Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01897/2017

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reasons Promulgated**
On: 8th August 2017	**On: 22nd August2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

TAA
(anonymity order made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: **Ms Smith, Counsel instructed by public access**
For the Respondent: **Mr Harrison, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. The Appellant is a male national of Iraq born in 1988.

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity

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Orders I therefore consider it appropriate to make an order in the following terms:

> "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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. The Appellant is accepted to be a national of Iraq of Kurdish ethnicity. He is a Sunni Muslim. When he claimed asylum in September 2016 he gave an account of being forced into working for Daesh against his will. He claimed that his work was publicly praised by Daesh and that as a result people in his locality turned against him. He feared that Daesh would punish him for escaping.

4. In her letter dated 4th February 2017 the Secretary of State for the Home Department accepted that the Appellant is, as he claimed, from Daquq in Kirkuk governate. This had formerly been recognised a 'contested area' where the indiscriminate violence taking place was of a sufficiently high level to consider that any civilian would be at risk if returned there. The Respondent did not however accept that to be the case any longer. The refusal letter cited three short passages from an August 2016 'Country Information and Guidance' (CIG) note (*Security Situation in the Contested Areas)* to submit that Kirkuk was no longer considered to be 'contested'. Reference is made to AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) and then (somewhat mysteriously) at paragraph 39 the letter concludes that "the most recent Country Guidance case on Iraq states that return to Kirkuk would no longer amount to a breach of Article 15(c)". Leave was therefore refused on 'humanitarian protection' grounds. In respect of the asylum claim the Respondent found there to be a number of discrepancies in the Appellant's account of being forced to work for Daesh and so rejected it. In the alternative, the Respondent found that the Appellant would be able to relocate without difficulty within Iraq, in particular to the IKR.

5. When the matter came before the First-tier Tribunal is conducted what can only be described as a careful and detailed analysis of the evidence. It concluded, having directed itself appropriately to the correct burden and standard of proof, that the Appellant's claims about forced labour for Daesh could not be believed. No challenge is made to those findings. Turning to the matter of humanitarian protection the Tribunal noted the terms of the country guidance in AA,

to the effect that Kirkuk is a contested area where the conflict has reached Article 15(c) intensity. It directed itself to the appropriate test to be applied when consideration is given to departing from country guidance. Placing reliance on the materials referred to in the refusal letter, namely the August 2016 CIG, the Tribunal then finds that the situation in Kirkuk has improved to the extent that a grant of humanitarian protection is not justified. The appeal was thereby dismissed.

6. The Appellant submits that in its determination the First-tier Tribunal materially erred as follows:

   (i) In failing to follow the country guidance case in BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 in which the Respondent expressly recognised that the guidance in AA should stand, notwithstanding the developments in Iraq and the advance against Daesh;

   (ii) In departing from the country guidance in AA the First-tier Tribunal failed to give adequate reasons or to identify "very strong grounds supported by cogent evidence" for doing so.

Error of Law

7. In May 2015 when the appeal in AA was heard (and in October when the decision was promulgated) the Respondent accepted that the conflict in Kirkuk engaged Article 15(c). That position was consistently maintained until August 2016 when the CIG referred to above was published. That indicated that the Respondent had changed her guidance to decision makers. The pertinent policy summary read as follows:

   > 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 person's individual circumstances which might nevertheless place them at enhanced risk.
   >
   > 3.1.5 In general, a person can relocate to the areas which do not meet the threshold of Article 15(c).

8. These are the passages from the CIG set out in the determination, at paragraph 54. The determination proceeds from there, with little

detour, to a conclusion that this material constitutes "very strong grounds supported by cogent evidence", this being the test set down by Stanley Burnton LJ in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940. Before me Mr Harrison, who stressed the otherwise high quality of this decision, conceded that the Tribunal had here appeared to "step over the obvious need for reasoning".

9. I must agree that this was a concession properly made. Firstly, the passages cited, and reproduced above, do not constitute evidence at all. They are a statement of the Secretary of State for the Home Department's policy. Secondly, there is no reasoning to explain why the CIG, even taken as a whole, might constitute the "cogent evidence" required to depart from the country guidance. For the Appellant Ms Smith contended that for those reasons alone this decision should be set aside; in her very well made submissions she was further able to explain why, on a proper analysis, the August 2016 could not be relied upon in the manner contended in the refusal letter, and adopted (without reasons) by the First-tier Tribunal. The 'evidence' underpinning the policy statements is set out at section 2:

> 2.3.7 Iraq is still the scene of internal armed conflict between Government forces (Iraqi Security Forces and/or Kurdish Peshmerga) and associated forces (Shia militia) on the one side and Daesh (Islamic State) on the other (see Actors of violence).
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> 2.3.8 There are reports that civilians are affected by the indiscriminate nature of the current violence, which mainly includes shootings and Improvised Explosive Devices (IEDs), and also suicide bombings, car bombs, rockets and mortars (see Fatalities, Injuries and Nature of violence).
>
> 2.3.9 Within the last year Daesh has suffered significant losses in Anbar, Ninewah and Salah al-Din, with Government and associated forces now controlling most of Diyala, Kirkuk (except Hawija and its surrounding areas) and Salah al-Din (see Control of territory).
>
> 2.3.10 There has been a steady decline in security incidents in all 'contested' governorates, especially in Salah al-Din, since Daesh (Islamic State) captured Mosul, Iraq's third-biggest city, in June 2014. Since mid-2015, when the UT in AA considered evidence, the number of security incidents has declined in Anbar and Salah al-Din. The number of security incidents has remained steady in Ninewah, Diyala and Kirkuk, with the latter two governorates still showing much lower levels overall when compared to the other 'contested' areas (see Security incidents).
>
> 2.3.11 Since mid-2015, the number of civilian fatalities and injuries either decreased or remained steady in Diyala, Kirkuk and Salah al-Din, and within relatively low levels. Anbar and Ninewah has seen far more civilian deaths overall. Their statistics are fairly erratic, which reflects the more 'contested' nature of the governorates and how Daesh's control gives them more opportunity to subject the civilian populations in these areas to killings (see Fatalities).
>
> 2.3.12 Based on current available evidence, most Internally Displaced

> Persons (IDPs) in Iraq come from Anbar (43%) and Ninewah (34%). The number of IDPs who come from Diyala (4%) and Kirkuk (4%) is relatively small. IDPs are returning to all 'contested' governorates, although particularly to Salah al-Din. The International Organisation of Migration (IOM) reported that 38% of all returnees went to Salah al-Din, with 20% returned to Tikrit alone. Very few people have returned to Ninewah since August 2014. Returns to Anbar, the largest governorate in Iraq, are happening, but are concentrated in the areas of the governorate near the border with Baghdad. IDPs are returning to Ramadi in Anbar (which accounts for 13% of all returnees), following recent Government military successes there (see Displacement).
>
> 2.3.13 Although Daesh has suffered losses in all the 'contested' governorates, the group still holds large parts of Anbar and Ninewah, with life in these areas characterised by systematic and widespread acts of violence and gross violations of international humanitarian law and abuses of human rights. There remains a significant threat to the lives and psychological well-being of the inhabitants there (see Human rights violations against civilians). These two governorates also remain the most violent of the 'contested' areas, with people still not generally returning there (except to the areas of Anbar near Baghdad).

10. Looking at those passages it is difficult to see what supported the Respondent's policy shift beyond the statement at 2.3.9 that the government now controls "most of Kirkuk". Regard to the remaining evidence indicates that this fact is not in itself capable of demonstrating that Article 15(c) conditions have ceased. At 2.3.7 the Respondent recognises that Iraq remains the scene of internal armed conflict. At 2.3.8 the CIG acknowledges that there continue to be reports of civilians being affected by indiscriminate violence. At 2.3.10 the document states that the number of security related incidents in Kirkuk has "remained steady". This analysis is supported by the graphs that appear in the CIG at section 6. At 6.1.1 a graph shows the level of violence in the top six 'contested areas'. It is clear from this that the levels of violence in Kirkuk were in fact marginally higher on the last date illustrated - June 16 - than that in May 2015 when AA was heard, and when the Respondent agreed that Article 15(c) was engaged.

11. This leads to Ms Smith's other ground of appeal. In finding as it did, the First-tier Tribunal failed to have regard to the findings in BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). In that reported Country Guidance decision the Respondent had submitted the August 2016 CIG only to concede that the evidence did not justify departure from AA:

> "56. This decision focuses on the situation in Baghdad city. Although the evidence shows that there have been some changes in the security situation in other areas of Iraq since the Tribunal heard AA (Iraq) it is beyond the scope of this case to give guidance on the situation outside Baghdad. **The evidence shows that the security situation in other areas of Iraq continues to be extremely fluid. The parties were in agreement that the Tribunal's findings in AA (Iraq) regarding**

generalised violence continue to apply"

(emphasis added)

This equivocation about the evidence on the part of the Respondent perhaps explains why the August CIG has now been removed from the Home Office website and no longer appears on its list of country information and guidance.

