



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/09998/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 March 2019**

**Decision & Reasons Promulgated  
On 20 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**H M W (IRAQ)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms R Popal, Counsel, instructed by HS Legal Solicitors  
For the Respondent: Mr I Jarvis, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

*The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.*

1. The appellant is a Kurdish citizen of Iraq from Tuz Khurmatu (also called Duz-Khurmatu) in the Salah al-Din governorate. He appealed with permission against the decision of the First-tier Tribunal on 1 March 2018 dismissing his appeal against the Secretary of State's refusal to grant him refugee protection, humanitarian protection or leave to remain in the United Kingdom on human rights grounds. The background to the appeal is set out in my error of law decision.
2. On 11 July 2017, the Court of Appeal handed down a judgment in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944, replacing all existing country guidance on Iraq. Further country guidance was given after the First-tier Tribunal decision in *AAH (Iraqi Kurds - internal relocation) (CG)* [2018] UKUT 212 (IAC), on 26 June 2018. It is common ground that there was evidence before the First-tier Tribunal concerning fighting in Tuz Khurmatu, the area from which the appellant claimed to originate. The evidence of conflict in Tuz Khurmatu was overlooked in the decision and that is a material error of fact at the level of an error of law.
3. By a decision sent to the parties on 27 December 2018, I set aside the decision of the First-tier Tribunal to that limited extent, and gave directions for further submissions to enable the Upper Tribunal to consider to whether the appellant's home area of Tuz Khurmatu is in a contested area of Iraq, and if so, whether he can lawfully be returned to that area or has an internal relocation option in another part of Iraq. The parties were directed to engage with the decision of the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 833 and *AAH (Iraqi Kurds - internal relocation) Iraq CG* [2018] UKUT 212 (IAC), promulgated on 26 June 2018.
4. I indicated that on receipt of those submissions, the Upper Tribunal would decide whether the decision in this appeal could be remade on the papers and submissions before it, or whether a further oral hearing was required.
5. Having read the evidence and submissions which the parties have advanced, I do not consider that it is necessary to convene a further oral hearing and I proceed to remake the decision.

### **Country guidance: the AAH decision**

6. The Upper Tribunal gave country guidance on 26 June 2018 in *AAH (Iraqi Kurds - internal relocation) (CG)* [2018] UKUT 212 (IAC). So far as relevant to the present appeal, that guidance was as follows:

*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. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID, whether P is able to do so, or do so within a*

reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;

ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

3. 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.

4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

5. 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.

6. 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.*

*7. 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.*

*8. 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.*

7. That guidance binds the First-tier Tribunal and the Upper Tribunal will not depart therefrom without significant new evidence. The most recent evidence taken into account in *AAH* was press releases from Rudaw, and reports from Human Rights Watch and UNHCR all of which were dated January 2018.

### **Evidence accompanying the appellant's submissions**

8. I have had regard to the evidence attached to the appellant's submissions. The appellant's submissions are supported by a small supplemental bundle, including some new evidence and some which was available below. The appellant relied on the UNHCR's September 2018 Iraqi Protection Update, reporting an increase in organised crime in Tuz Khurmatu, including kidnapping for ransom, with as many as 400 people thought to be missing. UNHCR considered that there was a growing fear of a rise in ethnically motivated violence, affecting the residents of Tuz Khurmatu and displaced families from the area.
9. The appellant also relied on extracts from the Danish Immigration Service's LandInfo report on Northern Iraq in November 2018 entitled *Northern Iraq: Security situation and the situation for internally displaced persons (IDPs), incl. possibility to enter and access the Kurdish Region of Iraq (KRI)*. That report identified in 'a substantive proliferation of militias and armed groups that are not under government control' the Salah al-Din governorate and in Tuz Khurmatu village, located near the Kirkuk-Baghdad road, a three-way division between Shi'a, Sunni and Turkmen populations, such that 'the level of violence in this village is very high'. A map on page 15 of the report showed Tuz Khurmatu as being just inside the contested area.
10. At [207] of the Danish LandInfo Report, it recorded that following the Anfal in October 2017, over 148,000 persons fled Tuz Khurmatu and Kirkuk, and most had not yet returned. It was easier to return to Kirkuk than to Tuz

Khurmatu, but many still did not trust the security situation in the area and were staying away.

