Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08319/2015

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 24th October 2018	**On 18th December 2018**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

FF
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Diwyncz, Senior Presenting Officer
For the Respondent: Miss Pickering, Counsel instructed on behalf of the Appellant

DECISION AND REASONS

1. This appeal comes before the Upper Tribunal by way of a remittal made by an Order of the Court of Appeal made with the consent of the parties on the 23rd April 2018 and in accordance with the statement of reasons attached to the consent order. I will set out a summary of the history and background to the litigation as it is of relevance to the issues that the Upper Tribunal is now to determine.

2. The issue that I am required to determine is an appeal brought by the Secretary of State, with permission, against the decision of the First-tier Tribunal (Judge Gribble) promulgated on the 9th November 2015 in which the Tribunal allowed the appeal of FF against the decision of the Secretary of State to refuse his claim for asylum, humanitarian protection and/or on human rights grounds.

3. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him or members 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.

4. Although the Secretary of State is now the Appellant before the Tribunal, I will for ease of reference refer to him as the Respondent as he was the Respondent in the First-tier Tribunal. Similarly I will refer to FF as the Appellant as he was the Appellant before the First-tier Tribunal.

Background

5. There is a long litigation history and background to the appeal which is set out in the papers before the Upper Tribunal.

6. The Appellant is a national of Iraq of Kurdish ethnicity. He entered the United Kingdom on the 7th December 2014 and made a claim for asylum the next day. The basis of his claim to asylum was that in or about June/August 2014 his town in Diyala was attacked by ISIS and as a result of that attack, parts of the town were taken over by them. Two ISIS members approached the Appellant on occasions. He was first approached in mid-October 2014 and was asked to cooperate and help ISIS in their fight and the second time he was approached was on 14 November 2014. On this occasion he was told that if he could not fight for ISIS, he would have to spy for them. The Appellant stated that he was scared of refusing as he feared that he would be severely ill treated for disagreeing with their demands and therefore told the two men that he would think about it. As a result of the threat of having to join ISIS at the end of November 2014 he left Iraq through the help of an agent that had been arranged by his maternal uncle. He crossed the border by foot into Iran and subsequently travelled to the United Kingdom by Karin Laurie. He arrived on 7 December 2014 and claimed asylum on the following day.

7. In his claim it was asserted that he could not return to his home area for fear of reprisal from ISIS and that he could not relocate to another area in Iraq, such as the IKR, as his father was heavily involved in the Baath party and that there were people of Kurdish ethnicity who would seek revenge against him. It was further stated that he could not return to Baghdad as a result of the civil war between the Shia and the Sunni and also as a result of his Kurdish ethnicity.

8. His claim for asylum was refused in a decision letter dated 27th April 2015. The Secretary of State accepted that the factual claim made by the Appellant which related to the attacks undertaken by ISIS in his home area which was consistent with the country information on Iraq. It was also recorded that since arriving in the UK, the country evidence demonstrated that his hometown was back in control of the Kurdish forces. Nonetheless, it was accepted that the Appellant's home town in the area of Diyala was classified as a "contested area" and thus was an unsafe area which would be unreasonable for him to return back to. The Secretary of State considered that he had provided both an internally consistent and plausible account which was supported by external country information.

9. As to the claim made that he would be at risk in the IKR as a result of his father's involvement in the Baath party, the Respondent considered that in the light of the country information which demonstrated that being targeted solely because of a former Baath party Association was no longer likely given that everyone employed by the previous regime had to be a member of the Baath party. Furthermore, it was considered that he had not provided a consistent account as to why he in particular would face any problems in this respect. Thus it was not accepted that he would have or would experience any problems in Iraq as a result of his father's alleged previous involvement in the Baath party.

10. In respect of internal relocation, the Respondent considered the Appellant's responses in his asylum interview that he could not be expected to live in the IKR as those who in the past had been persecuted by his father and the past government would seek revenge against him. In addition, he stated that he could not be expected to live in Baghdad as there was a Shia/Sunni civil war going on, both of whom threatened reprisals against those of Kurdish ethnicity. However the Secretary of State upon consideration of the country materials considered that it was reasonable to expect him to relocate to either Baghdad or the IKR.

