



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

Appeal Number: PA/04549/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Tribunal  
on 26 September 2017**

**Decision and Reasons  
promulgated  
on 27 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**ST**

(anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Howard of Fountain Solicitors.

For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. Following a hearing on 19 July 2017 the Upper Tribunal found the First-tier Tribunal had materially erred in law for the reasons set out in the error of law finding a copy of which is to be found at Annex A of this decision. The appeal was listed for a Resumed hearing to enable the Upper Tribunal to remake the decision with the caveat that all findings of the First-tier Tribunal other than those relating to the ability of the

appellant to relocate to the IKR and reasonableness of the internal flight option shall be preserved findings.

2. Reference to the Kurdish regions of northern Iraq appear as both IRK and KRI in the decision but relate to the same areas.

## **Background**

3. The First-tier Tribunal set out its findings from [31] of the earlier decision. The preserved findings, which form the starting point in this appeal, can be summarised in the following terms:
  - i. There is a material inconsistency in the appellant's account relating to when his father was killed including it been noted by the Judge that the appellant in his oral evidence asserted he was not sure if his father was dead or alive. The Judge states "I reject the appellant's claim that his father was killed by ISIS and that he does not know his mother's whereabouts. I find that he has fabricated this in order to bolster his claim for asylum" [34].
  - ii. The respondent accepted that the appellants return to his home area in Mosul would amount to a breach of Article 15(c) of the Qualification Directive [35]
  - iii. The respondent accepts there is no evidence that the appellant has access to the documents needed to obtain a passport or laissez passer making his return to Iraq not currently feasible [37].
4. There is no challenge to the factual matrix enabling the matter to proceed by way of submissions only although it was noted at the outset of the hearing that the Home Office view is that the appellant could provide identity documents although it was accepted that return to Mosul was still not feasible in light of country conditions.
5. It was submitted on the Secretary State's behalf that the appellant had not established that he could not obtain a passport or laissez passer ('let it pass') and that the respondent would assist him in obtaining these documents. It was submitted the appellant had therefore not established that he would not be able to possess the necessary documents to make return feasible.
6. The issue in the case was return to Baghdad initially and thereafter relocation to the IKR.
7. It was submitted the appellant will be able to obtain a CSID to enable him to access services on the basis that he had not proved that he could not obtain one, and that he would be able to obtain one if he had a valid passport or laissez passer.

8. It was submitted the appellant could fly from Baghdad to the IKR where he will be able to secure access.
9. On behalf of the appellant it was argued by Mr Howard that he would face a real risk on return to Baghdad. It was submitted the evidence did not show that the appellant will be able to obtain a CSID if from Mosul and accordingly would not be able to access the services that he required to provide him with assistance.
10. It was also submitted that there needs to be a detailed consideration of the reality of the appellant being able to travel to the IKR and an acknowledgement that the point of return is to Baghdad.
11. Without a CSID there is a strong likelihood of the appellant becoming destitute as he claims he has no family in Baghdad able to assist him, no siblings, and no sponsor in Baghdad which it is submitted is a requirement.
12. It was submitted that within Baghdad the situation will be unduly harsh, Mr Howard making reference to UN casualty figures increasing.
13. It was also submitted that even if the appellant was able to access the IKR he would have problems securing employment or economic opportunities and it was argued that there would also be a need for a sponsor and support letter from his local area. It was argued that even if he has family in the area does not have adequate support in the IKR.
14. The lack of identity documents and funds is also said to be relevant to the ability of the appellant to fly to the IKR.

### **Case law**

15. There have been a number of decisions relating to return to Iraq. In relation to the facts of this appeal the most relevant ones are summarised below.
16. In *AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944* the Court of Appeal held (amending the 2015 CG by consent) that a CSID was not simply a return document. It was feasible that someone could acquire a passport or a laissez-passer without possessing or being able to obtain a CSID. The country guidance should be revised by consent. (i) Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer; (ii) No Iraqi national will be returnable to Baghdad if not in possession of one of these documents; (iii) In the light of the Court of Appeal's judgment in *HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276*, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the

Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents; (iv) Where P is returned to Iraq on a *laissez passer* or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport. However (v), regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

17. Documentation: - Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq (see above). In *AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944* the Court of Appeal said, amending country guidance, that (i) where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P; (ii) P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.
18. Return to Baghdad:- In *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* (unchanged by the Court of Appeal) it was held that (i) 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 comments in this case on humanitarian protection and areas of the country where there is an internal armed conflict) the Baghdad Belts; (ii) In assessing whether it would be unreasonable/unduly harsh for and Iraqi national (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; (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. (iii) 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).

