



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

Appeal Number: AA/10056/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd November 2017**

**Decision & Reasons Promulgated
On 29th November 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**HAM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person

For the Respondent: Mr Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq.

2. **Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**
3. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.
4. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on the 10th May 2016 dismissed his claim for asylum and on human rights grounds. The Appellant's immigration history and the basis of his claim is set out within the determination at paragraphs [11-27] and includes summary of the decision letter issued by the Secretary of State.
5. The Appellant is from Makhmur and is a Kurdish-Sunni Muslim. The Appellant arrived in the UK after having travelled through a number of European countries and arrived on the 25th February 2015.
6. The Appellant underwent a screening interview and a substantive interview took place on the 16th June 2015. In a detailed reasons for refusal letter dated 7th July 2015 the Respondent refused that application for asylum. In that decision, the Respondent accepted the evidence of his nationality, identity and ethnicity but rejected his account of having had problems in Iraq due to threats. The decision letter rejected his account of risk from ISIS and that there was sufficiency of protection in Iraq (see paragraphs 21 -29). It was also considered that he could internally relocate to Baghdad, Suleimaniyah or Dohuk (see paragraphs 29-47). It was further considered that the Appellant was not entitled to a grant of humanitarian protection making reference to the decision of QD and AH (Iraq) EWCA [2009] Civ 620 and also HM and others (Article 15 c) Iraq CG [2012] UKUT 00409.
7. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 27th of April 2016. The Appellant was not represented before the First-tier Tribunal nor had he provided a witness statement in support of his appeal. He had produced some documentary evidence upon which he placed reliance but that it was not properly translated (see paragraph 19).
8. The judge set out his findings at paragraphs [30] to [44]. When considering the circumstances in Iraq before he left, the judge rejected his account and gave a summary of those reasons at paragraph [30-41]. Having rejected his core account, the judge having found that he had never encountered any difficulty with Daesh in Iraq. In the alternative he found that even if he had encountered Daesh, the Iraqi authorities either in Kurdistan or in southern Iraq around Baghdad would be able to afford him with effective protection. In terms of internal relocation the only

finding of fact made was that at paragraph namely, 45 “I would find it not be unduly harsh to expect him to relocate to another part of Iraq where he would be able to live safely.” Thus he dismissed his appeal. He made no separate findings upon Article 15c and dismissed the appeal in this respect also.

9. The Appellant sought permission to appeal that decision and the grounds are set out in the papers. It is plain from the decision of the First-tier Tribunal who refused permission that the Appellant had applied out of time. The judge did not find there was a credible explanation for the delay and therefore refused permission. The Appellant, still acting in person, applied for permission to the Upper Tribunal and did so in time. Permission to appeal was granted by Upper Tribunal judge O’Connor on 26 July 2017.
10. The grant of permission set out the following:

“Grounds 1 to 5 are not arguable and amount to no more than a disagreement with the First-tier Tribunal’s conclusions as to the truth of aspects of the Appellant’s account. Those conclusions are founded on unarguably sound reasoning and they are conclusions that the First-tier Tribunal was unarguably entitled to make.

The Appellant is not legally represented. This being a protection claim I have considered for myself whether the First-tier Tribunal’s decision discloses any obvious errors of law Although not pleaded in the grounds of challenge, I consider each of the following points to be Robinson obvious.

It is arguable that the First-tier Tribunal erred in failing to come to a conclusion as to whether the Appellant’s home area is a “contested area” such that return there would, following the decision in AA(Iraq) (both prior, and subsequent, to the amendments made thereto in [2017] EWCA Civ 944), lead to a breach of Article 15 (c).

It is further arguable that the First-tier Tribunal failed to lawfully apply the guidance given in AA (Iraq) to its conclusion that it would not be unduly harsh to the Appellant to live in the IKR (which ought to have included consideration of how the Appellant would travel to, and gain entry into, this region). As to the potential internal relocation alternative to Baghdad, the first-tier Tribunal arguably failed to come to conclusion as to whether the Appellant could obtain a CSID prior to, or upon, return.”

