



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

Appeal Number: PA/07971/2016

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 29 August 2017**

**Decision & Reasons Promulgated  
On: 30 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**[A H]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Martin, instructed by Barnes Harrild & Dyer Solicitors  
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Iraq of Kurdish ethnicity born on [ ] 1989. He arrived in the United Kingdom on 15 January 2016 and claimed asylum on 17 January 2016. His claim was refused on 15 July 2016. He appealed against that

decision and his appeal was heard before the First-tier Tribunal and was dismissed in a determination promulgated on 16 February 2017. Permission to appeal to the Upper Tribunal was granted on 12 June 2017.

2. The appellant claims to come from a village near Mosul and to have been captured, together with other villagers, by Daesh, when they attacked his village in June 2014. He claims to have been transported to Mosul and to have been detained for nine months in various prisons where he was beaten and tortured, before escaping in March 2015 and fleeing to the Kurdish Region of Iraq (IKR). He claims to have resided in a camp in Paramegnoon in the IKR and to have been assaulted by a family of Arabs because of his Kurdish ethnicity.

3. The respondent, in refusing the appellant's claim, accepted that he was Iraqi and Kurdish but did not accept that he was captured or detained by Daesh and did not accept that he was attacked by a family of Arabs in the IKR. The respondent accepted that the appellant could not return to Mosul due to the internal armed conflict in that area but considered that he could relocate to the IKR.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Boyes on 15 February 2017. Judge Boyes found that the appellant would be at risk if returned to an ISIS controlled area but considered that he would not be returned to such an area in any event. For that reason he did not make any findings on the appellant's account of capture and torture, which he considered to be a collateral issue. He concluded that the appellant could internally relocate to the IKR where he would be able to secure entry and would not be at risk of persecution. He accordingly dismissed the appeal on all grounds.

5. Permission to appeal was sought by the appellant on various grounds and was granted on the basis that the judge had arguably failed properly to apply the country guidance in AA (Article 15(c)) [2015] UKUT 544 and to make findings on material matters.

6. The matter then came before me on 29 August 2017. Mr Singh agreed with Mr Martin's submission that the judge's lack of findings on the appellant's account of his capture and torture was a material error of law, given that the key issue in the case was internal relocation and that a past experience of torture was relevant to the question of reasonableness of relocation. In view of the judge's failure to make any findings on that material matter, and given also the lack of consideration by the judge of how the appellant would reach the IKR from Baghdad and his ability to remain in the IKR in light of his claim to have no family or support, it was agreed by all parties that the judge's decision was unsustainable and had to be set aside and that the decision in the appeal had to be re-made in its entirety.

## **DECISION**

7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, with no findings preserved, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Boyes.

Signed 

Upper Tribunal Judge Kebede  
2017

Dated: 29 August