



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

Appeal Number: PA/02240/2015

THE IMMIGRATION ACTS

Heard at Liverpool

On 15 March 2018

**Decision & Reasons
Promulgated
On 05 April 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**AWARA [K]
(ANONYMITY DIRECTION NOT MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
Respondent

Representation:

For the Appellant: Mr J Nicholson, Counsel, instructed by Broudie Jackson & Canter

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant challenges the decision of First-tier Tribunal (FtT) Judge Austin sent on 2 May 2017 dismissing his appeal against the decision made by the respondent on 20 October 2015 refusing his protection claim.
2. I am grateful to both representatives for their succinct submissions. It is convenient, in light of the common ground, if I proceed straight to my reasons for concluding that the judge materially erred in law.

3. There is an initial difficulty with the judge's decision in that his adverse credibility findings are far from clear. On the one hand they state that his account is not credible without qualification. On the other hand, they accept that the factual matrix in this case is that the claimant is a Kurd, someone who has a history of having served in the police force and someone whose family members live in relative safety. On its own I am not persuaded this lack of clarity constitutes an error of law but it does serve as a backdrop for considering other difficulties.
4. Even assuming that the judge was entitled to decide the case on the basis of the above factual matrix, the judge was required to consider three different matters: (1) risk on return to the appellant's home area of Kirkuk, (2) risk on return to Baghdad; and (3) risk on relocation to Sulaymania. As regards the judge's treatment of these three issues, it is a struggle to follow his assessment since consideration of them is jumbled together. But leaving aside this lack of organised reasoning, the judge's treatment of each of these three issues is problematic.
5. As regards (1), the judge stated that he "considered the guidance in the case of **AA (Article 15c) Iraq CG [2015] UKUT 00544 (IAC)**", but then went straight on to ignore it, assuming, wrongly, that this case found there was no generalised risk in that region despite it being a contested area. The judge gave no indication that in departing from **AA** he was seeking to rely on cogent new COI or its equivalent and Mr Harrison did not suggest that there was such before the judge. If the judge had in mind that perhaps the claimant would be immunised against general risk by virtue of his personal characteristic of being a "serving policeman", then that required more explanation, particularly given that it would have been potentially contrary to Home Office country policy information.
6. Turning to (2), the claimant clearly would have difficulty in living in Baghdad by virtue of the fact that he is accepted to be a Kurd. The judge's treatment at paragraph 37 of the Baghdad scenario makes no reference to relevant country guidance.
7. As regards (3), the judge's treatment of it does not address the issue of whether or not the claimant would in the first place be able to obtain a CSID, which, as held by the Court of Appeal in **AA (Iraq) [2017] EWCA Civ 944**, is "an essential document for life in Iraq".
8. The judge's failure to address the CSID issue also afflicts his treatment of issues (1) and (2).
9. In light of the above analysis, I conclude that the judge materially erred in law and I set aside the judge's decision.
10. Both parties agreed with me that in the event that I set aside the judge's decision the case should be remitted to the FtT to be considered afresh.

11. The respondent accepts that the appellant is Kurdish and a former policeman. These findings can be treated as a start-point for the next hearing but nothing else can be preserved from the judge's decision.
12. Since there is a new country guidance case on Iraq due to be concluded soon, it would be unwise of me to add anything except to say that the three issues identified above as ((1), (2) and (3) above) should be addressed. However, if the next Tribunal were to find the appellant wholly lacking in credibility in anything other than his ethnicity and experience as a former policeman, then I would not exclude that it may decide that his ability to access a CSID could be inferred from his lack of credibility in other material respects, applying the approach set out by the Court of Appeal in **GM (Eritrea)** (approved by the Supreme Court in **MA (Somalia)** [2010] UKSC 49).
13. To conclude:


The decision of the FtT Judge Austin is set aside for material error of law.

The case is remitted to the FtT (not before Judge Austin).

No anonymity direction is made.

Signed

Date: 30 March 2018



Dr H H Storey
Judge of the Upper Tribunal