



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA061432016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Glasgow  
**On** 17 July 2017

**Decision & Reasons  
Promulgated  
On 21 July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**KHALIL YASIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Winter (counsel) instructed by Latta & Co, solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge D H Clapham promulgated on 2 February 2017, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 27 August 1992 and is a national of Iraq. On 1<sup>st</sup> June 2016 the Secretary of State refused the Appellant's Protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge D H Clapham ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 15 May 2017 Judge Shimmin gave permission to appeal stating

1. The appellant seeks permission to appeal against a decision of First-tier Tribunal Judge D H Clapham promulgated on 2 February 2017, dismissing the appellant's appeal against the Secretary of State's decision to refuse international protection.

2. The grounds requesting permission to appeal to the Upper Tribunal argue that the Judge erred in the assessment of the feasibility of the appellant returning to Iraq. It is arguable that the Judge failed to take full account of the case of AA (article 15c) Iraq CG [2015] 0054 (IAC) and that failure is material.

3. Furthermore, it is arguable that the Judge has failed to take account of the case of AA in terms of the appellant being able to travel from Baghdad to the IKR.

4. I grant permission on the grounds claimed.

### The Hearing

6.(a) Mr Winter, counsel for the appellant, adopted the terms of the grounds of appeal. He moved an additional ground of appeal on the basis that the Judge did not make findings on whether or not the Kurdish authorities have pre-cleared the appellant, relying on headnote 17 at paragraph 150 of the case of AA (article 15c) Iraq CG [2015] 0054 (IAC). He told me that the appellant was born in the Erbil, in the IKR, where he lived with his family until he was 10 years old. His family then moved to Mosul, in Ninewah province. He told me that the First-tier Judge failed to recognise that the respondent intends to return the appellant to Baghdad. He argued that from there the appellant would have to obtain preclearance in order to enter IKR. He told me that if the appellant cannot safely relocate to IKR, then his appeal should be allowed. He argued that

there was an implicit acceptance that it would be unduly harsh for the appellant to remain in Baghdad.

(b) Mr Winter turned to the grounds of appeal. He told me that the first ground of appeal related to the appellant's contention that he does not have a CSID and has no prospect of obtaining one. He took me to [76] of the decision and told me that the Judge's finding of fact that the appellant would be able to employ a lawyer to obtain a replacement CSID is not safe

(c) Mr Winter moved the second ground of appeal and told me that the Judge has failed to properly consider how the appellant will make his way from Baghdad to Erbil. He returned to the argument the pre-clearance was necessary to secure entry to IKR and told me that, on the facts of this case, travel would be impossible because the appellant cannot board a flight in Baghdad without identification documentation, which he told me the appellant does not have & cannot obtain.

7. (a) For the respondent, Mr Matthews told me that the decision does not contain a material error of law. He took me to paragraph 78 of the reasons for refusal letter and told me that, because the appellant's place habitual residence was Mosul in Nineveh province, which is not in IKR, then return, would be to Baghdad. Because the appellant is not a recent resident of IKR, then the pre-clearance (dealt with in the case of AA) is not necessary. He told me that there is no requirement for pre-clearance of a Kurd who does not originate from IKR, and that although the appellant was born in IKR, because he left there at 10 years of age he will not be treated as a Kurd who requires pre-clearance.

(b) Mr Matthews referred me to the revised country guidance given in AA (IRAQ) V SSHD [2017] EWCA Civ 944. He took me to [74] of the Judge's decision where, he told me, the Judge highlights discrepancies in the appellant's evidence. He took me to [77] where the Judge accepts that the appellant cannot return to a contested area, but goes on to give reasons for rejecting the appellant's claim not to have an identity document. He told me that that finding goes without challenge, and that that finding completely undermines the first ground of appeal.

(c) Mr Matthews addressed the second ground of appeal by producing evidence that a flight from Baghdad to Erbil currently costs US\$89. He reminded me that the appellant can access the assisted voluntary returns programme, which will provide more than sufficient funds to pay for that flight. He told me that the Judge's findings at [77] and [78] are unimpeachable, and that the grounds of appeal are misconstrued. He urged me to dismiss the appeal and allow the decision to stand.

### Analysis

8. The decision in AA (Iraq) [2017] EWCA Civ 944 was issued on 11 July 2017. That decision amends the country guidance in some respects, but

what is said at headnote 17 and at paragraph 150 of AA (article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) is unchanged. It is beyond dispute that the appellant is a Kurd, and that he originates from Mosul in Nineveh province. Although he was born in IKR, he has not lived there since 2002.

9. The appellant was born in IKR, to that extent he originates from the IKR, but the guidance at 17 of AA (Iraq) [2017] EWCA Civ 944 has little relevance in this case. Paragraph 17 of the country guidance should not be read in isolation. It is not the respondent's intention to return the appellant to IKR. The respondent intends to return the appellant to Baghdad. The place of the appellant's birth creates the option of internal relocation to IKR. Because the appellant has lived in Nineveh province since 2002, it is paragraphs 15, 19 and 20 of the guidance which apply to this appellant.

10. The Judge rejected the appellant's claim finding the appellant is neither a credible nor a reliable witness, and that the appellant has fabricated a story. No specific challenge is taken to the Judge's findings of credibility. At [120] of the decision the Judge finds that the appellant is an Iraqi Kurd who speaks Kurdish Sorani.

11. At [77] of the decision the Judge finds that the appellant is dishonest about his documents, that he does have an identity document and that his birth has been registered. The appellant will return to Baghdad. Paragraph 15 of the country guidance given in the annex to AA (Iraq) [2017] EWCA Civ 944 says

15. *In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:*
  - (a) *whether P has a CSID or will be able to obtain one (see Part C above);*
  - (b) *whether P can speak Arabic (those who cannot are less likely to find employment);*
  - (c) *whether P has family members or friends in Baghdad able to accommodate him;*
  - (d) *whether P is a lone female (women face greater difficulties than men in finding employment);*
  - (e) *whether P can find a sponsor to access a hotel room or rent accommodation;*
  - (f) *whether P is from a minority community;*

(g) *whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.*

12. What the Judge does not consider is whether or not the appellant, who is a Kurd who does not speak Arabic and does not have family members in Baghdad, can live in Baghdad safely. The Judge does not consider whether or not the appellant can return to his family home in Mosul. The Judge does not consider how the appellant could make his way from Baghdad to either Mosul or IKR

13. The background materials tell me that the appellant will be allowed to visit IKR for 10 days. The Judge's decision contains no realistic consideration of what is likely to happen to the appellant at the end of that 10-day period. The Judge has found that the appellant is returning as a single man with (at best) limited support. Those findings have not been factored into consideration of whether it is safe and reasonable for the appellant to return to an area of Iraq other than his home area.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. I therefore find that the decision is tainted by material errors of law because the Judge, having found that the appellant will not be safe in his home area, does not go on to properly consider whether internal relocation is safe and reasonable for this appellant. The conclusions that the Judge reaches are not supported by adequate reasoning - so that it is impossible for the objective reader to see how the Judge reached her conclusions. A fuller fact-finding exercise might have resulted in a different outcome to this appeal. I must, therefore, set the decision promulgated on 03 February 2017 aside.

16. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 02 February 2017. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

#### Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

19. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge D H Clapham .

### **Decision**

**20. The decision of the First-tier Tribunal is tainted by material errors of law.**

**21. I set aside the Judge's decision promulgated on 02 February 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed Paul Doyle

Date 20 July 2017

Deputy Upper Tribunal Judge Doyle