Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA035752016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On 22nd June 2017	**On 26th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

ZM
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Worthington, Solicitor
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge Hindson, promulgated on the 8th December 2016, in which he dismissed the appellant's international protection claim.

2. The appellant is a citizen of Iraq who was born on the [ ] 1996. His claim was (and no doubt still is) that he is at risk of being killed by both the Peshmerga and a Shiite group known as 'Hashad Al Shabi' because they each wrongly believe him to be a supporter of ISIS. Judge Hindson rejected that claim and this is not challenged in this appeal.

3. Judge Hindson nevertheless went on to consider whether the appellant would be at risk of harm by reason of internal armed conflict within the appellant's home area. However, he concluded that matters had "undoubtedly progressed" since Kirkuk was found to be a contested area in the decision of **AA (Article 15(c)) Iraq CG** [2015] UKUT 0544 (IAC) and that it was "now under the well-established control of the Peshmerga". He accordingly found it reasonable for him to return there.

4. Upper Tribunal Pitt considered it arguable that the judge had not applied **AA** "correctly to the facts as found" and granted permission to appeal "on all grounds". In fact there are only two grounds of appeal. Those grounds are that, (i) the judge had wrongly assumed that the feasibility of return to Iraq was determinative of the appeal, and (ii) given that the Tribunal in **AA** had found Kirkuk to be a contested area, it was not open to the judge to find to the contrary without specific evidence to support that finding. I take the grounds in turn.

5. At paragraph 21 of his decision, Judge Hindson said as follows –

> "It is not in issue that it is not feasible to return the appellant to Iraq. On my understanding of the current CG case of AA, it must follow that the appellant cannot succeed in his appeal as there is no risk of him being returned."

However, Judge Hindson's understanding of the (admittedly somewhat Delphic) reasoning in **AA** was incorrect. The true position is as stated by the appellant's representative in ground 1 of the application for permission to appeal –

> "**AA Iraq** simply says that an asylum seeker cannot rely on a risk of serious harm flowing from a lack of documentation, not that his appeal must fail in these circumstances."

Put another way; given that it is the very absence of appropriate documentation that stands in the way of a person returning to Iraq, such absence cannot also be prayed in aid as a factor relevant to the risk on return. The judge was therefore in error insofar as he purported to dismiss the appeal solely upon the ground that the appellant lacked the appropriate documentation necessary for his return to Iraq. However, that error may not be fatal to the decision if his alternative findings are sustainable.

6. As I previously observed, there is no challenge to the first of the judge's alternative findings of fact; namely, that the appellant's claim to be at risk by reason of his perceived support for ISIS is not credible. I therefore pass on immediately to consider the judge's assessment of what has come to be known as 'the Article 15(c) risk'.

7. As Mr Worthington correctly noted, the respondent's letter explaining the reasons for refusing the appellant's protection claim had started from the premise that Kirkuk was a contested area (as had been found in the decision of **AA**) and had thereafter proceeded to consider whether the appellant could reasonably be expected to relocate within Iraq [paragraphs 33 and 50

of the letter]. The question for me to decide is whether Judge Hindson was justified in adopting a different approach. I am satisfied that he was not. Whilst it may well be the case, as Judge Hindson suggested, that Kirkuk is now under the settled control of the Peshmerga, there was no evidence before him upon which to base such a finding. He was therefore bound to approach the matter on the basis that Kirkuk continued to be a contested area as had been found in the decision of **AA**. That error may not have been material had Mr Diwnizcz been in a position belatedly to submit such evidence to the Upper Tribunal. However, he confirmed that he was not in a position to do so.

8. I therefore conclude that both errors of law were material to the decision to dismiss the appeal and that it must therefore be set aside.

9. In considering whether it is appropriate to re-make the decision without a further hearing, I note that Judge Hindson found that relocation would not be reasonable to either Baghdad or the semi-autonomous Kurdish region of Iraq. I further note that this finding has not been challenged by the respondent, whether by way of cross-appeal, Rule 24 Notice, or otherwise. It is therefore unnecessary to rehearse what I consider to be the good and sufficient reasons provided by Judge Hindson for making that finding, and I accordingly preserve it. Given that I do not have any evidence to undermine the finding in **AA** that Kirkuk continues to be a contested area, I am thus driven to conclude that internal relocation is not a reasonable option for this appellant, and that his appeal should accordingly be allowed on the ground that, "the removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection" [section 84(1)(b) of the Nationality, Immigration and Asylum Act 2002]

Notice of Decision

10. The decision of the First-tier Tribunal to dismiss the appeal is set aside and substituted by a decision to allow the appeal on the ground that the removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection.

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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: 23rd June 2017

Judge Kelly

Deputy Judge of the Upper Tribunal