



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08780/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 14th June 2018

Decision & Reasons Promulgated
On 25th June 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole, instructed on behalf of the Appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq.
2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. 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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The Appellant with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 2nd November 2017, dismissed his claim for protection.
4. The background to the Appellant's claim is set out in the determination at paragraphs 1 - 4 and in the decision letter of the Secretary of State issued on 25 August 2017. The Appellant claimed that he was beaten and arrested by a militia in his home area approximately one year before ISIS came to his village. The Appellant also feared that he would be persecuted as a Sunni Muslim. It was the Appellant's case that his parents were killed by ISIS when they attacked his home area. The Appellant left Iraq and having travelled through a number of countries he entered the United Kingdom. He claimed asylum on 5 October 2015.
5. In a decision letter dated 25 August 2017 the Respondent refused his claim for asylum. It was accepted that he was a national of Iraq but his claim to have been arrested and beaten by the militia was rejected nor was it accepted that his home was destroyed or his parents killed by ISIS. The Secretary of State considered that in the alternative he could internally relocate to a different part of Iraq and consideration was given to whether he was able to relocate to the Kurdish region of Iraq ("IKR") applying the country guidance case of *AA (Article 15 (c) (Rev 2) [2015] UKUT 544* and the Court of Appeal's decision in *AA (Iraq) [2017] EWCA Civ 944*.
6. The appeal against that decision came before the First-tier Tribunal on 9 October 2017 and in the decision promulgated on 2 November 2017 his appeal was dismissed.

Permission to appeal that decision was sought and on 9 December 2017 First-tier Tribunal Judge Alis granted permission.

7. At the hearing before the Upper Tribunal Mr Cole in behalf of the Appellant relied on two principal submissions only; firstly, whether the judge erred in law by departing from the country guidance case in *AA(Iraq)* and reaching the conclusion that the Appellant's home area was no longer a contested area. Secondly, if entitled to depart from AA, was the reasoning as to safety of return to his home area open to the judge to make on the evidence?
8. There was some agreement between the parties and it was conceded on behalf of the Respondent that the second ground was made out and that the decision involved the making of an error on a point of law in this respect. However Mr Diwnycz submitted that the judge made no error when reaching a conclusion that he was entitled to depart from the country guidance. In this respect he submitted that there was a reduction of violence shown in the country materials relied upon by the Respondent and that the judge properly referred to that in his findings of fact.
9. I shall therefore deal with the first ground relied upon by Mr Cole.
10. The FTT Judge began his consideration at paragraph 27 by making the observation that under the guidance of *AA (Iraq)*, as amended by the decision of the Court of Appeal, the Appellant would be at risk in his home area. However he further observed that the Upper Tribunal had heard that appeal in May 2015 had promulgated it later that year in October but that since that time the CIG of August 2016 had been relied upon as setting out the Respondent policy that the contested areas had changed.
11. At paragraph 28 he set out the policy summary as follows:
12. Country Information and Guidance - Iraq: Return/Internal Relocation (August 2016):
 3. Policy Summary
 - 3.1.1 The 'contested' governorates of Iraq are Anbar, Diyala, Kirkuk (aka Tameen), Ninewah and Salah al-Din.

3.1.2 In the CG case of AA, which considered evidence up to April 2015, the courts found that, in the 'contested' governorates, indiscriminate violence was at such a level that subsequent grounds existed for believing that a person, solely by being present there for any length of time, faced a real risk of harm which threatened their life or person (thereby engaging Article 15(c) of the Qualification Direction and entitling a person to a grant of Humanitarian Protection).

3.1.3 However, the situation has changed since then, Diyala, Kirkuk (with the exception of Hawija and the surrounding area) and Salah Al-Din no longer meet the threshold of Article 15(c).

3.1.4 However, decision makers should consider whether there are particular factors relevant to the persons individual circumstances which might nevertheless place them at enhanced risk."

13. At paragraph 29 he further observed that the Respondent's position remained the same in its March 2017 CIG thus the Respondent's position is "that the Appellant's home governorate no longer meet the threshold of Article 15 (C)".
14. The judge then set out and properly applied the legal jurisprudence dealing with the departure from country guidance decisions and that [30] made reference to the Upper Tribunal decision of *DSG and others (Afghan Sikhs: departure from CG) Afghanistan*[2013]UKUT00148 which in turn made reference to the practice direction. There can be no dispute that the judge properly had regard to the correct legal test that he should apply as at [31] he set out that he needed to consider whether "there are very strong grounds supported by cogent evidence for departing from the country guidance case."
15. Mr Cole properly conceded that the judge's self-direction on the law was not in error. The question was whether there was in fact was cogent evidence of such strength to reach the threshold to displace the country guidance decision that the home governorate of the Appellant was a contested area.

