



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

Appeal Number: PA/03383/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 19 June 2017**

**Decision & Reasons Promulgated
On 23 November 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**HH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jones, instructed by Sutovic & Hartigan, Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, HH, is a citizen of Iraq. By a decision which was promulgated on 25 April 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My decision was as follows:

1. The appellant, HH, was born in 1986 and is a citizen of Iraq. He is of Kurdish ethnicity. By a decision dated 18 March 2016, the appellant was refused asylum in the United Kingdom. He appealed to the First-tier Tribunal (Judge Atkinson) which, in a decision promulgated on 15 November 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Both parties agree that this appeal should succeed. In a Rule 24 letter of 30 December 2016, the respondent indicated that she does not oppose the application and “invites the Tribunal to determine the appeal [and to] consider the limited issue of the practicality of travel from Baghdad to the Iraqi Kurdish Region which appears absent from the [First-tier Tribunal] consideration at [48].” The Upper Tribunal finds that the First-tier Tribunal failed to address the following matters which it shall now address at a resumed hearing: (i) on the basis that the appellant cannot live in his home area of Iraq and must, therefore, seek to exercise internal flight within Iraq, whether it would be unduly harsh for the appellant, having arrived from the United Kingdom, to remain in Baghdad for any period of time at all before transferring to reside in the Iraqi Kurdish Region (IKR); (ii) assuming that it would be safe for the appellant to reside in the IKR in the short term, the practical travel and other logistical arrangements which would need to be undertaken to transfer the appellant safely from Baghdad to the IKR; (iii) on the basis that the appellant is able to gain entry in the IKR, whether it would be unduly harsh for him to remain living there indefinitely. The findings of fact of the First-tier Tribunal shall stand and the resumed hearing shall proceed by way of submissions only. There is no need for an interpreter.

Notice of Decision

3. The decision of the First-tier Tribunal which was promulgated on 15 November 2016 is set aside. The Upper Tribunal (Upper Tribunal Judge Clive Lane) shall remake the decision following a resumed hearing at Bradford on a date to be fixed. The findings of fact of the First-tier Tribunal shall stand. The appeal should proceed by way of submissions only in relation to the issues identified above (see paragraph 2). No interpreter required.

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. At the resumed hearing on 19 June 2017 at Bradford, Mr Jones appeared for the appellant and Mrs Pettersen, a Senior Home Office Presenting Officer, appeared for the respondent. Mr Jones gave oral submissions at the hearing and Mrs Pettersen asked if she could send a written decision to the Tribunal at a later date. No submissions have been received from her or any of her colleagues. I therefore proceeded to determine the appeal on the basis of Mr Jones’s submissions only.

3. The issues remaining to be determined by the Upper Tribunal were those set out in [2] of my decision of 25 April 2017. Mr Jones submitted that the appellant is a Kurd and a Sunni Muslim. It is accepted by both parties that he cannot return to his home area of Iraq. He had been living in the United Kingdom for ten years. I had the benefit at the resumed hearing of a witness statement by Tori Sicher who is a solicitor at Sutovic & Hartigan acting for the appellant in this case. In that statement, Miss Sicher describes how in March 2017 a number of Iraqi citizens had been detained “in order to be interviewed by Iraqi authorities in the UK”. The statement records that all the Iraqis of whom Miss Sicher was aware had been issued with removal directions to Baghdad. The removals were to be carried out on the basis of a *laissez passer*; the individuals concerned had no passport, identity cards or, importantly, CSID cards.
4. Mr Jones submitted that removals to Baghdad now took place subject to a *laissez passer* which had not been the case at the time the Upper Tribunal promulgated its Croft House decision (now, following appeal, see *AA (Iraq) [2017] EWCA Civ 944*). Mr Jones submitted that there seemed a realistic possibility, in the light of Miss Sicher’s evidence, that individuals such as the appellant in this appeal who has no CSID or passport would be removed on the basis of a *laissez passer* to Baghdad and that it was important to consider whether he would be at risk there. Mr Jones acknowledged that the appellant could attempt to fly to Erbil in the Independent Kurdish Region (IKR) but there was no evidence to show how soon he would be able to make a flight. Once he entered the IKR, issues would arise as to how he would survive there; unemployment rates are high and he would in the first instance, only be granted a visa for ten days.
5. I considered the submissions very carefully. It would appear from the decision of the Upper Tribunal in *AA* (subsequently subject to amended country guidance by the Court of Appeal) that, if he spends any time living in the capital, an individual such as the appellant, a Sunni Kurd, would be at real risk. Significantly, no evidence has been adduced by the respondent to show that the appellant would be safe during such periods as he may need to remain in Baghdad before onward transit to the IKR. I proceeded, therefore, on the basis that the appellant would remain in Baghdad City rather than at the airport awaiting a flight to Erbil. The length of his residence in Baghdad would be uncertain but, in the possession only of a *laissez passer*, the effect of which would have ceased upon his admittance to the country at the airport and, in particular, given that he has no CSID he would be unable to access government or local services and in light of the fact also that he has no family members living in Baghdad, I find that he would be at risk there and that expecting him to remain in Baghdad even for a short period of time would be unduly harsh. In the light of those findings, it follows that the appellant’s appeal must be allowed.

Notice of Decision

6. The appellant's appeal against the decision of the Secretary of State dated 18 March 2016 is allowed on asylum and human rights (Article 3) grounds.

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Signed

Date 31 October 2017

Upper Tribunal Judge Lane

**TO THE RESPONDENT
FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 31 October 2017

Upper Tribunal Judge Lane