



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12399/2017**

THE IMMIGRATION ACTS

**Heard at Bradford
On 23 October 2020**

**Decision & Reasons Promulgated
On 28 October 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By decision promulgated on 7 August 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

"1. The appellant, who was born on 1 January 1997 is a male citizen of Iraq. He appealed against a decision of the Secretary of State dated 16 November 2017 which refused his claim for international protection. The First-tier Tribunal, in a decision promulgated on 19 January 2018, dismissed his appeal. Permission to appeal to the Upper Tribunal was refused in both the First-tier Tribunal and Upper Tribunal. Following

proceedings for judicial review, permission was granted on 9 October 2018.

2. At the initial hearing at Manchester on 30 July 2019, Mr Bates appeared for the Secretary of State. The appellant did not appear nor was he represented. I am satisfied that the notice of hearing was served by first class post upon the appellant at his last known address in Salford on 25 June 2019. The appellant has not given any or any adequate reason for his failure to attend and, in the circumstances, I proceeded with a hearing in the appellant's absence.

3. Mr Bates conceded that the First-tier Tribunal had erred in law. Notwithstanding the Secretary of State's current policy to return failed asylum seekers to Iraq only via Baghdad, the judge had considered it possible that the appellant could be removed directly from the United Kingdom or Turkey to the IKR. That finding was not supported by the existing country guidance (AA (Iraq) [2017] EWCA Civ 944) and the judge had failed to give any adequate reasons for departing from that guidance. It is the case that the judge found that the appellant had failed to prove that he had no family ties in Iraq but the judge's finding that he would be able to obtain a CSID after arriving in Iraq with the assistance of family members was speculative.

4. In the light of Mr Bates's helpful submissions, I set aside the decision of the First-tier Tribunal. The Upper Tribunal shall remake the decision at or following a resumed hearing. That resumed hearing will not be listed before 1 November 2019; by that date, fresh country guidance on the issues in this appeal should be available. Finally, I agree with Mr Bates that the grounds of appeal do not seek to challenge the judge's findings of fact on the appellant's account of past events in Iraq. Those findings shall be preserved. The only issues remaining to be determined in the Upper Tribunal are: (1) whether it is safe for the appellant to return to his home area of Iraq and; (2) if it is not safe, whether it would be unduly harsh for him to exercise internal flight by relocating in the IKR.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 19 January 2018 is set-aside. Save for the judge's findings as regard the safety of the appellant returning to his home area of Iraq and internal flight, the findings of fact are preserved. The appeal will be remade by the Upper Tribunal (Upper Tribunal Judge Lane) at a resumed hearing in Manchester not before 1 November 2019. Both parties may adduce fresh evidence provided that they serve on each other and file at the Upper Tribunal copies of such evidence no later than 10 days prior to the resumed hearing."

2. At the resumed hearing at Bradford on 23 October 2020, the respondent was represented by Mr Diwnycz. The appellant did not appear nor was he represented. A previous hearing had been adjourned after the notice of hearing had been sent to an incorrect address. However, I am satisfied that the address to which the notice of hearing for today had been sent was the correct address of the appellant. There is nothing on the file to indicate that the appellant had not received the notice of hearing. In the

circumstances, I proceeded with the hearing in the absence of the appellant.

3. Country guidance has developed since the First-tier Tribunal made its decision in this appeal in January 2018. In particular, the Upper Tribunal has promulgated its decision in *AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC)*. Further country guidance has appeared in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)*.
4. The Upper Tribunal is hampered to some extent in this appeal by the failure of the appellant to attend and, more particularly, to advance his case with the assistance of legal representation. I have preserved findings of fact from the First-tier Tribunal decision of 2018 but all that can now be said about this appellant is that he is of Kurdish descent, he does not have a CSID or passport and that he has failed to prove that he does not have family members in Iraq at the present time. Mr Diwnycz told me that the Secretary of State acknowledged that the appellant cannot obtain identity documents or a passport from the Iraqi Embassy in the United Kingdom. We know nothing of the appellant's knowledge of his family's registration details in Iraq such that would enable him to obtain documentation or whether his family members in Iraq would have those details would be able to obtain identity documents for him prior to his return to Baghdad. On the very limited information which we do have, and applying the appropriate lower standard of proof, I find that it is likely that this appellant would return to Baghdad (there are still no prospect of him returning directly to any other city in Iraq from the United Kingdom) without a CSID or its modern equivalent or a passport and that he would be exposed to a real risk of ill-treatment as a consequence and, without the identity documents he requires, he would be unable to travel by land or air to relocate in the IKR. Accordingly, I allow his appeal on Article 3 ECHR grounds.

Notice of Decision

I remake the decision. The appeal against the decision of the Secretary of State dated 16 November 2017 is allowed on Article 3 ECHR grounds.

Signed
Upper Tribunal Judge Lane

Date 23 October 2020

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.