Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04909/2019**

THE IMMIGRATION ACTS

Heard at the Civil Justice Centre Manchester	**Decision & Reasons Promulgated**
On 16th September 2019	**On 2nd October 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR DYAR KHEDER HAMAD
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq of Adams Solicitors
For the Respondent: Mr Tan Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M Davies promulgated on the 4th July 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on asylum, humanitarian protection and Articles 2 and 3 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances, I do not consider it necessary to do so.

3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Norton-Taylor on 21st August 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

4. The material part of the grant of leave provides:-

> 2 The succinct grounds of appeal assert that because the appellant came from a "contested" area (a fact not to have been in dispute between the parties), he could not return to the home area. Although the grounds refer to credibility, it appears the real thrust of the challenge is that the Appellant could not return to his home area notwithstanding the adverse credibility findings.
>
> 3 It is arguable that the judge has failed to take account of, or provide adequate reasons in respect of the apparently undisputed fact that the Appellant's home area was "contested". In turn it is arguable that this would be relevant to the issue of a return to that home area. I note that the judge has not specifically addressed an alternative place of relocation such as Baghdad.

5. The leave does not identify any error in the adverse findings of fact made by the judge in respect of the substance of the appellant's claim to asylum. Having considered the decision as a whole I do not find that there is any error of law in the findings rejecting the factual basis of the appellant's claim. The adverse findings with regard to the reasons why the appellant left Iraq stand and the appellant is not entitled to asylum. Thereafter consideration has to be given to humanitarian protection and Article 3 of the ECHR and whether or not the appellant came from a contested area in light of the cases of AA 2017 Imm AR 1440 and AAH [2018] UKUT 00212.

6. Mr Tan accepted that central to a consideration of the appellant's case was whether the appellant came from a contested area. Whilst the judge has made adverse credibility findings, given the current country guidance it was incumbent on the judge to determine whether even taking into account the adverse credibility findings it had been proved that the appellant came from a contested area or not.

7. The case of AA (Article 15 C) Iraq CG [2015] UKUT 544 has considered each of the regions in Iraq and whether a risk arises in the area in question. From paragraph 112 of the judgment specific consideration is given to the IKR, which encompasses Erbil, Sulaymaniyah and Dahuk. The conclusion appearing to be that in the

IKR the area appears to be virtually violence free and only exceptional incidents, on a one-off basis, disrupt this.

8. By comparison other governorates including Anbar, Diyala Kirkuk, Ninewah and Salah-Al-din continue to be beset by violence. The volatility of the situation in those areas, the number of displaced persons and the tactics of warfare used, will mean that an individual will be simply by virtue of presence in such an area at a real risk of suffering harm of the type identified in Article 15 (c) of the Qualification Directive. In the case of AA it was conceded that individuals in those areas would be entitled to humanitarian protection on that basis.

9. In the light of that, consideration has to be given as to whether or not the appellant was from a contested area. The appellant has referred to Makhmur Town and to relocating to Perdawood. At page 5 of the bundle of documents submitted by the appellant's representative there is an indication that Makhmur may be close to Erbil [sometimes known as Hawler]. At page 8 in dealing specifically with Makhmur, under the heading of Nineveh Iraq there is reference to Makhmur a district to the south-east of Mosul. Similarly at page 11 there is an indication that Makhmur is a district in the Erbil governate but it is a district between Erbil and Nineveh.

10. A proper assessment needs to be made as to whether or not Makhmur is in the Erbil governate or another governate and therefore whether or not it is in a contested area. Further an assessment needs to be made whether or not the town of "Perdawood" is similarly within the Erbil or other governate. Only when such has been considered can it be decided whether the appellant is from a contested area and therefore can proper consideration be made of whether the appellant would be entitled to Article 15 (c) protection. The judge has failed to determine whether the appellant is from a contested area.

11. For the reasons set out the adverse credibility findings as to the appellant's version of events and the decision with regard to asylum stand. With regard to the issue of Article 15 c and therefore article 3 of the ECHR as well the judge has failed to make proper assessment of whether or not the home area of the appellant is in a contested area in accordance with the cases of AAH and AA. That is a material error of law.

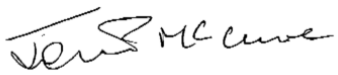
12. I asked the parties to the proceedings how the proceedings should determine the issues identified. It was agreed that it would be appropriate for the matter to be remitted back to the First-tier Tribunal to hear evidence on the issue and to make findings as to whether or not the appellant was from a contested area and whether or not it would be reasonable otherwise to expect the appellant to relocate. Material in that regard would be whether or not the

appellant would be able to obtain a CSID card or other documentation as indicated by the case law. The findings in that respect by the judge of paragraph 54 indicate that the appellant would be able to obtain a CSID card and no reason has been advanced why that finding of fact should not stand. The issue thereafter would be whether or not it would be reasonable for the appellant to relocate and whether or not it would be possible or unduly harsh for him to relocate to a safe area.

13. Forhe reasons set out there are no material errors of law with regard to the findings in respect of asylum. There is a material error of law with regard to the assessment of Article 15 c humanitarian protection and article 3 of the ECHR.

Notice of Decision

14. I allow the appeal to the extent that it will be remitted back to the First-tier Tribunal on the issues of Article 15c humanitarian protection and Article 3 of the ECHR.

Signed 

Deputy Upper Tribunal Judge McClure Date 1st October 2019