



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: PA/03828/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On January 18, 2018**

**Decision & Reasons  
Promulgated  
On January 22, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR S F M  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Ms Daykin, Counsel, instructed by Tuckers Solicitors  
For the Respondent: Ms Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I extend the anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is a citizen of Iraq. He entered the United Kingdom on November 29, 2015 claimed asylum the following day.
3. The respondent refused his application on April 2, 2014 under paragraph 336 and 339F HC 395.

4. The appellant appealed that decision on April 18, 2016 and the appeal came before Judge of the First-tier Tribunal Cooper (hereinafter called the Judge) on May 19, 2017. In a decision promulgated on June 13, 2017 the Judge dismissed his appeal on all grounds.
5. The appellant appealed that decision on June 27, 2017 arguing the Judge had erred. Permission to appeal was initially refused by Judge of the First-tier Tribunal Pedro on September 25, 2017. Grounds of appeal were renewed and on November 21, 2017 Upper Tribunal Judge Storey granted permission to appeal finding it arguable the Judge may have erred in her approach to internal relocation and sufficiency of protection.
6. The respondent filed a Rule 24 response in which she opposed the permission.
7. The case came before me on the above date and the parties were represented as set out above. Having heard submissions, I reserved my decision.

### **SUBMISSIONS**

8. Ms Daykin adopted her grounds of appeal and submitted the Judge erred in her approach to sufficiency of protection within the IKR. The Judge had found the appellant's claim credible and in doing so she accepted that he had been attacked by an unknown terrorist group in Sulaymaniyah in 2011 and he had to flee the area. The Judge also accepted that the appellant, his parents and his mentally disabled brother were moved by the Asayh to Mosul to a place of safety paid for by the security forces. The appellant's sister, brother-in-law and maternal aunt and uncle remained in Sulaymaniyah and were never approached by the authorities. The Judge accepted the appellant found work in Mosul working in the local PUK headquarters as a chef and he remained in Mosul until Daesh entered Mosul in June 2014 at which time it was no longer safe to remain there and he and his family fled and went to a refugee camp in Turkey. The issue for the Judge was whether he could be safely returned to the IKR as the Judge accepted return to Baghdad was not possible. Ms Daykin submitted that against the above findings the Judge erred in finding he could return either to a place where he had to flee from or to another part of the IKR.
9. Ms Pal adopted the Rule 24 response and submitted the Judge's conclusion the appellant could safely return was a finding open to her. She had noted that since 2011 his sister and other family members had not been approached by anyone looking for him. This suggested he was no longer of interest to anyone either in Sulaymaniyah or elsewhere in the IKR.
10. In response Ms Daykin made the point that the appellant's family in Sulaymaniyah had never experienced any problems but this had not prevented the Judge accepting the threats had been made. She pointed to the Judge's finding at paragraph 30(vi) of the Judge's decision in which the Judge recorded the appellant had to leave the IKR because the security forces decided he would not be safe there.
11. Having heard the submissions I reserved my decision.

### **ASSESSMENT OF ERROR IN LAW**

12. The Judge found the appellant was a credible witness and stated at [49] of her decision-

“I find that the appellant has demonstrated he did have a well-founded fear of reprisal from the terrorist group and that as a result his family were provided with protection from the KRG with armed security in Sulaymaniyah and their subsequent relocation to another city. I find the evidence demonstrates the Asaysh were unable to provide the appellant with adequate protection in Sulaymaniyah in 2011. However, the move to Mosul afforded the family adequate protection as on the appellant’s own account he and his family lived without difficulty in Mosul until Daesh entered the city in June 2014.”
13. At [50] the Judge reminded herself that she was now concerned with whether the appellant’s fear was now well-founded and whether the authorities would be able to provide sufficiency of protection. From [51] onwards the Judge considered this issue.
14. The Judge concluded the appellant could return to the IKR because:
  - (a) The risk posed to the appellant in 2011 had been from unknown non-state agents.
  - (b) Since fleeing Sulaymaniyah the appellant’s remaining family had experienced no problems whatsoever with this unknown terrorist group.
  - (c) There was no supporting evidence that the appellant would be at risk in another part of the IKR and the letter from the Brigadier General of the Asaysh made no mention of any ongoing threat or risk nor did it indicate the KRG (now IKR) would be unable to provide protection.
  - (d) The terrorists did not find him in Mosul so no reason to assume they would find him in the IKR.
  - (e) The fact witness protection was provided in 2011 suggests there is a willingness to provide protection even within Sulaymaniyah.
15. The issue in this appeal is simple namely were the Judge’s conclusions open to her or were they perverse or not sustainable in light of the evidence and findings made.
16. The Judge clearly spent a considerable period of time considering the evidence in this appeal and in many respects, she accepted what the appellant claimed. When considering the risk in June 2017 the Judge had to decide (a) did the risk remain in the IKR be that Sulaymaniyah or elsewhere and (b) was there sufficiency of protection.
17. The purpose of an appeal to the Upper Tribunal is not to reconsider the evidence that was presented but to consider whether the Judge, in reaching a conclusion, had made an error in law.

18. In R and Others v SSHD (2005) EWCA Civ 982 Lord Justice Brooke summarised the points of law which would be encountered most frequently in practice as follows:
- (i) making perverse or irrational findings on matters that were material to the outcome
  - (ii) failure to give reasons or any adequate reasons for findings on material matters
  - (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters
  - (iv) giving weight to immaterial matters
  - (v) making a material misdirection of law on any material matter
  - (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or fairness of the proceedings
  - (vii) making a mistake as to a material fact which could be established by objective and uncontentious evidence when the appellant and/or his advisors were not responsible for the mistake and where unfairness resulted from the fact that a mistake was made.
19. I have to ask myself whether any of the findings made by the Judge fell into the above categories and it seems the only potential argument that Ms Daykin could put before me was contained in [18(i)].
20. Ms Daykin argued that the fact the family had not been contacted was not relevant. The Judge felt it was a relevant fact and gave reasons for reaching that conclusion and went further by stating that if this group was so powerful then why had no attempts been made to locate him elsewhere. That conclusion was one the Judge was entitled to form.
21. The country evidence, referred to by the Judge, identified that protection is available and the fact the appellant previously received such protection was evidence of that fact. The Judge clearly felt circumstances in 2011 were different to those facing her today. The appellant may feel he is unable to return to Sulaymaniyah, despite the lack of activity against him, but the Judge gave reasons why return elsewhere within the IKR was possible.
22. The findings made by the Judge are neither perverse nor irrational. They were well reasoned and in those circumstances, it would be inappropriate for the Upper Tribunal to interfere with the Judge's decision.

**NOTICE OF DECISION**

23. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the Judge's decision.

Signed

Date January 18, 2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award is payable because the appeal has been dismissed.

Signed

Date January 18, 2018



Deputy Upper Tribunal Judge Alis