



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09955/2017

THE IMMIGRATION ACTS

Heard at Newport

On 13th November 2018

Decision & Reasons

Promulgated

On 8th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MOHAMMED [K]
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Latimer

For the Respondent: Mr C Howells

DECISION AND REASONS

Introduction

1. The Appellant, born on 1st January 1988, is a citizen of Iraq. The Appellant was represented by Ms Latimer. The Respondent was represented by Mr Howells, a Senior Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made an application for asylum on 3rd May 2016 and that application had been refused by the Respondent on 21st September 2017. The Appellant had appealed that decision and his appeal had been heard by Judge of the First-tier Tribunal O'Brien sitting at Newport on 2nd January 2018. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal had been made and granted on 23rd February 2018. Directions had been issued for the question of an error of law to be decided by the Upper Tribunal and the matter had come before me in accordance with those directions on 22nd August 2018. For reasons given within the decision I found that a material error of law had been made by the judge and decided that the case needed to be reheard and a fresh decision made. Directions were issued amongst which it was directed that that fresh decision should be taken in the Upper Tribunal and that the findings of fact made by the judge in relation to the Appellant's personal circumstances and reason for leaving Iraq in the first instance were preserved and that the issue to be decided was the question of risk on return to Iraq.

The Proceedings - Introduction

3. The Appellant was present. There was no interpreter but the Appellant's representative was quite content for the matter to proceed in the absence of an interpreter as it was intended that the case would proceed by way of submissions only from both the Respondent and the Appellant's representative.
4. In addition to the documents on the original file I was provided with:
 - Skeleton argument.
 - Appellant's bundle, pages 2 to 126.
 - Iraqi News extract.
 - **AAH Iraq CG [2018] UKUT 00212.**
5. As a preliminary matter the issues in the case were discussed and agreed. The Appellant's home area in Iraq is agreed to be Diyala. The Respondent said that the Appellant could return to his home area, that part of Iraq now being sufficiently safe. The Respondent accepted that the Appellant could not relocate to Baghdad because of his personal situation but the Respondent further said it would be possible for the Appellant to relocate to the IKR should it be found that his home area was unsafe.

Submissions on behalf of the Respondent

6. Mr Howells submitted that the conflict between ISIS and Iraqi forces had changed markedly in recent times with ISIS no longer having control in Iraq and it was appropriate therefore to look at whether Article 15(c) was applicable in any area of Iraq.
7. In respect of the Appellant's home area of Diyala it was accepted that in **AA [2015]** Diyala had been found to be an Article 15(c) area but was submitted that that had changed in a durable way and that ISIS no longer

controlled the territory and there was no longer a threat that it could re-take that area. I was referred to the CPIN March 2017, paragraphs 2.3.6 and 2.3.9. I was further referred to the table at paragraph 9.6.1 and the map at 8.4.1. Additionally, I was referred to the final page which was a UNHCR Report January 2018 dealing with Diyala. In respect of security it was found that in **AA [2015]** the issue of security was a matter to be looked at but it was submitted that Diyala no longer fitted into that category and in particular, I was referred to a number of graphs within the CPIN Report and paragraph 4.4 of a Swedish Report. Mr Howells submitted that the Appellant had a maternal uncle in Diyala and could ask him to get a replacement CSID from the local civil affairs office or that the Appellant could give a power of attorney to someone else to do that. It was noted that at paragraph 19 of the Appellant's witness statement of 27th October 2017 the Appellant had provided documents and photographs from that uncle proving that the uncle had that ability to assist him. The Appellant had also said that it was the uncle who had paid an agent for the Appellant to leave Iraq. It was noted the Appellant had copy ID documents showing that he had previously been issued with documents.

