



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07193/2019 (P)

**THE IMMIGRATION ACTS**

Decided under Rule 34 without a hearing  
On 30<sup>th</sup> June 2020

Decision & Reasons Promulgated  
On 14<sup>th</sup> July 2020

Before

**UPPER TRIBUNAL JUDGE LINDSLEY**

Between

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

Appellant

and

**KG**

**(ANONYMITY ORDER MADE)**

Respondent

**DECISION AND REASONS**

*Introduction*

1. The claimant is a citizen of Iraq born in 1980. He came to the UK in January 2019 with his wife and children and made an asylum claim. The application was refused on 25<sup>th</sup> July 2019. The appeal against that decision was allowed on humanitarian protection grounds by First-tier Tribunal Judge Davidge in a determination promulgated on the 27<sup>th</sup> January 2020.
2. Permission to appeal was granted to the Secretary of State by First-tier Tribunal Judge Scott Baker on 3<sup>rd</sup> March 2020 on the basis that it is arguable that the First-tier Tribunal erred in law in failing to provide sufficient reasons on material matters, and in particular to support the finding that the claimant

could not internally relocate within the IKR due to his mental health problems given the arguable lack of reasoning with respect to medical evidence and country of origin evidence about the availability of treatment.

3. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out to the parties by email on 7<sup>th</sup> April 2020 seeking written submissions on the assertion of an error of law with a view to determining that issue on the papers, and giving an opportunity for any party who felt that a hearing was necessary in the interests of justice to make submissions on that issue too. Responses were received from both parties: from Mr T Melvin, Specialist Appeals Team, dated 22<sup>nd</sup> April 2020 for the Secretary of State and from the claimant's solicitors in an undated document.
4. The matter came before me to determine whether it is in the interests of justice to decide this matter without a hearing and if so to determine whether the First-tier Tribunal has erred in law. I find that it is appropriate to determine whether there is an error of law on the papers given that neither party identifies any objection to the matter being determined on the papers in their submissions and it being a relatively discrete issue.

*Submissions – Error of Law*

5. In the grounds of appeal and further submissions from Mr Melvin it is argued by the Secretary of State, in short summary, as follows. It is argued that the First-tier Tribunal errs at paragraph 47 to 48 of the decision in finding that the claimant's mental health condition was such that it was not reasonable to expect him to internally relocate in the IKR. It is argued that there are no adequate reasons explaining why the claimant's mental health was such that it would not be reasonable for him to relocate given that at paragraph 46 it had been found that it would be generally safe for him to do so and that he had financial means and family support. It is argued that this is particularly the case as no medical evidence is referred to supporting this conclusion or evidence of the lack of any relevant treatment in the IKR.
6. In his submissions the claimant argues that the appeal should be dismissed as there are no errors of law in the decision of the First-tier Tribunal. It is argued that the grounds essentially raise two issues: firstly, whether there was insufficient reasoning as to why it would be unduly harsh for the claimant to relocate internally; and secondly contending that there was a failure to consider treatment options in Iraq on return for his mental health problems.
7. With regards to the first issue it is argued that the First-tier Tribunal carefully considered the medical evidence from Dr Munro at paragraphs 22 to 27 of the decision highlighting the diagnosis of PTSD; the fact that removal would aggravate his mental stress and would lengthen the period of therapy and rehabilitation needed for him to be able to work; and the fact that the

claimant's fears of return were genuine from a psychological perspective. Further there is also a proper direction by reference to the case law in SMO, KSP & IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 400 with respect to factors affecting return to the IKR including disabilities and access to work. It is submitted therefore that there is further reasoning supporting the decision that internal relocation is unduly harsh, and not just the concise summary at paragraph 47 of the decision.

8. In relation to the second issue it is argued that extensive evidence of the lack of mental health treatment in Iraq was placed before the First-tier Tribunal in the claimant's bundle, which included evidence of significant gaps in mental health provision and an acute shortage of psychiatrists and mental health professionals. The grounds set out the key passage which was drawn to the attention of the First-tier Tribunal on this matter. In the decision there is clear reference to all this material having been considered. It is clear from paragraph 47 of the decision that the First-tier Tribunal placed significant weight on the opinion of Dr Munro, the medical expert, that the claimant's: "fear of further abuse and extortion would make such therapy unlikely to succeed in Iraq". In this context it is argued that the decision of the First-tier Tribunal accords with the evidence that was before it and is sufficiently reasoned.