11. Section 1.1.4 of the Danish LandInfo Report states that based on interviews in Erbil and Sulaymaniyah, in November 2018, ISIS/Daesh was weak and no longer in control of any area in the Salah al-Din governorate. There were some reports of Kurds living in Tuz Khurmatu being forced to leave, and of houses and shops burned down there. The PMUS (Peshmerga) were controlling the suburbs and surrounding villages outside Kirkuk city, including Tuz Khurmatu, and would decide who was allowed entry to the city on the basis of their own security screening. There were reports of KDP members and the Asayish being the subject of Peshmerga violations in Kirkuk and Tuz Khurmatu. 49% of Kurdish families had not returned to Tuz Khurmatu due to the lack of services and social housing.
12. Tuz Khurmatu continued to be a 'sensitive case with conflicting reports' with a very high level of violence and displacement of some Iraqi Kurdish families after October 16, 2017 (paragraph 76); minority groups in Tuz Khurmatu and Salah al-Din felt threatened (paragraph 119). At [200], the Danish LandInfo report says this:
 

“200. Asked about targeting of civilians, the source answered that there is a general fear of ISIS in the civilian population. When ISIS attacks, people flee to Sulimania. The source named especially that fake checkpoints are a reason for concern. There have been many incidents on the Kirkuk-Baghdad road, where there were civilian casualties. For instance, a car with four family members was stopped on the road and all four were killed. A tourist bus was attacked in the town Tuz Khurmatu in Salah al-Din Governorate resulting in the deaths of some of the passengers. Truck drivers have been kidnapped for ransom, such events happened around March for example, the car with four family member’s accident happened March 11, 2018. The source noted that the Iraqi authorities always blame ISIS. However, it is not always clear who the perpetrators of these kinds of incidents are, because there are numerous armed groups present with different agendas. The source referred to an example that took place on 12 March this year where a family consisting of a mother and father, three children and the father’s brother who all were killed in a fake checkpoint outside Sadiyah. The perpetrators were dressed in Iraqi uniforms. The source stated that common for all attacks is that there are no insights in the investigation of the perpetrators. Kidnappings happen for ransom, and many armed groups engaged in crime could be responsible for such actions.”
13. That is a classic Article 15(c) situation: the circumstances in Tuz Khurmatu in March 2018 would have amounted to indiscriminate or 'blind' violence, but on the other hand, at [207] the report states that 'it is easier to return to Kirkuk than to Tuz Khurmatu' and the appellant does have family in that area.
14. The appellant also produced a report dated December 2018 from the Crisis Group called *Reviving UN Mediation on Iraq's Disputed Internal Boundaries* which at C on page 15 of the report confirms that:

“The district of Tuz Khurmatu (often referred to simply as “Tuz”) in Salah al-Din governorate directly north of Baghdad has suffered more violence than other disputed areas in the immediate aftermath of the October 2017 takeover by the Iraqi army and Hashd. This may be because the area has suffered violent interethnic and sectarian clashes since 2003 involving Sunni Kurds and Sunni and Shiite Turkmen, as well as Sunni Arabs.

Tuz is a northern transportation hub, located on the Baghdad-Kirkuk highway. Like Kirkuk, its centre is Turkmen in origin, while its countryside to the north and east is predominantly Kurdish, with Arab tribes in the south and west. The Amerli sub-district is largely Shiite Turkmen in the town but the area’s villages are predominantly Sunni Arab, while Suleiman Beg sub-district is mainly Sunni Arab. Post-2003 election results have shown that Tuz district is highly diverse, with no single ethnic group holding a majority. ...

