**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00585/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 24 February 2014** | **On 31 March 2014** |

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**HAZAR MOHAMMED AHMED**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Anderson, Sutovic and Hartigan
For the Respondent: Mr I Richard, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Iraq, born on 22 April 1982.

2. He seeks to appeal against the decision of the respondent on 12 March 2013 refusing to revoke a deportation order previously made against him. It is his contention in particular that his removal from the United Kingdom will lead to him being persecuted and therefore that he is entitled to protection. He also raises the issue of humanitarian protection and that of the fundamental breach of his human rights.

3. The appellant has a long and complex immigration history in the United Kingdom, having arrived on 19 July 1999 and clamed asylum.

4. During his time in the United Kingdom the appellant had a persistent history of committing crime which culminated in his receiving a sentence of 42 months' imprisonment for nine separate offences on 3 March 2008. On 11 November 2009 he was served with notice of being subject to automatic deportation.

5. As to the issue of asylum, the respondent made a fresh decision containing various refusal letters of 30 October 2009, 31 March 2010 and 27 March 2013.

6. The appellant's substantive asylum claim and appeal against the making of a deportation order was determined by Immigration Judge North and a non-legal member in a determination promulgated on 8 September 2010.

7. The hearing of the respondent's decision of 12 March 2013 refusing to revoke the deportation order came for hearing before First-tier Tribunal Judge Davies and Mr Getlevog, non-legal member, on 8 October 2013.

8. The appellant's representative at that hearing indicated that the appellant wished to pursue an application for protection under both the Asylum and Human Rights Conventions on the basis of evidence that had arisen since the determination of Immigration Judge North.

9. It was submitted, and documentation was produced to the effect ,that the country condition in Iraq had deteriorated to such an extent that the general conditions in that country would pose a real danger to the appellant. Thus it was recognised by the Tribunal in paragraph 8 of the determination that considerable reliance was placed by the appellant in his appeal on the humanitarian protection provisions in particular upon Article 15(c).

10. The Tribunal had regard to the previous determination of First-tier Tribunal Judge North and also to the recent decision of **HF (Iraq) [2013] EWCA Civ 1276**. The Tribunal concluded that the appellant did not establish that he was a proper beneficiary of the humanitarian protection provisions. The Tribunal went on to consider the personal situation and circumstances of the appellant and his family members and concluded overall that the respondent's decision to refuse to revoke the deportation order was in accordance with the law and accordingly dismissed the appellant's appeal.

11. Grounds of appeal have been submitted against that decision essentially on the basis that the Tribunal had erred in its approach to Article 15(c) and had paid little regard to the up-to-date background material which would tend to support a worsening of the situation in Iraq. It was also contended that inadequate consideration had been given for the best interests of the child.

12. Initially leave to appeal was refused but permission to appeal was granted by the Upper Tribunal on the basis that it was just arguable that the treatment by the Tribunal of the appellant's rights under Article 15c was inadequate.

13. Thus the matter comes before me in pursuance of that grant of leave.

14. Mr Anderson, who represents the appellant, invited my attention to his careful skeleton argument and to a bundle of documents submitted under cover of a letter of 20 February 2014, setting out details of background evidence concerning violence and disruption within Iraq. He specified in particular some 367 pages of background material which had been submitted to the Tribunal on the previous occasion under cover of a letter of 3 September 2013.

15. The thrust of the arguments presented on behalf of the appellant by Mr Anderson seeks to criticise the approach of the Tribunal and its consideration of Article 15(c). It is contended first that the Tribunal adopted an incorrect approach to the previous determination of Judge North.

    Secondly, that in any event that analysis by Judge North was defective.

    Thirdly, that in any event the Tribunal ought to have conducted its own assessment of the country conditions particularly in the light of the material that had been submitted to it.

18. As to the first criticism, it was noted by the Tribunal at paragraph 5 of its determination that the appellant's substantive asylum claim and appeal against the making of a deportation order was determined by Immigration Judge North and a non-legal member in a determination promulgated on 8 September 2010. Paragraph 66 of the determination reads as follows:

> "It is not necessary for us to consider the whole of the appellant's previous asylum claim which was determined by Immigration Judge North and the non-legal member. We are bound by the findings of that Tribunal. That Tribunal carefully and methodically considered the whole of the appellant's case taking into account the background information. Having received no further credible evidence we conclude the appellant cannot discharge the burden of proof upon him and satisfy us that he is entitled to any form of international protection."

