



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05143/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 20 March 2018

**Decision &
Promulgated
On 1 May 2018**

Reasons

Before

**THE HONOURABLE MR JUSTICE EDIS
UPPER TRIBUNAL JUDGE REEDS**

Between

**BA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G. Loughran, Counsel instructed on behalf of the Appellant

For the Respondent: Mr D. Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq.
2. We make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a Tribunal or court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 6th July 2017, dismissed his claim for protection.
4. In this case it is correctly accepted on behalf of the Secretary of State that the decision of the Judge of the First-tier Tribunal promulgated on 6 July 2017 contains an error of law, that is that the judge departed from the relevant country guidance case **AA** without a sufficient evidential justification and without adequately reasoning that course. It therefore follows that that ground of appeal succeeds and that decision is set aside. We do not however accept that the error to which we have referred infects the findings of primary fact by the First-tier Tribunal Judge in which he rejected the evidence of BA about his personal circumstances in Kirkuk. Those findings of fact appear to us to be properly reasoned and not in any way to depend upon the evidence about the security climate in Kirkuk. We therefore preserve those findings of fact.
2. Clearly the decision in relation to the situation in Kirkuk and its impact on the removal of BA will have to be reconsidered. We take the view that the appropriate forum in which that should happen is the First-tier Tribunal and we therefore remit the case to the First-tier Tribunal for a reconsideration of the case on the basis of the primary findings of fact already made by Judge Greasley. Any secondary findings of fact will be made on the basis of any further evidence provided by the parties. They are of course at liberty to rely upon such further evidence as to the current security climate in Kirkuk as they see fit and we direct that the case should be considered by the First-tier Tribunal for directions to be given as to the way in which the hearing is to be conducted. If the Secretary of State is intending to argue anything new about the possibility of a relocation internally within Kirkuk or Iraq of the appellant on removal then that needs to be set out in a written argument which should be prepared and served on the Tribunal and on the appellant within twenty one days of the decision being served so that it is before the First-tier Tribunal when the case is considered for the purpose of directions.
3. We are satisfied that the correct course is for the appeal to be remitted to the First-tier Tribunal in accordance with the Practice Direction. One of the reasons for not retaining the case in the Upper Tribunal is that that course would deprive the appellant of a route of appeal against the decision which now has to be made in respect of the security and humanitarian situation in Iraq and we consider that it is desirable that the outstanding primary facts should be found by the First-tier Tribunal and that any right of appeal against such a finding should be preserved.

Decision:

5. The decision of the First-tier Tribunal did involve the making of an error on a point of law and is set aside and the appeal is remitted to the First-tier Tribunal for a hearing on a date to be fixed in accordance with Section

12(2)(b) of the Tribunals, Courts and Enforcement Act and paragraph 7.2 of the practice statement of 10th February 2010 (as amended).

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Mr Justice Edis