During 2003-2017, the city of Tuz saw frequent clashes between Kurdish parties, mainly the PUK, which maintained security control, and Turkmen parties. ...Kurds and Turkmen both claim that Tuz is originally theirs. It’s not up to history to decide, though. The reality is that today, apart from all the Kurds here, many Sunni Arabs in Tuz want the city to become part of Kurdistan. This is because in that case they expect to be treated the way Kurds are treated [under the KRG] .... The local Kurdish authorities did not treat Sunni Arabs well before 16 October [2017]. The Peshmerga [of the PUK] destroyed many Sunni Arab villages after liberating them from ISIS in Amerli. This was a mistake. But now Sunni Arabs are suffering even more under Hashd domination. ...

The local Shiite Turkmen politician said: “We already have a power-sharing arrangement in Tuz, so there is no need to discuss it again. All ethnic components are represented in district government and local government”. Yet security dominance by a single group – a minority in the district and even more so in the governorate – is a recipe for continued violent conflict.”

15. At page 20, under the heading *IV. Views on reviving the UN process on the territories*, the report states that in parts of Kirkuk governorate and around Tuz Khurmatu, there are ‘...significant gaps in security coordination that ISIS and other insurgent groups exploit’ but that Baghdad (i.e. the Iraqi government) has a clear interest in reaching a settlement concerning Kirkuk. In a press report from Rudaw Media Network, a media outlet in Iraqi Kurdistan, which publishes in Kurdish, English, Arabic and Turkish, all on line, a 24 December 2018 report entitled *ISIS Attack Village, kidnap three near Tuz Khurmatu* described Tuz Khurmatu as ‘located within the disputed areas where security gaps between Iraqi and Peshmerga forces have allowed ISIS militants to operate’. Rudaw and other reports from 2017 confirmed the situation of the October 2017 Anfal as it affected Tuz Khurmatu.

## **Medical evidence**

16. A medical report from Dr Saleh Dhumad MBChB MSc MRCPsych CBT, prepared on 26 May 2018, assessed the appellant as having post-traumatic stress disorder and recorded that he was taking 20 mg citalopram prescribed by his general medical practitioner. The British

Nursing Formulary (BNF) indicates that 20 mg daily is the minimum adult dose of citalopram.

17. Dr Dhumad attached Appendices containing his curriculum vitae, extracts from ICD-10 and the Istanbul Protocol principles. Dr Dhumad's opinion (described by him as his 'impression') was that the appellant's clinical presentation was 'compatible with the experience of intense fear of expected threat to life' and *consistent with* a diagnosis of severe depression and post-traumatic stress disorder. Having regard to the Istanbul Protocol, I attach limited weight to that assessment since the witness did not describe the appellant's mental health issues as 'highly consistent' with or 'diagnostic' of the account given to him.
18. Dr Dhumad noted that the appellant was not receiving any psychological therapy and had no psychotic symptoms. His risk of suicide was moderate although it might increase if he were to fear that he would be returned to Iraq. The report purported to consider the appellant's credibility, but that is not a matter for medical evidence.

### **Appellant's submissions**

19. For the appellant, HS Legal Solicitors Ltd served written submissions on 15 January 2019 but they do not appear to have reached Mr Jarvis. The submissions on *AAH* begin at [14] of that submission. HS Legal remind the Tribunal that the appellant has no Iraqi documents, nor does he know the reference, page or volume number where his Iraqi CSID information is recorded. He has no Iraqi passport and has been outside Iraq since 2003, losing, on their submission, all contact with his family and friends in Iraq.
20. The appellant also relies on Dr Dhumad's evidence about his mental health problems and on Article 3 ECHR, but permission to appeal was not granted on that basis and the direction for further submissions was limited to Article 15(c) and internal relocation.

### **Respondent's submissions**

21. Mr Jarvis, who settled the respondent's submission, did so without sight of the evidence and arguments of the appellant. The respondent's submissions were late, but I have had regard to them, since the delay is said to have been caused by waiting for the appellant's submissions. The respondent relies on his November 2018 CPIN on Iraq. The relevant passages are quoted in the respondent's submissions, including a graph showing declining levels of civilian fatalities in the six worst-affected Governorates: Anbar, Diyala, Kirkuk, Ninewah, Salah al-Din and Baghdad. The decline is steep, and the respondent contends that it has fallen below the level which would engage Article 15(c).
22. Mr Jarvis did not accept that in Kirkuk there remained a risk at the Article 15(c) level to the appellant and noted that the appellant's paternal uncle

lives in Chamchamal, about 50 miles from Tuz Khurmatu, and could assist the appellant to get a CSID if necessary. He relied on the respondent's Iraq CPIN version 8.0 of October 2018. There is a more recent version of the CPIN, version 9.0 of February 2019, but the passage relied upon appears in both documents.