19. Return to IKR:- In AA (unchanged by the Court of Appeal) it was held that (i) the Respondent will only return an Iraqi national (P) to the IKR if P originates from the IKR and P's identity has been "pre-cleared" with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer; (ii) the IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR; (iii) A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities proactively remove Kurds from the IKR whose permits have come to an end; (iv) whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air - 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).); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR; (v) As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.
20. Observe that in R (on the application of H) v Secretary of State for the Home Department (application of AA (Iraq CG)) [2017] UKUT 00119 (IAC) the Upper Tribunal noted that background material before them indicated that onward travel from Baghdad to the IKR was "highly problematic" (hearing date 6 January 2017).

## **Discussion**

21. In addition to the above case law the respondent has published a document entitled "UK Home Office, 'Country Policy and Information Note - Iraq: Return/Internal relocation (September 2017)' 22 September 2017".
22. The source references in that report include the cases set out above both by reference to the citation and quoted principles.

23. In relation to the feasibility of return it is not disputed the appellant is an Iraqi national from Mosel. It has not been shown the appellant has obtained a current Iraqi passport or has an expired passport and if his is unable to obtain an emergency travel document (laissez passer) he will not be permitted to enter Iraq through Baghdad. Applications for such documents are made to the Iraqi Embassy in London in relation to which the Upper Tribunal in AA found the applicant needs to produce a CSID, Iraqi Nationality Card (INC) or photocopy of a previous passport and a report confirming that an emergency travel document has been lost or stolen. If a person does not have any of these documents they cannot obtain a travel document and therefore cannot be returned.
24. The Secretary of State specifically submits that even though the appellant currently does not have any of these documents she will assist in obtaining one to enable the appellant to secure the emergency travel document hence making return feasible. The main issue of concern however is whether the appellant, even if returnable, will be able to obtain a Civil Status Identity Card. The country information states that this and the Iraqi Nationality Certificate (INC) were the two most important documents and that the Iraqi Nationality ID Card replaces the INC and CSID.
25. The country information at paragraph 2.4.10 finds “it is likely that most people who do not possess a CSID, and whose return is feasible, (i.e. they possess a current or expired passport, or a laissez passer), will be able to obtain a CSID from the Iraqi embassy in London, or through proxies in Iraq”. See AA at [170].
26. The Tribunal in AA at [177] state:

“It is possible for any Iraqi living in the UK to obtain a CSID through the consular section of the Iraqi Embassy, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate”.
27. The claim by the appellant that his father had been killed was not found credible by the First-tier Tribunal indicating the appellant has family members within Iraq although he claims to have lost contact with them when the family fled in the face of the approach by ISIS, an aspect of his claim also found to lack credibility by the First-team Tribunal Judge.
28. If the appellant is able to contact family members in Iraq it has not been made out they will not be able to obtain a power of attorney. Whilst in light of the current military operations it may be arguably feasible that it is not possible to approach the Civil Status Affairs Office in Mosul it is

not made out that no alternative office or body is unavailable in this area of Iraq.

29. The Upper Tribunal in AA did also consider whether a person could acquire the CSID in Iraq. At [166] the Tribunal found:

“... That an Iraqi national should as a general matter be able to obtain a CSID from the Civil Status Affairs Office for that home governorate, using an Iraqi passport (whether current or expired), if they have one. If they do not have such a passport, their ability to obtain a CSID may depend on whether they know the page and volume number of the book holding their information (and that of their family members). Their ability to persuade the officials that they are the person named on the relevant page is likely to depend on whether they have family members or other individuals who are prepared to vouch for them’.

