



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08402/2019 (V)

**THE IMMIGRATION ACTS**

Heard at Bradford by Skype for business  
On the 19 August 2020

Decision & Reasons Promulgated  
On 27 August 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ZS

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Ms R. Petterson, Senior Presenting Officer

For the Respondent: Mr T. Hussain, Counsel instructed on behalf of the appellant

**DECISION AND REASONS**

**Introduction:**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Atkinson) (hereinafter referred to as the "FtTJ") who allowed his appeal in a decision promulgated on the 29 October 2019.

2. Whilst the Secretary of State is the appellant, for the sake of convenience I intend to refer to the parties as they were before the First-tier Tribunal.
3. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
4. The hearing took place on 19 August 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means. I am grateful to Ms Petterson and Mr Hussain for their clear oral submissions.

Background:

5. The appellant's claim is summarised in the decision of the FtTJ at paragraphs 14-20. The appellant is a citizen of Iraq of Kurdish ethnicity born in x in Erbil in the IKR. The appellant worked for a company known as "HP" from 2007. In 2011 he began working at the company's warehouse and was responsible for undertaking security checks on people and vehicles entering and leaving the premises.
6. On 8 January 2019, the appellant was told by his manager that a trailer was going to arrive at the warehouse, that you must not ask any questions about that and he should let the trailer in. The appellant suspicions were aroused in the light of those instructions. After the trailer had been granted access, the appellant made enquiries and found the trailer was loaded with expired medicines. He reported his findings to his manager, but the manager told him not to tell anyone and that, if the train was stopped, the appellant will be held responsible.
7. In the evening, the appellant's manager called him. The manager told the appellant that the trailer had been seized. The manager believed the appellant to have informed the authorities of events and the appellant's manager threatened to kill the appellant.
8. The appellant did not return home because he was scared, and a number of individuals went to the family home to look for the appellant. They told the

appellant's father that if the appellant did not turn up they would find him and kill him. The appellant's father told the appellant to stay with a friend.

9. On 10 January 2019, the appellant's father and brother made arrangements to an agent for the appellant to leave Iraq and he did so on 10 January 2019.
10. The appellant arrived in the United Kingdom on 4 February 2019 and claimed asylum following day.
11. His claim was refused by the respondent in a decision letter of 20 August 2019.
12. The respondent accepted that the appellant was an Iraqi national of Kurdish ethnicity from Erbil. The respondent also accepted that the appellant worked for "HP" from December 2017 based on the documentary evidence provided (a work pass) and from the questions he had answered concerning his role with the company.
13. The respondent considered his claim that he had received threats from his employers after the appellant discovered that they were distributing expired medication. At paragraphs 36– 43 the respondent set out inconsistencies in the appellant's account. Therefore, the respondent did not accept that he had been threatened by his employers after discovering they were distributing expired medication.
14. It was considered he could return to Erbil in the IKR where he would not be at risk.
15. The respondent considered feasibility of return to his home area at paragraphs 50 – 73 taking into account the country guidance decisions of AA (Iraq) [2017] EWCA Civ 944 and AAH (Iraq) [2018] UKUT 00212.
16. The respondent set out that the appellant would be returned to Erbil via Baghdad airport and that the background evidence illustrated that there would be regular, daily internal flight from Baghdad to Erbil and that he would be in Baghdad only for the transit period between airports and thus would not need to leave the airport and would not be at risk of harm. The respondent considered that on arrival at Erbil airport by his family could meet him and a company home. It was not accepted that he would face a real risk of serious harm at Baghdad airport (see paragraph 54).
17. It was further not accepted that he would face a real risk of persecution by returning to the IKR via Baghdad airport as a Kurd (see paragraph 55).
18. As to obtaining documentation, the respondent noted that the appellant claimed to have an Iraqi passport, ID card and CSID and driving licence which were in Erbil (see asylum interview questions 8 and 9). It was noted that as the

basis of his claim had been rejected, it was also not accepted that he was no longer in possession of his Iraqi passport and CSID.

