



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

Appeal Number: PA/01464/2018

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 18 February 2019**

**Decision & Reasons Promulgated  
On 11 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MR MOHAMMED [A]  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Greer, counsel instructed by Parker Rhodes Hickmotts Solicitors

For the Respondent: Ms R Pettersen, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Iraq of Kurdish ethnicity, appealed against the Secretary of State's decision, dated 17 January 2018, to refuse an asylum and Humanitarian Protection claim. His appeal against that decision ultimately came before First-tier Tribunal Judge O R Williams who, on 3 April 2018, dismissed his appeal on all grounds.

2. The grounds of appeal essentially argued that the Judge had failed to properly address the issue of internal relocation given that the Appellant was a Kurd born in Erbil, formerly living in Mosul. His family had been abducted by ISIL. The home area remained dangerous. The Appellant did not have a valid Civil Status ID card (CSID) and he could not be expected to relocate to Baghdad. Permission to appeal was given by Upper Tribunal Judge Allen on 29 June 2018. The Respondent made a Rule 24 response, on 13 September 2018, in which it was said as follows:

“The Respondent does not oppose the Appellant’s application for permission to appeal. In the light of the extant country guidance of *AAH* [2018], (albeit promulgated after the determination) it is accepted that the FtTJ has given inadequate reasons as to how A (the Appellant) could practically internally relocate from Baghdad to the IKR in the absence of any ID documents”.

The Upper Tribunal was invited to retain the matter if an error of law was established and re-make it on the accepted facts. There is no dispute as to the adequacy of the Judge’s findings on the facts, or the extent to which the basis of the Appellant’s claim was addressed.

3. In the light of the concession made as to the error of law I too conclude that the Judge erred in law in failing to properly and adequately address the basis of risk, particularly with reference to internal relocation, to the Appellant on a return to Iraq.
4. I find the Original Tribunal made a material error of law and the Original Tribunal’s decision could not stand.
5. In being invited to re-make this matter it has been put on the basis that there are sufficient findings of fact which can provide a proper basis of consideration of the claim without the need for any further hearing or evidence.
6. The case of *AAH (Iraq)* CG [2018] UKUT 00212 makes plain the particular problems and concerns there are about returning Iraqi nationals to Iraq,

and particularly those which arise through the need to move within Iraq to another area and the need for identification documentation. Those paragraphs of *AAH* [104-107] and [108-116] highlight the issues. As Ms Pettersen correctly accepted and identified that with the absence of a CSID the Appellant could not be expected to relocate to Baghdad, there really was when there was a threat to his family no real argument can be mounted that internal relocation was a reasonable option or which could take place without there being a serious risk of harm, destitution and diminished circumstances which would engage and satisfy the risk of proscribed ill-treatment under Article 3 ECHR.

7. Accordingly, I find the Appellant has to that low standard of proof required in asylum claims discharged the burden of proof of a real risk of persecution by reason of his ethnicity and/or of serious harm by reason of his inability to safely and reasonably relocate within Iraq, there is no effective protection in the Horvath sense to which he can have recourse, that his claim under the Refugee Convention succeeded. I similarly find his claim under Article 3 ECHR would succeed and whilst I have not considered the evidence as to the real risk of Article 2 ill-treatment, that was not necessary in order to determine this appeal.

### **NOTICE OF DECISION**

8. The Original Tribunal's decision did not stand. The following decision is substituted. The appeal is allowed on Refugee Convention and Article 3 ECHR grounds.

### **ANONYMITY**

No anonymity order was originally made nor is one required.

Signed  
Deputy Upper Tribunal Judge Davey

Date: 3 March 2019

**TO THE RESPONDENT**

**FEE AWARD**

No fee was paid or payable. No fee award is appropriate.

Signed

Date: 3 March 2019

Deputy Upper Tribunal Judge Davey