30. The Home Office report at section 6.3 notes reference to a letter written by the British Embassy on 22 January 2012 that a person could report to the Iraqi Ministry of Displacement and Migration (Mo D M) who will be able to support the transfer of the records from a person’s home area to the area where they now wish to live, an application that can be made to the Iraqi embassy in London. This may enable any family records held relating to the appellant in Mosul to be transferred to Baghdad where he would have access to original family records this is where he wished to settle. The appellant in his asylum interview at [51] confirmed he had been issued with an Iraqi Identity Document but not a passport, indicating that there must be in existence a record referring to the appellant’s identity and therefore the book page information which could be obtained from that source. It is noted above that the Iraqi Nationality ID card replaces the CSID and the appellant has failed to show that this would not be an option available to him. Even though the appellant will be required to attend in person to obtain a new card it is noted at 6.3.14 of the respondents document that there appears to be a repetitive theme that a person would need to know their book page number; although it is states that most Iraqis do know this or relative could confirm their identity. There is insufficient evidence to support a finding that the appellant would not know his book page number or that he would not have access to assistance by lawyers from the Protection Assistant Centre, which is run by non-state organisations on behalf of the UNHCR to update the ID card, or that family in Iraq could not assist.
31. It has not been made out to the required standard that the appellant would not be able to obtain a replacement Iraqi ID Card or a CSID within a reasonable time if returned to Baghdad or transited elsewhere within Iraq.
32. In relation to the relevant factors identified in AA material to assessing whether such relocation will be reasonable, it is noted the appellant is of Kurdish ethnicity and from a minority religious group, the appellant claims he has no family in Baghdad who can accommodate him, no

siblings and does not know his mother's whereabouts and has not done so since June 2014. Arabic is not said to be the appellant's first language as his main language is Kurdish and in his screening interview he claimed not to be to speak any other language, the appellant has no sponsor who could provide accommodation, and contends he has no support available to him in Baghdad.

33. If the appellant is unable to arrange immediate transit from Baghdad to the IKR will be require him to remain and establish himself in Baghdad for however long it takes to make such arrangements. There is no evidence that those returning to Baghdad of Kurdish ethnicity would be subjected to ethnic or religious discrimination in relation to procedures at the airport. It is said to be relevant to note that if a person who originates from the Kurdish area is the subject of an enforced return via Baghdad they will already have been re-cleared for arrival and have a valid or expired passport or emergency travel document and, assuming they have no outstanding warrants of arrest for criminal activity and related to immigration matters, they will not be detained. The lack of real risk also applies to those who may have left the country illegally.
34. A letter from the British Embassy dated 7 April 2014, section 4.1.8 of the country information, states:

“The MOI and MoDM have told us that one of these documents [expired or valid passport, or laissez passer] is sufficient in the first instance to pass through checkpoints on return to their home or temporary accommodation following which they need to regularise their Civil ID card. The UNHCR [United Nations High Commissioner for Refugees]/IRC [International Rescue Committee] said they were not aware of the policy of allowing passage through a checkpoint using an expired passport or laissez passer travel document. To the knowledge of UNHCR/IRC/Qandil and the Embassy there has been no case to date in which the airport authorities have provided a facilitation letter but we have been advised by the MoDM and MOI that passing through checkpoints is permitted upon first entry and return home and there have already been a number of successful returnees who have returned using an expired passport” [8]
35. At 4.1.9 it is stated the above was corroborated by a third letter from the Baghdad Embassy dated 8 April 2012 referring to a November 2011 UNHCR Baghdad paper stating that no civil documentation will be issued at the airport, but a letter would be issued to facilitate individual's movement back to their place of origin/relocation.
36. It has not been made out that the appellant would have any difficulties in physically entering Baghdad; the question being what would happen thereafter.



37. The respondent provides returnees with a rehabilitation/reintegration package which includes sufficient financial resources to assist an individual in returning to their home area. It has not been made out that it would be impracticable or unreasonable for the appellant to be able to arrange a flight from Baghdad to the IKR to tie in with his point of return or shortly thereafter. It is not made out that any support provided would not be sufficient to meet the cost of the airfare which, if the statement by the respondent that a return package covers such costs is correct, must include the same.
38. The Tribunal in AA refers to difficulties that will be encountered by those trying to settle in Baghdad and in this respect the appellants profile, as outlined by Mr Howard, would suggest that relocation to Baghdad on a more permanent basis, when the appellant has no longer access to funds provided on return, may be unreasonable as the appellant does not have the required language skills making it less likely he will find employment, has no family or friends in Baghdad to accommodate him, will be unable to rent accommodation, and is from a religious and ethnic minority community.
39. Although the appellant is not from the IKR he is a Kurd. The available information shows that a person arriving in the IKR can stay for one to two weeks as a tourist which would not require the need to apply for a residence permit including presenting a sponsor.
40. The respondent's country report at 7.2.2 discussing residency requirements in the IKR states:
  - 7.2.2 the British Embassy in Baghdad, in a letter dated 4 December 2014, noted:

