



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/09516/2016

Appeal Number

THE IMMIGRATION ACTS

**Heard at Birmingham
On 5th February 2018**

**Decision and Reasons Promulgated
On 12th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**KMS
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih (Counsel, instructed by Braitch RB Solicitors)
For the Respondent: Ms A Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant claimed asylum on the basis that he was a Kurd from Iraq and on the basis of events he suffered in the country. The application was refused and it was not accepted that he was from Iraq or that the events complained of took place. The Appellant's appeal was heard by Judge Carlin at Sheldon on the 24th of March 2017 and dismissed for the reasons given in a decision promulgated on the 30th of March 2017.
2. The Judge accepted that the Appellant was from Iraq but found that there were inconsistencies in his evidence and there was a lack of supporting evidence that might have been expected. The Judge found that the Appellant was not in need of international protection on any basis. The Judge referred to AA (Article 15(c) Iraq) CG [2015] UKUT 544 (IAC) briefly in paragraph 30 in the context of his article 8 assessment.
3. The Appellant sought permission to appeal on the basis that the Judge had not considered that the Appellant came, as he had found, from a contested area and had not properly considered the

guidance in AA with regard to the return of the Appellant and relocation to the IKR. Permission to appeal was granted by Judge Lambert as there was arguable confusion as the Appellant's home area and whether he could be returned there and with regard to his ability to go to the IKR.

4. The Respondent's rule 24 response argued that the Judge had not erred and that the decision was open to him for the reasons given. However at the hearing it was accepted that the Judge's findings on the Appellant's home area were not sufficient and the Judge had not addressed the issues of documentation and the Appellant's return and relocation. It was agreed that the decision could not be salvaged and it was proposed that the appeal be remitted to be heard afresh with no findings preserved.
5. The course of action proposed is entirely appropriate. The guidance in AA requires clear findings on the ability of an individual to obtain appropriate documentation and to be in a position to be able to support themselves of access family assistance. There are no relevant findings made in the decision and in the findings that were made there is a large element of confusion and inadequacy of reasons. In the circumstances I find that the decision of Judge Carlin contained errors of law and cannot stand. It will be remitted to be heard by a Judge other than Judge Carlin with no findings preserved.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The decision is remitted to the First-tier Tribunal in Birmingham for re-hearing on all issues with no findings preserved, not to be heard by Judge Carlin.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

I make no fee award which remains an issue for the First-tier Tribunal dependent on the outcome of the remitted appeal.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 7th February 2018

