



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

Appeal Number: PA/13752/2016

THE IMMIGRATION ACTS

Heard at Manchester

**Decisions and
Promulgated**

Reasons

On 10 July 2017

On 11 July 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AK
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Farrell, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to his international protection claim.
2. The appellant is a citizen of Iraq. He is a Kurd who was born and lived in Tuz Khurmatu, Salah al-Din province before leaving Iraq in 2015. His asylum claim was based upon the armed conflict in that area and his fears for his own safety and the safety of his wife and children.

Procedural history

3. In a decision dated 26 January 2017 the First-tier Tribunal dismissed the appellant's appeal after finding his account of what happened in Iraq not to be credible.
4. In a decision dated 18 May 2017 First-tier Tribunal Judge Kelly granted permission to appeal observing that it was arguable that the First-tier Tribunal gave inadequate reasons for rejecting the explanation provided by the appellant regarding apparent inconsistencies in his evidence. He also considered that the First-tier Tribunal arguably applied too high a standard of proof by referring to the appellant's account as not being "convincing".
5. The respondent submitted a rule 24 notice dated 30 May 2017 in which she submitted that the First-tier Tribunal was entitled to draw adverse inferences from the appellant's evidence and in any event found internal relocation was viable for this appellant.

Hearing

6. At the beginning of the hearing Mr McVeety accepted that the appeal was unopposed and the decision needs to be remade in its entirety. He was entirely correct to do so for the reasons set out below.
7. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

8. I can state my reasons briefly given the respondent's concession.

Country background evidence

9. When asked to briefly explain his reasons for claiming asylum at the screening interview the appellant said that he feared ISIS and the Iraqi army and then said this: *"They kill lots of people back home. They fight and the war has been going on for a long time, it's not safe for me or my family. I was tortured by army and I fear I or my family will be killed one day if I had to go home"*. At his substantive asylum interview in response to question 36 the appellant claimed that he feared ISIS and Hasht-Al Shabi ('the militia'). At question 97 the appellant was asked why he said at the screening interview that he was tortured by the army and he answered: *"That is what I meant by the Shia Muslims, they are part of the army, they were torturing anyone not just me, I was going to explain that to you when you stopped me"*. He then explained that in 2015 the militia would drag everyone out of their houses in order to mistreat, threaten and torture them (Q 98-106).
10. The country background evidence supports the appellant's evidence in two significant respects set out below.
11. First, as acknowledged by Mr McVeety, the militia is seen to be encompassed within the Iraqi army. The organisations cannot properly be described as distinct, as was done in the rule 24 response. References to the strong interconnectedness between the militia and the army is set out in the background evidence adduced on behalf of the appellant. For example, at page 105 of the appellant's bundle a report from the Carnegie Middle East Centre dated 16 November 2015, says this:

"During his address to the UN General Assembly in September 2015. Iraqi Prime Minister Haider al-Abadi declared that al-Hashd al-Shaabi (popular mobilisation) forces are part of the official state. Yet, it is no secret that Abadi has never been comfortable with the Hashd - an umbrella organisation of various non-state armed groups that have never been directly accountable to the prime minister. Some of the groups and fighters under the umbrella have been accused of committing crimes during various battles."
12. As Mr McVeety acknowledged the background evidence clearly explains why the appellant would perceive the Iraqi army and the militia to be interchangeable. He was therefore correct to concede that the adverse inferences drawn at [24 and 25] are unsupported by the country background evidence.
13. Second, the appellant's claim that he lived in a part of Iraq that was contested and in a state of internal armed conflict is consistent with the respondent's country information relevant to the material time in

2015 – see AA (Art 15(c)) Iraq CG [2015] UKUT 544 (IAC) at [36 and 101-106]. This describes systematic and widespread acts of violence in Salah Al-din at the time that the appellant fled the area. The First-tier Tribunal states that it considered all the material at [23] but it is difficult to see that the plausibility and credibility of the account in the home area was considered in the context of the country background evidence. The First-tier Tribunal has also erred in law in requiring the appellant to corroborate the assaults and torture he experienced in his home area at [26]. Aside from erroneously requiring the appellant to provide corroboratory evidence, the First-tier Tribunal has failed to take into account how difficult corroboration would be for the appellant when the home area was in a state of internal armed conflict at the relevant time.

Further errors of law

14. The two errors identified above are sufficient to vitiate the decision but there are further errors of law which I set out briefly.

- (i) As noted when permission to appeal was granted, the First-tier Tribunal has erroneously referred to matters being unconvincing (see for example references at [25-26]), instead of applying the correct lower standard of proof. The correct application of the standard of proof is a fundamental requirement in the determination of an asylum appeal.
- (ii) The First-tier Tribunal has not addressed how the appellant returning without a CSID. The appellant indicated at interview (Q 48) that he did not have a passport. His home area has, at least until relatively recently, been in a state of internal armed conflict. The First-tier Tribunal briefly addressed the fact that the appellant does not have “*identification documents*” at [29] and inferred that he should have contacted the authorities to obtain replacement documentation without addressing [187] of AA.
- (iii) In so far as the reference to identification documents at [29] is in relation to the IKR, it is difficult to understand why this is relevant given the guidance in the headnote at 17 of AA.
- (iv) The First-tier Tribunal has implied at [29] that it will not be unreasonable for the appellant to internally relocate to Baghdad without addressing the factors at 15 of the headnote in AA.
- (v) In considering the reasonableness of relocation to the IKR, the First-tier Tribunal has failed to take into account how the appellant together with his wife and children will be able to safely travel from Baghdad to the IKR – see 17 and 20 of the

headnote in AA.

15. It follows, as agreed by both representatives, that the First-tier Tribunal's conclusions on credibility and internal relocation are vitiated by errors of law and unsafe. The decision must be remade entirely and de novo.

Decision

16. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
17. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 July 2017