Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00928/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 9th December 2014	**On 19th January 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

IBRAHIM SERWAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Siddique of Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appellant's appeal against the decision of Judge Grimshaw made following a hearing at Bradford on 10th September 2014.

Background

2. The appellant is a citizen of Iraq born on 16th December 1985. He arrived in the UK on 11th September 2001 and claimed asylum. He was refused but granted four years' exceptional leave to remain until 11th February 2006. On 21st January 2004 he was convicted of wounding with intent to

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do grievous bodily harm and sentenced to 42 months' imprisonment. The sentencing judge made a recommendation for deportation. The appeal against the decision to deport was dismissed on 2nd September 2005.

3. Following the court's ruling in HH (Iraq) [2008] UKAIT 00051 the appellant was notified in January 2009 that his case would be reviewed. On 16th June 2011 the deportation order was withdrawn.

4. A fresh decision was made on 30th April 2014 rejecting the appellant's claim for asylum and leave to remain on human rights grounds. On the same day he was informed of a decision to make a deportation order and that removal directions would be set to Iraq.

5. The respondent applied Section 72 of the Nationality, Immigration and Asylum Act 2002. She noted that the appellant had not responded to the opportunity given to him to rebut the presumption that he would be a danger to the community if he were to remain in the UK. Given the seriousness of the conviction, she considered that the presumption had not been rebutted.

6. The judge began her considerations of Section 72 with an examination of the remarks of the sentencing judge. The appellant had no previous convictions save for, in 2008, he accepted a caution for the possession of cannabis.

7. He had pleaded not guilty to the charge of causing grievous bodily harm with intent on the grounds that he was acting in self defence. The sentencing judge concluded that the appellant had grossly over-reacted in first stabbing the victim with a bottle and then slashing his arm causing injuries three inches deep. She took into account the pre-sentencing report from the social worker based in the Youth Offending Team which suggested that he continued to deny that he carried a knife on the occasion that he inflicted grievous bodily harm on the victim which raised concerns regarding his truthfulness and perception of response options. She said that in general she believed that he would not pose a risk to the community but the injuries were so serious that the appellant must have retaliated with some ferocity and therefore, in similar circumstances, would be such a risk.

8. The judge wrote as follows:

> "There is no further material before me to assist in my assessment of risk. Given the lack of insight on the part of the appellant into his role and responsibility for his offending behaviour and in the absence of any supporting information to the contrary I am led to the conclusion that he has not rebutted the presumption that his continued presence in the UK constitutes a danger to the community. As I have upheld the Section 72 certificate the appeal on the grounds that the appellant's expulsion from the UK would breach his Refugee Convention rights must fail."

9. With respect to the risk on return she said that the country background information before her was troubling and the Secretary of State accepted that the contested areas of Iraq should be considered as meeting the circumstances of internal armed conflict. She was satisfied that in those areas an individual was likely to face a real risk of serious harm and it followed that the appellant could not be expected to return to his home area of Kirkuk or any of the contested areas on account of the general security situation.

10. She had not been directed to any evidence which would lead her to disagree with the respondent. The security situation in Baghdad has not changed significantly since the Tribunal concluded that the degree of indiscriminate violence characterising the conflict in Baghdad was not of such a level as to breach Article 15(c) of the Qualification Directive. Furthermore the appellant is an Iraqi Kurd and could reasonably be expected to relocate within the KRG.

11. So far as Article 8 was concerned she applied the Section 117C of the Nationality, Immigration and Asylum Act 2002. She accepted that he was in a genuine, warm and loving relationship with Ms Iqbal, and with his own son and that he acts as a father to Ms Iqbal's daughter. It would not be unduly harsh for Ms Iqbal and the children to remain in the UK without the appellant. The relationship was of relatively short duration – they did not begin to cohabit until October 2012. Paragraph 399 of the Immigration Rules did not apply; she was unable to find the appellant's position to be exceptional or compelling.

12. On that basis she dismissed the appeal.

The Grounds of Application

13. The appellant sought permission to appeal on the grounds that the Tribunal had erred in its assessment of certification under Section 72 and its finding that he was a danger to the community, and had failed to take into account the specific risk factors and the reasonableness of relocation. She had not considered the best interests of the children as a primary consideration and omitted material factors when assessing Article 8 including the delay in issuing a deportation order.

