**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/04624/2018

**THE IMMIGRATION ACTS**

| **Heard at Cardiff CJC** | **Decision & Reasons Promulgated** |
|---|---|
| **On 1 March 2019** | **On 10 April 2019** |

**Before**

**DR H H STOREY**
**JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR ZHENAR MOHAMED**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms S Alban, Fountain Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Iraq, has permission to challenge the decision of Judge Frazer of the First-tier Tribunal sent on 7 June 2018 dismissing his appeal against the decision made by the respondent on 23 March 2018 refusing his protection claim. The permission was limited to two grounds. The appellant's first ground alleged that the judge failed to follow a binding decision of a superior court, namely **AA (Iraq) v SSHD** [2017] EWCA Civ 944, which revalidated the position taken in **AA (Article 15(c)) Iraq CG** [2015] UKUT 00544 (IAC) that Kirkuk (the appellant's home area) was a contested area. Allied to this submission, the first ground

**© CROWN COPYRIGHT 2019**

contended that the judge failed to consider that, as the appellant's home area was Kirkuk, he or family members on his behalf would be severely hampered in obtaining a CSID due to the ongoing violence. It was also contended that the judge failed to consider the risk to the appellant from Shia militia when travelling from Baghdad to Kirkuk, in light of the country guidance decision in **BA (Return to Baghdad) Iraq CG** [2017] UKUT 00018 (IAC).

2. The appellant's second ground on which permission was granted maintained that the judge failed to consider paragraph 276ADE(1)(vi) of the Rules in respect of whether there would be very significant obstacles to the appellant's integration into Iraq.

3. Permission was not granted in respect of the challenge made to the judge's adverse credibility findings, and Ms Alban did not seek to raise them anew. In my judgment she was wise not to do so because they were devoid of arguable merit.

4. The appellant's first ground takes aim at the judge's reasoning as set out in paragraphs 35 and 36:

> "35. The Appellant would be returned to Baghdad as he is not from Iraqi Kurdistan. The most recent country guidance is contained in **AA (Article 15(c)) Iraq CG** UKUT 00544 (IAC**)**. In that guidance the Upper Tribunal found that a state of internal armed conflict, such as to engage Article 15(c) of the Qualification Directive, existed in certain parts of Iraq. In terms of the feasibility of return, the Tribunal found that if a former resident of Iraq was not in possession of a passport (current or expired) or a laissez-passer they would not be returnable to Baghdad. However, following **HF (Iraq) and Others v Secretary of State for the Home Department** [2013] EWCA Civ 1276 an international protection claim made by a former resident could not succeed by reference to any alleged risk of harm arising from an absence of Iraqi documentation.
>
> 36. Regardless of the feasibility of the Appellant's return it will be necessary to establish whether or not he could obtain a CSID in order to have access to facilities and services. Since the Appellant claims not to have an Iraqi passport he will need to be able to persuade officials that he is the person named on the relevant page of the book holding his information in the Civil Status Affairs Office for his home governorate."

5. In amplifying the written grounds Ms Alban highlighted that the CPIN on which the judge relied was dated March 2017 which pre-dated the Court of Appeal decision in ***AA* (Iraq)** and that the judge also overlooked objective materials in the appellant's bundle identifying the tensions in Kirkuk as a result of the Iraqi government's rejection of the Kurdish referendum. In the **Amin** case in the Administrative Court, she submitted, the only issue was whether the respondent had made a rational decision.

6. I am unable to accept the arguments advanced in support of the first ground.

7. Whilst it is true that the Court of Appeal decision in **AA (Iraq)** incorporates modified country guidance, the modifications were confined to the issue of the availability of CSID documentation. The court did not consider whether the Tribunal country guidance in **AA (Iraq)** still comported with the background country evidence. They relied simply on the fact that it was existing country guidance unaffected by legal error. Accordingly, in decided to depart from **AA (Iraq) [2015]** country guidance, the judge was not failing to follow binding court authority.

8. As regards the basis on which the judge departed from **AA (Iraq) [2015]**, I consider that it was consistent with the guidance given in **SG (Iraq)** and other reported cases that cogent reasons must be given for such departure. However, in line with Tribunal Practice Directions, the judge considered whether there was fresh evidence to justify such a departure. The evidence relied on was a CPIN which itself drew on multiple sources of COI to found its conclusion that Kirkuk was no longer afflicted by high levels of violence such as to make return there a general risk contrary to Article 15(c) of the Qualification Directive. That CPIN made clear that ISIS was no longer in control and that there were only sporadic incidents of violence. As the Court of Appeal has very recently noted in **KK (Sri Lanka) [**2019] EWCA Civ 172, departure from existing country guidance on the basis of a CPIN report does not as such involve legal error.

9. In relation to Ms Alban's argument that the judge's assessment failed to take into account background evidence showing that Kirkuk was still unsafe, I have looked through the bundle of evidence on which she relied to support this argument. At best it indicates (i) that the Iraqi government's policy of Arabisation and its rejection of the Kurdish referendum result has resulted in Kirkuk lacking stability; and (ii) that remnants of ISIS militia were still able to mount attacks. Such evidence is a far cry, however, from demonstrating that the levels of indiscriminate violent in Kirkuk had remained at anything like those applicable when ISIS occupied the region. Further, this evidence demonstrated very clearly that the Iraqi government was back in control of Kirkuk.

10. Given my conclusions regarding the judge's departure from country guidance, the appellant's challenge to the judge's treatment of the issue of whether he would be able to obtain a CSID document falls away.

11. I consider that the appellant's challenge to the judge's conclusions regarding paragraph 276ADE also fall away for similar reasons. Given that Kirkuk was adjudged safe and that the appellant had an aunt and cousin there (if not also other family), the judge was entirely justified in finding that there would not be very significant obstacles to his re-integration there.

12. I see no merit in the further submission that the judge fell into legal error by failing to consider risk to the appellant arising from having to travel from Baghdad to Kirkuk without ID. I accept that the judge did not address this issue, but on the judge’s findings it was reasonable to expect that the appellant would obtain ID documentation obtained beforehand with the help of his aunt and cousin. Furthermore, background evidence did not establish that since ISIS had fled Iraq, travel from Baghdad to Kirkuk would place persons at a real risk of serious harm.

13. For the above reasons I conclude that the judge did not materially err in law and accordingly his decision to dismiss the appellant’s appeal must stand.

No anonymity direction is made.

Signed                                                  Date: 12 March 2019

Dr H H Storey

Judge of the Upper Tribunal