Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01164/2017**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 20 March 2018	**On 27 April 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

BASHDAR IBRAHIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

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

DECISION AND DIRECTIONS

1. The appellant is a national of Iraq. He has permission to challenge the decision of Judge Head-Rapson of the First-tier Tribunal (FtT) sent on 23 March 2017 dismissing his appeal on international protection grounds.

2. The judge accepted that the appellant's home area was Kirkuk but rejected for lack of credibility his claim to fear reprisals from the family of a girl he had extramarital relations with.

3. The grounds do not challenge the judge's adverse credibility findings but take issue with the judge's decision to depart from Upper Tribunal country guidance as set out in **AA (Article 15(c) Iraq CG [2015] UKUT 544 (IAC)** according to which Kirkuk was unsafe.

4. I have no hesitation in finding this ground of appeal made out. The only reason given for departing from **AA** is that set out by the judge at paragraph 46 which states:-

> "46. Since the case of **AA**, and indeed since the decision was made in this case, in August 2016, the Objective Evidence states as follows:
>
> ***Country Information and Guidance – Iraq: Return/Internal Relocation (August 2016):***
>
> *3. Policy Summary*
> *3.1.1 The 'contested' governorates of Iraq are Anbar, Diyala, Kirkuk (aka Tameen), Ninewah and Salah al-Din.*
> *3.1.2 In the **CG** case of **AA**, which considered evidence up to April 2015, the courts found that, in the 'contested' governorates, indiscriminate violence was at such a level that subsequent grounds existed for believing that a person, solely by being present there for any length of time, faced a real risk of harm which threatened their life or person (thereby engaging Article 15(c) of the Qualification Direction and entitling a person to a grant of Humanitarian Protection).*
> *3.1.3 However, the situation has changed since then, Diyala, Kirkuk (with the exception of Hawija and the surrounding area) and Salah Al-Din no longer meet the threshold of Article 15(c).*
> *3.1.4 However, decision makers should consider whether there are particular factors relevant to the persons individual circumstances which might nevertheless place them at enhanced risk.*
> *3.1.5 In general, a person can relocate to the areas which do not meet the threshold of Article 15(c).*
> *3.1.6 Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002."*

There are two difficulties with this treatment. First, to designate the CIG policy as "Objective Evidence" was not something the judge could simply assume. CIG policy is an emanation of the Home Office who is only one party in the appeal. The objectivity of what was described as "Objective Evidence "was a matter for judicial evaluation. Second there was a considerable body of background country material before the judge, some relating to the issue of safety in Kirkuk and not all of it concurred with the CIG assessment. The judge's treatment evinces a clear failure to give cogent reasons for departing from country guidance or (as part of that) to identify diverse sources justifying such a course.

5. Mr Diwnycz did not seek to resist the grounds of appeal if I was persuaded the judge erred in his treatment of the guidance in **AA**, but I have given consideration in any event to whether the decision could be defended on the basis that the judge made further defensible findings in the alternative to the effect that the appellant could safely and reasonably relocate to the IKR. I have concluded that the judge's treatment of this issue is too problematic for me to uphold it. The principal difficulty is that the judge's approach is at odds with the Home Office CIG on internal relocation, as well as with Tribunal country guidance. In particular the judge only dealt with the issue of entry for 10 days or registration for renewal and sponsorship without addressing all the factors set out in **AA** at paragraph 204 pages 17 – 21.

6. For the above reasons the judge materially erred in law necessitating that I set out the judge's decision.

7. To conclude:

   The decision of the FtT is set aside for material error of law.

   The case is remitted to the FtT (not before Judge Head-Rapson).

8. No anonymity direction is made because none was applied for.

Signed: Date: 25 April 2018

H H Storey

Dr H H Storey
Judge of the Upper Tribunal