



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05450/2019 (V)**

THE IMMIGRATION ACTS

**Heard remotely by Skype for Decision & Reasons Promulgated
Business
On 7 January 2021 On 15 February 2021
Extempore**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms G Patel, Counsel, instructed by Legal Justice Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mensah (“the judge”), promulgated on 22 November 2019, by which she dismissed the Appellant’s appeal against the Respondent’s refusal of his protection claim. The Appellant, a citizen of Iraq, had previously had an appeal rejected by the First-tier Tribunal in 2008, the judge then having rejected all core elements of his account.

Before the judge, the Appellant effectively sought to re-argue his old claim and asserted that he was no longer in contact with any family members and could not return to his home area of Kirkuk. He also claimed that he would not be able to relocate to the IKR or indeed to Baghdad. The judge relied heavily on the previous decision of the First-tier Tribunal as regards the untruthfulness of the Appellant’s claim. She specifically rejected his assertion that he was no longer in contact with family members.

At paragraph 19 the judge also stated that he had an original CSID document with the Respondent and that this document had apparently expired. Having then cited large passages from the country guidance decision in AA (Article 15(c)) [2015] UKUT 544 (IAC), the judge continued at paragraphs 26 and 27 to find that the Appellant could not safely return to his home area of Kirkuk because at that time it remained a contested area. However, having found that the Appellant had failed to show that he was undocumented, the judge went on to conclude that he could reasonably internally relocate to the IKR.

The grounds of appeal essentially assert that the judge failed to assess the issue of the Appellant being re-documented with a CSID and also that she had failed to carry out an adequate assessment in respect of internal relocation. Permission was granted on both grounds.

At the hearing before me and following a discussion between the representatives Ms Everett stated what in my view was an entirely fair and correct position, namely that the judge had materially erred in failing to undertake a proper assessment of the internal relocation issue. With respect, the judge’s consideration of this issue is all too brief. There are no reasons given and nothing that engages in any meaningful way with the various factors which were clearly relevant to the assessment of reasonableness and as set out in the country guidance case of AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212 (IAC), which, whilst extant at the date of the judge’s decision had not been cited to any extent within her decision. On this basis alone the judge has committed a material error of law and her decision must be set aside.

I raised an additional matter with the parties, namely the question of what document was in fact in the United Kingdom and in the possession of the Respondent. Whilst the judge stated that this was a CSID, the reasons for refusal letter refers to a National Identity Card. There is a distinct possibility in my view that the judge had moved from an incorrect factual premise when considering documentation and this must have had a material bearing on her assessment of the Appellant’s claim as a whole.

In respect of disposal I have concluded that in all the circumstances and with reference to paragraph 7.2 of the Practice Statement this matter must be remitted to the First-tier Tribunal for a rehearing with no findings of fact preserved from the judge's decision. Having said that, the well-known principles in Devaseelan will clearly be in play, given the previous Tribunal decision from 2008.

In addition, the following matters will need to be addressed:

- a) the current country guidance set out in SMO and Others (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC);
- b) any further country information contained either within the Respondent's latest CPIN dated June 2020 or adduced in due course by the Appellant;
- c) the question of documentation or re-documentation, as the case may be, and the precise identification of what document is in the possession of the Respondent;
- d) whether the Appellant can now safely return to his home area of Kirkuk or, if appropriate, whether he could internally relocate either to Baghdad or the IKR.

Notice of Decision

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

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1) This appeal is remitted to the First-tier Tribunal with no findings of fact preserved and with the issues identified in paragraph 8, above, to be addressed;
- 2) The remitted appeal shall not be heard by First-tier Tribunal Judge L Mensah;
- 3) The First-tier Tribunal shall issue any further case management directions it deems appropriate in due course.

Signed H Norton-Taylor

Date: 15 January 2021

Upper Tribunal Judge Norton-Taylor

