



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

Appeal Number: PA/08693/2016 (A)

THE IMMIGRATION ACTS

**Case Management Review by BT MeetMe
On 19th January 2021**

**Decision & Reasons
Promulgated
On 2nd February 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**K A K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance by or on behalf of the appellant
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DIRECTIONS AND REASONS (A)

IT IS DIRECTED THAT:

- i) The directions of the Upper Tribunal that the appeal will be re-heard in the Upper Tribunal, are set aside.

- ii) The appeal is remitted to the First-tier Tribunal for re-hearing.
- iii) The parties shall be notified of a hearing date before the First-tier Tribunal in due course. The Tribunal shall arrange a Kurdish Sorani interpreter.

REASONS

1. The appellant is a national of Iraq. He appealed the respondent's decision of 4th August 2016 to refuse his claim for asylum and humanitarian protection. His appeal was dismissed for reasons set out in the decision of First-tier Tribunal Judge Raikes promulgated on 17th March 2017. The appellant was granted permission to appeal and the decision of Judge Raikes was set aside by Upper Tribunal Judge Lane for reasons set out in a decision promulgated on 6th October 2017. Judge Lane directed that the decision is to be remade in the Upper Tribunal and noted in his decision that the Upper Tribunal would soon produce a further country guidance case addressing the issues that arise in the appeal. The appeal was listed for hearing before me on 18th February 2020 but had to be adjourned because neither party had addressed the issues that now arise in the appeal, following the subsequent country guidance set out in SMO & Others.
2. The hearing before me on 19th January 2021 had been listed as a face-to-face resumed hearing at which it was intended that the Upper Tribunal would remake the decision as previously directed. Unfortunately, because of further restrictions announced in January 2021 and the need to take precautions against the spread of Covid-19, the hearing could not proceed as a face-to-face hearing and was instead listed as a Case Management Review hearing, using BT MeetMe.
3. A copy of the Notice of Hearing with the relevant dial-in details was sent to the appellant by post on 8th January 2021. He did not dial-in. I note that directions had previously been issued by Upper Tribunal Judge Smith

dated 13th October 2020 directing the appellant to provide, if possible, the Tribunal and that the respondent with an email address at which he can be contacted. He was also invited to provide his views as to whether the hearing of the appeal should proceed as a face-to-face hearing or whether it might be possible for the hearing to be heard remotely. There has been no response from the appellant to those directions.

4. Having had the opportunity of considering submissions helpfully made by Mr Howells, I accept that the most appropriate course is for the appeal to be remitted to the First-tier Tribunal for hearing afresh.
5. The appellant is of Kurdish ethnicity and from Mosul. As at the date of the hearings before FtT Judge Raikes and Upper Tribunal Judge Lane, Mosul was described as a disputed area in Iraq. Since those decisions, the guidance has changed. In SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400, the Country Guidance now states that the situation in the Formerly Contested Areas (*the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din*) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, “sliding scale” assessment to which several factors identified, are relevant. The Tribunal will now have to determine not only whether the appellant can internally relocate, but whether the appellant’s return to his home area would be contrary to Article 15(c).
6. There has already been a lengthy delay in the disposal of the appeal, and it is likely that the First-tier Tribunal will be able to accommodate a face-to-face listing of the appeal considerably sooner than might be possible in the Upper Tribunal.
7. It is in the interests of justice for there to now be a timely disposal of the appeal. I am satisfied that a rehearing of the appeal is likely to be accommodated in the First-tier Tribunal within weeks rather than months.

Following the updated country guidance set out in SMO & Others and the unforeseen delays that have occurred because of the current pandemic, I am satisfied that there has been a change of circumstances since the decision of Upper Tribunal Judge Lane such that the appropriate course is for the appeal to be remitted to the First-tier Tribunal for the decision to be remade. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Signed **V. Mandalia**

Date: 19th January 2021

Upper Tribunal Judge Mandalia