

1. The Appellant is an Iraqi national who appeals a decision of the First-tier Tribunal (Judge Barcello promulgated on 24th January 2017, dismissing the Appellant's appeal on international protection grounds.
2. The Appellant appeals firstly on the basis that the judge was wrong to conclude that the Appellant could return to Baghdad. It was not a conclusion available to the FTTJ as it was not an argument relied upon by the Respondent.
3. I find there is no merit in that ground as the reasons for refusal are drawn wide enough to encompass a return to Baghdad.
4. The Appellant secondly challenges the decision on the basis that, even if the option of return to Baghdad was open to the First-tier Tribunal, the decision is inadequate in the context of current case law.
5. At the hearing both representatives were in agreement that in light of the most recent Court of Appeal decision in respect of the country guidance set out in the case of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC), to the point that the judge is required to assess the safety of an Appellant who has no CSID card on return to Baghdad, even if presence in Baghdad was to be in the short term before relocating to IKR, there had been an omission by the judge that amounted to legal error.
6. In light of that agreed error I canvassed with the representatives as to how I should exercise my powers. Mr Mills for the Respondent submitted that the matter should be remitted to the First-tier Tribunal because there was a degree of fact-finding beyond the usual remit of the rehearing in the Upper Tribunal.
7. Mr Simmonds for the Appellant sought to persuade me that I should set aside the decision of the First-tier Tribunal in its entirety, including the decision on relocation. He submitted that I could deal with the case shortly by simply focussing on the relocation position. The Appellant was bound to win. It is a waste of resources to remit the matter. I could straightforwardly find that it would be unduly harsh to expect him to relocate because, as per the case of HF (Iraq) [2013] EWCA Civ 1276 states at [116]:

"The Tribunal accepted, however, that she would need to return regularly to Kirkuk in order to use the PDS card and take advantage of the food subsidies."
8. Mr Simmonds invited me to set the decision aside and remake the decision in line with the factual finding of that paragraph finding that it was unduly harsh to expect the Appellant to relocate to IKR because he would similarly be required to travel to use food subsidies. He referred me to his grounds setting out the supremacy of HF over the Upper Tribunal decision of AA (on the basis that the Upper Tribunal could not overrule the Court of

Appeal. He asserted that the judge had simply failed to deal with the point that he had made.

9. I find no merit in that position. The First-tier Tribunal Judge did take on that argument. It is germane to point out that at [37] he says the following:

“As stated by the Court of Appeal in TM, KM and LZ (Zimbabwe) [2010] EWCA Civ 916 I ‘must treat as binding any country guidance authority relevant to the issues in dispute unless there is good reason for not doing so, such as fresh evidence which cast doubt upon its conclusions’.”

10. There is no merit in Mr Simmonds’ submission that the fact-specific finding relating to a person from Kirkuk, based on a system applicable at the time of the evidence in that case, provides better authority than an Upper Tribunal country guidance case which plainly deals with matters of difficulties some years later. The Court of Appeal themselves having only recently considered the Upper Tribunal case and maintaining its import, save as to the need to make findings as to the risk arising from the absence of documents on the date of hearing, really requires no explanation from me as to why the argument is legally hopeless. Further, paragraph 116 of HF is merely a note of a submission, and is not a factual finding of the Court of Appeal. Even if as a submission it accurately reflects a factual finding of the UT relevant to that individual, this case involves a different person at a different time. The issue is fact sensitive and must be assessed on an individual basis. It is misconceived to assert that the case of HK is determinative of the factual position here. The judge finds this Appellant has relatives in the IKR, and there is no evidence to conclude that they have problems caused by having to periodically return to Kirkuk, and relying on HF does not assist the Appellant in establishing any factual error. There is nothing in the grounds that disturbs the consideration of the relocation point.
11. In conclusion: the error of law is of the assessment of risk on return to Baghdad arising from documentary difficulties. Given that the judge, in line with the erroneous understanding of the legal duty of the time, considered the matter to be irrelevant to his consideration there is an inadequate consideration of the factual matrix, and accordingly it is appropriate to remit the matter de novo on this point. The judge will need to make the necessary factual findings in respect of documentation to determine whether the Appellant can safely be relocated to Baghdad in the long or short term, and whether or not he would be able to travel to the IKR. The Grounds of Appeal do not disturb the judge’s findings otherwise in terms of relocation to the IKR and those findings stand including the finding that should the Appellant be able to get to the IKR, it would not be unduly harsh to expect him to relocate there.

Decision

12. The decision of the First-tier Tribunal reveals an error of law in the assessment of risk on return to Baghdad and is set aside to that extent and remitted to the First-tier Tribunal for that point to be heard de novo. The case is remitted to Judge Barcello to resolve the documentary dispute.

Signed

Date

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

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

Signed

Date

Deputy Upper Tribunal Judge Davidge