



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

Appeal Number: PA141892016

THE IMMIGRATION ACTS

**Heard at Field House
On 5th July 2017**

**Decision & Reasons
Promulgated
On 6th July 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Counsel instructed on behalf of appellant
For the Respondent: Mr Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq.

2. **Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**
3. 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 Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on 6th February 2017 dismissed his claim for protection. The Appellant's immigration history and the basis of his claim is set out within the determination at paragraph [1], [10-17]] and in the decision letter issued by the Secretary of State. It can be summarised briefly as follows.
5. The Appellant is from xxx and is a Kurdish-Sunni Muslim. His problems in Iraq began when his father, who was a retired officer in the Peshmerga had been approached by insurgents to cooperate with them but had rejected that request. In 2015 whilst on the telephone to him, he was killed and the person who had done so spoke to him on the phone and had threatened that he would be the next target. He reported the matter to the police but did not wait the outcome having left Iraq in 2016. His house was later set on fire believed by those responsible for the death of his father.
6. The appellant arrived in the UK after having travelled through a number of European countries including a stay of seven months in France and arrived between 11th to 15 June 2016.
7. The appellant underwent a screening interview on 15 June 2016 and a substantive interview took place on 29 November. In a detailed reasons for refusal letter dated 9th December 2016 the respondent refused that application for asylum. In that decision, the respondent accepted the evidence of his nationality and identity but rejected his account of having had problems in Iraq due to threats. The decision letter applied the country guidance case of *AA (Article 15 (c) [2015] UKUT 544(IAC)* in relation to humanitarian protection and accepted that in his home area there was a present situation of internal armed conflict. Further consideration was given to return and in particular that he could return to the IKR. The decision letter also considered Articles 2 and 3 and Article 8 (family and private life).
8. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on 30th January 2017.
9. The judge set out his findings at paragraphs [20] to [38]. When considering the circumstances in Iraq before he left, the judge rejected his account and gave a summary of those reasons at paragraph [23]. He also

placed weight and reliance on section 8 of the 2004 at and his failure to claim asylum in the first safe country (see paragraphs 20, 21 and 24). Having rejected his core account, the judge considered internal relocation in the context of the Country Guidance decision of AA (as cited). Whilst the decision letter had not considered the prospect of internal relocation to any other area than the IKR the judge identified relocation to Baghdad (set out in the decision of AA). Having applied the country guidance case, he reached the conclusion that he could relocate to either Baghdad or the IKR. Thus the claim for protection was dismissed on all grounds.

10. The Appellant sought permission to appeal that decision and the grounds are set out in the papers dated 17th February 2017. Permission to appeal was granted by FTT Judge Foudy on the 18th May 2017. Those grounds make reference to the judge's findings on credibility (ground 1). Ground 2 made reference to the Tribunal erring in law by determining the appeal on the basis that the appellant could relocate Baghdad when the Secretary of State had not suggested return to Baghdad or dealt with that in the decision letter. Ground three made reference to errors relating to relocation to Baghdad and grounds for dealt with the issue of relocation to the IKR.
11. At the hearing before this Tribunal Mr Gayle, relied upon the grounds that were before the Tribunal. It was not necessary for him to articulate in any oral submissions the grounds that had been submitted in written form because Mr Jarvis on behalf of the Respondent at the outset submitted that having had the opportunity to consider the grounds in the light of the determination he considered that there was a material error of law in the credibility findings (which were set out in relation to Ground 1). In those circumstances he invited the Tribunal to set aside the decision and for the appeal to be reheard so that all issues relating to credibility could be considered and in the context of the decision of AA (Iraq) which had recently been heard by the Court of Appeal but for which there was no transcript and would also provide time necessary for a supplementary refusal letter dealing with the issue of internal relocation and to Baghdad and/or the IKR.
12. In the light of that concession made by Mr Jarvis that there is a material error of law in the determination of the First-tier Tribunal, it is the case that both parties agree that the determination cannot stand and must be set aside. I am satisfied that the submission made on behalf of the Appellant to which I have made reference to which concerns the issue relating to the credibility findings (ground 1) are made out. The credibility findings related to threats from insurgents. As to the identity of those who killed the appellant's father, the judge found that the persons responsible and their "self advertisement" was implausible. However as the grounds assert, given the practices of those identified by the appellant and the issue of open intimidation it could not be so readily disregarded as implausible and in any event there was no evidence to justify such a finding. Furthermore, as to the aftermath of the event, the judge found that there were no witnesses however that failed to take into account the

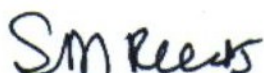
appellant's evidence given in his interview. Whilst the judge also rejected as implausible any interest in the appellant's father that failed to take into account the appellant's father's prior history as a Peshmerga which was relevant background history relevant to the overall findings. Therefore for those reasons and in the light of the concession made by Mr Jarvis, the decision cannot stand and will be set aside.

13. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant's evidence and also the issues relating to return to Iraq and internal relocation; this is a case in which the adverse credibility findings are therefore unsafe and cannot be preserved. There is also the additional requirement for a supplementary decision letter dealing with the aspects of relocation. The decision in AA (as cited) has now been heard by the Court of Appeal but to date there is no transcript. That will be available to the First-tier Tribunal who will consider the matter afresh. In the light of those submissions and the concession made by the Secretary of State , I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

Decision:

The decision of the First-tier Tribunal involve the making of an error point of law. It is set aside and it is remitted to the First-tier Tribunal to be remade.

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. The 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

Date: 5/7/2017