



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06968/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 October 2017

Decision & Reasons Promulgated  
On 20 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

MASTER ASN  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms G Brown, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

1. The First-tier Tribunal made an anonymity order. I have not been invited to rescind that order. The order remains appropriate as this is a protection claim concerning a minor.

## **Background / Substantive Issues under Appeal**

2. The Appellant is a national of Iraq born on [ ] 2000. He entered the United Kingdom, clandestinely, on 12 or 13 November 2015. He claimed asylum on 22 December 2015 on the basis that he fled his village near Kirkuk due to the advance of ISIS fighters and now feared them on return to Iraq.
3. The application was refused by the Secretary of State and the reasons for that decision are set out in a letter of 17 June 2016. Nonetheless, in view of the Appellant's minority, a grant of Discretionary Leave to Remain was made until 3 October 2017.
4. It was the refusal of the asylum claim however that gave rise to an appeal before First-tier Tribunal Judge Coutts.
5. There was no dispute before Judge Coutts that the Appellant could not return to Kirkuk as this was a "*contested area*", but he found the Appellant could replace his identity documents and return to another area of Iraq (such as Baghdad or the southern region) or to the IKR. Judge Coutts thus dismissed the appeal in a decision dated 25 August 2017. At an error of law hearing on 28 July 2017, I decided that the First-tier Tribunal erred in law and its decision should be set aside and remade by the Upper Tribunal. It was accepted the Appellant came from a "*contested area*" and the only live issue was whether there was any consequential risk to the Appellant on return to Iraq that would entitle him to international protection. As the parties were not in a position to proceed the hearing was adjourned.
6. The matter now came before me to re-make the decision. At the outset of the hearing, Mr Clarke outlined the Respondent's case that Kirkuk was not currently a "*contested area*" given the change of circumstances on the ground there. The shift in the Respondent's position did not place Ms Brown in difficulties and both parties were content to proceed with the hearing. Ms Brown indicated that she did not intend to call on the Appellant to give oral evidence as the parties agreed that the appeal could be determined on the accepted facts.
7. I thus proceeded to hear submissions from both representatives. The Tribunal is grateful to them both and in particular to Mr Clarke who while indicating that he could not concede the appeal, fairly and properly prefaced his submissions by acknowledging the difficulties in the Respondent's case.

## **Submissions**

8. Mr Clarke on behalf of the Respondent submitted that:
  - (i) The Appellant's return is not currently feasible; he has no identity documents.
  - (ii) The lack of documentation does not entitle the Appellant to international protection.
  - (iii) Kirkuk is not a contested area, but it was open to the Appellant to show on his accepted profile that there is an Article 15 (c) risk.

- (iv) It is accepted the Appellant has no support networks in Iraq.
  - (v) The Appellant can board a flight to the IKR and secure employment. .
9. On behalf of the Appellant Ms Brown submitted that:
- (i) The Appellant's limited education is an important factor in the assessment of risk.
  - (ii) There is no evidence the Appellant could acquire a Laissez-passer or passport.
  - (iii) The Appellant has no documents. He cannot obtain a CSID which is required to access services in Iraq.
  - (iv) There are insufficient grounds to depart from the Tribunal's Country Guidance (CG).
  - (v) While there have been changes in Kirkuk, instability of a different nature continues in the area; many people have been displaced and thousands are fleeing the city.
  - (vi) Alternatively, the Appellant will be subjected to indiscriminate violence in light of his accepted profile.

### **Re-making the Decision**

#### *Legal framework*

10. Article 33 of the 1951 Convention states that no Contracting State shall expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
11. The requirements for a grant of humanitarian protection are set out in paragraph 339C of the Immigration Rules. So far as material these are that:
- a. The Appellant does not qualify as a refugee; and
  - b. Substantial grounds have been shown for believing that the Appellant, if returned to the country of return, would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself of the protection of that country.
12. "Serious harm" is also defined in paragraph 339C of the Immigration Rules, namely:
- a. The death penalty or execution;
  - b. Unlawful killing;
  - c. Torture or inhuman or degrading treatment or punishment of a person in the country of return;
  - d. Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

13. The Appellant bears the burden of substantiating his case as at the date of hearing. The standard is a reasonable degree of likelihood (sometimes referred to as a realistic possibility).

#### *Facts*

14. It is not necessary to rehearse the historical account given by the Appellant as the parties agree that the issue of risk should be assessed on the accepted facts relating to his individual characteristics. These are:
- (i) The Appellant is an Iraqi Kurd from the town of Dobz near Kirkuk. He is 17 ½ years old.
  - (ii) He was separated from his family after they left Iraq together. He has been unable to trace them.
  - (iii) He has no immediate or extended family member(s) in Iraq.
  - (iv) He has no identity documents.
  - (v) Without any family member(s) in Iraq he is likely to be vulnerable (see expert report from Dr Ghaderi dated 11 December 2016).
  - (vi) He is uneducated but literate in Kurdish Sorani.

#### *Country Guidance (CG) and background evidence*

#### CG

15. The Tribunal's CG relevant to the present decision is set out, firstly, in AA Iraq (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as revised by the Court of Appeal in AA Iraq [2017] EWCA Civ 944. The guidance applicable is set out in the following paragraphs of the revised headnote as follows:

"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.*
2. *The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.*
3. *The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).*

4. *In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.*

B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. *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.*

6. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

7. *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.*

8. *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.*

C. The CSID

9. *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.*

10. *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.*

11. *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.*

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. Secondly, the Tribunal gave further CG in the case of BA (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC). The Tribunal found that the level of general violence in Baghdad city remains significant, but the current evidence did not justify a departure from the conclusion in AA (Iraq).

