



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

Appeal Number: PA/00399/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 14 December 2017**

**Decision & Reasons Promulgated  
On 14 December 2017**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**REBIN SABIR JALAL  
[No anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr J Howard, instructed by Fountain Solicitors

For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's his appeal against the decision of First-tier Tribunal Judge Herwald promulgated 16.2.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 29.12.16, to refuse his protection claim as an Iraqi Kurd.
2. The Judge heard the appeal on 13.2.17.
3. First-tier Tribunal Judge Pullig refused permission to appeal on 8.6.17. However, when the application was renewed to the UK, Upper Tribunal Judge Finch granted permission on 31.7.17.

4. Thus the matter came before me on 14.12.17 as an appeal in the Upper Tribunal.

*Error of Law*

5. For the reasons summarised below I found such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside and remade, remitting it to the First-tier Tribunal in accordance with the directions below.
6. In granting permission to appeal, Judge Finch noted the recent decision of the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944 and considered it arguable that the judge's findings as to return to Iraq failed to address the ability of the appellant to obtain a CSID.
7. Whilst the Court of Appeal decision, amending the country guidance in relation to the CSID, was promulgated 11.7.17 and thus post-dated the decision of the First-tier Tribunal, the First-tier Tribunal failed to address the issue of a CSID at all. There is a distinction between documentation enabling return to Iraq and the CSID needed to access basic resources.
8. Further, Judge Herwald appears to have misunderstood AA (Article 15(c)) Iraq CG [2015] UKUT 544 by suggesting at [11(a)] and at [18] that the country guidance provided that Kirkuk was no longer a contested area. That is not what the case held. Kirkuk was a contested area in 2015. Paragraph 1 of the country guidance in fact provides:

*"1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive."*
9. That part of the Country Guidance remains unchanged following the Court of Appeal decision. I note in passing that that some recent decisions of the Secretary of State have suggested that with the demise of IS, which is no longer in control of Kirkuk, it is no longer a contested area. However, more recent country information suggests that an internal armed conflict continues, with the Iraqi Army in battle against Kurdish Peshmerger forces, so that it remains a contested area.
10. The decision of the First-tier Tribunal is devoid of adequate reasoning as to whether the appellant, who is not from the IKR, will be able to obtain a CSID and how, if he is not to return to Kirkuk or settle in Baghdad, he will manage to access the IKR from Baghdad. In the circumstances, the decision cannot stand.

*Remittal*

11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates the findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

**Conclusions:**

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Consequential Directions**

14. The appeal is remitted to the First-tier Tribunal sitting at Manchester;
15. The ELH is 3 hours;
16. A Kurdish Sorani interpreter will be required;
17. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Herwald and Judge Pullig;

18. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
19. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

### *Anonymity*

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

### **Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**