



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07210/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 July 2017**

**Decision &  
Promulgated  
On 7 July 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**ASY  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No attendance by the legal representative  
For the Respondent: Mr D Clarke, Senior Presenting Officer

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

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **Introduction**

1. The appellant's nationality was originally disputed by the Secretary of State, the decision letter identifying him as being Iraqi. The appellant has always asserted that he is a national of Iran.
2. The appellant, born in November 1987, arrived in the United Kingdom on 4 December 2015 and claimed asylum on the same date. That application was refused by the Secretary of State in a decision of 29 June 2016, against which the appellant appealed to the First-tier Tribunal. The appeal was heard by First-tier Tribunal Judge Bartlett on 30 January 2017 and dismissed on all grounds in a decision promulgated on 9 February 2017.
3. It is prudent at this stage to identify the following significant findings made by the First-tier Tribunal:
  - (i) the appellant is a national of Iran who has had refugee status in Iraq for the entirety of his life [21];
  - (ii) the appellant has established that because of his family background and his activities with Komala he would be at risk of death or serious harm in Iran. The appellant forms part of a particular social group i.e. a group acting against the Iranian state [22];
  - (iii) the respondent proposes to return the appellant to Iraq [23];
  - (iv) the appellant would not suffer persecutory treatment in Iraq and, in any event, it would not be unduly harsh to require the appellant to relocate from the IKR to Baghdad;
  - (v) the appellant cannot, as a consequence of (iv) above, fall within the protection of the Refugee Convention [29], nor is he entitled to humanitarian protection. His removal would not be a breach of Articles 2 and 3 ECHR [34].
4. In granting permission to appeal to the Upper Tribunal, First-tier Tribunal Judge Cruthers aptly stated as follows;
  - "3. In my assessment it is arguable, as per the grounds, that the appellant's claim to refugee status is not defeated by the findings that the judge made. In particular, it is arguable that any possibility of the appellant being returned to Iraq without a real risk of persecutory ill-treatment arising does not take the appellant out of the definition of 'refugee' to be found in the 1951 Geneva Convention (as amended)."

### **Discussion and Decision**


5. It is necessary at this stage to set out the definition of a refugee found within Article 1A(2) of the Refugee Convention:

“A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it ...”
6. Before the Upper Tribunal Mr Clarke properly accepted the following:
  - (a) Given the First-tier Tribunal’s conclusions that the appellant is of Iranian nationality, is not of Iraqi nationality and that he would be persecuted for a convention reason if returned to Iran, the appellant falls within the definition of a refugee;
  - (b) The First-tier Tribunal erred in directing itself to the contrary and its decision must be set aside.
7. Mr Clarke further indicated/undertook that the Secretary of State would not seek to remove the appellant to Iraq. The previous indication that Iraq would be the country to which the appellant would be removed was based on the Secretary of State’s (now known to be mistaken) belief that the appellant is an Iraqi national.
8. On the findings made by the FtT the appellant is clearly outside his country of nationality as a consequence of having a well-founded fear of persecution in such country. The fact that he can return to another country of which he is not a national and in which he will not suffer persecutory treatment does not defeat his claim to be a refugee.
9. For the reasons succinctly identified by Mr Clarke I find that the First-tier Tribunal’s decision contains an error of law capable of affecting the outcome of the appeal and I set such decision aside.
10. No submissions were made by Mr Clarke as to how the decision on the appeal should be re-made but, in all the circumstances and given the uncontested findings of the First-tier Tribunal, I re-make it by allowing the appellant’s appeal on the basis that he is a refugee.
11. In such circumstances the appellant’s claim for humanitarian protection falls away. As to his Article 3 claim, as indicated above Mr Clarke gave an undertaking that the appellant would not be removed to Iraq. This, it seems to me, is sufficient to dispose of any Article 3 claim the appellant may have before the Tribunal - although I observe that any proposal to remove the appellant to his country of nationality would, of course, inevitably lead to a breach of Article 3.

## **Decision**

The decision of the First-tier Tribunal is set aside.  
Upon re-making - the appellant's appeal is allowed.

Signed:

A handwritten signature in black ink, appearing to be 'M. O'Connor', written over a faint rectangular stamp.

Upper Tribunal Judge O'Connor  
Date: 6 July 2017