Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08289/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons**
On 11 April 2019	**Promulgated On 08 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR Z.D.
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Candola, Home Office Presenting Officer
For the Respondent: Ms H Foot of Counsel

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a citizen of Afghanistan born on 20 May 2000. I shall however for sake of convenience refer to the parties as they were referred to, at the First-tier Tribunal.

2. The appellant appealed against the decision of First-tier Tribunal Judge Chapman from the decision of the respondent of 19 June 2010 refusing his application for asylum and humanitarian protection in the United Kingdom.

3. Permission to appeal was granted by First-tier Tribunal Judge Woodcraft in a decision dated 12 December 2018 stating that it is arguable that the Judge has not taken into account recent jurisprudence particularly the

case of **Amin CEO/2508/2017** which found that Kirkuk was no longer a contested area and therefore it is arguable that the Judge was wrong to find at paragraph 60 that the situation in the appellant's home area had not improved.

First-Tier Tribunal's Findings

4. The First-tier Tribunal's findings were as follows which I summarise. The Judge allowed the appellant's appeal humanitarian protection and stated that the appellant was at a very young age at the time events that he claimed occurred in Iraq which was in 2015. The appellant's account is relatively simple, straightforward and unembellished account of the incident. The incident was important enough to both his parents to that the family's departure from the country was necessary. The Judge accepted the appellant's account and found his evidence credible that he was separated from his family in Turkey.

5. The Judge found that it is highly unlikely that the appellant will be personally targeted by the Daesh on his return to Afghanistan and therefore it was unnecessary to investigate in much detail whether the appellant is at risk from them. The Judge accepted that the appellant came from the Kirkuk area in Afghanistan which he found is a contested area.

6. The respondent assertion that the situation in Kirkuk has improved since the country guidance case was promulgated. The Judge accepted that there is some evidence to support the assertion that Daesh has suffered defeat in Iraq, save for pockets of resistance and insurgency. However, the Judge stated the appellant has produced considerable evidence which suggest that the situation is not as clear-cut as the respondent asserts. There is considerable objective evidence to the effect that there is Daesh presence in Kirkuk, and, in particular, the appellant's country expert of Dr Fattah confirms this to be the case.

7. The realised stated that having considered Dr Fattah's report and he was not satisfied that the situation in the appellant's area has improved to the extent asserted by the respondent. The Judge was of the view that he can depart from the country guidance case because the respondent has not produced evidence which amounts to very strong grounds supported by cogent evidence justifying a departure. The Judge followed the country guidance cases and found that the appellant remains at risk of indiscriminate violence in his home area of Kirkuk.

8. Having found that the appellant cannot return to Kirkuk the issue in the appeal is whether the appellant can relocate elsewhere in Iraq. The Judge found that the appellant's profile is that he is a Kurdish Sorani and Sunni Muslim. He has no family in Iraq he can turn to for support, accommodation or other assistance, for example, obtaining documentation because he has no documentation. The Judge further found that the appellant was more vulnerable than others of his age because of the lack of family support. The Judge also found that the appellant has a tendency towards depression would affect him on return. The Judge found

that relocation to Baghdad would be unduly harsh for the reasons given by the expert Dr Fattah. Stated that relocation to the IKR may still be more difficult without a valid passport, CSID and family support.

9. The Judge allowed the appellant's appeal and found that he will be at article 15 (c) risk in his home area of Kirkuk and also that he cannot internally relocate elsewhere in his own country. The Judge stated that the appeal succeeds on protection grounds succeeds.

The Grounds of Appeal

10. The grounds of appeal state the following which I summarise. The Judge of the First-tier Tribunal allowed the appellant's appeal based on risk on return to his home area of Kirkuk. In doing so, it is submitted that the Judge has overlooked the relevant case law and therefore arrived at a flawed conclusion.

11. At paragraph 60 the Judge concluded that Kirkuk has not improved sufficiently to allow departure from the 2015 case of **AA Iraq) v SSHD [2017] EWCA Civ 944** and that the appellant remains at 15(c) risk should he return there. The Judge has failed to take into account the case of **Amin v SSHD [2017] EW HC 2417 (admin)** which concluded at paragraph 63 that as far as the position in Kirkuk is concerned, and the requirement for the claimant to return there to obtain a CSI D, the Secretary of State was entitled to take the realities on the ground there into account. Kirkuk is no longer a contested area.

12. It was argued that the country guidance cases must give way to the realities on the ground, a point recognised by the Court of Appeal in **SG Iraq v the Secretary of State for the Home Department [2012] EWCA Civ 940** at paragraph 47. It was argued that the position has changed from the time **AA** was promulgated.

