Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11946/2013

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
on 15th August 2014	**On 15th August 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SORAN KARIM
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Russell of Halliday Reeves Solicitors.
For the Respondent: Mr Dewison – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Kempton promulgated on 23rd May 2014 following a hearing at North Shields in which the Judge dismissed the appeal on human rights and humanitarian protection grounds.

2. The Appellant was born on 20th May 1985 and is a national of Iraq. The immigration decision under appeal is a refusal to vary leave to enter or remain and decision to remove made pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The Judge considered the evidence that was provided in relation to the Appellant's family and private life in the United Kingdom and noted in paragraph 11 of the determination that he heard a considerable amount of

evidence. The Judge sets out his findings from paragraph 19, including an analysis of the relationships the Appellant has had with various women in the United Kingdom, the fact a previous asylum claim was dismissed with adverse credibility findings by Immigration Judge Gordon, an examination of the relationship the Appellant has with various children a number of whom have been adopted, and in relation to which he is restricted to indirect post-box contact annually.

4. The Judge was not satisfied the Appellant had established any interference with private or family life in the United Kingdom which will be disproportionate to the legitimate aim sought be achieved, namely that of immigration control, leading to the dismissal of the appeal on Article 8 grounds. Although the way in which this element was considered is not in accordance with current thinking or jurisprudence, the Judge clearly concludes that no unjustifiably harsh consequences arise from the decision. As such it was not necessary to consider the matter as a freestanding Article 8 assessment, although he did, leading to a conclusion the decision is proportionate. As the outcome of a properly conducted Article 8 assessment will be exactly the same, any error is not material to the dismissal of this element of the claim and is not challenged before the Tribunal in any event.

5. In paragraph 22 of the determination the Judge states:

> 22. Miss Russell advanced an argument in relation to the issue of continuing indiscriminate violence in Iraq and that his appeal shall be allowed on the basis of Article 15 C of the Qualification Directive. However, I am somewhat in the dark as to the appellant's actual fear on return, given that he has not given any up-to-date evidence on the situation for him if he is returned to his home country. I was referred to the objective evidence generally in that regard. However, I am not persuaded that the appellant has provided anything like enough evidence on the matter of risk on return to him, even if the generalised issue of continuing violence is advanced as opposed to a specific threat to him. The appellant claimed a fear of persecution when he left Iraq. However, his asylum claim was refused and the appellant has not provided any evidence himself at the hearing of his fear on return.

6. The grounds are long and in part contain a summary of the facts of the case as advanced and a copy of the index of information submitted to the First-tier Tribunal. They challenge the Judge's conclusions in paragraph 22 claiming the Judge has not adequately addressed the grounds submitted and to equate the decision in this case to a refugee claim.

7. Permission to appeal was granted on the basis it may be arguable that the Judge was wrong to conclude that the appellant had not explained his actual fear of

return and not given up-to-date evidence on the situation when the skeleton argument submitted at the hearing and documentation contained in the bundle appear to set out the detail of that claim.

Error of law

8. Miss Russell confirmed that the challenge is to the finding of the Judge that the Appellant could not succeed with his humanitarian protection claim only.

9. Paragraph 339C of the Immigration Rules states:

> A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:
>
> (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
> (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
> (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
> (iv) he is not excluded from a grant of humanitarian protection.
>
> Serious harm consists of:
>
> (i) the death penalty or execution;
> (ii) unlawful killing;
> (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
> (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

10. The key question for the Judge was whether there is in Iraq, or a material part of it, such a high level of indiscriminate violence that substantial grounds exist for believing that the Appellant would, solely by being present there, face a real risk which threatens his life or person.

11. In HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) the Tribunal decided that the guidance as to the law relating to Article 15(c) of the Refugee Qualification Directive 2004/83/EC given by the Tribunal in HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) ("HM1") at [62]-[78] is reaffirmed. Of particular importance is the observation in HM1 that decision-makers ensure that following **Elgafaji, Case C-465/07; [2009] EUECJ and QD**

(Iraq) [2009] EWCA Civ 620, in situations of armed conflict in which civilians are affected by the fighting, the approach to assessment of the level of risk of indiscriminate violence must be an inclusive one, subject only to the need for there to be a sufficient causal nexus between the violence and the conflict.

12. In a recent case the Court of Justice of the European Union considered this issue too. In Diakité v Commissaire général aux réfugiés et aux apatrides (Case C-285/12) CJEU (Fourth Chamber), it was held that on a proper construction of Article 15(c) of Directive 2004/83/EC, an internal armed conflict existed, for the purposes of applying that provision, if a State's armed forces confronted one or more armed groups or if two or more armed groups confronted each other. It was not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor was it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict. The decision contained a reminder that the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.

