Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10056/2015

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 23 November 2018	
Prepared on 23 November 2018	**On 29 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

H. M.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms Cleghorn, Counsel, instructed by Halliday Reeves Law Firm
For the Respondent:	Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, entered the United Kingdom illegally in February 2015 and made a protection claim. That claim was refused, and his appeal against that decision was

dismissed by determination of First tier Tribunal Judge Traynor [B3-].

2. The Appellant was granted permission to appeal to the Upper Tribunal only in relation to his humanitarian protection claim.
3. The challenge based upon the humanitarian protection claim was itself only successful in part. Thus the appeal was remitted by decision of Upper Tribunal Judge Reeds of 29 November 2017 to the First tier Tribunal for further hearing of the humanitarian protection claim, in the context that the adverse credibility findings were preserved.
4. The remitted humanitarian protection appeal was then heard, and dismissed by decision of First tier Tribunal Judge Moran of 20 March 2018. Permission to appeal that decision was refused by the FtT, but was granted by decision of Upper Tribunal Judge Plimmer of 18 September 2018 on the basis that it was arguable the Judge had erred in making an irrational finding when he concluded that Makhmur was located within the Erbil governate, yet was located outside the IKR.
5. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The hearing

6. When the appeal was called on for hearing Ms Cleghorn, who did not appear below, suggested that the appeal should be adjourned to await further country guidance upon Iraq. I refused that application on the basis that it was premature; the Appellant first needed to establish a material error of law in the Judge's decision.

The scope of the challenge

7. It was common ground that there could be no challenge before me to the adverse credibility findings made by Judge Traynor, preserved as they were by the decision of Upper Tribunal Judge Reeds. No attempt was made before Judge Moran to re-open them, and he, correctly, took them as his starting point in his assessment of the evidence.
8. The appeal before Judge Moran, and thus before me, is limited to the humanitarian protection ground.
9. Thus the appeal before Judge Moran had to be approached (and this remains the position) on the basis the Appellant had not told the truth about his ability to access identity documents, shelter, and, financial support through family members in Iraq. Judge Moran concluded (as he was entitled to do) that the Appellant was in contact with his family in Iraq, and that his

family were in a position to provide him with significant financial support, in addition to the funds he had access to through the Respondent should he accept voluntary removal from the UK [27 & 29].

10. It was not open to the Judge to infer in those circumstances that the Appellant's return to Iraq was not feasible, and he did not do so. Thus he had to engage with any Article 15(c) argument that the Appellant faced destitution in the event that he sought to relocate from his home area in order to avoid the risks faced by civilians in that area from armed conflict.
11. Equally it was not open to the Judge to infer that the Appellant would be returned without identity documents, and again he did not do so. Thus the appeal had to be approached on the basis the Appellant would be removed from the UK to Baghdad airport, and, that prior to departure he would have been supplied with, or, would be able to obtain upon arrival at Baghdad airport with the identity documents issued by the Iraqi state to its citizens. Those documents would include a CSID. The Judge accepted only that the Appellant had no identity documents in his possession currently [28]
12. The parties accept before me that the Appellant as a Sunni Kurd, and an Iraqi citizen, in possession of a CSID would either be able to travel overland in safety, or, board an internal flight from Baghdad to the KRG and thus travel there by air in safety; AAH (Iraqi Kurds-internal relocation) Iraq CG [2018] UKUT 212. In turn, following the country guidance in AAH, the question becomes whether it is reasonable to expect the Appellant to avoid any risk of harm faced by a civilian in his home area, and relocate to the KRG, if indeed his home area lies outside the KRG, and within a "contested area".
13. Accordingly, and after the appeal had been stood down to allow for reflection, the Appellant's case was advanced as follows. The Appellant had consistently claimed that his home area was Makhmur, and that this town lay in the Nineveh Governate. Whether this town lay in the Nineveh Governate as the Appellant claimed, or in the Erbil Governate as the Respondent claimed, the Respondent had conceded at the hearing that the town lay outside the area physically controlled by the IKR that was not subject to armed conflict. That concession had not been withdrawn, and as such the town was to be considered as being within a "contested area". Thus the Appellant could not be expected to return to it, and the Judge had erred in concluding that he could leave the IKR in safety to cross the border overland and travel the short distance to Makhmur [29].

Makhmur

14. It is plain from the Judge's decision that some time was spent by him at the hearing considering the true location of Makhmur. Before me Ms Cleghorn was unable to identify any map that was placed before the Judge that reliably located Makhmur in the Nineveh Governate. On the contrary, the only detailed largescale map that can be identified on the Tribunal file (MapAction – Erbil Governate – Makhmur District) locates Makhmur in the Erbil Governate, as of course did the Human Rights Watch Report of 2015. That material was before the Judge in evidence, and it is clear from his decision that he felt able to place significant weight upon both as reliably sourced.

15. Thus it was well open to the Judge to reject the Appellant's claim that Makhmur lay in the Ninenveh Governate, which was corroborated only by material accessed by the Appellant from Wikipedia; a source upon which the Judge felt unable to place significant weight. That conclusion was well open to him since this material was inconsistent with the material available from reliable objective sources, particularly given the damage occasioned to the Appellant's credibility [24-5]. The Appellant has singularly failed to establish that the Judge overlooked any relevant evidence in making that finding, that it was a finding that was not open to him, or, that it was inadequately reasoned.

16. Although in those circumstance it might seem surprising that the Respondent was prepared to make a concession that Makhmur lay outside the IKR, I am satisfied that the area physically under the control of the IKR authorities at any material time, and the precise southern border of the Erbil Governate as originally drawn, are not necessarily going to be identical at a given date. It must be obvious that borders can be fluid in times of conflict, particularly when strategic positions and defensible locations have to be identified and maintained.

