Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06179/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 March 2018	**On 30 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

HALMAT [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holt, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Halmat [A], was born on [ ] 1986 and is a male citizen of Iraq. By a decision promulgated on 15 August 2017, I set aside the First-tier Tribunal decision. My reasons were as follows:

> "1. The appellant, Halmat [A], was born on [ ] 1986 and is a citizen of Iraq. He arrived in the United Kingdom in 2003 and claimed asylum. His claim was refused in a decision dated 21 September 2004 and the appeal was dismissed on 8 December 2004. In January 2006, the appellant left the United Kingdom and claimed asylum outside the

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United Kingdom and was returned to the under the provisions of the Dublin Convention. He made an asylum claim which was refused on 30 March 2007. The appellant made further submissions which were rejected as a fresh claim by the respondent. However, subsequent submissions were accepted by the respondent as fresh claim. A notice of refusal was issued on 24 May 2016 and it was against that decision that the appellant appealed to the First-tier Tribunal (Judge Manchester) which, in a decision promulgated on 28 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. I shall deal with the second ground of appeal first. Judge Manchester made a number of findings of fact which included: that the appellant cannot be returned to his home area of Iraq on account of the indiscriminate violence currently existing there; that he cannot be expected to relocate permanently to Baghdad as this would be unduly harsh; that the appellant would be returned to Iraq via Baghdad; that the appellant could internally relocate to the KRI (the Kurdistan Region of Iraq) and that doing so would not be unduly harsh. The second ground of appeal records the fact that at [44] Judge Manchester found that there was "no reason why the appellant would be unable to find employment in the KRI". The judge noted that, whilst the appellant is a Kurd, it was not clear that he had family or other individuals in the KRI who would be able to assist him upon his return. The judge found the appellant did not possess a CSID. Ground 2 asserts that the judge's finding with regards employment is equivalent "to a finding [that] the appellant will find employment within 10 days, as required by (AA (Article 15(c) CG Iraq [2015] UKUT 0054 (IAC))". The Upper Tribunal in AA recorded:

> "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."

3. The grounds of appeal acknowledge the observation made by the Tribunal in AA that there was no evidence that the authorities in the KRI actively seek to remove Kurds who, having been admitted on a 10 day visa, overstay. I reject the assertion in the grounds of appeal that the judge has speculated as to the prospect of the appellant finding employment. The judge was required to carry out an assessment of the likelihood of the appellant finding employment based on all the available evidence. That is exactly what he did. It would be impossible to find categorically that an individual would be certain to find employment within a specified time period; what is required is a reasoned judgment based on the available evidence. The judge was entitled to take into account the appellant's health and youth in assessing whether or not he would be likely to find employment within a reasonable period. I find that the judge did not err in law for the reasons asserted in ground 2.

4. The first ground of appeal challenges the judge's findings that it was likely that the appellant would be able to travel from Baghdad to

the IKR without facing a real risk of harm (it is agreed that return from the United Kingdom would be to Baghdad Airport). Before the First-tier Tribunal, it seems to have been assumed that the journey would be overland. The judge acknowledged that the appellant had no CSID and it was "not clear that he would be able to obtain [a CSID] reasonably quickly". The judge was aware that the appellant would encounter a number of checkpoints en route from Baghdad to the KRI but observed that, "… although the existence of checkpoints by militia is noted and these may pose further difficulties in relation to travel, I do not find it would be unduly harsh or involve a real risk of serious harm to expect him to undertake such travel". The judge has failed to say why the journey could be undertaken safely, that is why he believed that the 'further difficulties' would be surmounted. I do not consider the judge's statement to be a reasoned finding but, rather, an assertion unsupported by reasoning. The judge should have considered in greater detail the journey which the appellant would have undertaken overland and should have explained why he believed that the appellant would not encounter difficulties of a serious nature notwithstanding the fact that he does not possess a CSID.

