



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00696/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

RA  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Harvey, Counsel, instructed by Paragon Law Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Iraq born in January 1999 in the town of Jalawla in Diyala province. He arrived in the UK in August 2015, aged 16 years, and claimed asylum soon after arrival. His asylum claim was rejected in a decision dated 27<sup>th</sup> December 2017. His appeal against the decision was dismissed by First-tier Tribunal Judge Parkes in a determination promulgated on the 20<sup>th</sup> June 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on 27<sup>th</sup> July 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to give adequate reasons for finding that the appeal could not succeed given that it was arguably accepted that the appellant was an Iraqi national and that his family may have been killed by ISIS and he may have found their bodies. There was an arguable failure in this context to give reasons for rejecting the evidence and argument that the appellant could not be returned due to his psychiatric state making it unreasonable to expect him to relocate given that it was arguably accepted that he could not be returned due to a risk in his home area
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Conclusions – Error of Law*

4. It was agreed by consent that the First-tier Tribunal had erred in law. The appellant put forward seven ground grounds particularising contended errors, and Mr Kotas agreed that the decision was in error for failure to make clear findings on the evidence for instance it was unclear whether the First-tier Tribunal had found, to the lower standard of proof, that the appellant’s family had been killed by ISIS and he found their bodies at paragraph 30 and it was unclear whether it was found that the appellant could not return to his home area of Diyala due to a real risk of serious harm at paragraph 32 of the decision. In the circumstances I found that the decision erred in law and had to be set aside in its entirety.
5. Both representatives were given time to consider and take instructions on how they wished to proceed with the remaking. The appellant had not attended the Upper Tribunal hearing as his solicitors had requested an interpreter, who would be necessary were he to give evidence, and this had been refused. The options were established as being to adjourn the remaking hearing if the appellant were to give evidence, or to proceed without him in an appeal argued on the narrower basis that his return would be a breach of Article 3 ECHR within the meaning of Article 15(c) of the Qualification Directive and thus on the basis that the appellant was entitled to humanitarian protection and not refugee status. Ms Harvey said that she had instructions that she wished to proceed on this narrower basis; Mr Kotas confirmed he was ready to proceed with a hearing on this basis but made it clear that it was not accepted by the respondent that Diyala remains a “contested” area.
6. Mr Kotas was unhappy that the appellant was not present to give evidence, but this was a decision that was open to the appellant and not one for the Upper Tribunal to make. Whilst I am able to give less weight to his evidence as he was not tendered for cross examination I note that the consultant child and adolescent psychiatrist, Dr Susan Walker, who has provided a lengthy report on the appellant for this appeal, has significant reservations about his ability to provide “accurate” oral evidence in light of his PTSD diagnosis, and raises the issue of the appellant being potentially retraumatised through recounting his experiences. She records that even her sensitively conducted interview was very distressing to the appellant, see particularly section 8.5 of her report. I have no doubt that Dr Walker is an appropriate expert, and that weight should be given to her opinion. She is an

honorary consultant in child and adolescent psychiatry at Great Ormond Street Hospital; her report is very detailed and considered; and the report includes a statement of her duty to the court and that she has read and complied with the Immigration and Asylum Chamber's practice direction on expert evidence. Her report is also stated to be her full and complete professional opinion. It is her conclusions that the appellant is a highly vulnerable young man with severe mental health needs, and she concludes the appellant has major depressive disorder as well as post traumatic stress disorder. In this context I find that is appropriate to give some weight to the appellant's written statements when making my findings.

