



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: AA/00848/2015**

**THE IMMIGRATION ACTS**

**Heard at: Birmingham  
on 4 February 2016**

**Decision and Reasons Promulgated  
On 3 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**NI**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Ms O.E. Duru, Jemek Solicitors**

**For the Respondent: Mr D. Mills, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The appellant is a national of Iraq, born on 1 July 1973. His appeal against the decisions of the respondent to refuse his application for asylum and to remove him from the UK was dismissed by the First-tier Tribunal in a decision promulgated on 5 August 2015.
2. The Judge accepted that the appellant was an Iraqi citizen of Kurdish ethnicity who originally came from the Kurdish Autonomous Area. He did not however accept the core of his account that he has a genuine and well founded fear of persecution in Iraq. His reasons for those findings are set out from paragraphs [51] onwards.

3. The Judge found that if the appellant were returned to his home in the Kurdish Autonomous Area, there would be no real risk that he would be persecuted by the KRG. There is no risk that he would be targeted by members of ISIS or any other Islamist armed group [62]. Even if he were to be targeted by such groups, the Judge was satisfied that the KRG is able and willing to provide him with a sufficiency of protection within his home area of KAA [62]. The Judge then noted that the appellant has always claimed to be from Makhmur, "in the Nineveh province." [63] He referred to country information and guidance dated 24 December 2014.
4. In the light of the evidence, and more recent evidence, that indicates that Makhmur and the Nineveh province is now again under the control of the KRG, he concluded that the appellant had not established that he would not be able to return directly or indirectly to the KAA by obtaining the necessary documents in London, Sulaymaniyah or Baghdad. Moreover, the KRG are willing and able to provide him with a sufficiency of protection within his home area in the KAA [64-65].
5. On 22 October 2015, Upper Tribunal Judge Finch granted the appellant permission to appeal. She found that the Judge misdirected himself insofar as he found that Mukhmur is in the KAA, when in fact it is in Nineveh, a contested area. This is likely to have an adverse effect on his findings on entitlement to humanitarian protection and risk on return in the light of the decision in AA (Article 15(c) Iraq) CG [2015] UKUT 00544.
6. At the outset, Mr Mills submitted that in granting permission Judge Finch had made a factual error in stating that Mukhmur is in Nineveh, a contested area.
7. One of the documents before the Tribunal had been a Human Rights Watch report dated February 25, 2015, where it is stated at page 4 that HRW documented the apparently discriminatory acts in communities in Sheikhan and Tilkif Districts and Zumar Sub District, all in Nineveh Province, "and Makhmur District in Erbil Province..." Those areas had been visited in December and January 2015. They are part of the so called disputed territories that both the regional government and Iraq's central government in Baghdad claim.
8. With the exception of Sheikhan, the districts had been under the central Iraqi government's authority until ISIS captured portions of them in mid 2014. Many of the residents fled before ISIS captured their areas. Others stayed put because the fighting did not reach their towns.
9. Backed by US air strikes, Kurdish forces wrested several communities in or near the districts from ISIS between August and October. Other parts of the districts remain under ISIS control. Sporadic fighting has continued between ISIS and Peshmerga forces.
10. Mr Mills produced without opposition a UN map created on 9 August 2014, regarding the "Iraq Erbil Governorate, Makhmur Districts." In that map, Makhmur is shown to be within the Erbil Governorate.

