



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02805/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Tribunal  
On 2 May 2017**

**Decision & Reasons  
Promulgated  
On 3 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**R W  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Imamovic instructed by UK & Co Solicitors.  
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Suffield-Thompson ('the Judge'), promulgated on 6 October 2016, in which the Judge dismissed the appellant's appeal on all grounds against the respondent's refusal to grant him international protection and/or leave to remain on human rights grounds.

**Error of law**

2. The appellant is an Iraqi national who claimed asylum on the basis he faced a real risk from ISIS and that his family were supporters of the Ba'ath Party.
3. The appellant stated that before he came to United Kingdom he was living in a village called Gamesh Tapa near Mosul where he had lived until ISIS attacked the village, after which he left and went to work elsewhere. He claims he went to a village in the Kurdistan area but did not know exactly where
4. The respondent, in the Reasons for Refusal Letter disputed the appellant's claim that his village was in a 'contested area' stating that the village was within the Kurdish Autonomous Zone, referred to in the decision as the IKR.
5. The appellant lodged his appeal without the assistance of solicitors and initial directions were issued on 4 April 2016. This included notifying the appellant of a prehearing review and dates of the final hearing, on 11<sup>th</sup> August and 25 August 2016 at Hatton Cross respectively. The prehearing review form completed by a Designated Judge of the First-tier Tribunal noted there were no applications for an adjournment and that the matter was ready to proceed. That document is dated 11 August 2016.
6. On 18 August 2016, a letter was written to the First-tier Tribunal seeking an adjournment on the basis the appellant was in the process of getting documents from Iraq which he was told were with UK customs and that he hoped to find a legal representative. The adjournment request was granted on 19 August 2016 and the matter listed for a further prehearing review on 14 September 2016 at Newport with a substantive hearing listed for Monday, 12 September 2016.
7. The Judge who conducted the second prehearing review placed a question mark against the section of the form relating to whether further documentary evidence to be filed, but noted no reason why the matter should not proceed.
8. Directions were sent to the parties dated 15 September 2016 advising the appellant to file all the documentation for which he was seeking to rely not later than 5 working days before the 28 September 2016. Those directions are binding upon the appellant even though he was acting without the benefit of legal representation at that time.
9. On 27 September 2016, the appellant handed in a further letter from the previous correspondent confirming he was attended court unrepresented, confirming that following the adjournment he had attempted to find a solicitor without success, and he had not received the documents which he claimed he had been told were with UK Customs.
10. The Judge decided to proceed, noting the appellant was not represented and has recorded the oral evidence given.
11. The Judge sets out findings of fact from [29] to [40]. The Judge noted in [30] that it was essential to establish the credibility of the appellant and notes major inconsistencies between the three sources of evidence given by the appellant as part of his asylum claim.

12. The Judge noted the disputed areas in the appeal at [33] and in relation to the appellant's claim that the village that he was from was in a contested area, the Judge finds:
  35. The Respondent has stated that he and his family lived in a village called Gamesh Tapa, in Gweru, Mosul. The Respondent has looked at independent background information and has included in the bundle (Page E1) a map to show where this village is and it is in the Sulaymaniyah governorate of the IRK. The background information shows that there is another place with a similar name in the Arbil province of Iraq and this is also in the IRK. No such area could be found outside the IRK. The Appellant has not produced any evidence to show that his village is outside the IRK and I accept the information provided by the Respondent is correct. I find therefore that the Appellant comes from the IRK.
  36. As I find that the appellant has not told the truth about his originating from the IRK I find this places him in breach of section 8.
13. The Judge then assessed the alleged risk arising from the appellant's father being a member of the Ba'ath party which was not found to give rise to an entitlement to international protection, which is in accordance with the country guidance caselaw in the light of the absence of evidence to show that his father's standing was such as to give rise to a real risk to a family member.
14. The Judge considered the country guidance of *AA (Article 15 (c)) Iraq CG [2015] UKUT 00544 (IAC)* before concluding that as the appellant has been found to come from the IKR it was not accepted he will be at risk if returned.
15. The appellant challenges the finding in relation to his home town asserting that he did not originate from the IRK but rather an area formerly controlled by the Saddam regime and the Ba'ath party. The appellant asserts the Judge erred in law in finding where the appellant's village was located without considering factual issues and reached unsatisfactory adverse credibility findings.
16. The grounds as pleaded disagree with the decision reached by the Judge although permission to appeal was granted on the basis that location was a core issue and it was arguable the Judge misdirected herself and reached an erroneous finding that the appellant is from the IKR and not a contested area.
17. Although the appellant's representative before the Upper Tribunal had before her a bundle of documents, and sought to introduce further fresh evidence, the bundle was not before the Upper Tribunal or indeed to the Presenting Officer although to be fair, Mrs Aboni did indicate she did not have respondents file with her.
18. It was not disputed that before the First-tier Tribunal there was no bundle filed in accordance with the directions. It is not disputed that within the respondent's bundle was evidence of satellite photos showing Gamesh Tapa in the locations recorded by the Judge in the determination. It is not disputed that the finding in relation to geographical location was not reasonably open to the Judge on the evidence.

19. The appellant's case was notwithstanding its geographical location his village fell within the administrative boundaries of Mosul which fell outside the IKR.
20. The date of the refusal letter is 5 March 2016 in relation to which notice of appeal was given on 21 March 2016, six months before the appeal was heard in Newport. The appellant was given ample opportunity to provide evidence to support his contention in relation to his home area which he was aware was not accepted by the Secretary of State in the refusal letter. Notwithstanding having had a substantial period in which to provide evidence, no such evidence was made available to the Judge.
21. It is therefore my findings that the appellant has failed to discharge the burden of proof upon him to the required standard to show the Judge materially erred in law in making a decision contrary to the available evidence.
22. The Upper Tribunal were advised that the bundle which has now been prepared contained evidence that was never submitted to the First-tier Tribunal and which therefore constituted new evidence, which it was argued supported the appellant's claim.
23. If new material is now to hand it is open to the appellant to make a fresh application to the Secretary of State based upon those documents in which he will also have to deal with the current situation in Iran in which his home area, whoever was initially in control of it in the past, appears now to be under the control of the Kurdish authorities, and the internal relocation points identified by the Upper Tribunal in AA.
24. Based on the evidence before the Judge no arguable legal error is made out.

## **Decision**

- 25. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

26. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....  
Upper Tribunal Judge Hanson

Dated the 2<sup>nd</sup> of May 2017

