



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00144/2019

**THE IMMIGRATION ACTS**

Heard at Cardiff  
On 8 August 2019

Decision & Reasons Promulgated  
On 18 September 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

SAM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Gardner, instructed Migrant Legal Project  
For the Respondent: Mr Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born in 1984 and is a male citizen of Iraq. He arrived in the United Kingdom in 2007 and applied for asylum. That application and a subsequent appeal were rejected but the appellant remained in the United Kingdom, making further submissions most recently in May 2017. By a decision dated 10 December 2018, the Secretary of State, having accepted the appellant's submissions as a fresh claim, refused his application for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 21 March 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appeal turns on the judge's decision to depart from the country guidance of *AA (Iraq)* [2017] EWCA Civ 944 and *AAH (Iraqi Kurds - internal relocation) Iraq* CG UKUT 00212 (IAC). At the initial hearing at Cardiff on 8 August 2019, I informed the representatives that I intended to allow the appeal and remake the decision allowing the appellant's appeal on humanitarian protection grounds. I gave my reasons at the hearing so will now briefly summarise those reasons.
3. I find that the judge was not justified in departing from country guidance. At [23], the judge sets out what he considers to be the current security situation in parts of Iraq. In doing so, he fails to give any or any adequate references to background material or evidence to support the assertions which he makes. He concluded that, 'in the circumstances it is unrealistic in my view to place any reliance on the country guidance from 2015. As Ms Gardner [who appeared for the appellant] emphasised herself in her skeleton argument, the situation in Iraq is volatile and fluid.' The judge's acceptance of the appellant's argument that the security situation in Iraq is 'volatile and fluid' does not sit easily with his conclusion that circumstances have changed to such an extent and with such a degree of permanence in former contested parts of Iraq that it was necessary to depart from the existing country guidance. I am not satisfied that the judge has given sufficient reasons for departing from that guidance.
4. Secondly, the judge seeks to address the problems faced by the appellant who has no identity documents including a CSID or passport. At [29], the judge noted that, 'armed with a *laissez passer*', the appellant could be returned to Baghdad. The judge found that the appellant 'could leave the airport and attempt to locate his records at the Central Registry there but I accept there is no relative or friend to help him and he has no Arabic. His best option appears to be go through immigration control at the airport and obtain the letter from the airport police setting out his basic details. This should then unable to pass through checkpoints on arrival at Erbil.' I do not consider these observations to amount to a firm factual foundation for the judge's subsequent unequivocal conclusion that '[the appellant] could return to the IKR.' [33] Describing the appellant's 'best option' is not, in my opinion, adequate for concluding that the appellant could, without exposing himself to real risk in Baghdad as a single male Kurd, access records at the Central Registry and thereafter travel without difficulty overland to the IKR. In my opinion, the judge has fallen into error; on the particular facts, it was not open to the judge to conclude that the appellant would be able to obtain fresh documentation, reside safely in Baghdad

for the time it would take him to attempt to obtain a CSID and then to travel overland safely to the IKR.

5. I set aside the decision of the judge. Applying the existing country guidance of *AA (Iraq)* and *AAH (Iraqi Kurds - internal relocation)*, I am satisfied that the appellant should be granted humanitarian protection. However, the appellant should be aware that any grant of leave may be of short duration; fresh country guidance is imminently expected from the Upper Tribunal and, in the light of that guidance, it may be the case that the appellant will be deemed able to return safely to Iraq. However, that is a matter for the Secretary of State at a future date.

### **Notice of Decision**

I set aside the decision of the First-tier Tribunal which was promulgated on 21 March 2019. I remade the decision. The appellant's appeal is allowed on humanitarian protection grounds.

Signed

Date 10 September 2019

Upper Tribunal Judge Lane

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.