14. The appellant was 15 years old when he arrived in the UK and committed the offence whilst a minor. He was released from detention in December 2005. The judge referred to a pre-sentence report from 2004 and ignored relevant evidence including evidence postdating it. In Judge Hall's determination of 2005 there is reference to letters of support from staff at HM Y01 Portland and a number of character references postdating the criminal sentence including for his voluntary work with adults requiring support with mental health and learning difficulties.

15. The Tribunal's focus on the denial of the use of a knife, as opposed to a broken bottle, fell into the same error as that identified in AM V SSHD [2012] Civ 1634:

> "Unhappily, experience tells us that contrition is no guarantee of reform, any more than personal pride is a bar to rehabilitation. A man who faces expulsion from his family might persuade himself that he was not guilty after all, but that does not mean that he cannot resolve never to place himself in a position of temptation again. I recognise that in the case of persistent sexual offending, particularly against children, it is commonly understood that a refusal by an offender to accept guilt reveals an entrenched attitude of mind towards sexual offences which enhances the risk of repeat offences. This was not a sexual case. I do not consider that the UT was correct to take such a firm view about this appellant's risk of re-offending based solely upon its own assessment of the implications of the appellant's denial. The appellant had undoubtedly committed a very serious offence. He had been employed to act as a driver for a man who was supplying a substantial quantity of class A drugs recently imported into the United Kingdom. He was not however an organiser or manager and there is no evidence that his involvement was greater than that which emerged at this trial. Rehabilitation is often, but not exclusively, accompanied by a full confession."

16. Furthermore the fact that the respondent had taken ten years to issue a valid deportation order and five years post HH (Iraq) to review whether to issue a deportation order did not indicate that she seriously considered him a danger to the community. There was evidence of an incident where the appellant's home window was smashed by his partner's family whilst his partner was inside and despite this provocation, he did not react adversely. The judge did not explain why this was not evidence in his favour. Furthermore, the judge did not take into account the whole of the sentencing remarks recorded by Judge Hall, which indicated that he was not a danger to the community, including the acceptance by the judge that the attack was not unprovoked and he was not actively looking for trouble.

17. In failing to take into account relevant considerations and in over reliance on the issue of denial the Tribunal erred in law.

18. The Tribunal also erred in its assessment of risk on asylum, humanitarian protection and Article 3 grounds. It was accepted that the contested areas including Kirkuk now meant that the appellant faced a real risk of serious harm in his home area. She failed to give adequate reasons for finding that relocation to Baghdad or the KRG was safe or reasonable. It was argued that as a Sunni Muslim he would be at risk of sectarian violence in Baghdad, which is escalating, but the evidence was not referred to in the determination. The Secretary of State accepted that being a Sunni Muslim was an enhanced risk category as was being a Kurd in a local minority. It was not good enough to rely on the previous CG case when it had already

been accepted that the situation had changed so dramatically and the key findings in the CG case were no longer valid. Furthermore the appellant was particularly vulnerable since he had left Iraq when 15 years old in the Saddam era and had no experience of living in the present era of sectarian violence and civil war. It was accepted that he had no family in Iraq which meant that he would be especially vulnerable in Baghdad or elsewhere. The judge failed to properly assess the reasonableness of relocation with respect to the KRG and did not deal with the argument that the appellant would have to relocate without his partner and children because the area of relocation is simply unsafe for British citizens.

19. Finally the judge erred in respect of her consideration of Article 8, in particular did not properly assess the factors in Maslov and in particular the Respondent's delay in making the valid decision to deport.

20. Permission to appeal was granted by Judge Landes on 8th October 2014.

21. On 16th October 2014 the Secretary of State served a Reply, stating that the judge had limited evidence on which to carry out the assessment of risk and his continual denial indicated that he was not a person who could be trusted. The findings on family life were reasoned.

Submissions

22. Mr Siddique relied on his grounds. The judge had failed to take into account all material considerations, in particular the minority at the age of the offence, character evidence in the respondent's bundle and the fact that there had been no re-offending in the last ten years. The appellant had adduced evidence to rebut the presumption that he was a danger to the community. He had committed a single offence 11 years ago when he was 17. There was no premeditation. There was powerful evidence that he no longer presented any danger in that he had not reoffended and, under the Rehabilitation of Offenders Act, would in fact have been rehabilitated.

23. It was accepted that the appellant had a genuine parental relationship with a British citizen under the age of 18. It would not be reasonable to expect the children to leave the UK and unduly harsh to expect them to remain here without their father. It was in the children's best interests to be raised by both parents. There was evidence from the independent social worker of a strong attachment between the appellant and the children. Their mother was isolated from her own family and had a history of domestic violence which had a significant effect on her parenting ability. The social worker had a particular concern in relation to how the appellant's daughter would react to the loss of the appellant and how she will cope with the understanding of the issues surrounding her birth father. He would not be going to a safe place where the children could visit. The family's constant concern for his safety for an indeterminate period would be unduly harsh for the children.

