Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03451/2015**

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 23 October 2017	**On 21 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

S B M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Fitzsimons, Counsel
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq whose protection claim was refused by the Secretary of State on 23 November 2015 and his appeal against this decision was dismissed by First-tier Tribunal Fowell in a decision promulgated on 18 July 2016 on asylum, humanitarian protection and human rights grounds. Permission to appeal to the Upper Tribunal against that decision was granted by Upper Tribunal Judge A Grubb in a decision dated 12 September 2016.

2. The Appellant relies on three grounds of appeal. Firstly, it is argued that the First-tier Tribunal erred in assessing the question of Article 3 ECHR and internal relocation without reference to the impact of the Appellant's lack of a passport and/or laisser passer and/or CSID; secondly it is argued that **AA**

(Article 15 (c) [2015] UKUT 544 (IAC) was wrongly decided and thirdly that the First-tier Tribunal erred in the approach to internal relocation.

3. Upper Tribunal Judge Grubb found that ground 3 was arguable and that the finding about return to Baghdad was arguably flawed. The Judge was wrong to exclude consideration of "job prospects and the risk of falling into destitution" in determining whether it would be 'unduly harsh'. Permission was granted on ground 2 also because although the First-tier Tribunal was bound by **AA,** this was not the only arguable point raised and it was obviously considered to be an arguable point by the Court of Appeal.

4. At the hearing Ms Fitzsimons referred me to the authority of **OM (AA (1) wrong in law) Zimbabwe CG** [2006] UKAIT and submitted that the First-tier Tribunal had erred in law in respect of ground 2. Country guidance stood until replaced or found to be wrong in law. Where a country guidance case was found to be legally flawed in its approach to the evidence it must be seen as never having been correct country guidance. In **AA (Iraq) v SSHD [2017] EWCA Civ 944** the Court of Appeal found that the Upper Tribunal had erred in law in its treatment of a CSID. The First-tier Judge applied flawed country guidance in respect of the CSID and this affected the decision. With regard to the third ground, at paragraph 34 the First-tier Tribunal accepted that the Appellant was at risk in his home area. He should have examined all of the circumstances and he appeared to have stopped short and said he could not go beyond the general considerations. There was a material error in respect of the findings in relation to Baghdad and he took the same approach in respect of the IKR. The Appellant did not have any connections to find employment and a full enquiry should have been made.

5. Mr Diwnycz conceded that there was an error of law for the reasons articulated by Ms Fitzsimons.

Discussion

6. In **AA (Iraq) v SSHD [2017] EWCA Civ 944** the Court of Appeal found that the Upper Tribunal had erred in law in its treatment of a CSID. The Court held that it was not merely to be considered as a document which could be used to achieve entry to Iraq. Rather, it may be an essential document for life in Iraq. It was for practical purposes necessary for those without private resources to access food and basic services. It was not a document that could be automatically acquired after return to Iraq. In addition, it was feasible that an individual could acquire a passport or a laissez-passer, without possessing or being able to obtain a CSID.

7. The First-tier Tribunal Judge considered himself bound by the Upper Tribunal's treatment of a CSID in **AA** and disregarded the Appellant's lack of documentation in assessing the risk to him. Given that this has been found by the Court of Appeal to be a legally flawed approach to the assessment of evidence, it follows that the First-tier Tribunal erred in law. The First-tier Tribunal further erred in disregarding the Appellant's job prospects and the risk of falling into destitution as these were matters that did not relate to the

technical obstacles and therefore were required to be considered in an assessment of whether it would be unduly harsh for the Appellant to return to Baghdad.

8. In the light of the fact finding required, taking account of Part 7.2 (a) of the Practice Statements for the Immigration and Asylum Chamber of the First-tier Tribunal and Upper-Tier Tribunal I remit the case to the First-tier Tribunal for a *de novo* hearing.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for re-hearing.

Anonymity

The First-tier Tribunal made an order and I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge L J Murray