



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03859/2015

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice, Belfast
On 14 May 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

SHAHO OMER KADER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jebb, instructed by Nelson-Singleton Solicitors
For the Respondent: Mr Duffy, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Shaho Omer Kader, was born on 18 February 1986 and is a male citizen of Iraq. By a decision dated 11 December 2015, the Secretary of State refused the appellant humanitarian protection and asylum. The appellant appealed against that decision to the First-tier Tribunal (Judge Gillespie), which, in a decision, promulgated on 11 April 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Both representatives acknowledged that the First-tier Tribunal decision was vitiated by error of law. There had been a dispute before the First-tier Tribunal as to the area of Iraq from which the appellant originates. The appellant claims to be from Mosul,

whereas the respondent believes that he is from the IKR (Independent Kurdish Region). In reaching his determination of the appeal, Judge Gillespie did not make any finding which settled that vitally important issue. As a result, his conclusions at [46-47] were flawed. At [46], the judge noted that questions of “pre-clearance” for entry to the IKR only arose “where the appellant originates from the IKR and the respondent intends to return him directly to there. A Kurd who does not originate from the IKR can obtain entry from within Iraq for ten days initially and thereafter obtain a residence permit.” The judge recorded that the appellant spoke Kurdish Sorani, the official language of the IKR. He also noted that the appellant had no medical conditions which would restrict his ability to obtain employment. It is possible that the judge believed that the appellant was from the IKR possibly because he noted that the appellant claimed that his wife was a “Peshmerga soldier” but the fact remains that the judge made no firm finding either way. Notwithstanding that failure, he accepted the “feasibility of a return to the IKR.” At [47], the judge found that it would be “open to the appellant to secure a travel document that he can enter the IKR from Baghdad should he be returned there.” In the absence of any finding as to whether the appellant originated from the IKR, the sustainability of that finding is unclear. Equally, if the appellant did not originate from the IKR, then the judge has not properly considered whether the appellant would be at risk if he spent any time in Baghdad (see the country guidance provided in *AA (Iraq) [2017] EWCA Civ 944*).

3. The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The case will need to be remitted to the First-tier Tribunal (not Judge Gillespie) for that Tribunal to remake the decision. The next Tribunal will need to consider carefully whether this appellant is from the IKR or not. I note that, as of March 2018, international flights into Erbil have resumed and no doubt the First-tier Tribunal will consider that and all other recent developments in determining this appeal.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 11 April 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Gillespie) for that Tribunal to remake the decision.

No anonymity direction.

Signed

Date 16 MAY 2018

Upper Tribunal Judge Lane

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

Signed

Date 16 MAY 2018

Upper Tribunal Judge Lane