24. The appellant speaks English and although he has not got permission to work is clearly capable of working. He has not claimed public funds.

25. There has also been considerable delay on the part of the respondent. The appellant committed the offence in 2003. The deportation order was made in 2005. In 2008 it was accepted that the order was invalid and the decision withdrawn. It was reviewed in 2009 and no decision made until February 2014. During that time the appellant's private and family life developed.

26. So far as the reasonableness of relocation was concerned, the judge had not mentioned any of the objective evidence referred to in the appellant's bundle and had not considered his individual circumstances. The appellant had never been to Baghdad and left Iraq when he was 15 years old. The previous judge had accepted that he had no family in Iraq. He would have no knowledge of how to look after himself there. It was the Home Office's own evidence that it was not safe to travel to the KRG and the appellant would not have the necessary documentation to access resources there. His British family would not be able to visit him because Iraq was not safe for British citizens, a relevant consideration in deciding whether relocation would be reasonable.

27. Mr Diwnycz said that he stood by the deportation order. He had little to add to the Home Office bundle. He accepted that family life existed in the UK but submitted that deportation was nevertheless proportionate in view of the fact that a serious crime had been committed. He said that he could not advance anything on the protection issue and accepted that the appellant could not go back to Kirkuk although he could relocate.

Consideration of whether there is a material error of law

28. Under Section 72(4) of the Nationality, Immigration and Asylum Act 2002:

> "A person shall be presumed to have been convicted by a final judgment of a particular serious crime and to constitute a danger to the community of the United Kingdom if –
>
> (a) he is convicted of an offence specified by order of the Secretary of State, or
>
> (b) he is convicted outside the UK of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a)."

29. It is not argued that the appellant's offence does not raise the presumption under Section 72. The issue is whether the judge was entitled to conclude that the presumption had not been rebutted.

30. It is clear that the judge relied very heavily on the fact that the appellant continue to deny his possession of a knife which, as the Court of Appeal identified in AM v SSHD is not an adequate basis for concluding that

rehabilitation is not possible without full acceptance of guilt. The judge did not identify any other reasons for upholding the certificate.

31. She said that there was no further material to assist in her assessment of risk, but that is not correct. The fact is that the appellant has not re-offended since the index offence took place in 2004, save for possession of cannabis in 2008.

32. There was also the evidence from the prison. Judge Hall in his determination wrote:

> "The Appellant has produced a number of letters written in his support from Portland Young Offenders Institution. These letters confirm that the Appellant is a good prisoner who has proved himself to be reliable, undertaken tasks asked of him and has attended courses for the purposes of bettering himself. It is stated by Race Relations Liaison Officer that the Appellant 'is or very close to a model prisoner, he is on the enhanced level of the prisoner's incentive and earned privileges system'.

33. A letter states that the appellant has never had any behaviour warnings or adjudications whilst in custody and

    (i) "in my opinion I feel quite confident that he will not reoffend in society. He is a very mature and sensible person whose outlook on life is way beyond his years."

34. Another which sets out that the appellant has taken responsibility for his actions and deeply regrets his crime. Serious doubts are expressed about his ability to cope on being sent back to Iraq. The letter says:

    (i) "I believe he deserves a second chance and as a positive peaceful Muslim voice in this country we may benefit more from his staying than from his deportation."

35. There was also evidence in the appellant's statement that his partner's mother and sister threw a brick through their window, and her sister was arrested. The evidence that he had not risen to provocation was not referred to by the judge.

36. Finally, the appellant was a minor when the offence took place. His relative immaturity at the time is also a significant factor in the assessment of whether he presently poses a danger to the public.

<u>The Refugee Convention</u>

37. I conclude that the judge did not have regard to relevant matters, in relation to the certificate, which is an error of law, and the decision must therefore be set aside. I am satisfied that the appellant has rebutted the presumption that he constitutes a danger to the community. The

certificate is discharged for the reasons set out above. Accordingly he is not excluded from the protection of the Refugee Convention.

