Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09343/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgation**
On 26 April 2019	**On 10 June 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR OMAR MOHAMMED ALI MALHOE
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr T Hussain	(Counsel)
For the Respondent:	Mr A Tan	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. On 8 September 2017 the Secretary of State decided to refuse the claimant's application for international protection. He appealed to the First-tier Tribunal (the tribunal). The tribunal heard the appeal on 25 July 2018 and dismissed it. The decision of the tribunal was sent to the parties on 30 July 2018. A grant of permission to appeal to the Upper Tribunal followed and, on 14 February 2019, I decided to set aside the tribunal's decision because the making of that decision involved the making of errors of law. My full reasons for doing so may be found in my written decision of 14 February 2019 which was sent on that day. It is not necessary for me to repeat those reasons here but, in a nutshell, I concluded that the tribunal had considered irrelevant matters when deciding whether the claimant's home area in Iraq remained a "contested area" as that term has been used in

AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) and subsequent decisions of the Upper Tribunal and that it had inadequately explained an alternative finding that the claimant could internally relocate to the southern part of Iraq.

2. My having set aside the tribunal's decision, I directed that the decision be remade in the Upper Tribunal, a course of action urged upon me on behalf of the claimant. But I directed a further hearing to aid in the remaking process. That hearing took place on 26 April 2019. Representation was as stated above. I am grateful to each representative. I heard oral evidence from the claimant but from no other witnesses. He gave his evidence in English. There was a difficulty in that I was told an Arabic speaking interpreter had been sought but a Kurdish-Sorani speaking interpreter had erroneously been booked. But Mr Hussain told me, after a short adjournment so that he could take instructions, that the claimant spoke good English and did not require an interpreter. He indicated he was content to proceed and that the claimant was content to give his evidence in English. So, that is what happened. I did not detect, at any point in the proceedings, any difficulty on the part of the claimant either in understanding questions or answering them. Nor did anyone suggest there was any such difficulty.

3. By way of background, the claimant is an Iraqi national and an ethnic Arab from Mosul which is the provincial capital of the Nineveh Governorate in Iraq. He is a Sunni Muslim. He was born on 30 March 1985. He was, in 2014, asked by members or associates of the organisation sometimes referred to as "ISIS" to work for them as a translator. He refused and was ill treated by them as a result, such ill treatment including his receiving lashes and being detained for one month. Upon being released he decided to flee Mosul. All of that had been accepted by the Secretary of State when he had considered the claim and it represented my starting point when considering how I should remake the decision. But to continue with the background, the claimant says he was assisted by family and by an agent in leaving Iraq, a country he says he no longer felt safe in, and that he came to the United Kingdom (UK) having travelled through a number of countries including Greece, Austria, Germany and France. He entered the UK illegally on 12 March 2017 and made his claim.

4. In pursuing his claim and appeal, the claimant argued that if returned to Mosul he would be at risk at the hands of those who had ill treated him previously; that Mosul is located in the Ninevah Governorate which remains a contested area so return would expose him to the risk envisaged at Article 15c of the Qualification Directive; that he would further be at risk in Mosul or indeed anywhere in Iraq as a Sunni-Muslim (the potential persecutors being Shia individuals, Shia militias or Shia members of the authorities); that the antipathy towards Sunni-Muslims would mean he could not internally relocate; and that he does not possess appropriate identity documentation or the means to obtain it such that either he would be destitute which would bring about a breach of Article 3 of the European Convention on Human Rights (ECHR) or it would be unduly harsh to require him to relocate. As to documentation, the primary focus was upon the question of whether the claimant has a CSID card or is able to get one. It was accepted that such a document is crucial in that, without one, an Iraqi national in Iraq is not able to access government services or take official employment.

5. In remaking my decision it has proved necessary for me to consider all of the above matters. In doing so I have taken account of the oral evidence I have heard, the written documentation prepared for the hearing before the tribunal and the hearing before me and the submissions which have been made to me. In considering entitlement to international protection I have reminded myself that the claimant has the burden of proof but that the standard of proof is a low one. It is a standard often referred to as "the real risk test".