11. In summary, the Respondent considered the decision of HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 which did not establish that there was a real risk of serious harm to civilians who are Sunni or Shia or Kurds or those who have former Baath party connections as the characteristics did not themselves amount to "enhanced risk categories" under Article 15(c) "sliding scale".

12. The Appellant submitted an appeal against the decision and it came before the First-tier Tribunal on the 9th November 2015. It was therefore asserted that it was reasonable him to return to an area of Baghdad where there is a sizeable Arab Sunni population.

13. As to relocation to the IKR, it was not accepted that there were insurmountable obstacles preventing him from returning to the area. It had not been accepted that his father's past involvement with the Baath party was sufficient to put him at risk either from the authorities or the Kurdish people. When questioned, he was unable to identify who in

particular he feared and stated that he had never actually been to the IKR for a long period of time and had not mentioned any problems there during his short visit (see AIR question 91).

14. The Respondent made reference to the country information as follows:

> "In the IKR the civilian population is predominantly of Kurdish (Sunni) ethnic origin, whilst persons displaced to the IKR are likely to have either immediate or extended families residing in IKR."
>
> "Travel from Baghdad to IKR by road is not considered either safe or reasonable due to the current security situation."

15. Reference was also made to the case law MK (document/relocation) Iraq CG [2012] UK UT126 that a lack of documentation was not ordinarily an insuperable problem and would not be a factor likely to make return to any part of Iraq unsafe. The Respondent took into account that the Appellant spoke Kurdish, his language was the official language used in Iraq, he had been received a basic education and had previous work experience as a farmer and labourer. It was also considered that he demonstrated personal fortitude in relocating to a country they had no ties or spoke the language and attempted to establish a life in the United Kingdom. It was therefore concluded that he had skills that could utilise upon his return to Iraq, including an ability to gain lawful employment. In summary was not considered to be unreasonable or unduly harsh to expect him to return to the I KR or Baghdad.

16. Consideration was also given to Articles 2, 3 and Article 8 but it was concluded that he did not qualify for asylum or humanitarian protection or discretionary leave.

17. The Appellant appealed that decision and the appeal came before the First-tier Tribunal (Judge Gribble) on 22 October 2015. The judge heard the evidence of the Appellant and considered country information provided by each of the parties and referred to at paragraph 3 of his decision. He also had an expert report from Dr Fatah dated 1 October 2015 and had the advantage of the most recent country guidance case of AA (Article 15(c)) Iraq CG [2015] UK UT00544 which had been recently promulgated on 30 September 2015 and had not been before the SSHD when reaching a decision on the Appellant's case. Attached to that was the Home Office guidance on Iraq dated April 2015, UNHCR report from October 2014, an Amnesty International report from February 2015, an IOM report of September 2015 and other reports which the judge read and took into account (see paragraph 5 of the decision).

18. The judge noted at paragraph 16 that the expert report from Dr Fatah had not been challenged by the Secretary of State. The judge observed that the expert had commented on the issue of whether and if so how, the Appellant could obtain travel documents to return to Iraq or the I KR, he commented on security situation in Iraq and that his "status as an expert is not in doubt and he provided evidence in the case of AA, which was

found to carry great weight paragraph 90 of that case". The judge found that he "summarises the issues very well at paragraph 33 of his report and deals with the documentation required to enter Iraq for the I KR at paragraph 91 – a hundred. He concludes at paragraph 119 – 120 that without access to documents from xxx the Appellant may not be able to return back to Iraq."

19. The judge set out his findings of fact at paragraphs 23 – 38. Those findings of fact can be summarised as follows:-

(1) The Appellant originated from xx in Diyala in Iraq and not the IKR. It was accepted that the town of xxx was in a "contested area" and he could not be returned there. The evidence of Dr Fatah was accepted that his home town at the present time was a "ghost town".