'A significant change in November is that the previous requirements to have a sponsor who is resident in the Kurdish Region prior to admission has been removed (allegedly because sponsorships were being openly sold at certain checkpoints) and instead a new procedure is now in operation which requires IDP's to present themselves to the nearest Asayish office for screening and approval. Once approved, IDP's are issued with a residency card that entitles them to move freely within the governorates and rent private houses. Transit opportunities still exist for those who have valid plane tickets. Those arriving by air at Erbil and Sulamaniyah airports, are similarly being directed to report to the nearest Asayish office to regularise their stay. It is worth reiterating the point that admission does remain at the discretion of Kurdish immigration and border officers and the temporary restrictions can be imposed and withdrawn without notice'.
41. The appellant, as he will possess an emergency travel document to enable him to enter Baghdad, has not made out that he will not be able to enter the IKR. Although there may be concerns in the minds of

members of the IKR immigration officials in relation to those from areas previously occupied by ISIS, the appellant has a wealth of evidence showing that since that group invaded his area he has not lived there and has been in the United Kingdom.

42. The appellant arguably has a greater prospect of reuniting with his family members the IKR, in relation to which it was found his claim his father had been killed and that he had lost contact with his mother was not credible, with assistance from the UNHCR or other organisations assisting with tracing family members of displaced persons if required.
43. The appellant states that his skills within the family were as a farmer in relation to which it is reasonable to assume that work of a similar nature may be available to the appellant as this is an important area of the economy in the IKR when there is a need to provide sufficient food for those who live there.
44. In relation to the sponsorship requirement, it is noted that sponsorship is not required if an Iraqi citizen comes as a IDP which arguably applies to the appellant as a person who had to flee his home area as a result of the advance of ISIS; although the IRC are recorded as having stated that sponsorship is not imposed on IDP living in the camps whereas those living outside the camps face a sponsorship requirement if they wish to seek work.
45. It is noted in relation to Erbil that Kurds are generally permitted to enter this or the Dohuk governorate without pre-existing residence documents although they may face increased security restrictions.
46. The country information states:
 

“With regard to IDP’s wishing to enter Sulaimania, the lawyer working for an international NGO said that they must approach the checkpoint with the required documents, and permission is given to enter in the form of a tourist visa valid for 30 days. The source added that, after these 30 days, the IDP must register at the Bureau of Displacement and Migration (BoDM) and the local mukhtar as well as find a sponsor, depending on whether or not the sponsorship is being enforced at the given time”.
47. It is noted in the country information there is reference to entry across the land borders to the IKR being prevented/restricted as a result of the huge influx of refugees following the invasion by ISIS and steps taken by the Iraqi and Kurdish authorities to push the invaders out, now successfully achieved. These restrictions do not apply to access by air and at 7.3.2 there is reference to a Danish fact-finding mission observing:
 

“Various sources said that IDP’s can enter KRI by air. Two of the sources said that Iraqi citizens can enter KRI through the

airport without having a sponsor. In addition, IRC said that most IIDP's are currently arriving in KRI by plane, and that most of these flights are coming from Baghdad. IOM said that IDP's arriving from Baghdad usually have money to support themselves and will be welcome in KRI. If they arrive by domestic airline, not by car. The international humanitarian organisation further stated that entry through the airports was without problems, but that the IDP's cannot stay indefinitely, and they would have to register by the authorities at the airport. According to UNHCR, short-term residential documents are issued at the airport to those who come by air from abroad or from other places in Iraq and are extended at the place of residence upon issuance of security clearance by Asayish. In this respect, IDP's are able to settle in KRI temporarily. UNHCR and two sources stated different durations of the short-term residence permit. According to two sources, this short-term residence permit is being issued by the Asayish. The international humanitarian organisation explained that a person might be able to get away with not registering upon arrival at the airport, but that person would then not be able to move around freely inside KRI, and an unregistered person would not be able to rent a place to live.

