



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

Appeal Number: PA/02722/2016

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On April 27, 2017**

**Decision & Reasons Promulgated  
On May 4, 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR OMED AHMED MOHAMMED MURAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs Johnrose (Legal Representative)

For the Respondent: Mr Harrison (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq. He arrived in this country on November 23, 2015 and claimed asylum. The respondent refused his application for asylum on March 6, 2016.
2. The appellant appealed that decision on March 18, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. His appeal came before Judge of the First-tier Tribunal Herwald (hereinafter called the Judge) on December 2, 2016 and in a decision promulgated on December 14, 2016 the Judge refused his appeal. He

appealed that decision on December 28, 2016 Judge of the First-tier Tribunal Adio granted permission to appeal finding it arguable the Judge had erred on the issue of entry to Iraq and internal relocation.

4. I do not make an anonymity order in this case.

### **SUBMISSIONS**

5. Mrs Johnrose relied on her grounds of appeal and expanded at some length on them. In summary, she submitted the Judge had erred in his approach to the appellant being able to obtain documentation, had speculated on the availability of accommodation and financial support and had failed to consider country evidence or his ability to settle in Sulimaniyah.
6. Mr Harrison referred me to Page 12 of the Judge's decision and in particular the second paragraph of paragraph [18] of that decision.
7. In his findings the Judge accepted the appellant's return was not feasible.
8. Mr Harrison submitted that the respondent had the responsibility to show return was feasible and where it wasn't the appellant must succeed with his appeal. Although the Judge had gone on to consider ways the appellant could obtain documents there was nothing in the refusal letter that supported that approach. Mr Harrison accepted the appellant had no passport and he did not have a laissez passer and there was no evidence to suggest he had any family who could accommodate or support him. The Judge, he submitted, had made findings that he should not have made because he had accepted return was not feasible. He accepted there was an error in law.
9. I asked Mr Harrison what should happen in light of his submission/concession and he indicated that in the absence of any evidence to the contrary the appeal would have to be allowed because he would face a real risk of serious harm contrary to article 15(c) and article 3 ECHR.

### **FINDINGS**

10. In light of Mr Harrison's concession I find that returning the appellant would lead to the appellant requiring humanitarian protection in light of the findings in AA (Article 15(c)) Iraq CG [2015] UKUT 544 and any return, in the current situation, would breach article 3 ECHR.

### **DECISION**

11. There was an error in law.

12. I set aside the original decision and remake it as follows:

(a) I allow the appeal on humanitarian protection grounds.

(b) I allow the appeal under article 3 ECHR.

Signed

Date April 27, 2017

Deputy Upper Tribunal Judge Alis

**FEE AWARD**  
**TO THE RESPONDENT**

No fee award is made as no fee was paid.

Signed

Date April 27, 2017

Deputy Upper Tribunal Judge Alis