13. The grounds of appeal further assert that the appellant is now an adult and has shown evidence that he is capable of independent living. Having had Iraqi identity documents in the past he will be able to return to Kirkuk where he has spent the majority of his life and seek replacements. The Judge found at paragraph 55 the appellant is not at risk from Daesh, and while the appellant does not appear to have made efforts to contact his family as yet, the option remains open to him.

The hearing

14. At the hearing I heard submissions from both parties as to whether there is an error of law in the decision of the First-tier Tribunal Judge. Mr Tarlow on behalf of the Secretary of State stated that at paragraph 60 there is an error of law as set out in the grounds of appeal. Mr McCarthy on behalf of the appellant stated that the judicial review decision of **Amin** is not enough for the Judge to conclude that Kirkuk is no longer a contested area. The Judge considered clear country guidance to the contrary view. The Home Office's policy guidance states that one can only depart from the

country guidance case where there are strong grounds and cogent evidence to do so. The case of Amin cannot in itself to do that.

15. Mr Tarlow in response stated that **AA** was promulgated in 2015 and the decision in Amin was in September 2017 and that the situation in Kirkuk has changed dramatically.

Discussion and findings as to whether there is an error of law

16. I have considered the decision of the First-tier Tribunal with care. The Judge considered all the evidence carefully and found that the appellant would not be at risk from Daesh on his return to Afghanistan. He however relied on the country guidance case to find that the appellant cannot return to his home area of Kirkuk because the country guidance case states that Kirkuk is a contested area and that the appellant would be at 15C risk on his return to Kirkuk. The respondent's position is that Kirkuk is no longer a contested area and that the country guidance case was promulgated in 2015 and the case of **Amin** was promulgated in 2017 which found that Kirkuk is no longer a contested area. The respondent states that this further evidence should have been taken into account for the Judge to depart from the country guidance case.

17. Therefore, the nub of the appeal is whether the Judge should have considered this more recent evidence which postdates the country guidance cases. At the hearing I was asked by the appellant's counsel that I should not rely on **Amin** to find that Kirkuk is no longer a contested area because firstly, it was a judicial review case that was decided principally on the availability of an internal flight alternative, rather than on detailed analysis of the situation in Kirkuk. Secondly it was also submitted to me that there is no indication in the decision as to the nature of the objective evidence that was before the Judge before he made the decision that Kirkuk is no longer a contested area. It was submitted that paragraph 63 of the decision **Amin** is very short and does not have a detailed analysis as given in a country guidance case of **AA** which found that Kirkuk is a contested area. It was also argued that Amin is the subject of an appeal to the Court of Appeal and a decision is awaited. I was asked that until such time as the Upper Tribunal promulgates a new the country guidance, Kirkuk should be regarded as a contested area and removing the appellant to Kirkuk would be a clear breach of Article 15(c).

18. Therefore, what I need to decide is whether the Judge made a material error of law in his analysis as to whether the evidence presented by the respondent was of sufficient cogency to displace the country guidance case for a finding to that Kirkuk is no longer a contested area.

19. The Presidents Guidance states that a country guidance stands as the authoritative assessment of the state of play in the country or region unless there is cogent evidence to show that the situation on the ground has changed such as departure from the country guidance case is merited. In the case of **FA (Libya: art 15(c)) Libya CG [2016] UKUT 413 (IAC)** it was stated that the Judge must consider whether the evidence before

him was sufficient to require him to depart, in whole or in part, from the Tribunal's published guidance.

20. I do not agree with the submissions of Miss McCarthy that because paragraph 63 of **Amin** is very short and does not set out all the objective evidence considered by the Judge in arriving at his conclusion that Kirkuk is no longer a contested area, does not merit a departure. The Judge in **Amin** made a clear finding that Kirkuk is no longer a contested area. This finding must have been made by the Judge in **Amin** having considered relevant evidence, even if it was not set out in detail in the decision. The Judge decided that the Secretary of State was entitled to take the position that Kirkuk was no longer a contested area and that there was nothing to suggest that the claimant could not obtain a CSID from Kirkuk's Civil Affairs Office. 11 April 2019

21. I therefore find that the Judge materially erred in law when he did not determine the appellant's appeal correctly given the passage of time, and events since the evidence considered in the Guidance case was provided in respect of Kirkuk. The Judge should have, at the very minimum, applied the country guidance case with caution given the evidence provided of the change of circumstances in Kirkuk. The First-tier Tribunal therefore needs to undertake a new analysis of the Article 15(c) risk, in a new decision.

22. I therefore set aside the decision of Judge Chapman and remit the appeal to the First-tier Tribunal to be placed before any Judge other than Judge Chapman to determine whether returning the appellant to Kirkuk would expose him to a risk from which Article 15(c) protects him.

Decision

The Secretary of State's appeal is allowed
The appeal is remitted to the First-tier Tribunal

Signed by Dated this 9th day of April 2019

A Deputy Judge of the Upper Tribunal

Ms S Chana