8. In respect of Baghdad it was accepted that it would be unreasonable for him to relocate to Baghdad, in particular because it was accepted he had no family connections in that area nor did he speak the Arabic language and was Kurdish.
9. In terms of the KRG I was reminded the Appellant was an ethnic Kurd and therefore he would be free to enter the KRG. The case of **AAH [2018]** found that if an Appellant had a CSID or passport then there would be no risk travelling from Baghdad to the KRG but if such a person did not have that document then they would face difficulty on the journey. It was submitted the Appellant could get a CSID from the Iraqi Embassy that would allow him to then travel to the KRG. I was reminded that the Appellant's own evidence which was accepted is that he had fought with the Peshmerga between 2006 to 2015 having risen to the rank of warrant officer.
10. On behalf of the Appellant I was referred to the skeleton argument. In the case of Diyala it was submitted that this was still a contested area that met the Article 15(c) provisions. It was said that **AA [2017]** had been decided by the Court of Appeal in July 2017 and that the CPIN referred to had in fact been issued prior to **AA [2017]**. I was referred to the Danish Immigration Service Report at page 105 and 126 of the Appellant's bundle. In **AAH** at paragraph 14 the threat from ISIS was recognised in the Diyala area and was said that it was likely it would be there for some time. It was submitted that that was the position declared in June 2018. It was said that there was no cogent evidence to depart from AA.
11. In respect of return to the KRG and the question of a CSID document, **AAH** dealt with the question of return to the KRG and it was said that there was no evidence to show that anyone else had been able to get a CSID for some other person. It was submitted that the embassy in London was unhelpful. The Appellant had said that he had lost his Iraqi passport but it

was also said that the documents said to be necessary to produce to obtain a CSID did not include a passport. **AAH** in 2018 had found that ISIS had destroyed or damaged most of the registry offices in areas they controlled and therefore it is unlikely the Appellant would be able to obtain a replacement CSID. It was submitted therefore that it was not possible for the Appellant to get such document either in the UK or Iraq and therefore he would not be able to travel to the KRG. Indeed, I was referred to the opinion of Dr Fatah in **AAH** where it was said the person would have difficulty leaving an airport without the CSID. In all those circumstances it was said that relocation to the KRG was not reasonable.

12. At the conclusion of the hearing I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

Decision and Reasons

13. It is accepted fact that the Appellant is from Diyala. In **AA [2017] EWCA Civ 944** the Court of Appeal had considered the original decision in **AA [2015]** before the Upper Tribunal. They were essentially focused on the issue of a CSID but as noted at paragraph 41 they appended to their judgment a complete revised country guidance which appears as annexes to the judgment. Accordingly, whilst the judgment may not have looked in detail at all the matters considered in the case in 2015 it nevertheless specifically sets out guidance and at paragraph 22 (Annex F) specifically stated “this decision replaced all existing country guidance on Iraq”.
14. Annex A, paragraph 1 states:

“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, 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 faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c)”.

That decision was made in July 2017.

15. In general terms, a judge is required to take country guidance determinations into account and to follow them unless very strong grounds supported by cogent evidence are adduced justifying their not doing so (**SC [2012] EWCA Civ 940**).
16. It is accepted that circumstances in Iraq may well be fluid and there may have been changes in a relatively short time. It is also accepted that the threat posed by ISIS a few years ago is significantly reduced and different to the situation now. I have carefully considered all the data I have been referred to within the bundles. It is a mixed picture. Whilst I accept that various graphs show a reduction in security problems in Diyala it is begins from a poor base being one of the six most affected areas. In terms of

areas where households have not been able to access their local public distribution system Diyala registered third worst in Iraq according to Reach.

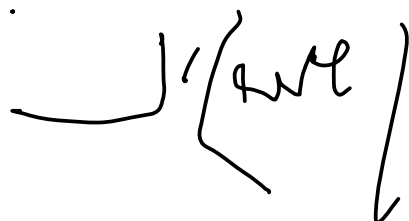
17. In summary, I accept there have been changes and improvements but it is by no means a clear or unambiguous significant shift for the better that is presented. I do not find that there is that level of cogent evidence that allows me to depart from a country guidance case decided by the Court of Appeal as recently as July 2017. If the reality is that the last time a case looked in depth at the situation throughout Iraq was in late 2014/early 2015 then the answer is to produce an updated country guidance case. I do not find on the material before me however a sufficiency of cogent evidence that would justify a departure from the Court of Appeal guidance in **AA [2017]** insofar as Diyala is concerned. I find therefore a return of the Appellant to his home area would lead to a situation where he would be entitled to humanitarian protection.
18. I have therefore looked at the question of internal relocation. The Respondent accepts that the Appellant's personal circumstances are such that they agree a relocation to Baghdad would be unduly harsh. Accordingly, the only option for internal relocation would be to the IKR.
19. **AA [2017]** Annex E noted at paragraph 17 that the Respondent will only return P to the IKR if P originates from the IKR and his identity has been pre-cleared with the IKR authorities and they do not require a passport or laissez passer. At paragraph 19 it is said that a Kurd who does not originate from the IKR can obtain entry clearance for ten days as a visitor and thereafter renew that entry.
20. Since **AA [2017]** Annex E, there has been the country guidance case of **AAH [2018] UKUT 00212**. That notes that there are no international flights to the IKR and all returns are via Baghdad. If the Appellant as a Kurd had a CSID or passport then there would be little difficulty in him making the journey from Baghdad to the IKR. However, without a valid CSID or passport then he would face considerable difficulties in making the journey from Baghdad to the IKR. It is said that it is not reasonable to require P to travel between Baghdad and the IKR by land absent the ability of P to identify his identity at checkpoints.
21. I find that the time the Appellant has spent in the IKR as a Peshmerga, gaining the rank of warrant officer, would have given him a noticeable footprint in that area. I find that he would have contacts and potentially friends that would provide him with the type of assistance that is described in **AAH** as being available to those with family assistance. I find the Appellant's footprint in the IKR such that the term "family assistance" used in **AAH** whilst no doubt referring to blood relatives would in the circumstances of the Appellant's case be as readily applicable in his case to contacts and friends that he has in that area.
22. The question mark therefore is the ability/reasonableness of the Appellant travelling from Baghdad to the IKR. I do not find evidence to suggest he has a current or expired passport. In terms of his ability to acquire a CSID