23. At 2.5.13 in version 9.0, the respondent cited a letter of 5 September 2018 from Dr Salih Hussain Ali, the Iraqi ambassador to the United Kingdom, indicating that contrary to the Upper Tribunal's country guidance in *AAH*, a returnee to Baghdad can travel onward by land or air in Iraq on a *laissez passer*, without a CSID or valid passport, and that all civil status records from all governorates are available in Baghdad. Mr Jarvis contends, therefore, that I should depart from the country guidance in *AAH* and conclude that the CSID is no longer necessary.
24. Mr Jarvis further contended that the appellant had an internal relocation to Chamchamal, where his uncle and his paternal cousins all lived: his evidence was that his paternal uncle and family lived in a rented property there, and that two of the appellant's paternal cousins, the uncle's daughters, were married and lived near their father.
25. The appellant would not be destitute in the short time he would have to spend in Baghdad while he replaced his CSID or made arrangements to rejoin his paternal uncle and cousins in Chamchamal. The respondent relied on the evidence of Dr Fatah, recorded at [42] of *AAH*, that sponsorship requirements were not currently being enforced in the IKR and procedures would be dictated by the security situation on the ground.

## **Analysis**

26. The decision as to risk in the home area, Tuz Khurmatu in this appeal, is fact-specific, applying *AAH*. Having regard to all the country evidence set out above, and the exodus from Kirkuk and Tuz Khurmatu in 2017, I accept that there was in October 2017 and for some time thereafter an Article 15(c) risk in the appellant's home area of Tuz Khurmatu. However, the respondent's evidence and also that advanced by the appellant show improvement. Even if the risk in Tuz Khurmatu remains sufficiently high as to engage Article 15(c), the evidence does not suggest that such is the case 50 miles away in Chamchamal, where the appellant's paternal uncle is living with his family.
27. For the purposes of this decision I am prepared to accept that despite the improvements generally in Salah al-Din, there may still be an Article 15(c) risk in Tuz Khurmatu, at least for a time.
28. However, this is an appellant with a patrilineal relative living near Kirkuk who could assist him to obtain a CSID after his return, or even before. The argument on his behalf that he has lost touch with his uncle and his cousins is inconsistent with his evidence about their circumstances in Chamchamal, where his uncle and three cousins live in a rented house,



and two more married cousins live nearby. I remind myself that CSID information is derived from the paternal line and that the appellant's uncle is his father's brother. Even if the appellant cannot remember the details of where his family information is to be found, it is much more likely than not that his paternal uncle has that information and would be able to help him obtain a CSID, assuming that one is still required for internal travel from Baghdad to Chamchamal.

29. As stated in *AAH*, the uncle would be under an obligation to assist the appellant and I remind myself that Upper Tribunal Judge Bruce in *AAH* found that:

*"3. 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. ...*

*8. 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."*

30. On the evidence before me, therefore, even if there is an Article 15(c) risk in Tuz Khurmatu, the appellant could obtain a CSID and be taken in by his paternal uncle in Chamchamal. He has a viable internal relocation option away from Tuz Khurmatu and accordingly, the standard for international protection is not met and the appeal falls to be dismissed.
31. Even if the medical report from May 2018 had been relevant, it is almost a year out of date and there is no up to date evidence. The appellant was receiving no treatment except for a low dose of citalopram. I am not satisfied that the opinion evidence in Dr Dhumad's report reaches the high standard required for Article 3 ECHR breach. The contents of this report cannot materially affect the outcome of the appeal.

## **DECISION**

32. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed **Judith AJC Gleeson**

Date: 18 March 2019

Upper Tribunal Judge Gleeson