



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

Appeal Number: PA043642016

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 May 2017**

**Decision & Reasons Promulgated
On 07 June 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**AHMED HASSAN KAKA ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Smith, instructed by Parker Rhodes Hickmotts,
Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Ahmed Hassan Kaka Ali, was born on 1 January 1988 and is a male citizen of Iraq. By a decision dated 21 April 2016, the respondent refused the appellant's application for asylum and made a decision to remove him as an illegal entrant/person subject to administrative removal. The appellant appealed to the First-tier Tribunal (Judge Fox) which, in a

decision promulgated on 10 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is a single male Kurdish Sunni Muslim. His home area of Iraq is Diyala. The respondent, although she refused the appellant's application, accepted that the appellant had a genuine fear of returning to Diyala which was objectively founded. However, the respondent considered that the appellant could avail himself of the internal flight alternative within Iraq and seek safety in particular in the Independent Kurdish Region (IKR). Judge Fox agreed. At [22-24] of his decision he wrote:

22. [The appellant] would have to source appropriate identification documentation once again *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)* confirms that it would not be impossible or too difficult for him to source such a replacement document if he returned to the IKR. I note that he previously held a Civil Status ID card (CSID). He claims that this was destroyed when his house was attacked. The objective information in Iraq notes that there is in existence an archival system which can be accessed to obtain replacement identity documents. He concedes that he has family who continue to remain in Iraq. He suggests he is not on good terms with his uncle. This contradicts his evidence that he fled originally to his uncle's house with his mother when his uncle supported his mother, after his departure from Iraq, until her death. I consider on the evidence before me today that he would be free to use family connections to assist him in replacing his identity documents, even if necessary via proxy.
23. Although a Kurd who does not originate from the IKR nonetheless he is able to obtain employment as an apprentice in the construction arena. He is clearly resourceful managing to make his way across Europe to come to the UK and working in Turkey for one year before electing to move on. His skills would be easily transferable to the IKR to assist him in obtaining employment. These skills will be equally transferable to the Safe Belts in Baghdad. *AA* and the background material suggested he could also relocate safely to the south of Iraq.
24. On the evidence before me today I do not accept the appellant has a genuine claim to be in need of international protection and that such fear he may claim to have I considered to be unfounded. The option to relocate is open to him. He demonstrates little in the way of positive evidence that would suggest that such relocation would be either unreasonable or unduly harsh.

3. I consider that Judge Fox has erred in law such that his decision falls to be set aside. I have reached that decision for the following reasons. First, I find that Judge Fox failed to apply *AA* in that he has failed to make findings as to the particular characteristics of this appellant and how those characteristics might influence his ability to relocate to the IKR. The judge has found that the appellant has employment skills [23] and that he has family members (in particular, an uncle) who may be able to assist him in obtaining a replacement CSID. However, the judge has not carried out assessment of the appellant's Arab language skills (the appellant said that

he has had only five years of education and speaks only limited Arabic) nor has he assessed the fact that the appellant does not have family members living in the IKR itself (the Tribunal in AA acknowledged that, in order to remain in the IKR long term, an individual would need to have such sponsors living there).

- 4.** Secondly, that whilst the judge found that the appellant's uncle would be able to assist him in obtaining replacement documents (in particular CSID), he appears to have ignored the fact that the uncle would need to travel to the disputed area of Diyala and thereby place himself at risk of ill-treatment in order to assist the appellant to obtain documents. The judge's decision is silent as to whether it is reasonable to expect the uncle or any other family member to undertake such a journey on the appellant's behalf. Thirdly, in Judge Fox's analysis, the appellant would return to Baghdad (the parties are agreed that that would be his point of entry to Iraq) but has failed to consider whether the appellant would be at risk living in Baghdad either short term (before he was able to afford and/or arrange travel to the IKR) or in the medium term. The judge found that the appellant's employment skills would be transferable "to the Safe Belts in Baghdad" but he has taken no account of other aspects of the appellant's profile (his Kurdish ethnicity, his lack of Arab language skills, for example) which might yet expose him to risk. The judge appears to have ignored also the fact the appellant has no family connections with Baghdad or friends living there. The appellant would be in Baghdad without a CSID; it does not seem likely that he would be able to obtain such a document, even through the agency of his uncle if that were reasonable, before he entered the city. As I have noted, the judge has not considered the practicality of the appellant's journey into the IKR from Baghdad. I also accept Miss Smith's submission that it is not likely that the appellant would be able to obtain work within a very short period of time within Baghdad in order to provide for himself whilst living there. In the circumstances, and in light of the errors of trial identified, I find that the decision cannot stand and I set it aside.
- 5.** I was invited to remake the decision by Miss Smith and I have proceeded to do so. I heard submissions from both Miss Smith and Mrs Pettersen, for the respondent, as regards remaking the decision. In considering the error of law, I have sought to characterise the appellant's profile upon return to Iraq but I shall now summarise it. The appellant is a relatively poorly educated Kurdish Sunni Muslim from a disputed area of Iraq. He has no family members who would assist him within the IKR as sponsor. Having regard to the background material, I find that he is unlikely to find short-term work within Iraq and, without a sponsor living in the IKR, he is unlikely to obtain permanent status in that region although I acknowledge that he may be admitted on a short-term basis. Whether or not the appellant has an uncle who would be able to assist him, it is not practical to expect the uncle to travel to Diyala in order to obtain a replacement CSID for the appellant. I have assessed risk, therefore, on the basis that the appellant would not have a current CSID either before he returned to Iraq or whilst he was living in Baghdad prior to his attempted removal to

the IKR. Mrs Pettersen referred me to a passage in AA where the Tribunal recorded that, although an entrant to the IKR may only be granted ten days additional leave to live there, there was no evidence that the authorities in the IKR actively sought to remove individuals who overstayed such permission. That may indeed be the case, but, without family support or employment, it would nonetheless be difficult for the appellant to maintain himself in the IKR without any formal status there which I find he is unlikely to achieve without sponsors living in the IKR or without any of the necessary documentation. In any event, the appellant is still faced with the following problems, namely (a) that he would have to remain in Iraq without means of support or documentation albeit even for a short period, where I find that he would be exposed to risk and; (b) before the appellant's status within the IKR may be considered, it is necessary to consider the possibility that he would be unable to make the journey safely from Baghdad to the IKR in any event. Having regard to all of the evidence and to the relevant passage of the country guidance, I am not satisfied that this appellant, in the absence of support or the necessary documents, would be able to support himself safely within Baghdad even for a short period of time or that he would be able to facilitate his own travel from Baghdad to the IKR. I accept, however, that if he were to reach the IKR, he may be able to reside there at least in the medium term without formal permission. The fact remains, however, that he is unlikely to reach the IKR safely and I therefore find that the appellant is entitled to a grant of humanitarian protection.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 10 October 2016 is set aside. I have remade the decision. The appellant's appeal is allowed. The appellant is entitled to a grant of humanitarian protection.
7. No anonymity direction is made.

Signed

Date 6 June 2017

Upper Tribunal Judge Clive Lane

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

Signed

Date 6 June 2017

Upper Tribunal Judge Clive Lane