*Background evidence*

17. The background evidence drawn to my attention by the parties can be summarised as follows.

18. The Home Office Country Policy and Information Note Iraq: Return/Internal relocation: September 2017 states at para.2.2.3:

*"Since AA Iraq was promulgated, the security situation has changed in particular:*

- *Daesh have lost territory;*
- *Government of Iraq (GoI) and/or associated forces have regained control of some areas;*
- *the level of violence has declined; and*
- *Internally Displaced Persons (iDPs) are returning to their areas of origin*

2.2.4 *Therefore, internal relocation is, in general, possible to all areas of Iraq*

- *parts of Mosul and the surrounding areas;*
- *Tal Afar and surrounding areas in northern Ninewah;*
- *Hawija and surrounding areas in Kirkuk governorate; and*
- *parts of west Anbar."*

19. At the hearing Ms Brown filed various internet articles from the BBC, Jerusalem and Rudaw, reporting the situation on the ground at the date of hearing. They can be summarised shortly as their content is not disputed. They refer to the victory of the Iraqi army in seizing Kirkuk from Kurdish control and the consequential displacement of hundreds of thousands of people to Erbil and Sulaymaniyah due to fear and instability in the area creating a new humanitarian challenge.

### **Discussion and Conclusions**

20. This is one of an ever increasing seemingly number of cases that comes before the Tribunal relating to return of Iraqi nationals to Baghdad or the IKR. In this case there is no dispute that the Appellant will be returned to Baghdad. In order for him to be returned he will need either a passport, current or expired, or a Laissez-passer. If he has none of these he will be refused entry. In the light of that fact, the Secretary of State does not return persons who do not possess any of these documents. The Respondent through Mr Clarke accepts that the Appellant has none of these documents and thus accepts that his return is not currently feasible. Nonetheless, there is no dispute that the unfeasibility of return does not entitle the Appellant to international protection: see AA Iraq CoA at headnote [7].
21. It was accepted at the hearing that each case is fact-sensitive. The factors in this case that are to be assessed is likely to involve inter alia an assessment of the following:
- (a) the likelihood of the Appellant obtaining a CSID on return;
  - (b) the conditions prevailing in Baghdad and whether the conditions there, in light of the Appellant's individual characteristics places him at real risk of serious harm;

(c) the practicality of travel from Baghdad to Kirkuk or the IKR (such as to Erbil by air) and whether there are any associated risks.

22. It is accepted by Mr Clarke that the Appellant is a vulnerable person without family support and that he is without documentation. The absence of any family support in Iraq thwarts the Appellant's ability to obtain documentation following his return. Without documentation the Appellant will not be able to access financial assistance from the authorities; employment; education; housing; and medical treatment, and there are no family members or any other person likely to be able to provide any means of support. The Appellant would thus face extreme difficulties in relocating to Baghdad and those difficulties are compounded by his limited education and his lack of fluency in Arabic. The humanitarian position is serious in Baghdad for internally displaced persons let alone those who have other personal factors of disadvantage. The Appellant is in general therefore likely to face a real risk of destitution amounting to serious harm in Baghdad.
23. The Respondent's view is that the Appellant can avoid the conditions prevailing in Baghdad by boarding an onward flight to the IKR, it being accepted that a journey there by land would be perilous. While the Respondent will return the Appellant to Baghdad there is no evidence that she will provide an onward ticket to Erbil International Airport. Consequently, it is necessary for the Appellant to obtain his own ticket. The question then becomes a very narrow one, namely "Will such ticket be available?" Unless there is certainty that it is, bearing in mind the risks the Appellant would be exposed to in Baghdad, then it cannot be appropriate to return such a person unless there is certainty that they will be in a position to move on. The Appellant will not be in a position to do so without documentation. In such circumstances, I conclude that there is a real risk that the Appellant would find himself stuck in Baghdad which exposes him to risk.
24. Should I be wrong about that, it is unreasonable to expect this vulnerable Appellant to relocate to the IKR where he has no family or means of support and a reduced chance of finding employment given his lack of connections in the area and his limited education.
25. That leaves the Appellant moving on to Kirkuk. The fall of ISIS and the retaking of Kirkuk by the Iraqi authorities in October 2017, indicates a significant shift in the position on the ground since AA Iraq (and country guidance cases must give way to those realities, a point recognised by the Court of Appeal in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 at para [47]). Notwithstanding, the fact that the Appellant has no documentation means that there are significant obstacles to his onward travel from Baghdad to Kirkuk also. The Appellant can only access Kirkuk by road. It has not been suggested that it would be safe for this vulnerable Appellant to embark on that journey or that he could travel there by avoiding areas in Iraq which remain contested or are otherwise unsafe. Even if the Appellant could access Kirkuk, which I am not satisfied that he could, and while the situation there has changed, the parties are in agreement that it is open to the Appellant to show that on his accepted profile there is an Article 15 (c) risk.

26. The Respondent accepts that this is an Appellant who is vulnerable. I find that he is so by his age; lack of documentation and family support in Iraq. While the territory of Kirkuk is not currently contested, the background evidence drawn to my attention illustrates the apparent dangers still prevailing in that area with hundreds of thousands of persons being displaced from that region as a consequence of the unstable humanitarian situation there. This evidence is uncontested. I thus have no hesitation in concluding that the Appellant in view of his distinguishing characteristics will be at real risk of suffering serious harm of the type identified in Article 15(c) of the Qualification Directive.
27. The Tribunal recognised in BA Iraq that individual characteristics, which do not in themselves create a real risk of serious harm on return to Iraq, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case. Given the accepted facts in this case by the Respondent and in light of the prevailing circumstances in Iraq relevant to this Appellant, in my judgement, the question of whether he is entitled to international protection must be answered in the affirmative.

### **Notice of Decision**

The appeal is allowed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18 January 2018

Deputy Upper Tribunal Judge Bagral