(2) As to his claim that his father was a Baath party intelligence member, the judge gave reasons at paragraphs 26 – 29 that the account lacked credibility and that the Appellant could not discharge the burden to show that he faced a real risk of persecution for imputed political opinion on return to Iraq.

(3) The Appellant is of Kurdish ethnicity.

(4) It was accepted by the Respondent that the Appellant speaks only a very little Arabic, his language is Kurdish Sorani.

(5) The Appellant has been issued with a CS ID by the Iraqi authorities, but he left that document in Iraq when he fled.

(6) The Appellant does not have an INC or a birth certificate in his possession.

(7) The Appellant has never been issued with a passport by the Iraqi authorities.

(8) The Appellant left his mother and sister behind in the family home when he fled Iraq, but he does not know where they are.

(9) The Appellant's elder brother lives in the UK, having left Iraq in 2002.

(10) The Appellant would as a result face a return to Baghdad airport, rather than any attempted return to the I KR. The Appellant could not travel from Baghdad airport to his home town in safety.

(11) The Appellant does not have a family member or a proxy who could go to xxx his home town and obtain the issue of it CS ID from the authorities in that town.

(12) The Appellant will not be returned to Iraq without possession of a current, or an expired passport – which he does not have and has never had.

(13) The judge accepted the expert evidence that without a birth certificate, a CS ID or an INC to prove his identity nationality, and without the support of family members in Iraq able to access

such documentation from within Iraq, the Appellant would not be obtain either travel documents or identification documents from the Iraqi Embassy in the UK.

20. The judge considered the issue of whether or not he could qualify for humanitarian protection under Article 15 (c). When considering whether the Appellant could relocate Baghdad or the I KR without an Article 15 risk of serious harm, the judge found that he was from Iraq and not the I KR and thus he would only be returned to the I KR if he was from there and his identity had been pre-cleared with the I KR authorities. The judge at [31] therefore considered the place of return would be Baghdad (whether or not the Appellant could travel onwards to the I KR).

21. The judge then considered the report of Dr Fatah, which was not challenged by the Respondent, and having considered the issue of a CSID the judge found that the Appellant had no ID document, passport or CSID. The latter document being a "vital document" to allow Iraq citizens to access services such as education, housing, financial assistance and employment. The judge found that individuals who did not have a CSID were required to go personally to their place of origin to obtain one or in the alternative, a family member or proxy could go on their behalf. The judge found that it could not be done centrally in Baghdad the documents are stored in each town and in this case the Appellant's home city xxx had been destroyed and is a "ghost town". The judge accepted that the Appellant did not know where his mother and sister were and placed weight on the comments of Dr Fatah at paragraph 112 that he would be surprised if the family remained in their home town given the current situation.

22. The judge therefore concluded that he could not obtain the documents necessary and if in Baghdad, he could not travel to his home town without an Article 15 risk. The judge also concluded that if returned to Baghdad he would not be able to obtain a CS ID as he could not travel to his hometown to obtain one, even if there one available. He cannot speak Arabic, he has no family links or family to Baghdad and would be unlikely to find a sponsor to access hotel or rented accommodation. She therefore found it would be unduly harsh and unreasonable for him to relocate Baghdad.

The Appeal before the Upper Tribunal:

23. The Secretary of State sought to appeal that decision and permission was granted by FtT Judge Adio on the 25th November 2015.

24. The appeal came before the Upper Tribunal (Deputy UT Judge Holmes) on the 15th March 2016. It was argued on behalf of the Respondent that having found that return was not feasible, the judge should have simply dismissed the appeal on humanitarian protection grounds because the judge could only go on to consider the ground if return was feasible. In the alternative, if the judge was considering the position on the assumption that the Appellant's return was feasible, the judge was obliged to consider

the ability of the Appellant to relocate in safety to the IKR by way of flight from Baghdad airport, which she had not done. It is plain from paragraph 11 that the Appellant's representative sought to argue that even if a laissez- passer were issued to the Appellant (which would not happen on the judge's findings), then he could not use it to travel internally within Iraq; such document would not allow individual to board a flight to the I KR, even if they managed to retain that document in their possession upon arrival. Thus the judge would have found that he could not travel from Baghdad to the I KR.