5. The position is further complicated by the contents of the Rule 24 response of the respondent dated 11 May 2017. The author of the response observes that, "the grounds of appeal are premised in part on the assumption that the appellant would have to travel by ground to the IKR and that it is clear from AA that there are regular flights from Baghdad and no reason has been put forward as to why the appellant would be unable to make use of these". That Rule 24 response, in turn, has led the the appellant to obtain a further report from his expert witness, Sheri Laizer. Mr Holt, for the appellant, invited me to consider that report when determining whether the First-tier Tribunal had erred in law. I declined to do so. Mr Holt submitted that the question of the appellant travelling by air rather than overland from Baghdad to the KRI had only arisen after the promulgation of Judge Manchester's decision. The feasibility of such a journey was obviously not considered by Judge Manchester and I do not see its relevance to determining whether or not the First-tier Tribunal erred in law. I am, however, concerned that the judge has not given any adequate reason to support his finding that the appellant would not face a real risk of serious harm when travelling from Baghdad to the KRI. In what is otherwise a thorough and carefully reasoned decision, the judge has erred in law in his treatment of this issue.

6. I set aside the judge's decision preserving all findings and conclusions save those relating to the journey which the appellant would have to undertake from Baghdad to the KRI if he were returned to Baghdad Airport. That issue will be considered further at a resumed hearing before me in Bradford. I consider it appropriate that all aspects of the appellant's proposed relocation to the KRI should be considered although the Upper Tribunal will not revisit the prospects of the appellant obtaining employment should he reach the KRI. Furthermore, if the respondent proposes that the appellant should be returned directly to Erbil from the United Kingdom, then she should make that clear without delay so that the matter may be addressed at the resumed hearing (in this context, I note that the most recent country guidance (from the Court of Appeal in AA (Iraq) [2017] EWCA

> Civ 944 states that returns of those individuals who were not from the KRI will be to Baghdad). Likewise, if the respondent proposes that the appellant will be returned first to Baghdad and then by air to the KRI, I am prepared to consider the latest report of Sheri Laizer. That report and any other item of evidence upon which either party may seek to rely at the resumed hearing must be sent to the other party and filed at the Upper Tribunal at least 10 days before the date fixed for the resumed hearing.
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> **Notice of Decision**
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> 7. The decision of the First-tier Tribunal which was promulgated on 28 March 2017 is set aside. All of the findings of fact are preserved save those relating to the proposed relocation of the appellant from Baghdad to the KRI. The issue of the internal flight alternative will be considered by the Upper Tribunal (Upper Tribunal Judge Clive Lane) at a resumed hearing at Bradford following which the Upper Tribunal will remake the decision.
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> 8. No anonymity direction is made."

2. At the resumed hearing, I had evidence in the form of an expert report from Ms S Laiser. The report was not challenged by Mr Diwnycz, who appeared for the Secretary of State. I note from the report [14] that the appellant would be unable to board a flight in Baghdad to travel to the IKR without a passport. Mr Diwnycz in his submissions, observed that there are no international flights into Erbil at the present time; all flights connecting to Erbil must first arrive in Baghdad. The appellant would be provided with a laissez-passer. To enable him to travel to Baghdad. This document, as Mr Diwnycz acknowledged, would not enable the appellant to board a flight in Baghdad to Erbil. Mr Diwnycz also acknowledged that Kirkuk, the appellant's home area, is not safe as at the date of the resumed hearing.

3. In the circumstances, the appellant's appeal is allowed. As a Kurdish male it would be unduly harsh for him to relocate, even in the short term to Baghdad. More particularly, there is no indication when, if at all, he would be able to leave Baghdad and travel to the IKR. In the light of the expert report and the other evidence before the Tribunal and given the fact that the appellant would be to Baghdad, I find that he would be at risk there. His home area remains unsafe and his ability to enter the IKR (where, potentially, he would be safe) is circumscribed his lack of documentation and his inability to safely travel overland. His residence in the United Kingdom may prove to be relatively brief should circumstances in Iraq (for example, the resumption of international flights to Erbil) alter but, for the present, he must remain here.

Notice of Decision

The appellant's appeal against the Secretary of State's decision dated 21 September 2004 is allowed on humanitarian protection grounds.

No anonymity direction is made.

Signed Date 20 APRIL 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 20 APRIL 2018

Upper Tribunal Judge Lane