19. Furthermore, it was not accepted that he was not in contact with his family members (his father and brother who helped him leave Iraq who are living in Erbil (question 32) and therefore his family members would be able to provide him with the relevant information he would need to present to the Iraqi consulate to obtain a replacement CSID. The respondent also considered that he could obtain his CSID (having previously had a passport and an ID card when living in Iraq, which he could present to the passport affairs directorate to obtain a replacement Iraqi passport.
20. As the appellant's family all resided in Erbil, the respondent considered that it was reasonable for him to return to the family home of his family to meet him at the airport in Erbil to accompany home.
21. At paragraph 79 - 93 the decision letter made reference to Article 15 C of the Qualification Directive. The decision cited AA (Iraq) and the degree of armed conflict in particular areas of Iraq.
22. The respondent made reference to the change in the security situation since May 2015 and that since that time Daesh's territorial control and collapsed and their operational capability had significantly degraded, and that the Iraqi government officially declared victory against them in December 2017. Whilst it was accepted that the threat had not disappeared entirely, it was noted the group were confined to small pockets and that the conflict changing nature of open conflict to periodic attacks in various states in Iraq.
23. At paragraph 87 it was considered that the Iraqi security forces (the ISF) and the Shia Militia popular mobilisation units (PMU's) also known as Hashd al Shabi and the Kurdish Peshmerga had re-established control over most of Iraq's territory.
24. The respondent therefore considered that there were strong grounds supported by cogent evidence to depart from the assessment in AA (Iraq) that any areas of Iraq engaged a high threshold of article 15(c) and that in the appellant's case he had not demonstrated that there are any circumstances which would place him at risk.
25. In summary, the decision letter proceeded on the basis that the appellant had not given a credible account as to events in his home area and that as a result he could return there and would not be at any risk of harm.

The decision of the First-tier Tribunal:

26. The FtTJ heard the appeal on 3 October 2019 where the appellant gave oral evidence. The FtTJ summarised the appellant's claim paragraphs 14 – 20 as set out in the earlier part of this decision.
27. At paragraphs 21 – 25 the FtTJ carried out an overview of the background evidence noting that the Kurdish region of Iraq (IKR) maintained a regional guard and had its own internal security and intelligence services and that the most recent developments showed that the human rights situation in Iraq gravely concerning but that there was limited violence in the IKR (paragraph 24). The judge also made reference to there being "numerous reports of the distribution use of counterfeit expired pharmaceuticals in Iraq and that such activities are covered up and maintained by corrupt authorities and government agents. Some reports indicate that the extent of the activity can be measured in terms of billions of dollars. There are reports of those who seek to expose such activities as being subjected to violence. There are reports suggesting that Ministry of health officials, powerful politicians and border officials are involved in such illegal activities. Reports indicate that investigations have been held on to some major violations, but that no real measures were taken to prevent their recurrence." (See paragraph 25).
28. The submissions of the advocates were set out at paragraphs 26 – 28 on behalf of the respondent and paragraphs 29 – 31 behalf of the appellant. It is plain from reading those submissions that the issue of the appellant's credibility was at the forefront and that on the respondents behalf, it was argued that in the light of his lack of credibility, he would be able to obtain relevant documentation of his family in the IKR and thereby return safely. No submissions were made on behalf of the respondent concerning the appellant's ability to relocate (as recorded by the FtTJ at paragraphs 28, 49 and 50). In the event that he was found to be credible, the judge recorded that the respondent's representative did not raise issues of internal relocation could not assist the judge in identifying the refugee Convention reason (see paragraph 28). On behalf of the appellant it was agreed that if the appellant's evidence was not credible, then he would be able to return safely to his home area.
29. The judge set out his findings of fact on the issue of credibility at paragraphs 32 – 48.
30. They can be summarised as follows:
  - the respondent accepted a significant number of aspects of the appellant's account; it was accepted that the appellant is a Sunni Kurd from Erbil.

