



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

Appeal Number: PA013552016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2017**

**Promulgated and sent
On 10 August 2017**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H A M

Respondent

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Mr S Chelran, instructed by Kesar & Co (Bromley)
Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination of the First-tier Tribunal allowing the appellant's appeal against the Secretary of State's decision refusing him protection.
2. The appellant is a national of Iraq, he is from the IKR; he has no CSID. Before the First-tier Tribunal it was, as I understand it, and certainly is now, accepted, that the appellant falls into the category of those whose return is feasible; in this case under EU arrangements. However, it is also accepted that the present position is that the appellant has no CSID. The First-tier Tribunal Judge considered the appellant's circumstances in some

detail and concluded that the appellant was a person who not merely had no CSID but who realistically would not be able to obtain it on arrival in the IKR if removed there by the Secretary of State pursuant to the arrangements that she makes. It was urged before him that new documentation would not be realistically possible and that there were a number of reasons which appeared to the First-tier Tribunal Judge to be accepted, including that he was unlikely to be able to access documentation. The judge accordingly found at para 52 of the determination that it would “be next to impossible for him to obtain, either in Iraq or from the Embassy in the United Kingdom, his civil identity document.” The judge therefore concluded that the appellant would, in essence, on return, be a person who would not be able to function as a national of Iraq with access to relevant services and other facilities to prevent his destitution.

3. The Secretary of State appealed on the ground that those facts did not, on the Country Guidance as it then was (forming AA (Iraq) in the Upper Tribunal [2015] UKUT 00544 (IAC)), did not establish that the applicant was entitled to protection. In relation to that guidance the assumption was that the function of the CSID was to demonstrate or its absence might suffice to deny the possibility of the removal to Iraq. By consent in the Court of Appeal AA (Iraq) [2017] EWCA Civ 944 the Country Guidance in AA was importantly modified to indicate the function of a CSID not merely as one of the factors which might enable a person to be returned but also as the crucial factor which might enable him to function as a national on return. The Court of Appeal observed that the function of the CSID was to open various doors to the applicant’s life in Iraq and that an analysis of the prospect of destitution, which would be ill treatment contrary to article 3, required an analysis at the time of decision-making in this country of the prospect of obtaining a CSID within a reasonable time - for example within a reasonable time after any funds provided by the Secretary of State to the returnee ran out.
4. The decision of the First-tier Tribunal has been found to be erroneous in law for failure to follow the Country Guidance as it was. As it happens, and as Ms Holmes in this case has indicated as rather difficult to oppose, the judge’s findings appear to have complied with the method of enquiry now required by the Country Guidance as it now is.
5. For those reasons it seems to me that this appeal falls to be allowed. The original determination having been set aside on the basis that the findings of fact in it did not merit the decision, I now substitute a determination allowing the appeal on the basis that the findings of fact at the First-tier Tribunal did merit the decision.
6. I say no more than that, because it may be that a more mature consideration in other cases may raise different issues, but so far as this appeal is concerned it is allowed on article 3 grounds.

C. M. G. OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 28 July 2017