48. The appellant has failed to establish to the required standard that his return is not feasible, that he would not be able to obtain a replacement ID document or CSID, that he would not have adequate resources to enable him to return to Baghdad and to transit to the IKR by air or enter the IKR lawfully. It is a case that the appellant would have some funds provided by the UK government but is accepted that these would not be sufficient to enable him to live for any length of time in the IKR as a person of independent means.
49. The appellant has failed to establish to the required standard that he will not be able to contact organisations with a view to tracking down family members or, if the practicalities of the security or humanitarian situation permitted, returning to the family home which the appellant claimed been taken by ISIS when they entered Mosul, if it is still habitable. Reference in the country guidance report at 7.1.5 to a source stating that Iraqi citizens not originating from the KRI must travel onward to the area he or she is originally from when arriving through an airport in the KRI has not been shown to be a requirement arguably applicable to a person who cannot realistically return to that area.
50. The issue that arises is the question of how the appellant will support himself in the IKR if any stay there requires him to obtain employment. If the appellant cannot secure employment he will be required to seek the assistance of either family, the Kurdish authorities, or international organisations.
51. The country information at 7.1.5 notes:

“Three sources said that ethnic Kurds, including Kurds from Kirkuk who can freely enter KRI, are exempted from the requirement of a sponsor. Human Rights Watch said that it is possible for ethnic Kurds with long residency in Kirkuk to gain access to KRI. With regard to the possibility for Kurds from Kirkuk not only to enter KRI but to settle, Qandil said that ethnic Kurds have no problem settling in KRI. However, Human Rights Watch found it uncertain if ethnic Kurds from Kirkuk could settle in KRI, and added that there are examples of IDP’s are able to get into Kirkuk but not able to go from Kirkuk to KRI. An international humanitarian organisation said that whether or not ethnic Kurds can gain access to KRI would depend on the political affiliation of the individual person, and that it might still be complicated. Head of General Security Directorate, Asayish, Esmat Argushi, however, said that for ethnic Kurds with long-term residency in Kirkuk, the same procedure for entry into KRI applies as for all other Iraqi citizens.”

52. It is being suggested elsewhere that there may be political reasons for the Kurdish authorities wishing to keep Kurds within Kirkuk as a result of the historical conflict between Kurds and Arabs in relation to control of this area. This matter has in some respects resolved by the intervention of the Iraqi government who seized control of Kirkuk. By contrast Mosul is to the north of Iraq, away from the oil-rich areas, and not subject to the same historic disputes. This is Iraq’s second city and was recaptured by members of the Iraqi security forces and the Kurdish Peshmerga. There is no suggestion in any of the material that ethnic Kurds from this area are denied access to the IKR.
53. The country material at 7.2.3 speaks of the requirement for a sponsor in order to work in the IKR. The same report also records:
 

“IOM stated that Kurds, including Kurds from Kirkuk, are exempted from the sponsorship requirement. The international humanitarian organisation said that there are some exemptions to the sponsorship requirement if for instance the IDP concerned needs to enter medical reasons, or if the IDP’s are single women or female-headed households with children. UNHCR said that exemptions have been made in cases where local tribal or religious leaders succeeded in negotiating access for certain groups of IDP is to Kurdish-controlled areas. UNHCR added that, in Kirkuk, some local leaders, for example, succeeded in negotiating access and temporary residence with the governor.”
54. It is important in this context to recall that not all IDP’s or those fleeing from other areas of Iraq to the safety of the IKR will be ethnic Kurds. When ISIS took control of territory from the Iraqi government a large

number of minority groups such as Christians and others were forced to flee together with Iraqis of Arab ethnicity.

