct categories and the material provided treats them so, as does the guidance at [15 (g)].
49. Taking all of these factors into account, I conclude that on the basis of the evidence before me, the appellant could not reasonably be expected to relocate to Baghdad; it would be unduly harsh for him in consequence.
50. Turning finally to the possibility of relocation to the IKR, the starting point must be the Country Guidance:

“E. IRAQI KURDISH REGION

17. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

18. 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.

19. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

51. As a starting point, it is notable, as Mr Caskie sets out in his skeleton argument, that the statistics set out in the Humanitarian Assistance reports show a significant increase in the population of the IKR over a period of two years. I accept that is so, and that this must be due in the main to a mass influx of IDPs, even allowing for possible problems as to the accuracy of data produced in the conditions prevalent in Iraq. At [6.3.1] of the County Policy Information Note: security and humanitarian policy, November 2018 it is stated that “Needs are also concentrated in Dahuk, Erbil and Sulaymaniyah governorates in Iraq’s Kurdistan Region, which together host 30 per cent of all displaced people in Iraq and 226,000 refugees from Syria.”

52. It is evident from the November 2018 report that significant numbers of IDPs live in the most vulnerable conditions and face an employment market with very high levels of unemployment. At [6.11.5] it is stated that:

‘The 2018 OCHR Humanitarian Response Plan explained the situation in the KRI: ‘Pressures on local services, including schools, water and sanitation, solid waste management, health facilities and competition for jobs have increased each year, contributing to a sharp decline in living standards across the three governorates. Conditions worsened in the aftermath of the Kurdish referendum in late September [2017] when international flights to the airports in Erbil and Sulaymaniyah were suspended, impacting economic activity and commerce. In mid-October [2017], as security forces realigned in Kirkuk and a number of disputed districts, more than 180,000 people fled their homes, the majority seeking safety and support in Erbil and Sulaymaniyah.’

53. It is perhaps inevitable that the pressure put on ethnic Kurds in Kirkuk led to them fleeing to the IKR.
54. Dr Fatah's report at section 7.3 indicates that this would be difficult due to the appellant having identity documents showing him to be from Mosul, and as he does not speak Sorani Kurdish. It is also observed that Kurds from the Bahdini area, such as the appellant, "usually have a tough time integrating into Sorani regions. Dr Fatah also observes that the appellant would be removed from his kinship network which would make it difficult for him to access employment, housing and social acceptance [207].
55. Returning then to the guidance, given that the appellant has a CSID, I am not satisfied the he would not be able to fly to the IKR or that he would not be permitted to enter. Nor am I satisfied, given his recent removal from the United Kingdom that he is at risk from the screening process. That said, he is from Mosul, he is a Sunni and of fighting age, but I am not satisfied that would put him at risk.
56. I am satisfied that the appellant does not have family in the IKR, and thus it is necessary to focus on paragraph [24] and [25] of the guidance. The appellant is a single man, has a CSID, and has some skills. He also speaks Arabic, but against that he has not ties or connections to the IKR which, as Dr Fatah states, will make life difficult for him. He also, as his documents show, comes from an area recently a centre of ISIL/ISIS activity. He will also, I accept, be returning with a package of aid.
57. In the light of this, and all the evidence considered in the round, I consider it is unlikely that the applicant will be able to live in an IDP or other camp. He will be reduced, absent a family member, to staying in a rented flat which is not a durable prospect, as this would rapidly exhaust his funds, given that, for the reasons set out below, I consider he could not obtain employment. He is likely, therefore, to fall into the category of persons described at [24 (iii)]. As to employment, although he has a CSID, he has none of the other connections that would assist him; and, as noted at [56] above, he faces the difficulty of originating from an ISIL/ISIS hotbed.
58. Accordingly, for these reasons, I consider that it would be unduly harsh to expect the appellant to relocate either to Baghdad or the IKR. It therefor follows, in the light of the finding that he is at risk in his home area such that it would be contrary to article 15(c) , I find that he is entitled to humanitarian protection and I allow the appeal on that basis.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by allowing it on humanitarian protection grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 25 June 2019

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul