Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06376/2016

THE IMMIGRATION ACTS

Heard in Manchester	**Decision and Reasons Promulgated**
On Wednesday 17 January 2018	**On Wednesday 24 January 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

G B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Faryl, Counsel instructed by Broudie Jackson Canter solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate that a direction is made. 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 his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Lambert promulgated on 27 April 2017 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 4 June 2016 refusing his protection and human rights claims.

2. The Appellant is a national of Iraq. He left Iraq on 2 June 2014 and travelled via Turkey and France before arriving illegally in the UK. He claimed asylum on 11 December 2015. The Appellant comes from Kirkuk. As such, he says that he is entitled to succeed on the basis of Article 15(c) of the Qualification Directive ("Article 15(c)"), following the country guidance case of AA (Article 15(c)) CG [2015] UKUT 544 ("AA") as Kirkuk is found by that decision to be a "contested area". He says that he cannot relocate to Baghdad because he has no documentation (CSID) or support network there and it would be unduly harsh to require him to do so. He also says that he cannot relocate to IKR because he does not come from that area.

3. The Judge accepted that there were "no real credibility issues" in the appeal save possibly as to the whereabouts of his family members and whether the Appellant remains in contact with them ([9.2] of the Decision). However, based on the Home Office's Country Policy and Information Note Iraq: Security and humanitarian situation (Version 4.0: March 2017) ("the Home Office guidance"), the Judge rejected the Appellant's claim to be unable to return to his home area, finding that it was no longer a "contested area" following defeat of ISIL by the Iraqi authorities in that area. The Judge therefore did not accept that Article 15(c) continued to apply. She did not therefore accept that the Appellant could not return to Kirkuk.

4. The Appellant's grounds raise one issue. Since that ground is succinctly pleaded, it is convenient to set out what that says:-

> "3. In SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 the court stated 'decision makers and tribunal judges are required to take Country Guidance determination into account, and to follow them **unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so'** (paragraph 47).
> 4. The Appellant contends the judge erred in failing to follow the Country Guidance case of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** in finding Kirkuk is no longer a contested area in Iraq.
> 5. The judge relied instead, solely on one single source, namely, Country Policy and Information Note – Iraq: Security and humanitarian situation (March 2017).

> 6. In the circumstances, the Appellant contends was not entitled to depart from the CG case of AA in the absence of cogent evidence that the situation in Kirkuk had changed to the extent that it was safe for the Appellant to return there."

5. Permission to appeal was refused by Designated First-tier Tribunal Judge Woodcraft on the basis that the Judge was entitled to rely on the Home Office guidance, having given adequate reasons for departing from AA and that "the Appellant had nothing to counter it (except it appears the head note to AA)". Following renewal to this Tribunal, permission to appeal was granted by Upper Tribunal Judge O'Connor in the following terms:-

> "It [is] arguable that the FtT erred in failing to adequately reason its conclusion that there is not an Article 15(c) risk to the appellant in Kirkuk, given the conclusions of the Upper Tribunal in AA (Iraq) CG [2015] UKUT 544"

6. The Respondent filed a Rule 24 response which reads as follows (so far as relevant):-

> "2….the judge of the First-tier Tribunal directed themself appropriately. The judge was entitled to consider a change in circumstances since the promulgation of any country guidance case and is entitled to depart from aspects of that case where there is sufficient evidence to do so (*R (Iran) v SSHD [2005] EWCA Civ 982* at ¶26,27). This view is further supported in *Amin v SSHD [2017] EWHC 2417* at ¶62,63).
> 3. The grounds are attempting to re-argue matters that the judge has adequately dealt with and given adequate reasons for rejecting the appellant's case. The judge had regard to the arguments advanced by the appellant and the respondent before concluding that the evidence was such as to find that the appellant's home area was no longer a contested area."

7. The matter comes before me to decide whether the Decision involves a material error of law and if so to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

Decision and Reasons

8. The material part of the Decision is at [9.4] to [9.7] as follows:-

> "[9.4] I turn to the issue of risk in the Appellant's home area. He has never maintained, and the evidence does not disclose, that he is or has been at any individual risk in Iraq. So far as Article 15(c) is concerned, **paragraph 2.3.21 of the Home Office 14 March 2017 Policy and Information Note** explicitly tells me that *'the security situation has changed since April 2015, the point up to which **AA** considered evidence. Daesh has suffered and continues to suffer*

significant territorial losses. Daesh now only control… Hawija and surrounding areas in Kirkuk governorate'. It was not challenged before me that the Appellant's village is not near Hawija and is not within the above areas in Kirkuk.

[9.5] Ms Faryl argued that the above information was not specifically referenced. However the preface to the Policy note under 'Country Information' states that the COI within the note has been compiled from a wide range of external sources and goes on to emphasise the attempts made to corroborate the information from independent sources to ensure accuracy. Given that I have no reason to doubt this statement as to the existence and reliability of source material for the information contained in the policy note, and given the evidential limitations on hearings at First Tier level that do not set out to establish country guidance, I am not prepared to dismiss the content of the policy note on this ground alone.

[9.6] Ms Faryl referred me to the current **FCO** travel advice, which she argued conflicted with the policy note with the result that I should conclude the situation Appellant's home village (sic) remained within Article 15(c). The FCO include 'Kirkuk province' in the areas to which 'all travel' is advised against. Advice against travel does not of itself establish the conditions for Article 15(c) protection. I find it significant that a later paragraph (second paragraph p2) of the FCO advice, which deals specifically with areas controlled by Daesh, does <u>not</u> include Kirkuk. Therefore, on the issue of areas now controlled by Daesh, there is in fact no conflict at all between the two documents.

