



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06851/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 28 July 2017

Decision & reasons Promulgated  
On 25 August 2017

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR CHINAR ISMAEL MOHAMMED

(ANONYMITY ORDER NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)  
For the Respondent: Mr C Cole (Solicitor)

## **DECISION AND REASONS**

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (Judge T Jones hereinafter "the Judge") to allow the claimant's appeal against a decision of 22 June 2016 refusing to grant him international protection. In particular, although the Judge had dismissed the appeal on asylum grounds he had allowed it on humanitarian protection grounds.

2. By way of brief background, the claimant is, it is accepted, a national of Iraq, a person of Kurdish ethnicity and a former resident of Mosul. It is said that he entered the UK, in a clandestine manner, on 12 October 2015 whereupon he claimed asylum. Put simply, in making that claim he asserted that the organisation sometimes called ISIS had sought to forcibly recruit him in Mosul and that he had fled to avoid such recruitment. He asserted that, in those circumstances, he would be at risk of persecution if he were to return to Mosul. He also contended that he would not have, available to him, an internal flight alternative.

3. The Secretary of State did not think the claimant had given a truthful account of events. The strongest point the Secretary of State had, in that regard, was that whilst the claimant had originally seemed to claim that he had fled Iraq on 29 September 2015 in response to the attempt to recruit him, there was evidence that he had been finger-printed in Greece on 29 July 2015. The Secretary of State, nevertheless, did accept that given prevailing conditions in Mosul, unless there was a viable internal flight alternative, the claimant would be entitled to humanitarian protection under Article 15c. But, it was argued that the claimant would be able to locate either to Baghdad or to the part of the country under Kurdish control (the "KRG").

4. At the hearing extensive submissions were made to the Judge as to the viability or otherwise of an internal flight alternative. The content of those submissions is recorded very fully in a passage from paragraph 15 to 19 of the Judge's written decision. I do not need to set out all of that in full. But Mr Cole's submissions to the Judge (Mr Cole represented the claimant before the First-tier as well as before me), in a nutshell, were that the claimant would not be able to relocate because he might not be able to properly document himself (a reference to a CSID document), he is unable to speak Arabic except to a very limited extent, he would have no sponsor available to assist him in obtaining accommodation in Baghdad, he is from a Sunni minority community (and I suppose he is also in a minority being Kurdish), he does not have family in the Baghdad region nor in the KRG, there is now greater pressure on resources in the KRG given the numbers of persons relocating there, and the UNHCR had taken the view that internal flight would not be viable for a person who does not have close links with the proposed area of relocation including the presence of family both willing and able to provide support.

5. The Judge, having set out the competing submissions as to internal flight went on to say this:

" 23. However, it is equally clear that the Appellant simply by want of being in the United Kingdom and in the absence of internal flight options being available, would be entitled to humanitarian protection pursuant to Article 15(c).

24. With this in mind, I have noted the representations made by Mr Hunt-Jackson as regards his instruction that the Respondent would intend to remove the Appellant to Baghdad, from whence the Appellant could then safely arrange his own onward travel, presumably by air so as to avoid ISIS controlled areas, to the KRG. I have taken account of the Country Guidance decision, and the further and more recent overview of the humanitarian protection positions for the appellant, be that in Baghdad – or the KRG as highlighted in the UNHCR report. I find the appellant's return to Baghdad on the facts of his own case is such at this time that to

return him there would be as was being submitted, unduly harsh (Januzi [2006] UKHL 5) or unreasonable in line with Mr Cole's submissions I have summated above. I also, for like reasons myself subscribe to Mr Cole's balanced, careful submissions, as to internal relocation into the KRG not being a viable option for the appellants at this time as this would be unduly harsh or unreasonable.

25. It may be unfortunate that this is an unmeritorious protection claim, but in all the circumstances and for these reasons and in line with Mr Cole's submissions, I am obliged to allow the appeal given the circumstances in country at this time."

6. The Secretary of State sought permission to appeal to the Upper Tribunal contending that the Judge had given inadequate reasons for his conclusions regarding internal flight, had failed to take into account the submissions of the Home Office Presenting Officer at the hearing with respect to that issue and had failed, given the conclusion that the claimant had lied about core aspects of his claim, to properly evaluate the contention that he might similarly be seeking to mislead regarding the absence of ties and associations in places of possible relocation. It was also suggested that the Judge had failed to consider the possibility of the claimant benefitting from Assisted Voluntary Return ("AVR") payments.

7. Permission to appeal was granted. The salient part of the grant reads as follows:

"The complaint by the respondent, that the learned Judge, in holding the appellant would be unable to return to Baghdad or KRG, merely adopted the submissions for the appellant without considering and giving reasons for the rejection of the contrary submissions of the respondent, is fairly arguable."

8. Following the grant the claimant's solicitors filed a "rule 24 reply". It was asserted therein, in summary, that a judge's reasons are not required to go beyond adequacy, that the reasons here were adequate, that the Judge was not required to refer to each and every aspect of the case and that the decision was a lawful one.

9. The appeal was listed before the Upper Tribunal (before me) so that it could be considered whether or not the Judge had erred in law. The directions also made provision for remaking to take place at the same hearing if that was required. As it turned out it wasn't.

10. I was addressed by Mr Diwnycz. He acknowledged, contrary to a suggestion in the grounds, that the Judge had clearly taken into account the Presenting Officer's submissions given that he had carefully recorded them. He suggested that despite permission having been granted the grounds were unpersuasive (he observed that they did not have "a great deal of bite") and, upon enquiry from me, he said he could not disagree with anything contained within the Order 24 reply.

11. In face of the above it is right to say that there was really no substantial argument pursued on behalf of the Secretary of State before me. In any event, there is nothing in principle wrong with a judge simply making it clear that he/she accepts submissions of a representative for the reasons given in those submissions and effectively adopting them. The Judge did consider the submissions made by the Presenting Officer and those are clearly recorded in the written decision. It seems to me really quite difficult to argue that in circumstances where the Judge had reproduced those submissions in some detail it can be said that he had then failed to keep them in mind. I do not see that the Judge was required to refer specifically to the possibility (and it seems to have been no more than that) of the claimant receiving some assistance by way of the AVR scheme. Perhaps, given the Judge's disbelief of the claimant's core account, it might be said that he should have considered and specifically addressed the possibility of the claimant lying about his lack of contacts in Baghdad and the KRG. However, there was really nothing in the material before the Judge to support the proposition that the claimant did have any such contacts and the mere fact that he had

been lying about other matters did not mean he was lying about that. Further, that particular argument was not pursued at all, let alone with any vigour, before me.

12. In the circumstances I have concluded that the Judge did not err in law. Accordingly his decision shall stand.

### **Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision shall, therefore, stand.

### **Anonymity**

No anonymity order is made. None was made by the First-tier Tribunal and none was sought before me.

Signed:

Date: 25 August 2017

Upper Tribunal Judge Hemingway

### **TO THE RESPONDENT FEE AWARD**

I make no fee award.

Signed:

Date: 25 August 2017

Upper Tribunal Judge Hemingway