6. I ask myself, first of all, whether the claimant can safely return to Mosul. Mr Hussain argues that he cannot and that one of the reasons is that he would face a real risk of persecution at the hands of his previous persecutors or their associates. I have resolved that argument against the claimant. There is dispute between the parties as to whether Mosul is in an area which can still be regarded as contested. But there can be no serious dispute about the fact that Mosul has seen significant changes in recent times. It was controlled by ISIS at the time the claimant was accepted as having been ill treated there. But that was in 2014. The Country Policy and Information Note: Iraq: Security and Humanitarian Situation: Version 5.0: November 2018 (the November 2018 CPIN) records at paragraph 8.1.2 that in July 2017 the Iraqi Prime Minister had visited Mosul to mark "the completion of major combat operations there against the Islamic State forces that had taken the city in June 2014". There is, I appreciate, information contained in the same document and in other reports before me which demonstrate an ongoing difficulty with ISIS or ISIS inspired attacks which has been described as a "robust insurgency" but the point is that ISIS is no longer in operational control of Mosul. The Iraqi authorities are, though their task in maintaining or attempting to maintain or even create order is not without its difficulties. But it seems to me inevitable that the removal of ISIS from power after an armed struggle will have meant many, though I accept not all, previous members or supporters of that regime will have fled, been arrested and detained or will have been killed. Against that background it seems to me it is no more than fanciful to argue that the claimant's previous assailants from as long ago as 2014 will still be present to harm him today.

7. I now move on to the contested area issue. It was decided in *AA*, cited above, that the Ninevah Governorate was a contested area at the time that case was decided. So, at that time the Article 15c risk was present. AA is a Country Guidance case. That means I may depart from it in the circumstances set out in Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance Note 2011, no. 2, paragraphs 11 and 12 but otherwise must not. In that context I am really asking whether there is fresh evidence of substantial and durable change. Before me Mr Tan relies upon the content of the November 2018 CPIN as evidence of such a change. I accept, as noted above, that there is evidence of the ISIS forces having been defeated to the extent that they no longer control territory in Mosul. But that same document contains evidence of an ongoing insurgency. It is said at paragraph 8.1.1 that security conditions have improved since ISIS control of territory was disrupted but that ISIS fighters remained active in some parts of Iraq. At paragraph 8.1.2 it is said that Iraqi security operations are ongoing against ISIS fighters in various areas of Iraq including Ninevah. At paragraph 8.1.5 it is said that ISIS is now pursuing "its old hit and run targets in Iraq". I bear in mind that on the claimant's own evidence his family had left Mosul but have now returned to it. Nevertheless, I have concluded that given the evidence of ongoing violent attacks, whilst the conditions in Mosul have changed, I cannot be satisfied that the stringent test for departure from Country Guidance has yet been met, at least not on the material before me. So, I have decided the claimant cannot safely return to Iraq because if he does so he will be exposed to an Article 15c risk.

8. However, the claimant has not persuaded me that he would be at risk in Mosul solely in consequence of his status as a Sunni-Muslim. There is simply no persuasive evidence of that and it is difficult to understand the decision of his family, presumably Sunni-Muslims themselves, to choose to return if they would be targeted on the basis of their religion. Nor has the assertion in the Secretary of State's decision letter of 8 September 2017 that some 80% of the population of Mosul is Sunni-Muslim been challenged before me or, so far as I can see, elsewhere. But my view as to this does not matter very much since I have decided there is risk to the claimant in Mosul, anyway.

9. Having decided there is risk in Mosul, I must go on to consider whether the claimant can safely relocate within Iraq and, if he can, whether it would be unduly harsh to expect him to do so. This causes me to address a number of matters but I shall start with the issue of documentation. There is no doubt at all that when he came to the UK he did so in possession of at least one Iraqi identity document. I say that because he has given it to the Secretary of State and there are copies of it in a number of bundles of documents in front of me. Mr Tan produced the original for viewing at the hearing. The Secretary of State's position is that it is in fact the claimant's CSID card. The Secretary of State's previous position seems to have been that it was some other sort of identity document. But Mr Tan says it is obvious it is a CSID when one looks at the detail of what such a document contains as set out in a report entitled Iraq: Travel documents and other identity documents ("the documents report"). He has in mind, in particular, what is said at pages 16 and 17 of that report. The claimant's position, as explained in his witness statement of 10 April 2019 which he adopted before me, is that whilst it is an identity document of some sort, he does not know what type of document it is. Mr Hussain points out that the document is in Arabic and has not been translated nor authenticated (one way or the other) by an expert.