[9.7] I conclude having regard to the above that the respondent has produced reliable and consistent up to date evidence justifying a departure from **AA** so far as this Appellant's specific home area of Kirkuk province is concerned. The situation in his village has changed since his departure in June 2014 and since the decision in **AA**. Daesh no longer control the area and there is no longer any evidence of circumstances in that village giving rise to Article 15(c) protection."

9. Having heard oral submissions from Ms Faryl and Mr Harrison, I indicated at the hearing that I was satisfied that the Decision discloses a material error of law and that I would provide my reasons for that conclusion in writing which I now turn to do.

10. I begin by recording the relevant parts of the headnote in <u>AA</u>:-

"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 knows 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."

11. I have included in that citation [2] of the headnote to show that the issue whether ISIL remains in occupation of a particular area is not and cannot be decisive of the question whether there is an Article 15(c) risk in that area. The Judge has conflated those two issues in what she says at [9.4] of the Decision. It may well be relevant to the risk of indiscriminate violence that ISIL has been defeated in that area but that does not of itself mean that there is no longer such a risk.

12. The second error disclosed in the Decision is the Judge's reliance on the Home Office guidance. Although obviously the Respondent is one of the parties to the appeal, I have no difficulty in accepting that the Judge is entitled to have regard to that guidance, particularly having regard to its methodology and sourcing. The difficulty with the Judge's approach is that she appears to have had before her only the extracts which give an overview of the issues and the Respondent's reply to them. She has not been referred to later sections of the Home Office guidance which expand on that overview and which may be expected to bear reference by footnotes to the sources from which the conclusions are drawn. By way of example, although the passage expressly cited by the Judge does not include cross-references, there is reference in the following paragraph to a link to "Number of returnees and places of return" associated with the statement that "Returns are taking place to areas of the country that Daesh previously controlled".

13. The Appellant also relies on what is said at [2.3.24] of the Home Office guidance as follows:-

> "[2.3.24] In the six governorates worst affected by violence (Anbar, Baghdad, Diyala, Kirku, Ninewah and Salah al-Din), the number of security incidents has either remained steady or steadily declined since April 2015, when the Upper Tribunal in AA considered evidence. The exception to this is Ninewah, where the number of security incidents is erratic, with high spikes in violence."
> [my emphasis]

14. As the Appellant rightly points out, if it is the case that the security incidents in Kirkuk have remained steady since April 2015, then based on AA, the Judge should have accepted that there remains a risk which is sufficient to satisfy the Article 15(c) threshold.

15. The other point to be made about this passage though is that there is a cross-reference to a later section entitled "Security Incidents". The Judge did not refer to that section which expands on the proposition that the number of security incidents may have stayed the same or declined and provides not only graphs showing the numbers of casualties which would allow comparison with the position at the date of AA but also cross-references the source of that data.

16. The Judge was right to point out the difficulties for a First-tier Tribunal Judge seeking to, in effect, carry out a country guidance function in an individual case. That is why country guidance exists. There may be some clear cases where the evidence all points in one direction and does not require the sort of cross-referencing and sourcing analysis to which I refer above but that is not this case.

17. Finally, there is a third error which is probably the more obvious. The Judge was clearly entitled to give limited weight to the FCO travel advice. That is not produced to inform immigration appeals. However, the Appellant did not simply rely on that and the headnote in AA as appears to be assumed in the First-tier Tribunal's refusal of permission. There was a bundle of background evidence running to 198 pages before the Judge. True it is that pages 1-60 are the decision in AA. However, the remainder is evidence, mostly post-dating that considered in AA. Some of that is at one with the Home Office guidance (unsurprisingly since it also emanates from the Home Office albeit is earlier than March 2017). However, the Appellant has included the whole of such reports which expands on the security situation in Kirkuk. Other of that documentation emanates from other sources. While much of the evidence relates to the humanitarian situation, there is some evidence in this bundle which relates to the security situation. In any event, the Judge has assumed that the findings in relation to Article 15(c) can simply be read across to humanitarian protection and no reference is made to this evidence.

18. None of the above is intended to suggest that it is not open to a Judge to decline to follow a country guidance case. However, as noted in the case to which the Appellant refers in his grounds, to do so requires "very strong grounds supported by cogent evidence". It may be that the Home Office guidance on which the Judge relied, if analysed in depth, may provide such cogent evidence. However, the overview on which the Judge relied without any analysis of the underlying evidence did not.

19. For the foregoing reasons, I am satisfied that the Decision includes a material error of law. I therefore set aside the Decision. The Decision is based on the Judge's finding that the Appellant will not face an Article 15(c) risk and can therefore be returned to Kirkuk. That issue requires a fresh evaluation on the evidence. Furthermore, based on that conclusion, the Judge has not gone on to consider the issue of internal relocation and humanitarian protection if it is subsequently found that the Appellant cannot be returned to Kirkuk. For those

reasons, it is appropriate for this appeal to be remitted to the First-tier Tribunal for hearing by a Judge other than Judge Lambert.

DECISION

I am satisfied that the Decision involves an error of law. The decision of First-tier Tribunal Judge Lambert promulgated on 27 April 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.

Signed  Dated: 23 January 2018

Upper Tribunal Judge Smith