Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04459/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 23 JULY 2019	**On 09 AUGUST 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AKAR [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain, instructed by Bankfield Heath, solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is male citizen of Iraq. By decision which was promulgated on 10 April 2019, I found that the First-tier Tribunal had erred in law such that its decision should be set aside. My reasons were as follows:

> "1. The appellant was born on 5 September 1995. He is a citizen of Iraq and is of Kurdish ethnicity. He claims to have arrived in the United Kingdom in July 2017. By decision dated 20 March 2018, the Secretary of State refused his application for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 31 May 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

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> 2. At the initial hearing at Bradford on 28 March 2019, both representatives accepted that the judge had erred in law such that her decision falls to be set aside. Briefly, the reasons are as follows. At [28], the judge concluded that there was insufficient reason to depart from the country guidance including AA (Iraq) [2017] EWCA Civ 944 and BA (Returns from Baghdad) [2017] UKUT 18 (IAC). The judge acknowledged that the appellant had given consistent evidence that he comes from Kirkuk but she did not accept that he had proved to the lower standard of proof that he is from that area. The judge found it likely that the appellant has 'access to his passport and, if the Home Office are able to retrieve his CSID card and electoral documents, he will have a complete complement of documents to enable him to return.' The appellant has documents currently in Finland, which the judge accepted to be the case and she found further that, 'if he retrieves documents from Finland showing he is from Kirkuk then, of course in the alternative I finally cannot return there but could relocate to Baghdad.'
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> 3. The judge's reasoning is problematic. There are simply too many contingencies for there to be coherent outcome to her analysis. The judge should have determined the likelihood of the appellant retrieving his documents from Finland. Had she found it likely that would be able to obtain the documents, then she should have carried out a proper fact-sensitive analysis as to whether it would be unduly harsh to expect the appellant to relocate to Baghdad. She should have made a firm, rather than a contingent, finding as to whether the appellant is from Kirkuk. As it is, she has left the appellant in an uncertain position which is unsatisfactory.
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> 4. Fresh country guidance is that believed to be imminent. In the circumstances, I set aside the First-tier Tribunal decision. The decision will be remade in the Upper Tribunal. The date of the substantive hearing will be fixed following, in the first instance, a case management review which will be listed on the first available date after 13 May 2019 before me at Bradford (time estimate: 20 minutes; no interpreter)."

2. At the resumed hearing at Bradford on 23 July 2019, it was apparent that no progress had been made in obtaining the appellant's documents from the Finnish authorities. It appears that both the appellant's representative and the Home Office have written to the relevant Finnish government department but have not received any response.

3. For the purposes of the disposal of this appeal, both parties now agree that the appellant is from Kirkuk. Notwithstanding the judge's doubts that the appellant does not have access to his passport and CSID, the fact remains that he does not possess these documents at the present time. There is no prospect of obtaining identity documentation from Finland. I told the parties that, subject to the country guidance which still exists (at least for the time being) in the form of *AA (Iraq)* [2017] EWCA Civ 944 and *AAH* (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC), I intended to allow the appellant's appeal on humanitarian protection grounds. However, the appellant should be aware that any leave to remain which is granted to him consequent to that decision may be short lived; if,

in the foreseeable future, it becomes possible to return the appellant safely either to Baghdad or the IKR then it is likely that the Secretary of State will take steps to do so.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 20 March 2018 is allowed on humanitarian protection grounds.

Signed Date 23 JULY 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.