12. For the reasons set out above I find that the decision, insofar as it relates to Article 15(c) of the Qualification Directive, must be set aside. The decision was not supported by reasoning or 'cogent evidence' capable of justifying departure from established country guidance.

The Re-Made Decision

13. The Secretary of State for the Home Department made no further submissions on whether the situation in Kirkuk has improved to the extent required. It follows from what I have said above that I do not regard the evidence in the August 2016 CIG as sufficiently cogent to warrant departure from the country guidance on this issue. I accordingly find that the Appellant would be at a real risk of harm by way of indiscriminate violence if he returned to Kirkuk.

14. The question remains whether he might reasonably be expected to avail himself of an internal flight alternative and go and seek safety in the IKR. The findings on this matter by the Tribunal in AA were fairly limited. The Tribunal found the area to be "virtually violence free" and there to be no Article 15(c) risk pertaining there. Ms Smith takes no issue with those findings. In respect of reasonableness the evidence before the Tribunal in AA indicated as follows:

> *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.*

No findings are made about the wider humanitarian or socio-economic conditions in the IKR.

15. From that starting point Ms Smith made the following key submissions:

    (i) the Appellant's personal circumstances indicate that he will be without support and that in those circumstances he is unlikely to be able to support himself; and
    (ii) that situation in the IKR has markedly deteriorated for IDPs since 2015.

16. In respect of the Appellant's personal circumstances the pertinent facts are these. He has:

    - No family connection to the IKR
    - No friends in the IKR
    - Never visited the IKR
    - Sorani
    - Little education but some skills as a mechanic

17. Reliance was placed on section 8 of (a different) August 2016 CIG Iraq: *Return/Internal Relocation*, which deals with the IKR[1]. The primary source cited in this section is the Joint Report by the Danish Refugee Council and the Danish Immigration Service *The Kurdistan region of Iraq: Access, Possibility of Protection, Security and Humanitarian Situation* published in April 2016 ('the Danish report'). That report relied in turn on information supplied by the IOM, UNHCR, Human Rights Watch, Qandil (a Swedish humanitarian organisation), Kurdish NGOs, lawyers, journalists, and IKR security personnel. The CIG also refers to information supplied by the British embassy in Baghdad during 2014. Ms Smith draws my attention to the distinction in this evidence between whether the Appellant is reasonably likely to be *admitted* to the IKR, whether he would be reasonably likely to be permitted to *remain* there. Even if the Appellant were able to secure lawful residence in the IKR, Ms Smith submits that his socio-economic situation would be so dire that it would be unduly harsh to expect him to relocate there.

18. The sources cited in the Danish report appear fairly unanimous in stating that an IDP arriving by air from Baghdad would be admitted to the IKR: see for instance 8.1.4 of the CIG. Two journalists and an NGO

[1] This was the CIG available at the date of the First-tier Tribunal determination; I note that a later version has now been published but the relevant section remains the same.

indicated that those arriving by land may face an additional requirement to show that they have a sponsor in the IKR [8.1.3]. Although some evidence suggests that admission may be at the discretion of the Asayish [8.1.1], that identity documents are required [8.1.3] and that the land border is periodically closed, the general view is expressed that, as found in AA, by-air entry is permitted on arrival for an initial period of ten days.

19. What happens thereafter is that IDPs are required to regularise their position by applying for a long-term residence permit. The requirements thereof are set out at s 8.2.1:

> 'PAO/KHRW said that if a person wishes to stay longer [than two weeks] in KRI, he must have a sponsor, and after finding a sponsor who must be publicly employed, the IDP must find a place to live and get a support letter from the local mukhtar. PAO/KHRW added that the sponsor should also get a support letter from the government agency where he is employed to confirm that he is still employed. Further, PAO/KHRW said that the IDP and the sponsor should then approach the local Asayish office with the support letter from the mukhtar, the support letter from the sponsor's employer and all relevant ID, including the national ID card and the Public Distribution System card. PAO/KHRW said that if the request is denied, there is nowhere to lodge a complaint about the decision.
>
> 'IOM said that if a person wants to stay in KRI for more than one week, the person must register at the local mukhtar's office and the closest Asayish centre in the area where he stays within the first week of the stay. IOM added that if the person stays in a hotel for more than a week, without intention of settling in the neighbourhood, it is only necessary to have approval from the Asayish, and there is no need for approaching the mukhtar. According to IOM, here, the individual or the head of the family must present a Kurdish sponsor in person, a place of residence in KRI, registration details of the car and full name. To the knowledge of IOM, the family is given a paper with all names of the family members as well as the car registration number, and the one week residence permit will be extended for shorter periods of time until the security clearance by the Asayish is issued.
>
> 'Three sources stated, however, that practice is inconsistent. Two of these sources explained that it is unclear which criteria must be fulfilled to obtain a residence permit. In line with this, Human Rights Watch said that there are different ways to obtain a permit, also depending on the governorate within KRI. IRC said that, for someone who is not connected, the registration for a residence permit in KRI can take a couple of years...
>
> 'IOM stated that, with regard to processing of applications for residence permits and the duration of renewed residence permits, the procedure is arbitrarily implemented. According to IOM, sometimes, the temporary residence permit is extended for one week or a month or two months or sometimes even three months during the approval process for a permanent residence. To the knowledge of IOM, the decision may depend on the applicant's background and place of origin.
>
> According to PAO/KHRW, there is no fixed practice ensuring that an IDP can have a permanent residence permit after five years; it varies from