38. It is the view of UNHCR that many persons fleeing Iraq are likely to lead to the 1951 Convention criteria for refugee status. The appellant, as a Sunni Kurd, is not claiming a fear of the actions of ISIS. However the respondent accepts in the COI report that Sunnis should also be considered at risk of serious harm in the contested areas, and that Kurds where they are a local minority will be at increased risk. Kirkuk has a large Arab Kurdish and Turkmen population and is volatile and violent. The Tribunal in MK (documents – relocation) Iraq CG[2012] UKUT 126 described the city as hazardous, there being a good deal of evidence of random and targeted violence in the city. Since that time the situation has deteriorated.

39. No argument was made by the respondent that there is no Convention reason in this case. The risk to the appellant arises from his religion and ethnicity as a consequence of sectarian reprisals against Sunnis and Kurds. The sole remaining issue is internal flight.

Subsidiary protection

40. There is no challenge in the grounds to the respondent's assertion that the appellant is excluded from humanitarian protection because he has committed a serious crime having been sentenced to 42 months imprisonment after being convicted of wounding with intent to do grievous bodily harm. He therefore falls within the exclusion criteria set out in Rule 339D(i).

Article 8

41. So far as the Article 8 considerations are concerned, the challenge under the Rules is to the judge’s assessment of whether it would be unduly harsh for the child to remain in the UK without the person who is to be deported.

42. She properly applied the relevant sections of the Nationality, Immigration and Asylum Act 2002 brought in by the Immigration Act 2014. She was entitled to take into account that the relationship was of relatively short duration. She plainly had proper regard to the social worker’s report and the concerns as to the emotional wellbeing of the children, which may be compromised if the appellant is returned to Iraq. The partner’s circumstances were analysed in some detail and the judge was entitled to conclude that she would be able to access necessary support from the statutory services in the appellant’s absence. There was no requirement, as the grounds suggest, for the judge to go into the background which resulted in Mrs Iqbal’s present vulnerability. The welfare of the children was clearly at the forefront of her mind. She was satisfied that their mother could meet their basic needs and had the capacity to manage their distress at being separated from the appellant.

43. Nor am I satisfied that the judge erred in her broader considerations of Article 8. The factors referred to in the grounds, whilst not referred to in the conclusions, namely the circumstances of the initial offence, the length of time that the appellant has spent in the UK, the lack of family in Iraq and the respondent's delay in reaching her decision were all matters which had been referred to at some point in the determination, and formed a part of the reasoning process. The judge's conclusions were open to her and the grounds have not established that the decision was unlawful.

Further Submissions

44. Mr Diwnycz did not wish to seek an adjournment to prepare for further submissions and said that he had little to add. He did not wish to cross-examine the appellant.

45. Mr Siddique submitted that it was accepted that the appellant would be at risk as a Sunni Kurd in Kirkuk. It was accepted by Judge Hall that he had no immediate family in Iraq save for an aunt who was living there in August 2001. According to the information on the SEF his parents had died before he came to the UK in 2001 and his siblings' whereabouts were unknown as at that date,.

46. The appellant left Iraq when he was 15 and has now, at the age of 28, spent nearly half of his life in the UK. The dangers when he left were different from those which are present today. He does not have the life skills to deal with protecting himself against indiscriminate attacks by terrorists.

47. Mr Siddique submitted that the appellant would not be able to travel safely to the KRG. His family could not visit him in his place of relocation which went to the issue of whether it was reasonable to expect him to go there. He relied on the recently issued UNHCR guidance.

Findings and Conclusions

48. It is accepted by the respondent that the Sunnis should be considered at risk of serious harm in the contested areas, which include Kirkuk. It is also accepted that return to non-contested areas should not involve travel through areas identified as being contested. The COI report at 1.3.19 acknowledges a real risk to civilians who choose to travel by road through the contested areas.

49. It is the respondent's position that relocation to the KRG or to Baghdad is reasonable. In the reasons for refusal letter she asserts that the appellant could relocate to the KRG where he had previously resided, which is incorrect, since the appellant's only former residence was Kirkuk, or to Baghdad. She relies on the previous UNCHR guidelines dated May 2012.

50. So far as Baghdad is concerned, the reasons for refusal letter asserts that the picture is one of an improving security situation and there has been a fall of over 80% in the number of casualties from its peak in 2006-7 to 2009-11, although it is clearly based on out of date information. The Secretary of State continued to rely on the findings in HM & ors (Article 15(c) Iraq CG [2012] UKUT 00409 which found that the evidence did not establish that the degree of indiscriminate violence characterising the conflict in Baghdad was at such a high level to breach article 15(c) and that there were no reasons to indicate that the security situation in Baghdad has changed significantly since HM(2) such as to make its conclusions unreliable. Somewhat paradoxically it also that the implications of the decision in HM(Iraq) [2011] EWCA Civ 1536 was found there was no up-to-date country guidance from the Tribunal on the situation in Iraq.