10. There are entries on the card which, on the face of it, seem to match what one might expect from the description in the documents report. For example, there is a number on the top left-hand side where, according to the description, one would expect to find a serial number. But I agree with Mr Hussain that my attempts to match the card with the description cannot be decisive given the points he has made. However, I find the claimant's assertion that he does not know what the document is to be significantly unpersuasive. As the tribunal itself noted, he has had a university education and has worked as a teacher. As was stressed in *AA* and other judgments and Upper Tribunal decisions which followed it, identity documentation is something which is of real importance in Iraq. I cannot accept that an educated and intelligent man from Iraq and who has lived most of his life in Iraq does not know what identity documentation he possesses and does not know what the particular document in the possession of the Secretary of State (which of course he will be able to read because it is written in Arabic and he is literate and of Arad ethnicity) is. So, I have concluded he has sought to deliberately mislead me about that. I have also concluded that he must have done so for a reason. The only reason I can think of is that he knows it is a CSID card, he knows that having one is unhelpful to his case, and he would rather it not be known by any immigration decision-makers, that that is what it is.

11. As to other documentation, he says that he left some (he mentions a document he calls his "nationality document") back home in Iraq but that any such documents have now been destroyed. In so far as it may be relevant I do not accept that. It seems to me that if he had brought some identity documentation with him he would have brought all of it. Further, I have not been able to believe him as to what he has said about documents. I find he is documented and that the card referred to above is a CSID card. On that basis, not only is he returnable to Iraq but he will be able to evidence who he is and access services in Iraq when he returns.

12. The above though does not of itself mean he can relocate in Iraq. All the finding about the CSID card does is establish that since he has one (or strictly speaking since the Secretary of State has
one) it cannot be said he cannot relocate in consequence of the lack of one. The Secretary of State, in his decision letter, lacked a degree of clarity about what might be regarded as a safe or appropriate place for relocation. The Secretary of State clearly thought the claimant could relocate to "the Southern Governorates" but it is less clear whether he was positively asserting he could also return to Baghdad or the Baghdad belts (see paragraphs 67 to 70 of the decision letter). Since Mr Tan did not pursue relocation to Baghdad and since the Secretary of State was unclear about it, I

have decided not to consider that as a possible destination. That leaves the Southern Governorates which were clearly stated as a potential place of relocation in the decision letter.

13. The claimant says, in his witness statement of 10 April 2019, that he cannot so relocate because as a Sunni-Muslim he would not "be welcome" in the South of Iraq. He adds that his name "Omar" marks him out as being Sunni from Mosul. In his witness statement of 11 January 2018, he says the majority of the population in the South are Shia Muslims. He hints at the risk of sectarian violence. He also relies on an expert report prepared by Dr R Fatah and which is dated 21 November 2017. There is a section concerning and indeed entitled "Targeting of Sunni Arabs". At paragraph 245, it is stated that "several men have been killed purely on the basis that their name was indicative of their Sunni or Shia faith". It is said that the claimant's own name is an obvious Sunni name. At paragraph 304, it is suggested that the claimant if relocating to the South would not be at risk of generalised (as opposed to sectarian) violence and that such would be "less logistically difficult" because of his ethnicity and language skills. But it is also said that "relocation to the South at a time of heightened sectarian tension may result in him being subjected to discrimination or at even (sic) potentially violence". So, I need to think about all of that.

14. It seems to me obvious that what is described by Dr Fatah falls short of demonstrating the claimant would be at real risk of persecution, serious harm or article 3 ECHR ill treatment in the South on the basis of his ethnicity. After all, the reference to "several men" having been killed, whilst obviously tragic, does not suggest the risk is substantial. Nor was that seriously argued before me. Nor was I specifically taken to any other item of background material which went beyond what Dr Fatah had to say. But that does not mean, of itself, that it would not be unduly harsh to expect him to relocate. But as to that, he is educated, he has previous work experience in Iraq as a teacher, he is on the face of it healthy, he is an Arabic speaker and that is a language widely spoken in the South of Iraq, and he has demonstrated a degree of resilience through leaving Iraq and accomplishing a lengthy and no doubt difficult journey to the UK. Against that, there is nothing to suggest he has any friends or family in the South, he would be starting life afresh, and there would be at least some degree of risk of sectarian discrimination or even violence albeit not to the extent that, with respect to violence, there would be a real risk of it. In balancing all of that I have concluded whilst life would be difficult in the South, it would not be unduly harsh to require him to relocate there. He would be able to travel there from Baghdad armed with his identity documents, he would be able to look for work, Dr Fatah does not say it would be hard for him to find work and he would, in due course, be able, on the evidence before me, to rebuild his life.

15. So, in remaking the decision, I have decided to dismiss the claimant's appeal from the Secretary of State's decision of 8 September 2017.

Decision

The claimant's appeal is dismissed.
Anonymity is not directed.

Signed:
Upper Tribunal Judge Hemingway
Dated: 7 June 2019