16. In this context the judge made reference to the Respondents CIG. Had this been the only reference to the material it would have been an error as CIG policy is an emanation of the Home Office who is only one party in the appeal. However the judge did make reference at [31] to the evidence relied upon by the parties. However the evidence was of a limited nature. I can find no reference in the decision letter that it had been set out as an issue that the Respondent considered that the home governorate of the Appellant was no longer a contested area and it is not clear to me at what stage this had been communicated to the Appellant's legal advisers and whether this had played a part in the nature of the evidence advanced on behalf of the Appellant. Nonetheless I have considered the judges assessment in the light of the material that was provided.
17. The central reason given by the judge was that at the time of *AA (Iraq)* the Tribunal was only considering evidence up to the date of May 2015 and at that time ISI S had occupied large areas of northern Iraq. He stated at [32] that the situation was now different and that the ISW map from December 2016 showed that Daesh territory was now far more restricted. The judge made reference to the Iraq government forces having recaptured Mosul and therefore to follow the country guidance in AA was to "ignore the reality on the ground that Isis have been removed from large parts of Iraq." He further found that [37] that the evidence contained in the Appellant's bundle did not contradict the evidence in the March 2017 CIG and made reference to [AB 131] where it was stated that the Appellant's home village had been taken by Isis in July 2014 and had been held until November that year. However since then it's been held by a combination of Kurdish forces, the Iraqi army and Shia militia. Thus the judge found as the Appellant's home area had not been held by Isis for almost 3 years, he did not consider that the country evidence showed that the he would be at risk of serious harm from ISIS in his home area.
18. I accept the submission made on behalf of the Appellant that it was insufficient to depart from the country guidance decision on the basis of who was in control of the area. The issue of who is control of an area is not by itself sufficient to make an area a

“contested area” and there are other issues that are relevant before reaching an overall decision that the area is no longer a “contested area”.

19. In *AA (Iraq)* the Tribunal stated as follows:

“89. Both parties accepted that we should take an inclusive approach to our consideration of Article 15(c). This was the approach adopted by the Tribunal in both HM1 and HM2 as well as in numerous other country guidance decisions of this Tribunal. We remind ourselves that such an approach requires an analysis of the violence that is both qualitative and quantitative and is not to be restricted to a purely quantitative analysis of the number of civilian deaths and injuries in Iraq, or in any particular governorate within Iraq. The list of factors relevant to such an analysis is non-exhaustive but includes within them the conduct, and relevant strength, of the parties to the conflict (see, for example, AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 at [163]), the number of civilian deaths and injuries; including psychological injuries caused by the conflict, the level of displacement and the geographical scope of the conflict.”

20. Thus there were a number of issues that would be of relevance before reaching the overall conclusion to depart from the country guidance. It is right, as Mr Diwnycz submitted that the judge did consider one of those issues namely that the level of violence had declined by reference to the various tables from Joel Wings Musings on Iraq. Those tables had previously been referred to by Dr George (when giving expert evidence) who considered them to be a reliable source of information (see paragraph 53 of *BA (Returns to Baghdad) Iraq* CG [2017] UKUT 00018. Two issues arise from those tables. As to violence in the province, the tables show a small reduction as at March 2017 compared with May 2015 from 47 to 34 security incidents. However as set out at paragraph 89 of *AA (Iraq)* it was necessary to make an analysis of the violence that was both qualitative and quantitative. Furthermore by reference to the table that Mr Cole had produced (which showed comparative figures for 2018) in some respects the security incidents had either increased or were little different to that in 2017. Whilst those 2018 figures would not have been available to the judge, it does demonstrate that

there had been no durable changes which would be required in this respect if seeking to depart from the country guidance.

21. Mr Cole also made reference to the material in his bundle that was relevant to the geographical area of the conflict. At pages 110 - 111 of the Appellant's bundle, there was reference to the position of Diyala and that it was attractive to military groups because of its geography and terrain and at page 107 refers to Isis being driven out of Mosul and the setting up of new bases in the Hamrin Mountain area which, as I understand it, extends to the province of Diyala. There has also been reference to Diyala being used to launch attacks on Baghdad. Some of the material in this respect was of a limited nature but it was necessary to make an analysis of all of the relevant issues.
22. For those reasons, I am satisfied that ground one is made out. However, that is not to say that a judge dealing with the case of one of the "contested areas" would not be so entitled to reach such a conclusion but it will depend on a full analysis of all the issues and in the light of the material that is presented.
23. I now deal with the second issue and are set out above Mr Diwnycz properly accepts that there is an error in the assessment of return. I shall set out why I agree with that position.
24. The Court of Appeal has provided the following guidance in the decision of AA (Iraq) CG [2017] EWCA Civ 944.