- It was not disputed that the background materials show that there was a widespread problem relating to the use of counterfeit and expired medications (at [32]).
- The appellant answered all the questions put to him directly and without evasion and the appellant's replies were also detailed and consistent (at [33]).
- In respect of the adverse credibility points raised by the respondent, the judge found that the appellant had provided satisfactory responses to those concerns (at [34]).
- The judge rejected the submission that the appellant's account was inconsistent on the basis that he, and his brother were subject to threats that only the appellant left the IKR. The judge considered that the appellant's response in the screening interview a 4.1 was necessarily short and abbreviated and the screening interview was not expected to capture the full detail and extent of the claim and events. The judge found that the appellant had subsequently provided a more detailed account of events which demonstrated that the threat was directed at the appellant, rather than other members of family (at [35 - 36]).
- The judge referred to other submissions made on behalf the respondent based on alleged discrepancies between the screening interview and the substantive interview, for example, matters relating to the trailer being stopped, the conversations with his manager and the means by which information about the events became common knowledge, the judge found that the screening interview response it were limited and that in respect of each matter the appellant had put forward a detailed response which effectively rebutted the respondent's position. Therefore, the judge found that the appellant's account was a consistent one (at [37 - 39]).
- The judge rejected the respondent's submission that the appellant's account of the operation of the illegal market in expired medication was speculative. At [41] the judge found that as the appellant only had limited involvement in such illegal activities and arising out of the performance of his duties at warehouse, the appellant could not reasonably be expected to give an account of the distribution methods, nor the risks and identity of the individuals involved in the activities. Judge recorded "in trying to answer the questions put him on such matters, the appellant was in effect being invited to speculate. The appellant can only reasonably be expected to answer questions on matters that fall within his knowledge. The fact that he attempted to answer questions on matters not within his knowledge is not something that should be held against him." The judge therefore found that his answers, whilst at times negative, did not form a proper basis upon which it could be said that the credibility of his account was undermined (at [42]).
- When looking at the evidence as a whole, judge found the appellant had given a consistent, detailed and plausible account which was consistent

with the background materials. He found the appellant to be a “credible witness” and therefore made findings of fact on matters within his knowledge as set out in the preceding paragraphs of his decision (at [44]).

- At [46] the judge found that the appellant had been subject of threats to his life based on his being perceived as an informer by nonstate actors involved in the illegal distribution and sale of expired medications. In this context he noted at [47] the background material made some references to issues of violence directed at those who expose the illegal market in expired medication, but that there was no systematic analysis of such matters.
  - At [48] a judge found that in light of all the available evidence and his acceptance of the appellant’s account of being subject to threats that, if the appellant were to return to his home area, there would be a real risk of being identified and targeted by individuals involved in the illegal trading of medications and as such face a real risk of serious harm.
31. Having made the assessment that the appellant would be at a real risk of harm if returned to his home area, the judge then turned to the issue of internal relocation. At [49] and [50] the judge observed that neither advocate had addressed him on the matters of internal relocation. At [50] the FtTJ found that the appellant did not have an internal relocation option stating “that is because, not only has the respondent not suggested otherwise, but also in taking into account the background materials, the country guidance cases and the individual factual matrix, it would be unreasonable to expect the appellant to relocate. The evidence does not show that he would be able to rely on family members and the materials show that there is nationwide instability with a mounting humanitarian crisis and a wide range of security issues.”
  32. As to whether there was a Convention reason, the judge found that his fear was not due to a Convention reason but that given his findings on the factual matrix, he would be at real risk of serious harm which would violate Article 3.
  33. At [56] the judge concluded that as the appellant had not claimed to be at a real risk of suffering serious harm on humanitarian protection grounds under Article 15 (c) of the Qualification Directive and because “the country guidance cases show that the people in the IKR do not face the risks envisaged by article 15 C” the judge dismissed his appeal on grounds of humanitarian protection.
  34. Permission to appeal was issued on behalf of the Secretary of State and permission was granted by a judge of the First-tier Tribunal on the 7 July 2020.

#### The hearing before the Upper Tribunal:

35. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law

issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

36. Ms Petterson on behalf of the respondent relied upon the written grounds of appeal. There were no further written submissions. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.
37. It is not necessary to set out the submissions of each of the parties in full as I will set out the relevant aspects of those submissions when dealing with the grounds advanced on behalf of the Secretary of State and my consideration of those issues.

#### Discussion:

38. Ms Petterson on behalf of the respondent relied upon the written grounds. It is important to consider what those grounds address. The grounds begin by submitting that the FtTJ erred in law by allowing this appeal on Article 3 grounds and it is stated that the appeal had been dismissed on grounds of both asylum and humanitarian protection at paragraphs 55 and 57. Nothing more is said at that point as to any error of law.
39. As I read the grounds that follow it appears that they seek to challenge the FtTJ's factual findings on the basis of a failure to give reasons (as set out as a headline to the grounds ). The grounds cite paragraph 41 where the following is stated :

“ At [41] the FtTJ stated that the appellant's claim is based on his having only limited involvement in such illegal activities and arising out of the performance of his duties at a warehouse. He then goes on to make a finding at paragraph 48 that in the light of all the available evidence and his acceptance of the appellant's account of being subject to threats, that, if the appellant were to return to his home area, they would be a real risk of his being identified and targeted by individuals involved in the illegal trading of medications and as such face a real risk of serious harm.”

