



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

**Appeal Number: PA/05239/2019**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 10 January 2020**

**Decision & Reasons Promulgated  
On 6 February 2020**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

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

**Appellant**

**and**

**MOHAMMED SHWAN HASSAN**

**Respondent**

**Representation:**

For the Appellant: Mrs R Pettersen (Senior Home Office Presenting Officer)

For the Respondent: Ms F Khan (Counsel)

**DECISION AND REASONS**

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 4 September 2019 (the date of its written reasons) following a hearing of 9 July 2019. The tribunal's decision was to allow the claimant's appeal against a decision of the Secretary of State of 17 May 2019 refusing to grant him international protection.

2. I have not ordered anonymity. The tribunal did not do so and I was not invited to consider doing so by the claimant's experienced and competent counsel.

3. By way of brief background the claimant, who was born on 6 April 1995, is a male national of Iraq of Kurdish ethnicity. He is from Erbil which is located in the part of Iraq under Kurdish administrative control (the IKR). In seeking international protection, he had claimed to be at risk if returned to Iraq at the hands of family members of a man he had knocked down and injured in a car accident. He says that, in consequence of that risk, he fled Iraq in October of 2018 and travelled to the United Kingdom (UK) via Turkey, Greece, Italy and France. He claims that certain family members of the person he injured are influential because they are Peshmergas and are members of a political party which operates in the IKR and which is called the Kurdish Democratic Party (KDP). He also says that he would not be able to internally relocate either within the IKR or to some other part of Iraq.

4. The Secretary of State, in considering the application for international protection, disbelieved the claimant. That was for a number of reasons including his failure to claim asylum in a safe country prior to entering the UK. The Secretary of State also made the point that the claimant's account even if true did not disclose the existence of an applicable 1951 Refugee Convention reason.

5. The claimant was represented, before the tribunal, by Counsel. He gave evidence to it. There were no other witnesses. The Secretary of State was not represented before the tribunal. The tribunal decided not to adjourn the proceedings despite the lack of a representative for the Secretary of State. Having heard from the claimant the tribunal accepted, to the lower standard applicable in cases where international protection is sought, that he had given a truthful account of events. It did so for reasons which it explained, in some detail, in a passage running from paragraph 38 to paragraph 46 of the written reasons. At paragraph 47, the tribunal explained why it did not think there would be a sufficiency of protection if he were to return to the IKR. At paragraph 48 the tribunal, in considering the prospect of internal relocation within Iraq, suggested that the Secretary of State had failed to give a clear indication as to where it was thought the claimant could relocate to. At paragraphs 50 and 51 it explained why it thought, if the Secretary of State had asserted that the claimant could relocate to Baghdad, that would have been wrong.

6. The tribunal did not allow the appeal on asylum grounds because it did not think that there was an applicable 1951 Refugee Convention reason. But it did allow the appeal on humanitarian protection grounds. The Secretary of State's application for permission to appeal to the Upper Tribunal followed. What was said in support of the application was not separated into distinct grounds but the propositions advanced may be summarised as follows: the tribunal erred through adequately explain why, in the absence of the Home Office Presenting Officer, it was not adjourning; the tribunal erred through not fully addressing the impact and relevance of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 coupled with what had been said in *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878 when addressing credibility; the tribunal provided inadequate reasons for its factual findings; the tribunal erred through failing to adequately explain its view that the claimant could not safely relocate within the IKR; the tribunal erred through effectively reversing the burden of proof with respect to internal flight; the tribunal erred through failing to explain what caselaw it had in mind when assessing the prospect of internal flight to Baghdad; the tribunal erred through failing to have regard to a document known as the February 2019 CPIN Iraq: Internal Relocation, Civil Documentation and Returns. I appreciate that the order I have set

those propositions out is not the same as they are set out in the actual grounds themselves. But I cannot see that that matters.

7. As to the ground concerning the tribunal's decision to proceed rather than to adjourn, the tribunal noted, at paragraph 14 of its written reasons, that it had been notified that there would be no Presenting Officer in attendance due to operational constraints and that "a request was made requesting that the tribunal to adjourn the appeal or alternatively if the tribunal proceeded with the appeal to then consider the reasons for refusal letter and dismiss the appeal". The tribunal then went on to say, in effect, that it decided not to adjourn because it was satisfied that it could proceed in the absence of a Presenting Officer and justly decide the appeal. It also indicated that a further factor in its thinking was its reluctance to prolong or delay matters.

8. The decision whether to adjourn or to proceed was, essentially, a case management decision which, absent perversity or irrationality, was one for the tribunal to take, applying its expertise and experience. It was open to it to take the view that it could fairly decide the appeal and it was open to it to attach weight to the undesirability of prolonging matters. It is not remotely arguable that the tribunal was obliged, as a matter of law, to adjourn. What is said in the grounds, in my judgment, does not go beyond a disagreement with the tribunal's permissible finding. I do, therefore, reject that ground of appeal.

9. As to the argument about credibility and section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, I cannot see that the reference to caselaw adds anything. It is right to say, of course, that the claimant had passed through a number of European countries on his way to the UK and had not claimed in any of them including, in particular, France. The tribunal knew that and expressly referred to his journey at paragraph 26 of its written reasons. At paragraph 38 of its written reasons it said that the "failure to claim asylum en-route undermines his credibility". It then went on to immediately make the point that it was still necessary for it to assess his claim against the backdrop of that damaged credibility. It seems to me that, in fact, what the tribunal did was what the Secretary of State in the grounds has suggested it should have done. It is obvious that section 8 is not determinative but it is equally obvious that the tribunal was statutorily obliged to take certain behaviour specified in section 8, such as a failure to claim in safe countries visited on the way to the UK, into account. It did that. It was obliged to do no more than that. It did not err in law and I reject that ground of appeal.

10. There is then the contention that the tribunal gave inadequate reasons for its factual findings. Essentially, this is a complaint that it did not adequately explain why it believed the claimant's account. In explaining why it did believe it, it made the points that the account had been largely consistent; that the claimant's assertion that he had been asked to pay a large sum of money as compensation for the injuries he had caused was in line with background country material; and that what he had said about responding to the situation he found himself in by relocating to a friend's house and hiding there was credible. A tribunal does have to give adequate reasons for its decision. It is important that it achieves that task but it is a relatively undemanding one. It is clear to a reader of the written reasons why it is that the tribunal decided to accept the claimant's account. There is nothing perverse or irrational about its reasoning. I would readily accept that a differently constituted tribunal might have reached a different view as to credibility on exactly the same evidence. But, in the context of resolving whether this tribunal actually erred in law, that is not a consideration. The tribunal gave adequate reasons for believing the claimant

and it was open to it on the material in front of it to believe him. I reject this ground of appeal.

11. There is then the contention that the tribunal did not adequately explain its conclusion that it would be unsafe for the claimant, on the assumption that he had given a truthful account, to relocate outside of Erbil but in another part of the IKR. But, as to that, the tribunal had found that the claimant was a witness of truth and had accepted, therefore, his assertion that the person he had injured had relatives who had been involved with the KDP and who were Peshmergas. Accordingly, in my judgment, it was open to the tribunal to conclude that there would be a risk at the hands of the relatives in the IKR and that, further, the authorities would not be in a position to afford protection. On any view, the KDP is an influential organisation within the IKR. I reject this ground of appeal.

12. There is then the contention (which is what it amounts to even if not put exactly in this way) that the tribunal effectively reversed the burden of proof when considering the availability of an internal flight alternative. But that was not the way in which the tribunal approached or decided matters. It pointed out, with respect to the Secretary of State's position to it in the document sometimes referred to as the reasons for refusal letter, that no safe venue for relocation had clearly been suggested. It was entitled to make that point. It, it was entitled to say that as the Secretary of State was not suggesting that the claimant could locate to Baghdad or any other part of Iraq outside the IKR, then it was not required to assess the matter itself. So, it was entitled to end its enquiry into possible internal flight outside the IKR at that point. That is what it did. That does not amount, on any view, to reversing the burden on proof. I reject this ground of appeal.

13. There is then the contention regarding the failure to reference case law when assessing internal flight to Baghdad. It is I think, in the context of that ground, that the Secretary of State also argues that the tribunal failed to have regard to the document I have referred to above and which I shall now simply call the CPIN. The first point to make about internal flight to Baghdad is that the tribunal was, here, reaching an alternative finding in case its initial position that the Secretary of State had not asserted internal flight to Baghdad was available and therefore it need not address the matter at all, was wrong. I have concluded that its conclusion as to that was not wrong. So, it matters not what I decide with respect to this remaining ground of appeal. But it seems to me quite obvious from what the tribunal had to say at paragraph 51 of its written reasons, that it had in mind, perhaps amongst other things, what had been said about internal flight to Baghdad in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC). It was entitled, indeed required, to take that into account. I cannot see that the CPIN had been placed before the tribunal by the Secretary of State. Such a document is evidence. If a party wishes a tribunal to consider evidence which it says is relevant, then that party should provide that evidence to the tribunal. Here it has not been shown to me that the Secretary of State did that. I reject this ground of appeal.

14. It follows, therefore, that I conclude the tribunal did not make an error of law. Accordingly, this appeal to the Upper Tribunal is dismissed. There is just one matter I would like to briefly touch upon. There seems to be a suggestion at paragraph 16 of the grounds of appeal that the individual Judge who decided this appeal was, in some way, biased. It might be that the author of the grounds did not intend to suggest that. But, whilst not wishing to labour the point, an allegation of judicial bias is a serious matter which should not be made lightly. Insofar as it might be thought necessary for me to address the

allegation, I can find nothing capable of supporting either actual bias or what is sometimes referred to as perceived bias.

### **Decision**

This appeal to the Upper Tribunal is dismissed

Anonymity is not directed.

Signed:

Dated: 4 February 2020

Upper Tribunal Judge Hemingway