25. The conclusion reached by Judge Holmes was that a finding that return to Iraq was not feasible meant that the Appellant could not succeed in his humanitarian protection claim which was based upon a risk of harm arising from an absence of identity documents. The judge found that that was the basis upon which the humanitarian protection claim was advanced, it being argued that the Appellant could not get to his home area in safety, or live there, because of the indiscriminate violence prevalent in that area, and could not reasonably be expected to relocate either to Baghdad or elsewhere without a CSID or family support, because he would be unable to find food or shelter was to look for employment support himself, which he would not in any event be likely to find (see paragraph 14). The judge therefore set aside both the decision on asylum and humanitarian protection and made the decisions dismissing the appeal on all grounds.

26. Permission was sought to appeal the decision of the Deputy Judge which was refused on the papers by Upper Tribunal Judge Pitt on the 12th July 2016.

27. It is plain from the grounds of appeal that the first ground advanced was that the judge had gone beyond the grounds of appeal advanced by the Respondent and the grant of permission- the sole ground raised by the Respondent was internal relocation to the I KR. Thus it was argued that the first argument had not been included in the application for permission and that the Respondent having made no application for permission to amend the grounds was not lawfully entitled to consider such an argument.

28. The application for permission to appeal to the Court of Appeal was renewed and was again refused on the papers by Sir Stephen Silber on the 12th October 2017. However on oral renewal before Lord Justice Flaux, the application for permission to appeal was granted on the 12th February 2018.

29. Following this an order was made by consent that the Appellant's appeal should be allowed and that the appeal should be remitted to the Upper Tribunal for reconsideration in accordance with the attached statement of reasons.

30. The statement of reasons set out the history that I have referred to above. At paragraph 12, it sets out that the parties agree that the Appellant's argument that the Tribunal misinterpreted the country guidance case of

AA (Iraq) [2015] as set out at paragraph 9 of his determination, was answered by the Court of Appeal's judgement in AA (Iraq) [2017) EWCA Civ 944 and the annex to that decision on which the country guidance had been amended.

31. It was therefore agreed that it was appropriate for the matter to be remitted to the Upper Tribunal to consider whether the decision of the First-tier Tribunal involved the making of a material error of law.

32. Paragraph 15 sets out as follows:

> "the parties accordingly agree that in the light of the determination of the Court of Appeal in AA (Iraq), the decision of the Upper Tribunal dated 24th of March 2016 should be set aside in this matter and should be remitted to the Upper Tribunal to consider the issue of whether the First-tier Tribunal made a material error of law and in particular whether the First-tier Tribunal failed to make a finding in respect of the ability of the Appellant to safely relocate to the I KR."

The appeal before the Upper Tribunal:

33. At the hearing before the Tribunal, neither party had provided any skeleton arguments setting out their respective positions. Furthermore, Mr Diwncyz did not have any of the documentation which post-dated the decision of the Upper Tribunal, which included the proceedings before the Court of Appeal and the pivotal document of the statement of reasons. Those documents were therefore provided to him and he was given time to consider those documents in order to provide his oral submissions.

34. It was unclear from the statement of reasons as to what the ambit was of the hearing and in particular whether it was anticipated that the Upper Tribunal would consider any further CG decision given that AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 had been promulgated a considerable time after the decision of the First-tier Tribunal.

35. I heard submissions from each of the advocates, Mr Diwncyz on behalf of the Respondent and Miss Pickering on behalf of the Appellant. It is not necessary to set out the submissions of each of the parties as they are set out in the record of proceedings and I will set out the relevant aspects of those submissions when dealing with the grounds advanced on behalf of the parties and my consideration of those issues.

