



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

Appeal Number: PA/09669/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 29 January 2019

**Decision & Reasons
Promulgated
On 21 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole, Parker Rhodes Hickmotts, solicitors

For the Respondent: Mrs Pettersen Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 10 December 2018, I found that the First-tier Tribunal had erred in law and I set aside its decision. My reasons were as follows:

1. The appellant, SAS, is a citizen of Iraq. He had appealed to the First-tier Tribunal (Judge Moxon) against a decision of the Secretary of State dated 26 August 2016 refusing him international protection. The First-tier Tribunal in a decision promulgated on 1 March 2018 dismissed his appeal. He now appeals, with permission, to the Upper Tribunal.

2. I find that the First-tier Tribunal erred in law such that its decision falls to be aside. Mr Diwnycz, who appeared for the Secretary of State, accepted that, should I consider Ground 1 of the grounds of appeal to the Upper Tribunal, the judge had erred in his assessment of the appellant's age and in particular in his analysis of an age assessment produced by the local authority in Kirklees. The Secretary of State now accepts that the appellant was born on 2000 and is therefore now 18 years old.

3. Judge Allen purported to grant permission only on Ground 2. However, the grant of permission itself is not qualified; the comments of the judge regarding Ground 1 appear only in the 'Reasons' section of the standard form decision. Mr Worthington relies on the decision of the Upper Tribunal in Safi and others [2018] UKUT388 (IAC). In the light of that decision, I was prepared to accept that permission had, in effect, been granted on both grounds. Therefore, in the light of Mr Diwnycz's comments I accept that the First-tier Tribunal erred in law. As regards Ground 2, it follows that the judge's assessment of the internal flight alternative is vitiated by the fact that the appellant is younger than the judge found him to be and consequently his findings on the internal flight alternative cannot stand.

Notice of Decision

4. The decision of the First-tier Tribunal promulgated on 1 March 2018 is set aside. The findings of fact shall not stand save that the appellant is a real risk on return to his home area of Iraq. The only issue before the Upper Tribunal at the resumed hearing is that of internal flight to the Independent Kurdish Region (IKR). The Upper Tribunal (Upper Tribunal Judge Lane) shall remake the decision at or following a resumed hearing at Bradford on a date to be fixed. That hearing shall proceed on the basis that both parties accept that the appellant was born in the year 2000.

2. I heard brief evidence from the appellant at the resumed hearing. He told me that his parents had kept his CSID card in Iraq. He had not thought to bring it with him to the United Kingdom because he was too young.
3. For the Secretary of State, Mrs Pettersen submitted that it was unclear which family members of the appellant were still living in Iraq. The appellant had said, variously, that he had a sister father and mother though he had also said that his mother died. She submitted that the appellant could obtain a replacement CSID with the assistance of his family. Further, she referred to Foreign Office emails dated October 2018 indicated that the appellant could enter the IKR without having a sponsor. He would receive a financial support package from the UK government which would assist him until he found a job in the IKR.
4. For the appellant, Mr Cole acknowledged that the Upper Tribunal had directed that the hearing proceed on the basis that the appellant was born in 2000. He accepted that the appellant's evidence regarding his family in Iraq was not clear. However, there was no evidence that he had contacted his family. Indeed, there was no evidence that any member of the family still possessed the CSID. He submitted that it was impossible for the

appellant to prove a negative, that is that he had no contact with his family. His access to identity registration documentation would be hampered by reason of the fact that the registration office is in the contested area. He would be issued with a *laissez passer* but this was not the equivalent of a CSID and could not be used for onward travel to the IKR. In any event, unemployment in the IKR was running as high as 70% and the appellant could not work without a CSID.

5. I am grateful to both representatives for their helpful submissions. However, I agree with Mr Cole that, having regard to all the circumstances, it is reasonably likely that the appellant, even assuming that he is in contact with his family in Iraq, could not obtain through their agency or otherwise his existing CSID or a replacement card. The relevant registration office remains in a disputed area and I do not find that it is reasonably likely that a family member or anyone else acting on his behalf could access the office and obtain a new card. I agree that it is difficult for the appellant to prove that he does not have contact with his family and, for the purpose of determining the feasibility of internal flight, I have proceeded on the basis that he does not. The appellant is still a young man, he is a Kurd, he has no CSID and would be returned to Baghdad. The existing country guidance clearly indicates that he would be at risk there. I therefore allow his appeal. The appellant should be aware, however, that the situation in Iraq is changing rapidly. It is likely that the Secretary of State will issue him with only a short period of leave to remain. If in the future the appellant's ability to enter the IKR is rendered easier either by direct flights for enforced returnees to Erbil or by easier access to CSID or other necessary identity documentation then it is likely that the appellant will be expected to return to Iraq.

Notice of Decision

6. The appellant's appeal against the decision of the Secretary of State refusing of international protection is allowed.

Signed

Date 3 March 2019

Upper Tribunal Judge Lane