



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

**Appeal Number: LP/00294/2020  
(PA/50128/2020)**

**THE IMMIGRATION ACTS**

**Heard at George House, Edinburgh  
On 15 December 2021**

**Decision & Reasons  
Promulgated  
On 22 December 2021**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**M A R**

and

Appellant

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

Respondent

For the Appellant: Ms K Dingwall, of Latta & Co, Solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. FtT Judge Grimes dismissed the appellant's appeal by a decision dated 12 January 2021.
2. The grounds raise two issues, succinctly summarised and found to be arguable in the grant of permission by Judge Martin dated 15 February 2021:

(i) error in finding that the appellant could return to Kirkuk because the PMF are not in control, which did not take account of evidence that the PMF control exit and entry; and

(ii) error in considering that the appellant could obtain documentation from the Iraqi Embassy, when the respondent's CPIN makes clear that the Embassy will not do so.

3. Ms Dingwall submitted that the FtT erred materially in both respects. On the first, she acknowledged that any fresh decision needed to be based on evidence of the up to date situation in and around Kirkuk. On the second, she said that the appellant did not seek to add to his previous evidence. She pointed out that the grounds are inter-related, on the question whether the appellant may need to visit Kirkuk to obtain necessary documentation. There is no challenge to previous findings (as far as they go) on possession of and access to documents. Further hearing would be by submissions only. She accepted that if the case was remitted to the FtT, there was no reason for it not to go back to the same Judge to finalise, in the full light of the evidence and guidance.
4. Mr Diwnycz conceded that there was error on both grounds, such as to require the decision to be set aside and remade. He submitted that the case was apt to go back to the same Judge to complete her task. He suggested that further decision might usefully be deferred until further country guidance is forthcoming.
5. I note that the cases of *SMO & KSP*, PA/08722 & 09241/2017, have recently been heard further in the UT. Decisions are presently reserved and are expected to result in further country guidance, which is likely to bear on the outcome of this appeal.
6. The decision of the FtT is set aside, to the extent only as explained above. The case is remitted to the FtT for further decision on the matters disclosed by the two grounds.
7. Listing is up to the FtT, but that tribunal may wish to consider postponing until further country guidance is published. The further hearing may be before Judge Grimes, unless that leads to any unnecessary delay or inconvenience, in which case it may be further resolved by any FtT Judge.
8. The anonymity direction made by the FtT is maintained at this stage.



15 December 2021  
UT Judge Macleman

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.