19. The criticism which is offered in relation to that observation is that it is a misdirection. Under the authority of **Devaseelan v SSHD [2002] UKIAT 00702** it is

settled law that the determination of Judge North was properly to be regarded as the starting point but not necessarily determinative of all matters. Indeed it was argued that the obligation was upon the Tribunal to consider the fresh evidence that had been presented, particularly relating as it did to the crucial issues of international protection.

20. That error it is submitted was compounded by the fact that the decision of Judge North and the evaluation of the appellant's risk on return relied on the previous Iraq country guidance case of **HM and Others (Article 15(c)) (Iraq) [2010] UKUT 331** which was quashed and found to be unlawful by the Court of Appeal in **HM (Iraq) and Another v Secretary of State for the Home Department [2011] EWCA Civ 136**. It is suggested therefore that relying upon the findings of Immigration Judge North in relation to Article 15(c) the panel erred in law.

21, It may be instructive, therefore, to consider in some detail the reasoning of Judge North and Mr Thursby in the appeal heard and promulgated on 1 September 2010. The appellant contended that he originated from Kirkuk and gave details of his political profile. He claimed that he was a person who was outside Iraq for the last ten years and who had originated from the disputed territory in Kirkuk and with no family members or close friends in the KRG he would not be admitted for settlement in the KRG. He claimed that he would be deliberately targeted because of his and his family's links to the PUK if returned to Kirkuk and also spoke of the widespread violence that was currently in Kirkuk.

22. It was noted that the appellant had said in his 2001 asylum application that his family had been displaced from Kirkuk to Suliemanya.

23. The issue as to humanitarian protection was raised specifically at that hearing on the basis that the appellant would face serious harm in Iraq for a serious and individual threat to his life or by reason of indiscriminate violence in situations of internal armed conflict. It is argued that the whole of Iraq was in a state of internal armed conflict and that the objective evidence supported the proposition that there was in Kirkuk such a high level of indiscriminate violence that solely by being there the appellant faced a real risk to his life or person.

24. The Tribunal did not accept as credible the account of the appellant's political profile or of the specific targeting of him and his family that he claimed.

25. In terms of humanitarian protection the Tribunal was not satisfied that the appellant and family continued to live in Kirkuk since they had moved from there to live in Suliemanya. The Tribunal was satisfied that the appellant would be able to establish a link with Suliemanya, his former place of residence, and that he would be accepted as a returning resident of that area and take advantage of the protection of the authorities there.

26. Also for those reasons in paragraph 20 of that determination Judge North concluded that the appellant could be admitted to the Kurdish area of Iraq and will be able to establish his credentials in Suliemanya. Alternatively he could relocate elsewhere.

27. The current country guidance that was operative at the hearing of the matter by Judge Davies and Mr Getlevog was that of **HF (Iraq), HJM (Iraq), R (Iraq) MK (Iraq) [2013] EWCA Civ 1276**. That was a decision promulgated on 23 October 2013, but a few days prior to the hearing on 28 October 2013. It is clear from the determination that that was a decision brought to the attention of the Tribunal as can be clearly identified in paragraph 52 of the determination.

28. In general terms that was a decision which upheld the findings of the Tribunal in **HM and Others (Article 15(c)) Iraq CG [20121] UKUT 409 (HM2)** and **MK** in its general application rather than its specific facts. It was noted in paragraph 25 of that judgment that the conclusions of the Tribunal were as a result of a careful, reasoned and assessment of all the relevant evidence, the Tribunal seeking to ensure that the material was as up-to-date as possible and in that context focused particularly on the UNHCR Eligibility Guidelines. These were guidelines were issued shortly after a hearing of **HM(2)** on 31 May 2012.

29. It was noted particularly that the Tribunal in **HM(2)** summarised its conclusions as follows:-

> "(i) Whilst the focus of the present decision is the current situation in Iraq, nothing in the further evidence now available indicates that the conclusions of the Tribunal in HM1 reached about the country conditions in Iraq were wrong.
>
> (ii) As regards the current situation, the evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat.
>
> (iii) Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) for civilians who are Sunni or Shia or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to 'enhanced risk categories'' under Article 15(c)'s sliding scale."