51. The COI guidance dated August 2014 does recognise that these civilian casualty levels have risen significantly and are at their highest level since 2007 demonstrating a worsening security situation. It accepts that there are very high levels of new population displacement, the ongoing security situation being the overwhelming factor driving it.

52. It is the UNHCR's most recent position, dated 27th October 2014, that asylum claims should not be refused on the basis that there is a relocation alternative. It states that since the 2012 guidelines were published, Iraq has experienced a new surge in violence and that casualties so far in 2014 represents the highest total since the height of the sectarian conflict in 2006-7. Baghdad was the worst affected governorate in 2014 in terms of casualty figures.

53. Whilst the UNHCR states that the security situation in the Kurdistan region remains relative stable, it also states that there are reported access restrictions particularly into the Kurdistan region of Iraq. UNHCR does not consider it appropriate for States to deny persons from Iraq international protection on that basis.

54. At paragraph 9 the report states:

(i) "Reports indicate a resurgency of sectarian reprisal with bodies of Sunni men found blindfolded, handcuffed and apparently executed in different parts of the country, primarily in Baghdad (21) UNAMI reported that Sunnis in Basra governance had been exposed to threats, abductions and killings (22)."

55. At paragraph 14:

"The escalation in violence has further generated additional deaths from a lack of access to food, water and medical care (47), injuries and disabilities (48), destruction of property and livelihoods (49) and serious impairment of access to basic life-sustaining services (50). The current conflict is largely concentrate in the central and northern

governorates of Al-Anbar, Ninewa, Salah al-Din, Diyala, Kirkuk and Babel. Baghdad remains the centre of frequent mass casualty attacks often but not exclusively launched against predominantly Shi'ite neighbourhoods and has seen an upsurge in sectarian violence. The security situation in the Kurdistan region remains relatively stable with security forces remaining on high alert and imposing tightened security to prevent IS and associated groups from staging attacks. Armed clashes also occur between Kurdish forces and ISIS and associated armed groups on the borders of the Kurdistan region as the latter had also advanced into areas previously controlled by the Kurdish forces."

The report concludes:

"As the situation in Iraq remains highly fluid and volatile and since all parts of the country are reported to have been affected, directly or indirectly, by the ongoing crisis, UNHCR urges states not to forcibly return persons originating from Iraq until tangible improvements in the security and human rights situation have occurred. In the current circumstances, many persons fleeing Iraq are likely to meet the 1951 Convention criteria for refugee status. When in the context of the adjudication of an individual case of a person originating from Iraq, 1951 Convention criteria are found not to apply, broader refugee criteria as contained in relevant regional instruments or complimentary forms of protection are likely to apply. In the current circumstances, with massive new internal displacement coupled with a large-scale humanitarian crisis, mounting sectarian tensions and reported access restrictions, particularly into the Kurdistan region of Iraq, UNHCR does in principle not consider it appropriate for states to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative."

56. The appellant is not required to demonstrate the degree of risk in the proposed area of relocation as that which exists in his home area.

57. The Court of Appeal in AH (Sudan) v SSHD [2007] EWCA Civ 297, at para 33, set out the criteria to be applied when considering whether internal flight would be unduly harsh and held

(i) "the starting point must be the conditions prevailing in the place of habitual residence.

(ii) those conditions must be compared with the conditions prevailing in the safe haven.

(iii) the latter conditions must be assessed according to the impact that they will have on the person with the characteristics of the asylum seeker.

(iv) if under those conditions the asylum seeker cannot live a relatively normal life according to the standards of his country it will be unduly harsh to expect him to go to the safe haven,

(v) dramatic changes of lifestyle for instance from city to a desert or into slum conditions should not be forced on the asylum seeker."

58. Taking the information from the "UNHCR position on returns to Iraq" dated 27 October 2014, it is clear that there has been a significant resurgence of sectarian reprisals, particularly in Baghdad, which remains the centre of frequent attacks. The FCO advises against all but essential travel to Baghdad.

59. The appellant argues that he would not be able to access the KRG because it would require him to pass through contested areas. Moreover although the COI refers to returns to Baghdad or Erbil International airport, the most recent Foreign Office travel advice advises against all travel to Erbil city and all areas west of the city within the province.

