



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
IA/02412/2014**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**On: 27 October 2014**

**Prepared: 6 November 2014**

**Determination  
Promulgated**

**On: 11 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR SHWAM WAHED AHMED  
NO ANONYMITY DIRECTION MADE**

**Respondent**

**Representation**

**For the Appellant: Mr S Walker, Senior Home Office Presenting Officer**

**For the Respondent: Mr K Smyth, Solicitor, Kesar and Co.**

**DETERMINATION AND REASONS**

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondent as "the claimant."

2. The claimant is a national of Iraq, born on 7<sup>th</sup> October 1992. His appeal against the decision to refuse his application for asylum and human rights and to remove him from the UK was allowed in a determination of First-tier Tribunal Judge Monroe, promulgated on 6<sup>th</sup> August 2014.
3. She found that if returned to Iraq there was a reasonable likelihood that he would be persecuted for his imputed political opinion, and that there was a real risk that his human rights under Articles 2 and 3 of the Human Rights Convention would be breached. Further, his removal from the UK would breach his right to private life under Article 8. He was also entitled to subsidiary protection.
4. On 26<sup>th</sup> August 2014, First-tier Tribunal Judge Nicholson granted the secretary of state permission to appeal. It was contended in the first ground of appeal that the Judge failed to have due regard to the decision of the Upper Tribunal in **HM and Others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)**. He would be able to return to KRI and as such internal relocation would be a viable option.
5. Ground 2 asserted that the Judge had not adequately explored whether he would be able to reside in the capital and whether relevant medical treatment, if required, would be available.
6. Mr Walker relied on the secretary of state's grounds. The Judge had found that the appellant would not be able to access Kurdistan, since he does not come from that area. He submitted however that the Judge failed to have due regard to the decision in **HM**, supra and asserted that the claimant would be able to return to KRI and accordingly internal relocation was a viable option. He also relied on ground 2, which I have set out.
7. Mr Smyth submitted that the secretary of state had not challenged the finding that the claimant would be at considerable risk of prosecution in his home area of Makhmour, as found at paragraph 54 of the determination. Neither the alternative finding that he would have succeeded in his claim for subsidiary protection [58] nor the decision to allow his appeal under Article 8 had been challenged.
8. With regard to the appeal under Article 8, the claimant had also relied on the fact and had shown that internal relocation was unreasonable or unduly harsh. That therefore remains an undisturbed finding.
9. He further submitted that the 'point' had been made on behalf of the claimant before the First-tier Tribunal that his home area of Makhmour is not a part of the KRI. The Judge found as a matter of fact that it is in Iraq [44]. That finding has not been challenged.

10. Furthermore, the Judge did have in mind the country guidance case of **HM** as well as **MK (Documents - Relocation) Iraq CG [2012] UKUT 00126 (IAC)**. Accordingly, the requirement as to whether a sponsor would or would not be necessary was not relevant. She noted that in **MK**, the Tribunal stated that Civil Status ID was required to effect entry into the KRG and that the person has to go to his home to replace a lost ID; or to ask a friend or relative to pass the necessary information to the local Iraqi embassy. That was not found to be a practical possibility for the claimant [46]. That finding was open to the Judge, given the specific facts of the case. The claimant is unable to obtain such ID as he does not come from the KRI and does not have the support of any family members [56-57]. There was thus no departure from the relevant country guidance.
11. He submitted that the Judge had also regard to an earlier determination of the appellant's appeal in October 2010. Judge Monroe found that the Judge had been at a disadvantage in reaching his decision as he did not have a report from Dr Conning before him. He had also been presented with a serious factual inaccuracy which informed his decision on credibility. In particular, he had found as a fact that Makhmour is in Kurdistan. The case advanced by the claimant, however, was that it is in Iraq. Judge Monroe found that the country material before her indicated that that was the case. She has set this out in full at paragraph 42 of the determination.
12. At paragraph 44, she stated that whatever the claimant as a child of 15 may have said about the geographical situation of Makhmour, as a matter of fact, it is in Iraq. Accordingly his credibility had been adversely affected on a wrong basis because of this factual inaccuracy. The country material made it clear that since he does not come from Kurdistan, he would not be able to access that part of Iraq if he were returned.
13. With regard to the second ground of appeal, namely that the Judge failed to give adequate reasons for finding that the claimant would incur the hostility of ISIS, Mr Walker submitted that the Judge had not adequately explored whether he would be able to reside in the capital and whether relevant medical treatment would be available.
14. Mr Smyth however submitted that this ground is "misconceived". It fails to take into account the range of personal characteristics highlighted at paragraph 56 of the determination. There, the Judge found that the claimant had certain personal characteristics which she found placed him in an enhanced category of risk on return to Baghdad. He is a Sunni Muslim; he is Kurdish; he left Iraq aged 15 and has resided here since 2007; he does not have the support of any family members in Iraq; he suffers from PTSD with depression and his IQ is in the lowest 5% of the population.

15. Nor did he have the inner strength and life skills required to enable him to survive in Iraq, where he has never lived independently. He has never lived in Baghdad and has no contacts there to offer him support. He will appear 'westernised' and thus tainted and he will incur the hostility of ISIS. Accordingly, there was a reasonable likelihood that he would be persecuted for his imputed political opinion if returned to Iraq.

## **Assessment**

16. The grounds of appeal do not seek to challenge the alternative finding by the Judge that even if the asylum claim had failed, the claimant would have succeeded in his claim for subsidiary protection. Nor has the secretary of state challenged the decision to allow his appeal under Article 8 of the Human Rights Convention.
17. The respondent has asserted that the appellant would be able to return to KRI and that internal relocation was a viable option.
18. However, the evidence presented to the First-tier Tribunal was that his home area of Makhmour was in fact not part of the KRI. I have referred to Judge Munro's reasons for coming to that conclusion which are fully set out from paragraphs 42-44. That finding has not been challenged by the secretary of state.
19. Further, it is evident from her determination that Judge Munro has had regard to the country guidance cases and has in fact set out at paragraph 48 the relevant paragraphs relating to country guidance in full. She found that the security situation had however significantly changed [49]. The basis for that finding is set out from paragraphs 49 - 53.
20. Judge Munro has considered whether internal relocation to Baghdad is viable and reasonable for this claimant.
21. From paragraph 56 onwards, she has set out his personal characteristics, including the fact that he suffers from PTSD with depression and that his IQ is in the lowest 5% of the population. At paragraphs 55-57, she thus found that he does fall into an enhanced risk category. As a result, he could not reasonably be expected to relocate there. I find that she has given proper reasons for her conclusion.
22. Moreover, her findings that the claimant would be unable to obtain a civil status ID as he did not hail from the KRI and that he did not have the support of any family members are sustainable on the evidence [46] and [56-57].

23. Finally, even if Judge Monro has made any error on the basis asserted by the secretary of state, it would not be material in the light of the fact, as already noted, that she has made reasoned findings which have not been challenged, that removal would breach the Directive 2004/83/EC and Article 8 of the Human Rights Convention.
24. As submitted by Mr Smyth, given that the claimant is at risk in his home area, it cannot be said that he can reasonably relocate; such a move would breach his Convention rights.

### **Decision**

The determination of the First-tier Tribunal did not involve the making of any material error on a point of law. The determination shall stand.

**No anonymity direction made.**

Signed

Dated: 6/11/2014

C R Mailer  
Deputy Upper Tribunal Judge