Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09299/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 April 2018	**On 11 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SQ
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Harley, Counsel instructed by Wilson Solicitors LLP
For the Respondent: Miss Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 19 February 1998 who claimed asylum on 13 February 2015 having entered the UK clandestinely on 9 January 2015. His application for asylum was refused on 8 September 2017. The Secretary of State determined that the appellant was not entitled to protection either under the Refugee Convention or under Article 15(c) of Council Directive 2004/83/EC ("the Qualification Directive"). The appellant's human rights claims under Articles 2, 3 and 8 of the ECHR were also rejected. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Aujla ("the Judge"). In a decision promulgated on 22 January 2018 the judge dismissed the appeal. The appellant is now appealing against that decision.

Background and Decision of the First-tier Tribunal

2. The appellant claims to be an Iraqi of Kurdish ethnicity from Kirkuk who played the lute and is from a musical family. This was accepted by both the Secretary of State and the Judge.

3. The appellant also claims to have suffered threats and violence because of his musical activities including that he was abducted and witnessed his cousin's beheading. These claims were not accepted by either the Secretary of State or the Judge. The Judge found the appellant's account to contain inconsistencies and to be, at least in part, implausible.

4. It is not necessary to consider the asylum claim further because the dismissal of this aspect of the First-tier Tribunal's decision is not being challenged.

5. With respect to the appellant's humanitarian protection claim under Article 15(c) of the Qualification Directive the judge, having set out relevant extracts from the extant country guidance case of *AA (Article 15(c)) Iraq* CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in *AA (Iraq)* [2017] EWCA Civ 944, stated (at paragraph 43 of the decision) the following:-

> "The Respondent made the decision on 07 September 2017. The country guidance decision of the Court of Appeal in *AA* was promulgated on 11 July 2017. There have been fundamental changes in Iraq regarding the presence of ISIS since then. Although as yet there appeared to be no official reports from the UN, US State Department, Human Rights Watch, Amnesty International or any other international human rights organisation, it is clear from media reports that ISIS have been eliminated from Iraq. Around 09 December 2017, the Iraqi Prime Minister declared an end to three-year war against ISIS and that the last remnants of the terror cult, which no doubt included Al Qaeda members who the Appellant claimed he feared, had been driven out of the country. Media reports referred to the area in and around Kirkuk and the surrounding areas including the border area with IKR. Whilst I am duty-bound to follow country guidance decisions, it is clear to me that in this particular case there has been a fundamental change in the security situation in the whole of Iraq, in particular the area where the Appellant hailed from. It is therefore my view that the Appellant's fear on return from Al Qaeda or ISIS was now non-existent."

6. The appellant submitted in support of his claim a country report by Ms Sheri Laizer dated 5 January 2018. The only reference to this report in the decision is at paragraph 32 where the judge stated:

> "Most important of all, I have carefully considered and taken into account the expert report by Sheri J Laizer..."

7. The appellant also submitted a medico-legal report by a GP, Dr Sinha. The report considered the appellant's mental health and physical injuries. In respect of the appellant's mental health Dr Sinha concluded that he suffers from severe depressive episodes and PTSD. Regarding his physical injuries, applying the Istanbul Protocol, Dr Sinha assessed the appellant's

scars finding several to be highly consistent with the attributed cause (knife and gunshot wounds).

8. The judge did not accept Dr Sinha's conclusions about the physical injuries or the appellant's mental health. At paragraph 48 the judge stated:-

> "I have not accepted the medical reports as evidence of the Appellant's claimed mental health problems, in the absence of appropriate evidence. I therefore find that Appellant was fit and well and in good health. He does not have any physical or mental health difficulties."

The Grounds of Appeal and Submissions

9. The central argument made in the grounds of appeal and pursued before me by Ms Harley is that the report of Ms Laizer was highly relevant to whether the appellant would be at risk under Article 15(c) of the Qualification Directive but was not adequately (or at all) considered by the Judge.

10. Ms Isherwood acknowledged that she was in difficulty disputing this challenge to the decision given that the Judge, despite highlighting the relevance of Ms Laizer's report at paragraph 32 (quoted above at paragraph 6), failed to address any of its findings or conclusions or make any further mention of it.

Error of Law

11. The evidence of Ms Laizer was undoubtedly relevant and material to the decision. In an up-to-date report she set out in detail her expert opinion, inter alia, on the current risk to civilians in Kirkuk, the feasibility of travelling from Baghdad to the Iraqi Kurdish Region ("IKR"), the risks of relocating to Baghdad and the risks faced by musicians.

12. As highlighted by Ms Harley, Ms Laizer's report was particularly relevant because it provided up-to-date information Kirkuk after October 2017 following the retaking of the area by Iraqi Army forces and Shia militia. The other information before the judge about the circumstances in Kirkuk, including in particular the relevant Home Office Guidance and the extant country guidance case of *AA*, all predated the fundamental changes that took place in October 2017.

13. The judge's assessment of the objective evidence is at paragraph 43 of the decision (quoted above at paragraph 5). Reviewing this paragraph and the decision as a whole, it appears that the judge has assessed the risks in Iraq and in particular Kirkuk (and whether the changes since *AA* justify a departure from the guidance in that case) without having regard to Ms Laizer's evidence. This was a material error of law and the decision will need to be made afresh.

14. Having delivered my decision on there being an error of law I asked the parties whether they were ready for the decision to be remade. Ms Isherwood submitted that because a new country guidance case on Iraq is

expected imminently I should adjourn in order to remake the decision after the new case is promulgated. Ms Harley submitted that I should proceed to remake the decision immediately given that there was no (or minimal) factual dispute. I expressed my agreement with Ms Harley. My role is to assess the case based on the facts and law as they stand at the date of the hearing. Given the factual matrix was broadly agreed (and both parties felt the case could proceed without further factual evidence being given) there was nothing to prevent me remaking the decision based on the law as it currently stood. I pointed out to the parties that if a new country guidance case was promulgated before my decision was promulgated, it would be necessary for this to be taken into account and it was agreed that if this were to occur a further hearing would most likely be necessary.