60. UNHCR has particular concerns that hundreds of thousands of displaced Iraqis, in particular in the Kurdistan region face challenges to access safety as a result of ongoing fighting. It presently hosts over 850,000 IDP's. The 200,000 Syrians who have sought refuge are mostly in the Kurdistan region. Moreover IDP's face growing challenges in obtaining the renewal of civil identification documentation there, which usually require them to return to their place of origin which is generally not feasible. They face challenges accessing services. An IDP without valid documentation may be unable to register with local authorities in the region thereby preventing regularisation of stay and limiting their access to assistance and public services. Access restrictions appear to be linked to certain criteria such as family composition or the requirement to have a sponsor in the concerned governorate and in some cases persons seeking to relocate are barred entry. If access is granted, there may be additional requirements for IDPs to be able to register with local authorities.

61. The primary shelter arrangement is to stay with the host communities. Otherwise displaced persons occupy unfinished or abandoned buildings or live in the open in substandard living conditions, exposing them to significant health risks. A number of camps are in use although not all meet minimum standards. Significant numbers of schools accommodate IDP's but many are occupied by armed groups or have been damaged or destroyed as a result of the conflict.

62. More generally, casualty figures in 2014 have spiked compared to previous years. Over 13,600 civilians died between January and late October 2014 in the country as a whole. The escalation in violence has generated additional deaths there from a lack of access to food and water and medical care. Humanitarian needs have escalated rapidly in the region with the influx of 200,000 Syrian refugees. More than 5 million people are currently in need of humanitarian assistance across Iraq with

only 1.5 million currently reached by humanitarian actors. The UN has declared the highest level emergency designation, and in areas of displacement local authorities and communities are overstretched, unable to provide IDPs with basic services.

63. Very considerable weight should be attached to the guidelines, although they are not determinative. There has been a lack of argument from the respondent and no engagement at all with them. There is a dearth of up-to-date analysis of the present ever changing situation in Iraq, the most recent country guidance case being some three years old, and predates the current crisis. Inevitably this decision is based on limited evidence.

64. Applying the guidance set out in AH, the starting point is the situation in Kirkuk which the respondent accepts is a contested area and where a real risk of harm is established. It is clear that the situation in Kirkuk is more dangerous than Baghdad or the KRG, but at least so far as Baghdad is concerned, the difference is one of degree rather than of substance. Most of the large-scale attacks take place there. So far as the KRG is concerned, on the basis of the information from UNHCR an IDP there faces real problems accessing basic services.

65. Would the appellant be able to live a relatively normal life in either place according to the standards of Iraq? The question of what those standards should be is not an easy one to determine. In AH (Sudan) the Court was concerned with economic survival and the reasonableness of expecting subsistence farmers to relocate to camps in Khartoum The Court observed that in most cases where internal relocation was considered, the relocation proposal has been between parts of the country which share broadly similar patterns. The basic structure of the refugee's life would be the same in the safe haven as it was in the area of habitual residence. It was looking at a situation which is relatively static.

66. It is difficult to translate that across to a country which is presently experiencing an upsurge in large-scale targeted and indiscriminate violence. And there is no obvious answer to the question of whether the comparison should be made between the conditions prevailing in Kirkuk and a safe haven in 2014, or over the last 10 years or pre-conflict Iraq. It is clear from the figures in the refusal letter that there have been continuous mass casualties since the war but aside from the peak in 2006-07, the present situation is far worse than any in the last 10 years.

67. Leaving that aside, on the basis of the limited evidence before me, it is difficult to see from the evidence of UNHCR, undisputed before me by the respondent, that the appellant could in any sense, whatever period is chosen, live a normal life in the KRG because of the extreme strains imposed by the influx of refugees particularly from Syria and others fleeing the contested areas.

68. So far as Baghdad is concerned, since most of the mass casualties from suicide attacks and car bombs occurred there, and it is the primary

resurgent of sectarian reprisals against Sunnis, the risk is to his safety. The appellant has particular characteristics which make him more vulnerable than the general population, namely he is a person who has been out of Iraq for 14 years, left when he was a child of 15 and has not been there in the post-Saddam era. He has no immediate family who would be able to assist him. He lacks the skills and connections to help him avoid the risk of sectarian attack.

Decision

69. There is no error in law in relation to the judge's consideration of the Article 8 claim, which shall stand. Her decision is set aside with respect to the section 72 certificate. The following decision is substituted. The appellant's appeal is allowed on asylum grounds.

Signed Date

Upper Tribunal Judge Taylor