



IAC-AH-KRL-V1

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

Appeal Number: PA/01024/2017

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**On 18<sup>th</sup> September 2017**

**Decision & Reasons  
Promulgated**

**On 26<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**SH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Sanders of Counsel, instructed by Maya Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Lloyd of the First-tier Tribunal (the FtT) promulgated on 14<sup>th</sup> March 2017.

2. The Appellant is a male citizen of Iraq, born [ ] 1982. His asylum and human rights claim was refused on 17<sup>th</sup> January 2017 and the subsequent appeal was heard by the FtT on 2<sup>nd</sup> March 2017.
3. There had been a previous appeal so the FtT applied the Devaseelan guidelines. The FtT found that the Appellant would not be at risk if returned to Iraq and found that he is from Mosul which is not a contested area.
4. The FtT found that even if the situation in Mosul had deteriorated, the Appellant could safely return to the Iraqi Kurdish Region (the IKR).
5. Having found that the Appellant would not be at risk if returned to Iraq, the FtT considered Article 8, accepting that the Appellant had family life in the UK with his wife and child. The Respondent conceded at the hearing that the Appellant had a genuine and subsisting relationship with his wife and child. The FtT found that the best interests of the child would be to stay in the UK with her mother, and it would be proportionate for the Appellant to return to Iraq and to apply for entry clearance to the UK.
6. The appeal was dismissed on all grounds. The Appellant was unrepresented before the FtT, and was without legal representation when he applied for permission to appeal to the Upper Tribunal. It was contended that the FtT had made a factual mistake in stating that Mosul is not in a contested area, pointing out that it is within Nainawah province, and that it was accepted that this was a contested area.
7. The Appellant pointed out that his wife is a British citizen who could not accompany him to Iraq, and contended that there would be a breach of his Article 8 family life if he was forced to return to Iraq leaving his wife and child in the UK.
8. Permission to appeal was granted by Judge Pedro in the following terms;
  - “2. The grounds assert, inter alia, that the judge misdirected herself in her application of the country guidance in AA Iraq CG [2015] UKUT 544 (IAC) by proceeding on the basis that the Appellant, being from Mosul, was not from a contested area and that this premise has tainted the judge’s findings.
  3. The grounds raise an arguable error of law capable of affecting the outcome.”
9. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary that the FtT directed itself appropriately, pointing out that the FtT had found that the Appellant had a reasonable option of relocation to the IKR.

10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

## **Submissions**

11. Ms Sanders submitted that the FtT had erred in law by failing to follow AA (Iraq) which was the country guidance case in force at the time of the FtT hearing. The FtT was factually wrong to find that Mosul was not a contested area, as it was confirmed in the country guidance case that it was within a contested area. It was submitted that the FtT had failed to consider the personal circumstances of the Appellant, to assess whether he had a reasonable option of relocation to the IKR, and I was asked to find that it was a clear error of law not to follow a country guidance decision without giving reasons.
12. It was contended that the FtT had erred in law in considering Article 8. Ms Sanders pointed out that the Appellant has a British child which had not been considered by the FtT. The FtT had erred in law by failing to consider section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).
13. Mr McVeety did not adopt the rule 24 response, and conceded that the FtT had materially erred in law as contended by Ms Sanders.

## **My Conclusions and Reasons**

14. I announced at the hearing that the FtT had materially erred in law as contended on behalf of the Appellant, and the FtT decision was set aside with no findings preserved.
15. The FtT was factually incorrect in finding Mosul not to be a contested area. AA (Iraq) confirmed that Mosul was within a contested area, and it was an error of law for the FtT not to follow country guidance, without giving reasons.
16. The FtT did not carry out an adequate consideration of whether there was a reasonable internal relocation option to the IKR. This is dealt with very briefly at paragraphs 50-51, the FtT finding being that because there was no indiscriminate violence in the IKR, the Appellant could safely return. There was no further consideration of the reasonableness of internal relocation.
17. The FtT erred in considering Article 8. The provisions of section 117B(6) are set out in the FtT decision but not considered. As it was accepted the Appellant has a genuine and subsisting parental relationship with a qualifying child (his daughter is a British citizen), the FtT should have considered whether it would be reasonable to expect the child to leave the

United Kingdom. There was no consideration of reasonableness in line with the guidance given in MA (Pakistan) [2016] EWCA Civ 705.

18. Both representatives submitted that no findings of fact should be preserved because the consideration of risk on return was flawed, and therefore the appeal should be remitted to the FtT to be heard afresh.
19. I considered paragraph 7.2 of the Senior President's Practice Statements, and decided that the appropriate course was to remit the appeal back to the FtT. This is because substantial fact finding needs to be undertaken, and it is more appropriate for this to be undertaken by the FtT, rather than the Upper Tribunal.
20. The parties will be advised of the time and date of the hearing in due course. The appeal will be heard at the Manchester Hearing Centre by a judge other than Judge Lloyd.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

### **Anonymity**

The FtT made an anonymity direction. I continue that direction pursuant to 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 or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20<sup>th</sup> September 2017

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date 20<sup>th</sup> September 2017

Deputy Upper Tribunal Judge M A Hall