### *Submissions - Remaking*

7. Ms Harvey submitted that it is accepted by the respondent that the appellant is from the province of Diyala, see paragraph 36 of the reasons for refusal letter. Paragraph 120 of that letter states as follows: "your home area is no longer a contested area therefore you would be unable to visit the Civil Status Affairs Office in your home governate of Diyala." Although this does not quite make sense she assumed that it was not accepted that Diyala remains a contested area. Ms Harvey argues however that this is not correct. The clarified country guidance given in the decision of the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944 section A states that there is a state of internal armed conflict, and that the intensity of that conflict in the so called contested areas, which are listed as including Diyala, is such that there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence, 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. The only question that then arises is whether there has been any substantial change so as to render it incorrect to follow this country guidance. In this respect Ms Harvey notes that the Upper Tribunal reviewed the country guidance on Iraq in the case of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212, in a decision written on 12<sup>th</sup> June 2018. No amendment was made to Section A of the guidance although the Upper Tribunal issued supplementary guidance about CSIDs and the IKR.
8. Ms Harvey draws attention to the fact that in both the decisions of AA and AAH reliance was placed on the expert evidence of Dr Fatah, indeed at paragraph 91 of AAH it is stated: "Both advocates describe him as an "excellent" expert witness and we were urged to give substantial weight to all of his evidence. We have done so. We note the large measure of consistency between Dr Fatah's reports and the other material before us. The only real point of divergence was on the question of sponsorship, and on that point we prefer - without objection by Mr Bazini - the evidence of Dr Fatah, as we explain below." In this appeal the evidence of Dr Fatah, in the specific expert report produced for this appellant dated 14<sup>th</sup> May 2018, is that Diyala continues to be a contested area where there is on-going multi-sided fighting and security incidents: his conclusion at 6.3 of the report being that: "Diyala is one of the most unstable governorates in Iraq. Diyala is part of the disputed territories, these are the provinces in which Iraq's different religions, ethnic groups and political ideologies collide. This is where the vast majority of casualties take place. Diyala has a very high level of security incidents." Dr Fatah states that the attacks

are a threat to civilians, and there is objective evidence that ISIS sleeper cells continue to operate there. Ms Harvey therefore submits that the appellant cannot return to his home area due to Article 15(c) risks.

9. Ms Harvey submitted that cogent reasons are needed to exist to depart from country guidance, and that there were none set out in the reasons for refusal letter at paragraphs 171 to 187. The judicial review decision cited was a challenge to whether a decision in a particular case was rational, and related in any case to Kirkuk. The letter cites no evidence, but relies upon the Home Office Country Policy and Information Note – Iraq published in March 2017, and does not have the detail or advantage of being as up to date as the expert report evidence of Dr Fatah which is confirmatory of the guidance in AA.
10. Ms Harvey submitted that there was no possibility of the appellant relocating to a place of safety with his uncle because his uncle also lives in Diyala, this is clear because in his statement at paragraph 13 the appellant records that his uncle lives in the village of Sheikh Bawa, which was just 15 minutes by car from Jalawla the town where the appellant lived. She said that the respondent had not suggested the appellant could relocate elsewhere in Iraq, bar the IKR, and it was clear from the guidance in BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 that this would not be safe or reasonable for a young vulnerable Kurdish man, with little education or work experience and with no family, and who had not grown up in Baghdad.
11. Ms Harvey then moved on to argued that it was also not lawful to require the appellant to relocate to the IKR. She noted that it was accepted by the respondent that the appellant did not have a CSID at paragraph 120 of the reasons for refusal letter; and it is clear from the appellant's screening interview that he had arrived in the UK without a passport and never held such a document. She argued that the evidence of the appellant was credible on this issue. The appellant said as a child on arrival at his screening interview that he had owned a CSID but he did not know where it was; in his statement he says his parents held this but he did not take it from his home when they were killed as it did not occur to him to do so. It was not until the country guidance given by the Court of Appeal (and therefore well after this claim was made) the relevance of not having such a document within the asylum system was recognised. There was no reason to doubt the appellant's history of his family having been killed, particularly given the objective evidence of an ISIS attack on that day on his home town and given the medical evidence of trauma from Dr Walker. It was also plausible that issues with the appellant's phone meant he had lost contact with his uncle. However even if he could contact his uncle this would not take the matter further as it was most unlikely that he has the appellant's CSID or would be in a position to meet him and assist in getting a replacement.
12. She then drew attention to the fact that in the country guidance in AAH it was found that all returns from the UK are to Baghdad; that it is not possible to fly to the IKR without a CSID or passport; and that there would be considerable difficulty in making the journey by land without either of these documents due to the checkpoints on the way and it would not be reasonable to expect the appellant to

do this without an ability to verify his identity, see paragraph 5 of the guidance. She argued that the guidance also indicated that the appellant would be at risk of ill-treatment during security screening on entry to the IKR because he comes from an area associated with ISIL and is a single male of fighting age. He would also struggle to be able to live there, in accordance with the country guidance, as he has no family living in the IKR, he is not a child who might be able to get into a refugee camp by virtue of showing special circumstances, and without a CSID would not be able to obtain employment particularly given a 70% unemployment rate for IDPs, the appellant's total lack of skills and his severe mental health problems. The appellant would have to resort to living in a "critical shelter arrangement" due to lack of funds or assistance from family which would be unduly harsh as he would be without food, clean water and clothing. Ms Harvey emphasised the evidence of Dr Fatah, in AAH at paragraph 96, that family is the "primary unit of social interaction, and support", and that this appellant would be without this in the IKR as well as without a CSID. Dr Fatah's evidence in AAH also went to the lack of health care for IDPs in the IKR.