40. This grounds then state:

“At [31], the FtTJ mentions that the appellant's account of his father and brother remaining in the IKR is not inconsistent because it was the appellant himself, rather than his family members, who was a real object the threat with the appellant's account supported by the background materials. However, the respondent submits that the family members were also subjected to threats, are still safe and did not choose to flee Iraq. The respondent also submits that the appellant would be able to obtain relevant documentation from his family to enable him to return safely”.



41. And then

“At [36], the judge notes that the appellant had threats made to his life, however, at paragraph 16 there is only one mention of one telephone call from the appellant’s manager threatening to kill him. Why would someone choose to leave their life behind on this basis?”

42. In my judgement none of those paragraphs provide any basis for asserting that the FtTJ’s decision involved the making of an error on a point of law. Those grounds properly considered are nothing more than a disagreement with the factual findings made by the judge. As submitted by Mr Hussain and set out his Rule 24 response, the respondent’s grounds make a number of submissions/ask rhetorical questions which clearly seek to re-argue the FTT’s findings on credibility. That is plainly clear from the reference in the grounds to paragraph 36 and the question posed “why would someone choose to leave their life behind on this basis?”

43. The grounds also misstate the decision of the FtTJ. The grounds begin by citing only part of paragraph 41 and fails to set out paragraph 41 in context. As can be seen by the decision of the FtTJ, at paragraphs 32-44, the judge set out his findings of fact and analysis of the appellant’s credibility. In doing so he addressed the points raised on behalf of the respondent which was said to undermine his account. The judge dealt with those issues at paragraphs 33 – 38 and concluded that the appellant had given detailed responses in his evidence which had rebutted the respondent’s submissions. He concluded that he found the appellant’s account to be consistent (paragraph 39).

44. At paragraph 40 the judge then returned to a further submission made on behalf of the respondent that the appellant’s account of the operation of illegal market in expired medication was largely speculative. It was this point that the judge addressed at paragraph 41. That paragraph reads as follows:

“41. I reject the submission that this is a sound basis on which to find the appellant’s credibility to be undermined. That is because the appellant’s claim is based on his having only limited involvement in such illegal activities and arising out of the performance of his duties at a warehouse. In these circumstances, the appellant cannot reasonably be expected to give an account of the distribution methods, nor the risks and identity of individuals involved in these activities. In trying to answer the questions put him on such matters, the appellant was in effect being invited to speculate. The appellant can only reasonably be expected to answer questions on matters that fall within his knowledge. The fact that he attempted to answer questions on matters not within his knowledge is not something that should be held against him.”

45. Therefore, by citing only part of paragraph 41 alongside paragraph 48 (the concluding paragraph) the grounds mis-state what the judge had found on the evidence.

46. As Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. In respect of each of these grounds of complaint, the FtTJ provided perfectly acceptable reasoning as set out in the First-tier Tribunal decision.
47. Furthermore, as the Court of Appeal stated at para 18 of *Herrera v SSHD* [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.
48. I am therefore satisfied that the grounds relied upon by the respondent fail to identify any arguable error of law in the assessment of credibility or the findings of fact made by the FtTJ. The FtTJ gave careful consideration to the adverse points raised. He considered the appellant's evidence alongside the country materials which supported the appellant's factual claim, which he set out at paragraph 25. The judge referred to "numerous reports of the distribution use of counterfeit and expired pharmaceuticals in Iraq and that such activities are covered up and maintained by corrupt authorities and government agents. Some report the extent of the activity can be measured in terms of billions of dollars. There are reports of those who seek to expose such activities as being subject to violence. There are reports suggesting that Ministry of health officials, power politicians and border officials are involved in such illegal activities. Reports indicate that investigations have been held into some major violations, but that no real measures were taken to prevent the recurrence."
49. That material was set out in the appellant's bundle and consisted of articles and reports dealing with the distribution and use of counterfeit and expired pharmaceuticals and those who had exposed activities being subject to violence (as referred to also at paragraph 47). Consequently, it was reasonably open to the judge to reach the conclusion in the light of that evidence and his acceptance of the appellant's account that the appellant would reasonably face a real risk of serious harm.
50. I now turn to the last ground which cites paragraph 48 where the judge reached the conclusion that if the appellant were to return to his home area there would be a real risk of his being identified and targeted by individuals involved in illegal trading medication and as such faced a real risk of serious harm. The judge also stated, "in so finding, I take particular account of the application of the lower standard of proof that applies in protection cases".
51. It is submitted on behalf of the respondent that having dismissed the asylum and humanitarian protection claim, the judge could not consider the same

possibility of real harm and allow the appeal on Article 3 grounds. In fairness to Ms Petterson, she did not seek to advance that ground with any force.