36. The grounds advanced on behalf of the Secretary of State submit that the FTTJ failed to take into account the guidance given in AA (Iraq) v SSHD [2015] UKUT 00544 and that in particular the judge materially erred in law by failing to conduct an assessment to establish whether internal relocation to the IKR was viable. It was submitted that the Appellant was an Iraqi Kurd who had a CSID identity card which was left with his mother in Iraq. It was further asserted that he had visited the I KR in his childhood,

spoke Kurdish fluently and had contact with relatives in Iraq including his sister.

37. It was therefore submitted on behalf of the on those facts it was incumbent on the judge to conduct an analysis of the viability of internal relocation to the I KR in accordance with the guidance of AA at paragraph 20 – (a)-(c).

38. Mr Diwncyz submitted that this was the sole ground of challenge to the FTTJ's determination. He submitted that the judge had made no findings as to where his family were and whether he would be able to access a CSID.

39. In the alternative he made reference to the more recent decision of AAH noting that all enforced returns are to Baghdad. As to whether the error of law was material, he submitted that the question was whether or not the Appellant could obtain a CSID or the means to obtain one in a timely fashion and if he could it would not be unduly harsh to relocate to the IKR.

40. Miss Pickering on behalf of the Appellant agreed that the sole ground advanced by the Respondent in the grounds was whether the judge materially erred in law by failing to consider internal relocation to the I KR.

41. She accepted that the judge had not expressly considered return to the I KR but that on the findings of fact that were made in relation to this particular Appellant that this was not a material error because even if the judge had gone on to consider this, on the findings of fact made it would have had no difference to the outcome.

42. She submitted that at paragraph 25 of AA (Iraq), Dr Fatah made reference to the documentation necessary and that he did not consider that a laissez-passer used by a person to return from the UK to Baghdad could be used for an onward trip to the IKR. Such a document would be valid for one trip and would be likely to be taken by the authorities on arrival in Baghdad. She submitted that against that background the judge found that the Appellant did not have a CSID and on the basis of AA (Iraq) [2015] was not in the possession of a laissez-passer once he had arrived in Baghdad. Therefore applying the guidance set out in AA (Iraq) on the findings made by the judge, the Appellant could not have travelled from Baghdad to the IKR in safety.

43. Even applying the more recent country guidance in AAH which was not in existence at the time of the hearing, the Appellant would have succeeded as return to the IKR would still be via Baghdad. The Appellant had no valid CSID nor passport which would therefore make internal relocation not possible. Without a CSID or a valid passport he would not be able to board any domestic flights from Baghdad to the I KR. She submitted that this was relevant to the issue of materiality of any error because the Appellant would be in a position where he could not board such a flight, therefore could not travel to the IKR. Furthermore, he could not make that journey

by land once that was viewed through the lens of the Appellant not being in the possession of a CSID. He would not be able to pass the checkpoint and therefore would be a route at real risk of detention. Similarly, he had no relatives that could verify his identity as set out at paragraph 33 of the decision of the FTTJ. The judge had found that no one could bring documentation to verify his identity because the only family members were his mother and sister and their whereabouts were unknown.

44. Thus she submitted on the factual findings made it would be difficult to see how the Appellant would be able to leave Baghdad airport without the CS ID and travel to the I KR. She therefore invited me to find that there was no material error of law in the decision of the FTTJ.

Discussion:

45. I have carefully considered the submissions made by the parties in the light of the decision of the FTTJ and in the light of the statement of reasons.

46. I therefore turn to the original grounds which were submitted on behalf of the Secretary of State. The Respondent's grounds accept that the FTTJ had applied the country guidance in existence at that time, AA (Iraq) [2015] in relation to internal relocation to Baghdad. Such is plain from the written grounds at paragraph 2 where it was accepted that the judge had applied the guidance and given weight to the expert report and was entitled to conclude on the findings of fact that it would be unreasonable and unduly harsh to relocate to Baghdad.