11. In the north western section of the map, the Nineveh Governorate is shown. The boundary between these two Governorate is shown. Accordingly, Makhmur is in a Kurdish area.
12. He referred to the headnote in AA, *supra*. With regard to the Iraqi Kurdish Region – IKR - the Tribunal found that the respondent will only return a person to the IKR if that person originates from there and his identity has been “pre-cleared” with the IKR authorities. The authorities in the IKR do not require the person to have an expired or current passport, or Laissez Passer. At [18] it is provided that the IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.
13. At [19] the Tribunal held that a Kurd who does not originate from the IKR can obtain entry for ten days as a visitor and then renew this entry permission for a further ten days. There is no evidence that the IKR authorities pro actively remove Kurds from the IKR whose permits have come to an end.
14. The Tribunal found that there is at present a state of internal armed conflict in certain parts of Iraq. The intensity of this armed conflict in the so called “contested areas”, compromising the governorates of Ambar, Diyala, Krikuk, 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 within Article 15(c) of the Qualification Directive.
15. Mr Mills accordingly contended that both the Human Rights Watch report and the United Nations map produced showed that Makhmur is in the Erbil Governorate and not the Ninewah Governorate.
16. Mr Mills noted that the human rights report was handed up to the First-tier Tribunal at the hearing. At [64] the Judge noted that Makhmur and the Nineveh province is now again under the control of the KRG.
17. Mr Mills also relied on a report (Press TV) dated 22 December 2014 headed “Kurds re take control of Gwer, Makhmur, from ISIL.” It is stated that the Kurdish fighters recaptured two towns in northern Iraq from ISIS militants. Peshmerga forces had managed to drive Takfiri terrorists out of Gwer and Makhmur in Nineveh province. Those areas had been liberated from ISIL's grip, with the Iranian forces and Iraqi army playing significant roles.
18. On behalf of the appellant, Ms Duru submitted that the map produced was created in August 2014. That showed the position at that date. The map from the UN was not updated. She submitted that Mukhmur is part of Nineveh. That appears to be confirmed by the Press TV report itself.
19. Ms Duru stood the matter down in order to produce a later UN map. She later presented a map which noted that the boundaries and names shown and the designations used on this map did not imply official endorsement or acceptance by the United Nations. The subject areas by province referred to Ninewa and contained

six areas. There is then a further province stated to be “Ninewa-Erbil” where Makhmur is situated.

20. On the map Ms Duru produced, Makhmur is shown to be close to the Erbil border. She submitted that there is some dispute as to whether Makhmur is in Nineveh or Erbil.
21. In reply, Mr Mills submitted that as at the date of hearing, the UN map showed that Makhmur is in Erbil. The dispute related to who has control over the area. On the one hand, the Kurds assert that they should and on the other hand, Baghdad claims it is no longer in Kurdistan. If Makhmur is in Kurdistan, the appellant would not be refused permission to enter and he would not be made to go back. They have de facto control. He would fly directly to Erbil.
22. As claimed by the appellant, he originates from the IKR. He will accordingly be returned to the IKR as he has originated from there. His identity will have been “pre cleared” with the IKR – AA, supra, headnote paragraph 17.

### **Assessment**

23. The question for the First-tier Tribunal Judge was whether Makhmur was a safe area as at the date of the hearing. The country guidance case was published several months after the date of the hearing before the First-tier Tribunal.
24. The effect of AA, supra, is that if a person is from an area controlled by the Kurdish government in Erbil, a person can be returned. He need not go to Baghdad or other contested areas. There is a difference noted between a disputed and a contested area. Makhmur is a disputed area. Only if Makhmur is a contested area is there a need to consider paragraphs 19-20 of the country guidance in AA. That refers, inter alios, to a Kurd who does not originate from the IKR.
25. Since 2014, the evidence indicated that ISIS had been expelled by the Peshmerga. It has been under the control of the Erbil Governorate. The United Nations map reflects this in 2014.
26. There is no date on the map produced by Ms Duru at the hearing. There was the Human Rights Watch report that was before the First-tier Tribunal. It is evident that the Kurds have expanded the borders and are in fact not allowing Arabs back into the area.
27. In AA there were three areas identified. There is no risk in a Kurdish controlled area for this appellant. As a Kurd who originates from the IKR, the appellant can be safely returned to Erbil.
28. As already noted, the First-tier Tribunal Judge did not accept that the appellant was ever targeted by the KRG. Moreover, he did not accept that as a Kurd, he would be suspected of willingly helping ISIS or that he could not have gone to the KRG authorities to report that matter or that the authorities would not believe his account [53].

29. The Judge examined the purported arrest warrant issued by the KRG in August 2015 and found, having considered the evidence in the round, did not accept that the appellant is able to demonstrate that the document is genuine and reliable. He did not accept that the KRG would have an adverse interest in the appellant [55].
30. Having regard to those findings, as well as the appellant's claim that he was from Makhmur, the finding that the appellant had not established that he would not be able to return directly or indirectly to the KAA is sustainable. In particular the Country Guidance case which was published after the First-tier Tribunal Judge promulgated his decision, confirmed that he would only be returned to the IKR if he originated from the IKR. That had been the appellant's claim.
31. In the result, the First-tier Tribunal stated that the appellant would not be at risk if returned to the Iraqi Kurdish region. He originates from there and his identity would have to be "pre cleared" with the IKR authorities. He would not be required to have an expired or current passport, or Laissez Passer.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date 24/2/2016

Deputy Upper Tribunal Judge Mailer