



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

Appeal Number: PA/13044/2017

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 30 January 2019**

**Decision & Reasons Promulgated
On 6 March 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**R M F
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Garrett, instructed by Hazelhurst Solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 13 November 2017 refusing his claim for asylum and on human rights grounds.
2. The judge dismissed his appeal on all grounds. She found that he had not demonstrated any real risk of persecution. She adopted the earlier adverse credibility findings of the judge who heard an earlier appeal of the appellant in 2009. She thus found that the appellant had not had any profile and was not specifically targeted by insurgents. She did not accept his account in respect of his family and where he and they had lived and

to where they moved in respect of Kirkuk and Raniya in the KRG. She concluded that, in light of evidence subsequent to the country guidance which is annexed to the Court of Appeal's decision in AA (Iraq) [2017] EWCA Civ 944, country conditions had changed and Kirkuk was no longer a contested area and Article 15(c) risk as a consequence did not arise. She also dismissed the appeal in respect of Article 8 of the European Convention on Human Rights.

3. The appellant sought and was granted permission to appeal on the basis that the judge had failed to take account of the country guidance in AAH [2018] UKUT 00212 (IAC), which was handed down after the hearing by the judge but before her decision and reasons were promulgated. It was argued that in light of that guidance the judge's findings were inconsistent. It was also argued that the judge had erred in finding that Kirkuk was a place in which Article 15(c) risk no longer applied as this was contrary to extant country guidance, and it was clear that country guidance determinations were to be taken into account by Tribunal Judges unless there were very strong grounds supported by cogent evidence to justify them not doing so. It was also argued that the judge had erred in respect of the Article 8 issue in not taking into account delay by the Secretary of State in making the decision to refuse the claim.
4. At the hearing Mr Howells conceded that the judge had erred as contended in the grounds with regard to risk in Kirkuk. The reasoning in this regard was very limited, and the judge had not detailed the evidence and the basis for departing from the country guidance in AA.
5. With regard to the guidance in AAH, it was relevant if the appellant could not return to Kirkuk. As regards the ground concerning Article 8 and delay by the Home Office it was argued that the delay had not been raised in the skeleton arguments in January and May 2018. It might be best for the matter to be stayed behind the country guidance case to be heard later this year concerning the contested areas.
6. Mr Garrett on instructions preferred that the matter not be held back as there was no benefit or reason for so doing. If the appellant were unsuccessful then he could consider his position in light of the country guidance.
7. Mr Howells said the point was not pressed on behalf of the Secretary of State though it might be beneficial to await the country guidance on the point.
8. I concluded that there were errors of law in the judge's decision. She erred with regard to the country guidance matter in not identifying very strong grounds supported by cogent evidence to justify departing from the country guidance in AA. In addition she erred with regard to a failure to take into account the guidance in AAH in coming to her decision with regard to the documentation issue. In the circumstances I consider that given that the above matters need to be reconsidered there will need to

be a reconsideration of the Article 8 issue also. The credibility findings are preserved but otherwise the matter is remitted for rehearing by a judge other than Judge Baker at Newport on the matters identified above.

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 28 February 2019

Upper Tribunal Judge Allen