52. I accept the submission made by Mr Hussain that was open to the FtTJ to find a risk of Article 3 and yet find no risk pursuant to Article 15(c) for the reasons given at [56]. In my judgement, the grounds fail to engage with the reasoning of the FtTJ. It is plain from reading the findings of fact and is analysis of the evidence that the judge found that the appellant was at a real risk of serious harm arising out of being perceived as an informer by nonstate actors involved in illegal distribution and sale of expired medications. The country materials, as cited above, supported the real risk of harm by reference to the issues of violence directed at those who exposed illegal trading. The appellant's case was that nonstate actors involved included people in high-ranking positions (as set out in his interview at question 70). However, the judge at [51] considered that the appellant's well-founded fear of serious harm was not due to a Convention reason. Earlier in the decision the judge recorded at [28] that the presenting officer could not assist in identifying the Refugee Convention reason in the event that the appellant was found to be credible and at [31] recorded the submission made by Mr Hussain that the Convention reason could be framed in terms of imputed political opinion or as the judge described "even more tentatively, as membership of a particular social group." The judge rejected those submissions at paragraph 51. It was therefore open to the judge to find that a return to Iraq would be in breach of Article 3. In the alternative the judge could have allowed the appeal for the same reasons on humanitarian protection grounds under Article 15 (b) of the qualification directive which is coterminous with Article 3 of the ECHR ( see decision in Elgafaji at paragraph [28]). Furthermore, there is no inconsistency with the judge dismissing the appeal under Article 15 (c) for the reasons recorded at paragraph 56. The appellant did not claim that there was a risk of indiscriminate violence but that he faced a specific serious risk of harm as set out in the factual findings.
53. I have therefore addressed the issues that have been raised in the grounds upon which permission to appeal was sought. For the reasons that I have given, I am satisfied that the judge came to the conclusions based on the evidence that was before him and that he had given adequate and sustainable reasons for reaching his factual analysis. The grounds, as Mr Hussain submitted, were nothing more than seeking to reargue the credibility points.
54. However, it is necessary to deal with the grant of permission. Permission was granted by the FtTJ on 7 July 2020 for the following reasons:
- " The grounds of appeal argue that the Judge erred in failing to give adequate reasons for the findings made. The Judge also erred in dismissing the appeal on humanitarian protection grounds and yet allowing it on Article 3 grounds.
- Whilst much of the pleaded grounds amounts to a re-argument of the respondent's case, there is merit in the argument that the Judge erred by

failing to give reasons for finding that the appellant would be at risk of serious harm. Whilst the Judge gave clear, and sustainable, reasons for accepting the appellant's account of events, and no arguable error arises relating to these findings, the Judge arguably erred by giving insufficient reasons relating to the issue of risk as a result of those events. It is also arguable that the Judge erred by failing to consider whether the appellant would be assisted by the authorities with effective protection against the non-state agents identified.

It is also arguable, in light of the Judge's finding that the appellant was at risk of serious harm in his home area, that the Judge erred by failing to give adequate reasons for finding the appellant had no internal relocation option.

It is also arguable that the Judge erred in finding that the appellant did not meet the requirements for humanitarian protection yet allowed the appeal on human rights grounds. The Judge appears to only have considered Article 15(c), at paragraph 56, in the context of humanitarian protection. This ground is also arguable. "Permission is granted limited to the grounds specified above".

55. As Ms Petterson accepted, the grounds upon which the respondent sought permission to appeal did not raise issues of sufficiency of protection nor internal relocation. It appears that the FtTJ raise those issues on his own volition.
56. In the decision of AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 (IAC) the Upper Tribunal considered the position where the FtTJ granted permission on grounds not advanced on behalf of the party applying for permission to appeal.

