Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00594/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 31 August 2017	**On 1 September 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DANA SALIM ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's protection claim for reasons explained in her decision dated 14 January 2016.

2. First-tier Tribunal Judge Mrs D H Clapham dismissed the appellant's appeal for reasons explained in her decision promulgated on 15 March 2017.

3. The decisions of the respondent and of the judge are based on *AA* (Iraq) CG [2015] UKUT 00544.

4. UT Judge Pitt granted permission on 12 July 2017, saying:

> The judge appears to accept that the appellant is from a contested area and does not have a CSID. Permission is granted only in relation to the correct application of *AA* (Iraq) in those circumstances.

5. The guidance in *AA* has now been corrected and set out as an annex to *AA* (Iraq) [2017] EWCA Civ 944:

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.

F. EXISTING COUNTRY GUIDANCE DECISIONS

22. This decision replaces all existing country guidance on Iraq.

Submissions for appellant

6. At paragraph 48, the judge said that evidence from the respondent seemed to suggest that Gwer, the appellant's home town, is in the IKR. The appellant had provided a report by Dr R Fatah, dated 15 November 2016. The report made it clear that Gwer is in the IKR and had recently been fought over.

7. At paragraph 148, Dr Fatah said that he "would not consider Gwer to be habitable just yet". At paragraph 170, the report says that non-possession of a CSID would be a barrier to the appellant's relocation to Iraq.

8. The judge accepted at paragraph 42 that the appellant had no contact with his family.

9. *AA* at headnote 17 established that the respondent would return to the IKR only someone whose identity had been "pre-cleared" with the IKR authorities. It was for the respondent to prove pre-clearance, which she had failed to do.

10. The judge, also at paragraph 48, said that it was "a complete misreading" of *AA* "to suggest that a Kurd cannot return simply because he does not have a passport and other documentation. That is not a claim upon which asylum can be based. It is an administrative problem only". That was itself a misreading. A case for protection cannot be based only on absence of documentation, but the difficulties an appellant may face through absence of documentation, once in Iraq, have to be assessed.

11. The judge went on to say that the appellant's statement was "entirely self-serving", but that had no clear meaning. She went on to say that the appellant stated that he did not know the details of his CSID, but made no finding. Even if it were to be assumed that the appellant could be returned to the IKR, the absence of a CSID was a significant factor which should have been taken into account in relation to the difficulties of relocation. Gwer might no longer be a contested area within the IKR but it was not an area where the appellant could be expected to go. The judge made no findings by which the practicality and difficulty of settling elsewhere in the IKR could be assessed.

12. The decision should be set aside and a further hearing fixed, either in the UT or in the FTT, for a fresh decision to be made.

13. The report of Dr Fatah says at paragraph 171, "Gwer is under the KRG control, thus Mr Ali will have access to free movement within the IKR". Mr Winter submitted that

was not a finding that the appellant would necessarily be granted a CSID, which he would need to take employment, and for other purposes.

14. (I indicated that I would decide the "pre-clearance" point as in several similar recent cases, in some of which Mr Winter had appeared for appellants, and so did not need to hear from the respondent on that issue.)

Submissions for respondent.

15. The appellant is a Kurd from the IKR, to be returned directly there. His case is covered by *AA* at headnotes 17 – 18: the IKR is virtually violence free, with no article 15(c) risk to an ordinary civilian. The rest of that case is concerned with complexities of return to and relocation within the rest of Iraq. Those do not apply to this appellant. Once his return is feasible, the rest falls away.

16. The case is unusual in that the appellant comes from one of the few areas of the IKR which have been fought over, but that does not affect the outcome. The expert report which the appellant produced shows that he can move freely anywhere else in that region. The appellant appeared to be arguing that he would be at risk in terms of article 3, but that could not be sustained simply by absence of a CSID, or on the findings in *AA*.