17. Mr Diwnycz has been able to show from a largescale map accessed at https://iraq.liveuamap.com that a relatively narrow section of the south of the Erbil Governate lies outside the area currently physically controlled by the IKR authorities, and that this includes the town of Makhmur. Indeed the "front line" lies within 500m of the town boundary. This, or a similar map, was the basis for the concession made by the Respondent, and the reason Mr Diwnycz states that it was correctly made.

18. In the circumstances, and notwithstanding the terms in which the grounds of appeal were drafted, and permission to appeal was granted, the Judge's acceptance of the Respondent's concession was not inconsistent with his finding that Makhmur lay within the Erbil Governate. Nor was it unreasoned. Nor was it perverse. The Judge's finding was based upon a concession of

fact, that itself was properly made. It was perfectly adequately reasoned. Where the Judge did err, however, was in failing to follow through that finding, so that he failed to conclude that it must follow that Makhmur lay for the purposes of the Article 15(c) appeal before him, in a contested area.

19. Indeed after standing the appeal down to allow time for reflection or instructions, Ms Cleghorn was content to accept for the purposes of this hearing that the map accessed through https://iraq.liveuamap.com is accurate. Thus the parties were agreed before me for the purposes of the hearing of this appeal that Makhmur does lie within the Erbil Governate, but that at the date of the hearing before Judge Moran it lay outside the area controlled by the IKR authorities, and it should therefore have been considered to lie within a "contested area" for the purposes of the humanitarian protection appeal.

Conclusions

20. There is no error of law disclosed in the finding Makhmur lies within the Erbil Governate, and not the Nineveh Governate, as the Appellant had claimed. Nor in the finding that Makhmur currently lies outside the area under the control of the IKR authorities.

21. The humanitarian protection appeal had to be approached therefore on the basis that Makhmur did lie within a "contested area", and that since it was the Appellant's home area, he could not be expected to return to it. To the extent that the Judge failed to do so [30], he erred. However, as explained at the hearing, I am not satisfied that such an error gave rise to a material error of law, requiring his decision to dismiss the humanitarian protection appeal to be set aside and remade.

22. It is plain from the unchallenged findings of fact that the Appellant can be removed from the UK to Baghdad airport in safety, and that he can then travel onwards to the IKR in safety, and with the identity documents that his family can supply to him either upon arrival in Baghdad, or in advance of his departure from the UK.

23. I can identify no reason why the Appellant, as a former resident of Makhmur, a town within the Erbil Governate, would not be treated as a returning resident of the IKR. Even if that were not the case, it would be immaterial, because as a Sunni Kurd he would be permitted to enter the IKR. He has not established that he would face any risk of harm during any security screening. He would face no sponsorship requirements, and would be able to show that he had been living in the UK since February 2015; AAH.

24. The guidance in AAH is that an individual would be physically unable to gain access to a refugee camp in the KRG because they are all oversubscribed, and that relocation would be unduly harsh if there was a real risk that he would therefore be required to resort to the lower end of the spectrum of "critical shelter arrangements" [AAH #127]. Thus the question for the Tribunal becomes one of whether the Appellant would be able to support himself and find accommodation within the private rental sector from a combination of his own earnings, the VRS support package, the support available from the Iraqi authorities, and any financial support available from his uncle [AAH #128].
25. The reasons offered for the Appellant's inability to secure employment were; (i) his lack of employment experience and skills, (ii) the unemployment rate for IDPs in the KRG, and, (iii) the lack of family contacts to provide patronage and introductions.
26. As to (i). There is no obvious reason to accept the Appellant's denial of employment experience and skills at face value given the damage to his credibility. However, even if that aspect of his claim were true, he is a fit and healthy young man with an earning capacity.
27. As to (ii). The guidance to be found in AAH is that unemployment amongst IDPs within the KRG is 70%, in contrast to a rate of 20% for other residents of the KRG. However that unemployment rate of 70% includes women who face serious gender discrimination in their attempts to find employment, and, all those IDPS who are undocumented and thus unable to take employment legitimately. The Appellant would not face that gender bias, and he would be able to take legitimate employment because he would hold a CSID, and he would be able to rely upon the assistance of family to gain employment through nepotism.
28. As to (iii), the Tribunal has rejected as untrue the Appellant's denials of contact with his family, and he has failed to establish that he is without even distant family within the KRG to help him obtain employment through nepotism. On the contrary the Appellant's circumstances have to be assessed on the basis that he would have available to him significant support from his family, and there is the guidance that as a voluntary returnee he would be able to access a support package worth £1500 through the VRS. He cannot be heard to say that he would refuse to return voluntarily, and thus be unable to access this.
29. Indeed given the rejection of the Appellant's evidence about his family, it is not possible to do anything other than conclude that he has failed to demonstrate even on the applicable low standard of proof that he has no family members living in the

area that is currently within the control of the IKR authorities, and thus has no opportunity to access the shelter and support in finding employment that he could expect through cultural norms; AAH. There is no sound evidential basis for an inference that the Appellant would be forced into living in an IDP camp, or, a "critical shelter arrangement". Equally as one with a CSID and thus able to take legitimate employment, and with the support of family, and the financial support available to him from the Respondent, there is no sound evidential basis for an inference that the Appellant would be unable to support himself.

30. Looking at the evidence in the round I am satisfied that this Appellant would be able to secure employment in the KRG within a reasonable period of arrival. I am not satisfied that relocation to the KRG would place him in circumstances of destitution. Thus the expectation that he relocate to the KRG is not unduly harsh within the AAH guidance.

31. Accordingly, and notwithstanding the terms in which permission to appeal was granted, the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 20 March 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

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 him. 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 23 November 2018