11. At the hearing before this Tribunal the Appellant was unrepresented. I ensured that both the Appellant and the interpreter were able to understand each other and I confirm that there were no difficulties raised by either party during the hearing. In consequence to the directions made he provided documentation which upon further clarification consisted of the documents which he had sought to rely on before the First-tier Tribunal but which the judge had found not to be properly certified. He had

obtained translation and certification of those documents. In addition, he made reference to the changing circumstances in relation to his home area in Iraq and Iraq generally. He had also provided video clips which could not be accessed by the Tribunal and the letter had been sent to him in this respect from the Tribunal.

12. The Respondent had also provided a further documentation relating to the Appellant's home area in Iraq and a copy of an unreported decision of a Deputy Upper Tribunal Judge promulgated on 3 March 2016. In addition there was a Human Rights Watch report in the bundle along with a map.
13. When asked about the "out of time" point that appears to be raised on the face of the decision, Mr Clarke on behalf of the Respondent submitted that he did not pursue the out of time point taking into account that the Appellant has at all material times been unrepresented and that this was a protection claim and the gravity of the situation. He further submitted that the judge's findings on the issue of sufficiency of protection, relocation and humanitarian protection were lacking and that this was an error but at the time of the decision his home area was in a "disputed area" rather than a "contested area" and therefore was not material. He made reference to the map and the decision of the deputy Upper Tribunal Judge. I indicated to him that the provision of this determination did not meet the requirements of the practice direction and that there had not been any further submission of determinations which may have a contrary view. Nonetheless, it was in evidence before me. He also made reference to a Human Rights Watch report of 2015 which made reference to the Appellant's home area in the Erbil province. In terms of the error of law, he accepted that it required a reassessment and it was further clear that the First-tier Tribunal judge did not deal with the issues identified in the grant of permission as to sufficiency of protection, internal relocation and humanitarian protection by reference to the country guidance decision of *AA (Article 15 (c) [2015] UKUT 544(IAC)* and which had been heard by the Court of Appeal.
14. I am satisfied that the decision of the First-tier Tribunal did demonstrate an error of approach in dealing with issues of sufficiency of protection, internal relocation and the issue of humanitarian protection. The decision of *AA (Iraq)* (as cited) was published on 3 November 2015 and was a country guidance decision but was not referred to in the decision of the First-tier Tribunal which heard the appeal on 27 April 2016. The Tribunal therefore erred in law in failing to have regard to that decision. As the grant of permission sets out, the Tribunal failed to come to conclusion as to whether the Appellant's home area was in a "contested area". As Mr Clarke accepted there were no findings of fact whatsoever concerning this issue. Even if it could be said on the evidence that might have been available then that his home area was in a "disputed area" rather than a "contested area", it does not mean that the decision should stand. The Tribunal failed to apply the guidance given in *AA (Iraq)* as to return to the IKR and no consideration had been given as to how the Appellant will travel to, gain entry into that region. Furthermore as to any potential

internal relocation alternative, no consideration was given as to whether he could obtain a CSID. I therefore set aside the decision to dismiss the appeal.

15. As to the remaking of the decision I have concluded that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant's evidence and also the issues relating to return to Iraq and internal relocation. Mr Clarke made reference to the recent changes in the area surrounding the Appellant's home area and this would require further consideration and reference to objective material provided by the Secretary of State and the Appellant. The Appellant has also provided further evidence which the Tribunal has not been able to access via video clips and the provision of evidence from Facebook. This will also give the Appellant the opportunity to access legal representation.
16. The Tribunal's findings of fact at paragraphs 31-43 are preserved and the First-tier Tribunal will consider any further evidence relating to risk on return and the issue of humanitarian protection (Article 15 c).

I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal for further hearing.

Decision:

The decision of the First-tier Tribunal involve the making of an error point of law. It is set aside and it is remitted to the First-tier Tribunal for a further hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. The direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
Upper Tribunal Judge Reeds

Date: 28/11/2017