13. Ms Harvey then submitted that the appellant would not be able to obtain a replacement CSID in London based on the evidence in AAH at paragraphs 100 to 106. The appellant does not have a passport and does not know the book and page number of his family registration details. To get a replacement in Iraq he would need to go to the Civil Status Affairs Office in his home Governorate, with this information and without a passport to have family members or others to vouch for him, see paragraph 186 of AA set out at paragraph 102 of AAH. She submitted that it was not at all likely that the office in Diyala would be operational in light of the background evidence, and in any case he could not be required to go to Diyala as it was place where he was at risk of serious harm as defined by Article 15(c) of the Qualification Directive.
14. Mr Kotas focused firstly on issues that he contends arise out of the lack of the credibility of the appellant. He referred to paragraph 144 of the reasons for refusal letter which states that there is no evidence that the appellant had tried to obtain a CSID or new passport by contacting the Iraqi Embassy or via friends or family in Iraq. He submitted that it should not be believed that the appellant's family were dead or that he had no contact with his uncle. His uncle could arrange for the original CSID to be sent to him in Baghdad or travel to Baghdad to meet him with it. It would then be possible for the appellant to return to his home area. As set out in the reasons for refusal letter, Mr Kotas submitted, that it was not accepted that there were, any longer, Article 15(c) risks in Diyala. However, even if this were the case the appellant could go with his family or uncle to live in the IKR, and as he would have his CSID card he could either work or be supported by his uncle who was presumably well and able to obtain employment. The appellant's uncle had paid for the agent to take the appellant from Iraq and must be presumed to be a person of means. As had been submitted family were important in Iraqi society, and this appellant should be found to have family who could assist him. Or, alternatively, the appellant could relocate to Baghdad as that would not be unduly harsh for the reasons set out in the reasons for refusal letter at paragraphs 78 to 87.

*Conclusions - Remaking*

15. Guidance and reported decisions of the Upper Tribunal all make it plain that a country guidance decision should be followed absent significant credible fresh evidence that circumstances have changed in a material way. The country guidance cases AA and AAH are recently issued decisions, although I appreciate that the political situation has continued to change since they were written, and it is necessary to look at any new evidence before the Tribunal to see if it is still appropriate to follow the guidance. The material relied upon by the respondent to say that there are no Article 15(c) risks in the appellant's home area of Diyala is older (as it is the CPIN issued in March 2017) than that relied upon by the appellant. Whilst it is undoubtedly correct that ISIS no longer occupies Diyala that is not the only reason why there might be a situation of indiscriminate violence as a result of internal armed conflict which gives rise to a real risk of a serious individual threat to the appellant's life or person. I do not find the fact that a fresh claim judicial review (CO/2508/2017) was dismissed as the decision making could not be said to be irrational in relation to an appellant from Kirkuk to be of any relevance. It is of course not known what evidence that particular applicant had put forward as to the situation in Kirkuk at the time he made his fresh claim, and in any case this appeal does not depend on the situation in Kirkuk. I find that Dr Fatah is a proper expert, as argued by Ms Harvey, and that it is appropriate to give weight to his report in this appellant's case (particularly sections 6.2 and 6.3), and for the reasons argued by Ms Harvey that there is no reason to depart from the position that the appellant cannot be required to return to his home area of Diyala in accordance with the country guidance in AA at section A 1. It is not disputed by the respondent that the appellant is an Iraqi Kurd from Diyala.
16. It is then necessary to decide whether the appellant's uncle also lives in Diyala, and thus whether the village of Sheikh Bawa is in this district. I am satisfied that this is the case for the following reasons. It is necessary to consider the credibility of the appellant to come to a conclusion on this issue. I have not had the advantage of hearing oral evidence from the appellant. As I have set out above however there are valid reasons relating to his fragile mental health verified by a medical expert why together with his legal representatives he has decided not to attend the Upper Tribunal to give oral evidence. In his detailed witness statement made in December 2016, made therefore before the refusal decision, the appellant makes the proximity of his village to the appellant's town clear, at paragraph 13, when he is detailing finding his family killed by ISIS and fleeing to his uncle. I am satisfied to the relevant lower civil standard of proof that the appellant's uncle lived in Sheikh Bawa, and therefore also in Diyala, and thus also a place, to which the appellant could not return due to Article 15(c) risks.
17. I find that the appellant does not currently have a CSID or passport. This is what he said from the time of his arrival at this screening interview as a 16 year old child, and this is tacitly accepted by the respondent in the refusal letter. The appellant did not simply deny ever having had any documentation but gave a history of having had a CSID but this being abandoned and lost in the house at the point of time the ISIS killed his family on or around 11<sup>th</sup> August 2014. I am satisfied to the lower civil

