



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11252/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 7th December 2017

Promulgated

On 2nd January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR SHIRWAN AMIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Riffat Hussain, Solicitor

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Shirwan Ali Amin against the decision of Judge Saffer, promulgated on the 22nd March 2017, to dismiss his appeal against refusal of his Protection Claim.
2. The appellant was born on the 1st January 1995 and hails from the town of Tuz Khurmtu in the province of Salahuddin (Salah al-din) in Iraq. He left there when his home was shelled and all his documents, including his Civil Status Identification Document [CSID], were destroyed. His case has always been that his home town is contested by ISIS and Iraqi national forces and that it would be unreasonable to expect him to relocate elsewhere given his lack of identity documents.

3. The position of the Secretary of State concerning the safety or otherwise of the appellant returning to Tuz Khurmtu has changed repeatedly throughout these proceedings. The original decision-maker conceded that Tuz Khurmtu was a so-called “contested area” but nevertheless refused the claim for international protection on the ground that it was feasible for the appellant to relocate to an area within Iraq that was not contested. That decision was made on the 29th September 2016. This concession was withdrawn by the Presenting Officer (Mrs Brewer) at the hearing in the First-tier Tribunal on the 22nd March 2017, and Judge Saffer duly found that the background country information justified his departure from the guidance in this regard that is to be found in AA (Article 15(c)) Iraq [2015] UKUT 00544. It will be recalled that the Upper Tribunal found in that case that Tuz Khurmtu was a contested area. On the 26th July 2017, Judge Shaerf granted permission to appeal on the ground that Judge Saffer had given inadequate reasons for departing from the decision in AA. By way of a notice served on the 7th August 2017, under Rule 24 of the Upper Tribunal Procedure Rules, the Secretary of State indicated that she did not oppose the appeal and invited the Tribunal “to determine the appeal with a fresh oral (continuance) hearing and to consider whether the appellant would be at risk on return **as per AA (Iraq)**.” [Emphasis added]. Given the terms of the notice, Mr Diwyncz felt constrained to concede that there had been an error of law and that the decision of the First-tier Tribunal should be set aside and remade in the Upper Tribunal. This did not however prevent him from arguing that I too should depart from the guidance in AA. The position of the Secretary of State has thus come full circle since Judge Saffer made his decision for reasons that seem to have little if anything to do with the changing situation on the ground in Tuz Khurmtu.
4. In granting permission to appeal, Judge Shaerf appeared to suggest that the amendments made by the Court of Appeal to the original guidance issued by the Upper Tribunal in AA might be relevant to Judge’s Saffer’s decision to depart from that guidance. It is therefore appropriate to note from the outset that the Court of Appeal did not make any amendments to the original guidance concerning those areas of Iraq within which the Upper Tribunal found there to be a state of internal armed conflict giving rise to a risk of serious harm (see the Annex to the judgement in AA (Article 15(c)) Iraq [2017] EWCA Civ 944 at paragraph A). It thus remains the starting point that the intensity of the armed conflict in the so-called “contested areas”, which includes the governate of 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, 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. It was thus for the Secretary of State to persuade Judge Saffer, and now me, that the background country information justifies departure from that position.
5. Both Mrs Brewer (in the First-tier Tribunal) and Mr Diwyncz (before me) placed substantial reliance upon the UK Home Office Country Information and Guidance Note (Iraq), “Security situation in the ‘contested’ areas

(August 2016)". That Guidance contains the following conclusion, at paragraph 2.3.14:

Diyala, Kirkuk (except Hawlja and the surrounding areas) and Salah al-din no longer meet the threshold of Article 15(c).

Mr Dwyncz additionally relied upon printouts of maps of northern Iraq that were taken from a website entitled "isis.livemuamap.com", which are dated the 6th December 2017. These appear to show that Tuz Khurmatu was under Iraqi government control as at that date.

6. The Country Information and Guidance Note states that within the last year (that is to say, in the year preceding August 2016) Daesh had suffered significant losses, with Government and associated forces now controlling "most" of Salah al-din. Since the situation was considered in AA in mid-2015, the number of security incidents had declined and the number of civilian fatalities and injuries had either decreased or remained steady within relatively low levels. However, as Ms Hussain rightly pointed out, the Guidance Note paints a picture of a general decline in the intensity of violence rather than one of cessation. The question thus remains whether the intensity of that violence is such as to meet the threshold of Article 15(c). In this regard, Ms Hussain drew my attention to reports of a suicide car-bomber who killed six civilians in Tuz Khurmatu on the 3rd September 2016 [pages 31 and 32 of the appellant's bundle of documents] and of Sunnis and Kurds fleeing sectarian violence from Shiite militia in Tuz Khurmatu on the 25th June 2016 [pages 140 to 143 of the appellant's bundle of documents].
7. Standing back and looking at the background country information in the round, I am not satisfied that it establishes that the intensity of the violence that it reports in Tuz Khumatu had fallen below the threshold necessary for Article 15(c) to cease to be operative. I note that the material relied upon by both sides relates to the situation as it appertained more than 12 months' ago, at a time when Iraqi Government and associated forces had but recently regained control of the area. This does not however mean that it had ceased to be a contested area at that time, any more than it could be said to have been uncontested area when ISIS were in overall control of it. Thus, whilst the current situation may now be very different from that reported in the background country information that has been placed before me, that information does not in my judgement justify departing from the finding in AA that there are substantial grounds for believing that there is a situation of internal armed conflict in Salah al-din that gives rise to a real risk of serious harm as a result of indiscriminate violence.
8. Following on from the above, and applying the guidance in AA (as amended by the Court of Appeal), I find that the appellant will be unable to go to the Civil Status Affairs Office of the Salah al-din governate because it continues to be an area where Article 15(c) serious harm is occurring. Whilst alternative CSA Offices for Salah al-din have been established in Baghdad and Kerbala, this does not demonstrate that the "Central Archive" is in practice able to provide CSID to those in need of them. Given

that the precise operation of the National Status Court in Baghdad is unclear, I am satisfied that it is not reasonably likely that the appellant would be able to obtain a replacement CSID card. Whilst Judge Saffer considered it unnecessary (because he found that the appellant would have little difficulty in obtaining a replacement CSID) he nevertheless accepted that the appellant would be unable to call upon familial support as an alternative to the financial and other services that are provided to those who are in possession of a CSID. I therefore find that there is a real risk that the appellant would become destitute once the funds provided to him by the Secretary of State became exhausted.

Notice of Decision

9. The decision of the First-tier Tribunal to dismiss the appeal is set aside and is substituted by a decision to allow the appeal.

No anonymity direction is made.

Judge Kelly

Date: 26th December 2017

Deputy Judge of the Upper Tribunal