47. It is also plain from the original grounds of appeal that the other factual findings made by the judge in relation to access to documentation was also not challenged in the grounds.

48. It is common ground between the parties at the sole ground relied upon by the Respondent in the written grounds and before the Tribunal relate to whether the judge materially edge in law by failing to conduct an assessment to establish whether internal relocation to the IKR was viable in this Appellant's case. This is also set out in the statement of reasons.

49. AA (Iraq) CG was amended by the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944. However it reaffirmed the guidance provided by the Upper Tribunal at paragraph 18 of the annex stating:

> "The Iraqi Kurdish Region; In AA (unchanged by the Court of Appeal) it was held that (i) the Respondent will only return an Iraqi national (P) to the IKR if P originates from the IKR and P's identity has been "pre-cleared" with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer; (ii) the IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR; (iii) A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities

> and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end; (iv) whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a)the practicality of travel from Baghdad to the IKR (such as to Irbil by air - there is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).); (b)the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR; (v) As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR."

50. The Tribunal found that a Kurd who does not originate from the IKR and is facing a real risk of harm elsewhere in the country could enter the area and upon finding employment would be lawfully permitted to remain there. Against that background, the judge was required to conduct a fact sensitive assessment of whether internal relocation to the I KR would be reasonable or not unduly harsh.

51. I have therefore considered the decision of the First-tier Tribunal judge. In the findings of fact made by the judge, she considered the alternative area of relocation, namely the IKR (see paragraph 30). She found that the Appellant was from Iraq and not from the IKR which was important because, as a judge observed, AA (Iraq) section B paragraph 5 applied, that return of former residents from the I KR will be to the I KR and all other Iraqis will be to Baghdad. The judge went on to state, "it is clear from section D paragraph 17 that the Appellant can only be returned to the I KR if he is from there and his identity has been pre-cleared with the I KR authorities."

52. The judge went on to state at [31]:

> "As therefore the place of return is Baghdad (whether or not the Appellant could travel onwards to the I KR) I turn to the report of Dr Fatah and the facts I have found about the Appellant's lack of ID document, passport or CSID. Dr Fatah's uncontested view, and one accepted by the court in AA, is at the CSID is a vital document to allow Iraqi's to access services such as education, housing, financial assistance and employment (paragraph 86 of his report)."

53. There has been no challenge to the report of Dr Fatah, either at the hearing before the FTT or before this Tribunal.

54. The findings of fact made in relation to the documents were relevant to the issue of relocation to the I KR. Whilst the judge did not go on further to consider relocation to the I KR, I have considered whether the findings of fact made in essence provide the answer to such an assessment and includes whether the Appellant, if returned to Baghdad can travel to the I KR and the matters set out at paragraph 20 (a)-(c).

55. In this context I observe that the findings of fact which the Respondent refers to being as "uncontested" relate to the Appellant being an Iraqi Kurd who has a CSID identity card which was left with his mother in Iraq and that he had visited the I KR in his childhood, spoke Kurdish fluently and it had recent contact with relatives including his sister (see original grounds of the Secretary of State). However those matters have not been accurately stated in the grounds. It is plain from reading the determination that whilst it was accepted by the judge that he was an Iraqi Kurd he did not have access to a CSID. The judge found at [33] that he could not go personally to his place of origin to obtain one as his home city had been destroyed and was a "ghost town". Furthermore the judge found that no family member or proxy could go on his behalf to obtain documentation as the judge found "I have no reason to doubt the Appellant says he does not know whether his mother and sister are". The judge noted and accepted the comments of Dr Fatah paragraph 112 where he said he would be surprised if the family remained in their home town given the current situation that. The judge returned to this at [36] and [37] and found that he would not be able to obtain a CS ID as he could not travel to his home city to get one even if there was an office that was open. Whilst the Appellant had travelled to the I KR as a child, that by itself does not provide any assistance in establishing relocation for an adult in the circumstances of this Appellant. The judge found the fact that he had no contact with his mother and sister and did not know where they were. It is against that background and those findings of fact which the issue of relocation to the I KR should be considered.