13. The Appellant's asylum claim has been dismissed and the basis of that claim found to lack credibility, indicating that the Appellant was eligible for consideration of his humanitarian protection claim. Miss Russell, in her grounds seeking permission to appeal, asserts that paragraph 29 of the skeleton argument provided for the First-tier Tribunal hearing referred to the fact that the country guidance of HM and others [2010] UKUT 331 has been quashed by the Court of Appeal and should no longer be followed and that the relevant Article 15 C arguments had been removed from the country guidance case of MK [2012] UKUT 126 and that although the decision of HM2 has since been promulgated this has been appealed to the Supreme Court and is not good law in light of the change in the country situation. However, this submission appears to be a misrepresentation of the current legal position with regard to Iraq. It is correct that HM [2010] was set aside but the current country guidance case is HM and others (article 15 (c)) Iraq CG [2012] UKUT 00409 which is also referred to as HM2.

14. In HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC) (October 2012) the Tribunal decided that:

    (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 that the Tribunal **in HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)** ("HM1") reached about 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 Shi'a 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" (see [39] of Elgafaji);

(iv) Further evidence that has become available since the Tribunal heard **MK (documents - relocation) Iraq CG [2012] UKUT 126 (IAC)** does not warrant any departure from its conclusions on internal relocation alternatives in the KRG or in central or southern Iraq save that the evidence is now sufficient to establish the existence of a Central Archive maintained by the Iraqi authorities retaining civil identity records on microfiche, which provides a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.

15. This determination was challenged to the Court of Appeal whose judgment is reported as **HF (Iraq) and others v Secretary of State for the Home Department [2013] EWCA Civ 1276**. The claimant, a failed asylum seeker, unsuccessfully challenged HM2. The Court rejected an argument that there was justification for conferring a presumptively binding status on UNHCR reports merely because of their source. The Court had to assess all the evidence affording such weight to different pieces of evidence as it saw fit. The appeal in MK was remitted to the Upper Tribunal for a reassessment on a factual basis in light of the comments by the Court of Appeal, but no more.

16. The Appellant has failed to establish there is any arguable merit in the claim that the country guidance cases relating to Iraq have been set aside or cannot be relied upon as statements of the current position in relation to the humanitarian protection situation in Iraq. I accept that in certain circumstances the Tribunal is entitled to depart from a country guidance case if there has been a material change in circumstances or other elements to justify such conclusion, but it has not been established on the basis of material provided to the First-tier Tribunal that such an approach is justified.

17. The Judge was clearly aware that the question before the First-tier Tribunal was whether the Appellant was entitled to a grant of humanitarian protection for that is specifically referred to in paragraph 22 and that claim refused in the

concluding section of the determination. I find the Judge clearly considered the evidence provided with the required degree of anxious scrutiny and the claim that the Judge should have done more by reference to the witness statements or country information has no arguable merit and does not establish legal error. The obligation upon the First-tier Tribunal is to consider the evidence appropriately and give adequately reasoned findings to support the conclusions they have arrived at. The answer to the key question posed above is that on the basis of the information provided by the Appellant in support of his case he has not substantiated his claim that he will be at risk in Iraq of serious harm, notwithstanding the deteriorating situation in some parts of that country and the ongoing internal armed conflict.

18. Returns to Iraq tend to be to Baghdad Airport unless arrangements are made to return individuals to the Kurdish north. None of the material provided shows that such routes are no longer available, notwithstanding the recent advances by IS, or that individuals returning to Iraq will be at risk as a result of any internal armed conflict that is ongoing between the forces of the Iraqi State and IS, or that as a result of his presence in parts of Iraq not controlled by IS there is a real risk of serious harm.

19. Having reviewed the evidence made available to the First-tier, the submissions and findings made at the hearing, and those before the Upper Tribunal, I do not find the Appellant has discharged the burden of proof upon him to the required standard to show that he is entitled to a grant of humanitarian protection as there are clearly parts of Iraq to which he can return where no such real risk exists.

20. The Appellant is reminded in this respect of the recently reported decision of the Upper Tribunal in **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC)** which found that appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.

21. Although the Judge may have been able to write a substantially longer determination a finding that the required legal test has not been met has not been shown to be perverse, irrational, or contrary to the available evidence.

Decision

22. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such

order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 15th August 2014