Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13854/2016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 28 September 2017	**On 3 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

O A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Boyle, of Halliday Reeves Law Firm
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity order which the First-tier thought appropriate, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bircher promulgated on 27 February 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [ ] 1996 and is a national of Iraq.

4. On 1st December 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bircher ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 22 June 2017 Judge Dineen gave permission to appeal stating *inter alia*

> "The four grounds of application may be summarised as complaining that the Judge erred in law by departing from country guidance in AA without very strong grounds supported by cogent evidence, and by erroneous application of country guidance regarding returned to IKR.
>
> These grounds are arguably material errors of law."

The Hearing

6. (a) Mr Boyle, for the appellant, adopted the terms of the skeleton argument and the grounds of appeal. He told me that although the appellant was born in the IKR, his family moved to Jalawla when he was only 6 or 7 years old. The appellant is from Kirkuk, which is outside the IKR. At [23] of the decision the Judge finds that the appellant can safely return to Jalawla. At [28] and [29] of the decision, the Judge finds that the appellant can safely go to the IKR, and that there is no article 15c risk to the appellant in his home area. Mr Boyle told me that those findings are the foundation of a material error of law.

(b) Because the appellant is from Jalawla, in Diyala province, he will return to Baghdad. Mr Boyle told me that the Judge failed to consider the pre-clearance requirement for entry to IKR set out in AA (Iraq) CG [2017] EWCA Civ 944. He told me that the Judge failed to consider the importance of a CSID card, and that the Judge had failed to consider how the appellant could get from Baghdad to IKR. He told me that the decision is devoid of consideration of what would happen to the appellant if he enters IKR. He told me that the decision is fundamentally flawed.

(c) Mr Boyle referred me to AA (Iraq) CG [2017] EWCA Civ 944. He asked me to allow the appeal, to set the decision aside and substitute my own decision allowing the appeal on article 3 ECHR grounds and on Humanitarian Protection grounds.

7. Mr Diwyncz, for the respondent formally opposed the appeal and relied on the rule 24 note, dated 12 July 2017. He told me that he was limited in the submissions that he could make because the case of AA (Iraq) CG [2017] EWCA Civ 944 was handed down after the judge's decision was promulgated. He conceded that in light of AA (Iraq) CG [2017] EWCA Civ 944 the appellant comes from a contested area and if internal relocation is unduly harsh is entitled to humanitarian protection. He accepted that a single man from an ethnic minority who does not speak fluent Arabic is unlikely to be safe. He also accepted that a humanitarian crisis is unfolding in Iraq, and the life of an internally displaced person there amounts to destitution.

Analysis

8. The Judge's decision was written in February 2017 and, relied on background materials which were carefully considered by the Judge. Relying on those background materials, the Judge found (at [29] of the decision) that the appellant's home area (in Diyala) no longer meets the threshold to engage article 15(c). On 22 June 2017, the Court of Appeal issued updated country guidance on Iraq. In the annex to the decision of AA (Iraq) CG [2017] EWCA Civ 944 the Court of Appeal said

> *A.* INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE
>
> 1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), 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 amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

9. In making that finding the Court of Appeal adheres to what was said in AA Iraq CG [2015] UKUT 0054 (IAC)

10. The Judge's finding at [29] is therefore not safe. The Judge finds that the appellant's claim does not succeed on any grounds, however the country guidance given by the Court of Appeal in June 2017 indicates that the appellant's claim for humanitarian protection must succeed. The guidance given by the Court of Appeal four months after the Judge's decision confirmed the guidance given in 2015, and is directly contrary to the background reports the respondent relied on.

11. Because what is contained at [29] is a material error of law I must set the Judge's decision aside. But there is sufficient material before me to

enable me to substitute my own decision. The Judge's error of law relates to the assessment of risk on return to Iraq.

12. The appellant's claimed fear is of forced recruitment into Daesh. At [23] the Judge finds that the appellant has never been an individual target of Daesh. The appellant is not known to Daesh. Taking the evidence at its highest. All the appellant has done is discretely avoid a general call to arms. He is not known to Daesh; Daesh are not searching for him and have not threatened him. His claim is really that he fears the internal armed conflict in Iraq. I find, on the facts as the Judge found them to be, the appellant cannot succeed under the refugee convention.

13. It is common ground that the appellant comes from Diyala. The respondent intends to return him to Baghdad and insists that he can return to his home area. The guidance given by the Court of Appeal in AA (Iraq) CG [2017] EWCA Civ 944 clearly indicates that the respondent's position is wrong. If the appellant return to his home area he must succeed both in terms of article 15(c) of the qualification directive and on article 3 ECHR grounds. The question for me to determine becomes whether or not it is reasonable for the appellant to internally relocate.

14. The appellant is a Kurdish Sunni Muslim. He has only a basic grasp of the Arabic language. The background materials indicate that there are so many internally displaced persons in Iraq that UNHCR refers to the plight of internally displaced people there as a humanitarian crisis. The simple question that I have to answer is whether or not it is reasonable to make the appellant a displaced person anywhere in Iraq.

15. I take the following guidance from AA (Iraq) CG [2017] EWCA Civ 944

> *D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)*
>
> *14. 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 paragraph 2 above) the Baghdad Belts.*
>
> *15. In assessing whether it would be unreasonable/unduly harsh for 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 (see Part C above);*
>
> *(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.

16. 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).

E. IRAQI KURDISH REGION

17. The Respondent will only return 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.

18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.

19. 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 pro-actively remove Kurds from the IKR whose permits have come to an end.

20. 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); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.

21. 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.

16. On the facts as the Judge found them to be, the appellant has only a limited grasp of Arabic. He is distinguishable by his religion and his ethnicity, and so will be viewed as a member of a minority community. He has no network of support in Iraq. Although he is a Kurd, he has not lived in IKR since he was 6 years old. With that profile, it cannot be reasonable to return the appellant to Iraq. If returned to Iraq the appellant would be treated as a Kurd who is not from IKR. As a Sunni Muslim and a young single Kurd the appellant would be treated as a man from a minority ethnic group. The appellant no longer has a CSID; he does not have family members or friends in Baghdad able to accommodate him; there is no suggestion that the appellant can find a sponsor to access a hotel room or

rent accommodation; He has no network of support in Iraq. It is most likely that he will not have access to accommodation and employment within Iraq. He therefore faces the prospect of destitution if returned to Iraq.

17. Perhaps the appellant could be admitted to IKR for 10 days. That 10 day period may be extended for a further 10 days. He would only have 20 days to try to establish himself with a job and accommodation. He would be competing with other young men in a region which is starting to struggle with an influx of refugees. As a non-Arab from a minority group without a means of support in Baghdad, there will be significant obstacles to the appellant negotiating his way from Baghdad to IKR. Following the guidance given in AA (Iraq) CG [2017] EWCA Civ 944, I find that internal relocation is unduly harsh

18. The appellant is therefore entitled to humanitarian protection and succeeds on article 3 ECHR grounds.

Decision

19. The First-tier Tribunal decision promulgated on 27 February 2017 is tainted by material errors of law. The decision is set aside.

20. I substitute my own decision.

21. The appeal is dismissed on asylum grounds

22. The appeal is allowed on humanitarian protection grounds.

23. The appeal is allowed on article 3 ECHR grounds.

Signed Paul Doyle Date 2 October 2017
Deputy Upper Tribunal Judge Doyle