



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02189/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport**

**Decision & Reasons  
Promulgated**

**On 9 October 2017**

**On 15 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

**Between**

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

Appellant

**and**

**M A**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer

For the Respondent: Ms Alban, Fountain Solicitors

**DECISION AND REASONS**

1. I refer to the Appellant in this case as the Secretary of State and to the Respondent as the Claimant. The Claimant is a citizen of Iraq. His protection claim was refused by the Secretary of State on 15 February 2017 and his appeal against this decision was allowed by First-tier Tribunal Judge B Lloyd in a decision promulgated on 31 March 2017. Permission to appeal to the Upper Tribunal against that decision was granted by First-tier Tribunal Judge Pooler in a decision dated 7 August 2017. He found that all grounds were arguable.
2. The Secretary of State relies on three grounds of appeal. Firstly, it is contended that the Judge's finding at paragraph 26 of the determination is

unsupported. The Judge found “There appears to be no dispute between the parties that the Appellant’s father has indeed been a long serving member of the Peshmerga”. The Secretary of State argues that this was in direct contrast to page 5 of the decision letter where it was stated “It is considered that you have failed to substantiate the aspect of your claim that your father was a member of the Peshmerga, furthermore this aspect of your claim has been vague, lacking in detail and inconsistent and therefore damages your credibility. The Secretary of State argues that the First-tier Tribunal failed to give clear reasons as to why it was accepted that the Claimant’s father was a long serving member of the Peshmerga. It is also submitted that the First-tier Tribunal found the Claimant’s account contained ambiguity and inconsistency at paragraph 31 of the determination and the First-tier Tribunal failed to give clear reasons as to why it had been accepted that the Claimant had given credible evidence.

3. It is also submitted that the First-tier Tribunal failed to give clear reasons why the Claimant could not seek protection from the authorities from a non-state actor if required throughout Iraq, excluding the contested areas.
4. It is further argued that in **AA (Article 15 (c) (Rev 2) [2015] UKUT 544 (IAC)** the Upper Tribunal held that internal relocation is possible and the First-tier Tribunal failed to give adequate reasons why relocation to Baghdad would not be possible again. Paragraphs 135 to 137 of that decision are cited and it is submitted that the First-tier Tribunal Judge gave no reasons for his conclusion why the Claimant could not satisfactorily relocate away from the IKR or even why relocation within the IKR excluding the contested areas is not possible.
5. At the hearing Mr Richards said that the sentence at paragraph 26 of the decision that there was “no dispute between the parties that the Claimant’s father had indeed been a long serving member of the Peshmerga” was not a concession by Ms Bowden who had represented the Secretary of State that there was no dispute between the parties and it was not clear where, if it was asserted that there was a concession, it arose. It was challenged in the refusal letter that he was a long-serving member of the Peshmerga. It was recorded that Ms Bowden put her case in line with the refusal letter and it was recorded that there was a fundamental lack of credibility in his account that he feared ill-treatment. It was recorded in paragraph 16 that Ms Bowden had submitted that the whole account was a fabrication. It was clear that there was no concession that he was a member of the Peshmerga. The Judge never really engaged with the challenge to the credibility of the Claimant’s account. He did note in paragraph 31 that he had provided credible evidence but no reasons were given for the positive findings in the face of the challenge made by the Secretary of State and his own finding that there was ambiguity and inconsistency in the Claimant’s account. He asked me to find that the inadequacy in the reasoning on the key parts of the evidence amounted to a material error by the First-tier Tribunal. It was not possible for the Secretary of State to know why matters had gone in the Claimant’s favour. If I agreed then the arguments on internal relocation and sufficiency of protection really were not entirely relevant. His fear was from an individual and not the state and no reasoning was given as to why, even

if the father had influence in the town in which they lived, throughout Iraq there would not be a sufficiency of protection including within the IKR. Similarly in terms of internal relocation the Judge found in paragraph 33 that the Claimant would not be able to relocate in the IKR or another part of the country. There was a lack of reasoning in terms of the IKR and in relation to other parts of Iraq. The grounds of appeal made the case for Baghdad with reference to the appropriate case law. The Judge considered internal relocation at paragraph 34. There was an absence of reasoning and it conflicted with the findings in the country guidance case of **AA**. He asked me in all of the circumstances to find that there was a material error and that the decision ought to be set aside and sent back to the First-tier Tribunal for a fresh hearing.

