Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06459/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 25 September 2017	**On 27 October 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR AHMED MOHAMMED SALIH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard, Solicitor, Fountain Solicitors
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iraq, has permission to challenge the decision of the First-tier Tribunal (FtT) Judge Hussain sent on 14 February 2017 dismissing his appeal against the decision of the respondent made on 7 June 2016 to refuse to grant him international protection.

2. I am grateful to the parties for their succinct submissions.

3. It is relevant to note before addressing the judge's reasoning that in the respondent's refusal decision of June 2016 it was accepted that the appellant faced a real risk of serious harm in his home area of Al-Douz

(near Tikrit) in Salah Al-Din. That was in line with the conclusion reached by the Upper Tribunal in **AA (Article 15(c)) Iraq CG [2015] UKUT 544**. The judge decided to depart from that position because in August 2016 the respondent had issued updated Country Information and Guidance on Iraq which stated that in general civilians were now able to relocate to Kirkuk and Salah Al-Din.

4. The grounds contend that the judge erred by failing to apply **AA**. As amplified by Mr Howard this was said to constitute an error because the evidence relied on by the judge did not establish durable change. I am not persuaded this ground is made out. First, a judge is only obliged by Tribunal Practice Directions and case law to follow a country guidance case if there is no fresh evidence. Plainly there was fresh evidence before the judge. Second, what the judge had to assess was whether the appellant's home area was safe for him in terms of whether he could return there without facing a real risk of serious harm (i.e. whether the area was "safe"). On the evidence before the judge, there was sufficient evidential basis for him to conclude it was safe because the assessment of the UT in **AA** that Salah Al-Din was unsafe was based on it being a "contested area", whereas on the new evidence it was no longer contested, ISIS had been driven out and was under the control of the Peshmerga and Turkmen militia. Third, although the judge only cited one item of fresh evidence, the Home Office CIG Iraq Return/Internal Relocation Report, that was based on a number of sources of information, and it reflected, for example, the latest position as set out in UNAMI reports. Because it was a source drawing in turn of multiple sources, including sources on the ground in Iraq, it also sufficed to be characterised as "cogent evidence" in the sense identified by the Court of Appeal in **SG (Iraq) [2015] EWCA Civ 940**. Mr Howard made reference in his submissions to there being evidence that ISIS had not been entirely driven out of this area and that ISIS pockets remained. However, he cited no sources in support of this contention and even assuming that was the case, there was nothing in the evidence before the judge to suggest that such pockets threatened the control now exercised by the liberating forces. The same is true of Kirkuk which was the area the judge for most of the time assumed the appellant's home area to be; the CIG identified both Salah Al-Din and Kirkuk as now generally safe.

5. The grounds also raised a challenge to the judge's adverse credibility findings but it is confined to the tenuous assertion that the judge's reasons at [10]- [15] was inadequate without any elaboration whatsoever. In those paragraphs the judge gave a number of reasons for concluding that the appellant had not given a credible account of his family home being burnt down, his brother being killed by Turkmen Shia militia and his father having disappeared.

6. The grounds also take issue with the judge's findings that the appellant would in any event be able to relocate safely and reasonably to the IKR, but that was avowedly a finding "in the alternative" ([20]) and in the absence of any viable challenge to the judge's assessment that the appellant could safely return to his home area, this ground has no traction.

7. Mr Howard submitted that the judge also erred in failing to follow parts of the country guidance in **AA** that were separate from those relating to the issue of whether his home area was a contested area. He pointed to paragraph 15 of **AA**. Paragraph 15, however, is not concerned with risk arising from mere return to Iraq via Baghdad but with relocation to Baghdad for persons whose home area is unsafe. Further **AA** did not find that Baghdad was generally unsafe: see paragraphs 8 and 9 below.

8. The grounds challenge that the judge erred by not applying the country guidance of **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)** [119]. However, the grounds here quite carelessly omit to refer to paragraph (i) of the head note of **BA** which states that:

> "(i) The level of violence in Baghdad City remains significant, but the current evidence does not justify departing from the conclusion in [**AA**]."

9. Nor is there any reference to the statement in (iv) of the same head note that "... the evidence does not show a real risk to a returnee in Baghdad [on the ground of being a returnee from the West] alone". Whilst (vii) refers to the generally inability of the authorities in Baghdad to protect "Sunni complainants", the appellant was neither a Sunni nor someone who had faced serious harm in Baghdad.

10. Mr Howard conceded at the outset that the appellant could derive no benefit from the the Court of Appeal "correction" of certain points of the country guidance in **AA** relating to documentation since the appellant had in fact all the necessary documentation to enable him to enter Iraq and to access food ration and health and other facilities see [22].

11. I see nothing in the further written ground, not pursued by Mr Howard that the judge erred in concluding that the appellant had not shown there would be very significant obstacles to (re) integration into Iraq. The appellant's appeal was restricted to protection and human rights grounds and did not turn on paragraph 276ADE(i)(iv) of the Immigration Rules. In any event, on the judge's findings of fact the appellant had clearly failed to show there would be such obstacle.

Notice of Decision

For the above reasons the First-tier Tribunal judge did not materially err in law and his decision must stand.

No anonymity direction is made.

Signed Date: 8 October 2017

Dr H H Storey
Judge of the Upper Tribunal