



IAC-AH-SAR-V1

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

Appeal Number: PA/04729/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 21 February 2020**

**Decision & Reasons Promulgated  
On 18 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

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

Appellant

**and**

**HLH**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mr Hussain, instructed by Bankfield Heath, solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1994 and is a male citizen of Iraq. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 6 May 2019 to refuse to grant him international protection. The First-tier Tribunal, in a decision promulgated on 20 November 2019, allowed the appeal on humanitarian and human rights grounds (Article 3 ECHR) but dismissed it on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant's home area of Iraq is Tuz Khurmatu. The judge found [34] that it was unsafe to return the appellant to his home area notwithstanding the fact that she rejected his account of past events in Iraq. She did not find the appellant to be a credible witness. However, in assessing the reasonableness of internal flight within Iraq, the judge accepted that the appellant could not obtain the necessary identity documents to enable him to relocate safely. At [37], she wrote:

"Despite having found the appellant lacks credibility, there is nothing to suggest that he has his CSID and in the context of the displacement from his home area I accept that even if he is in contact with his family may be very difficult for anybody to go to the civil registry in Salah-Al-Din to try to obtain replacement within a reasonable period. Furthermore, as his home area was formerly held by ISIS it is possible that the relevant civil registry office is no longer operational. The appellant is from the minority community [Kurdish] there is no evidence that he can speak Arabic. He has no relatives or anyone who can sponsor him in Baghdad will stop apply all these factors I find that without his CSID be unduly harsh him to relocate to Baghdad or the southern governates."

3. The judge went on [38] to conclude that the appellant would also be unable to relocate to the IKR without a CSID or family support.
4. The problem with the judge's decision is that there is a significant tension between her findings in respect of internal flight and her robust rejection of the appellant's 'fabricated' claim. There is also inconsistency in her fact-finding. At [29], the judge found that the appellant had not been 'honest about his family circumstances in Iraq.' Notwithstanding that finding, she proceeded in her analysis of internal flight to assume that the appellant would have no family support anywhere within Iraq. The judge has not made any attempt to explain why she has, on the one hand, rejected the appellant's credibility only, on the other, to restore it in a subsequent part of her analysis. Moreover, the judge clearly found [29] that the appellant had been inconsistent about the whereabouts of his mother and younger brothers. She has left unresolved the question of where in Iraq those family members may now be living and whether or not they would be able to assist the appellant in obtaining either his original CSID or a replacement. Had the judge made firm findings as regards whereabouts of the family members and their ability to assist the appellant, then her findings on internal flight may have been sufficient. However, she has made unreasoned assumptions regarding family members in her discussion of internal flight which are at odds with her earlier rejection of what the appellant said about his family members in Iraq. The analysis is confused and unsatisfactory.
5. The judge's error is compounded by her rather hazy analysis at [37] *et seq.* The judge's suggestion that 'it may be difficult for anybody to go to the civil registry... To obtain [a] replacement [CSID] within [a] reasonable time' does not refer to any item of evidence or background material which may have led her to make that statement. She also poses the possibility that 'as his home area was formerly held by ISIS it is possible that the

relevant civil registry office is no longer operational' [37]. Again, the judge not refer to any evidence of background material which led her to that equivocal observation. I agree with the Secretary of State that it is equally possible that the civil registry office remains operational. The result is that the judge's analysis of internal flight is not based on any firm foundation of fact-finding.

6. For the reasons I have stated, I find the judge's analysis is not sound. Accordingly, I set aside the decision.

7. The Upper Tribunal in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019]* UKUT 400 (IAC) at [436] observed that:

"Mr Knafler invited us to remit this appeal to the FtT so that further findings of fact can be made. We consider that to be the appropriate course. Although the appellant has been found incredible in relation to his account of first-hand difficulties with ISIL, it was accepted that he is a Kurd from Tuz Khurmatu which is, as we have recorded above, an area with particular ethno-sectarian conflict. It is arguable (we put it no higher than that) that the appellant might, as a result of his particular profile, demonstrate that he has a sufficiently enhanced risk profile that he is entitled to a conclusion that his return to Tuz Khurmatu would engage Article 15(c) and that considerations of internal relocation arise. We could potentially have resolved those questions ourselves but we received no specific argument on the points. That is not a criticism of the appellant's legal team; as Mr Knafler noted in his submissions, he was unable to make submissions on the assessment of risk before he knew how we would decide the CG issues."

8. In the light of the particular difficulties which still exist in Tuz Khurmatu it will be necessary for there to be a fact-finding analysis of such risk, if any, which the appellant may face on his return. I consider that judge's findings that [29] constitute a sufficient basis for the finding that the appellant still has family members living in Iraq with whom he remains in contact. That finding shall form the basis of any new analysis. The next judicial decision maker will need to deal not only with risk to the appellant should he reach Tuz Khurmatu but also, on the basis that he has contact with his family in Iraq, whether he will be able to obtain the necessary identity documentation before he leaves the United Kingdom either from Iraq or by application to Iraqi consular services in this country. It will be necessary for the Tribunal to make firm findings on these issues. That fact-finding is likely to be extensive and it may be necessary to hear further evidence. For that reason, the appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. The judge's findings regarding the appellant's account of past events in Iraq are preserved. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing. That hearing will proceed on the basis that the appellant is in contact with family members in Iraq.

Signed  
Upper Tribunal Judge Lane

Date 16 March 2020

**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.