6. Ms Alban relied on the Rule 24 reply and submitted that at paragraph 16 of the decision the questioning and submissions amounted to a concession. She submitted that it was not material as adequate reasons had been given for finding that the account was credible to the lower standard. He was a minor. Paragraph 15 gave details of his evidence and the Judge concluded at paragraph 31 that he had presented credible evidence. The Judge was entitled to make the finding and had given sufficient details as to how he reached the findings. At paragraph 30 he explained his evidence and at paragraph 31 the Judge accepted that he had given a detailed history and that was the key issue that had been addressed. With regard to sufficiency of protection, his father had connections within the states and reasons had been given for why he could not seek protection. He noted Ms Franchina's submissions and the Claimant's evidence and was entitled to find at paragraph 33 that he could not seek protection due to his father's connections. With regard to internal relocation, relocation to Baghdad it had never been put forward. During the hearing the Secretary of State accepted that relocation would be to the IKR. At paragraph 33 the Judge considered the Claimant's youth and Sunni background. Even though it was not raised he considered it and gave reasoned findings. He was entitled to find that he would be safe relocating. She referred to her skeleton and R24 for full submissions.
7. I reserved my decision as to the error of law and outcome.

### **Discussion**

8. It was the Secretary of State's case, as set out at page 5 of the decision letter, that the Claimant had failed to substantiate the aspect of his claim that his father was a member of the Peshmerga and that this aspect of his account had been vague, lacking in detail and inconsistent and therefore damaged his credibility. It was also concluded that his claim to have been the victim of domestic abuse at the hands of his father was also vague and lacking in detail.
9. The First-tier Tribunal recorded the evidence at paragraphs 11 to 18 of the decision. It is recorded at paragraph 16 that the Secretary of State's submission was that the whole account was a fabrication. At paragraph 26 it was noted that the Secretary of State put her case very much in line with

the refusal letter. In the same paragraph the Judge notes “There appears to be no dispute between the parties that the Claimant’s father has indeed been a long serving member of the Peshmerga.”

10. I find, having considered the decision as a whole, that there is nothing to indicate that the Secretary of State conceded the point taken in the refusal letter that the Claimant’s account that his father was a long serving member of the Peshmerga was not a credible one. The First-tier Tribunal does not record that the point was conceded and it is clearly recorded that the Secretary of State relied on the refusal letter and argued the case on the basis that the whole of the Claimant’s account was a fabrication. In the circumstances I find that the Judge misapprehended the Secretary of State’s case. No reasons were given for the conclusion at paragraph 31 that:

“Although there is some ambiguity and inconsistency in the account which the Appellant has given I believe he has presented credible evidence having regard to the lower standard of proof to which he must adhere. I believe that he has suffered violence as well as pressure to associate himself with his father’s activities in the Pesmerga.”

11. In view of the fact that the Secretary of State contended that the Claimant’s account was a fabrication this conclusion was inadequately reasoned. It follows from this that the findings in respect of sufficiency of protection and internal flight also cannot stand.
12. In the light of the fact finding required taking account of Part 7.2 (a) of the Practice Statements for the Immigration and Asylum Chamber of the First-tier Tribunal and Upper-Tier Tribunal I remit the matter to the First-tier Tribunal.

### **Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for re-hearing.

### **Anonymity**

The First-tier Tribunal made an order and I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

A handwritten signature in black ink, appearing to read 'L J Murray', enclosed within a thin black rectangular border.

Deputy Upper Tribunal Judge L J Murray