



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08526/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision**

**&**

**Reasons**

**On 21<sup>st</sup> September 2017**

**Promulgated**

**On 17<sup>th</sup> October 2017**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

**Between**

**MRS B.S.**

**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Boyle of Halliday

For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a national of Iraq of Kurdish ethnicity. Her claim for protection was refused by the respondent and her appeal before First tier Tribunal Judge Head Rapson was unsuccessful.
2. Permission to appeal was granted on the basis it was arguable the judge made a material error in finding the appellant could return to Kirkuk. The country guidance decision of AA(Article 15 (c) Rv 1) Iraq CG[2015]UKUT 544 held that Kirkuk is a contested area. Furthermore, the appellant in fact was not from there but was from the town of Makhmur. A further ground of argument was that the judge did not apply the country guidance in relation to the route to the IKR and her ability to support herself.

3. At hearing Mr Boyle confirmed he was not seeking to challenge the judge's rejection of the underlying claim. However, he submitted the judge erred at para 60 in suggesting the appellant could return to Kirkuk, incorrectly described as her homeland and from there relocate to Erbil or Sulaymaniyah. She was from Makhmur which is not in the IKR and is a contested area. There is a map showing it northwest of Kirkuk and outside the recognised autonomous region and in the Minewa Province. Consequently, she could not be returned there. Although she is not from Kirkuk it is a contested area in any event. As she is not from the IKR the judge did not consider how she could get there or establish herself.
4. Mr Diwnycz relied on the rule 24 response which refers to changes in the country since AA(Article 15 (c) Rv 1) Iraq CG[2015]UKUT 544 and the gains made by Kurdish forces.
5. The respondent had accepted she could not return to Makhmur. The respondent took the view she could go to the Erbil in the IKR and her claimed lack of documentation could be overcome. At para 60 the judge errs in stating she could go to Kirkuk and then from there go to Erbil. As someone who was not from the IKR the route back would be via Baghdad. She could only go directly to the IKR if she was from there. The judge therefore did not consider these matters which would require consideration of her ability to manage in Baghdad, the question of a CSID and the ability to establish herself in the IKR.
6. My conclusion is that the decision of First tier Tribunal Judge Head -Rapson materially errs in law on the issue of return. Consequently, this aspect will have to be remade.

### Decision

The decision of First tier Tribunal Judge Head- Rapson is set aside and the appeal is to be heard de novo in respect of the question of return only. The judge's rejection of the underlying claim is preserved.

Deputy Judge of the Upper Tribunal Farrelly  
October 2017

13<sup>th</sup>