56. Therefore the judge found on the evidence that he could not obtain CSID by travelling to his home area as it had been destroyed and was a "ghost town". The alternative would be that a family member or proxy could go on his behalf but the judge accepted that he did not know where his mother and sister were the judge accepted the report at paragraph 112 as it was likely the family members were no longer in the area. It is therefore open to the judge to conclude at [34] that if in Baghdad he could not travel to his home area without facing an Article 15 (c) risk.

57. As he would not be able to obtain a CS ID when in Baghdad the judge found on the fact that he would be at a real risk of destitution in Baghdad as without a CSID he would be unable to obtain anywhere to live, access to employment and all the vital services that he would require.

58. Against that background I accept the submission made by Miss Pickering that it is difficult to see how it could be said that the Appellant would be able to leave Baghdad and travel to the I KR. This was supported by paragraph 25 of AA (Iraq) and the report of Dr Fatah that even with a laissez-passer that would be taken from him at Baghdad airport. Therefore in the light of the judge's findings, I am satisfied that there is no material error in not considering return to the I KR any further on the facts found; he was an Iraqi Kurdish male, and if returned to Baghdad, would be without documentation and would not be able to obtain the CSID, the vital document required. He would therefore be in Baghdad as a member of a

minority community with no family members to accommodate him in Baghdad or provide any network of support. He has not resided in the Kurdish area namely IKR nor does he come from the I KR.

59. I consider that I am supported in this view even if I were to consider the more recent country guidance decision (although this decision was not in existence at the time of the FTTJ's decision in November 2015).

60. In AAH, section E is replaced with more current guidance. However it is still the position that all returns from United Kingdom are to Baghdad. It records that for an Iraqi national returnee of Kurdish origin, which is therefore this Appellant, in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the I KR whether by land or air is affordable and practical and can be made without a real risk of him suffering persecution or serious harm nor would any difficulties on the journey make relocation unduly harsh.

61. However on the findings of fact made by the FTTJ, the Appellant has no valid CSID or Iraqi passport and also was not likely to be able to obtain one given the difficulties outlined by the judge. The guidance goes on to state that such a person without a CS ID or a valid passport would be unable to board a domestic flight between Baghdad and the IKR. The guidance goes on to state that such a person would face considerable difficulty making the journey between Baghdad and the IKR by land without a CSID or valid passport. The decision makes reference to the numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If the Appellant has neither a CSID nor a valid passport, the Tribunal state that there is a real risk of such person being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is stated that it is not reasonable to require such person to travel between Baghdad and the I KR 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 identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

62. On the findings of facts that were made, as the Appellant has neither a CSID nor a valid passport, there is a real risk of being detained at the checkpoint. As to being able to verify his identity, the judge found that he would not be able to access his identity documentation as he has had no contact with his relatives and because his home city where the documentation is could not be accessed in safety and was in any event described as a "ghost town". No male family members were identified and as the judge had found he had no family support or knew anyone in Baghdad, it could not be said that his identity could be verified at a checkpoint by calling upon "connections" higher up in the chain of command.

63. Therefore I accept the submission made by Miss Pickering that even if the Tribunal applied the most recent country guidance, which was not in existence at the time of the hearing, the findings of facts that were made

would demonstrate that the judge did not materially err in law because it could not be said that he could relocate to the I KR reasonably without undue harshness. Therefore I am satisfied that even if the judge did err in law by not making a further assessment concerning relocation to the IKR, that such error was not material given the findings of fact that were made and the outcome to allow the appeal would have been the same. Therefore I do not set aside the decision but affirm the conclusion that the judge reached; that the appeal should allowed on humanitarian protection grounds.

Notice of Decision

The appeal of the Respondent is dismissed and the decision of the First-tier Tribunal shall stand; the appeal is allowed on humanitarian protection 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 Upper Tribunal Judge Reeds Date 31/10/2018

Upper Tribunal Judge Reeds