



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03232/2016

THE IMMIGRATION ACTS

Heard at Glasgow  
On 30 August 2018

Decision & Reasons Promulgated  
On 10 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ARYAN [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Caskie, advocate, instructed by Latta & Co, solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Handley promulgated on 24 October 2016, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 01 January 1999 and is a national of Iraq. On 19 March 2016 the Secretary of State refused the Appellant's protection claim.

## The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Handley ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 6 December 2016 Designated Judge McCarthy gave permission to appeal stating

"1. The appellant applies, in time, for permission to appeal to the Upper Tribunal against the decision and reasons statement of FTT Judge Handley which was issued on 24 October 2016. Judge Handley decided the appellant was not a refugee from Iraq or that he was in need of international protection. In addition, the Judge concluded the decision appealed against was not contrary to s.6 of the Human Rights Act 1998.

2. The first ground argues that the Judge erred in assessing the appellant's credibility by requiring the appellant to give third-party evidence on behalf of his father and/or to speculate as to his father's motivations. The second ground is that the Judge erred by not properly applying the country guidance case, AA (Iraq) [2015] UKUT 544. The appellant was from a contested area and would be returned to Baghdad city. The third ground alleges the Judge erred for analogous reasons when considering article 8 and the ability of the appellant to re-establish his private life in Kirkuk.

3. I do find there is merit in the second ground because, although Judge Handley summarise some key points from AA (Iraq) at [32]and [33], he fails to engage with the appellant's circumstances regarding risk on return. It is unclear whether the Judge expected the appellant to be able to live in Baghdad city or whether he would return to Kirkuk to re-establish his life there. These are matters that could not be overlooked given the clear guidance given by the Upper Tribunal. Yet, Judge Handley makes no findings of the relevant issues.

4. I do not find there is merit in the first ground. The Judge made sound findings for disbelieving the appellant regarding his father's involvement with the Ba'ath party and the risks associated with such involvement. The complaint is in relation to whether the appellant was expected to give evidence only his father could give. That is to misread the decision and I do not give permission on this ground.

5. The third ground is interwoven with the second ground in that it centres on whether the appellant's moral and physical integrity might be undermined were he to return to Iraq, either to Baghdad city or Kirkuk. Although the standard of proof is different, it is arguable that Judge Handley failed to consider those issues according to relevant case law.

6. Because the grounds reveal arguable legal errors, permission to appeal is granted.

### Error of Law

5. When the Upper Tribunal considered this case on 2 August 2017, an error of law was found in the Judge's decision and the decision was set aside. The Judge's credibility findings were preserved but the Upper Tribunal found material errors of law in the Judge's consideration of internal relocation and risk on return. This case was sifted to await the decision in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212. The appeal now calls before me so that a decision can be substituted in relation to humanitarian protection and articles 3 and 8 ECHR.

### The Hearing

6. (a) For the appellant, Mr Caskie told me that the only remaining live issues in this case were humanitarian protection and section 276 ADE(1)(vi) of the rules. He told me that he relied heavily on the respondent's country policy and information note: security and humanitarian situation, Iraq: March 2017. He referred me to various paragraphs in that report and told me that the respondent's own report indicates that 50% of the people of the IKR require humanitarian assistance; 70% of IDPs in IKR are unemployed; 40% of the population of IKR do not have enough to eat.

(b) Mr Caskie told me that IKR is impoverished and struggling to cope with the number of IDPs who have flocked to the comparatively safe region. He told me that the appellant's prospects of finding employment there are negligible. He then took me to the guidance given in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212.

(c) The thrust of Mr Caskie's argument was that the country guidance given in AA (Iraq) 2017 indicates that the appellant cannot return to Kirkuk because it has been judicially determined that there is internal armed conflict there, and that mere presence in Kirkuk creates a need for article 15c protection. As the appellant is a Kurd he can enter IKR. He will be allowed to stay there legally for 20 days and then be allowed to remain if he finds employment; with the appellant's profile he has no chance of obtaining employment. If he remains in IKR, he will have to remain illegally.

(d) Mr Caskie told me that the respondent cannot return a man to a region where he will inevitably become an unemployed, illegal, resident. He told me that return will make the appellant a destitute IDP deprived of status in IKR. He told me that means that internal relocation is unduly harsh, the appellant is therefore entitled to humanitarian protection. By analogy there are very significant obstacles to reintegration.

(e) Mr Caskie urged me to allow the appellant's appeal on humanitarian protection grounds and on article 8 grounds, relying on paragraph 276 ADE(1)(vi) of the rules

7. (a) For the respondent, Mr Govan urged me to dismiss the appellant's appeal. He also relied on the respondent's country policy and information note: security and

humanitarian situation, Iraq: March 2017. Mr Govan told me that the guidance given in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 makes it clear that the appellant can go to IKR. He reminded me that all the respondent accepts from the appellant's account is that the appellant is an Iraqi Kurd, that it is now accepted that there is no substance in the appellant's asylum claim, and the appellant can recover a CSID.