A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

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.

In making that finding the Court of Appeal adheres to what was said in AA (Iraq) CG [2015] UKUT 0054 (IAC). The following guidance is also found in AA (Iraq)

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.

25. The judge made an assessment that the Appellant could return to his home governorate of Diyala (see paragraph [39]). He set out what was the position of the Respondent at that time (and now) that the Appellant would be removed to Baghdad. What is missing from the Judge's decision is a consideration of what will happen to the Appellant if he is returned to Baghdad, the point of return. He makes no assessment as to what would happen in Baghdad but at [40] makes reference to what is described as his "key finding" that he can safely return to his home and it is in this context that he reaches the conclusion that he would be able to obtain a CSID by using identity documents he has there. As Mr Cole submits, an assessment of how the Appellant would make his way from Baghdad to his home area is also necessary. In his submissions he made reference to the positioning of his home area and the possible route which would

require on the face of the map a journey which would mean traveling through part of a contested area in the Baghdad Belts.

26. The judge was required to consider whether or not the Appellant has a network of support available to him and whether or not he has or is able to acquire a CSID. The facts and circumstances of the Appellant's case must be set against the seven factors set out at [15] of annex A to the case of AA (Iraq) CG [2017] EWCA Civ 944.
27. The judge did not consider the alternative of a relocation to the IKR from Baghdad. The relevant guidance is contained within the Annex to AA [2017] EWCA Civ 944 at section E paragraph 20 which is reproduced below;

"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 securing employment in the IKR; and

(c) the availability of assistance from family and friends in the IKR."

28. It is clear that the judge made no assessment of this in the determination as to whether in the alternative as a Kurd, he could relocate to the IKR. This was because his primary finding was he could return to his home area but as set out above it is accepted on behalf of the Respondent that this was in error.
29. In summary, in this appeal it is correctly accepted on behalf of the Secretary of State that the decision of the Judge of the First-tier Tribunal promulgated on the 2nd November 2017 contains an error of law. I have found that the judge departed from the relevant country guidance case AA without a sufficient evidential justification and it was conceded on behalf of the Respondent that the issue of return was not properly considered. It therefore follows that the 2 grounds of appeal identified by Mr Cole succeeds and that decision is set aside.
30. I do not however accept that the error to which I have referred infects the findings of primary fact by the First-tier Tribunal Judge in which he rejected the evidence of AA

about his personal circumstances in Iraq. Those findings of fact are properly reasoned and not in any way depend upon the evidence about the security climate in his home area of Iraq. I therefore preserve those findings of fact. For the avoidance of doubt those findings are set out at paragraphs 19 - 25 of the determination.

31. As the decision in relation to the situation in Diyala and its impact on the removal of the Appellant will have to be reconsidered, I have decided that the appropriate forum in which that should happen is the First-tier Tribunal and I therefore remit the case to the First-tier Tribunal for a reconsideration of the case on the basis of the primary findings of fact already made by the FTTJ. Any secondary findings of fact will be made on the basis of any further evidence provided by the parties. They are of course at liberty to rely upon such further evidence as to the current security climate in the Appellant's home area as necessary and in the light of any further CG decisions. The Respondent should be clear as to the basis upon which it is submitted that the situation has changed since the decision of AA(Iraq) in the light of the material she relies upon and any further material relied upon concerning relocation. This can be done by way of an addendum to the decision letter or by way of skeleton argument to be filed and served upon the Tribunal and the other party.
32. Consequently, I am satisfied that the correct course is for the appeal to be remitted to the First-tier Tribunal in accordance with the Practice Direction.

Decision:

33. The decision of the First-tier Tribunal did involve the making of an error on a point of law and is set aside and the appeal is remitted to the First-tier Tribunal for a hearing on a date to be fixed in accordance with Section 12(2) (b) of the Tribunals, Courts and Enforcement Act and paragraph 7.2 of the practice statement of 10th February 2010 (as amended).

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal)
Rules 2008**

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date; 19/6/2018

Upper Tribunal Judge Reeds