



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

Appeal Number: PA/06874/2016

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 28 September 2017**

**Decision & Reasons Promulgated  
on 29 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**[D O]**

Appellant

**and**

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

Respondent

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. By a decision promulgated on 7 February 2017, First-tier Tribunal Judge Farrelly dismissed the appellant's appeal against refusal of asylum.
2. The appellant sought permission to appeal to the UT. The proposed grounds 1 and 2 sought to challenge the adverse credibility findings. Ground 3 said that the judge erred by failing to make a definitive finding on the appellant's place of origin. Ground 4 said that in various respects the judge failed to apply AA [2015] UKUT 544.
3. In a decision dated 9 August 2017 UT Judge Freeman said that there was no merit in grounds 1 and 2; that no more was required than that the judge found the appellant to be from a "contested area"; and that the points about the judge's conclusions on relocation to Baghdad or Kurdistan were arguable on the basis of AA as re-affirmed in BA [2017] UKUT 18, but

did not affect the credibility findings. Thus, permission was granted on ground 4 only.

4. Mrs O'Brien conceded that the findings which were made were an insufficient basis from which to reach the further findings required to resolve the case in light of the country guidance.
5. Representatives concurred that there were no clear findings on whether the appellant has made his case in these related respects: whether he has, has had, or is able to obtain a CSID or a passport; the extent of his contact or ability to make contact with family members or friends in Iraq; and the practicalities of his relocation either in Kurdistan or in Iraq.
6. I observe that there is nothing in the point at 4(a) of the grounds about the appellant not approaching the Iraqi Embassy without jeopardizing his claim. It is correct that a person claiming to fear his national authorities cannot be expected to have recourse to them, and it is usually inappropriate for the respondent to do so; but that is not the present situation.
7. As both representatives correctly mentioned, the guidance in AA has now been amended and set out as an annex to AA (Iraq) [2017] EWCA Civ 944. That should be the framework for further fact-finding and resolution of the case.
8. Both representatives agreed that the further resolution was apt to take place in the FtT, before another judge.
9. The decision of the FtT is **set aside**. Its credibility findings, however, are the starting point for the next decision.
10. In terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the case is **remitted to the FtT** for a fresh decision to be reached on the foregoing agreed basis.
11. The member(s) of the FtT chosen to consider the case are not to include Judge Farrelly.
12. No anonymity direction has been requested or made.



28 September 2017  
Upper Tribunal Judge Macleman