IAC-UT

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08334/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 February 2016	**On 18 March 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

REKAN SHWAN KAKARASH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer.
For the Respondent: Ms G Capel, counsel.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge John Jones QC) allowing an appeal by the applicant against a decision made on 11 May 2015 refusing to grant him asylum. In this decision I will refer to the parties as they were before the

First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. The appellant is a citizen of Iraq born on 18 April 1997. He arrived in the UK on 10 November 2014 and claimed asylum on arrival. His application was refused for the reasons set out in the decision letter of 11 May 2015. The respondent accepted that the appellant was a Kurdish Iraqi citizen whose village had been attacked by ISIS and that there was a generalised risk from ISIS in his home area. However, it was the respondent's view that the appellant could relocate in safety in Iraqi Kurdistan. The judge noted as a preliminary matter that the respondent confirmed that she proposed to remove the appellant to the autonomous Iraqi Kurdish region ("IKR") rather than to Baghdad [13]. In her submissions Ms Capel confirmed that as the appellant was no longer a minor, she was not pursuing the appeal under the refugee convention but on humanitarian protection and human rights grounds [55]-[56].

3. The judge set out the common ground between the parties at [71]. The appellant could not return to his home village and there was an insufficiency of protection from ISIS there. He could be returned to the IKR which was virtually violence free and as he was from the Kurdish region of Iraq, he would be able to return to the IKR and could internally relocate there. The issue between the parties was whether it would be reasonable to expect him to relocate there or whether it would be unduly harsh to expect him to do so.

4. The judge accepted the submission that it would be unduly harsh for the appellant for the reasons set out at [74]. He took into account the appellant's youth, his very low prospects of securing employment, the fact that he would not be eligible to receive any benefits in the IKR, he would not have available to him the assistance of family and friends and he would not be eligible for financial assistance simply by virtue of having an identity card.

5. The judge summarised his findings at [75] as follows:

> "At paragraph 11 of AA, the Tribunal referred to a person who was both unable to access financial assistance and who was without family or other means of support, as being likely "to face a real risk of destitution amounting to serious harm". I consider that this applies too to the appellant. I find that he does not have any family or support network in Iraq that he can access, his family having dispersed and being untraceable, will not be eligible for financial benefits in the IKR, and will be very unlikely to find a job. He will then be facing a real risk of destitution. I consider that this meets, indeed surpasses, the threshold whereby it would be "unduly harsh" for him to relocate within the IKR."

6. The judge found that the appeal succeeded in terms of the grant of humanitarian protection in accordance with article 15(c) of the Qualification Directive and article 3 of the ECHR. He commented that in these circumstances it was not necessary to consider article 8 but, had he been required to do so, he would have found applying para 276 ADE(1)(vi) that there would be "very significant obstacles to the appellant's integration" into the IKR.

The Grounds of Appeal and Submissions

7. In the grounds it is argued that the country guidance case of AA (Article 15 (c) Iraq CG [2015] UKUT 44 incorporates a conclusion of internal relocation/removal to IKR and Baghdad. On that basis it was a necessary requirement in order to determine the appellant's claim lawfully for the judge to consider internal relocation to Baghdad and he had failed to do so. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge had made an error of law by not considering whether the appellant could relocate to Baghdad following the guidance given in the current country guidance cases.

8. Mr Kotas accepted that no specific internal relocation submission had been made in relation to Baghdad but nonetheless there had been no concession that the appellant could not be returned there. The judge should have considered not only the IKR but also Baghdad.

9. Ms Capel relied on her rule 24 response of 2 February 2016 arguing that AA did not require the consideration of whether Iraqi Kurds from the IKR, who could not reasonably locate there, should have to travel to and relocate in Baghdad. Further, the respondent had not previously argued that the appellant could internally relocate in Baghdad, the argument being raised for the first time in the respondent's grounds of appeal and no submissions being made at the hearing about whether it would be reasonable for the appellant to return there.

Assessment of Whether there is an Error of Law

10. I must consider whether the First-tier Tribunal erred in law such that its decision should be set aside. I am not satisfied that it did so err for the following reasons. The respondent's case as it was presented at the appeal (and reflecting the decision letter) was that the intention was to remove the appellant to the IKR [13]. It is clear from the judge's decision that no issue was raised at the hearing about returning the appellant to Baghdad. I was referred to the judgment of the Court of Appeal in Daoud v Secretary of State [2005] EWCA Civ 755 and in particular to [12] where Sedley LJ said in respect of internal relocation that it was a serious and frequently problematical issue, requiring proper notice, proper evidence and proper argument.

11. As the issue of relocation to Baghdad was not raised in the decision letter or at the hearing before the judge, it was too late for it to be raised in the grounds of appeal. None of the requirements identified by Sedley LJ in Daoud were met. In any event, the reasons given by the judge's finding that it would be unduly harsh for the appellant to relocate in the IKR may well equally apply in Baghdad. However, this can only be speculation. The fact remains that the position in Baghdad was not considered at the hearing as the issue was not raised or argued before the judge.

Decision

12. The First-tier Tribunal did not err in law and its decision to allow the appeal on humanitarian protection and article 3 grounds stands.

Signed H J E Latter

H J E Latter Date: 1 March 2016
Deputy Upper Tribunal Judge