17. The report of Dr Fatah concludes at paragraph 242 that the appellant would not be at risk in the IKR "and as a Kurd from Gwer has the right to move freely as he wishes in the IKR". The judge did not mention the expert report, and nothing appeared to have been made of it in the FtT; but reference to the report confirmed that the judge reached the correct outcome.

Reply for appellant.

18. The appellant did not advance his case under article 3, but on the lesser standard of the unreasonability or undue harshness of internal relocation. The report was concerned with the level of general violence, which was not the only issue in relocation.

19. *AA* (Iraq) CG [2015] UKUT 00544 at paragraph 47 cites country guidance from *MK*, which accepted the importance of a CSID, throughout and not only in parts of Iraq, and at paragraph 57 dealt with difficulties arising from lack of a CSID.

Discussion and conclusions.

20. The argument that there is a burden on the SSHD to prove that a Kurd from the IKR has been pre-cleared for return does not appear to have been put to the FtT, and is not in the grounds of appeal to the UT.

21. The country guidance as summarised in the headnote and as annexed (before and after amendment by the Court of Appeal) does not state that there is any such burden.

22. In so far as any passages in *AA* (Iraq) CG [2015] UKUT 00544 may be read to suggest that there might be such a burden, that has not found its way into the formal guidance, and is contrary to principle.

23. The respondent makes travel arrangements after not before conclusion of an appeal. It would be unworkable to have to put such arrangements in place prior to appeal hearings.

24. It would generally be unlawful for the SSHD to approach the authorities of a person with an unresolved asylum claim to arrange removal.

25. Issues about practicality of return in the event of an unsuccessful appeal are for resolution later between the parties (if necessary, by way of judicial review) not while the appeal process remains live.

26. *AA* (Iraq) CG [2015] UKUT 00544 at paragraph 47 does cite previous country guidance in *MK,* but the main point of *AA* was to consolidate and update guidance; and the headnote cited from *MK* begins by stating that absence of a CSID "is not a factor likely to make return to any part of Iraq unsafe or unreasonable".

27. *AA* (Iraq) CG [2015] UKUT 00544 at paragraph 57 is a narration of a submission, not a finding.

28. The FtT judge was not right to say that absence of a passport or other documentation is "an administrative problem only". It is correct that non-returnability, due only to lack of documentation, does not translate into qualification for protection; but problems arising from lack of documentation may be part of the assessment of difficulties on return, a theme which runs through the guidance.

29. To say that the appellant's statement is "entirely self-serving" is vague and unhelpful. It is neither a conclusion nor a reason for one. That is followed by a statement of his evidence that he does not know the page and volume number of his CSID; perhaps, in context, an indication that his statement is not accepted, but far from clear.

30. I do not find those two points to amount to error of law, such as to require the decision to be set aside.

31. The appellant has not shown that even if he does not have a CSID, that might entitle him to protection, or that the Judge erred by failing to make such a finding. He did not state any comprehensible case along such lines in the FtT. His grounds of appeal to the UT are misconceived. They are based (a) on alleged difficulty in onward travel from Baghdad to the IKR, in a case which is clearly one of return directly to the IKR and does not involve internal travel, and (b) on the possibility of ejection from the IKR if unable to find employment, which does not apply to someone who originates from the IKR (and which is negated by reference to the report from his expert).

32. It is likely that those misconceptions in the grounds led to the grant of permission, because they obscured the fact that although the appellant was from a contested area, that area is inside the IKR.

33. Pre-clearance by the authorities of the IKR is the basis of return. That means recognition of the appellant's identity and origins. Taken with the expert's views on his freedom of movement in the IKR, he has not shown that he would be at greater disadvantage than any other young Kurdish man from there.

34. The appellant has not shown that current non-possession of a CSID and reference to *AA* discloses any error of law such as to require the decision of the FtT to be set aside, or such as might bring about another result.

35. The decision of the First-tier Tribunal shall stand.

36. No anonymity direction has been requested or made.

31 August 2017
Upper Tribunal Judge Macleman