



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/04945/2017**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On April 16, 2018**

**Decision      &      Reasons  
Promulgated  
On April 24, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR R N S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant:      In person

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

Interpreter              Mr Ali

**DECISION AND REASONS**

1. I extend the anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and direct that unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

2. The appellant is an Iraqi national. On November 20, 2016 he applied for asylum but his application was refused on May 11, 2017.
3. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 24, 2017. His appeal came before Judge of the First-tier Tribunal Durance (hereinafter called "the Judge") on June 22, 2017 and in a decision promulgated on July 6, 2017 the Judge refused his appeal on all grounds.
4. The appellant appealed the decision on July 11, 2017. Permission to appeal was refused by Judge of the First-tier Tribunal Nightingale on September 28, 2017. Permission to appeal was renewed and Upper Tribunal Judge Grubb granted permission on November 20, 2017 on the sole ground the Judge had arguably failed to address the issues in AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 (amending AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)).
5. The matter came before me on the above date and the parties were represented as set out above.
6. I asked the appellant whether he was legally represented and he confirmed that he had spoken to his former solicitors, since being granted permission to appeal, but they were unable to assist him. The appellant understood that today's hearing was limited to whether he was returnable to Iraq based on the previous findings made in the First-tier Tribunal. I was satisfied it would be appropriate to continue with the hearing.
7. The respondent accepted there was an error in law in respect of the Judge's consideration of internal relocation. Mr Bates confirmed his position remained unaltered.

### **SUBMISSIONS**

8. Mr Bates relied on the previous findings of fact. He also reminded the Tribunal that the Judge had specifically rejected the appellant's whole claim and invited me to find that the appellant did have family in Iraq to whom he could turn to and that his claim, that he was at risk from his family, lacked any credibility.
9. The appellant had produced to the respondent pictures of both his own and other family members' CSID documents.
10. The starting point for the respondent was that he could be returned to Baghdad and from there he would be able to fly to either Erbil or Sulaymaniyah. He would be able to replace his CSID document because he had all the necessary information. He could either settle in the IKR as a Kurd with documentation and access to family support or he could return to Kirkuk which was no longer a contested area and was controlled by the Iraqi authorities. It was neither unreasonable nor unduly harsh to return the appellant.

11. The appellant reiterated that he came from Kirkuk and stated that if he returned he would face problems with family both in his home area and in other parts of Iraq. He did not dispute that he had copies of documents that would enable him to obtain a CSID document but reiterated his claim that he could not return.

## **FINDINGS**

12. The appellant had brought a claim for protection and this had been rejected by the First-tier Judge. His claim had been based on the fact that he had been discovered with his gay lover and that he would be unsafe where he returned.
13. The Judge found the appellant gave inconsistent, discrepant and incredible evidence. The Judge specifically rejected his claim to have been involved in a relationship with another male as well as rejecting his account of how he escaped. He attached no weight to the photographs and at paragraph 31 of his decision the Judge found there was no risk to the appellant from either his own family or his “boyfriend’s” family.
14. The error in law concerned the Judge’s approach to the issue of return and the failure to consider the guidance in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC).
15. In considering whether the appellant could be returned to Iraq I am invited to consider either a return to his hometown of Kirkuk or a return to the IKR.
16. Kirkuk was a contested area and the Tribunal held in AA that it would not be possible for a person to be returned to that area. That decision remains a binding authority.
17. The recent September 2017 Country and Information Report indicates that a return to Kirkuk was now possible unless it was to the area in and around Hawija. There is no suggestion that the appellant comes from this part of Kirkuk. Subject to the appellant being able to travel to Kirkuk this would clearly be an option as his family remain in the area.
18. Mr Bates confirmed that the appellant would be returned to Baghdad. I raised with Mr Bates what would happen when he arrived in Baghdad and in particular would he be able to financially support himself in the short term and arrange travel to either Kirkuk or the IKR. He confirmed that the appellant had demonstrated he had been in possession not only of his own CSID card but also those belonging to other family members. He also relied on the fact the Judge had rejected his claim and therefore he could turn to his family for support.
19. In AA the Tribunal gave guidance on return to Baghdad. At section D(15) of the head note the Tribunal provided guidance to assist in determining whether a person could be returned to Baghdad.

20. Mr Bates did not argue that the appellant would be required to live in Baghdad although he argues he is an Iraqi national, with documents, and therefore able to travel wherever he wanted in Iraq
21. In AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 the Court of Appeal held (amending AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) 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. The country guidance was revised as follows:
- (a) Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer;
  - (b) No Iraqi national will be returnable to Baghdad if not in possession of one of these documents;
  - (c) In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents;
  - (d) Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.
  - (e) Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.
22. The appellant's CSID document will allow him access to financial assistance from the authorities; employment; education; housing; and medical treatment. He also has family he can turn to.
23. Taking into account the guidance in AA it seems that the appellant would either be able to enter the IKR and stay there or alternatively he would be able to return to his own family in Kirkuk.
24. Whilst I have taken into account the appellant's oral submissions I cannot go behind the previous findings made by the First-tier Judge. The appellant

is a Kurd who has documents and family to whom he can turn to and in these circumstances it is neither unreasonable nor unduly harsh to require him to return to Iraq. If he is unable to reside immediately with his family then he is able to reside in the IKR because of the factors I have mentioned above.

**DECISION**

- 25. 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.
- 26. I have remade the decision and dismiss the protection and human rights claims.

Signed

Date 11/04/2018



Deputy Upper Tribunal Judge Alis

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

I do not make a fee award as I have dismissed the claim.

Signed

Date 11/04/2018



Deputy Upper Tribunal Judge Alis