



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

Appeal Number: PA/02250/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 23 May 2017**

**Decision & Reasons  
Promulgated  
On 1 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HALOW ABDUL-RAHMAN  
(NO ANONYMITY ORDER)**

Respondent

**Representation:**

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer  
For the Respondent: Mr M J Azmi, instructed by Braitch RB Solicitors

**DECISION AND REASONS**

1. The appellant Secretary of State appeals with permission to the Upper Tribunal against the decision of FtT Judge Ferguson that was promulgated on 18 October 2016.
2. No anonymity direction was made in the First-tier Tribunal and there is no reason to make such an order now.
3. Mr Mills admitted that he was somewhat perplexed by the grounds of application because although the author of the grounds referred to a grandmother, there is no mention of a grandmother in the decision. In

addition, Mr Mills noted that the paragraphs cited in the grounds did not properly cross-reference Judge Ferguson's decision.

4. Despite these limitations, which Mr Mills attributed to the author of the grounds getting two case muddled, Mr Mills argued the grounds revealed two errors of law in the decision and reasons statement.
5. First, the judge failed to make any finding on whether Mr Abdul-Rahman had any relatives in Iraq. The judge made a finding at [17] that Mr Abdul-Rahman had no relatives in Baghdad, but considering the country guideline case, AA (Article 15(c)) Iraq CG [2016] UKUT 00544 (IAC), it was necessary to make a finding as to whether Mr Abdul-Rahman had relatives anywhere in Iraq.
6. Second, the judge failed to make any finding on whether it would be reasonable to expect Mr Abdul-Rahman to relocate to the Independent Kurdish Region (IKR). At [15], Judge Ferguson found that the appellant would not be returned to that part of Iraq and then said he "could not relocate there because there is no evidence that he has any connection to that area to be permitted entry or residence." The head notes to AA clearly indicated that a Kurdish person did not face a barrier to entry or residence merely because of having no connection to the IKR.
7. Mr Azmi submitted that Judge Ferguson made no legal errors. At [4], the judge recorded evidence from Mr Abdul-Rahman about losing contact with his mother and sister, and details about other relatives in Iraq. Although the judge had found Mr Abdul-Rahman had not been targeted by ISIS, that finding did not undermine the evidence given about his relatives. Therefore, it was open to Judge Ferguson to say at [17] that Mr Abdul-Rahman had "no family or other support available to assist him in Baghdad." Mr Azmi suggested this should be understood to mean there were no relatives anywhere in Iraq who could assist Mr Abdul-Rahman and not limited to having no relatives in Baghdad.
8. Mr Azmi also argued that the findings at [15] were sufficient to identify that Judge Ferguson considered it unreasonable to expect Mr Abdul-Rahman to relocate to the IKR. Mr Azmi reminded me that at [171] of AA, the Upper Tribunal indicated that the issue of reasonableness is fact sensitive. The judge's comments should be read, he suggested, as indicating that he found the lack of support available to Mr Abdul-Rahman in the IKR to make his relocation there unreasonable.
9. Despite Mr Azmi's valiant attempts to encourage me to uphold Judge Ferguson's decision, as I announced at the end of the hearing, I cannot do so. I find his decision to be undermined by his failure to make findings as to the reasonableness of expecting Mr Abdul-Rahman to relocate to the IKR, and about what relatives he might have in Iraq and whether they could offer any assistance.
10. In relation to the former, the finding that the appellant could not move to the IKR is contrary to the country situation found by AA and there is no evidential basis to indicate why the judge departed from that guidance. In relation to the former, although I acknowledge that Judge Ferguson

recorded at [4] Mr Abdul-Rahman's evidence about his relatives, the judge made no findings as to whether that evidence was accepted. Because the judge found Mr Abdul-Rahman had not given a credible account on this, it is not possible to infer the account about his relatives was accepted.

11. Findings on either or both these matters could change the outcome of the appeal and therefore the omissions are material. It follows that I must set aside the decision.
12. I discussed with Mr Mills and Mr Azmi whether this appeal should be remitted *de novo* to the First-tier Tribunal. I indicated that it would be necessary to obtain evidence from Mr Abdul-Rahman on both issues because no evidence was recorded in Judge Ferguson's decision and reasons statement. In addition, Mr Mills indicated that the Home Office's position regarding the Province of Diyala has changed as ISIS has retreated. The Home Office position is that it is open to Mr Abdul-Rahman to return to Baghdad and from there to travel to his home area because the internal armed conflict no longer affects that area. Because the next judge will have to consider the facts as at the date they hear the appeal, this significant change in the reasons for refusal, requires the decision to be remade in the First-tier Tribunal.
13. It follows that it is appropriate to remit the appeal to the First-tier Tribunal for the decision to be remade. Nothing is preserved from the decision and reasons of Judge Ferguson.
14. I direct that the remitted hearing can be heard by any judge other than Judge Ferguson. I record that Mr Mills handed Mr Azmi some recent background country information but I did not admit them in evidence because it is appropriate they are properly filed for the remitted appeal. Both parties are expected to prepare fresh bundles of evidence for the remitted hearing and all documents on which they seek to rely must be received by the First-tier Tribunal at least seven calendar days before the remitted hearing.
15. It is open to the First-tier Tribunal to amend or make additional directions.

## **Decision**

The decision of FtT Judge Ferguson contains legal errors and is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh decision, in accordance with my decision and directions at paragraphs 13 and 14 above.

Signed

Date

23 May 2017

Judge McCarthy  
Deputy Judge of the Upper Tribunal