Thus the Tribunal in **HM(2)** went on to consider the risk at Baghdad Airport.

30. The conclusions were challenged, but essentially the Court of Appeal upheld the findings of the Tribunal. Challenge was also made to the Tribunal's approach to the UNHCR Guidelines and that again was an unsuccessful challenge in the event.

31. The Court of Appeal considered as an important issue in the appeal whether a sponsor was necessary in order for the appellant to reside in the KRG. This is considered particularly at paragraphs 67 to 76 of the Court of Appeal judgment. The Court concluded generally that that would not be a problem, and in particular at paragraph 68 that there were some governorates (such as Suliemanya) that did not require a sponsor and that the reason for obtaining a sponsor was for security purposes and that in practice that was a very easy requirement to satisfy. It noted that there was no real evidence of prejudice resulting from a failure to obtain a sponsor and in practice little evidence of anyone being removed from the region for failing to obtain one.

32. I pause to note that members of the applicant's family remain in the KRG according to the appellant in any event.

33. Relocation within the KRG was also considered.

34. Whether or not the material considered by Judge North had been overturned and subsumed into further country guidance, it was the position as at the hearing before Judge Davies and Mr Getlevog that humanitarian protection was not required given the most up-to-date statement of the Country Situation and the Court of Appeal generally upholding the Tribunal as to that position. It seems to me that the first tier Tribunal was entitled to rely upon that decision.

35. It is contended in the grounds of appeal that the Tribunal should have departed from that guidance even so recently given, in the light of the objective material that was presented before it in the bundle to which reference has been made. It is said by Mr Anderson that that material dating as it did from late 2012 through to 2013 was evidence that was more recent even than that that had been considered by the Tribunal or by the Court of Appeal. Accordingly the Tribunal should have preferred that evidence to the general statement contained in the country guidance judgment.

36. That seems to me to be a very bold assertion to make in all the circumstances. No document analysing the material presented has been placed before me. I note that the articles which are relied upon and there are many, relate to the whole of Iraq making reference particularly to suicide bombings and bomb strikes.

37. It is of course proposed to return the appellant to the KRG and not to Baghdad or other parts of Iraq.

38. Mr Anderson nevertheless submits that a substantial portion of the documentation relates to the area of Kirkuk and to an increased level of violence therein. Whilst it is to be acknowledged that there would seem to be a number of articles relating to Kirkuk, for the most part, the documents in the bundle relate elsewhere. In that connection I notice in a Press Service News Agency report of 31 July 2013 at pages 92 to 93 of the bundle. There are other articles which are not specifically highlighted in

the arguments as presented before me. Without some guidance or assistance it is difficult without more to understand how helpful presenting a bundle of documents without such explanation is to any Tribunal.

39. It is to be noted, however, as was recognised by the Court of Appeal in its judgment that the Tribunal had, over a period of time, considered many aspects of background material in coming to the conclusion that had been arrived at. It seems to me that it would require something quite compelling to justify any departure from the guidance as given in those circumstances and I do not detect from the documents any such compelling nature.

40. Mr Anderson relies particularly upon the limitation which is placed by the Court of Appeal upon the issue of relocation. He invites me to find that that is more restrictive than was considered by Judge North in the original hearing. It would seem that a person can only access goods and services in the area of registration. Thus it is not necessarily open for an individual to relocate elsewhere because the tie to the home area is in practice to be maintained. My attention was drawn in particular to paragraphs 116 and 117 of the judgment where it is said the Upper Tribunal also found, consistent with its country guidance enunciated elsewhere in its judgment, that **MK** would if necessary be able to relocate to KRG. The Tribunal was satisfied that she would be able to obtain an information card to be able to able to reside in KRG. The Tribunal accepted however that she would need to return regularly to Kirkuk in order to use a PDS card and take advantage of the food subsidies, and found that this would not be unreasonable.

41. Of course a distinction is to be made in the case of **MK** where it was found that the real issue was whether or not she was specifically targeted in Kirkuk as she claimed. Clearly if she was she might be running an unacceptable risk of harm by regular returns to Kirkuk which could make relocation unreasonable. The Court of Appeal found that this was an issue that was never addressed by the Tribunals and accordingly it was a matter that fell to be addressed by it. In the case of the appellant before me, however, it was a specific finding by Judge North that he was not specifically targeted in Kirkuk and in any event he and his family had relocated to Suliemanya. Little suggestion has been made in the background material relied upon that the level of violence in Suliemanya has dramatically increased since the circumstances as determined by Judge North in 2010.