within a reasonable timeframe in Baghdad I am guided by the criteria referred to in Annex E of **AA [2017]** and the replacement guidance within **AAH [2018] UKUT 00212**. I have looked at the factors to see whether the Appellant could obtain a new CSID within a reasonable timeframe. I have noted the factors listed within **AAH [2018]**. I find the following relevant to the Appellant:

- (a) The Appellant does not have documents.
 - (b) The local civil registry office in Diyala was potentially formerly held by ISIL, may well be destroyed, was in a contested area and remains in an area I find that on current country guidance remains an Article 15(c) area.
 - (c) The relative referred to within the facts, namely the Appellant's maternal uncle, is on the mother's side of the family in a system which is patrilineal. That uncle does not live in Diyala and information about him and his current circumstances is extremely limited. There are no other family members identified.
 - (d) The Appellant is Kurdish, does not speak Arabic and has no known family friends or support in Baghdad.
23. The ability of the Appellant to obtain a CSID within a reasonable timeframe in Baghdad is therefore unlikely. The Respondent accepts that internal relocation to Baghdad (presumably except for a short transit period prior to relocation to the IKR), is not acceptable, but the evidence points precisely to the fact that the Appellant's ability to relocate outside Baghdad in a reasonable timescale or at all in safety is doubtful because of his lack of a CSID and inability to obtain one within such a reasonable timescale if at all.
24. Accordingly, whatever the reality may be on the ground currently, following as I do the relevant country guidance case law for reasons provided, I find the Appellant cannot be returned to his home area. The Respondent accepts he cannot be relocated to Baghdad. I find that he could, given his background, relocate to the IKR but for reasons given I do not find that he has or could obtain the necessary identification that would allow him to travel from Baghdad to the IKR given that currently removal is only to Baghdad and not direct to the IKR.
25. I find therefore that returning the Appellant to his home area would be a breach of Article 15(c) and there is no current viable internal relocation option in his case.

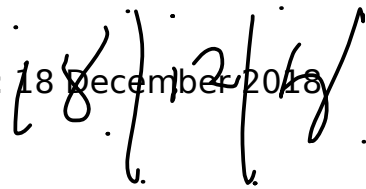
Notice of Decision

26. I find in this case that the Appellant qualifies for humanitarian protection.
Anonymity not retained.



Signed

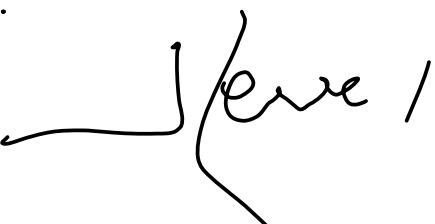
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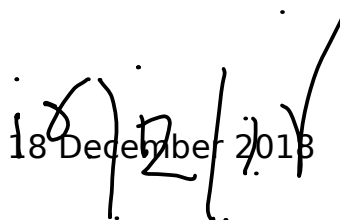
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Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable

Signed 

Date: 18 December 2018 

Deputy Upper Tribunal Judge Levér