



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/01128/2019**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 22 August 2019**

**Decision & Reasons Promulgated  
On 03 September 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**KARZAN [K]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Holmes instructed by Halliday Reeves Law Firm

For the Respondent: Mr Tan Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

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 Bannerman promulgated on 17 April 2019, which dismissed the Appellant's appeal against a refusal of a protection claim on all grounds.
3. Grounds of appeal were lodged arguing that the Judge failed to properly consider the risk for the Appellant travelling through Iraq as an accepted member of the KDP and whether a 15(c)-risk existed in Kirkuk on the basis of AA (Iraq) or that it was justified to depart from it on the evidence.
4. On 3 July 2019 Upper Tribunal Judge Grubb gave permission to appeal.
5. At the hearing Mr Tan conceded that there were errors of law in the Judges decision.

### **Finding on Material Error**

6. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law and I find that Mr Tan was correct in making that concession.
7. At paragraph 77 of the decision the Judge finds that Article 15(c) was not engaged by the security situation in Kirkuk which is contrary to the guidance given in AA (Article 15 (c)) Iraq [2015] UKUT 00544. It is a matter of well established law that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal has previously stated in R and Others v SSHD (2005) EWCA Civ 982 that it represented a failure to take a material matter into account. The starting point for the decision of whether to go behind a CG case is the helpful advice provided in SG (Iraq) v SSHD; OR (Iraq) v SSHD [2012] EWCA Civ 940 where the CA said that decision-makers and tribunal judges were required to take country guidance determinations into account, and to follow them unless 'very

*strong grounds supported by cogent evidence*', were adduced justifying their not doing so (paras 43 – 50). In this case other than the brief assertion made in paragraph 77 that *'the situation may not be a good one'* there is no engagement by the Judge in the nature of the evidence that persuaded him that departing from the Country Guidance was appropriate.

8. The issue of the security situation in Kirkuk was relevant to the issue of a CSID which all of the caselaw is clear the Appellant would need to be able to survive in Iraq. The Judge appear to have accepted that the Appellant did not have one. If the Judge had determined that the Appellant could not return to Kirkuk he was then obliged to consider whether the Appellant could obtain a replacement CSID card within a reasonable period of time on his return. There is no adequate assessment of the various options: obtaining the document in the UK, in the replacement civil status office in Baghdad by reference to the caselaw and his particular circumstances. There is for example no assessment of what languages he speaks, whether there were male family members available to assist and how that might impact on this task.
9. If the Judge determined that the Appellant could obtain a replacement CSID having accepted that Kirkuk was unsafe he was obliged to consider relocation to the IKR and whether that was reasonable by reference to the Appellants personal circumstances and the guidance in AAH. There is no engagement with his circumstances, his lack of family support in the IKR, his work experience, the challenge of obtaining accommodation merely an assertion that there would be no harsh consequences.
10. The failure of the First-tier Tribunal to address and determine these issues constitutes clear errors of law. These errors I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
11. I have regard to para 7.2 of the relevant Senior Presidents Practice Statement and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT to make completely fresh findings of fact.

**CONCLUSION**

12. **I therefore set aside the decision and remit it to the FTT to be reheard before me. No findings preserved.**

Signed

Date 24.8.2019

Deputy Upper Tribunal Judge Birrell