*Conclusions – Error of Law*

9. The First-tier Tribunal clearly states that it did have regard to all of the evidence before it, as is noted at paragraph 8 of the decision, and it is also clearly said that not all evidence is recited in order to provide an accessible reasoned decision at paragraph 9 of the decision. This is, I find, a lawful approach.
10. The First-tier Tribunal concludes on the basis of all of the evidence that the claimant has shown to the lower civil standard of proof that he is in need of international protection as his at real risk of serious harm from an organised criminal gang who have kidnapped and tortured him to extort money in Kirkuk in the past, and that there is a real risk that they will do so again in the future. In coming to this conclusion significant weight is placed on the medical report of Dr Munro. This conclusion is not challenged in the Secretary of State's appeal. The challenge is to the decision that he could not find safety within the IKR in Iraq by internally relocating, away from his home area of Kirkuk and Erbil, where he is in danger.
11. It is found by the First-tier Tribunal at paragraph 46 of the decision in favour of internal relocation that the claimant has considerable financial resources of his own and within his family, and that he has family nearby, and that it would be possible to find safety within the IKR. However, it is found, at paragraph 47 of the decision, not to be reasonable for the claimant to

internally relocate in this area as this would be unduly harsh due to his mental health problems and the fact it would be too frightening for him.

12. As submitted by the claimant the medical evidence is considered in detail at paragraphs 22 to 27 of the decision, with paragraphs 24 to 26 of the decision focusing on the psychological problems, and concluding that removal would negatively impact on his mental state given the ill-treatment he was subjected to, and would this would impact on his ability to engage with therapy and thus slow his ability to rehabilitate and be able to return to work.
13. It is relevant to consider the scarring evidence set out in the report and in the decision of the First-tier Tribunal which can be summarised as follows. It is found that the scarring is highly consistent or typical of injuries which the claimant says he received during his kidnap by the criminal gang in November 2017 and includes: a scar on his eyelid highly consistent with being caused by a blow with the butt of a handgun; a scar at the base of the penis highly consistent with being caused by a blow from a fist or boot; entry and exit wounds scars typical of being from a handgun at a range of 1 metre; and injuries to a toe typical of being caused by two segments of the toe being removed with sharp metal pincers.
14. In light of the horrific torture the claimant is found to have suffered at the hands of the criminal gang by the First-tier Tribunal in Kirkuk in November 2017, and the diagnosis of PTSD (which as set out in the full report includes: flashbacks, nightmares, avoidance of noise, crowds and discussions of his situation with strangers, hyperarousal affecting his sleep and concentration, lack of concentration, and emotional upset) and the opinion of the medical expert, Dr Munro, that "his fear of further abuse and extortion" would make the necessary psychological therapy "unlikely to succeed in Iraq" as he found the claimant to be in a state of "dread" and to have a genuine psychological belief that he will be found and attacked again if he returns to that country, I find that the conclusion of the First-tier Tribunal that it would be unduly harsh to expect the claimant to relocate internally is entirely rational and properly reasoned by reference to the medical report.
15. I find that there was no need for the First-tier Tribunal to refer to the country of origin materials with respect to the availability of psychological support in the IKR as the point is that even if they exist in adequate form the state of terror which return would induce in the claimant due to his genuine subjective belief that relocation in the IKR away from Kirkuk and Erbil would not provide safety from further abduction and torture would make any therapy very unlikely to succeed in healing his significant and debilitating PTSD condition. However, as the claimant has point out, in any case the evidence available to the First-tier Tribunal with regards the situation for health service provision in Iraq is very poor with an acute shortage of psychiatrists and mental health professionals, see UNCHR report on Iraq dated May 2019 in the claimant's bundle at page 282, which was before the

First-tier Tribunal and in a passage identified in a schedule as particularly relevant to the determination of this appeal.

Decision:

1. The making of the decision of the First-tier Tribunal did not involved the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal on humanitarian protection grounds.

Signed *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

30<sup>th</sup> June 2020