



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

Appeal Number: PA/04837/2016

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus Decision & Reasons Promulgated  
House)  
On 16 June 2017**

**On 22 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**K H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms E Fitzsimons instructed by Migrant Legal Project  
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.
2. The appellant is a citizen of Iraq of Kurdish ethnicity. He was born on 8 September 1989. He entered the United Kingdom on 17 December 2015 and claimed asylum. On 26 April 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

3. The appellant appealed. In a decision dated 31 October 2016, the First-tier Tribunal (Judge A D Troup) dismissed the appellant's appeal on all grounds. Before Judge Troup, it was accepted that the appellant could not return to his home area as it fell within one of the "contested areas" of Iraq. The sole issue before the judge was whether the appellant could internally relocate to the Iraqi Kurdish Region (IKR). Judge Troup found that internal relocation to the IKR was a viable option and as a consequence the appellant could not succeed on asylum and humanitarian protection grounds or under Arts 2 and 3 of the ECHR.
4. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds. On 22 December 2016, the First-tier Tribunal (DJ Macdonald) granted the appellant permission to appeal. Thus, the appeal came before me.
5. Before me, Mr Diwnycz, who represented the Secretary of State, accepted that the judge had erred in law in reaching his adverse finding on internal relocation. Mr Diwnycz accepted that the appellant's ground 3 was made out, namely that the judge had approached the issue of whether internal relocation was "unduly harsh" on the basis that the appellant had to establish a breach of Art 3 of the ECHR.
6. Mr Diwnycz's acceptance of the error of law is, in my judgment, entirely correct. The test of "reasonableness" or "unduly harsh" which applies in determining whether internal relocation is an option, does not require the appellant to establish a breach of Art 3 (see AH (Sudan) v SSHD [2007] UKHL 49 at [9]). In applying that yard-stick at paras 39 and 42, the judge erred in law.
7. Both representatives indicated that the proper disposal of the appeal was that it be remitted to the First-tier Tribunal in order that fresh factual findings, applying the correct approach, could be made in respect of the issue of internal relocation to the IKR.
8. Accordingly, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. I set that decision aside.
9. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Troup. As regards the appellant's international protection claim, the sole issue will be whether the appellant can internally relocate to the IKR. In addition, the First-tier Tribunal should also remake the decision in respect of Art 8.

Signed

A Grubb

Judge of the Upper Tribunal

Date: 21 June 2017