The headnote reads:

*Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:*

*(a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:*

*(i) for the original appellant; or*

*(ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or*

*(b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address.*

57. The decision sets out what should happen at section (e) of the decision and cites the following:

64. In its application to asylum law, the "Robinson" approach applies only in favour of the individual, who is seeking asylum; not in favour of the Secretary of State. An exception, however, arises where the point identified concerns a possible breach of the Refugee Convention, which would result from recognising a person as a refugee who is, in fact, covered by one of the exclusion clauses in the Refugee Convention (see, in this regard, paragraph 21.38 of *MacDonald's Immigration Law and Practice* (Ninth Edition) and A (Iraq) v Secretary of State for the Home Department [2005] EWCA Civ 1438).

And

69. In conclusion, we consider that any judge who is considering whether to grant permission to appeal to the Upper Tribunal must not grant permission on a ground which does not feature in the grounds accompanying the application, unless the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success for the original appellant; or for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international treaty obligations; or (possibly) if the ground relates to an issue of general importance, which the Upper Tribunal needs to address.

58. Most recently the Upper Tribunal re-affirmed those principles in the decision of Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197 (IAC).

*"In reaching a decision whether to grant permission to appeal to the Upper Tribunal on a point that has not been raised by the parties but which a judge considering such an application for permission considers is arguably a Robinson obvious point or other point falling within para 3 of the head-note in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 (IAC), the evidence necessary to establish the point in question must be apparent from the grounds of appeal to the Upper Tribunal (whether or not the appellant is represented at the time) and/or the decision of the judge who decided the appeal and/or the documents on file. The permission judge should not make any assumptions that such evidence was before the judge who decided the appeal. Furthermore, if permission is granted on a ground that has not been raised by the parties, it is good practice and a useful aid in the exercise of self-restraint for the permission judge to indicate which aspect of head-note 3 of AZ applies."*

59. In her oral submissions Ms Petterson accepted that she had difficulties with the written grounds and that the grant of permission did not reflect the written grounds.

60. In my judgement, the judge granting permission did not take account of the above jurisprudence and did not indicate which aspects of the headnote applied- this being an appeal on behalf of the Secretary of State. He did not identify grounds on which there were strong prospect of success on the basis that the ground related to a decision which would breach the United Kingdom's international treaty obligations nor that the grounds addressed a point of general importance. Therefore, the respondent's grounds are those that I have considered earlier and which in my judgment fail to demonstrate that the FtTJ's decision involved the making of an error on a point of law.

61. Even if the grounds did include such a challenge, it is important to consider the issues that were raised before the FtTJ and the basis upon which he undertook his assessment.
62. It is apparent from the decision of the FtTJ that it was agreed by the advocates that “only a narrow range of matters” were in issue as the judge recorded at paragraph 12. The case put on behalf of the Secretary of State in the decision letter was that the appellant’s account was not credible, and the issue of return was considered in that light only. It had been submitted on behalf of the appellant that if found to be credible then he would be able to return safely to his home area.
63. The judge recorded the submissions on behalf of the respondent at paragraphs 26 and 27 in which the credibility of the account was challenged (paragraph 26) and that at paragraph 27, in the light of a lack of credibility, the appellant would be able to return to his home area. At paragraph 28 the judge expressly recorded that the presenting officer did not raise the issue of internal relocation and returned to this at paragraph 49 and also at paragraph 50 where the judge recorded “I find that the appellant does not have an internal relocation option. That is because, not only has the respondent not suggested otherwise...” . The issue of sufficiency of protection was also not raised during the hearing.
64. It therefore appears that submissions were not advanced on behalf of the respondent to deal with either of those issues and therefore the FtTJ cannot be criticised for not considering arguments which had not been advanced or relied upon before him.
65. Nonetheless he did undertake an assessment of internal relocation (albeit in short terms) at paragraph 50. The judge observed again that the respondent had not suggested that there was any internal relocation option but that taking into account the background material, country guidance cases and the appellant’s individual factual matrix, the FtTJ considered that it would be unreasonable to expect him to relocate. I would agree that the FtTJ could have expressed his reasoning with greater clarity but that in the light of his acceptance of the appellant’s factual account it was open to the judge to find that he could not internally relocate safely, whether to another part of the IKR (in the light of the objective material relating to the profile of those involved in the illegal market an expired medication (including the security apparatus)) or to Baghdad, where he had no family members or support and did not speak Arabic.
66. For those reasons, I am satisfied that it has not been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law. The decision of the FtTJ shall stand.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision shall stand.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed *Upper Tribunal Judge Reeds*

Dated 25 August 2020