55. The situation facing the appellant is not as clear as it may be for some in relation to Iraq or other countries as a result of the changing nature of the security situation in Iraq and reliance by the appellant upon statements that he cannot return or reasonably internally relocate together with country material. That material indicates that the application relies upon some things that in one part of report are stated in clear terms but which may not be applied or enforced; there being reference to inconsistent application of some policies.
56. In relation to economic opportunities in the IKR the country report states:

7.2.4 the sources also commented on economic opportunities in the KRI:

‘Three sources said that the number of job opportunities in the KRI is very limited for the host community as well as for IDP’s. In this respect, ERC stated that, due to the financial crisis in KRI, even people from the host community are losing their jobs. Three sources indicated that the private sector is affected by the crisis, including the construction business and the oil business. Being among these sources, IRC added that many jobs in the oil sector are occupied by foreign labour.

When asked in what fields IDP’s typically find jobs, three sources said that IDP’s who managed to get a job will often find it in low skilled fields, for instance construction or casual work in agriculture or restaurants. IRC further stated that IDP’s with an education may be able to find work with NGOs; however, the number of jobs available in this field is low.

It was stated by three sources that the public sector is not adding new jobs, and three sources pointed to the fact that the Kurdish Regional Government (KRG) has not paid salaries to government employees since June 2015. IOM said that it is not possible to live on a salary of a civil servant under the Kurdish Regional Government (KRG) administration.

Various sources stated that publicly employed IDP’s are still supposed to receive their salary from the central government in Baghdad. Two sources, however, said that as of September 2015, there is a delay in the payment.

Different figures were given by three sources on the current unemployment rate in KRI, ranging from 6.5% to 35%.

Three sources pointed to competition for jobs in KRI between host community members, IDP’s and Syrian refugees. Three sources said that IDP’s are typically willing and able to work for lower salaries than members of the host community. IOM stated that they, as an organisation, are facing difficulties to

find employment for Kurdish returnees who went back to KRI from Europe, as many companies downsize their workforce.

- 57. Although relocation to the IKR will clearly be a challenging event for the appellant that is not the test. The question is whether it is unreasonable or unduly harsh to expect him to internally relocate in light of the fact that at the current time it has not been made out that he can return directly to his home area; although this may be feasible in the future following the defeat of ISIS.
- 58. None of the country guidance cases support a finding that a person of Kurdish ethnicity cannot relocate to another part of Iraq. It is a fact specific assessment in relation to each case. The appellant is a healthy single male of working age with experience of agricultural work, an ethnic Kurds, who possesses the required language. He has family in northern Iraq who can vouch for his identity and in relation to whom it is not been shown they cannot provide the required sponsorship. The claim that his father died was dismissed by the First-tier Tribunal Judge indicating that the issue is the ability to trace such family members rather than whether they exist. The claim the appellant had lost contact with his mother was rejected as not to be incredible indicating that the appellant is able to advise them of his return to enable appropriate arrangements to be made. The appellant has failed to provide any credible evidence that this is not the case. A claim he would not have the opportunity of benefiting from family support on return was not established even to the applicable lower standard. The appellant has failed to establish that his return to Iraq and internally relocate is unreasonable.
- 59. On that basis, this appeal is dismissed.

**Decision**

**60. The Immigration Judge materially erred in law. I have set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

61. The First-tier Tribunal make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Judge of the Upper Tribunal Hanson

Dated the 23 November 2017

ANNEX A



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

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For the Respondent: Mrs Aboni Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Gurung-Thapa promulgated on 27 January 2017 in which the Judge dismissed



the appellant's appeal on both protection and human rights grounds, although Mr Howard confirmed at the hearing on the appellant's behalf that he was not seeking to rely on Article 8 ECHR outside the Immigration Rules [40].

