



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/06035/2019 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34**

**Decision & Reasons Promulgated  
On 19 November 2020**

Before

UT JUDGE MACLEMAN

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**A**

Respondent

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. In a decision promulgated on 26 January 2020, FtT Judge Bircher at [29 – 30] allowed A’s appeal on asylum grounds; dismissed the humanitarian protection claim; and allowed the human rights claim under article 3.
3. The SSHD’s appeal to the UT raises only one challenge. The SSHD’s decision held that the claim did not fall within the Refugee Convention. The FtT did not deal with that issue, and did not identify within which Convention category the claim fell.
4. The FtT granted permission on 24 February 2020.

5. The UT issued a note and directions on 1 May 2020, with a view to deciding without a hearing (a) whether the FtT erred in law and (b) if so, whether its decision should be set aside.
6. Neither party has submitted that a hearing is required.
7. The SSHD did not respond.
8. In an email dated 29 May 2020, the appellant's representatives said that they had not received submissions from the SSHD, and asked for an extension of time to respond.
9. By a note and further directions, dated 28 September and issued on 6 October, the appellant was given 21 days to make any submissions on whether the SSHD's grounds of appeal disclose error on a point of law; if so, whether the decision of the FtT should be set aside; and if it is set aside, on the further procedure, if any required, and on the outcome sought.
10. The SSHD was given the same period during which to submit on the outcome sought.
11. The UT indicated that at the end of that period, whether or not any responses were received, it would decide how to proceed further, and might reach a final decision; which, in absence of response, might be to set aside the decision of the FtT, on the basis that the claim discloses no Refugee Convention category, and to substitute a decision that the appeal, as brought to the FtT, is allowed on grounds of humanitarian protection and on human rights grounds (article 3).
12. There is no response on file from the SSHD.
13. The appellant's response, filed on 28 October 2020, acknowledges that the FtT did not consider "the Convention reason", and submits that it was imputed political opinion, based on refusal to follow the order of a superior in the *peshmerga*, "albeit outwith the scope of his employment". Alternatively, it is suggested that the case discloses that the appellant formed "part of a social group".
14. The UT may now resolve the case without a hearing, in terms of rules 2 and 34.
15. The FtT overlooked the question whether the claim fell into a Refugee Convention category, which was raised at [24 - 25] of the SSHD's decision, and was obvious. The issue points to a different outcome, so this requires the decision of the FtT to be **set aside**.
16. The appellant makes only token efforts to identify a Refugee Convention category. Pressure to become involved in diverting arms and ammunition to the black market does not involve either an imputation of political opinion, or membership of a social group.

17. The appeal, as brought to the FtT, is **allowed on grounds of humanitarian protection and on human rights grounds** (article 3).
18. The FtT made an anonymity direction. Parties have not addressed the matter in the UT. Anonymity is preserved.

Hugh Macleman

UT Judge Macleman  
13 November 2020

---

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.