



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/08319/2015

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 14 March 2016  
Prepared on 24 March 2016**

**Determination Promulgated  
On 19 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**[F F]  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr Cole, Solicitor of Parker Rhodes Hickmotts Solicitors  
For the Respondent: Mr Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant entered the United Kingdom illegally and claimed asylum on 8 December 2014. That application was refused on 27 April 2015, and a decision to remove him was made in consequence.
2. The Appellant's appeal to the Tribunal against those immigration decisions was heard on 22 October 2015, and it was dismissed on asylum grounds, but allowed on both human rights and humanitarian

protection grounds by decision of Judge Gribble, promulgated on 9 November 2015.

3. The Respondent's application to the First Tier Tribunal for permission to appeal argued that the Judge had failed to correctly apply the guidance contained in the country guidance decision of AA (Article 15(c)) Iraq CG [2015] UKUT 544. That application was granted by Judge Adio on 25 November 2015.
4. The Appellant has filed no Rule 24 Notice.
5. Thus the matter comes before me.

#### Error of Law?

6. It is plain, and Mr Cole does not seek to suggest otherwise, that the Judge made a material error of law in her decision to allow the appeal on both humanitarian protection and human rights grounds. He accepts that he read paragraph 30 of the decision as dismissing the Article 3 claim, and invites me to set the decision upon the Article 3 claim aside and remake it so that this ground of appeal is dismissed because no Article 8 appeal was advanced below. Mr Kingham consented to that course.
7. The focus of the hearing then fell upon whether, in the light of the findings of fact that she had made, the Judge had correctly applied the guidance to be found in AA when considering the Article 15c claim.
8. The relevant findings were that;
  - i) the Appellant originated from Jalawla in Iraq, and not from the KRG
  - ii) The Appellant is ethnically Kurdish
  - iii) The Appellant speaks only a very little Arabic, his language is Kurdish Sorani
  - iv) The Appellant has been issued with a CSID by the Iraqi authorities, but he left that document in Iraq when he fled
  - v) The Appellant does not have an INC or a birth certificate in his possession
  - vi) The Appellant has never been issued with a passport by the Iraqi authorities
  - vii) The Appellant left his mother and sister behind in the family home when he fled Iraq, but he does not now know where they are
  - viii) The Appellant's elder brother lives in the UK, having left Iraq in 2002

- ix) The Appellant would as a result face a return to Baghdad airport, rather than any attempted return to the KRG
  - x) The Appellant could not travel from Baghdad airport to Jalawla in safety
  - xi) The Appellant does not have a family member or a proxy who can go to Jalawla and obtain the issue of a CSID from the authorities in that town
  - xii) The Appellant will not be returned to Iraq without possession of a current, or an expired passport - which he does not have and has never had
  - xiii) Dr Fatah's evidence (which the Judge accepted) was that without a birth certificate, a CSID or an INC to prove his identity and nationality, and without the support of family members in Iraq able to access such documentation from within Iraq, the Appellant would not be able to obtain either travel documents or identification documents from the Iraqi Embassy in the UK.
9. In the light of those findings of fact the Judge concluded that the Appellant's removal to Iraq was not feasible [35]. She went on to consider in the alternative, what the Appellant's position would be if his return was feasible, and concluded that if he were unable to obtain a CSID within a reasonable period of time, and had no family member capable of supporting him, that he faced a real risk of destitution. She concluded that he had no realistic prospect of obtaining a CSID, that he was not a fluent Arabic speaker, and that since neither he nor family members originated from Baghdad he was at the vulnerable end of the scale despite the fact that he was a healthy male.
10. Mr Kingham advanced two arguments. First, having found that return was not feasible the Judge ought to have simply dismissed the appeal on humanitarian protection grounds, because she could only go on to consider that ground if return was feasible. Second, if the Judge was considering the position in the alternative on the assumption that the Appellant's return was feasible, and thus considering the risk of harm in the event of that return, she was then obliged to consider the ability of the Appellant to relocate in safety to the KRG, by way of flight from Baghdad airport, which she had not done.
11. Mr Cole pointed to the fact that even if a laissez passer were to be issued to the Appellant (which would not of course happen on the Judge's findings) then he would not be able to use it to travel internally within Iraq. Such a document would not for example allow an individual to board a flight to the KRG upon arrival at Baghdad airport, even if they managed to retain that document in their possession upon arrival and did not have to surrender it to Iraqi immigration officers. Thus the guidance in AA was clear; on the facts as the Judge had found them to be, the Appellant would not in

practice be able to travel from Baghdad to the KRG since he would have no means of boarding a flight there.

### Conclusion

12. It is in my judgement perfectly clear from the terms of her decision that the Judge was satisfied that the Appellant's return to Iraq was not feasible. The Respondent does not seek to suggest that there was any error of law in the reasoning that led to that finding.
13. Equally it is perfectly clear from the guidance to be found in AA that Jalawla lay in the contested areas, where as the Respondent conceded, the situation was such as a result of the tactics deployed by ISIS that a civilian, simply by virtue of their presence in that area, would be at a real risk of harm of the type identified in Article 15c. There is no suggestion before me that the Judge should have reached any other conclusion.
14. In line with the guidance to be found in both AA and HF (Iraq) [2013] EWCA Civ 1276, the finding that return to Iraq was not feasible meant that the Appellant could not succeed in a humanitarian protection claim that was based upon a risk of harm arising from an absence of identity documents. That was the basis upon which this humanitarian protection claim was advanced, it being argued that the Appellant could not get to his home area of Jalawla in safety, or live there, because of the indiscriminate violence prevalent in that area, and could not reasonably be expected to relocate either to Baghdad or elsewhere without a CSID and family support, because he would be unable to find food or shelter whilst he looked for employment to support himself, which he would not in any event be likely to find.

### The decisions remade

15. In the circumstances I set aside both the decisions on the asylum and the humanitarian protection appeals and remake those decisions in the light of the preserved adverse credibility findings.

### DECISION

The Decision of the First Tier Tribunal which was promulgated on 9 November 2015 contains an error of law in the decision to allow the Appellant's appeal on humanitarian protection grounds and human rights grounds which require that decision to be set aside and remake so that the appeal on those grounds is dismissed. There is no error of law in the decision to dismiss the Appellant's appeal on asylum grounds and that decision is confirmed.

I remake the decision so as to dismiss the appeal on all grounds.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 24 March 2016

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed  
Deputy Upper Tribunal Judge JM Holmes

Dated 24 March 2016