



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10047/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Birmingham
On 10th August 2017**

**Decision and Reasons
Promulgated
On 15th August 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**RFA
(ANONYMITY ORDER MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Barnfield, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a male national of Iraq born in 1994.

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant is accepted to be a national of Iraq. The basis of his claim for international protection is that his home area in the Nineveh governate is ‘contested’, that is to say that there is there a conflict between ISIS (or Daesh) and the government of Iraq and associated forces. This conflict results in indiscriminate violence that presents a real risk of harm to civilians. The Appellant further stated that he could not avail himself of ‘internal flight’ anywhere else in Iraq. He claimed that as an undocumented Kurdish man with no connections to the city, life in Baghdad would be unduly harsh. He was unable to safely move to the Independent Kurdish Region (IKR) because of his family’s historical links to the Ba’athist regime of Saddam Hussain. The Appellant stated that an uncle who had ventured into the IKR had been killed by members of the Muziri tribe because of that association.
4. In her refusal letter dated 7th September 2016 the Respondent accepted [at paragraph 35] that the Appellant is from Qabussi village, Shinghal, Nineveh province. She further accepted that his detailed account of events, in particular the advance of Daesh in August 2014, was consistent with the background information. The Respondent accepted that the Appellant’s home is in an area where Article 15(c) is engaged. The claim was refused however, on the grounds that the Appellant could avail himself of a safe and reasonable internal flight alternative. His claim that he was in danger in the IKR because of his family associations was expressly rejected.
5. When the matter came before the First-tier Tribunal the Appellant relied on both asylum and humanitarian protection grounds. He submitted there to be a currently well-founded fear of harm because of his family association with the Ba’athist regime, and averred that he would not be able to live in safety in the IKR. In the alternative, he submitted that as an undocumented Iraqi national with no connections to the IKR he would face considerable civil, political and socio-economic difficulties in re-establishing himself there.
6. The First-tier Tribunal dismissed the appeal on all grounds.
7. The Appellant was granted permission to appeal on the 12th May 2017 by Designated Judge of the First-tier Tribunal Shaerf who considered it

arguable that the First-tier Tribunal had not engaged with the case as put by the Appellant. The decision had failed to refer to the country guidance, or apply the appropriate tests in consideration of internal flight.

Discussion and Findings

8. I need say little about the detailed substance of the grounds because before me Mrs Aboni recognised that she was in some difficulty in defending this decision. In particular, she conceded that the Tribunal had not turned its mind at all to the question of internal flight, apparently proceeding on the assumption that the brief rejection of the refugee claim disposed of the entire appeal.
9. Having heard from both parties I am satisfied that the decision must be set aside for the following errors of law:

- (i) Failing to make findings on relevant matters.

The determination makes no finding on whether or not it would be unduly harsh to expect the Appellant to relocate within Iraq, for instance to the IKR. Even if the asylum element of the claim was properly rejected, this remained a relevant question in respect of Article 15(c).

- (ii) Failing to take relevant evidence into account.

The Appellant's claimed fear of armed elements in the IKR is rejected on the basis that his grandfather and father had not to date been harmed. No consideration was here given to the evidence that these gentlemen were not living in the IKR, and so were out of the reach of the elements feared.

At paragraph 13 the Tribunal states that there is "no evidence" to suggest that the Appellant's family have had any difficulties since the fall of Saddam. This would appear to overlook his claim that his uncle was killed by the Muziri tribe in the IKR because of his associations with the former regime.

- (iii) Perversity

At paragraph 15 the Tribunal finds, on the basis of a sojourn in France, that the Appellant was not truly seeking international protection, and that he simply wanted to come and live in the UK. Given that the Respondent had accepted that Daesh had taken over the Appellant's home town, and that his account of fleeing the Mount Sinjar area along with many thousands of others was detailed and credible, I cannot be satisfied that this was a finding reasonably open to the Tribunal.

The Appellant's claim may in the final analysis be defeated by other issues, but it cannot rationally be said that he had left Iraq just because he wanted to come to the UK.

(iv) Failure to give the claim anxious scrutiny

This was a detailed account very largely supported by objective background information. This determination entirely fails to engage with the account itself, and as noted by Judge Shaerf, makes no attempt to evaluate the claim in the context of the country background material, nor indeed the extant country guidance.

10. The parties were in agreement that the appropriate course of action would be for the matter to be remitted to the First-tier Tribunal so that the decision can be re-made *de novo*. Having had regard to the extent of judicial fact finding required, I accept that this must be so.

Decisions

11. For the reasons set out above I am satisfied that the decision of the First-tier Tribunal contains a material error of law. The decision is set aside in its entirety.
12. There is an order for anonymity.

Upper Tribunal Judge Bruce
10th August 2017