> place to place. Long-term residents, including IDPs who have lived in KRI for many years, are treated more favourably than new IDPs. However, PAO/KHRW said that they still need to renew their residence permit every three or six months or once a year, depending on the governorate they live in, and Kurdish IDPs do not have to renew their residence permits; only Arab IDPs do.
>
> 'According to the international NGO, a permanent residence permit is a permit of one year, and it is renewable. IOM defined a residence permit as a renewable permit with an initial duration of six months.'

20. The CIG goes on to explain how the 'sponsorship requirement' was formally abolished in 2012 due to concerns about corruption, but that numerous sources confirmed that it continues to be enforced [8.2.3]. UNHCR told the Danish researchers that "access to the KRI may be very difficult for IDPs, unless they have some form of sponsorship or a certain ethnic or religious profile and some sort of connection to government officials or people employed with the security forces in the area".

21. It is evident from the extracts reproduced and summarised above that there would appear to be a divergence between the position in law (no sponsorship required) and in practice (where it is apparently enforced on a selective basis). Kurdish NGOs PAO and KHRW report that an IDP who wishes to remain in the IKR must have a sponsor (a public employee), accommodation, and support from local officials including the security services. The evidence from the IOM and HRW is broadly consistent with that. They agree that the requirements, and procedure, may differ according to the governate that the application is made in. Both UNHCR and the IRC suggest that an individual without "connections" may need to wait at least a "couple of years" for a permit to be issued. All of that indicates it to be reasonably likely that an IDP who wishes to remain in the IKR beyond ten days would be required to find a sponsor, accommodation and the support of the Mukhtar and Asayish. I accept Ms Smith's submission that since the Appellant has no connection with the IKR it is not reasonably likely that he will be able to find a sponsor. If he cannot find a sponsor then he will not be able to remain lawfully in the IKR.

22. In respect of the socio-economic conditions the sources noted that job opportunities are "very limited" in the IKR [8.2.4], even for the host community. The financial crisis means that wages are not being paid in the public sector and that the private sector is not adding new job opportunities. If IDPs do manage to secure employment it is generally in casual work on construction sites.

23. The question then arises whether in those circumstances it would be 'unduly harsh' to expect the Appellant to remain there. I return to the guidance in <u>AA</u>. The Tribunal there applied the settled principle that in internal flight assessments, decision-makers are required to weigh all relevant factors in the balance and assess whether the

individual concerned would be able to lead a semblance of a normal life in the new area. The Appellant speaks Kurdish and as such would not face the immediate obstacle faced by an Arab compatriot. The difficulties he would face would however be significant. He does not know anyone in the IKR and as such would not be able to find a sponsor. The likelihood of him being able to secure lawful residence, beyond the initial period of ten days entry, would in those circumstances be low. The consequences of that are not altogether clear. I can see no evidence that the authorities in the IKR would seek to remove the Appellant, but on the other hand the lack of security would obviously be a matter of significant concern for him. The economic situation in the IKR appears to be bleak. I accept Ms Smith's submissions that without a sponsor, and without a formal residence permit, the appellant is going to find it extremely difficult to find regular employment or accommodation. It appears to me that in those circumstances the risk of destitution is a real one. I do not understand it to be the Respondent's case that destitution would constitute a 'reasonable' internal flight alternative. For that reason the appeal must be allowed.

Decisions

24. For the reasons I have given I am satisfied that the decision of the First-tier Tribunal involved material errors in approach to the question of Article 15(c). The decision is set aside to the limited extend identified above. The findings on asylum are preserved.

25. The decision is remade as follows:

"The appeal is allowed on protection grounds (humanitarian protection)".

26. There is an order for anonymity.

Upper Tribunal Judge Bruce
22nd August 2017