### **Error of law**

2. The appellant is a citizen of Iraq born on 1 January 1995.
3. The Judge sets out the evidence provided leading to findings and reasons at [31] - [41] of the decision under challenge.
4. Judge notes inconsistencies in the claim such as [2] and [34] leading to it being found that the applicant had fabricated his claim his father was killed by ISIS and that he did not know his mother's whereabouts in order to bolster his claim for asylum [34].
5. The Judge notes the Secretary State accepts that return to the appellant's home area in Mosul would amount to a breach of Article 15(c) of the Qualification Directive as it is a contested area [35] and that the issue was one of internal relocation.
6. The respondent accepted there was no evidence that the appellant has access to the documents needed to obtain a passport or laissez passer making return to Iraq currently not feasible [37].
7. The Judge finds at [39] that when the appellant's return is feasible he can relocate to the IKR. The Judge did not accept the appellant was not in contact with his family and found he would have the support of his family on return. The Judge finds the appellant will be able to obtain entry to the IKR for 10 days as a visitor and to renew that upon finding employment which he has experience of, according to his evidence, working as both a shepherd and a farmer in Iraq and as a labourer in Turkey.
8. The Judge rejected the submission made by Mr Howard that the appellant was entitled to leave to remain under the Immigration Rules by reference to paragraph 276 ADE(1)(vi) [40].
9. The appellant sought permission to appeal asserting a failure to apply country guidance by reference to *AA(Article 15(c)) Iraq [2015] UKUT 000544* in which it was held that return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and for all other Iraqis to Baghdad.
10. The Judge does not find the appellant is a former resident of the IKR and was therefore arguably required to consider the initial point of return to Baghdad and whether it was reasonable in all the circumstances for the appellant to internally relocated to Baghdad. If, as the Judge implies, the appellant will be able to secure entry to the IKR as a visitor, it was necessary for the Judge to consider the practicalities of how the appellant will travel from Baghdad to the IKR.
11. Despite the Secretary of State asserting that no material error of law was made, I find the Judge fails to properly analyse the reasonableness of internal flight in light of the Secretary of State's published policies and country guidance caselaw, which requires consideration in relation to return to Baghdad and onward travel

thereafter by reference to both *AA* and the later case of *BA [2017] UKUT 18* which specifically considered the level of violence in Baghdad.

12. The grant of permission by the Upper Tribunal on the renewed application provides an additional steer in relation to the error where it is stated:

“The applicant is a Kurd from a contested area (not the IKR). It is arguable that the judge failed to apply **AA (Article 15(c) Iraq CG** [2015] UKUT 00544 (IAC) correctly to the factual matrix. Although a judicial review case, **R (on the application of H) v The Secretary of State for the Home Department (application of AA (Iraq CG) IJR** [2017] UKUT 00199 (IAC) has given guidance as to how **AA (Article 15(c))** should be interpreted.

13. I find the Judge has materially erred in law for the reasons set out in the grounds seeking permission as reflected in the grant of permission to appeal by the Upper Tribunal set out above. Accordingly, I set aside the decision of the First-tier Tribunal although all findings other than those relating to the ability of the appellant to relocate to the IKR and the reasonableness of the internal flight option shall be preserved findings.

14. The following direction shall apply to the future management of this appeal:

- i. List for a Resumed hearing before Upper Tribunal Judge Hanson sitting at Birmingham on 26 September 2017 or such other date as shall be available subject to the requirements of the effective management of the Tribunal’s lists, time estimate three hours.
- ii. A Kurdish (Bahdini) interpreter shall be provided.
- iii. The appellant must no later than 4 PM 14 days before the allocated hearing date, file with the Upper Tribunal and send to the respondent’s representative a consolidated, indexed and paginated bundle containing all the documentary evidence the appellant is seeking to rely upon, including statements of all witnesses who it is intended to call to give evidence on the appellant’s behalf. Such witness statements must be signed, dated, and contain a declaration of truth. The witness statements shall stand as the evidence in chief of the maker who shall be tended for cross examination and re-examination only. Evidence not filed in accordance with any time limit provided by these direction shall not be admitted without permission of the Upper Tribunal for which a written application is required to be made prior to the expiry of any relevant limitation date confirming (a) the reason for the failure to comply with directions, (b) the person responsible, (c) the nature of the evidence that has not been filed, (d) the significance of that evidence to the issue(s) in the appeal, (e) when such evidence will be available to be filed and served, (f) whether the other party consents to the evidence being filed

late, (g) the prejudice to either party of either allowing or refusing to allow the evidence to be admitted late, (h) the effect on any allocated hearing date of late filing of the evidence being permitted.

- iv. All findings of the First-tier Tribunal other than those relating to the ability of the appellant to relocate to the IKR and the reasonableness of the internal flight option shall be preserved findings.

**Decision**

- 15. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. The appeal shall be listed for a Resumed hearing before the Upper Tribunal in accordance with the direction set out above, to enable that Tribunal to substitute a decision to either allow or dismiss the appeal.**

Anonymity.

- 16. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 4 August 2017