REMADE DECISION

15. The argument pursued by Ms Harley in remaking of the appeal was that:-

    (1) the appellant is at risk under 15(c) of the Qualification Directive in Kirkuk; and

    (2) it would not be reasonable or safe for him to relocate either to Baghdad or the Iraqi Kurdish area.

Relevant Facts

16. It was common ground that the appellant is Kurdish, from Kurkuk, a musician, speaks Kurdish Sorani and only a little Arabic, has an uncle with whom he is in contact in Kirkuk, and does not have a Civil Status Identify Document ("CSID").

17. The appellant claims to have lost contact with his family other than his uncle and to not have family in Baghdad. This claim was not accepted by Ms Isherwood. Having reviewed the evidence that was before the First-tier Tribunal, applying the lower standard of proof, I find that although the appellant may have contact with family members other than his uncle he does not have any family or other connection to Baghdad or the IKR.

Article 15(c) Risk

18. The issue under Article 15(c) of the Qualification Directive is whether there is a real risk of the appellant suffering serious harm if he returns to Kirkuk. Serious harm in this context consists of a serious and individual threat to the appellant's life by reason of indiscriminate violence due to armed conflict.

19. Applying the lower standard of proof I am satisfied that there is a serious risk under Article 15(c) in Kirkuk. My starting point is that the panel in the country guidance case of *AA*, which at the date of drafting this decision is the extant and applicable country guidance case, stated that the intensity of armed conflict in the contested areas (which includes Kirkuk) is such that Article 15(c) applies.

20. However, I recognise, and it was common ground before me, that the circumstances in Kirkuk have changed. This was highlighted by the Secretary of State in the refusal letter dated 8 September 2017 where it was observed that ISIS no longer controls Kirkuk and the violence in that area has reduced. However, the analysis in the refusal letter which appears to primarily be based on Home Office Guidance dated March 2017 predates the substantial changes that took place towards the end of 2017 as set out in Ms Laizer's report.

21. The evidence before me from Ms Laizer about the current situation in Kirkuk, where (according to Ms Laizer) state forces and Shia militia have taken control in some areas, is that the risk to civilians is higher than that which prevailed when *AA* was decided.

22. Ms Isherwood argued that only limited weight should be given to Ms Laizer's report because she has relied on twitter and newspaper reports. However, as observed by Ms Harley, Ms Laizer has also supported her report with references to the Foreign & Commonwealth Office, UNHCR, the Iraqi Government and the Foreign Office. In a fast changing situation an expert will need to rely on multiple sources and I am satisfied that Ms Laizer has relied on sources appropriately such that her report gives a reasonable (and the best available to me) snapshot of the situation in Kirkuk at the present time.

23. In light of Miss Laizer's report I do not accept that I should depart from *AA* in respect of the risk to civilians in Kirkuk from indiscriminate violence, although I accept that the source of that violence has now changed.

Internal relocation

24. Having found that the appellant would face an Article 15(c) risk if he returned to Kirkuk, the question to be determined is whether it is reasonable and safe for him to relocate either to Baghdad or to the IKR.

25. In *AA,* as confirmed by the subsequent Court of Appeal decision in relation to *AA*, the finding on internal relocation to Baghdad is as follows:-

> "14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area [which includes Kirkuk] 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 ...;
>
> (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."

26. Neither party argued that I should depart from this aspect of *AA*.

27. Applying the factors enumerated in *AA*, I find as follows:

(1) The appellant does not have a CSID and would not be able to obtain one given that to do so he would need to return Kirkik where there is an Article 15(c) risk.

(2) The appellant does not speak Arabic to a sufficient level to work/function in Baghdad.

(3) The appellant does not have family members in Baghdad or contacts who could accommodate him.

(4) The appellant does not have a sponsor in which would enable him to access a hotel room or rent accommodation.

(5) The appellant is from a minority community.

28. Taking these factors together it would, in my view, be unreasonable and unduly harsh for the appellant to relocate to Baghdad.

29. The next question is whether the appellant could relocate to the IKR. *AA* makes it clear that the appellant would not be returned direct to that region given he does not originate from it. The issue, therefore, is whether he could be expected to, and could safely, travel to the IKR having been returned to Baghdad. It is explained in *AA* as follows:-

> "Whether P, 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."

30. The evidence before me is that the appellant does not have family and friends in the IKR and is not someone who could easily, or at all, find employment in that region. In terms of the practicality of travel, he would need a CSID but I have found that he does not have, and cannot reasonably obtain, one. I am therefore satisfied that it would be unreasonable and unduly harsh for the appellant to relocate to the IKR via Baghdad.

31. Accordingly, I find that:-

    (1) the appellant would face a risk of indiscriminate violence in Kirkuk, such that he cannot be returned to that (his home) area;

    (2) relocation to Baghdad would be unreasonable/unduly harsh because of the factors outlined in *AA*. In particular, he does not have, and it is not reasonably likely that he would be able to obtain, a CSID; and he lacks family or other support in Baghdad; and

    (3) it would be unreasonable/unduly harsh to expect him to travel from Baghdad to the IKR given the absence of family support and CSID.

32. The appellant's humanitarian protection claim is therefore allowed.

Decision

A. The decision of the First-tier Tribunal contains a material error of law and is set aside.

B. I remake the decision by allowing the appellant's humanitarian protection claim.

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 or any member of his family. 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

Deputy Upper Tribunal Judge Sheridan Dated: 21 April 2018