42. Thus although it is attractive to suggest that the determination by Judge North is three years out of date, the general conclusions as to Article 15(c) have been upheld subsequently by the Tribunal and by the Court of Appeal.

43. Although the Tribunal was in error in considering itself bound by the decision of Judge North, it is clear from the principles of **Devaseelan** that it was properly a starting poin,t both as to the determination that there was no specific targeting of the appellant to give rise to refugee status and that the level of indiscriminate violence was not such as to engage Article 15(c). That is still the position that appertains as to

the country guidance given by the Tribunal and upheld by the Court of Appeal in **HF**.

44. It may be that the Tribunal was in error in not specifically addressing the argument as to the current background material as presented before it but, as I have indicated, I can find little safe basis to conclude that had the Tribunal so considered the material that it would have been entitled to have departed from the conclusions of the Tribunal in **HF and Others**. This is particularly so upon the findings that were made that the appellant had previously relocated to Suliemanya and could return there.

45. Therefore I do not find that the Tribunal's decision concerning Article 15(c) is at variance with the current country guidance and I find no error of law in the approach taken by the Tribunal to those matters. I do not find that there was sufficient evidence before the panel to show that the decision in **HM and Others** was no longer good law. As I have indicated, I find no safe basis or any basis to conclude that had the panel considered the background material that it would have departed from it or was entitled to depart from **HM(2) and Others**.

46. It is submitted also in the grounds of appeal that the panel failed to consider the children's best interests in line with **ZH (Tanzania)**. I find there to be little merit in that point. In paragraph 67 of the determination the Tribunal found that the appellant had minimum contact with his children Liam and Calam and found there to be no reason why that limited contact could not continue were he to be removed to Iraq. It was noted that the mother of Liam and Calam had not attended the hearing to support the appellant's case.

47. Of more immediate concern was the contention made by the appellant that he had family life with Chelsea Lee and her child Amiya Brook Lee. At paragraph 68 the Tribunal noted that the appellant and Chelsea Lee did not live together but that there were weekly visits and he spoke to Chelsea Lee and the child on the telephone. Thus there was clearly some contact as between the appellant and Amiya. However the Tribunal went on to comment:-

> "We are not persuaded, taking into account the appellant's history of relationships, that it is likely that the appellant's relationship with Chelsea Lee and her child will have any permanence even if the appellant were allowed to remain in the United Kingdom. We do not accept that there is any evidence to suggest that the effect of the appellant's relationship with Chelsea Lee is that his mental health has improved, nor do we accept that it is likely that the appellant's presence in the United Kingdom would be of benefit to either Chelsea L or her child."

48. The Tribunal noted at paragraph 70 that the appellant had formed relationships and fathered children without taking any responsibility for those children.

49. The Tribunal had the advantage of hearing evidence from the appellant and from Chelsea Lee and forming its impression as to the nature of any family and/or private life that may have been established.

50. It is clear, and I so find, that the Tribunal had borne in mind the best interests of the child in the findings which it made.

51. In essence the nub of this appeal relates to the risk of return to the appellant given the general level of indiscriminate violence within that country and particularly within the area to which he would be returned. I find that the Tribunal has given adequate consideration to that issue and has relied upon the case of **HF and HM** and in so doing did not fall into error. I do not find that the material which was presented before the Tribunal was such that it would have been entitled to have departed from the country guidance.

52. In the absence of any specific fresh evidence relating to the appellant's own personal situation and circumstances I find that the Tribunal was entitled to rely upon the findings of Judge North that the appellant was under no specific threat either in Kirkuk and that he and his family had to all intents and purposes in any event relocated themselves to Suliemanya.

53. In all the circumstances, therefore, the appellant's appeal before the Upper Tribunal is dismissed and the findings of the First -tierTribunal upheld. The appellant's appeal in respect of asylum is dismissed. That in respect of humanitarian protection is dismissed. That in respect of Article 8 is dismissed. Essentially, however, those are all but one facet of the central issue as to whether or not the deportation order should be revoked. In relation to that also the appellant's appeal is dismissed. Thus the decisions of the Tribunal are to stand.

Signed Date

Upper Tribunal Judge King TD