



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

Appeal Number: PA/09540/2016

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 30 January 2018**

**Decision & Reasons  
Promulgated  
On 2 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**A M MAHMOOD**

Appellant

**and**

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

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr Matthews, Senior Home Office Presenting Officer

**DETERMINATION**

Introduction.

1. This determination is to be read along with:
  - (i) The respondent's decision dated 24 August 2016, refusing asylum.
  - (ii) The appellant's grounds of appeal to the FtT, filed on 7 September 2016.

- (iii) The decision of FtT Judge David C Clapham SSC, promulgated on 21 April 2017, dismissing the appeal.
- (iv) The UT's decision on error of law (as conceded by the respondent) dated 19 and issued on 23 October 2017, including directions for further hearing in the UT to the extent indicated at paragraphs 7 - 13.
- (v) The UT's further ruling and directions issued on 8 December 2017.
- (vi) The appellant's revised skeleton argument, itemising passages from country guidance, background evidence, and the expert report. He contends that these show that he cannot lawfully be expected to return to his home area of Tuz Khurmato, Salah-al-Din province, or to relocate to the IKR. (At the hearing, Mr Winter supplemented the argument to the effect that the appellant could also not be expected to relocate to Baghdad or anywhere else in Iraq.)

Appellant's evidence, and submissions thereon.

2. The appellant adopted his statements up to and including 21 November 2017 as his evidence-in-chief.
3. At a screening interview on 24 February 2016 the appellant said that his parents and sister were in Iraq, his family paid US\$8000 to smugglers for his travel, and his mobile phone was taken by the smugglers (pp. A3, A9, respondent's FtT bundle).
4. At substantive interview the appellant said his family in Iraq comprised his mother and sister. Asked if he had spoken to them since being in the UK, he replied, "Only with my mum" (Q/A 10 - 12, p.C7).
5. In the appellant's latest statement, he says he never had a passport. He had a CSID and a nationality certificate but left them behind. They are irretrievable due to disruption of his home area. He last spoke to his mother when he was in Calais. He has no numbers for his mother or for his sister in Kirkuk. He went to the Red Cross in November 2016, but they said they were unable to help. He went back to the Red Cross recently and they took details to try to trace his family.
6. Cross-examination focused on the circumstances of the appellant's family in Iraq, and on his ability and efforts made to contact them. He said that he last spoke to his mother when he was in Turkey or in France, he could not remember which. He said at interview that he had spoken to her, but never that he had done so from the UK. His family had a mini-market business and some property. He heard while on his way to Turkey that his family sold a property to raise the \$8000. He had been to the Red Cross many times. The Presenting Officer questioned him repeatedly about what information he had given about his family, to enable tracing to take place, but he said he was unable to recall any details. He was not in touch with any of his relatives on his mother's side in the IKR, for reasons which he was not willing to discuss.

7. In re-examination, the appellant said the most important people to him were his mother, his brothers and his sisters, and his dad, but he did not know where any of them are. He suggested that the smugglers had removed phones to avoid tracing.
8. Mrs O'Brien submitted that the appellant's evidence about documentation and his family was not credible.
9. Mr Winter submitted that the starting point is that the appellant is from Tuz Khurmato, a dangerous area at the time of his departure; the situation was such that he might have left documents behind, and be unable to retrieve them since; it was plausible a smuggler might take away phones; there was no significant inconsistency over the appellant's last contact with his mother; he might have appeared vague about his dealings with the Red Cross, but his account was supported by evidence from that organisation - a note on a "compliments slip" stating that the appellant asked for an appointment with their family tracing service, but they are unable to see him until after 13 December 2017 (item 3, appellant's 2<sup>nd</sup> bundle in the FtT).

#### Credibility of the appellant.

10. The appellant answered questions intelligibly and in reasonable detail, up to the point where he was asked about any information he had given to the Red Cross to enable them to trace his family. He then said that the Red Cross asked him a lot of questions, but he could not remember any details he gave them. A succession of his answers were vague and non-responsive.
11. If the appellant genuinely has been separated from his family by force of events, he would be acutely anxious to trace them. Their last known whereabouts are simple matters about which he could give clear information to the Red Cross, to the respondent, to his solicitors, and to tribunals.
12. The appellant would have been motivated to set enquiries in motion as soon as he came to the UK, not belatedly, in the run-up to a rehearing of his case.
13. The appellant apparently contradicted himself over whether he has only one sister in Iraq, as he appears to have said up to the date of the hearing, or a number of brothers and sisters, as he said in re-examination; but as this was not picked up in submissions, I give it little significance.
14. The FtT judge rejected the credibility of the appellant on the events which allegedly caused him to flee. He may of course be reliable on some matters although not on others, but the surrounding circumstances have been found to be not as he claims, and that is another reason to think that there is no genuine difficulty in communication.

15. The appellant contradicted himself about when and from where he last spoke to his mother. If he lost touch, it should be clear in his mind whether their last conversation was while he was in Turkey, or in Calais, just before he came to the UK. His attempt to deal with this in evidence was unpersuasive. I find this another indication that there is no genuine difficulty in communication.
16. For all those reasons, the appellant fails to establish his claims about his lack of documentation and family contacts.

Further resolution of the claim.

17. The case now falls to be approached on the footing that the appellant has identity documentation readily available and has family contacts to assist him on return.
18. Mr Winter submitted that although the appellant's case was strengthened if he had no documents, or the ability to replace them, and no family contacts, his case could be established in any event by the difficulties he would face in Iraq, such as to exclude his home area, the IKR, Baghdad or elsewhere.
19. Those submissions magnify any problems the appellant would face on return. His difficulties would be no more than those of any other reasonably able young Iraqi Kurdish man; perhaps less, as he comes from a family of at least reasonable financial substance.
20. As Mrs O'Brien submitted, Salah-al-Din province, including Tuz Khurmato, is no longer subject to Daesh and is no longer a contested area in terms of the country guidance. However, there have been recent significant clashes leading to the flight of civilians on a large scale. The current evidence might be interpreted as reaching the threshold of protection.
21. Relocation to Baghdad raises some problems. Although not generally reliable, it may be that, as the appellant says, he is not fluent in Arabic and has no family or other contacts there. On the other hand, he would have a CSID and would return with the benefit of a resettlement package. His overall situation would fall short of undue harshness. However, this is not the first alternative, and not the decisive issue.
22. The case is completely answered by the availability of relocation to the IKR. The appellant's references and his expert report include no material of such force as to over-ride the clear country guidance. The IKR remains virtually free of violence. The appellant faces no undue harshness there.
23. The decision of the FtT has been **set aside**. The following decision is substituted: the appeal, as brought to the FtT, is **dismissed**.
24. No anonymity direction has been requested or made.

*Hugh Macleman*

1 February 2018  
Upper Tribunal Judge Macleman