



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

Appeal Number: PA/03849/2017

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision sent to parties  
on:**

**On 16 January 2018**

**On 18 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**NNE (IRAQ)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the appellant: Ms Lynn Brakaj, solicitor with Iris Law Firm

For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the appellant, whether directly or indirectly. This order applies to,*

*amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.*

### **Decision and reasons**

1. The appellant appeals with permission against the decision of the First-tier Tribunal refusing him leave to remain on asylum, humanitarian protection or human rights grounds.
2. The appellant is a citizen of Iraq from the Kirkuk region who has both his CSID and a copy of his national certificate. He is married to a British Citizen.

### **First-tier Tribunal decision**

3. The First-tier Tribunal accepted that although the appellant's wife is willing to live in Iraq if he is removed, it would not be reasonable to expect her to do so.
4. The Tribunal set out the country guidance headnotes for *BA* (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC) and *AA* (Article 15(c)) (Rev 2) [2015] UKUT 544 (IAC) but there is no indication in the judge's reasoning that the guidance was applied.
5. The First-tier Tribunal Judge preferred the assertion by the respondent that Kirkuk was no longer a contested area, but did not indicate which paragraphs of the respondent's country information and guidance were relied upon, nor did he make any reference to any other country information.
6. The First-tier Tribunal dismissed the appeal.

### **Permission to appeal**

7. The appellant appealed to the Upper Tribunal and permission was granted, as it was considered that there was an arguable case for saying that the First-tier Tribunal's reasoning was inadequate.

### **Rule 24 Reply**

8. There was no Rule 24 Reply.
9. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

10. I heard oral submissions from Ms Brakaj and Mr Diwnycz, which are recorded in my notes. It is not necessary to set out these submissions in full: where relevant, I have made reference to them below.

### **Discussion**

11. I begin by considering whether it was an error of law for the judge in this appeal to depart from the country guidance which is set out in his decision. He does not explain why he did so nor is there any broader

assessment of changes in the country information regarding the risks in Baghdad and Kirkuk for a person who has his CSID and national certificate details and who comes from Kirkuk. Whilst it is always possible to depart from current country guidance on a proper assessment of later evidence, the reasoning in the decision of the First-tier Tribunal does not reach that standard. That is a plain error of law and the decision must be set aside and remade.

12. There is also no reference to the Article 8 ECHR consequences of the spouse remaining behind in the UK when the appellant is removed, either under the Immigration Rules HC 395 (as amended), or outside the Rules. The appellant and his wife produced evidence of how they help to care for his mother-in-law, who has chronic obstructive pulmonary disease (COPD), and also of the assistance the appellant gives to his sister-in-law in caring for her children.
13. When rehearing the appeal, and in dealing with the asylum element of the claim, the First-tier Tribunal will have the benefit of the recalibrated country guidance given by the Court of Appeal in *AA (Iraq) v Secretary of State for the Home Department* [2017] EWCA Civ 944 which was handed down on 11 July 2017, two months after the decision in this appeal, and which is binding on the Upper Tribunal and the First-tier Tribunal. That judgment confirms the Upper Tribunal's finding that Kirkuk remains a contested area.
14. Mr Diwnycz told me at the hearing that the respondent maintains the position taken in her own country information and guidance, that the evidence now indicates that Kirkuk is no longer a contested area. The Judge who hears the appeal will need to consider whether there are proper grounds for distinguishing the Court of Appeal's guidance on the basis of later country evidence.
15. In addition, the judge will need to make a fully reasoned Article 8 decision, both within and outwith the Rules, taking into account all of the family circumstances relied upon. Whilst these matters might not have been determinative of the appeal, the lack of reasoning thereon suggests an insufficiently thorough consideration of the evidence before the Tribunal.
16. The findings of fact in this appeal are insufficiently reasoned to enable me to remake the decision myself and it is necessary therefore for the appeal to be remitted for hearing afresh by the First-tier Tribunal, with no findings of fact or credibility preserved, save that the appellant is from Kirkuk, is married to a British citizen, and has with him his CSID and a copy of his national register details.

## **DECISION**

17. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Date: 16 January 2018

Signed **Judith AJC Gleeson**  
Upper Tribunal Judge Gleeson