Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/23942/2016**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 24 August 2017	**On 11 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, instructed by B Assured Law
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AA, was born in 1980 and is a male citizen of Iraq. He arrived in the United Kingdom in 2002 and claimed asylum. His application was refused. The appellant was subsequently granted exceptional leave to remain in October 2006 and indefinite leave to remain.

2. Following criminal convictions (September 2006 – violent disorder; April 2016 – fraudulent business activity) the respondent made a decision to deport the appellant on 16 May 2016. The appellant's subsequent asylum

claim was refused and the appellant appealed to the First-tier Tribunal (Judge Atkinson) which, in a decision promulgated on 18 May 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

3. I find that Judge Atkinson erred in law such that his decision falls to be set aside. I have reached that decision for the following reasons. It is accepted that the appellant comes from a contested area of Iraq (Diyala). The judge found that the appellant's account "of his family background is not reliable" [39]. However, the judge did accept the appellant does not speak Arabic and does not have any identity documents and has never been to or lived in Baghdad or the IKR. The judge found [46] that "the appellant does not have a viable internal relocation option within Baghdad or the south of Iraq". The judge went on to consider the possibility of the appellant relocating to the IKR. He observed that the authority of *AA* (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) indicated that a returnee could obtain entry to the IKR as a Kurd for ten days but was unlikely to be removed from the IKR even if unable to find work there [48]. The judge found [50] that it would not be unreasonable for the appellant to travel to the IKR. However, at [52] the judge found as follows:

> I find that the appellant would face some obstacles in finding employment in the IKR and therefore face some hardship. The economic situation in the IKR is described as being in crisis. The unemployment figures for 2015 are said to be in the region of 30%. Whereas there are doubts about the extent of his family in Iraq, there is no credible evidence before me showing the appellant would be able to call on family support in the IKR. I also find, as suggested by Dr Fatah [the appellant's expert witness], that the appellant may have some difficulties in adjusting to life in the IKR because he has been in the United Kingdom since 2002.

4. Notwithstanding those observations, the judge went on [53] to find that the appellant's relocation to the IKR would not be unduly harsh.

5. One would have expected following that finding that the subsequent paragraph [54] would provide the judge's reasoning for concluding that internal flight would not be unduly harsh notwithstanding the "difficult environment" which the judge had identified earlier in his analysis. However, at [54], the judge wrote:

> In coming to my decision, I also take account of the appellant's claim not to have relevant identity documentation. I follow the approach adopted in *AA* when faced with these circumstances and as such find that the appellant cannot succeed in his protection claim on the basis of an absence of such documentation. In the present case, as Dr Fatah has identified at section 6.4 of the report, it is open to the appellant to apply to the Iraqi Embassy in London to obtain his civil status identity card (CSID) and thereafter an Iraqi passport. I note in this respect the appellant has said that he has a brother in Diyala who may be able to assist him.

6. This paragraph is problematic. It does not, in my opinion, offer any justification for the judge's finding at [53] that internal flight would not be unduly harsh. Indeed, it is disconnected from the previous paragraphs in

which the judge had found that the appellant would face a "difficult environment" in the IKR. The judge fails to acknowledge the fact that the appellant's claim including that in respect of internal flight does not depend upon the "technical" difficulties in obtaining documentation. It is not clear how the appellant's brother in Diyala might assist the appellant in obtaining a CSID whilst in the United Kingdom. Moreover, it is not clear how the possession of a CSID would enable the appellant to settle in the longer term in the IKR. Moreover, the judge has not grappled with the fact that the appellant is likely to be returned to Baghdad (where the judge finds he would be at risk) or he might encounter serious difficulties in the relatively short period of time before he could arrange to travel onwards to the IKR. It is not clear whether that onward journey would be by air or overland; if the latter, the judge has not considered whether the appellant would be likely to face risk *en route*.

7. I agree, therefore, with Judge Froom, who granted permission to appeal in the First-tier Tribunal, that Judge Atkinson's analysis was incomplete. He has failed to address the matters which I have identified above and his paragraph [54] does not provide sufficient justification for his conclusion at [53] that the appellant would not find internal relocation in Iraq unduly harsh.

8. Mr Hussain urged me to proceed to remake the decision allowing the appeal. I have considered doing so but have decided that I should not. I am aware that both parties may wish to adduce new evidence concerning the circumstances which this appellant may encounter both in Iraq generally and should he exercise the option of travelling to the IKR. I am aware that there are direct flights from the United Kingdom to Erbil and it would be helpful to know the position of the respondent as regards the route by which it is proposed to return this appellant to Iraq. Moreover, it is not clear what attempts, if any, this appellant has made to obtain a CSID or any other documentation whilst he remains in the United Kingdom. This may be important given the judge's findings at [45] that the appellant would be "unlikely to identify individuals who would be willing to sponsor him [to settle in Baghdad] and thereby enable him to access accommodation and other services". It seems those findings are based upon the assumption that the appellant would not have a CSID, an assumption which is at odds with the judge's finding at [54]. However, I see no reason to interfere with the judge's finding that the appellant does have a family member living in Diyala. It is not clear what, if any, assistance that family member may be able to offer the appellant. I consider these are all matters which require further examination followed by clear and equivocal findings of fact by a Tribunal. This analysis is best conducted in the First-tier Tribunal. I set aside Judge Atkinson's decision but preserve his findings (which the appellant has not challenged in the Upper Tribunal) that the appellant has given a false account of his family members living in Iraq. The decision will be remade in the First-tier Tribunal on the basis of the fact that the appellant is Kurdish, from Diyala and that he has a brother or other family member living in Diyala. By the time this appeal is returned to the First-tier Tribunal for hearing that Tribunal will expect the appellant to give a full account of any attempts

which he may make whilst in this country to obtain documentation from the Iraqi Embassy.

Notice of Decision

9. The decision of the First-tier Tribunal which was promulgated on 18 May 2017 is set aside. The findings of the Tribunal which I have identified in paragraph [8] above shall stand. The appeal is returned to the First-tier Tribunal (not Judge Atkinson) for that Tribunal to remake the decision.

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.

Signed Date 5 September 2017

Upper Tribunal Judge Clive Lane

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

Signed Date 5 September 2017

Upper Tribunal Judge Clive Lane