standard of proof for the following reasons that this attack took place and the appellant's parents and siblings were killed as he has claimed. The background evidence supports this attack taking place. There are varying accounts in the news reports as to the precise time and even day of the attack (see paragraph 5 of Dr Fatah's report) but it is clear that there was a civilian slaughter by ISIS on or around this day. Further, I find the report of Dr Walker to be supportive of the appellant having lost his family in this way. She records that he became "visibly distressed when I asked him if he could talk about that day", and she was shown evidence of his self-harming which he reported to her as the only way he was able to stop thinking of the images of his murdered family (see paragraph 7.7.2 and 7.7.4 of the report). Dr Walker records that she has considered whether the appellant was feigning or exaggerating, but found that his inability to talk about the deaths of his family members was not consistent with someone wanting to make up a history, and his non-verbal responses were consistent with someone who had acquired PTSD and depression in the way he claims. It is clear that Peterborough Social Services also have experienced the appellant struggling to cope with flash backs of the death of his family, and consequent mental health problems, see the document at page 33 of the appellant's bundle. I find therefore that the appellant's original CSID was lost in the wreckage of his broken family home, as described at paragraph 12 of his witness statement. It would not be possible for his uncle to send or bring this document to him in these circumstances, even if the appellant locates him through the Red Cross or has a telephone number for him.

18. The appellant came to the UK as a 16 year old child from a farming family who had given up his schooling in the third year of secondary school aged 13 years. I find that he would not know the book and page number of his family registration details relating to a document he had only vaguely been aware of as being in the possession of his parents, and that in any case it would not be possible for him to go to the Civil Status Affairs Office in his home Governorate, as this is in Diyala, and he could not obtain this in the UK for the reasons set out by Ms Harvey in her submissions. I do not find that it is a matter which goes against his credibility that he has not tried to obtain one in the UK as on the country guidance evidence he does not have the relevant documentation or knowledge to attempt to do so.
19. I do not find that the appellant's uncle is likely to be in a position to assist him if he were returned to Iraq. When the appellant left he owned a shop in a small village in Diyala. He was obviously committed to assisting the appellant, and it is the appellant's evidence he spent £5000 on an agent to get him out of Iraq. The appellant's history was that he threw away the SIM card in the phone he brought from Iraq, on which he could contact his uncle, as it ceased to work after he left Turkey, but that the phone (with the number in it) was taken by the British police and he has been unable to retrieve it from them or contact his uncle as a result. He has contacted the Red Cross to see if his uncle can be located, but in turn this process has not produced any results as yet. I find it probable that the appellant's uncle has either remained in Diyala despite the real risk of serious harm or is himself an IDP somewhere in Iraq. Neither of these positions is one from which he can provide for the appellant safely, and I do not find that he has any likelihood whatsoever of

finding the appellant's CSID or of travelling to meet him in Baghdad or accompanying him to the IKR if the appellant were returned to Iraq.

20. I adopt the submissions of Ms Harvey as to why it would not be reasonable to expect the appellant to relocate either to the IKR or Baghdad. I find that the appellant is an extremely damaged and vulnerable young man. As Dr Walker states at paragraph 8.4.5 of her report the appellant's: "emotional dissociation, insecure asylum status, increasing hopelessness and ongoing self-harm mean that he is at risk of becoming actively suicidal should he not receive appropriate social support and evidence-based mental health treatment." To require him to internally relocate in Iraq without a CSID, family or the likelihood of such support and medical treatment would be unduly harsh.
21. I therefore conclude for the above reasons that the appellant cannot return to his home area of Diyala due to a state of internal armed conflict which means that he is, as a civilian, solely on account of his presence there at real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. I also conclude that it would be unduly harsh for him to have to relocate internally within Iraq as such relocation would also pose a real risk of subjecting him to serious harm.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing it on humanitarian protection and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 12<sup>th</sup> September 2018