



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/01563/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 2 November 2018**

**Decision & Reasons  
Promulgated  
On 16 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**Z M F  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Bass of Asylum Justice.

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. To preserve the anonymity direction deemed necessary by the First-tier Tribunal I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Richards-Clarke promulgated on 27 June 2018, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 1 July 1984 and is a national of Iraq. On 17 January 2018 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Richards-Clarke ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 27 July 2018 Judge Haria gave permission to appeal stating inter alia

2. The grounds assert that the Judge erred in failing to follow the country guidance in law in

- a. AA (Iraq) v SSHD [2017] EWCA Civ 944 (11 July 2017)
- b. AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212

The grounds also disagree with the Judge's findings as to the appellant's credibility

3. In an otherwise well-reasoned determination the Judge arguably erred in law in failing to follow the latest country guidance. There is an arguable error of law.

4. All grounds may be argued

### The Hearing

5. Mr Diwnycz, for the respondent, immediately conceded that, as the decision neither contains findings about the whereabouts of the appellant's family nor about the availability to the appellant of CSID or other documentation, the decision contains a material error of law. Both Mr Diwnycz and Mr Bass asked me to set the decision aside and remit this case to the First-tier Tribunal to be determined afresh.

### Analysis

6. The accepted facts in this case are that the appellant is an Iraqi Kurd from IKR. In AA (Iraq) v SSHD [2017] EWCA Civ 944 the Court of Appeal held (amending the 2015 Country Guidance by consent) that a CSID was not simply a return document. It was feasible that someone could acquire a passport or a laissez-passer without possessing or being able to obtain a CSID.

7. In AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212

section C of the guidance given in AA [2017] is supplemented with guidance about the factors to consider when considering whether it is possible for the returnee to obtain a CSID or obtain it within a reasonable time frame. Section E of the country guidance is replaced – the new guidance explaining that all returns are currently to Baghdad but a returnee of Kurdish origin in possession of a valid CSID or passport can journey by land or air practically and affordably without real risk and without relocation being unduly harsh. Domestic flights to the IKR cannot be boarded without either a CSID or a valid passport and if the returnee has neither, there is a real risk of his being detained at a checkpoint if he travels by land (other ways of verifying identity at checkpoints such as calling upon “connections” were discussed).

8. The Judge makes no reference at all to the country guidance cases. The Judge makes no findings about whether or not the appellant has family or other support in IKR. The Judge makes no findings about the availability of a CSID or other documents. The Judge’s consideration of internal relocation and humanitarian protection is, at best, superficial. The Judge’s conclusion at [30] is inadequately reasoned.

9. In R and Others v SSHD (2005) EWCA civ 982 the Court of Appeal endorsed Practice Direction 18.4 which states that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal said that it represented a failure to take a material matter into account.

10. The decision is tainted by material errors of law. I set the decision aside.

11. I consider whether I can substitute my own decision but find that I cannot because further fact-finding is necessary.

#### Remittal to First-Tier Tribunal

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25 September 2012 a case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

13. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

14. I remit the matter to the First-tier Tribunal sitting at Newport to be heard before any First-tier Judge other than Judge Richards-Clarke.

**Decision**

A handwritten signature in grey ink that reads "Paul Doyle". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

**The decision of the First-tier Tribunal is tainted by material errors of law.**

**I set aside the Judge's decision promulgated on 27 June 2018. The appeal is remitted to the First-tier Tribunal to be determined afresh.**

Signed  
November 2018

Date 9

Deputy Upper Tribunal Judge Doyle