(b) Mr Govan told me that the respondent's report dated March 2017 indicates the level of violence in Iraq has dropped. He implied that it would now be safe for the appellant to return to Kirkuk. He urged me to dismiss the appellant's appeal.

### Analysis

8. The appellant no longer pursues his asylum claim. Counsel for the appellant conceded that it was only at the end of his asylum interview that the appellant blurted out that his father was a Ba'ath party spy who was killed in 2014. He said that the appellant tainted an otherwise true story by telling an enormous lie in the closing stages of his asylum interview. The focus in this case is now firmly drawn on humanitarian protection and articles 3 and 8 ECHR grounds of appeal.

9. What is not disputed is that the appellant is a Sunni Muslim; he is a Kurd; he is single and was born in 1997; he is uneducated and has only previously worked in agriculture; his home town is Kirkuk. If the appellant is returned to Iraq, he will be sent to Baghdad. He will be given approximately £1500 as an assisted voluntary returnee. He will be able to fly from Baghdad to Irbil.

10. The Court of Appeal has provided the following guidance in AA (Iraq) CG [2017] EWCA Civ 944.

#### A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

11. In making that finding the Court of Appeal adheres to what was said in AA (Iraq) CG [2015] UKUT 0054 (IAC). The following guidance is also found in AA (Iraq) 2017

#### D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. *As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area 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 (see Part C above);*
  - (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.*
16. *There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).*

12. AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 amended the guidance given in AA (Iraq) [2017] insofar as it relates to Iraqi Kurds (ie the guidance relating to this appellant)

*Section E of Country Guidance annexed to the Court of Appeal’s decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*

1. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
2. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
3. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
4. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P’s identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P’s identity documents but may also be achieved by calling upon “connections” higher up in the chain of command.*
5. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local*

*mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*

6. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
7. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
8. *For those without the assistance of family in the IKR the accommodation options are limited:*
  - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
  - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
  - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
  - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
9. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
  - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
  - (iii) *P cannot work without a CSID;*
  - (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*

- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers.*

13. AAH did not, however, amend the country guidance concerning internal armed conflict in Kirkuk. AA(Iraq) [2017] tells me that there is internal armed conflict in Kirkuk, which is the appellant's home area. The respondent argues that the violence there has diminished, but I am not persuaded that I should depart from country guidance. The appellant cannot return to Kirkuk

14. AAH and the respondent's own country policy and information document from March 2017 indicate that IKR is struggling to cope with an influx of refugees. The appellant is a young man of fighting age who comes from an area which had been dominated by ISIL. The appellant does not have skills which would make him attractive to an employer, and has no connections within IKR.

15. The background materials and caselaw tells me that the unemployment level amongst IDP's in IKR is 70%. There is no evidence placed before me to indicate that the appellant has education, skills, experience and attributes which would place him within the top 30% who obtain employment. It is therefore more the likely appellant will face unemployment. As an unemployed person who does not originate from IKR, his legal right to remain within IKR will expire 20 days after arrival.

16. It is most likely that the appellant will returned to life as an unemployed illegal resident. The inevitable illegality of his residence reduces the already slim chance of finding employment. The assisted voluntary return grant is nothing more than a short-term solution. When the money runs out, the appellant faces homelessness.

17. Within three weeks of return it is most likely that the appellant will be an unemployed, homeless, man with no legal right to remain in IKR. UNHCR say that the situation in IKR is a serious humanitarian crisis. It must be unduly harsh to expect the appellant to relocate from an area of internal armed conflict to a life of destitution as an illegal immigrant.

18. Relying on the background materials and the country guidance caselaw, I find that the appellant is entitled to humanitarian protection because there is no viable alternative option of internal relocation.

19. As I find that the appellant is entitled to humanitarian protection, by analogy I find that there are very significant obstacles to reintegration in Iraq. The appellant therefore meets the requirements of paragraph 276ADE(1)(vi) of the rules.

Decision

The decision of the First-tier Tribunal promulgated on 24 October 2016 is tainted by material errors of law and was set aside by the Upper Tribunal on 2 August 2017.

I substitute my own decision.

The appellant is entitled to Humanitarian Protection.

The appeal is allowed on article 8 ECHR grounds.

A handwritten signature in grey ink, appearing to read "Paul Doyle". The signature is written in a cursive, flowing style.

Signed  
Deputy Upper Tribunal Judge Doyle

Date 5 September 2018