Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05069/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 23 January 2018	**On 8 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

I. A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq who entered the UK illegally, and who then claimed asylum on 14 November 2016 with his wife and two children as dependents upon that claim. That protection claim was refused on 12 May 2017. His appeal against that refusal came before the First-tier Tribunal at North Shields on 29 June 2017, when it was heard by First-tier

Tribunal Judge Hands. She dismissed the appeal on all grounds in a decision promulgated on 13 July 2017. The Appellant sought to challenge that decision, and his application for permission to appeal to the Upper Tribunal was granted on all of the grounds advanced, by First-tier Tribunal Judge Ransley on 5 October 2017. Thus the matter comes before me.

2. The Respondent had conceded that the Appellant was a national of Iraq, and that he originated from the city of Shorija in the province of Kirkuk [52]. It was argued that nonetheless the Article 15(c) threshold was not met. Even if it was met, it was argued that it was reasonable to expect the Appellant and his family to relocate to the KRG. The grounds, as explained by Ms Brakaj, argue that the Judge erred by considering the appeal upon the incorrect premise that the Appellant and his family originated from the KRG. Whilst I am not persuaded that paragraph 45 of the decision contains such an error (the Judge was plainly there talking about relocation to the KRG), the argument is made out in relation to paragraphs 48 and 49 of the decision, as a result of the Judge stating twice in terms that the Appellant originates from the KRG. It is moreover in these paragraphs that the Judge sets out the considerations that led to her conclusion that the Appellant could be expected to return to his home area in the KRG.

3. After due consideration Mr Diwnycz accepted on behalf of the Respondent that the Judge had indeed erred in fact and in law. The Respondent had accepted that the Appellant originated from Shorija in the province of Kirkuk, and the Judge had accepted that there was an Article 15(c) risk to civilians in that area. Thus the Judge needed to go on to consider whether it was reasonable to expect the family to relocate to avoid that risk, and that this consideration required an accurate approach to the family's circumstances, and, the application of the current country guidance. Whilst the Judge had referred herself to AA (Article 15(c)) Iraq CG [2015] UKUT 544 she had not made any reference to either BA (Returns to Baghdad) Iraq CG [2017] UKUT 18, or, AA (Iraq) [2017] EWCA Civ 944 which was promulgated shortly before her own decision as promulgated. Thus this aspect of her decision needed to be set aside and remade.

4. Both parties were agreed that there was in the circumstances no need for the appeal to be remitted to the First tier Tribunal, and that they were content that I should remake the decision upon the issue of relocation in the light of the current country guidance. Neither sought to adduce further evidence upon that issue, and neither sought to address me upon the content of that country guidance, or, indeed its application to the other facts, as the Judge had found them to be.

5. The Appellant accepted at his screening interview that he had been issued with a passport by the Iraqi authorities, but asserted that this was now lost [A2]. He denied that he had ever held a passport at his full interview [Q13], although he offered no explanation for this inconsistency. He has never suggested that he has made any approach to the Iraqi Embassy in the UK for the issue to himself of a replacement passport, and he has offered no reason why he should not be expected to do so. I note that the

Judge rejected as untrue the Appellant's claim that his identity documents were taken from him upon arrest in Iraq [#41 l], and also rejected as untrue his claim to have been arrested. Indeed his account of the reasons for leaving Iraq was rejected as untrue.

6. In the circumstances, although the Judge made no specific finding in relation to whether the Appellant had ever been issued with a passport by the Iraqi authorities, I am satisfied that he had admitted that this was the case at his screening interview, albeit that he denied this subsequently. Had the Judge turned her mind to the issue I am satisfied that she would have rejected that denial as untrue, as indeed I do.

7. I approach the appeal therefore on the basis that the Appellant has previously been issued with an Iraqi passport. Either he still has that in his possession, or, if he genuinely no longer does so then I am satisfied that he could apply for a replacement passport to the Iraqi Embassy. The Embassy would in my judgement be able to access the passport records of the Iraqi authorities. Were he minded to do so I am satisfied that the Appellant could provide sufficient truthful biographical details, including fingerprints, to allow the Iraqi authorities to identify the records of his former passport, and thus issue him with a replacement passport. I am also satisfied that this process would allow the Iraqi authorities to identify the "family book" records for himself, his wife and his children, since the records held by the passport authorities for the Appellant would allow the identification of the relevant family book and page – even if the Appellant genuinely could not identify either the book or page from memory himself. In those circumstances I am satisfied that the return of the family to Iraq is feasible, using a replacement passport, or a laissez passer.

8. In those circumstances I am satisfied that it would be practical for the family to obtain the issue of CSID cards by the Iraqi authorities, either prior to their departure from the UK, or, reasonably soon after their arrival in Iraq; AA.

9. The current method and point of return to Iraq is by air to Baghdad airport. Whilst the family were within the airport complex there is no reason to suppose that any member of the family would be at any risk of harm. There is no prospect of the Appellant being detained for questioning.

10. In the light of the guidance to be found in BA it would be realistic to expect the family as Sunni Kurds to settle in Baghdad, with the benefit of the assistance they could access using the CSID cards they could be expected to obtain (whether prior to departure from the UK, or reasonably soon after their arrival in Iraq), even though there is no evidence to suggest that they have family links to that city, or family members living in that city who could support them and assist them whilst they established themselves. There is no state of internal armed conflict within Baghdad. Moreover the Upper Tribunal did not accept that merely being a Sunni male returned from the UK was sufficient to establish a real risk of harm, whether as a target for kidnap for ransom, or, at because of the need to

pass through roadblocks operated by Shia militias within Baghdad. The combination of funds provided by the Respondent to assist those returning voluntarily, and the assistance available to returnees from the Iraqi authorities holding CSID cards would be such that the family would avoid destitution.

11. Alternatively, should they choose to arrange it, the family would in my judgement be able to fly into the KRG from Baghdad airport to either the airports at Erbil or Suleymanyeh. Since it is accepted that the family originate from outside the KRG, and since there is no evidence that they have every lived in the KRG before, they would enter the KRG as visitors initially, a permission that would be granted to them as ethnic Kurds from the Kirkuk area. The initial period of leave would last ten days, but this could be renewed. Should the Appellant be able to find employment then this could be renewed further and for a much longer term. In any event the current country guidance is that the authorities in the KRG do not pro-actively seek to remove individuals who have overstayed their entry permission.

12. In the light of the findings of fact made by the First tier Tribunal I am not satisfied that I should infer that the family would be unable to arrange flights to the KRG, or, that the Appellant would be unable to secure employment in the KRG. There is no situation of armed conflict within the KRG, and upon the findings of the Judge below no real risk within the KRG to the members of this family of persecution, or, serious harm, or, destitution.

13. In the circumstances I remake the decision under appeal so as to dismiss the appeal.

Notice of decision

The decision promulgated on 13 July 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard.

The appeal is dismissed on all grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 7 March 2018

Deputy Upper Tribunal Judge J M Holmes